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## **The UN Convention on the Rights of the Child, Decentralisation and Legislative Integration: A Case Study from Wales**

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### **Abstract**

Despite decentralisation and local control over policy being a ubiquitous feature of human rights governance globally, the UN Committee on the Rights of the Child focuses primarily on the State as the locus for implementation of UN Convention on the Rights of the Child (CRC). State control and a regulative approach prioritising justiciability of the CRC at national level are the Committee's dominant responses to decentralisation. This paper introduces the context of decentralisation, including the risks and potential gains for implementation of the CRC. It is contended that the regulative approach contemplated by the Committee may prove particularly challenging in the context of decentralisation. It is suggested that a normative approach, in which legislation is used to promote compliance through cultural acceptance of the CRC, and to support localisation of children and young people's rights, may be better suited to the contours of decentralised governance. Taking the example of Wales, a devolved territory in the

United Kingdom, it will be shown how a primarily normative approach to legal integration can help mainstream international norms in policy development, enhance accountability for rights, and provide opportunities for policy advocacy at a local level. The paper is a contribution to the literature on the instrumental value of legislation to support the realisation of human rights, applicable to decentralised systems of governance.

### **Keywords**

Decentralisation; devolution; human rights; children and young people; legal integration; UNCRC

### **Introduction**

Obligations under the UN Convention on the Rights of the Child (CRC) are imposed on States Parties, accordingly a State government is required to respect, protect and fulfil the CRC rights of all children and young people within its jurisdiction.<sup>1</sup> Yet in many States worldwide decentralisation or devolution is the context for implementation of the CRC and, although arrangements vary, a common feature of decentralisation is the transfer of State power over policy that impacts on the lives of children and young people from central State institutions, to administrations at regional or local level,<sup>2</sup> making governance of the CRC a matter of local responsibility.<sup>3</sup> Despite its ubiquity as an aspect of governance of children and young people's rights globally, the UN Committee on the Rights of the Child (the 'Committee') focuses primarily on State government as the locus for implementation, with States encouraged to adopt a regulative approach to legal integration of the CRC at national level, including in response to decentralisation.<sup>4</sup>

This paper first introduces the context of decentralisation, including the risks and potential gains for implementation of the CRC. It will then focus on the Committee's recommendation that the CRC be incorporated in national legal systems. It is contended that the regulative approach contemplated by the Committee may prove particularly challenging in the context of decentralisation. It is suggested that a normative approach, in which legislation is used to promote compliance through (institutional) cultural acceptance of the CRC, and to support localisation of children and young people's rights, may be better suited to the contours of decentralised governance. After discussing aspects of regulative and normative approaches to legal integration of human rights to provide a conceptual and analytical framework, the paper introduces a case study on legal integration of the CRC at a level below the State party. Taking the example of Wales, a devolved territory in the United Kingdom (UK), it will be shown how a primarily normative approach to legal integration can help mainstream international norms in policy development, enhance accountability for rights, and provide opportunities for policy advocacy at a local level. While the focus is on implementation of the CRC, the case study provides generalisable insights, and is a contribution to the literature on the instrumental value of legislation to support the realisation of human rights in decentralised systems of governance.

### **Decentralisation: A context for children's rights**

The dominant arrangement for governance in many States worldwide is decentralisation.<sup>5</sup> Arrangements vary but typically provide for local control, in some cases including legislative competence, in policy areas such as health, education, housing and welfare, often accompanied by fiscal decentralisation.<sup>6</sup> In a number of States therefore the levers of control over policies that affect how children and young people experience their rights guaranteed by the CRC, in particular their social and economic rights, are in the hands of devolved administrations. This introduces both risks and opportunities. Risks include: low priority accorded to children and

young people's rights by local administrations, especially where locally elected politicians may be more concerned to meet the needs of adult constituents in order to maintain themselves in power;<sup>7</sup> limited resources to support implementation (when compared with resources available to State governments), blurred lines of accountability, and discrimination as children and young people experience their rights differently based on territorial distinction.<sup>8</sup> Inconsistent implementation of the CRC across internal administrations was identified as an issue in a study of legal implementation of the CRC for UNICEF in 2012; as was dilution of State responsibility for children and young people's rights where implementation takes place largely under local control.<sup>9</sup> The Committee is alert to these risks. Referring to decentralization and devolution without distinction, it has emphasized that such arrangements do not reduce the direct responsibility of States governments to meet their CRC obligations across the whole of their jurisdiction, irrespective of internal governance structures.<sup>10</sup> Although a range of measures of implementation suitable for use at all levels of government have been identified, an upward solution emphasising State government control, planning and coordination, and national legal regulation are the Committee's primary responses to decentralisation.<sup>11</sup>

While decentralisation introduces risks for CRC implementation, there are also potential gains. Decentralisation is often argued on efficiency grounds as leading to better services and improved accountability.<sup>12</sup> Where service planning and delivery are in the hands of local administrations, planners are usually closer to users, civil society and non-governmental organisations (NGOs). This has potential to facilitate contributions to policy development by local stakeholders with experience of local need, expertise in discrete areas of policy, and insight into how to make best use of local resources.<sup>13</sup> Close proximity relations are also seen as enhancing accountability, as decisions-makers are likely to be more visible and accessible to service users or their representatives.<sup>14</sup> While these claims are difficult to establish

empirically, it is claimed that decentralisation increases the opportunities available for local people, NGOs and others to contribute practise experience to scrutinise policy and bring forward alternatives, as well as to act as advocates for reform and hold local institutions to account.<sup>15</sup> These are precisely the sort of opportunities the Committee says should be available to children and young people, or their representatives.<sup>16</sup>

### **Incorporation: A regulative approach to CRC integration**

The Committee, in common with other UN human rights treaty bodies, engages primarily with States Parties on matters of treaty compliance. But the international regime is not endowed with the means to impose any significant penalty for breach of obligations, and there are doubts about the utility of international mechanisms to bring about real change in the way States behave.<sup>17</sup> It is unsurprising therefore that the Committee has called for incorporation of the CRC so that it is fully justiciable and enforceable before national courts, and given predominance when in conflict with national law, policy or practice, and a remedy provided where rights are violated.<sup>18</sup> Incorporation of the sort contemplated by the Committee would provide the hard-edged regulative environment for CRC implementation at national level that is lacking at international level. However, while integration in national legal systems clearly has a function to promote behaviours that deliver CRC consistent policy outcomes, there are a number of objections to a regulative approach which relies on individual claims litigation to achieve this. Amongst these are well-rehearsed arguments concerning the justiciability of social and economic rights, including whether unelected judges should interfere with resource allocative decisions taken in the political domain.<sup>19</sup> Judicial reticence to trespass onto the perceived terrain of elected politicians is certainly a feature of the legal landscape in the UK.<sup>20</sup> This was recently confirmed in *R (SG and others) v Secretary of State for Work and Pensions*,<sup>21</sup>

in which a majority of the UK Supreme Court was unwilling to declare government policy on welfare reform unlawful, despite its negative impact on children and young people's rights.

While the case for enforcement and justiciability of all CRC rights is often convincingly made in the literature, this is contested.<sup>22</sup> In any event, children and young people face particular challenges accessing court-based remedies where their rights are violated. These include inadequate resources, and reliance on others to act on their behalf where capacity is in issue.<sup>23</sup> Although the Committee has recommended States introduce measures to support children and young people to claim their rights through legal proceedings, they remain marginalised in justice systems.<sup>24</sup> As Williams observes, obtaining CRC compatible policy outcomes through the courts is likely to be a 'hard and tortuous business' even in States where there has been progress on incorporation of social and economic rights.<sup>25</sup> She notes that securing judicial enforcement of the CRC in full in some legal systems is not merely a conceptual issue but, for children and young people, a practical one.<sup>26</sup>

The context of decentralisation introduces additional challenges to a regulative approach to ensuring compliance with the CRC through national law and enforcement by the courts. Decentralisation is a manifestation of legitimate claims by regions within a State to a degree of independence, and is consistent with several principles of international human rights.<sup>27</sup> A State imposed regulatory framework requiring local compliance with international human rights places limits on devolved sovereignty. Reflecting on the issue in the context of devolution in Scotland, Himsworth comments that while 'devolutionary democracy is enhanced by the addition of a human rights dimension', there is nonetheless an 'element of tempering of the devolution project by the human rights project'.<sup>28</sup> Tensions are likely to arise between these 'projects' where policy divergence takes place as a predictable and legitimate outcome of

devolution.<sup>29</sup> The probability is that these tensions will emerge in precisely those policy areas where discretion is typically given to local administrations. These are areas where difficult decisions often need to be made about the allocation of scarce resources, and where disagreements often arise in the political domain about how best to meet competing priorities, including rights-based priorities. International human rights in these areas, including under the CRC, are often indeterminate (see below), and there is scope for disputation about how best to realise their objectives. Under a regulative approach States governments may seek to rely on human rights arguments to impose their will on local administrations: whether as a consequence of disagreement, or in pursuit of a centralising agenda. In either scenario, there is the possibility of disruption of the sovereignty relations anticipated by devolution.

Disruption of sovereignty at devolved level may be justified to provide a ‘floor of rights’ to ensure that regional governments do not violate human rights.<sup>30</sup> It might also be assumed that human rights uniformity should be a matter of constitutional significance, enforced by a national Supreme Court.<sup>31</sup> However, a legal regime inclined toward State human rights isomorphism risks denuding many human rights, including under the CRC, of a key asset. In common with other human rights treaties, many of the guarantees set out in the CRC are drafted at a level of abstraction to make them suitable to a wide range of settings.<sup>32</sup> In the context of decentralisation this is an opportunity for stakeholders, including children and young people, to contribute locally relevant understandings of CRC obligations to inform policy development.<sup>33</sup> However, in a regulative environment which relies on court-based determination the flexibility inherent in human rights may be seen as problematic. The proscription that accompanies legal application of rights invites delineation by the courts, undermining local interpretation and applicability. The risk is that rights under the CRC will lose their ‘transformative effect’ and will become petrified into a ‘legalistic paradigm’ if local



officials become more concerned with regulatory compliance than with local application and relevance.<sup>34</sup> From this there is the potential for a regulative environment to produce a chilling effect on the policy process if CRC interpretation is dominated by ‘technocrats’ (legal professionals or officials), limiting the opportunities to mobilise the CRC to inspire imaginative policy solutions.<sup>35</sup>

### **A normative approach: Making the CRC locally relevant**

An alternative to court-based compliance mechanisms for implementation of the CRC is one which relies on the ‘persuasive power of legitimate legal obligations’.<sup>36</sup> In this normative model of compliance CRC consistent policy outcomes are a consequence of a ‘logic of appropriateness’,<sup>37</sup> with a ‘de-emphasis of formal enforcement measures... except in egregious cases’.<sup>38</sup> The essence of the approach is an iterative discourse in which the meaning and content of rights becomes locally understood, and have a causal influence on policy outcomes.<sup>39</sup> A normative approach to CRC implementation has much in common with the localisation of human rights. De Feyter, discussing the concept of localisation as a response to globalisation, sees local need as the ‘starting point both for further interpretation and elaboration of human rights norms, and the development of human rights action at all level’.<sup>40</sup> Under a normative approach and the localisation paradigm international legal norms are not treated as the basis for a legal claim, but as a framework for effective policy and action.<sup>41</sup> Rights-holders and policy advocates will mobilise international norms to promote change through the introduction of a human rights perspective into policy-making,<sup>42</sup> including as justification for deviation from State policies.<sup>43</sup>

The preferred response to human rights needs through localisation is that they are dealt with in close proximity to the sites where needs emerge.<sup>44</sup> This provides a link to the context of

decentralisation as human rights needs arise in a specific geographic location, which will often be the context for public policy in devolved systems.<sup>45</sup> Localisation of the CRC begins with ‘cultural acceptance’ of the idea that children and young people have rights, and thereafter integration into the practices of local administration.<sup>46</sup> As in a normative approach, the articles of the CRC are deployed to convince local policy-makers that practices must change, and to reform policy.<sup>47</sup> Local NGOs, using their knowledge of local need and informed by the CRC, will develop policy options for selection by policy-makers, who will have to be persuaded to adopt preferred options.<sup>48</sup> Decentralisation provides a unique opportunity to undertake policy advocacy through local ‘interpretive communities’ made up of policy-makers and NGOs, with participation by children and young people or their representatives.<sup>49</sup> Tobin, discussing interpretive communities from the perspective of international treaty implementation, notes that participants can take account of factors that apply locally, including any resource constraints on devolved administrations. Taking account of constraints, as well as needs and obligations, is more likely to result in locally negotiated policy options being seen as legitimate by all concerned.<sup>50</sup> The involvement of local NGOs and National Human Rights Institutions in interpretive communities, in particular those with links to the international sphere, is vital to ‘navigate between the local and the global’ in order to bridge the gap between the international regime and local application of human rights.<sup>51</sup> The Committee is distant from the sites where children and young people experience their rights, and any disconnect between local policy and the Committee’s outputs has the potential to undermine the CRC’s legitimacy at local level.<sup>52</sup> Localisation in the context of decentralisation is an obvious opportunity for ‘transformation of the global discourse’ of human rights, including under the CRC, to the local environment.<sup>53</sup> This transformative process enhances the legitimacy of the CRC as international human rights become the demands of children and young people at local level.<sup>54</sup> To improve the effectiveness of localisation practices, mechanisms need to be available to

support interactive dialogues and ‘deliberative engagement’ to deliver a locally relevant understanding of CRC obligations, including mechanisms that engage children and young people.<sup>55</sup> These are more likely to be available in the context of decentralisation, and may already be a feature of local governance. This is what has been attempted in Wales, and is discussed later in this paper.

### **Supporting CRC implementation: Functions of Legislation**

Legislation is a quintessentially regulative device. In the context of a normative approach to CRC implementation however, it may be used to promote structures and practices to support implementation.<sup>56</sup> A function of (devolved) legislation therefore might be to frame the policy environment in which this takes place, so that policy decision-making proceeds by reference to objectives introduced by legislation: including the possibility of human rights objectives. This has several aspects, a number of which are relevant to the discussion of developments in Wales set out below. First is to confirm internationally accepted guarantees of protection and entitlements for children and young people as the legitimate objectives of policy at local level. This is partly symbolic, but also establishes an expectation which authorises the use of rights-based compliance language in policy advocacy. Stakeholders are able to identify relevant duty-bearers and make claims for compliance.<sup>57</sup> Second is to establish rules to govern the discretion of public officials (Ministers and their officials) involved in policy development.<sup>58</sup> These rules, although contained in legislation, need not imply application by lawyers or the courts. Rather legislation contributes the basic elements of an institutional environment, through ‘structural templates and action scripts’ that guide work on policy.<sup>59</sup> Third, legislation can confirm the reference points for officials involved in policy decision-making, including the Committee’s textual output: general comments, reports on days of discussion, and concluding observations on State Parties’ reports.<sup>60</sup> Fourth, as the effectiveness of a normative approach is partly

dependent on the involvement of children and young people, and other stakeholders, legislation can introduce mechanisms that engage a range of participants in policy development.

As a normative approach relies on acceptance of CRC obligations without recourse to judicial enforcement, there is the potential that it will be adopted as a policy framework but will not be used as the actual basis for policy. In this scenario children and young people's rights are likely to be 'decoupled' from practice and any stated commitment to the CRC will be little more than 'window-dressing'.<sup>61</sup> Legislation can therefore be used to strengthen accountability mechanisms to expose any failure to use the CRC as a policy framework. Additional accountability opportunities might include: complaints procedures; review by National Human Rights Institutions (NHRIs), including children's commissioners where these are established; and, opportunities for parliamentary scrutiny.<sup>62</sup> While a normative approach places limited reliance on judicial enforcement, Williams suggests that legislation might also provide a supervisory role for the courts as a 'backstop to bespoke political and administrative machinery' designed to ensure that the objectives of the CRC are met primarily through close attention in policy development.<sup>63</sup> The approach in Wales has sought to deploy legislative devices to promote a normative approach to CRC implementation, while retaining regulative elements to enhance accountability mechanisms.

### **The CRC in Wales**

Since 1999 and devolution to Wales, Scotland and Northern Ireland, there has been scope for devolved administrations in these territories to follow their own direction on policy affecting children and young people. The National Assembly for Wales (NAW) has legislative competence in a number of areas relevant to the CRC, including: health, housing, education, and social care.<sup>64</sup> The Welsh Government exercises executive powers that largely mirror the

competences of the NAW, with control over a fixed annual budget.<sup>65</sup> The contours of Welsh devolution are not unusual, and will be a feature of decentralisation in many States. A particular aspect of UK devolution is that devolved administrations are prohibited from acting in a manner which is not compliant with the Human Rights Act 1998, which gives effect to the European Convention on Human Rights (ECHR) in UK law.<sup>66</sup> This limitation, which is not imposed on the UK Parliament,<sup>67</sup> establishes the outer limits of devolved competences, providing a safeguard against human rights violation. However, it offers no guidance on how the devolved administrations should give effect to human rights obligations incumbent on the UK, either under the ECHR or other international instruments. There is then considerable scope for the devolved administrations to take diverse approaches to CRC sensitive policy areas.<sup>68</sup>

Differences in policy approach between the UK and Wales in the field of children and young people have been apparent since the outset of devolution. In contrast to the UK government, the NAW and the Welsh Government have used the language of rights and entitlements in policy documents and legislation.<sup>69</sup> Although perhaps an inevitable consequence of devolution, the divergence in the approach to the CRC in policy between government in Wales and in the UK means that children are likely to experience their rights differently depending on where they live in the UK. This is consistent with findings from the UNICEF study referred to above, and is amongst the challenges of decentralisation identified by the Committee.<sup>70</sup> In 2008 the Committee expressed its concern at the lack of national coordination of implementation of the CRC in the UK, and again when the UK was examined by the Committee in 2014.<sup>71</sup> (This issue has been identified not only in the UK but for other States where some form of regional autonomy is a significant feature of constitutional arrangements and CRC governance<sup>72</sup>). Despite this, the approach taken in Wales was noted with approval by the Committee when the UK was examined in 2008. However, the Committee identified an implementation gap between

political rhetoric and policy affecting children and young people.<sup>73</sup> Although the willingness of Welsh governance institutions to engage with the CRC offered the possibility of a local solution to this problem, the Committee's response was to urge the UK to incorporate the CRC in national law and take a lead on national planning.<sup>74</sup> While the Committee may have overlooked an opportunity to connect its recommendations to the context of Welsh devolution, the Welsh Government was keen to strengthen its commitment to children and young people's rights through law. In 2010 a proposal for legislation was introduced to the NAW, and in 2011 the *Rights of Children and Young Persons (Wales) Measure 2011* (the 'Measure') received Royal Assent. The Measure is the first, and to date the only general legislative measure of implementation of the CRC in the UK. It came into partial effect on 1<sup>st</sup> May 2012, and has been in full effect since 1<sup>st</sup> May 2014.<sup>75</sup>

The development of the Measure was characterised by a high level of engagement between Welsh Government and the Wales UNCRC Monitoring Group (the 'Monitoring Group'), a civil society network, with participation (as observers) by the Children's Commissioner for Wales (CCfW), the Equalities and Human Rights Commission in Wales (EHRC), and Welsh Government officials.<sup>76</sup> In a highly unusual step (unlikely outside the context of devolution), the Monitoring Group was invited to put forward a proposal for legislation to the Welsh Government. Convinced that the implementation gap was attributable to a lack of attention to the CRC in policy development, the Monitoring Group took the view that a regulative approach giving a reactive remedy to rights violation would be unlikely to deliver an effective solution to low prioritisation of the CRC in policy development. The Monitoring Group favoured legislation to embed the CRC in policy processes at an early stage, and so legislation was suggested – and was enacted as the Measure – to promote cultural acceptance of the CRC as

an aspect of policy-making within the Welsh Government, and to support local mobilisation of children and young people's rights.

### **The Measure**

The primary mechanism to embed the CRC in policy under the Measure is a duty on the Welsh Ministers to have due regard to Part 1 of the CRC when exercising any of their functions (the 'due regard duty').<sup>77</sup> This enshrines the CRC as part of the framework for policy development in Wales, and places children and young people's rights to the fore.<sup>78</sup> The essence of the approach is to promote a culture in which the CRC is routinely taken into account and causally influential on policy outcomes. Ministers have to reflect on relevant articles of the CRC when considering proposals for policy, and how they can exercise their functions to give better effect to children and young people's rights.<sup>79</sup> The Measure confirms the CRC as the basis for policy on children and young people in Wales by making attention to their rights a condition of legitimacy of policy outputs in Wales. The Measure further encourages adoption of the CRC into policy decision-making by requiring Ministers to publish a 'children's scheme' (the 'Scheme'), setting out arrangements they have made for securing compliance with the due regard duty.<sup>80</sup> Significantly, within six months of the Committee making any recommendation based on a UK periodic report, Ministers must consider whether the Scheme should be amended to reflect this, and when preparing (or remaking) the Scheme they must have regard to the Committee's textual output.<sup>81</sup> Ministers are also required to involve children and young people, the CCfW, and any other relevant persons they identify (which could include the Monitoring Group, other NGOs, or the EHRC) in the preparation of the Scheme, a draft of which must be laid before the NAW.<sup>82</sup> These requirements provide an excellent opportunity for children and young people, and other stakeholders, to debate and directly influence policy development at the highest level in Wales.<sup>83</sup> As the CCfW is linked to European and wider

networks of commissioners, and many local NGOs will be part of European or regional organisations, the Measure introduces channels through which the CRC can flow from the international to the local. Ministers also have an obligation to report periodically to the NAW on compliance, once again giving an opportunity for debate and scrutiny.<sup>84</sup> The maximum period between reports is five years (to coincide with UK State party reporting to the Committee), but this may be shortened by the Scheme.<sup>85</sup> Currently a report is required every two-and-a-half years.<sup>86</sup>

### **The Impact of the Measure**

The Measure sits amongst a number of interconnected mechanisms that support children and young people's rights in Wales. These include: other statutes;<sup>87</sup> international, national and local networks that inform Welsh Government policy;<sup>88</sup> the work of the CCfW and EHRC; and developments at international, European and UK levels on integration of the CRC through law.<sup>89</sup> It would be extremely difficult to disentangle the causal impact(s) of the Measure from these and other factors influencing policy on children and young people in Wales, requiring a sophisticated methodology beyond the scope of this paper. Instead discussion will be confined to more general impacts.

An important impact of the Measure has been to enhance legal and parliamentary accountability for children and young people's rights in Wales.<sup>90</sup> Legal accountability has been strengthened as compliance with the due regard duty is a public law function, the exercise of which is amenable to challenge by way of judicial review in the Administrative Court. The due regard formula is borrowed from UK equalities enactments and case-law under these enactments gives guidance on the procedural and substantive content of the duty.<sup>91</sup> Case law confirms that having due regard means a decision-maker must be properly informed, must



attend to the substance of a decision paying attention to any specified objectives, and take account of relevant evidence; the duty must be rigorously exercised and integrated within the discharge of public functions.<sup>92</sup> In addition factors taken into account by the courts on judicial review are: the weight attached to different policy priorities, and the balance struck between competing, or even complementary, interests. Children and young people, and others with sufficient interest will be able to look to the courts to hold the Welsh Ministers to account for compliance with the due regard duty, and how they have taken the CRC into account in policy decision-making. The Measure therefore adds a new basis for judicial review of Welsh Government policy on children and young people. Importantly, the Measure draws down the CRC into Welsh law so that judges deciding cases on compliance with the due regard duty may be called on to consider the meaning of rights under the CRC, as an aspect of forming a view on whether due regard has been had to it.<sup>93</sup> Through this process it is possible that developed understandings of the rights guaranteed by the CRC will emerge in the context of Wales. While it is not anticipated that judicial review will be a regular occurrence, and there is no reported case where the due regard duty has been relied on, there is some evidence that legal practitioners are considering how it might be used as a basis to challenge Ministers on policy decisions.<sup>94</sup> And in *Re P-S*, a case in which the right of a child or young person to be heard in proceedings was considered, the Court of Appeal acknowledged that in the future the approach taken by the courts to cases in Wales may be different because the CRC has become part of Welsh law.<sup>95</sup> However, in practice, other accountability mechanisms are likely to have greater currency, including ‘parliamentary’ scrutiny by the NAW.

A number of opportunities are provided by the Measure for the NAW to scrutinise Ministers on children and young people’s rights in policy development in Wales. For example, when a Scheme is published in draft, or following a compliance report; or, in plenary or committee

sessions when policy is being discussed by the NAW. This could encompass any matter relevant to the CRC, including whether the Committee's recommendations have been properly taken into account. A factor relevant to the effectiveness of parliamentary accountability under the Measure is the willingness of NAW members to engage in rigorous questioning of Ministers. To date members, and in particular the Children, Young People and Education Committee (the 'CYPEC'), have made some good use of the due regard duty to hold Ministers to account.<sup>96</sup> A recent example will illustrate the point. In 2017 the Welsh Government introduced draft legislation to improve educational provision for children and young people with additional learning needs in Wales. The task of scrutinising the legislation was undertaken by the CYPEC. A number of stakeholders contended during scrutiny of the draft bill that the Ministerial due regard duty required Ministers to ensure that those exercising functions under the legislation are also under a duty to have due regard to the CRC.<sup>97</sup> The CYPEC took up the point, and recommended that the Welsh Government introduce an amendment to require anyone exercising functions under the legislation to have due regard to the CRC.<sup>98</sup> Initially this was not accepted. However, the CYPEC and others, such as the CCfW, continued to argue the case using various channels of communication with Ministers, relying on the due regard duty. This lobbying proved successful, and resulted in a Welsh Government amendment to the legislation to place a duty on responsible authorities to have due regard to the CRC.<sup>99</sup>

The Measure has also introduced new opportunities for civil society stakeholders to hold Ministers to account for compliance with the CRC. NGOs, the CCfW and EHRC, the Public Service Ombudsperson, and the Auditor General for Wales, are able to use the due regard duty as a basis to challenge Ministers on issues relating to children and young people's rights in Wales. To date some NGOs, and the CCfW have made effective use of the due regard duty to underpin scrutiny of Ministers. Notably the CCfW in particular has sought to make use of the

due regard duty to hold the Welsh Government to account, deploying it as the basis to critique policy against the framework of the CRC, and to underpin advocacy for alternative policy solutions.<sup>100</sup> Again a recent example will help illustrate the point generally. This relates to the Welsh Government's response to the UK's withdrawal from the European Union (Brexit). Initially the priorities identified for Wales by Ministers failed to expressly recognise the need to protect the interests of children and young people.<sup>101</sup> This was raised by civil society members of the Welsh Government coordinated Children's Rights Advisory Group (CRAG). CRAG has a standing membership drawn from the NGO and academic sectors, UNICEF, and the CCfW and is established to advise Ministers via their officials on CRC compliance in Wales.<sup>102</sup> CRAG members were able to write directly to the relevant Minister pointing out that the duty to have due regard applies to Ministerial participation in any Brexit process, and that Article 12 of the CRC requires Ministers to consult with children and young people about priorities for a post-Brexit Wales.<sup>103</sup> This argument was accepted in a subsequent policy paper on Brexit, which refers directly to the need to consult with children and young people, and funds being made available to support a consultation process.<sup>104</sup>

The above examples illustrate how stakeholders have found new opportunities for accountability and advocacy using the Measure as a bulwark to engage with Ministers. In addition, the Measure has provided leverage to influence how policy on children and young people is carried out in Wales. A Child Rights Impact Assessment (CRIA)<sup>105</sup> has been introduced by the Scheme for all policy proposals. This was introduced following consultation with stakeholders during preparation of the first Scheme in 2011,<sup>106</sup> and reflects the Committee's recommendation that CRIA should be applied to all policy which will have an impact on children and young people.<sup>107</sup> The Welsh Government's report on compliance with the due regard duty in 2015 claimed a 'substantial increase' in number of CRIAs carried out in

the period after the Measure came into full effect in May 2014.<sup>108</sup> This is confirmed by available data in the 2018 report, in which the Welsh Government further claimed that ‘CRIA is now an intrinsic part of policy making processes’.<sup>109</sup> The 2015 report also claims that the use of CRIA has contributed to embedding children and young people’s rights in policy and to the emergence of an ‘ingrained culture of thinking about children’s rights in the Welsh Government’, while recognising that further ‘cultural change’ has to take place.<sup>110</sup> The report points at a number of policies which it claims were influenced by CRIA resulting in better policy for children and young people. These include changes to legislation on well-being in Wales to require the interests of ‘children’ to be identified in local well-being assessments,<sup>111</sup> and guidance issued pursuant to legislation to promote ‘active travel’ to ensure children and young people are able to engage in healthy activities such as walking and cycling.<sup>112</sup> In the 2018 compliance report, data from the Welsh Government confirm that CRIA is in use across a range of departments, not simply those directly involved with policy on children and young people.<sup>113</sup> An evaluation of CRIA by the author of this paper in 2015 partially confirms the claims made by the Welsh Government. It found that CRIA had contributed to increased visibility and awareness of the CRC within the Welsh Government, and had resulted in some better policy outcomes for children and young people.<sup>114</sup> However, the evaluation also identified a number of weaknesses in CRIA procedure undermining its effectiveness to predict the impact of policy on children and young people’s rights. These include capacity and resources issues, limited understanding of CRC obligations amongst officials, and a lack of participation by children and young people during the CRIA evidence gathering phase.<sup>115</sup> These issues are discussed in the Welsh Government’s latest compliance report which includes a commitment to ensure that officials are trained on the CRC, and to take account of recommendations for improvement made in the CRIA evaluation.<sup>116</sup> It is too early to comment on whether this will result in improvements to the CRIA procedure. However, the due regard

duty and the requirement to publish a compliance report means that the effectiveness of CRIA and the issues identified in the evaluation, as well as the Welsh Government's response, have been placed in the public domain and will be debated and scrutinised in the NAW (by the CYPEC), by CRAG and by other interested stakeholders.

To enhance children and young people's capacity to engage with available mechanisms to hold Ministers (and others) to account for compliance with the CRC the Measure includes a free-standing duty requiring Ministers to take action to raise awareness and knowledge of the principles of the CRC in Wales.<sup>117</sup> In order to comply with this duty Ministers have introduced a number of initiatives. For example, since 2015 it has funded 'Young Wales', a project to support consultation with, and participation by children and young people in policy development in Wales.<sup>118</sup> Other participation and awareness raising activities aimed at children and young people supported by the Welsh Government include publication of key policy documents in child-friendly format,<sup>119</sup> new on-line resources,<sup>120</sup> and funding for MEIC, an information, advice and advocacy service for children and young people in Wales.<sup>121</sup> These initiatives contribute toward empowering children and young people to engage in policy in Wales, and to take advantage of their rights. There is evidence that this has resulted in new meaningful engagements between children and young people and policy-makers.<sup>122</sup> However, Young Wales and others have identified the lack of opportunities for participation by children and young people in policy in Wales at all levels as an ongoing problem.<sup>123</sup>

## **Conclusion**

Wales has adopted a primarily normative approach to legal integration of the CRC, without abandoning (on conceptual grounds) regulative aspects of legal integration. The Measure establishes and encourages normative mechanisms to promote a proactive approach to CRC

implementation, and to strengthen advocacy and Ministerial accountability for compliance with children and young people's rights through the work of the NAW, civil society and the CCFW, while deploying a regulative device to support accountability via the supervisory jurisdiction of the courts. While there has been divergence internally within the UK between Wales and other administrations in the UK, the approach in Wales, utilising the due regard duty, is well-suited to the contours of Welsh devolution, and in particular the devolution of competences in areas touching on social and economic rights under the CRC. However, the Measure only merits support if it results in outcomes which better contribute to the realisation of children and young people's rights, and which do not result in lower standards of compliance with the CRC in Wales than elsewhere in the UK. In this respect, it would be imprudent to draw conclusions too broadly from the preceding discussion on impact, not least because some of the initiatives mentioned predate the Measure: the Welsh Government had a long-standing commitment to the CRC and had supported a participatory forum for children and young people before Young Wales was established.<sup>124</sup> But equally it would be artificial to assess the Measure distinct from its historical and contemporary policy context: as noted above, it is one amongst a number of interconnected mechanisms that support children and young people's rights in Wales. These mechanisms, to which the Measure is an addition, are mutually re-enforcing. A reasonable assessment of the Measure at this point in time therefore sees it as having strengthened the role of the CRC in Welsh Government policy-making. An interesting development in this regard is the adoption of the CRC as a policy framework by a number of public bodies in Wales; following the Welsh Government's lead.<sup>125</sup> The Measure has also enhanced opportunities for accountability and policy advocacy on CRC implementation. The impact of the Measure has therefore been positive for children and young people's rights in Wales. Accordingly, it provides a useful model for others to adopt (and adapt) where the contours of decentralisation bear comparison with those in Wales.

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All websites last accessed: 23<sup>rd</sup> May 2018

<sup>1</sup> UN Committee, *General Comment No.5, General Measures of Implementation of the CRC* (2003), 10.

<sup>2</sup> In this paper ‘policy’ refers to any government proposal or course of action, including but not limited to: legislation, action plans, programmes, and budgets. The terminology used to describe States territories varies: this paper will use ‘regional’ or ‘local’ throughout. Decentralisation is distinguished from deconcentration whereby State government departments are located in regional offices.

<sup>3</sup> ‘In the real world...national governments rarely exercise direct power over the issues that are of most immediate concern to vast majority of the world’s people. Local, municipal or regional governments often matter more’: International Council on Human Rights Policy (ICHRP), *Local Rule: Decentralisation and Human Rights* (2002), 1.

<sup>4</sup> UN Committee, *General Comment No.5*. Mirroring the approach of other UN Treaty Bodies, for example: Human Rights Committee, *General Comment No. 31, The Nature of Legal Obligations Imposed on States Parties* (2004), 2; Committee on Economic Social and Cultural Rights (CESCR), *Substantive Issues Arising in the Implementation of the CESCR* (1998), 2.

<sup>5</sup> James Manor, *The Political Economy of Democratic Decentralisation* (Washington DC: World Bank, 1999), 5.

<sup>6</sup> ICHRP, *Local Rule*, 6.

<sup>7</sup> Children and young people’s exclusion from the franchise and marginalisation within democratic political systems can lead to their interest being overlooked. For discussion of

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children and democracy, see: Aoife Nolan, *Children's Socio Economic Rights Democracy and the Courts* (Oxford: Hart Publishing, 2011), chapter 2.

<sup>8</sup> ICHRP, *Local Rule*, 24-8. See also: Jane Williams, 'Multi-level governance and CRC implementation', in Antonella Invernizzi and Jane Williams (eds), *The Human Rights of Children: From Vision to Implementation* (Farnham: Ashgate Publishing, 2011), 239-61, 248.

<sup>9</sup> Lundy *et al*, *The UN Convention on the Rights of the Child: A study of legal implementation in 12 countries* (London: UNICEF UK, 2012). Available here:

<https://www.unicef.org.uk/publications/child-rights-convention-2012-report/>

<sup>10</sup> UN Committee, *General Comment No.5*, 10.

<sup>11</sup> *Ibid*: 2, 6-10.

<sup>12</sup> ICHRP, *Local Rule*. On devolution in Wales: Welsh Office, *A Voice for Wales* (Cardiff: Welsh Office, 1997), Cm. 3718.

<sup>13</sup> ICHRP, *Local Rule*.

<sup>14</sup> *Ibid*.

<sup>15</sup> Manor, *Political Economy*, 118-20. See: Newcastle University and London School of Economics, *Decentralisation outcomes: a review of evidence and analysis of international data* (2011).

<sup>16</sup> UN Committee, *General Comment No.5*, 1. Children and young people may be better able to take advantage of opportunities for participation in systems of decentralised governance: Philip Veerman and Hephzibah Levine, 'Implementing children's rights on a local level, Narrowing the gap between Geneva and the grassroots', *International Journal of Children's Rights* 8 (2001), 373-84.

<sup>17</sup> Gerd Oberleitner, 'Does enforcement matter?', in Conor Gearty and Costas Douzinas (eds.), *Human Rights Law* (Cambridge: Cambridge University Press, 2012), 249-68, 254; Oona N.



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Hathaway, 'Do Human Rights Treaties Make a Difference?', Yale Law School Faculty Scholarship Series (2002), Paper 839.

<sup>18</sup> UN Committee, *General Comment No.7*, the Committee sets out a range of mechanisms to promote implementation of the CRC, including administrative measures, as well as structures for monitoring and review as contributions to enforcement. Although these may be distinguished from enforcement in a 'narrow sense' as pre-emptive or compliance control devices, or because they lack remedial measures that accompany judicial enforcement. See: Oberleitner, 'Does enforcement matter, 250-2.

<sup>19</sup> See for example: Conor Gearty, 'Against Judicial Enforcement', in Conor Gearty and Virginia Mantouvalou, *Debating Social Rights* (Oxford: Hart:Hart, 2010), 1-79.

<sup>20</sup> Jane Williams, 'England and Wales', in Ton Liefwaard and Jaap E. Doek (eds.), *Litigating the Rights of the Child* (London: Springer, 2015), 53-70.

<sup>21</sup> [2014] EWCA Civ 156. Lord Kerr and Lady Hale, in the minority, deal with the impact of the reform on children and young people.

<sup>22</sup> For example: Gerladine Van Bueren, 'Including the Excluded: The Case for an Economic Social and Cultural Human Rights Act', *Public Law* (2002), 456-72. For objections see: Gearty, 'Against Judicial Enforcement'.

<sup>23</sup> Julinda Beqiraj and Lawrence McNamara, *Children and Access to Justice: National Practices, International Challenges* (Bingham Centre for the Rule of Law, 2016).

<sup>24</sup> Ibid. UN Committee, *General Comment No.5*, 7.

<sup>25</sup> Jane Williams, 'General legislative measures of implementation: individual claims, 'public officer's law' and a case study on the UNCRC in Wales', *International Journal of Children's Rights* 20 (2012), 224-40, 227.

<sup>26</sup> Ibid.

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<sup>27</sup> Decentralisation has been described as a manifestation of the subsidiarity principle, a ‘structural principle of international human rights law’: Paolo G. Carozza, ‘Subsidiarity as a Structural Principle of International Human Rights Law’, *American Journal of International Law* 97 (2003), 38-79, fn.99.

<sup>28</sup> Chris Himsworth, ‘Rights versus Devolution’, in Tom Campbell, K.D.Ewing and Adam Tomkins (eds.), *Sceptical Essays on Human Rights* (Oxford: Oxford University Press 2001), 145-62, 146. In contrast, State autonomy is a manifestation of sovereignty over human rights: Carozza, *Subsidiarity*, 63.

<sup>29</sup> Discussing divergence with reference to the case of *R (Horvarth) v Secretary of State for Environment, Food and Rural Affairs* (2009) ECJ Case C 248/07: Williams, ‘Multi level governance’, p.253.

<sup>30</sup> Himsworth urges caution as the definition of rights will always be contested (with the possible exception of absolute rights): Himsworth, ‘Rights versus Devolution’, 148.

<sup>31</sup> Williams, ‘Multi-level Governance’, 240.

<sup>32</sup> Nolan observes that this is desirable so that human rights may be generally applicable to ‘different contexts over time’: Nolan, *Children’s Socio Economic Rights*, 31.

<sup>33</sup> This is not a challenge to human rights universalism, but an example of human rights pluralism: Samantha Besson, ‘Justifications’, in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds.), *International Human Rights Law* (Oxford: Oxford University Press 2014), 22-40, 29; Keon de Feyter, *Localising Human Rights* (Antwerp: Institute of Development Policy and Management, 2006), 9.

<sup>34</sup> Drawing on: Martti Koskenniemi, ‘The Effects of Rights on Political Culture’, in Philip Alston (ed.), *The EU and Human Rights* (Oxford: Oxford University Press 1999), 99-116, 99.

<sup>35</sup> Ibid: 114.

<sup>36</sup> Hathaway, *Human Rights Treaties*, 1955.

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<sup>37</sup> Wade M. Cole ‘Human Rights as Myth and Ceremony? Reevaluating the Effectiveness of Human Rights Treaties 1981-2007’, *American Journal of Sociology*, Vol.17, No.4 (2012), 1136.

<sup>38</sup> Abram Chayes and Antonia Handler Chayes, ‘On Compliance’, *International Organization*, Vol. 47, No. 2 (1993), 175-205, 205

<sup>39</sup> Hathaway, *Human Rights Treaties*, 1957.

<sup>40</sup> De Feyter, *Localising Human Rights*, 5.

<sup>41</sup> Ibid.

<sup>42</sup> George Ulrich, ‘Epilogue: widening the perspective on the local relevance of human rights’, in Koen De Feyter et al (eds.), *The Local Relevance of Human Rights* (Cambridge: Cambridge University Press 2011), 337-61, 337.

<sup>43</sup> Oomen makes this point in the context of human rights cities: Barbara Oomen, ‘Rights and the city: Does the localization of human rights contribute to equality?’, in M.van den Bink, S.Burri and J.Goldschmidt (eds.), *Equality and human rights: Nothing but trouble? Liber amicorum Titia Leoneb* (Utrecht: University Utrecht, 2015), 401-10, 404.

<sup>44</sup> Koen De Feyter, ‘Sites of rights resistance’ in De Feyter et al, *Local Relevance*, 11-39, 15, 20.

<sup>45</sup> Ulrich, ‘Epilogue’, 343.

<sup>46</sup> Wouter Vandenhoele, ‘Localizing the Human Rights of Children’, in Manfred Liebel (ed.), *Children’s Rights from Below* (Basingstoke: Palgrave Macmillan, 2012), 80-93, 81.

<sup>47</sup> Alice Ely Yamin and J.Jaime Miranda, ‘Building rights-based health movements: Lessons from the Peruvian experience’, in De Feyter et al, *Local Relevance*, 176-207, 199.

<sup>48</sup> Ulrich, ‘Epilogue’, 337

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<sup>49</sup> Adopting Tobin's communitarian model: John Tobin, 'Seeking to persuade: A constructive approach to human rights treaty interpretation', *Harvard Human Rights Journal* Vol.23 (2010), 1-50.

<sup>50</sup> These will be more persuasive if they take account of all relevant factors: *ibid*, 11.

<sup>51</sup> Felipe Gomez Isa, 'Freedom from want revisited from a local perspective: evolution and challenges ahead', in De Feyter et al, *Local Relevance*, 40-81, 59.

<sup>52</sup> Veerman and Levine, 'Implementing Children's Rights', 373.

<sup>53</sup> In relation to human rights generally: De Feyter, 'Sites of rights resistance', 23.

<sup>54</sup> Oomen, 'Rights and the City', 407.

<sup>55</sup> Discussing deliberative engagement: Williams, 'General legislative measures', 229.

<sup>56</sup> Douglas Cassel, 'Does International Human Rights Law Make a Difference', *Chicago Journal of International Law* Vol.2 No.1, Article 8 (2001), 121-35. Cassel's commentary is relevant to several points on the function of legislation in this section.

<sup>57</sup> *Ibid*: 126-7.

<sup>58</sup> Williams, refers to rules which govern the conduct of public officials as 'public officers law' Williams, 'General legislative measures', 228-9 (drawing on: T. Daintith and A. Page, *The Executive in the Constitution* (Oxford: Oxford University press, 1999)).

<sup>59</sup> Wade, 'Myth or Ceremony', 1131. Wade draws on seminal work on the functioning of institutions: John W. Meyer and Brian Rowan, 'Institutional Organisation: Formal Structure as Myth and Ceremony', *American Journal of Sociology*, 83 (1977), 340-63.

<sup>60</sup> The Committee's textual output may be used by government as the basis for policy-making: Ursula Kilkelly and Laura Lundy, 'Children's Rights in Action: Using the Convention on the Rights of the Child as an Auditing Tool', 18(3) *Child and Family Law Quarterly* (2006), 331-50.

<sup>61</sup> Wade, 'Myth or Ceremony', 1132.

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<sup>62</sup> Criticism in the public domain is likely to be perceived as damaging by the institutions concerned: *ibid*, 1137.

<sup>63</sup> Williams, 'General legislative measures', 225.

<sup>64</sup> Schedule 7, Government of Wales Act 2006 (subject to change: schedule 7A to be substituted by Wales Act 2017).

<sup>65</sup> Part 2, GWA 2006. Welsh Government budget 2017-18: £15 billion.

<sup>66</sup> S.94, GWA 2006; s.29, Scotland Act 1998; s.6, Northern Ireland Act 1998.

<sup>67</sup> S.4, HRA 1998: a Higher Court may declare UK legislation incompatible with the ECHR (as set out in the statute), but this does not affect its validity or continuing effect.

<sup>68</sup> For an overview of policy: in Wales, see, Ian Butler and Mark Drakeford, *Children's Rights as Policy Framework in Wales*, in Jane Williams (ed.), *The Rights of the Child in Wales*, 9-20; in Scotland, see, NGO Report, *Implementation of the UNCRC, Scotland (UK)* (Edinburgh: Together Scotland, 2015); in Northern Ireland, see, NGO Report, *Submission to the UN Committee on the Rights of the Child* (Belfast: Children's Law Centre and Save the Children NI, 2015). NGO reports available on the Committee webpage:

[http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=GBR  
&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=GBR&Lang=EN)

<sup>69</sup> Butler and Drakeford, *Children's Rights*.

<sup>70</sup> Lundy *et al*, *A study of legal implementation*. UN Committee, *General Comment No.5*, para. 41.

<sup>71</sup> UN Committee, *Concluding Observations on the UK* (2008), concluding observation 12; UN Committee, *Concluding Observations on the UK* (2016), concluding observation 11.

<sup>72</sup> See for example: UN Committee, *Concluding Observations on Belgium* (2010), concluding observation 13; UN Committee, *Concluding Observations on Germany* (2014), concluding

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observation 13; and, UN Committee, *Concluding Observations on Spain* (2018), concluding observation 7.

<sup>73</sup> UN Committee, *Concluding Observations UK*, concluding observations UK 14, 15.

<sup>74</sup> UN Committee, *Concluding Observations UK*, concluding observations 11, 13, 15.

<sup>75</sup> The Measure was brought into effect in two stages to allow Welsh Government officials to prepare.

<sup>76</sup> On the development of the Measure: Jane Williams, ‘The Rights of Children and Young Persons (Wales) Measure 2011 in the context of the international obligations of the UK’, in Williams, *Rights of the Child in Wales*, 49-64.

<sup>77</sup> S.1 of the Measure requires the Welsh Ministers, when exercising any of their functions, to have due regard to: Part 1 of the CRC; articles 1 to 7 of the Optional Protocol to the CRC on the involvement of children in armed conflict, except article 6(2); and, articles 1 to 10 of the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography.

<sup>78</sup> Welsh Government, *Explanatory Memorandum to the Measure* (Cardiff: Welsh Government: 2010), 11.

<sup>79</sup> *Ibid.* The Measure includes a power, under s.6, for Ministers to amend existing legislation which is inconsistent with the CRC (if this is within the scope of devolved competences). To date this provision has not been used, possibly because the Welsh Government has been proactive in introducing new policy in areas impacting on children and young people.

<sup>80</sup> S.2.

<sup>81</sup> S.2 and s.3.

<sup>82</sup> S.3. Building on the requirement that government in Wales is to be conducted in an ‘inclusive’ manner: ss.72-9, GWA 2006.

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<sup>83</sup> Osian Rees, ‘Holding Government to account’: the role of the children’s commissioner for Wales’, in Williams, *Rights of the Child in Wales*, 181-95, 190. Policy here being the substantive content of the Scheme.

<sup>84</sup> S.4.

<sup>85</sup> Ibid.

<sup>86</sup> Welsh Government, *Children’s Scheme* (Cardiff: Welsh Government, 2014), 3.

<sup>87</sup> For example: HRA 1998.

<sup>88</sup> For example: the End Child Poverty Network:

<http://www.childreninwales.org.uk/our-work/poverty/end-child-poverty-network-cymru/>

<sup>89</sup> For developments in litigation see contributions in: Liefwaard and Doek, *Litigating the Rights of the Child*.

<sup>90</sup> For a full discussion of accountability mechanisms under the Measure see: Simon Hoffman and Jane Williams, ‘Accountability’, in Williams, *The Rights of the Child in Wales*, 167-180.

<sup>91</sup> Currently the Equalities Act 2010.

<sup>92</sup> The leading case is: *R (Brown) v Secretary of State for Work and Pensions [2008] EWHC 3158*.

<sup>93</sup> S.8.

<sup>94</sup> Michael Imperato, Watkins and Gunn Solicitors, *Legal Wales Conference*, Swansea University, ‘Embedding rights in public services: what it means for litigators’, 15<sup>th</sup> September 2017 (speaking notes: author’s collection).

<sup>95</sup> *Re P-S (children) [2013] EWCA Civ.223* per the Rt Hon. Sir Alan Ward at paragraph 35.

<sup>96</sup> Based on the author’s research. See for example, the CYPEC scrutiny of the First Minister on 27<sup>th</sup> October 2017. Transcript available at:

<http://senedd.assembly.wales/documents/s68146/27%20October%202017.pdf>

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<sup>97</sup> As under s.7, Social Services and Well-Being (Wales) Act 2014, which places a duty on relevant authorities to have due regard to the CRC.

<sup>98</sup> CYPEC, *Report on the Additional Learning Needs and Educational Tribunal (Wales) Bill* (2017). Available here: <http://www.assembly.wales/laid%20documents/cr-ld11055/cr-ld11055-e.pdf>

<sup>99</sup> See: ss.7 and 8, Additional Learning Needs and Educational Tribunal (Wales) Bill, (Royal Assent: 24<sup>th</sup> January 2018). However, Ministers refused to agree that individuals exercising functions under the Act should also be under a due regard duty.

<sup>100</sup> For example: CCfW and Children in Wales consultation responses during scrutiny of the additional learning needs legislation (note 92). Available here: <http://senedd.assembly.wales/mgConsultationDisplay.aspx?id=245&RPID=1508796674&cp=yes>

<sup>101</sup> Cabinet Secretary for Finance and Local Government setting out Ministerial priorities for EU Withdrawal during conference held at Swansea University, 25<sup>th</sup> November 2016 (author's contemporaneous note).

<sup>102</sup> An example of a local 'intrepretive community'.

<sup>103</sup> Children's Rights Advisory Group standing members: CCfW, UNICEF, Children in Wales, and the Observatory on the Human Rights of Children. The Welsh Government's influence is limited to matters that fall within devolved competence. Significantly, a number of key Brexit issues affecting children and young people (e.g. immigration and residence; replacement of EU funding; European child protection measures), are matters under the control of the UK Government.

<sup>104</sup> Welsh Government and Plaid Cymru, *Securing Wales' Future* (Cardiff: Welsh Government 2017); Minister's response to questions from the CYPEC on Brexit:



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<sup>105</sup> For further discussion of CRIA's, see article by Payne (this issue).

<sup>106</sup> Welsh Government, *Children's Scheme* (Cardiff: Welsh Government, 2012 and 2014).

<sup>107</sup> UN Committee, *General Comment No.5*, 11.

<sup>108</sup> Compliance report 2013-2015 (Cardiff: Welsh Government, 2015), 9-11.

<sup>109</sup> Ibid, 11. Welsh Government, *Compliance Report 2015-2018* (Cardiff: Welsh Government, 2018),10.

<sup>110</sup> Welsh Government, *Compliance Report 2013-15*, 9-13, 17.

<sup>111</sup> S.37, Well-being of Future Generations (Wales) Act 2015.

<sup>112</sup> *An Active Travel Action Plan for Wales*, guidance issued under the Active Travel (Wales) Act 2013.

<sup>113</sup> Welsh Government, *Compliance Report 2015-2018* (Cardiff: Welsh Government, 2018), 10-13.

<sup>114</sup> Simon Hoffman (Rhian Morse RA), *Evaluation of the Welsh Government's Child Rights Impact Assessment* (2015), <https://cronfa.swan.ac.uk/record/cronfa30963>

<sup>115</sup> Ibid. Echoing concerns about lack of participation in policy processes raised by the Committee in 2008: UN Committee, *Concluding Observations*, 20, 32, 33.

<sup>116</sup> Welsh Government, *Compliance Report 2018*, 14.

<sup>117</sup> S.5.

<sup>118</sup> Information on Young Wales: <http://youngwales.wales/index.php/young-wales-cafe/about-us>

<sup>119</sup> See for example, on Brexit: <https://beta.gov.wales/sites/default/files/2017-04/170424-securing-wales-future-yf-en.pdf>

<sup>120</sup> Welsh Government, *Compliance Report 2018*, 15.

<sup>121</sup> Information about MEIC (Welsh for microphone): <https://www.meiccymru.org/>

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<sup>122</sup> Welsh Government, *Compliance Report 2018*, 28-29.

<sup>123</sup> Young Wales, *Report to the UN Committee* (Cardiff: Children in Wales undated), 26-30. Rhian Croke and Jane Williams (eds.), *Wales UNCRC Monitoring Group Report to the UN Committee* (Swansea: Swansea University, 2015), 21. Hannah Bussicott and Jane Williams, *The Desert: Public Legal Education in Wales*, Research Report (forthcoming, 2018).

<sup>124</sup> Funky Dragon, the Youth Parliament for Wales. Ceased to operate in October 2014. Information here: <https://funkydragon.org/history/>

<sup>125</sup> For example: the City and County of Swansea has embedded a duty to have due regard to the CRC into the Council's policy framework:

<https://www.swansea.gov.uk/childrensrightsscheme>