

Impact case study (REF3b)

Institution: Swansea University
Unit of Assessment: 20 - Law
Title of case study: Shaping new law on human rights of children and young people in Wales
1. Summary of the impact

The research in this case study provided guidance for advocates of policy change, Welsh Government Ministers and Assembly Members in their shaping of the Rights of Children and Young Persons (Wales) Measure 2011, which imposed a unique legal duty on Welsh Ministers to have due regard to the requirements of the United Nations Convention on the Rights of the Child (UNCRC). This model was followed in a Scottish Government consultation on prospective law reform, and it has attracted significant international interest.

2. Underpinning research

Jane Williams (Senior Lecturer, joined the UoA in 2000) and Simon Hoffman (Lecturer, joined in 2007) undertook collaborative research on legal and administrative mechanisms to secure children's rights. This has included work on (a) the impact of devolution on the arrangements for UK compliance with the UNCRC, and the applicable legal framework under the Government of Wales Act 2006; (b) suitable legal and other accountability mechanisms in respect of UNCRC implementation; and (c) the function of policy networks in this context. This has been applied research, involving engagement with the Welsh Government, statutory bodies and NGOs, coupled with comparative analysis of other jurisdictions. It has also been informed by membership of the Wales UNCRC Monitoring Group which analyses data and opinion to inform its non-governmental reports and recommendations to the UN treaty monitoring body.

The research led to the following insights:

- (i) Effective implementation of children's rights requires a variety of legal and administrative mechanisms to ensure that political and executive decision-makers pay proper attention to children's rights. National measures must take account of constitutional structures, different legal systems and arrangements for public service delivery. [R1 and R3 below]
- (ii) Innovative approaches to interpretation are required (including development through a body of judicial precedent). [R3, R4, R5 and R6 below]
- (iii) Administrative and social structures impact on capacity to respect and promote children's rights. Non-governmental organisations and alliances have a crucial role to play in promoting children's rights, supporting rights-based policy and service delivery, and facilitating participation by children as members of civil society. [R1-R6 below]
- (iv) In Wales, having regard to the legal framework of devolution and the policy priorities adopted by successive Welsh administrations, a particularly useful mechanism would be a legal duty on Welsh Ministers and other public officers in Wales to have due regard to the UNCRC when exercising their functions. This duty should be pervasive, so that commitment to children's rights becomes as much a part of decision-making as other pervasive themes in Welsh government, such as equality of opportunity and sustainable development. [R1, R4-R6 below]
- (v) Many different actors must remain engaged, collaborating where appropriate, furthering policy development, promoting public awareness and ensuring accountability. [R2, R4-R6 below]

3. References to the research

- R1. Williams, J. 'Incorporating Children's Rights: The Divergence in Law and Policy' *Legal Studies* 27, 2007, 261-87 (peer-reviewed journal of the Society of Legal Scholars). Outlines the case for political and administrative accountability as well as judicial remedies, and for divergent approaches beneath State party level.
- R2. Invernizzi, A. and Williams, J. (eds.) *Children and Citizenship* (Sage, 2008). Chapter 15 by Williams and Croke details the role of the Monitoring Group and other non-governmental actors. The book emerged from an interdisciplinary seminar series organised by Invernizzi and Williams in 2006, in which Williams began to develop the idea of 'public officer's law' as an instrument for law reform, evidenced in 1 above.

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- R3. Williams, J. *Child Law for Social Work: Implementing Rights in Policy and Practice*, (Sage, 2008). This book set out in detail, in relation to social work, how professional practice plays an essential part in implementation of human rights and equally how utilising human rights can help practitioners be more effective in social work with children and families.
- R4. Invernizzi, A. and Williams, J. (eds.) *The Human Rights of Children: From Visions to Implementation* (Ashgate, 2011). International collection analysing aims of the UNCRC, developments in its use and challenges to implementation. Chapter 11 by Williams examines multi-level governance and UNCRC implementation in Europe.
- R5. Williams, J. 'General legislative measures of implementation: individual claims, "public officer's law" and a case study on the UNCRC in Wales' *International Journal of Children's Rights*, Vol. 20, 2012, 224 – 240 (peer-reviewed, international, inter-disciplinary journal). Summary of the thesis on which the 'pervasive duty' on Welsh Ministers is based, and analysis of its impact in Wales, the UK and in the treaty monitoring system.
- R6. Williams, J. (ed.) *The United Nations Convention on the Rights of the Child in Wales* (University of Wales Press, 2013). The book tells the story of the UNCRC in Wales, explains the legal effect of the Measure and examines selected areas of impact. Chapter 4 (Williams) explains the new law, Chapter 7 (Hoffman et al.) examines its application in the field of housing, and Chapter 12 (Hoffman and Williams) considers mechanisms for accountability of Welsh Ministers for compliance with their new duties.

4. Details of the impact

Welsh legislation

In July 2009, Williams, on behalf of the Wales UNCRC Monitoring Group, sent an outline legislative proposal to Welsh Ministers when they were planning what became the Rights of Children and Young Persons (Wales) Measure 2011. The proposal was based on the research insights at 2(iv) above. The Welsh Ministers accepted the proposal but encountered resistance from their officials to a pervasive duty. In September 2009 Williams was commissioned to work with officials. Initially this helped restore Ministers' original intentions: '*... by early December it appeared that the politicians had prevailed, and a proposal emerged from officials which reflected the aspirations of sponsoring Ministers, Cabinet and the First Minister*'. (C1 below, p. 28)

In December 2009 there was a change in Ministerial portfolios following the First Minister's retirement. New Ministers were persuaded to restrict the proposed duty to 'relevant functions' which Ministers themselves would specify on advice from civil servants. Williams continued to advocate the unrestricted application necessary to support the integrated, whole government approach required by the UNCRC. Advocacy for the latter approach was then conducted outside as well as within the government: '*That [the restricted duty] did not ultimately form the basis of the Measure was the result of resolute and informed opposition by the NGO community, the ad hoc group of lawyers ... the scrutiny carried out by the Legislation Committee, the Children and Young People Committee and the Constitutional Affairs Committee*'. (C1 below, p. 28)

In March 2010 pre-legislative public consultation began. Williams and Hoffman supplied the NGO community with advice derived from the research insights to help inform responses. In April 2010 an 'experts meeting' was convened in the UoA, attended by Welsh academics and practitioners, statutory bodies, AMs, UNICEF representatives and UK children's rights experts. Written views were also solicited from international experts. This helped achieve an overwhelming majority of responses in favour of an unrestricted duty, and influenced a key political actor, the then chairperson of the National Assembly's Children and Young People Committee, National Assembly for Wales, who attended the meeting and as a result formed the view that the Committee should take the unusual step of undertaking pre-legislative scrutiny (C1 below p. 31, and see contacts list).

In June 2010, the Ministers responded to the pre-legislative consultation and a revised draft Measure was introduced, containing a duty which applied to all functions but only when the exercise could be characterised as 'strategic'. Williams and Hoffman viewed this restriction as equally problematic as the earlier one. Williams and other Monitoring Group members gave

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evidence to the National Assembly's Children and Young People Committee and legislative scrutiny committee (LC5). Williams was invited to return to LC5 with further evidence. Williams and Hoffman convened a second 'experts' meeting' at which the restrictive and pervasive approaches were tested with particular reference to child poverty. This reinforced the benefit of the pervasive approach and had persuasive impact on two key Assembly Members (the Chair of Children and Young People Committee and a Minister / member of LC 5, see contacts list), and informed Williams' written evidence to LC5 (C8 below).

In September 2010, Williams and Hoffman led an 'ad hoc' lawyers' group giving oral evidence to LC5. The Swansea evidence *'made direct and fundamental differences to the Measure which was adopted by the National Assembly. The quality of that evidence, and its foundation in empirical and comparative research, assisted our scrutiny as legislators and helped change the mind of government in important respects. ... Without their intervention, I am sure that the Rights of the Child Measure would have been considerably weaker'*. (C2 below)

In November 2010, in light of the LC5's report on its scrutiny of the draft Measure, the responsible Welsh Minister conceded the case for a pervasive duty. In January 2011 the Minister tabled the necessary amendments and the Measure as so amended was passed, receiving royal approval on 16 March. The insights from research had thus influenced the outcomes of the legislative scrutiny process and helped realise the original political aspiration for a pervasive duty: *'.... the effectiveness of the NGO community was heightened by the legal and policy expertise of the ad hoc group of lawyers and seminars hosted by Swansea University School of Law. A cold-light-of-day analysis will, in my opinion, indicate the central importance of that community in ensuring that the Government remained true to its original intentions'* (Rt. Hon. Rhodri Morgan, Speech to 5th World Congress, San Juan, Argentina, October 2012). *'It was very much thanks to Jane's tireless advocacy work that the original idea of the CRC underpinning all the work of the Welsh Government has been taken forward. Her evidence to the Legislation Committee in September 2010 played a crucial role in those efforts.'* (Domestic Policy and Research Officer, UNICEF UK, C9 below).

International impact

On-going impact includes promotion of legislative change and programmatic reform on children's rights at the autonomous regional level, through research collaboration between Hoffman and Barcelona University. The World Congress on the Rights of Children and Adolescents featured the Welsh model of incorporation in its 5th biennial congress in Argentina in October 2012, with a plenary address by Rt. Hon. Rhodri Morgan. Hoffman has been invited to serve on the scientific committee for the next Congress in Mexico, 2014. UNICEF has promoted consideration of the Welsh model internationally: *'Wales was the first country in the UK to adopt a legislative instrument of incorporation but the Measure is also unique in the world and has attracted a lot of interest. A number of governments and UNICEF offices have been following developments in Wales and using it for their advances in implementing the CRC. For instance, UNICEF Canada organised an international conference on the Child Rights Impact Assessment in May 2013 and the Welsh model and experience was on the agenda and was discussed in detail and with great interest'* (Domestic Policy and Research Officer, UNICEF UK, C9 below). In September 2011 a Scottish Government consultation proposed to follow the 'due regard' model (C10 below, at para. 60).

On-going impact in Wales

The 'Taking the Rights Steps' conference in June 2012 was part-funded by the Welsh Government to contribute to implementation of the Measure. The Wales Observatory on Human Rights of Children and Young People, based in the UoA, was launched at 'Taking the Rights Steps' and in its first year has undertaken training and consultancy on implementation of the Measure for the National Assembly for Wales and the Children's Commissioner for Wales. It is working with local NGOs and children's projects as well as developing international research links. The Observatory has also responded to Welsh Government consultations, with respect to the due regard duty, and has supported a group of children and young people in contributing to its response to the UK Bill of Rights Commission's second consultation (Wales Observatory responses, C6 below). *'The Observatory continues to play a vital role in making sure that the Measure is implemented....The*

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work of Jane Williams and Simon Hoffman is crucial in securing that the hard-won political victory over the Measure is reflected in policy and practice (Domestic Policy and Research Officer, UNICEF UK, C9 below)

Beneficiaries include law-makers, policy advisers and children in Wales who will benefit from Welsh Ministers' compliance with the due regard duty. Continuation of the UoA's contribution will be ensured through participatory action research led by Wales Observatory. Since the Measure came into force over 50 child rights impact assessments (CRIA) have been conducted in the preparation of new policy / policy review to ensure compliance with the due regard duty, and a number of consultations have been carried out with children to inform policy development as an aspect of CRIA.

5. Sources to corroborate the impact

- C1 Sullivan, M. and Jones, H. M., 'Made to Measure: cooperation and conflict in the making of a policy', in Williams J. (ed.) *The United Nations Convention on the Rights of the Child in Wales*, 2013, Cardiff, University of Wales Press.
- C2 Professor Andrew Davies, former Welsh Business Minister and Assembly Member serving on LC5 during legislative scrutiny of the draft Measure, quoted in Swansea University press release, February 2011 <http://www.swan.ac.uk/media-centre/news-archive/2010-2011/swansearesearcherscontributetonevnewlawonchildrensrights.php>
- C3 Rt. Hon. Rhodri Morgan, Foreword to Williams J. (ed.) *The United Nations Convention on the Rights of the Child in Wales*, 2013, Cardiff, University of Wales Press.
- C4 'Devolution, Wales and Children's Rights: an innovative and emblematic approach to law-making', Speech by Former First Minister of Wales Rt. Hon. Rhodri Morgan to Fifth World Congress on Rights of Children and Adolescents, San Juan, Argentina, October 2012 <http://www.swansea.ac.uk/law/wales-observatory/> .
- C5 Aspinwall, T. and Croke, R. 'Policy advocacy communities, the collective voice of children's NGOs in Wales' in Williams J. (ed.) *The United Nations Convention on the Rights of the Child in Wales*, 2013, Cardiff, University of Wales Press.
- C6 Wales Observatory on Human Rights of Children and Young People consultation responses <http://www.swansea.ac.uk/law/wales-observatory/consultationresponses/> .
- C7 Record of proceedings of Legislation Committee 5, 1 July and 23 September 2010 <http://www.assemblywales.org/bus-home/bus-third-assembly/bus-legislation-third-assembly/bus-leg-measures/business-legislation-measures-rightsofchildren.htm> .
- C8 Written evidence to Legislation Committee 5, CR 23, September 2010. <http://www.assemblywales.org/cr23 - swansea law school.pdf>
- C9 Personal communication from the Domestic Policy and Research Officer, UNICEF UK, to Jane Williams 1 August 2013. Available on request.
- C10 Scottish Government Consultation on Rights of Children and Young People, 2011. <http://www.scotland.gov.uk/Publications/2011/09/07110058/0>