

IN THE MATTER OF THE COVID-19 INQUIRY

MODULE 8: CHILDREN AND YOUNG PEOPLE

CLOSING STATEMENT OF THE WELSH GOVERNMENT

Introduction and overview

1. Over four weeks the Inquiry has heard compelling evidence about the impact the pandemic had on children and young people across the United Kingdom. As was clear from the evidence disclosed before the Inquiry (and the Welsh Government's own commissioned research¹), the pandemic had a disproportionately adverse effect on some children and young people: disadvantaged children, children with special educational needs, disabled children and children who were vulnerable. At all levels of the Welsh Government there is an understanding that the legacy of the pandemic on children and young people must be addressed and the inequalities which exacerbated the effects of the pandemic must continue to be addressed.
2. The Welsh Government has a longstanding commitment to place children and young people at the heart of its decision-making. This commitment was embodied in the witness evidence of Mark Drakeford, who was First Minister during the pandemic²:

*"I'm absolutely committed to the voice of the child being heard in the ears of people who make decisions, and [the] first time I'm able to do that is in the April immediately after the lockdown, where I meet the Youth Parliament for the first time to hear from them. And I continued to meet with children, as I say, throughout the pandemic, because I really did want to hear directly from them about the impact that the pandemic is having on them, and the advice that they would want to give to government, the things they wanted us to think about"*³.

"I was lucky enough I met children every month during the pandemic, and whereas older children would talk to you about their anxiety about exams and

¹ INQ000399997

² Mr Drakeford was First Minister between December 2018 and March 2024.

³ Drakeford 22 October 2025 171/3-13

mental health and employment, younger children talked to you always about how they missed playing, missed playing with their friends and so on”⁴.

3. The Welsh Government submits that the Inquiry should consider at the outset of its considerations the extent to which children and young people’s rights were in opposition to the rights of others and in particular older people or those who were more susceptible to the virus, particularly at points when the infection rates were at their highest. In his evidence, Mark Drakeford made the point in the following way:

“Article 6 of the UNCRC says that children have a right to life and at this point in the pandemic, that is what we are worrying about: children’s right to a life themselves, but also to a family life. [...] I sometimes feel when I’ve been following the evidence that you have heard, that there is some argument that the rights of children are somehow different and counterpoised to the rights of other people. That is absolutely not the way that children saw it at the time. We also do our very best to observe Article 8, which is that children have a direct voice, and maybe I should have made the point earlier that in Wales, by statute, every school has a schools council, every local authority has a youth council, and the Senedd has, the Senedd Ieuenctid, the Welsh Youth Parliament, so at every level, because of the Children’s Rights Measure, we have the voice of the child actively contributing to decisions that are made about them and alongside them. And if you talked to children at the time, they did not have a view that somehow their rights were being subjugated to the rights of other people, they talked to you all the time about their fear for their grandparents, a fear for their father who worked away, their fear for their sister who had an underlying health condition. You know. They did not make that distinction that somehow their rights were being sacrificed for the rights of others because the rights of others really mattered to them”⁵.

4. At the point when schools were closed to most pupils in March 2020 and December 2020/January 2021, the infection rate was high, very few of the population had been vaccinated and there were few available options to prevent a high level of fatalities. Children and young people existed within families and broader networks of friends and would have been adversely impacted by a higher death rate. As was made clear in the module, a small number of children died, became extremely unwell or developed debilitating Long Covid. It is against that background that decisions were being taken.

⁴ Drakeford 22 October 2025 167/12-17

⁵ Drakeford 22 October 2025 133/15 - 134/20

5. These points do not in any way detract from the Welsh Government's acknowledgement that the pandemic was devastating for many children and young people nor do they detract from its commitment to tackle the ongoing issues children and young people are experiencing as a result of the pandemic, especially in regard to their mental health, development and school attendance. The Welsh Government has reflected on its decision making during the pandemic and learned lessons to inform action in the future. Kirsty Williams' witness statements in Module 2B and 8 contain many instances of regret and acknowledgment that decisions could have been different. In evidence, Mark Drakeford similarly acknowledged areas of decision making which could have been better. The submissions below candidly engage with the evidence heard over the four weeks of Module 8 and emerging recommendations.

Structure of the closing statement

6. This closing statement focuses on the issues which arose during the hearings and should be read in conjunction with the Welsh Government's opening statement⁶ and witness statements⁷. The following areas are covered in this closing statement:
 - a. The legal framework for children and young people's rights in Wales and how this made a difference during the pandemic;
 - b. Preparation to close schools and the closure of schools to most pupils on 18 March 2020: concessions and context;
 - c. Effectiveness of mitigations: remote learning and keeping schools open for the children and young people of key workers and vulnerable children and young people;
 - d. Interactions with the unions: summer 2020 and January/February 2021; and
 - e. Recommendations.

The legal framework for children and young people's rights in Wales made a difference during the pandemic

7. In 2004, the Welsh Government formally adopted the United Nations Convention on the Rights of the Child as the basis for policy making relating to children and young people. In 2012, Wales was the first country in the UK to enshrine the United Nations Convention

⁶ The Welsh Government's Opening submission for Module 8

⁷ INQ000618154, INQ000620750, INQ000615597, INQ000548739, INQ000587979, INQ000652057, INQ000651962, INQ000651701, INQ000652058, INQ000588203

on the Rights of the Child into domestic law. This was achieved through *the Rights of Children and Young Persons (Wales) Measure 2011*, which placed a duty on Welsh Ministers to consider children's rights in all their actions and decisions. In addition to the 2011 Measure, from 2014 there was a Children's Rights Scheme (updated in 2021) which provided that the Welsh Government should undertake a Children's Rights Impact Assessment as part of a wider integrated impact assessment.

8. Other legislation, such as the *Wellbeing of Future Generations (Wales) Act 2015* put an obligation on Welsh Ministers to think about the future implications for and on children and young people when making decisions. Legislation such as the *Social Services and Well-being (Wales) Act 2014* and the *Additional Learning Needs Education and Tribunal (Wales) Act 2018* also embed the United Nations Convention's principles.
9. The Welsh Government does consider the fact that children and young people have been put at the heart of decision-making since 2004 (and in law from 2012) meant that considering the rights of children and young people was effectively embedded in its response to the pandemic.
10. During the evidence of Mark Drakeford, Counsel to the Inquiry stated that some Core Participants considered that the 'due regard' duties of the Welsh Ministers were not fully and properly followed during the pandemic and that had children's rights protection in Wales been stronger, such as by full incorporation of the Convention on the Rights of the Child, the impact of the pandemic may have been better mitigated. In response Mark Drakeford stated:

"Well, I will say that I think I can point to very direct practical examples from very early on, and through the pandemic, where the perspective of the UNCRC Children's Rights Measure made a genuine difference to the decisions we made, whether that is in the April, the first three-week review, we decide that children who have very particular needs can go out to exercise more regularly than just the one hour a day. That is a children's rights issue. That's how it was conceived and debated in the Cabinet. Right through, as you said, for example, in the firebreak where we decided, very unusually, I think, you know, probably not completely consistent with the medical advice, that we were going to allow years 7 and 8 to return to secondary schools. That was a children's rights issue for us there. So, I think I can point to practical examples all the way through that show how the measure bites. Of course, I understand that there are people who believe that, differently framed, we might have

*done more, but I would definitely say that from the very earliest days to the end, the due regard duty was making a difference*⁸.

11. The Inquiry heard evidence from the Founding Director of Playing Out who considered that the Welsh legal framework had made a difference to how it approached a child's right to play (Article 31 of the United Nations Convention on the Rights of the Child):

*“the fact that the Welsh Government have incorporated the UNCRC, including children's right to play into its domestic law is, I think, really significant and the fact that the UK Government hasn't done that is also really significant in its approach to children in the pandemic. And yeah, I think, like I said, it seems like the Welsh Government maybe had limited scope to sort of do things very differently from the UK Government, but they did in small ways. They did definitely give the message, including to councils, that children's play should be prioritised”*⁹.

12. The Welsh Government submits below examples of how the legal landscape in Wales, with children's rights embedded in decision-making made a difference during the pandemic. The examples set out below are not an exhaustive list but just some of the many examples of how the legislative framework was (and remains) integral to decision-making in Wales. As set out in the Welsh Government's written opening submissions, the Welsh Government has provided 10 witness statements for this module comprising more than 700 pages of detailed evidence, with more than 1,700 exhibits disclosed in this module. This supplements substantial witness evidence and disclosure on issues relevant to this module in earlier modules, notably Modules 2B and 3. That evidence provides further detail and more comprehensive examples of the interventions and actions taken by the Welsh Government in a level of detail which goes beyond the scope of this document. This document instead seeks to highlight some key examples:

- a. There was an established and close working relationship with the Children's Commissioner for Wales, Professor Sally Holland, who was described by Mark Drakeford as a *“tremendous force for good during the pandemic”*¹⁰. It has been accepted that it was not possible to consult with the Children's Commissioner for Wales before the announcement that schools should close to most pupils on 18 March 2020, but it is submitted that the contemporaneous documents and the witness evidence show that from the time of the first lockdown there was a

⁸ Drakeford 22 October 2025 193/22 - 194/18

⁹ Ferguson 30 September 2025 104/12-23

¹⁰ Drakeford 22 October 2025 155/24

constant dialogue between the Children's Commissioner for Wales and the Welsh Government. This greatly enhanced the decision making and allowed the voices of children and young people to be clearly represented;

- b. Running the *Coronavirus and Me* survey in May 2020 and January 2021 in conjunction with the Children's Commissioner for Wales and using the results of the surveys to inform decision making (as can be seen in Children's Rights Impact Assessments¹¹ and Ministerial advice);
- c. The First Minister talking to children and young people monthly throughout the pandemic;
- d. On 20 March 2020, financial support was provided to families of children in receipt of free school meals. Wales was the first of the four UK nations to commit to providing free school meals throughout the summer holidays in April 2020. This continued in the school holidays until May 2023;
- e. Allowing more relaxed outdoor time for disabled children/children with impairments from 24 April 2020 (the first three-week review of the restrictions), this was particularly aimed at helping families with children with autism and learning disabilities;
- f. Not disapplying or diluting the legal protections for children and young people with statements of special educational needs;
- g. Attempting to extend the summer term in 2020 (and add a week to the October half-term) so children and young people could return to school in the summer of 2020;
- h. The decision that children under 12 should be exempt from the social distancing rules in July 2020;
- i. Implementing the *Summer of Fun* programme – a programme for children and young people aged 0 to 25 to play and participate in leisure, sports and cultural activities. The *Winter of Wellbeing* in 2021 built on the *Summer of Fun* and provided children and young people aged 0 to 25 in Wales with access to free activities, including opportunities to play and engage in leisure, recreational, sporting and cultural activities, as well as childcare and formal education;

¹¹ INQ000048882

- j. Providing dedicated mentoring and revision support to those in years 11, 12 and 13, with a specific focus on Black, Asian and Minority Ethnic communities and vulnerable pupils and the development of new online learning materials in both English and Welsh for GCSE students to support blended learning and learning for those who had to self-isolate; and
 - k. On 7 September 2020, the NSPCC and Childline were commissioned by the Welsh Government to develop and publish information for children and young people on speaking out about abuse and how to get support. There were two different types of support published, one for children over 12 and one for children under 12.
13. It is submitted there are many examples of the unique children's rights framework informing the approach of the Welsh Government and the decisions it took during the pandemic. It is further submitted that incorporation of the United Nations Convention on the Rights of the Child into law would not have materially changed the decision-making process during the pandemic or resulted in different outcomes for children and young people. This is considered further in the recommendations section given the call from multiple core participants for the Welsh Government to incorporate the Convention in full into domestic law in Wales.

Preparation to close schools and the closure of schools to most pupils on 18 March 2020: concessions and context.

14. In the Welsh Government's opening statement, it accepted that preparation had been inadequate. It also provided some context:

"The Welsh Government acknowledges that there was inadequate planning to close schools for most children in March 2020. One of the principal reasons that detailed plans for school closures were not prepared well in advance of March 2020 was that it appeared inconceivable that a society-wide lockdown could happen. In the absence of a society-wide lockdown, planning for closing schools was considered to be of limited effectiveness as children would be likely to mix out of school and parents would be unable to work if schools were closed. The Welsh Government has learned this lesson. Planning for the unimaginable is necessary, including considering what would be the response to a virus with a high infection and fatality rate amongst children and young people".

15. Further context was provided in Mark Drakeford's evidence, namely that:

- a. The scientific consensus until at least 16 March 2020 had been that the disbenefits of closing schools were greater than the likely benefits and therefore the focus of planning had been around supporting schools to remain open¹²¹³¹⁴.
 - b. Given limited resources (both monetary and personnel) it was sensible to prioritise planning for the probability (schools would remain open until at least Easter) rather than the possibility of more immediate school closures. Given unlimited resources it would have been possible to plan for both¹⁵.
 - c. *“The genuinely remarkable story [...] is how quickly the system managed to respond to that very rapidly changing position. And on the 18th we decide to close schools, and by the 20th there are documents available covering most of these aspects, not complete documents, documents that will be further developed later. But I think the genuinely remarkable thing, if you stand back, is how fast the system was able to mobilise itself on behalf of the children who were affected¹⁶”*. This point was acknowledged by Counsel to the Inquiry when referring to Ministerial advice on 19 March 2020¹⁷.
16. It was not accepted by Mark Drakeford in evidence that the extent of the preparation at the beginning of March was focused on *“the risk of staff absence, implications for parents, and the legal power in respect of exams”*¹⁸. Mark Drakeford’s evidence was that it did not cover the totality of what was going on and that that other discussions were happening at this time covering the provision of free school meals and children who had particular needs such as disabled children¹⁹. Similarly, the suggestion that the contemporaneous documents indicated that no thought had been given to the needs of vulnerable children was not accepted, with Mark Drakeford stating that *“these are shorthand notes, hurriedly put together late in the evening, focusing on some of the things that we would have been concerned about. The fact that it doesn’t refer directly to vulnerable children should not be taken as vulnerable children not being part of what we would have been thinking about [...] in other documents you’ll find references to how we will navigate a path for vulnerable children, including the use of hubs²⁰”*.

¹² Drakeford 22 October 2025 107/21-24

¹³ Drakeford 22 October 2025 108/23 - 109/7

¹⁴ Drakeford 22 October 2025 115/6-24

¹⁵ Drakeford 22 October 2025 125/11-22

¹⁶ Drakeford 22 October 2025 124/18 - 125/2

¹⁷ Drakeford 22 October 2025 140/1-6

¹⁸ Drakeford 22 October 2025 112/6-8

¹⁹ Drakeford 22 October 2025 112/10-19

²⁰ Drakeford 22 October 2025 122/16-21

17. Mark Drakeford stated that it would have been usual to consult with the Children's Commissioner for Wales but that it was not possible in this case due to the pace of events²¹. Carrying out a Children's Rights Impact Assessment would have been normal practice for the Welsh Government, but these were not normal circumstances. He accepted that there would have been "direct benefits" to having a Children's Rights Impact Assessment and he wished there had been one but at this point the paramount need was to protect life and to act in a way that reduced transmission of the virus²².
18. It is submitted that it is difficult to draw recommendations from the period February to 18 March 2020 in circumstances where little was known about the novel virus and the pace of events was unforgiving. As set out in the Welsh Government's opening statement, one lesson it has learned is that pandemic planning must include planning for the unimaginable, including a pandemic with a high fatality rate among children.

Mitigations: keeping schools open for the children and young people of key workers and vulnerable children and young people and remote/online learning

Vulnerable children and young people

19. The focus of the Inquiry's questioning was on the effectiveness of the policy to keep schools open for vulnerable children, particularly children who were not safe in their homes and for whom school was a protective factor.
20. Mark Drakeford accepted that in March 2020 the policy and the messaging from the Welsh Government was that as few children and young people as possible should attend schools (including vulnerable children). "*So we do have a relatively narrow definition and we do have a strong emphasis that where children can safely be at home, they should be at home. If they need to be in a hub, there is a hub available and here are the definitions that we are using. And at this point they are narrower than they will be later in the pandemic, but I think that is understandable in the context of the time*"²³.
21. It was accepted that it became clear very quickly that small numbers of vulnerable children were attending schools, far fewer than had been anticipated. Mark Drakeford's evidence was that the Welsh Government immediately began to try and understand why. Looking back, he said that fear would have been one of the reasons which should not be underestimated.

²¹ Drakeford 22 October 2025 1128/15 - 130/16

²² Drakeford 22 October 2025 131/14 - 132/10

²³ Drakeford 22 October 2025 142/13 - 20

22. Measures were taken to try and ensure that more vulnerable children attended schools, and the numbers did rise over the pandemic. In a letter dated 23 April 2020 from the Welsh Government to local authorities (Directors of Education and Directors of Social Services), the Welsh Government asked them to take measures to ensure that vulnerable children were accessing schools. Mark Drakeford gave evidence that the government was also in daily contact with local education authorities, the leader of the Welsh Local Government Association was a member of the Covid Core Group with ministers so there was a weekly opportunity to hear from him frequently and the Welsh Government collected [daily] school attendance figures. It was accepted relatively early in the pandemic that the hub model may have been part of the problem for some vulnerable children who would have to walk past a familiar school to a hub²⁴.
23. On the overall effectiveness of the policy, Mark Drakeford stated: *“Well, as I say, the numbers were never what we would have liked them to have been. If that's your yardstick of effectiveness, then clearly it doesn't meet that. And there are some inherent things that we tried to put right, as we went along. This policy by itself, though, does not operate in isolation from all the other things that are going on in people's lives. And maybe we didn't have quite a full enough appreciation of the other pressures that people would be experiencing, and the other possibilities that they were able to develop in their own lives, which meant that the use of the hubs wasn't at the volume that we would have hoped for”*²⁵.
24. Mark Drakeford agreed with Kirsty Williams that he wished it had been possible for more vulnerable children to attend school during the pandemic. He disagreed that the Welsh Government could have ensured attendance given other contextual factors. It is acknowledged that safeguarding vulnerable children and young people should be a focus of pandemic planning and the learning about the disbenefits of the hub model for some vulnerable children and young people should be taken into account.

Remote/online learning

25. The infrastructure and materials for remote learning were relatively well developed in Wales. The Hwb educational platform had been in place since 2012 and the Inquiry heard evidence that in terms of provision of laptops to digitally excluded learners, Wales

²⁴ Drakeford 22 October 2025 152/3 - 154/13

²⁵ Drakeford 22 October 2025 154/16 - 155/3

was slightly ahead of the curve²⁶ as detailed in the Welsh Government's evidence which specifies 10,848 MiFi devices were provided by the end of May 2020²⁷.

26. In evidence it was suggested to Mark Drakeford that in January 2021 there were several sources of information before the Welsh Ministers suggesting there were problems with the effectiveness of remote learning and that the provision for remote learning was “*very patchy and very variable*”²⁸. In response Mark Drakeford noted that the same survey showed that in half of schools in Wales, 90% of children had access and he did not consider that “*patchy*” was accurate, stating that “*the majority of schools by now have very significant access to devices. The struggle is not with availability of devices all the time. It is in getting devices used. So, that one in 10 of schools reporting 20% of children without a device, when they were asked why that is, they often -- they do sometimes say it's hard to get the equipment but what they more often say is it's because there are some families who are very hard to reach, and when you do reach them, it's not a matter of giving them a device; you know, they don't have data. They can't afford it. So there's -- and they don't have the confidence or the skills to assist the child to use the device when they've got the device*”²⁹.

27. Mark Drakeford accepted that as the pandemic continued the move to remote learning reinforced existing inequalities. This had been set out in a paper that was before Cabinet on 25 January 2021 which described the findings of some research that had been funded by the Welsh Government in respect of the issues related to remote learning at the time.³⁰ This is certainly part of the learning which must feed into planning for the next pandemic but it is submitted that it is not as simple as making sure that disadvantaged families have access to the hardware and to Wi-Fi, it includes more fundamental issues about the support available to children in the home.

28. Mark Drakeford also made a broader point in evidence: “*I think one of the things that was very apparent during the pandemic is the variable capacity of schools to make a success of online learning. Some schools are marvellous at it. They grasp it from the beginning, they do all sorts of imaginative things, and they make sure that online learning provide the maximum that it can, and other schools are not in the same position. The variability between schools, I think, which is there in many, many aspects, but I really felt it came to*

²⁶ McCluskey 7 October 2025 138/15-17

²⁷ INQ000618154

²⁸ Drakeford 22 October 2025 175/24

²⁹ Drakeford 22 October 2025 176/10-23

³⁰ INQ000129921

*the surface in relation to online learning, particularly*³¹. This led Mark Drakeford to make a recommendation that pandemic preparation includes ensuring that schools are prepared and trained to provide online learning should it become necessary in the future. The position cannot be that it should never be implemented again because it reinforced inequalities, because there might be a pandemic which targets children and young people. Instead, steps must be taken to understand what best practice was in terms of remote learning and how schools could be supported to become more skilled in their delivery of remote learning.

Interactions with the unions: summer 2020 and January/February 2021

29. Kirsty Williams, Vaughan Gething and Mark Drakeford all referred in their witness evidence to difficult moments in discussions with the teaching unions during the pandemic and points where they considered that there was a potential conflict between the interests of the teachers (as expressed by the unions) and children and young people. Mark Drakeford's statement stated: "*At key moments, relationships with teacher unions could be difficult and that the interests of children, as opposed to adults, were not always given the weight they deserved*"³². In oral evidence and in response to a question from counsel for the Trades Union Congress, Mark Drakeford responded: "*We had some very specific instances where we took a different view to some of our trade union colleagues, but nobody should think that is some general reflection that suggests that those individuals and the members that they represented were anything other than dedicated to the interests of the children that they served*"³³.
30. The specific instances where views differed were (i) reopening schools in the summer term 2020 (ii) guidance about live streaming lessons in January 2021 and (iii) re-opening schools in February 2021.
31. The scientific evidence supported an early closure of schools on 22 June 2020 and then a re-opening of schools early on 1 August 2020³⁴. This proposal was put to the teaching unions which uniformly rejected it. A fallback plan of keeping schools open for an additional week of the summer term with an additional week's holiday added to the October half-term was then mooted on the basis that children would have an additional week in school in the summer while the circulation of the virus was low. This more modest proposal was also rejected by the teaching unions.

³¹ Drakeford 22 October 2025 181/2-13

³² INQ000588203

³³ Drakeford 22 October 2025 202/20 - 203/1

³⁴ INQ000618154

32. Giving evidence, Mark Drakeford indicated that he had some sympathy with the position of Kevin Courtney (giving evidence for the Trades Union Congress) that the more radical plan was not achievable but in respect of the fallback position of adding a week to the end of the summer term he stated: *“There, I think, the objection of my trade union colleagues is harder to understand. They say, you’ll have seen it in the notes, that this one-week suggestion had caused consternation amongst their members. Well, there were lots of things going on at this time which I think did cause a bit of consternation, but asking you to move one week in July and give it back in October I did not think was necessarily a proportionate response to that suggestion. And of course, three local authorities in Wales did manage to do that. So it clearly was not impossible to do. And so this is not simply trade unions not being willing to do something, but it is also something about some local authorities deciding to pick their battles and to, you know, think that this is not the one that they’re going to invest a lot of time and energy in. Unfortunately, I think the three local authorities absolutely turned out to be right because in October, in our firebreak, in those three local authorities, schools were closed for the whole of the period and that was definitely the right thing to do, and we weren’t able to do it elsewhere. So while on a more radical course of action, I think what Mr Courtney said to you has got some merit. On the more modest proposal for a one-week amendment, I think it is harder to understand why the consternation was caused by that”*³⁵.

33. Mark Drakeford also differed from the teaching unions in their concern about the change in guidance requiring schools to provide livestreamed lessons for students in January 2021: *“By now, many, many schools are providing online livestream learning. The notion that nobody had thought of child protection implications, that nobody had thought of GDPR implications, I don’t think that was a fair reflection of the facts on the ground because many schools are doing this. And what the Welsh Government is wanting to do is to make sure that this is part of the repertoire that is deployed in schools. I have read the evidence of I think Mr Courtney, who provided evidence on behalf of trade unions, and I thought he made some very strong points about the fact that recorded lessons are often just as -- or more valuable, because students can go back if they haven’t heard or understood a point, parents can share a lesson with them in the evening. But as well as that, we wanted to make sure that live lessons online were part of the repertoire that schools provided. Not to the exclusion of other things, but as part of the tools available to them. I don’t think that the Welsh Government’s position was an unreasonable one, and as I say, many, many schools were doing it already”*³⁶.

³⁵ Drakeford 22 October 2025 162/9 - 163/10

³⁶ Drakeford 22 October 2025 182/16 - 183/13

34. It was clear from the evidence of Mark Drakeford that there was a close working relationship between the trade unions in Wales and the government. They were part of the social partnership model and consulted throughout the pandemic. Despite this, there were clearly issues where there was a difference of opinion between the Welsh Government and the unions about what was in the best interests of children and young people. It is submitted that on the issues described above, the position of the Welsh Government represented the position that represented the best interests of children and young people.

Recommendations

35. The following recommendations have been suggested by several Core Participants and witnesses:

- a. Full incorporation of the United Nations Convention on the Rights of the Child;
and
- b. A Minister for Children.

Full incorporation of the United Nations Convention on the Rights of the Child

36. "Incorporation" of an international treaty is generally understood to mean that the substantive provisions can be relied upon and applied by the national courts and those provisions must, as a matter of domestic law, be applied by national authorities. Incorporating the United Nations Convention in full into domestic law in Wales in this way would require domestic legislation to embed the rights in the Convention into the law in Wales and enable children to rely on their rights in the domestic courts however incorporating human rights conventions like the European Convention on Human Rights and United Nations Convention on the Rights of the Child are not within the current constitutional framework.

37. Under the *Government of Wales Act 2006* (as amended), Wales operates under a reserved powers model. This means:

- a. The Senedd can only legislate on matters that are not reserved to Westminster;
and
- b. Incorporation of the United Nations Convention fully would relate to a number of reserved matters and therefore, the Senedd cannot pass legislation that directly incorporates the Convention.

38. Instead of incorporation, Wales has used indirect incorporation mechanisms within its devolved powers. As the Inquiry is aware, the *Children and Young Persons (Wales) Measure 2011* requires Welsh ministers to have “due regard” to the United Nations Convention when exercising their functions and legislation such as the *Social Services and Well-being (Wales) Act 2014* and the *Additional Learning Needs Education and Tribunal (Wales) Act 2018* also embed the principles of the Convention.
39. However, this legislation does not create enforceable rights in the same way as full incorporation would. The incorporation of the United Nations Convention on the Rights of the Child would create a “duty to comply”, a duty to provide an outcome which is consistent with the rights of the individual, unlike an obligation to give due regard which is simply a duty to provide a process which takes into account the rights of the individual.
40. Scotland brought forward the *UNCRC (Incorporation) (Scotland) Act 2024* which creates a duty to comply. However, the original 2021 version of the *UNCRC (Incorporation) (Scotland) Bill* was subject to the UK Supreme Court ruling that it overstepped by potentially affecting UK Acts, including in reserved areas like immigration³⁷. The revised 2024 Act now applies only to devolved legislation and functions, avoiding reserved matters like immigration. This has resulted in many rights and obligations within the articles of the United Nations Convention on the Rights of the Child and first and second optional protocols not being fully incorporated where their inclusion would take the Bill outside the legislative competence of the Scottish Parliament.
41. While the Senedd has legislative competence over many areas affecting children (e.g. education, health, social services) any Welsh incorporation of the United Nations Convention would, like the Scottish approach, be limited to devolved functions and legislation. In Wales, unlike in Scotland, further limitations would apply with justice and policing reserved to the UK Government. Such limited incorporation would therefore be unlikely to have a significant impact on children’s rights and it would be subject to limitations and interpretation queries when it came to enforcement.
42. Full incorporation as advocated during the Covid-19 Inquiry would require constitutional reform (to allow the Welsh Government to legislate outside of devolved areas) or UK-wide legislation.

³⁷ *Reference by the Attorney General and the Advocate General for Scotland – UNCRC (Incorporation) (Scotland) Bill* [2021] UKSC 42

43. The UK Parliament has full legislative competence over international treaties, including human rights conventions. It incorporated the European Convention on Human Rights via the Human Rights Act 1998, making the rights enforceable in UK courts. It could do the same for the United Nations Convention on the Rights of the Child, creating a United Nations Convention on the Rights of the Child Incorporation Act that makes the rights directly enforceable, allows courts to strike down or reinterpret legislation incompatible with children's rights and imposes duties on public authorities to uphold those rights.
44. It is submitted that to be effective and have the force advocated by the core participants, the United Nations Convention on the Rights of the Child would need to be fully incorporated (all articles and all UK territories). That is not something which is within the gift of the Welsh Government.

Children's Minister

45. Wales currently has a Minister for Children and Social Care. As is clear from the extensive written evidence, the Minister for Education and the Deputy Minister for Health and Social Services both had a role advocating for children during the pandemic. Given the smaller scale of the administration in Wales and the close working relationships of Ministers and collegiate decision making (as referred to in Mark Drakeford's evidence) it is not considered that a further Ministerial post would materially enhance the rights of children and young people in Wales.
46. The Children's Commissioner for Wales made a number of recommendations in her witness statement directed at the Welsh Government. Careful consideration has been given to those recommendations, some of which go beyond matters upon which the Inquiry has gathered evidence and they are therefore not addressed in detail here. The Welsh Government will however continue to directly engage in discussion with the Children's Commissioner for Wales on the broader recommendations made.
47. In its oral closing, the Welsh Government asked the Inquiry to consider the recommendation made by Heather Payne, the Senior Medical Officer who chaired the children and young people subgroup of the Technical Advisory Group during the pandemic. She recommended the establishment of an overarching multiagency children's advisory group to advise on the potential impacts of any restrictions/measures in response to a health emergency on children and young people (including the impact on maternity care). The group would include third sector organisations to ensure that the voices of children and young people are heard. Mark Drakeford also recommended

'machinery of government' to focus on children's rights during an emergency which affected children and these recommendations have similar features in that they are intended to be ready to be 'stood up' in the event of a future emergency affecting children and young people. As Mark Drakeford said, such a group would be helpful because "*We had everything we knew about the children's rights measure, we had all the experience we had of that, but we didn't have machinery ready to take across government, you know, in health, in education, in social services, in community development, and so on, machinery of government ready to use to make sure that children's needs and children's experience was going to get the attention that it needed*"³⁸.

48. The Welsh Government looks forward to receiving the Inquiry's recommendations to ensure that "*children's needs and children's experience*" get the attention they need in the event of a future pandemic.

28 November 2025

³⁸ Drakeford 22 October 2025 1977-18