

# Submission to the UN Human Rights Council Universal Periodic Review of the United Kingdom

By: Children's Commissioner for Wales, Keith Towler

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## 1. Introduction

### 1.1 The Children's Commissioner for Wales and the United Nations Convention on the Rights of the Child (UNCRC)

1.1.1 The Children's Commissioner for Wales was established pursuant to the Children's Commissioner for Wales Act 2001, which amended the Care Standards Act 2000. The Commissioner's powers and functions are derived from the 2000 Act. Further powers and functions were granted through the Children's Commissioner for Wales. Regulations 2001. The Children's Commissioner for Wales' principle aim is to safeguard and promote the rights and welfare of children in Wales.

1.1.2 The Commissioner's remit covers all areas of the devolved powers of the National Assembly for Wales insofar as they affect children's rights and welfare and he may also make representations to the National Assembly for Wales about any matter affecting the rights and welfare of children in Wales.

1.1.3 When exercising his functions the Commissioner must also have regard to the UNCRC. The UNCRC is the first legally binding international instrument to incorporate the full range of human rights — civil, cultural, economic, political and social rights. The Convention was ratified by the UK Government in 1991 and sets out these basic human rights for children in 54 articles and two Optional Protocols.

### 1.2 The legislature in Wales

1.2.1 In Wales, powers are vested in the National Assembly for Wales and the Welsh Government in particular policy areas (known as 'devolved areas'). However, the UK Parliament and Government still have significant powers in relation to Wales and have considerable influence over Welsh affairs.<sup>1</sup>

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<sup>1</sup> <http://www.assemblywales.org/abthome/role-of-assembly-how-it-works.htm>

## **2. Methodology**

2.1 This submission is based upon the information gathered and research conducted via the Children's Commissioner for Wales' statutory remit.

2.2 It is also worth noting that much of the evidence within this submission has been gleaned in conjunction with the Children's Commissioners for Scotland, Northern Ireland and England.

## **3. Developments since last review**

### **3.1 Normative and institutional framework**

#### **3.1.1 Proposal for a UK Bill of Rights**

3.1.2 The UK Government has established an independent commission to examine the possibility of developing a UK Bill of Rights.

3.1.3 As far as the Children's Commissioner for Wales is concerned, a UK Bill of Rights would be welcomed only on the premise that a bill would build on existing rights and not represent a retreat.

3.1.4 We have advised the Commission that they should not entertain the concept of rights being accompanied by responsibilities. Any concept of 'claiming' a right would be a retrograde step and represent an inherent inequality within the legislation.

3.1.5 Any Bill should encompass the rights enshrined in other international conventions and should specifically mention the UNCRC and its optional protocols.

3.1.6 The UNCRC contains a clear set of principles and standards to ensure children reach their full potential and comprehensively encompasses civil, political, economic, social and cultural rights. The European Convention on Human Rights does not provide a sufficiently holistic set of rights which should be afforded all people. As such, a Bill of Rights could address these weaknesses, namely the lack of socio-economic rights.

3.1.7 The UN Committee on the Rights of the Child stated in its 2008 concluding observation: "The Committee remains concerned that the principles of the Convention are not duly taken into account in all pieces of legislation throughout the country and

that the state party has not incorporated the Convention into domestic law nor has ensured the compliance of all legislation affecting children with it”<sup>2</sup>

3.1.8 There also need to be careful consideration of the UK constitutional settlement and diverging policy context as part of the Commission’s deliberations. For instance, any UK Bill of Rights would need to consider how to incorporate the linguistic rights of Welsh speakers in Wales considering the legal status afforded the Welsh Language. Linguistic considerations have applications across all human rights.

### **3.2.1 Equality Act**

3.2.2 The Equality Act 2010 protects people from discrimination (direct and indirect), related harassment or victimisation and sexual harassment in a range of settings by reference to a range of protected characteristics, in relation to goods, facilities, services and public functions. Despite clear evidence of the discrimination children face, the Equality Act does not offer children and young people complete protection from discrimination on the grounds of their age. It means children and young people will be the only age group in society that will be discriminated against by this critical piece of equality legislation.

3.2.3 The general duties within the act relating to eliminating discrimination, advancing equality and fostering good relations between groups does not apply to schools or children’s homes.

3.2.4 The Equality Act however gave powers to the Welsh Government to introduce specific public sector duties in Wales. It is of utmost importance that consideration of the issues facing children and young people are given the attention they deserve during the implementation of these duties.

**3.2.5 Priorities for action:** Under-18 year olds should be given comprehensive protection under the Equality Act against age discrimination – not withstanding the necessary and justifiable exceptions.

### **3.3.1 Rights of Children and Young Persons (Wales) Measure 2011**

3.3.2 The National Assembly for Wales has passed groundbreaking legislation which obligates Welsh Ministers to pay due regard to the UNCRC and its optional protocols when undertaking Ministerial functions. There is also a duty on Ministers to promote and raise awareness of the UNCRC and also provisions for amending Welsh legislation if it were deemed incompatible with the UNCRC. The Children’s Commissioner for Wales

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<sup>2</sup> <http://www.childcomwales.org.uk/uploads/publications/277.pdf>

welcomes this development and will be monitoring closely the implementation and impact of the legislation.

### **3.4.1 General Measures of Implementation of the UNCRC**

3.4.2 Currently, the Children’s Commissioner for England has a UK-wide remit regarding non-devolved issues, enabling her to exercise her functions in relation to children in Wales, Northern Ireland and Scotland.

3.4.3 It is more appropriate, particularly from the point of view of the child, that each of the Commissioners in the UK is able to promote and protect all the rights of children in their own country, regardless of the subject matter.

**3.4.4 Priorities for action:** That UK Children’s Commissioners’ legislation is amended so that all four Commissioners can promote and seek to uphold the rights of children in their own nation across all aspects of a child’s life.

## **4. UPR 2008 Recommendations – Human Rights Council, eighth session. Agenda item 6.**<sup>3</sup>

4.1 The following section focuses on particular issues which relate to recommendations made through the UPR process in 2008.

**UPR Recommendation 10:** To consider further measures in order to address the problem of violence against children, including corporal punishment.<sup>1</sup>

### **4.2 Equal Protection for Children - Smacking**

4.2.1 Legislation is needed to provide for equal protection of adults and children against assault. Children are the only people in the UK who can be hit without consequence. Children should be entitled to the same level of protection as adults.

4.2.2 The UN Committee on the Rights of the Child recommended in their concluding observations to the UK that *“as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, in England and Wales, Scotland, and Northern Ireland...”*<sup>4</sup>

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<sup>3</sup> [http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/GB/A\\_HRC\\_8\\_25\\_Add1\\_UnitedKingdom.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/GB/A_HRC_8_25_Add1_UnitedKingdom.pdf)

<sup>4</sup> <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

4.2.3 In England and Wales, Section 58 of the Children Act 2004 removed the defence of 'reasonable chastisement' for those with parental responsibility but replaced it with one of 'reasonable punishment'. While section 58 prevents the use of the defence in relation to serious assaults, it may be used in relation to charges of common assault. The Children Act 2004 therefore fails to prohibit all physical punishment in the family.

4.2.4 The National Assembly for Wales has voted in favour of the non-binding motion:

*'Urges the Welsh Government to bring forward legislation for consideration by the Assembly which would end the availability of the defence of 'lawful chastisement' for an offence of assaulting a child'<sup>5</sup>*

**4.2.5 Priorities for action:** Welsh Government should repeal the 'reasonable punishment' defence to provide equal protection for adults and children along with developing an educational and promotional strategy regarding parenting skills.

### 4.3 Youth Justice

**UPR Recommendation 18:** To address the high incarceration rate of children, ensure that the privacy of children is protected and to put an end to the so-called 'painful techniques' applied to children.<sup>1</sup>

4.3.1 The UN Committee on Rights of the Child had concerns in 2008 regarding youth justice including the age of criminal responsibility being too low, cases where children could be tried in an adult court, high rates of custody, high numbers on remand, children in custody not having the right to a statutory education, proposed removal of reporting restrictions for 16 and 17 year olds facing criminal proceedings, and the provisions of the Counter Terrorism Bill applying to children. Recommendations sought to address these issues and ensure that the State Party complied with international standards especially Articles 37, 39, and 40 of the UNCRC.

4.3.2 The Committee was concerned about Anti-Social Behaviour Orders (ASBOs) in particular the ease with which they were issued, the broad range of prohibited behaviour, and the fact that breach of an order is a criminal offence with potentially serious consequences. ASBOs were not seen as being in the best interests of the child (Article 3 UNCRC) and could contribute to entry into the criminal justice system. There

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<sup>5</sup><http://www.senedd.assemblywales.org/ieListDocuments.aspx?CId=153&MIId=581&Ver=4>

was concern that most ASBOs were imposed on children from disadvantaged backgrounds. The Committee recommended the State Party review ASBOs with a view to abolishing their application to children.

4.3.3 The reduction in recent years of the number of children entering the youth justice system and custody (in England and Wales) may, in part, be the result of the Youth Justice Board's (YJB) investment in a range of early intervention and diversionary schemes.<sup>6</sup> However, the Children's Commissioners are disappointed that England and Wales still have one of the highest rates of child imprisonment in Western Europe

4.3.4 The UK State Party is signatory to the United Nations' Optional Protocol to the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (OPCAT) and bound by international agreement to ensure the humane treatment of children in custody. While the UK Children's Commissioners acknowledge the commitment to this principle in all four jurisdictions, the experiences of those in custody would suggest that far more needs to be done. The Children's Commissioners have noted concern regarding documented reports detailing the negative experiences of children in custodial settings across all four jurisdictions. They are particularly concerned about the overuse and inconsistent application of physical control and restraint, strip searching and segregation, as well as limited access to an advocate. The Children's Commissioners believe such treatment is unacceptable. Every Government must do everything in its power to tackle this immediately.

#### **4.3.5 Priorities for action**

- The UK Government and devolved administrations must take immediate steps to re-orientate the juvenile justice system in each country in order to ensure the non-criminalisation of children and young people through a focus on prevention and diversion.
- The UK Government and devolved administrations must work with relevant agencies to ensure that there is consistency and continuity of services for children and young people in the youth justice system and the wider community, especially in accessing mental health and education services.
- Each Government must take immediate action to ensure that every child in custody is treated humanely and that their rights are respected.

<sup>6</sup> Youth Justice Board (YJB), (2011) Youth Justice Annual Workload Data 2009/10 (D126) in <http://www.childcomwales.org.uk/uploads/publications/277.pdf>

## 4.4 Child Poverty

**UPR Recommendation 11:** Provide further information with regard to efforts to reduce poverty among children by half by 2010.

4.4.1 The Children's Commissioners note that, since 2008, child poverty (using a 60 per cent of the median income after housing costs) has not fallen and in some parts the levels have increased.<sup>7</sup>The historic commitment to reduce child poverty by half by 2010 was not achieved.

### 4.4.2

- 32% of children in Wales live in households below 60 per cent of the median income (accepted poverty threshold)
- 14% of children in Wales live in households below 50 percent of the median income (accepted severe poverty threshold)
- Wales has the highest rates of severe child poverty in the UK
- More than half of Welsh local authorities have a severe child poverty rate of 15% or higher<sup>8</sup>

4.4.3 While the UK Child Poverty Act has been a very welcome development its implementation to date has been somewhat less positive.

4.4.4 In Wales the Welsh Government introduced legislation which placed an obligation on Welsh Government and other public to produce strategies which would outline their contribution to addressing child poverty in Wales. There is also a Child Poverty Strategy for Wales in place; however, many of the levers which impact on child poverty are not within the competency of the National Assembly for Wales, for instance taxation and most aspects of welfare.

4.4.5 The UK Children's Commissioners are particularly concerned at developments in relation to reform of the welfare system including the Welfare Reform Bill 2011. Despite benefit levels having been consistently below poverty thresholds and minimum income

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<sup>7</sup> <http://www.childcomwales.org.uk/uploads/publications/277.pdf>

<sup>8</sup> <http://www.childcomwales.org.uk/uploads/publications/273.pdf>

standards, benefit levels are being frozen or reduced, and additional conditionality is being introduced. A child rights impact assessment of each of these changes would demonstrate that the likeliest outcome will be increased child poverty. These changes in the system will impact on children both in workless households and among 'working poor' households, and must be reconsidered in the light of the commitments outlined in the Child Poverty Act 2010.

4.4.6 The UN Committee expressed concern at the ways poor children were discriminated against in terms of service provision and the fulfillment of their rights. In particular they raised concern around three areas: family support, health and education.<sup>9</sup>

4.4.7 The negative outcomes experienced by children in poverty reflect more significant problems they face, including significant challenges in accessing services. At a time of cuts in public services, governments must prioritise provision of services to the most disadvantaged children, notably those experiencing poverty. Furthermore, close scrutiny of accessibility of services for children should be maintained to ensure barriers for children experiencing poverty are identified and overcome. There should be a particular focus on costs of accessing services, which should be waived for children in poverty.

#### **4.4.8 Priorities for action**

- The UK Government and devolved administrations should fully implement the Child Poverty Act 2010.
- Sufficient financial resources should be allocated to tackling child poverty across the UK, funding services targeted at the most disadvantaged, and increasing the household income of poor families.
- Governments must prioritise services for poor children to address the wide range of inequalities in health and educational outcomes they experience.<sup>1</sup>

#### **4.5 Children seeking asylum**

**UPR Recommendation 25:** To withdraw its reservation to the Convention on the Rights of the Child, concerning the provision that detained children be separated from adults while in detention, as well as the reservation concerning refugee and asylum seeking children.<sup>1</sup>

<sup>9</sup> *ibid*

4.5.1 Article 22 of the UNCRC states that if a child is a refugee or seeking refuge, governments must ensure that they have the same rights as any other child. Governments must help in trying to reunite child refugees with their parents. Where this is not possible, the child should be given protection.

4.5.2 There has been significant policy and legislative progress in relation to Article 22 of the UNCRC. The removal of the UK Government's reservation to the article was a significant and welcome step. In May 2010 the UK Government addressed one of the UNCRC Committee's main criticisms, announcing it would be ending the detention of children for immigration purposes. Plans for the new system were published in March 2011. The Government's proposals as outlined may fall short of an end to detention, but it has yet to be seen whether the new process meets the requirements of the UNCRC or fulfils the recommendation of the UNCRC Committee in 2008.<sup>10</sup>

4.5.3 The UK's Children's Commissioners welcome the intention of section 55 of the Borders, Citizenship and Immigration Act 2009, that places a duty on the UK Border Agency (UKBA) to have arrangements in place to safeguard and promote the welfare of children in discharging its functions. This legislation and accompanying guidance could have a significant impact on realising children's best interest.

#### **4.5.4 Priorities for action**

- That the UK Government, in partnership with devolved administrations, should implement and evaluate the new arrangements for family removals and safeguarding against the UNCRC and international standards.
- The UK Government should undertake a thorough review of the current arrangements for determining age with a view to ensuring that unaccompanied children seeking asylum are treated as such and afforded their rights as children
- Sufficient funding should be given to local government and appropriate authorities to ensure that children and young people have access to appropriate services, including guardians and independent legal advice.

**ENDS**

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<sup>10</sup> <http://www.childcomwales.org.uk/uploads/publications/277.pdf>

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Contact: Gwion Evans, Public Affairs Officer

tel: 01792 765 600/[gwion.evans@childcomwales.org.uk](mailto:gwion.evans@childcomwales.org.uk)