



Comisiynydd Plant Cymru Children's Commissioner for Wales

Keith Towler

Ymateb i Ymgynghoriad / Consultation Response

Date/Dyddiad

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Subject/Subject

Education (Wales) Bill

The Children's Commissioner for Wales is an independent children's rights institution established in 2001. The Commissioner's principal aim is to safeguard and promote the rights and welfare of children¹. In exercising his functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC).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.³

The UNCRC is an international human rights treaty that applies to all children and young people up to the age of 18. It is the most widely ratified international human rights instrument and gives children and young people a wide range of civil, political, economic, social and cultural rights which State Parties to the Convention are expected to implement. In 2004, the Welsh Assembly Government adopted the UNCRC as the basis of all policy making for children and young people and in 2011, Welsh Government passed the Rights of Children and Young Persons (Wales) Measure.⁴

¹ Section 72A Care Standards Act 2000

² Regulation 22 Children's Commissioner for Wales Regulations 2001

³ Section 75A (1) Care Standards Act 2000

⁴ <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislationmeasuresrightsofchildren.htm>

Introduction

As Children's Commissioner for Wales I welcome the introduction of legislation that seeks to improve coherence across a number of areas of education related matters. Every child and young person has the right to an education (article 28 of the United Nations Convention on the Rights of the Child (UNCRC)) and to an education that is directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential (article 29 of the UNCRC).

The Explanatory Memorandum that accompanies the Bill includes a statement from the Minister for Education and Skills to the effect that the Minister considers that the duty of due regard to the UNCRC as contained in the Rights of Children and Young Persons (Wales) Measure 2011 has been satisfied. However the only other references to the UNCRC are contained in Part 1, Section 4 of the Explanatory Memorandum and relate to the provision of consultation material and events with children and young people. The provision of information for children and young people (article 13, UNCRC) through the development of children and young people friendly documents and consultation in line with the right of children to have their views heard in matters affecting them (article 12, UNCRC) are welcomed. However these developments may not necessarily reflect the requirements to address the obligation to examine substantive rights across the articles of the UNCRC. In crude terms, you could, in theory involve children in discussions and produce child friendly versions of policies and legislation which fundamentally undermines the application of the UNCRC in all other aspects. I would welcome the opportunity to see the due regard impact assessment that has been undertaken in relation to this proposed legislation.

1. Education Workforce Council – Registration and regulation of teachers and the wider workforce

1.1 Registration

I welcome the proposals to set a framework so that sectors of the wider education workforce will be required to register in addition to teachers. Children and young people in Wales have the right to expect that the practitioners and professionals with whom they have daily contact through

education settings have been subject to a thorough consideration of their suitability to fulfill positions of trust. The proposals on the conditions in place to allow a person to be eligible for registration will strengthen safeguarding measures and potentially give greater affect to article 19 of the UNCRC (take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardians(s) or any other person who has care of the child). I would wish to see training on the UNCRC and children's rights included as a requirement of induction and the continuous professional development in order to retain registration.

1.2. Code of Practice

The proposed Code of Practice and Conduct specifying the standards of professional conduct and practice of those required to register offers the opportunity to support practice underpinned by considerations of the best interests of the child (article 3 of the UNCRC). I would seek assurance that the Code of Practice will be the subject of consultation so that I will be afforded the opportunity to comment on proposals on the content of the Code. The Code of Practice must outline practice that is child centered and relate to the rights of each child and young person in a clear and unambiguous manner. I would like further clarity on the intended legal status of the Code of Practice. I am aware that the status of many current Codes of Practice such as that currently in place for Special Educational Needs means that they cannot be used to hold agencies to account in a robust manner. However in relation to the Mental Health (Wales) Measure (2010) the Code of Practice has the legal status of regulations and includes a number of requirements. I would seek assurance that the Code of Practice developed under the proposed legislation will have the legal standing of regulation and will be fit for purpose as an accountability framework.

1.3. Disciplinary functions of the proposed Education Workforce Council

While Welsh Government guidance for governing bodies on disciplinarily and dismissal procedures for school staff¹ states that training for governors, clerks, head teachers and staff should cover notification to the General Teaching Council for Wales this training is not mandatory. While it is

important that the new Education Workforce Council will continue to hold disciplinary functions in relation to teachers and the proposals provide for these functions to be extended in relation to the wider education workforce this process will be ineffective if cases appropriate for investigation are not referred to the Council in the first place. Measures must be put in place to ensure that schools are able to utilise the new procedures as intended and refer all appropriate cases to the Education Workforce Council.

1.4. Information duties

I welcome the proposals to require the Education Workforce Council to maintain records about the people required to register and requirement for employers to supply information to the Council where they have ceased to use the services of a registered person on specified grounds or would have ceased to use these services had the registered person not stopped providing these services. Information sharing of this kind is central to safeguarding and to supporting good educational outcomes in ensuring that children and young people can enjoy their rights to be safe (article 19, UNCRC) and to an education that meets their needs (articles 28 and 29, UNCRC).

1.5 Education Workforce Council

The role of the Council in supporting the development of a skilled and competent workforce working within a framework of professionals standards is welcomed. Children and young people deserve to have their right to an education met by a skilled and competent workforce of education professionals.

Evidence presented by Estyn in relation to school effectiveness in tackling poverty and disadvantage was published in 2012 and provides a strong case for the importance of supporting pupil well-being in order to secure attainment.² I would like to see a strong emphasis within the continuing professional development of staff on approaches to and benefits of supporting the well-being of pupils and in relation to the employment of positive behaviour management techniques.

The Bill sets out four categories of persons who will be required to register with the Council including: school teachers and school learning support workers. Children and young people attending pupil referral units are among our most vulnerable learners and evidence from Estyn raises a number of questions about the need for improved systems and measures to support pupil well-being.³ I would seek assurances that the terms ‘school teachers’ and ‘school support staff’ incorporates staff working in pupil referral units and other forms of alternative education provision as well as teachers and learning support staff in mainstream schools and special schools. I am aware that there is a lack of parity across provision in relation to other measures, for example, the One Wales commitment to provide a school nurse in every secondary school does not extend to special schools or pupil referral units.

Measures should also be put in place to ensure that learners and their parents/carers are provided with clear information about the role, remit and responsibilities of the Education Workforce Council. My Advice and Support service continues to receive calls from parents and carers who struggle to get clear information about due process in the handling of education complaints and concerns about education settings.

2. Reform of the registration and approval of independent schools in respect of special educational need

The policy intentions of the Bill in terms of ensuring consistency of approach and monitoring, increasing transparency and minimising bureaucracy are positive and have the potential to ensure the educational rights (articles 28 and 29, UNCRC) and safeguarding (article 19, UNCRC) of children with complex needs are better protected. Provision for all schools registered under the amended s160 to fall within the scope of Estyn monitoring arrangements and be subject to an annual monitoring is a critical factor. I also welcome the fact the proposed changes should lend better clarity to local authorities, learners and parents in making decisions about the most appropriate educational placements.

3. Responsibility for assessing the need for and arranging specialist post-16 education for learners with learning difficulties and/or disabilities

The changes proposed in the Bill could potentially provide greater equity for learner's post 16 in line with proposals for a more person-centred approach as set out in the wider reforms of Additional Learning Needs legislation currently being considered. Measures proposed in the Bill that seek to improve the assessment of additional needs for post-16 learners and to secure better transitional planning for learners moving from college to 16+ provision are urgently needed. My officers have met with the parents of young people with Autistic Spectrum Disorders in one local authority whose children have restricted options for post-16 education. The designated local college is in their opinion unable to meet the learning and support needs of their children. A number of young people have withdrawn from college due to lack of appropriate support. I would want to see monitoring and measures in place to ensure that the limitations of the Section 140 assessment process are not replicated in new procedures for decision making in the context of limited resources. The assessment and planning process must be robust in order to secure the resources needed to provide the educational offer the young person requires to realise their right to an education that enables them to fulfil their potential. Welsh Government must ensure that the changes proposed through the reform of wider Additional Learning Needs framework and through this Bill are implemented in a way that satisfies their policy intentions.

I would also seek clarity in relation to the terms as applied on the face of the Bill. Section 40a of the Bill sets out that where a learner has a statement of special educational need under section 324 of the Education Act 1996 an assessment by the authority is mandatory. However under section 40b in relation to a young person who appears to have a learning difficulty the provision of an assessment is discretionary. My Advice and Support service continues to receive calls about children and young people who are not receiving the educational provision they deserve because their emotional and behavioural difficulties are not being addressed. Many of these children and young people do not satisfy the criteria for the statementing process but their parents are left feeling that without a statement there will be no opportunity to secure support to meet their additional needs. I am concerned that the demarcation between mandatory duties to assess in relation to young people with a statement of special educational need and discretionary powers to

assessment for those without a statement as presented on the face of the Bill will replicate inequalities in provision that already exist.

I am also unclear as to how the Bill will give effect to Welsh Government intentions if proposals to replace statements of SEN with an integrated assessment and planning process and Individual Development Plan as contained in Welsh Government 'Proposals for the reform of the legislative framework for special educational needs' (2012). If statements of special educational need are replaced through wider reforms the numbers of young people to which eligibility for a mandatory assessment applies as set out on the face of the Bill will apply will be further restricted over time.

3.1 Right of appeal

I welcome the provisions included in the Bill that provide for post-16 learners in non-school settings to enjoy equal rights of appeal in relation to SENTW where they consider an assessment under the SEN Code of Practice should have been undertaken or where the assessment does not adequately identify or meet the needs of the learner. I would seek assurance that the provisions of the Special Education Needs Tribunal for Wales (SENTW) Regulations 2012 will be equally applied to those learners brought into entitlement to appeal through the Bill.

I welcome the inclusion on the face of the Bill of the term 'independent advocacy services' and the inclusion of provisions in relation to the right to access to an independent advocacy service when making or intending to make an appeal to the Welsh Tribunal under 40G of the Bill. My review of independent advocacy services for children and young people with an entitlement under the Children Act 1989 identified that children and young people did not always understand that they had this right, were unclear about the role of an advocate and faced barriers to accessing independent advocacy provision. Learners, parent/carers and case friends must be provided with clear information on their entitlement to an independent advocacy service. This information should be provided and explained to every learner as part of the assessment process in relation to a learner's needs introduced through the Bill (section 40a and 40b).

4. School term dates

Over half of children living in poverty live in working households⁴ and childcare costs impact significantly on low-income families and their capacity to sustain employment.⁵ I therefore welcome the policy intentions of the Bill in relation to the harmonisation of school term dates to reduce additional childcare costs for families with children in different schools.

5. The appointment of HM Chief Inspector and HM Inspectors of education and training in Wales under section 19 of the Education Act 2005

The repeal of section 19(6) of the 2005 Education Act in order to allow for the First Minister to advise Her Majesty on Privy Council matters as far as these to HMCI and HMI is welcomed and appropriate in light of the devolved nature of education in Wales.

ENDS

Submitted by:

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- ¹ Welsh Government, circular no: 002/2013 *Disciplinary and dismissal procedures for schools staff: revised guidance for governing bodies*, Cardiff: Welsh Government
- ² Estyn, (2012) *Effective practice in tackling poverty and disadvantage in schools*, Cardiff: Estyn
- ³ Estyn (2012) *A survey for the arrangements for pupils' wellbeing and behaviour management in pupil referral units*, Cardiff: Estyn
- ⁴ JRF (2012) *Measuring Poverty and Social Exclusion in Wales 2011*, York:JRF, JRF (2012) *Measuring Poverty and Social Exclusion 2012*, York:JRF
- ⁵ Save the Children (2011), *The Childcare Trap: Making Work Pay, Childcare Costs and Child Poverty*, Cardiff: Save the Children