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Y Gweinidog Cymunedau a Threchu Tlodi
Minister for Communities and Tackling Poverty



Llywodraeth Cymru
Welsh Government

Ann Jones AC/AM
Chair - Children and Young
People Committee
National Assembly for Wales
Cardiff Bay

12 November 2013

Dear Ann

Welsh Government Draft Budget 2014-15

Thank you for your letter of 29 October 2013 and the annex outlining the conclusion of your scrutiny. I and the Deputy Minister look forward to attending in future to provide the further evidence around the various evaluations we are currently undertaking. Your letter also refers to issues you felt weren't fully addressed during the session and areas where additional information would be helpful. These are covered below.

Strategic Approach

I am disappointed that my response on prioritisation did not entirely persuade you so I will elaborate on the large amount of work that went into considering the options.

The Communities and Tackling Poverty MEG contains three main areas: Children, Young People and Families; Supporting Communities and People; Sustainable Development and Equality. All of these are a priority for the Welsh Government, many cut across all of the WG portfolios, and all are part of the main budget theme of Supporting Children, Families and Deprived Communities.

Over the past few years we have been constantly scrutinising our budgets to identify potential savings and efficiencies. These prudent measures allowed us to have some small amounts of unallocated funds in most of the BELs. This has provided a platform for managing the reductions in 2014-15 and established a framework for good financial

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management for the future. These measures and some protection afforded to the MEG in 2014-15 means that it will be a transitional year where we will work with partners in Local Government and the Third Sector, looking at how we can better target and realign funding wherever possible in line with our priorities.

Thus, in this Draft Budget, while a number of budgets have been maintained on a level cash basis such as the funding provided to the Children’s Commissioner, cuts were inevitable in other areas. Wherever possible, we have tried to address in a number of ways:

- In the first instance, any budgetary amounts unallocated (resulting from either efficiency measures or funding streams coming to an end) have been utilised; and
- Secondly, activities which can be delivered differently and more cost effectively without affecting front line delivery have been reviewed: for example the approach to funding assessment tools and the funding of “free” criminal records checks for childcare workers.

However, by 2015-16 these do not deliver the scale of reductions necessary. Therefore, Families First, Communities First and infrastructure funding for the Third Sector will all be required to deliver reductions. We will also need to refocus those elements of the Children and Families Organisational Grant located in this MEG in order to deliver a better return on investment and be more effective in delivering WG priorities. Wherever possible we will look to mitigate the impact on front line services.

In considering the longer term, we reviewed all our expenditure over the Spending Review period. That work will continue and further consideration will be given to:

- merging and streamlining some grants wherever possible to be even more effective and efficient;
- in the longer terms, looking at whether certain programmes which provide specific grants to Local Authorities could be transferred to the Revenue Support Grant;
- specific review and evaluations such as Flying Start and Families First. We will continue to closely monitor our commitments and regularly look at ways of minimising expenditure whilst maintaining effective and efficient outcomes.

Evaluation

We discussed at length some of the evaluations being undertaken and you have referred to most of them in your letter. For the sake of completeness I include a table below indicating what evaluations are being undertaken, the outcomes expected and the due date for completion. I hope you find this helpful. Following the publication of the evaluations we will be happy to attend and discuss with the Committee in more detail.

Evaluation	Mechanism/Outcomes	Due Date
Flying Start	The forthcoming reports for the ‘Wave 2 evaluation’	

	<p>are as follows:</p> <ul style="list-style-type: none"> • A report examining the implementation and delivery of Flying Start across all 22 local authorities • An impact report based on a survey of parents using Flying Start and a comparator group • A synthesis report that will summarise the findings and lessons from all of these reports 	<p>November 2013</p> <p>early December 2013</p> <p>end December 2013</p>
Child Poverty Strategy	<p>The aims of the evaluation are to answer three key questions:</p> <ul style="list-style-type: none"> • What effects are each of the main Welsh Government policies and strategies having on child poverty, or can they expect to have over the long-term? • What effects are public bodies having on child poverty as a consequence of the new public sector duty, and the way the Child Poverty Strategy is influencing its interpretation and implementation, or otherwise? How is the Child Poverty Strategy influencing decision-making and the delivery of services? • What effects are the Child Poverty Strategy for Wales having on child poverty over and above what would have happened anyway, through existing policies and initiatives within and outside the Welsh Government? Is the Strategy making a difference in prioritising effort on the most promising activities and most important outcomes, and in establishing an effective accountability framework focused on impact, to help manage the performance of all contributing partners? 	<p>The final report will be delivered in December 2013</p>
Advocacy (MEIC)	<p>A qualitative and quantitative evaluation of the service will be undertaken to measure the extent to which Meic has achieved its aims and objectives. This will inform the specification for the procurement exercise for delivery of the service from August 2014.</p>	<p>Spring 2014</p>
Families First	<p>The evaluation will examine the design, delivery and impact of the Families First programme.</p> <p>The first annual report will focus on the implementation and delivery of the programme to date.</p>	<p>Annual report early December 2013.</p>

You express concern over the reductions in this area and though I believe I covered it in my response at Committee, I am happy to clarify that savings found will not impact on implementing the Measure. The total budget in this area was £1.3m, of which £0.5m was allocated for the Measure – that has not changed. The necessary reductions come from two elements where we will need to end old programmes and merge others with as little impact on front-line services as possible.

For example, we have legislated for children and young people's participation and we will continue to support the participation of children and young people on a national level. Reconfiguring the funding arrangements where Funky Dragon currently receives £400k per annum does not change this. In future however, funding for Third Sector organisations, including Funky Dragon, will be available through a new, single grant scheme.

Other savings amounting to £500k are as a result of work that has either now come to an end, is being funded from other BELs, or had one-off costs. Examples include:

- Promotion of knowledge and understanding of Children's Rights - Section 5 of Rights Measure
 - Refreshing the Getting It Right website
 - Consultation on the Children's Rights Scheme
 - Development and refreshing of the children's rights e-training for officials and professionals working with children and young people
 - Development and launch of the Children's Rights App and promotion
 - U-Tube clip promoting children's rights
 - Children's Rights Conference at Swansea University
 - Summary version (CYP version) of the Children's Rights Scheme
- Participation
 - The Participation unit hosted in Save the Children who no longer require the funding
 - Development of the Participation hub

Children's Rights Impact Analysis (CRIAs)

I note a number of issues raised in your letter about the exact requirements of CRIAs, which I will try to clarify.

We are committed to considering the rights of children and young people as part of the budget setting process. As the Committee will be aware, responsibility for children's rights sits within my portfolio and I am committed to embedding considerations around children's rights into policy development. In the context of the Draft Budget, we have taken a whole Government approach and all Ministers have considered children's rights in developing their detailed spending plans – this includes my own portfolio for Communities and Tackling Poverty. The outcome of this work is set out in the Equality Impact Assessment of the Draft Budget 2014-15, which was published alongside the Draft Budget 2014-15 on 8 October.

We have also undertaken a children and young people due regard analysis on the Draft Budget 2014-15, which sets out how our spending decisions respect the UN Convention on the Rights of the Child.

We are committed to improving our approach to impact assessments more generally, and are working to move towards a more integrated approach to understanding the impact of

our spending proposals in future budgets, including the integration of children's rights considerations, within the context of the proposed Future Generations (Wales) Bill.

Importantly, I would not wish you to consider that we do not take the requirements very seriously. In implementing the Rights of Children and Young Person's (Wales) Measure 2011, we focus on the policy or legislative intent which is the main determinant in outcomes, which in turn needs to be resourced to be implemented. The basis of the CRIA is to firstly consider what is the intent, which of the UNCRC articles are most applicable to the desired outcomes, consider the impact of the policy/legislation on children, consider how to fully implement the relevant UNCRC articles by increasing positive outcomes and mitigating any negative ones and make a decision based on the findings. I have attached a few examples of legislation/policy that have undergone a CRIA for your information (please see Annexes 1-3)

1. Active Travel
2. Children (Secure Accommodation) Regulations 1991
3. Organ Donation Bill

I note that your Committee would like all CRIAs to be made public in future. I have asked officials to explore this further in respect of the revised Children's Rights Scheme which sets out the arrangements we will have in place as a Government for when the additional duties come into force. I will keep you advised of progress in this area.

Families First

Cuts to the 2015-16 budget will be met from local authority grant allocations. We have made it clear to local authorities that we expect the first two years of the programme to focus on systems change. As a result, we expect the more resource intensive activity to take place during these early years. By the time cuts are implemented in 2015-16 the programme will be embedded. With the structures in place the grant can focus on the operational delivery of Families First. We are also working with policy colleagues across the Welsh Government and local authorities to improve the join up of services across early intervention and prevention programmes. This will provide opportunities for savings to be made at the local level in the delivery of services to families.

We will use the emerging monitoring and evaluation data to assess how the delivery of the programme is affected by a reduction in funding to local authorities in 2015-16. We will work closely with them during their planning stages to ensure that the key elements of Families First are prioritised and that service delivery is based on local needs assessment.

Flying Start

Wave 2 of the longitudinal survey received an extremely high response rate from parents, exceeding expectations. Whilst this meant fieldwork took longer to complete and publication was delayed, the increased sample size has enhanced the validity of the findings. The

impact report is currently subject to quality assurance through an external peer review process which will ensure the research and analysis is robust.

You asked whether there is sufficient flexibility within my budget to address issues from the research issued in October 2013 and the evaluation due to report soon. As to the first item, both I and the Deputy Minister talked at Committee about the positive, far reaching outcomes of Flying Start and also the cross-Government approach to issues, including objectives in the portfolio of the Minister for Education and Skills and work being taken forward by the Deputy Minister for Social Services. However, the Government is not complacent and fully appreciates that complex support packages are needed to protect the vulnerable in society. This matter is much wider than just my budget and so I and the Deputy Minister will be working with colleagues across Government in taking forward the Tackling Poverty Action Plan, as it's very relevant to the issues in hand.

It would be remiss of me to guarantee all the findings of the evaluations will be addressed from within my current budget when the evaluations have yet to be completed. I and the Deputy Minister await the evaluation reports with interest and will be discussing these and the potential policy and financial impacts with officials in due course. The Deputy Minister has already offered to return to Committee to discuss the findings. By that time, we will be in a more informed position to discuss policy and financial implications with you.



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Minister for Communities and Tackling Poverty



Vaughan Gething AC/AM

Y Dirprwy Weinidog Trechu Tlodi
Deputy Minister for Tackling Poverty

Active Travel (Wales) Bill

Due Regard to the United Nations Convention on the Rights of the Child

Step 1 – What's the piece of work?

The Active Travel Bill is a key action in the Programme for Government and is included in the Welsh Government's Legislative Programme. The Bill is intended to enable more people to walk and cycle and generally travel by non-motorised transport. We want to make walking and cycling the most natural and normal way of making getting about. We want to do this so that more people can experience the health benefits, we can reduce our greenhouse gas emissions, and we can help address poverty and disadvantage. At the same time, we want to help our economy to grow, and we want to take steps that will unlock sustainable economic growth.

There has been a lot of work over previous years to promote walking and cycling. The Walking and Cycling Strategy, published in December 2003, aimed to maximise the opportunities afforded by walking and cycling and to point out the disadvantages of using private cars, particularly for short journeys. The subsequent Action Plan, published in December 2008, set out the initiatives which the Welsh Government and key partners are undertaking or planning to undertake to support more people to walk and cycle safely and more often. Though the Walking and Cycling Action Plan Annual Report 2009-10 did show an increase in the number of people walking and cycling to work in Wales, this was not the significant growth that we had hoped to deliver.

Research indicates that for many people, including children and young people, the biggest barrier to walking and cycling is concern for their safety. These concerns relate mainly to the existing infrastructure, the speed and proximity of traffic, and concerns for personal safety. After safety, the practical difficulties of walking and cycling are the biggest barriers. These are issues such as storing bikes and outdoor clothing, both at home and at the destination; the logistics of transporting bags, children and so on by foot or by bike; and time constraints. For children and young people, parental perceptions of safety can be a significant barrier to active travel and for outdoor play.

The third significant barrier is the lack of a walking and cycling culture, where walking and cycling is seen as the most natural and obvious way of making shorter journeys. The absence of this culture leads to a perception that walking and cycling is something abnormal, done by eccentrics and enthusiasts only.

What this shows is that when it comes to actually changing the way people travel we need to be doing things differently. We need to think more broadly about how we encourage people to change their behaviour, and in doing so change the culture surrounding walking and cycling.

Behaviour change means far more than just enabling people to use active travel by providing safe routes. People need to be able to engage with the idea of walking and cycling and feel encouraged to give it a go. Finally, as a Government we need to set the example for the kind of culture change we wish to see through consistent and clear messages and activity, for example using the "Four E" model of behaviour change: Enabling, Engaging, Exemplifying and Encouraging.

The Active Travel Bill will require Local Authorities in Wales to:

- identify and map the network of routes within their areas that are safe and appropriate for walking and cycling;
- identify and map the enhancements that would be required to create a fully integrated network for walking and cycling and develop a prioritised list of schemes to deliver the network;
- deliver an enhanced network subject to budget availability and following due process;
- consider the potential for enhancing walking and cycling provision in the development of new road schemes.

We propose that under this Bill, Local Authorities would have a duty to identify the routes within their areas that are safe and appropriate for walking and cycling. These routes would consist of a combination of traffic-free routes, on-road provision and access through public spaces such as parks. Where pedestrians or cyclists would be in proximity with motorised traffic, there should be provisions in place to make these routes safe for pedestrians and cyclists, for example through traffic calming, 20mph zones or through segregated routes. Local Authorities would also have a duty to identify the facilities that are publically available to enable active journeys by foot or bike, such as cycle storage, toucan crossings and wash facilities.

Once the current routes and facilities were identified, Local Authorities would have a duty to mark them on to a map that would be publically available and promoted as appropriate. This would be an advisory map, aimed at informing the public of the location of suitable routes for walking or cycling, and the facilities they might use while making active journeys. The map would need to be updated on a regular basis to reflect the improvements that have been made to the infrastructure for pedestrians and cyclists.

Local Authorities would then be required to identify where routes do not join up within their areas and across their boundaries, and where there is a lack of facilities along those routes to support walking and cycling. Local Authorities would also be required to identify where significant numbers of shorter journeys are being made and there is no safe route for pedestrians or cyclists. They would then need to identify what enhancements, upgrades and new infrastructure would be required to enable people to make continuous and safe journeys by foot or by bike.

Local Authorities will also have a duty to create a second map, showing these proposed upgrades and enhancements. This map should set out an integrated network which will allow the majority of shorter journeys made in Wales to be made by walking or cycling, including routes to schools. This map will be an ambitious vision that will take a long term view, setting out what Local Authorities feel could be achieved over decades, rather than the next few years. Local Authorities will then be expected to deliver continuous improvements to their integrated network, subject to due process.

When new road schemes are planned, Local Authorities will have a duty to consider the potential these schemes could have for enhancing walking and cycling infrastructure. It is more efficient and cost effective to incorporate walking and cycling provision into a design than to retro-fit this provision into a completed scheme. Incorporating walking and cycling provision into new road schemes could help Local

Authorities to deliver the maps, or could present new opportunities for connecting existing infrastructure. We recognise that this may not always be the case, and we want to avoid creating isolated pieces of infrastructure for walking and cycling that do not form part of a network. However, at the same time we do not want the opportunities that new construction presents to be overlooked.

This Bill is just one tool for delivering an increase in walking and cycling and will be supported by a range of activity by central and local government. Alongside the Bill, we intend to produce new design guidance and standards for pedestrian and cycling routes (on-road and traffic-free) and for street design to enforce the hierarchy of road users, prioritising non-motorised transport users over cars. We also intend to review activities and targets set out in the Walking and Cycling Action Plan to support the delivery of the Bill. We will be consulting separately about these activities in due course. These activities are an opportunity to address equality issues related to active travel alongside the delivery of the Bill.

Step 2 – Which UNCRC rights does the work help to realise or affect?

Our assessment is that the work helps to realise or affects the following rights:

Article 1	Everyone under 18 years of age has all the rights in this Convention.
Article 2	The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from.
Article 3	All organisations concerned with children should work towards what is best for each child.
Article 4	Governments should make these rights available to children.
Article 6	All children have the right of life. Governments should ensure that children survive and develop healthily.
Article 12	Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.
Article 13	Children have the right to get and to share information as long as the information is not damaging to them or to others.
Article 17	Children have the right to reliable information from the mass media. Television, radio and newspapers should provide information that children can understand, and should not promote materials that could harm children.
Article 23	Children who have any kind of disability should have special care and support so that they can lead full and independent lives.
Article 24	Children have the right to good quality health care and to clean water, nutritious food and a clean environment so that they will stay healthy. Rich countries should help poorer countries achieve this.
Article 27	Children have a right to a standard of living that is good enough to meet their physical and mental needs. The Government should help families who cannot afford to provide this.

Article 30	Children have a right to learn and use the language and customs of their families, whether these are shared by the majority of people in the country or not.
Article 31	All children have a right to relax and play, and to join in a wide range of activities.

Step 3 – Respecting rights and giving greater effect to the UNCRC

The Active Travel (Wales) Bill will affect children and young people living in Wales. The mapping exercise will provide them with information to assist them in travelling actively. It will lead to better routes and facilities to support active travel at schools and play services.

The following section indicates whether each of the Articles above is breached, respected or given greater effect by the proposals. It also indicates any additional action which is needed. This assessment should be read alongside the equalities impact assessment, which includes an assessment of the impact of the Bill of the people of different ages, disabilities and races. It also includes a summary of the evidence used to support the impact assessments and details of the bodies consulted.

Article 1 - Everyone under 18 years of age has all the rights in this Convention.

Article 2 - The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from

Article 3 - All organisations concerned with children should work towards what is best for each child.

Article 4 - Governments should make these rights available to children.

Respected

The products of Active Travel (Wales) Bill will apply equally to all children and young people. Guidance is being developed to support the implementation of the Bill, and this will include engagement and consultation with children and young people. Even though the Rights of the Child Measure (2011) does not apply to local authorities in Wales, the delivery guidance will reflect the importance of respecting children’s rights. The design guidance for routes will also consider the needs of children and young people.

Article 6 - All children have the right of life. Governments should ensure that children survive and develop healthily.

Article 24 - Children have the right to good quality health care and to clean water, nutritious food and a clean environment so that they will stay healthy. Rich countries should help poorer countries achieve this.

Given greater effect

Children will experience both direct and indirect health and environmental benefits as a result of this Bill. It will make it easier and safer for them to travel actively, meaning that they will receive the health benefits of physical activity and they will be at lower risk

from accident or injury. They will also experience benefits of reduce greenhouse gas emissions, better air quality, lower levels of noise pollution and vibration from traffic. The shift from car centred infrastructure to pedestrian and cyclist centred infrastructure will benefit children and young people by providing them with a more child-centric environment.

Article 12 - Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.

Respected

During the development of the Bill, groups that represent the views of children and young people were consulted and their views have helped form the final provisions for the Bill. Additionally, the Sustrans led consultation event on the 18 June involved primary school aged pupils from “Bike It” schools. They were actively engaged in the event, interviewing attendees and presenting poetry they had written about their experiences of cycling. The guidance on the delivery of the Bill will include consultation with children and young people so that their views can be considered in the identification of suitable routes for active travel.

Article 13 - Children have the right to get and to share information as long as the information is not damaging to them or to others.

Article 17 - Children have the right to reliable information from the mass media. Television, radio and newspapers should provide information that children can understand, and should not promote materials that could harm children.

Given greater effect

Currently there is limited information on suitable routes for active travel for children and young people. Some schools are proactive and provide information on access, but many do not. Many facilities that are valued by children and young people (play centres, parks, leisure centres, libraries and so on) do not publicise safe and appropriate routes for access, and there is very limited information about safe routes for visiting friends and family. Google maps offer both walking and cycling maps, but these are not always appropriate routes (as the disclaimers on the site make clear).

The provisions in the Bill will lead to better information provision for all, including children and young people. Maps are more accessible than written documents to many children, meaning that they can gain a better understanding of safe routes based on reliable information. It is also likely that commercial mapping organisations will use the maps to improve their data and provide better information on safe routes.

Article 23 - Children who have any kind of disability should have special care and support so that they can lead full and independent lives.

Respected, potentially given greater effect

The guidance to deliver the Bill will include engagement with children and young people and engagement with those with disabilities. We recognise that children with visual impairments will not be able to use paper maps, the equalities impact assessment sets out the mitigating action we are taking to address this. Disabled

children will potentially benefit significantly from the provisions of the Bill, if it gives them better access to services and facilities. Again the equalities impact assessment sets this out in more detail.

Article 27 - Children have a right to a standard of living that is good enough to meet their physical and mental needs. The Government should help families who cannot afford to provide this.

Respected

The improvements to the local environment and improved access to services will support a standard of living that will help meet children's physical and mental needs. The Bill will also help tackle poverty by promoting better access to employment, which is a significant factor in worklessness. Families where one or more parents work are significantly less likely to be in poverty than families where parents are workless. A reduced dependency on motorised transport (both private and public) will lead to financial benefits for families that are no longer required to spend as much on transport.

For older children and young people, a safer environment will active travel will help support them to travel independently, meaning they are less dependent on others to give them lifts or paying for public transport. This will give them better access to facilities and services, including education and leisure facilities, supporting a standard of living that meets their needs.

Article 30 - Children have a right to learn and use the language and customs of their families, whether these are shared by the majority of people in the country or not.

Respected

Maps are non-linguistic, as are the majority of road signs for walking and cycling. The provision of information on safe routes, as well as the provision of safe routes, allows children and parents to make informed decisions about appropriate routes for active travel. The Bill does not require people to use active travel or penalise those who wish to make other travel choices due to cultural preferences. Please see the equalities impact assessment for more information.

Article 31 - All children have a right to relax and play, and to join in a wide range of activities.

Given greater effect

Safer and more appropriate routes for active travel will enable children and young people to access play and leisure facilities more easily. It could also make access to activities more affordable for low income families, if they are less dependent on motorised travel. If this Bill leads to a reduction in both traffic volume and traffic speed then children will benefit from a safer environment for outdoor play, even if they are not travelling actively.

Recommendations

- The delivery guidance should include engagement and consultation with children and young people.
- The Walking and Cycling Action plan should consider the potential benefits and impacts on children and young people, and seek to maximise the benefits of the Bill for this group.

Legal Aid, Sentencing and Prevention of Offenders Act 2012

Step 1 – What's the piece of work?

Amending the Children (Secure Accommodation) Regulations 1991

The Regulations revoke the “modified test” set out in Regulation 6(b) in respect of 10 to 11 year olds irrespective of the basis of their detention, **and** for 12 to 16 year olds remanded to local authority accommodation. Such children will be subject to the application of the “welfare test” under section 25 of the Children Act 1989.

The Regulations will form part of a suite of consequential amendments to support implementation of the revised remand framework proposed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

The Act provides that children remanded to youth detention accommodation (secure children's homes, youth offending institutions or secure training centres) be treated as children looked after by the designated authority. The Act also provides for the modification or dis-application of legislation that applies to looked after children where the exercise of that duty would not be consistent with their remanded status.

Currently, only those children who are remanded to local authority accommodation or those remanded to local authority accommodation with a security requirement are designated as “looked after”. This excludes the majority of 15 and 16 year-old boys and all 17 year-old offenders (who are remanded to under-18 young offender institutions).

These new arrangements will align the treatment for all looked after children and place on-going duties on local authorities to support them whilst in custody and to plan for their release.

The Home Office, ACPO and the Police Federation have argued for the retention of the modified test for 12 to 16 year old children in determining the restriction of liberty to prevent individuals absconding and / or committing further offences on the basis of the necessity to protect the public from harm.

The determination of the appropriateness of whether a child is detained under PACE and the determination of the appropriateness of the child's release on bail are matters for the Police. Such determinations are made prior to the consideration of the application of either the “welfare” or “modified” tests by a local authority.

The Children's Commissioner for Wales argues for the revocation of the modified test, highlighting the Welsh Ministers' duty to have due regard to the UNCRC (particularly Article 37(b)) as required by the C&YP Rights Wales Measure.

"No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time" (Article 37(b))

Due to the significance of this particular work, some of the more pronounced articles identified below are in bold. The full article detail is covered in certain elements of the analysis below.

Step 2 – Which UNCRC rights does the work help to realise or affect?

Our assessment is that the work helps to realise or affects the following rights:

Article 1	Everyone under 18 years of age has all the rights in this Convention.
Article 2	The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from.
Article 3	All organisations concerned with children should work towards what is best for each child.
Article 4	Governments should make these rights available to children.
Article 5	Governments should respect the rights and responsibilities of families to direct and guide their children so that, as they grow, they learn to use their rights appropriately.
Article 6	All children have the right of life. Governments should ensure that children survive and develop healthily.
Article 9	Children should not be separated from their parents
Article 12	Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.
Article 13	Children have the right to get and to share information as long as the information is not damaging to them or to others.
Article 14	Children have the right to think and believe what they want and to practise their religion, as long as they are not stopping other people from enjoying their rights. Parents should guide their children on these matters.

Article 15	Children have the right to meet together and to join groups and organisations,, as long as this does not stop other people from enjoying their rights.
Article 16	Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes.
Article 17	Children have the right to reliable information from the mass media. Television, radio and newspapers should provide information that children can understand, and should not promote materials that could harm children.
Article 18	States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
Article 19	States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child 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 guardian(s) or any other person who has the care of the child.
Article 20	A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
Article 23	Children who have any kind of disability should have special care and support so that they can lead full and independent lives.
Article 25	States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.
Article 27	States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
Article 36	States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare. This Article means that children and young people should be protected from anything which could harm their welfare (be this physical or psychological) and ability to grow up safely.

Children and young people should be treated with respect at all times and not exploited or used by others.

Article 37	No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
Article 38	States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.
Article 40	States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
Article 41	If the laws of a particular country protect children better than the articles of the Convention, then those laws should stay.
Article 42	States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Step 3 – Respecting rights and giving greater effect to the UNCRC

The following section indicates whether each of the Articles above may counterbalance, respect or give greater effect by the proposals. It also indicates any additional action which is needed.

Respected. .

It is the case that any type of incarceration of children is a high consequential and impact area and requires a thorough analysis against the articles of the UNCRC. The harsh reality and sharper end of children's rights in taking decisions around the criminal and youth justice system can and does ultimately with a child being potentially locked up. This counterbalance

centres primarily around article 3 'best interests' and article 37 that looks at the potential imprisonment of a child.

The principles of this work are based on trying to ensure that the child's interests are paramount and that this also pertains to the potential victims of a child as an offender.

Determining the potential risk to others and or absconding, which could place the child as an offender in risks themselves, is a relevant process. Clarification and support of a collaborative relationship with those responsible for these decisions, at times in very fluid scenarios with time and resource issues can respect the rights of these children.

Article 20 is also a key right particularly if a Welsh child is placed within England and is a first language Welsh speaker. This would require some support in order that this right is respected.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."

This Article of the Convention is incredibly important and it means that adults should always put children and young people's needs first. In practice, putting this Article in effect can have a number of effects including adults changing the way that they work with children and young people to find out what their needs are, looking again at policies that are written for children and young people and ensuring that services provided do not cause harm.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

This Article means that not only do children and young people have a right to family life, but, should their parents/carers not be capable of looking after them, the Government should make arrangements for appropriate care to be provided. As part of this right, a child or young person can expect those adults who look after them to respect their cultural background and traditions, religion, and language.

Article 37

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

This Article means that if a child or young person breaks the law or other rules, they have to be treated with respect by people such as the Police or their teachers. Children and young people must be treated fairly, and in a way which respects due process. The right to be protected from cruel punishment includes a child or young person having the chance to keep in touch with their family, even if they are placed in jail, and to have a Court review any sentence which has been imposed. In cases where a child or a young person has been accused or breaking the law, they also must be granted access to legal representation and have an opportunity to challenge the taking away of their liberties.

Given greater effect.

The history criteria is not a requisite of the “modified” test and provides greater flexibility in ensuring the child(ren) can be securely accommodated where this is appropriate as a result of the nature of the offence(s).

This is an example where greater affect can be linked into finding the relevant accommodation in relation to female children. There is evidence that places remain difficult in the system for this particular group. The flexibility identified here is a positive opportunity.

Placing children far from their home community is also a difficulty. Links to family and community could create a sense of alienation immediately, even though it may be short term. This could be a reason to try and abscond in the very first instance?

On the flip side to this disconnection, it may be that being back within their home community could create the potential in being a danger to themselves and or others?

Treating children with dignity in this regard is supported by a more flexible approach.

Step 4 – What action could the Welsh Ministers take next?

The following are potential actions drawn from the analysis at Step 3.
NB It is recognised that this has a non devolved component.

- Review the impact of the collaborative nature of the model over time and its impact in relation to the UNCRC
- Ensure training in place on the UNCRC is delivered to police and those in local authorities. Some of this work has been taking place amongst social services and the police in Wales as part of a ‘train the trainers’ UNCRC Welsh Government activity.
- Where possible provide the opportunity to involve advocates for children within these circumstances if the parent/guardian is unwilling and or unavailable.
- Have information for children and families available on their rights where they may be held.
- There will be a commitment to include the views of the child.
- Try to ensure the parent/guardian or those responsible are fully aware of the convention.
- Ensure there is an understanding that whilst the ‘best interest’ general principle will be a paramount model, the other relevant articles around harm to others and the child as an offender under PACE can be clarified.

- Look at the training of the police and other professionals involved in the decision making process in regard to those children with a disability.
- Look at the training police and other professionals involved in the decision making process
- Ensure that religion, cultural and language rights are respected using training

Step 5 – Ministerial Decision

A summary of this assessment will be put to the Minister as part of the SF briefing.

Step 6 – Keeping Records

This assessment is stored on the Welsh Government's record system iShare (ref A4547087)

Nick Keating
David Clayton
February 2013

Draft Human Transplantation (Wales) Bill

Due Regard to the United Nations Convention on the Rights of the Child

Step 1 – What's the piece of work?

The action in question is a legislative proposal to introduce a soft opt-out system for organ donation in Wales.

A soft opt-out system is one where consent to the removal and use of organs and tissues is treated as having been given unless the deceased objected during their lifetime, but where the next of kin of will be involved in the decision making process.

The aim of the Bill is to increase the number of organs and tissues available for transplant, which will benefit the people of Wales by reducing the number of people dying whilst waiting for a suitable organ to become available and improving the life of others.

The shortage of human organs for the purposes of transplantation continues to cause unnecessary death and suffering, both to patients waiting for a transplant and their relatives. Around 1,000 people a year die across the UK each year and in Wales, on average, around one person dies each week while waiting for an organ transplant. Around 300 people in Wales are normally on the active waiting list for a transplant and 37 people died in Wales in 2011/12 while waiting for an organ donation.

Organ transplantation surgery is one of the most clinically effective forms of modern medical treatment and saves lives for patients with organ failure affecting heart, kidneys, lungs, pancreas and liver. Historically much of the focus has been on transplantation to save lives but recent years have also seen a number of transplants of tissue aimed not at saving lives but improving their quality of life. Organ donation is also cost effective. One donor could save or improve the life of up to nine other people and many more can be helped through the donation of tissues. Organ donation helps reduce costs to the NHS, in particular in relation to kidney transplants.

In the case of adults who live and die in Wales, the effect of the Bill will be that appropriate consent for the donation of a deceased person's organs and/or tissues is either:

- a positive wish to donate all or some organs and tissues expressed by a person during his or her lifetime (i.e. by joining an "opt-in" register or leaving written instructions), or
- a wish not to donate certain or any organs and tissues expressed by a person during his or her lifetime (i.e. by joining an "opt-out" register or leaving written instructions), or
- agreement given by a nominated representative after the person's

death, or

- treated as having been given if a person did none of the above.

For the final provision above, the Bill will provide for a person in a qualifying relationship to be able to supply information to show the deceased did not wish to be a donor (i.e. to be able to “rebut the presumption” that the person was in favour of being an organ donor).

The new arrangements with regard to consent being treated as having been given will not apply to children¹. However, children under 18 will still be able to register their wish to become an organ donor, or will be able to register their wish not to be a donor, i.e. they will be able to exercise either of the first two options set out above. In practice, if a child dies in circumstances where donation becomes a possibility, then their stated wish to consent to, or not consent to, organ donation takes precedence and families will be sensitively encouraged to accept their decision. However, it would be normal practice for a person with parental responsibility to be consulted to establish whether the child was competent to make the decision. Where a child has not expressed a wish to donate or not to donate, then their consent will not be treated as having been given and the person with parental responsibility or in a qualifying relationship will be asked to make the decision about organ donation.

Step 2 – Which UNCRC rights does the work help to realise or affect?

Our assessment is that the work helps to realise or affects the following rights:

Article 1	Everyone under 18 years of age has all the rights in this Convention.
Article 2	The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from.
Article 3	All organisations concerned with children should work towards what is best for each child.
Article 4	Governments should make these rights available to children.
Article 6	All children have the right of life. Governments should ensure that children survive and develop healthily.
Article 12	Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.

¹ In this assessment “children” means people under the age of 18 because that is the language of the UNCRC and the Rights of Children and Young Persons (Wales) Measure. In other contexts we refer to people under 18 years of age as “children and young people”.

Article 13	Children have the right to get and to share information as long as the information is not damaging to them or to others.
Article 14	Children have the right to think and believe what they want and to practise their religion, as long as they are not stopping other people from enjoying their rights. Parents should guide their children on these matters.
Article 16	Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes.
Article 17	Children have the right to reliable information from the mass media. Television, radio and newspapers should provide information that children can understand, and should not promote materials that could harm children.
Article 23	Children who have any kind of disability should have special care and support so that they can lead full and independent lives.
Article 24	Children have the right to good quality health care and to clean water, nutritious food and a clean environment so that they will stay healthy. Rich countries should help poorer countries achieve this.
Article 41	If the laws of a particular country protect children better than the articles of the Convention, then those laws should stay.

Step 3 – Respecting rights and giving greater effect to the UNCRC

Apart from introducing the ability for a child to register a wish not to be a donor, the Welsh Government is proposing that there is no change in the law regarding organ donation as it applies to children. However, there are reasons why our proposals should be assessed in terms of their impact on children, as follows:

- The decision to make no change to the law for children, rather than, for example, applying the new soft-opt out system from the age of 16, is itself a decision that affects children.
- At present if a child makes it known that they do not wish to donate organs, that decision should be respected by their parents if they die. What is changing is that there will be a new register set up where children can record by phone, online or by post that they do not wish to donate their organs, as well as record that they do wish to donate organs.
- It will be important for children to be provided with information at the right time so they can understand that at the age of 18 the new soft opt-out system will apply to them.

The following section indicates whether each of the Articles above is breached, respected or given greater effect by the proposals. It also indicates any additional action which is needed.

Article 1 - Everyone under 18 years of age has all the rights in this Convention.

Article 2 - The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from

Article 3 - All organisations concerned with children should work towards what is best for each child.

Article 4 - Governments should make these rights available to children.

Respected. .

Children and young people will continue to have the right to express a wish to donate their organs after death. In addition, we will extend to them the right to express a wish not to be a donor. In many respects this will help clarify the wishes of a number of children and provide a more solid basis for decision making in the event of their death, which could have the effect of increasing the number of organs donated.

In terms of the main change being introduced by the legislation, a child's consent will **not** be treated as having been given. In reaching this position, careful consideration has been given as to which age limits should apply, balancing children's ability to make their own decisions whenever possible, with a parent's role and whether it is right to treat no expressed wish on the child's part as appropriate consent. We have taken into account responses received during the consultation, including from children and young people, whose view appears to be that we should set a lower age limit. Our conclusion is that for the time being, and whilst the new system embeds, the arrangements should apply from the age of 18 years. This is consistent with other significant legal changes at age 18 such as the right to vote and existing laws on organ and tissue donation (The Human Tissue Act 2004).

However it is our intention to review this matter after a suitable period of time as we are sympathetic to the arguments that this would be in the best interests of children and young people to seek to extend the arrangements to a lower age range at some point in the future.

Article 6 - All children have the right of life. Governments should ensure that children survive and develop healthily.

Article 24 - Children have the right to good quality health care and to clean water, nutritious food and a clean environment so that they will stay healthy. Rich countries should help poorer countries achieve this.

Given greater effect.

The proposals overall should increase the pool of organs and tissues for transplantation for both sick adults and children, and in many cases save the lives of children that would otherwise die or have a poor quality of life. Although the provisions for treating consent as having been given will not apply to children, the intention is that the publicity and education campaign will make more children aware of the opportunity to register whether they wish to donate or not donate organs and tissue if they die, and have a conversation with their family about it. If they then die, the family would be more confident that they could follow their wishes and more families would consent to donation.

Article 12 - Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.

Given greater effect.

Children will still be able to formally register their wish to be a donor. We will also extend to them the right to register that they do not wish to donate their organs or tissues after their death. A major public awareness campaign, including work in schools, will bring this right to the attention of children to a much greater extent than before. The law will continue to provide that if children die and they have said what they think should happen about their organs and tissues, then parents, relatives and doctors should take this into account and be sensitively encouraged to accept the child's wishes.

Article 13: Children have the right to get and to share information as long as the information is not damaging to them or to others.

Article 17: Children have the right to reliable information from the mass media. Television, radio and newspapers should provide information that children can understand, and should not promote materials that could harm children.

Given greater effect.

A major public awareness campaign is central to our proposals and we need to ensure this has strands of work that will reach children. The main mass media messages will be aimed at adults but through paid-for advertising and work with broadcasters we will work to ensure that materials pay attention to the information needs of children, in particular those approaching their 18th birthday. At least as important will be direct work with children and young people through schools, youth forums or other means.

Article 14: Children have the right to think and believe what they want and to practise their religion, as long as they are not stopping other people from enjoying their rights. Parents should guide their children on these matters.

Respected.

The Welsh Government thinks that whether children do or do not wish to donate organs their view should be respected. All the major religions support organ donation if someone has expressed their wish to donate organs after they die. Information setting out various religious and world views is already available to help guide people, including children, on these questions.

Article 16: Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes.

Respected.

It will be vital to ensure that if children register their wishes about organ donation, the information is held securely and with complete confidentiality until they die.

We are publishing a Privacy Impact Assessment that sets out how this will be achieved.

Article 23: Children who have any kind of disability should have special care and support so that they can lead full and independent lives.

Respected.

We recognise that disabled children should be treated equally. This means that we will work with those working with disabled children so that they have equal access to information about the new law. They should have help if necessary to understand the new law and decide whether to express their wishes regarding organ donation.

Article 41: If the laws of a particular country protect children better than the articles of the Convention, then those laws should stay.

Respected.

We consider that our proposals respect this right, in accepting that the existing legislation on organ donation strikes an appropriate balance between protecting children, enabling them to express their wishes about what should happen if they die, and helping children that need transplanted organs. These laws should therefore stay.

Step 4 – What action could the Welsh Ministers take next?

The following actions are drawn from the analysis at Step 3.

- Review the age limit for the legislation within a reasonable timeframe and as part of the evaluation of the operation of the new system.

- Ensure that the public awareness campaigns encompasses work with schools and other ways of engaging with children and young people, and communicates that they will be able to register whether they wish to donate or not donate organs and tissues if they die.
- Ensure systems are designed so that if children register their wishes the information is held securely and with complete confidentiality.
- Ensure that the public awareness campaign takes account of the needs of disabled children.

Step 5 – Ministerial Decision

A summary of this assessment will be put to the Minister as part of advice on the draft Bill that is to be published on 18 June 2012. It will be reviewed prior to advising the Minister on the introduction of the legislation into the Assembly.

Step 6 – Keeping Records

This assessment is stored on the Welsh Government's record system iShare (ref A2947584)

John Abraham
Bill Manager
May 2012