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Devolution and children's rights in the United Kingdom

Osian Rees

Introduction

Devolved law-making bodies have now been firmly established in Northern Ireland, Scotland and Wales. This chapter examines how devolution has affected children's rights. It should be stressed at the outset that the chapter is not a comprehensive inquiry into whether children's rights are better protected in any of the constituent nations of the UK. Instead, the chapter seeks to consider legal measures that have been implemented by the devolved governments to promote children's rights, and in particular the United Nations Convention on the Rights of the Child (UNCRC). Following a brief explanation of the devolution context, two interrelated examples of progressive measures that have emanated from the devolved nations as a direct result of devolution are considered: first, measures to incorporate the UNCRC into law, and second, the establishment of Children's Commissioners. It is argued that both these steps have had wider positive ramifications, and demonstrate the value of devolution in enabling legislative experimentation and promoting better implementation of children's rights.

Devolution in the United Kingdom

The process of devolution in the UK began towards the end of the last millennium. As a result of legislation passed in 1998, devolved governments were established in Northern Ireland, Scotland and Wales. From the outset, devolution has been asymmetric – in Scotland, for example, a parliament was established with a reserved powers model (where all matters are devolved other than listed exceptions), while in Wales an Assembly was established with limited powers to make legislation only in relation to specified matters.

1 Devolution has famously been described as ‘a process not an event’
2 (Davies, 1998: 15), and there have been significant developments since
3 the initial legislation. This can be seen particularly clearly in the Welsh
4 context, where law-making powers have been gradually deepened and
5 broadened, most recently through the 2017 Wales Act, which creates
6 a reserved powers model for Wales along the lines of the Scottish
7 model, albeit with more limited legislative competence. In Northern
8 Ireland, conversely, devolution has been constrained by the fact that
9 up to 2019 the Assembly had been suspended on five occasions due to
10 disagreements between the main parties.

11 Limitations aside, devolution has enabled law and policy in a range
12 of areas to develop in a distinct manner in the devolved nations.
13 Mechanisms for promoting children’s rights by implementing the
14 UNCRC are a good example in this respect, to the extent that they
15 may be used as case studies in relation to the effects of devolution
16 more widely.

17

18 **Steps taken to embed the UNCRC in law and policy in** 19 **the devolved nations** 20

21 The UNCRC is the most widely ratified human rights instrument
22 in the world. It contains civil, political, social and economic rights. It
23 is often seen as the starting point when considering children’s rights.
24 Children have special rights to protection and nurture under the
25 UNCRC. They also have the right to be heard, and to participate
26 in decisions concerning their lives. The UNCRC has 42 substantive
27 provisions. These are often classified into what is referred to as the
28 three ‘Ps’: provision, protection and participation. Article 12 is often
29 cited as a key feature of the UNCRC, and sets out the right of
30 children to have their views heard and taken into account in decisions
31 that affect their lives.

32 The UNCRC is not directly incorporated into law in the UK. The
33 position is the same in the majority of countries that have ratified it,
34 and the effect is that citizens cannot generally rely on it in court. This
35 contrasts with the European Convention on Human Rights, which
36 was incorporated into law through the 1998 Human Rights Act.
37 The main enforcement mechanism for the UNCRC is the reporting
38 process of the United Nations (UN) Committee on the Rights of
39 the Child, which considers the progress of each member state in
40 implementing the UNCRC on a five-yearly basis. As part of this
41 process, states provide a report of their own to the UN Committee,
42 and other evidence is also considered. The UN Committee’s reports

1 – entitled *Concluding Observations* – include recommendations, and
2 while these are not legally binding, they place political pressure on
3 states to be seen as responding appropriately.

4 As the UK Government noted in its report to the UNCRC in
5 2014, 'Alternative steps have been taken within each jurisdiction
6 to ensure that all aspects of law and practice are compliant with the
7 UNCRC' (HM Government, 2014: 8). The reality, however, is that
8 the approaches in each country in the UK have been very different,
9 ranging from no or very limited steps towards legal incorporation
10 in England and Northern Ireland, to a higher (but not direct) level
11 of incorporation in Wales and Scotland. Accordingly, the following
12 discussion focuses on Wales and Scotland, though reference is also
13 made to Northern Ireland.

14 15 **Wales**

16
17 Ever since the establishment of the National Assembly for Wales,
18 there has been a distinct and progressive commitment to promoting
19 and embedding children's rights in line with the UNCRC in the
20 Welsh context. An early example in this respect was the establishment
21 of the first Children's Commissioner in the UK. This is discussed
22 further later in this section, but it should be noted that the 2001
23 Children's Commissioner for Wales Regulations place a duty on the
24 Commissioner to 'have regard' to the UNCRC when exercising the
25 functions of the office. This was the first reference to the UNCRC
26 in UK legislation, made all the more significant by the fact that the
27 UNCRC had not been in any way incorporated.

28 At around the same time, the Assembly referred to the UNCRC in
29 relation to its Programme for Children and Young People, which was
30 described as being:

31
32 based around the 7 Core Aims for children and young
33 people which summarise the UNCRC and form the basis
34 for decisions on priorities and objectives nationally. They
35 also form the basis for decisions on strategy and service
36 provision locally. (Welsh Government, 2015)

37
38 On 14 January 2004, meanwhile, the Assembly resolved to adopt
39 the UNCRC as the overarching framework of policy for children
40 and young people in Wales (National Assembly for Wales, 2004).
41 The Welsh Government also funded an organisation called 'Funky
42 Dragon', which self-styled as a Children and Young People's

1 Parliament for Wales. This came to an end in 2014. This resulted in
2 considerable outcry, and has subsequently been replaced by the Welsh
3 Youth Parliament, which held elections for the first time in 2018
4 (Croke and Williams, 2018).

5 The culmination of the commitment to the UNCRC came with
6 the 2011 Rights of Children and Young Persons (Wales) Measure (the
7 2011 [m](#)measure). This was the first legislation of its kind in the UK, and
8 again represented a hugely significant step on the part of the National
9 Assembly for Wales.

10 As it was initially proposed, the 2011 [m](#)measure was to place a
11 duty on the Welsh ministers to have due regard to the UNCRC
12 when exercising 'relevant functions'. When the [m](#)measure was
13 subsequently introduced, this had been amended to when making
14 'relevant decisions', defined as decisions 'of a strategic nature', with
15 an accompanying obligation for ministers to produce a 'Children's
16 Scheme' setting out the arrangements they would make for the
17 purpose of securing compliance with the duty.

18 While there was considerable support for the [m](#)measure in principle,
19 limiting the duty to 'relevant decisions' was subject to criticism by
20 academic and non-governmental organisations in Wales (for the
21 background generally, see Williams, 2013). Following consultation,
22 the duty was widened and came into effect in two stages. Between
23 May 2012 and April 2014, Welsh ministers were to have 'due regard'
24 to the UNCRC in making any provision proposed to be included in
25 an enactment, a formulation of a new policy or a review of or change
26 to an existing policy. From May 2014 onwards, the duty has applied
27 to Welsh ministers when exercising *any* of their functions, thereby
28 becoming a far stronger 'pervasive' duty.

29 The Welsh ministers published a Children's Rights Scheme in
30 2014, setting out arrangements for having due regard to the UNCRC
31 when Welsh ministers exercise their functions (Welsh Government,
32 2014). The scheme includes, *inter alia*, a commitment to ensuring
33 appropriate awareness raising and training, and a Children's Rights
34 Impact Assessment process, which is based on a template consisting of
35 six steps. An evaluation undertaken in 2014–15 identified a number of
36 weaknesses with this process (Hoffman, 2015).

37 It is important to note that the Welsh model amounts to 'indirect'
38 as opposed to 'direct' incorporation, in that the UNCRC has to be
39 fully taken into account, but not necessarily followed. As Lundy and
40 colleagues put it: 'In effect, these measures are aimed to give the CRC
41 some effect in national law but they stop short of making substantive
42 rights part of the domestic legal order' (Lundy et al, 2013: 451). The

1 indirect model of incorporation in Wales does have some limitations,
2 therefore, in that the ultimate discretion on what extent to give effect
3 to the UNCRC is left to the decision maker. By way of example,
4 Hoffman notes that the 2011 measure has not led to the reasonable
5 chastisement defence¹ being removed in Wales, nor did it prevent
6 the decision to withdraw funding from the Children and Young
7 People's Assembly for Wales (Funky Dragon) in 2014 (Hoffman,
8 2015). Ironically, it should be noted that the latter decision was
9 made without consultation with children and young people (Croke
10 and Williams, 2018: 11). Nonetheless, Hoffman emphasises that the
11 measure has made a 'significant contribution' towards implementing
12 the UNCRC in Wales (Hoffman, 2015). It has led to changes in
13 institutional culture, and has had an important symbolic effect, which
14 has prompted various bodies to consider how to further implement
15 the UNCRC in their policies and practices. Actions by a number of
16 local authorities to voluntarily adhere to the UNCRC provide a good
17 example in this respect (see Williams, 2017: 50).

19 Scotland

21 Similarly to Wales, there has been evidence of a progressive political
22 commitment to the UNCRC in Scotland. The UNCRC was taken
23 into consideration in forming the national approach for supporting
24 children, *Getting it Right for Every Child* (Scottish Government, 2013).
25 The most significant development, however, came about under the
26 2014 Children and Young People (Scotland) Act. This is a wide-
27 ranging piece of legislation, but has parallels to the 2011 measure in
28 Wales in that it introduces duties in relation to the UNCRC.

29 Under section 1 of the 2014 Children and Young People
30 (Scotland) Act, Scottish ministers must 'keep under consideration
31 whether there are any steps which they could take which would or
32 might secure better or further effect in Scotland of the UNCRC
33 requirements'. They are also expected to promote public awareness
34 and understanding of the rights of children, and to produce a report to
35 the Scottish Parliament every three years setting out what actions have
36 been undertaken, and the plans for the subsequent three years.

37 In order to assist the Scottish ministers in meeting their duties, a
38 Child Rights and Wellbeing Impact Assessment process has been
39 developed to identify the anticipated impact of any proposed law
40 and policy on children's rights and wellbeing (Scottish Government,
41 2015). It is an expectation that assessments are carried out on all
42 legislation and policy that impacts on children.

1 Under section 2 of the 2014 Children and Young People (Scotland)
2 Act, specified public authorities are under a duty to report every three
3 years on the steps they have taken to secure better or further effect
4 of the UNCRC. These authorities include all local authorities and
5 health boards, as well as a range of other authorities including, for
6 example, Children's Hearings Scotland, the Scottish Social Services
7 Council and the Scottish Police Authority. This duty came into effect
8 on 1 April 2017, and the first reports are due in 2020. Guidance has
9 been produced by the Scottish Government on how public authorities
10 should undertake their reporting duty, including how to involve
11 children and young people in the process (Scottish Government,
12 2016).

13 There has been criticism of the current Scottish model, as the duty
14 to 'keep under consideration' comes across as somewhat weak (see
15 Together Scottish Alliance for Children's Rights, 2016), particularly
16 when compared with the 'due regard' duty in Wales. Williams, for
17 example, describes it as a 'light-touch' duty (Williams, 2017: 40).

18 Prior to the passage of the 2014 Act in Scotland, differing academic
19 views were expressed on the issue of whether and how the UNCRC
20 should be incorporated. Kenneth Norrie, for example, stated that
21 incorporation would be 'bad policy, bad practice and bad law' due to
22 the UNCRC being 'full of wide, broad statements that you cannot
23 possibly ask judges to determine' (Scottish Parliament, 2013: 30).

24 Elaine Sutherland, on the other hand, stated that:

25
26 it was not anticipated that every article of the Convention
27 would be incorporated and it will be for those drafting
28 the statute to distinguish the solid from the aspirations and
29 to find the appropriate means of incorporation. (Scottish
30 Parliament, 2013: 31)

31
32 Despite any criticisms of the Act, it does represent a positive starting
33 point. As is noted by Together Scottish Alliance for Children's Rights:
34 'Whilst the 2014 Act does not make UNCRC rights enforceable
35 in Scottish courts, it is a welcome first step and helps mainstream
36 children's rights into decision making' (2017: 12) Furthermore, the
37 position may not remain static. 2018 was designated as Scotland's 'Year
38 of Young People', and in its 2017-18 Programme for Scotland the
39 Scottish Government expressed a commitment to:

40
41 undertaking a comprehensive audit on the most effective
42 and practical way to further embed the principles of the

1 UN Convention on the Rights of the Child into policy
2 and legislation, including the option of full incorporation
3 into domestic law. (Scottish Government, 2017: 81)
4


5 Northern Ireland 6


7 As already noted, it is inevitable that political factors will have
8 constrained developments in Northern Ireland. As the Northern
9 Ireland Commissioner for Children and Young People stated in 2018,
10 'the lack of a Northern Ireland Executive and Assembly for 16 months
11 has meant that no strategic decisions have been made to improve the
12 lives of children and young people' (NICCY, 2018: 3).

13 Similarly to England, there is no legislation giving any form of
14 legal incorporation to the UNCRC in Northern Ireland. There
15 has nonetheless been legislation referring to the UNCRC in the
16 form of the 2015 Children's Services Co-operation Act (Northern
17 Ireland). The Act, which is described by the Commissioner as
18 'the most significant legislative development relating to children
19 in Northern Ireland in recent years' (NICCY, 2018: 13), requires
20 cooperation between certain public authorities and other children's
21 service providers in order to contribute to the wellbeing of children
22 and young persons. There is an expectation under the Act that, in
23 determining the meaning of wellbeing, 'regard' must be had to 'any
24 relevant provision' of the UNCRC. This legislation is more limited in
25 scope than the legislation referred to in Wales and Scotland, but does
26 arguably amount to a starting point.
27

28 The four Children's Commissioners 29

30 The establishment of Children's Commissioners in each of the
31 UK's constituent nations pre-dates steps to introduce broader legal
32 duties in relation to the UNCRC. In some respects, however, their
33 significance may be in some ways just as great in that they were
34 the first manifestation of the commitment to promoting children's
35 rights in line with the UNCRC, and may well have provided part
36 of the initial momentum for the more recent developments outlined
37 earlier. In addition, the variations in the powers and functions of
38 the Commissioners across the UK may be indicative of the varying
39 contexts and ideologies within the different countries. Accordingly,
40 any analysis of the impact of devolution on children's rights in the UK
41 must include an examination of the Children's Commissioners.
42

1 Children's Commissioners are national human rights institutions
2 (NHRIs) for children. The UN Committee on the Rights of the
3 Child see them as being essential for the purposes of implementing
4 the UNCRC (UN Committee on the Rights of the Child, 2002).
5 As with other NHRIs, they can be established in particular contexts,
6 and this can be clearly seen in the UK context. As Jane Williams
7 explain ch of the UK's four Children's Commissioners was 'the
8 result of policy developed within the changed legal, administrative
9 and constitutional landscape of the UK following devolution, taking
10 account of variations in political ideology, emphases and priorities'
11 (Williams, 2005: 39).

12 This can be seen particularly clearly in the context of the Children's
13 Commissioner for Wales, which was the first such Commissioner in
14 the UK. The Commissioner was initially established under the 2000
15 Care Standards Act. This was a direct response to the Waterhouse
16 Report, which had just been published, and which revealed serious
17 and widespread abuses in the care system in Wales (Waterhouse,
18 2000). As a result, the legislation had a specific focus on children in
19 care. Soon after, however, the legislation was widened by the 2000
20 Children's Commissioner for Wales Act. As with the 2000 Care
21 Standards Act, this legislation was made in liament, as it went
22 beyond the legislative competence of the Welsh Assembly at the
23 time. However, the Acts were supplemented by the 2001 Children's
24 Commissioner for Wales Regulations, which were made by the
25 National Assembly for Wales. The changes to the legislation resulted
26 from a commitment on the part of the Welsh Government to promote
27 children's rights more generally.

28 The second Commissioner to be established was the Northern
29 Ireland Commissioner for Children and Young People under the 2003
30 Commissioner for Children and Young People (Northern Ireland)
31 Order. This was part of a broader move to enable human rights to
32 play a part in governance given the background of sectarian conflict.
33 By way of example, a Northern Ireland Human Rights Commission
34 was established in 1999.

35 The Children and Young People's Commissioner Scotland was
36 established under the 2003 Children and Young People (Scotland)
37 Act. Finally, the Children's Commissioner for England was established
38 under the 2004 Children Act. This followed a recommendation made
39 by the public inquiry into the death of Victoria Climbié, who was
40 killed by her main carers despite having been repeatedly seen by a
41 number of statutory agencies and authorities (Laming, 2003).

42

1 Powers and functions

2
3 Conceptually, the Commissioners have much in common. However,
4 their statutory structures differ in some key respects, and have evolved
5 over time. The Commissioners in Wales and Northern Ireland have,
6 from their inception, had oversight and monitoring functions in
7 relation to complaints, whistleblowing and advocacy procedures. As
8 noted above, this reflected the Waterhouse Report in Wales, and was
9 directly based on one of the recommendations. Conversely, when
10 first established, the Children's Commissioner for England was mainly
11 limited to gathering the views of children and informing the UK
12 Government about children's views and interests. The remit of the
13 office was however broadened significantly under the 2014 Children
14 and Families Act, with an emphasis on promoting and protecting the
15 rights of children living away from home or who are in receipt of
16 social care. This reflected the abolition of the post of Children's Rights
17 Director, which had been in place when the Commissioner was first
18 established and was charged with monitoring the provision of services
19 to children accommodated away from home.

20 Another area of key difference is the role of the Commissioners in
21 addressing individual cases. This is an area of working where there
22 is considerable divergence of views as to its merits (Rees, 2010), but
23 is something that the UN Committee on the Rights of the Child
24 views as essential (UN Committee on the Rights of the Child,
25 2002). The Welsh and Northern Irish Commissioners have had a
26 casework function from the outset. The Scottish Commissioner was
27 provided with this function under the 2014 Children and Young
28 People (Scotland) Act, which introduced an individual investigations
29 mechanism. The English Commissioner, meanwhile, was provided
30 with an advice and assistance function as part of the reforms in 2014,
31 but only for children in care.

32 It should be emphasised that a significant number of individual
33 cases are brought to the Commissioners. For example, the Northern
34 Ireland Commissioner considered 314 individual cases in 2016/17,
35 whereas in England, 1,579 cases were brought in 2017/18. There
36 are clear resource implications, particularly if a worthwhile service
37 is to be provided. Although each of the Commissioners can receive
38 representations from children, it is only the Northern Ireland
39 Commissioner ~~that~~ has the power to bring, intervene in or assist in
40 legal proceedings. This power, however, is limited in practice (Rees
41 and Williams, 2016: 17-18).

42

1 Each of the Commissioners has an explicit role in relation to
2 the UNCRC. In Northern Ireland, Scotland and Wales, each of
3 the Commissioners must have regard to the UNCRC, though
4 in Northern Ireland the Commissioner must also have regard
5 to ‘the importance of the role of parents in the upbringing and
6 development of their children’ **[[ref?]]**. There was no role in
7 relation to the UNCRC in England until the passage of the 2014
8 Children and Families Act, which inserted a provision stating that the
9 Commissioner must have regard to the UNCRC in considering what
10 constitute the rights and interests of children.

11 Each office is required to engage with children, to raise awareness of
12 the Commissioner’s role, and to seek their views on matters within the
13 Commissioner’s remit. How they have approached this role is further
14 considered below. Again, the Northern Ireland Commissioner is also
15 expected to engage with parents.

16 A controversial and limiting factor is that the powers of the
17 Commissioners in each of the devolved countries are limited to
18 devolved matters. This is an understandable but nonetheless potentially
19 major limitation – particularly when devolved powers are limited, as
20 is the case in Wales. There has nonetheless been cooperation between
21 the Commissioners. For example, the Commissioners prepared a
22 joint report to the UN Committee on the Rights of the Child as part
23 of the fifth periodic review (UK Children’s Commissioners, 2015).
24 The joint report made 70 recommendations. There is a British and
25 Irish Network of Children’s Commissioners, and the Commissioners
26 have worked together in relation to some issues. In addition, the
27 Commissioners occasionally prepare joint statements, for example,
28 a statement on play in August 2018 on the 31st anniversary of
29 National Playday, making reference to Article 31 of the UNCRC,
30 which creates a right for all children to have rest and leisure, to
31 engage in play and recreational activities appropriate to their age
32 and to participate freely in cultural life and the arts (UK Children’s
33 Commissioners, 2018).

34 Each of the Commissioners has an expectation to engage with
35 children and young people, and to raise awareness of children’s rights.
36 A number of mechanisms have been employed by the Commissioners
37 towards this end – both permanent and ad hoc. To provide examples
38 of permanent mechanisms, the Northern Ireland Commissioner for
39 Children and Young People (NICCY) has the NICCY Youth Panel,
40 which comprises over 60 children from across Northern Ireland
41 representing different religions, different abilities and disabilities, and
42 different ethnic groups. Panel members have the opportunity to ‘share

1 their experiences and thoughts with the Commissioner and her staff
2 so as to help NICCY make decisions about issues that affect children
3 and young people' (www.niccy.org) **[[include web address in an**
4 **endnote? Cf Chapter 7]]**. In Wales, meanwhile, the Commissioner
5 has Community Ambassadors, comprising children and young people
6 nominated by their local community groups. The Community
7 Ambassadors include children and young people living in areas of
8 social deprivation as well as those from disadvantaged groups. The
9 Commissioner also has Super Ambassadors and Student Ambassadors,
10 which are schemes comprised of primary and secondary children
11 respectively.

12 In terms of ad hoc mechanisms, there are numerous examples of
13 the Commissioners consulting with groups of children and young
14 people in order to set priorities, and in the course of researching
15 individual matters. To provide an example, the Scottish Commissioner
16 undertook a large-scale consultation in 2010, entitled 'A RIGHT
17 blether', which produced 74,000 responses from children and young
18 people so as to inform the office's work programme between 2011
19 and 2016. A further consultation, entitled 'A RIGHT wee blether'
20 and aimed at children between two and five, was undertaken in
21 2011, and produced 12,711 responses. In addition to providing an
22 input into setting the Commissioner's work programme, this process
23 had the benefit of increasing awareness of the Commissioner, and of
24 children's rights under the UNCRC (CYPCS, 2011). More recently,
25 the Children's Commissioner for Wales undertook a two-stage
26 consultation that involved obtaining the views of over 1,000 children
27 during the first stage and over 6,000 children in the second stage,
28 including children from a range of ages and backgrounds, including
29 hard-to-reach children. The consultation enabled the Commissioner
30 to produce a work plan for 2016-19 that was based on the findings,
31 demonstrating a partnership approach (CCfW, 2016).

33 Work programmes

34
35 One of the difficulties in evaluating Children's Commissioners is how
36 to gauge success. As may be expected, each office has had a different
37 focus. Detailed accounts are available elsewhere, but a number of
38 recent initiatives undertaken by the Commissioners may provide
39 indicative examples of diversity of their work programmes. As would
40 be expected, each of the Commissioners has decided on particular
41 areas of priority. For example, at the time of writing, the Children's
42 Commissioner for England is focusing on children in care, vulnerable

1 children, children in the secure estate and children and digital
2 technology (CCfE, 2018a).

3 In terms of outputs, each of the Commissioners regularly publishes
4 reports that are typically made available to the government in
5 their respective countries, as well as the media. These include
6 comprehensive studies into the state of children's rights, for example
7 the *Statement on Children's Rights in Northern Ireland* published by the
8 Northern Ireland Commissioner for Children and Young People in
9 2018 (NICCY, 2018). Reports can also result from research, including
10 commissioned research, into particular issues. Recent examples
11 include a report into the experiences of children growing up in
12 armed forces families by the Children's Commissioner for England
13 (CCfE, 2018b), a report into the impact of caring responsibilities
14 on the mental health and wellbeing of young carers by the Children
15 and Young People's Commissioner Scotland (CYPCS, 2017), and a
16 report on the transition to adulthood for young people with learning
17 difficulties by the Children's Commissioner for Wales (CCfW, 2018a).

18 Some research involves matters specific to the respective countries,
19 for example representations by the Northern Ireland Commissioner
20 for Children and Young People into paramilitary style assaults, and
21 research by the Children's Commissioner for England into the gap in
22 educational outcomes between children in the north of England and
23 children in London (CCfE, 2018c).

24 The Commissioners also produce policy briefings and practical
25 guidance for public bodies on how to safeguard and promote
26 children's rights. For example, the Children's Commissioner for Wales
27 has produced a resource for secondary schools in Wales on tackling
28 Islamophobia (CCfW, 2018b), and a framework for a children's rights
29 approach to education in Wales (CCfW, 2017).

30

31 The effectiveness of the Commissioners

32

33 As noted previously, evaluating the effectiveness of the Commissioners
34 is difficult, let alone drawing comparisons in terms of their impact.
35 Each of the offices has varying powers and functions, and different
36 levels of funding and staff resources, and, moreover, is operating
37 in a different country with different social, economic and cultural
38 contexts. As with the measures to incorporate the UNCRC, the fact
39 that they exist is arguably indicative of a commitment to the rights
40 of children and young people, and contributes to a pro-children's
41 rights environment in society. In addition, it is clear that the work
42 of the Commissioners has had a positive impact, both in terms of

1 contributing to policy changes, and in terms of assisting individual
2 children.

3 There may, however, be ways in which they could be improved.
4 This is the view of the UN Committee, which in its 2016 *Concluding*
5 *Observations* expresses concern that:

6
7 the powers of the Commissioners in Northern Ireland
8 and Wales are still limited and that the Commissioner
9 in Scotland has not started exercising its mandate to
10 conduct investigations on behalf of individual children.
11 (UN Committee on the Rights of the Child, 2016: 14)

12
13 The Committee recommends that the independence of the
14 Commissioners is further strengthened, and that they are enabled
15 to receive and investigate complaints from or on behalf of children.
16 The Committee also recommends that the Commissioners be
17 allocated 'the necessary human and financial resources in order to
18 carry out their mandate in an effective and coordinated manner'
19 (UN Committee on the Rights of the Child, 2016: 15).

20 21 **Conclusion**

22
23 To only focus on the various legal measures in order to consider the
24 extent to which children's rights are adequately protected in each
25 of the devolved nations would be simplistic, as there are far more
26 complex factors at play that have greater or lesser impacts in different
27 parts of the UK. Examples highlighted in the UNCRC's most
28 recent *Concluding Observations* **[[ref?]]** include child poverty, rates of
29 children in care, mental health funding, and investment in play and
30 leisure facilities, to name but a few. In this regard, it may be difficult to
31 demonstrate that devolution has led to an improvement in children's
32 lives in one country as opposed to another.

33 Despite this, the various actions taken, including the establishment
34 of Children's Commissioners and the steps taken towards
35 incorporating the UNCRC into legislation, do suggest that there is
36 an emerging commitment not only to promoting children's rights
37 but also to ensuring an element of accountability at all levels of
38 decision making. As has been shown, such developments are not only
39 significant in their own right, but also have far broader implications in
40 creating a culture where children's rights are taken more seriously.

41 It is also possible to suggest that devolution has led to an element
42 of competitiveness between the devolved nations in terms of a

1 desire to be seen as being at the forefront of best practice regarding
 2 children's rights. This can be seen from the developments relating
 3 to the Children's Commissioners, which were established in quick
 4 succession across each of the constituent nations in the UK. It can also
 5 be seen from the steps taken to further incorporate the UNCRC into
 6 law and policy in Wales and Scotland, thereby demarcating practice
 7 from Westminster policy in a progressive manner. Without devolution
 8 such opportunities would simply not arise, and in this respect, it is
 9 reasonable to suggest that, in the UK context, devolution has, to date,
 10 had a positive impact on the rights of children.

11 **Note**

12 ¹ The law in England and Wales allows parents to use 'moderate and
 13 reasonable' chastisement on a child, which has been interpreted as
 14 allowing smacking. By not removing it, the Welsh Government failed
 15 to ban smacking.
 16

17 **References**

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