

15 June 2009

Dr Dai Lloyd AM
Chair - Legislation Committee 2
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

Dear Chair

Legislation Committee 3: Proposed Education (Wales) Measure.

I was very grateful for the opportunity to give evidence to your committee (4 June 2009) and also to listen to the comments from the committee and the evidence of other interested parties.

One question in particular gave rise to much discussion afterwards.

This is the inclusion of subsection 1(4):

Section 1 subsection (4) makes provision allowing regulations to be made by the Welsh Ministers that specify circumstances in which a child may not appeal to the Tribunal.

This provision facilitates an extensive set of alterations to be made by Welsh Ministers. This may provide for sufficient flexibility to make necessary changes which incorporate lessons learned from the pilot scheme. There is however a balance to be struck, and from the rights based perspective of the UNCRC we have concluded that there is a need for legal certainty in this instance. On reflection, therefore, we do not believe this flexibility should include enabling a Minister to deny specific groups of children a right that their peers enjoy.

This would retain the absolute nature of a right in the spirit of the United Nations Convention on the Rights of the Child which states:

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or*
- (b) International law in force for that State.*

Dr Dai Lloyd AM
Page 2
15 June 2009

However, giving a Minister power to revoke the right of appeal to certain groups of children would be against the spirit of the convention.

We had suggested that, for children in the secure estate, it may be pointless to appeal against placement. However, they may wish to appeal to the tribunal about other aspects of their education and they should have the right to do so.

We would suggest that Section 1 subsection (4) should be removed from the face of the Measure.

Yours sincerely

A handwritten signature in black ink that reads "Keith Towler". The signature is written in a cursive style and is positioned above a horizontal line that extends to the right.

Keith Towler
Children's Commissioner for Wales

cc: Jane Hutt AM Minister for Children, Education, Lifelong Learning and Skills, Helen Mary Jones AM Chair of NAFW Children and Young People Committee