



# Children & Young People (Scotland) Bill

## Stage 2 Amendments Briefing - Children's Rights

Friday 13th December 2013

This briefing outlines the child rights specific amendments to the Children and Young People (Scotland) Bill that are supported by Together and its members. Overall, we welcome the general principles of the Bill and support the Scottish Government's ambition to 'make rights real'. However, we believe the legal provisions behind the Bill currently fall short of ensuring the policy intentions are fully met.

We urge the Education and Culture Committee to approve the following amendments at Stage 2. We also note a number of other amendments that have been put forward around primary prevention, children of prisoners and children with disabilities that would help to take forward children's rights. We urge the Committee to give them serious consideration. In taking these amendments forward, the Education and Culture Committee will ensure the Bill contains the meaningful and coherent child-rights framework needed to deliver its policy ambitions.

This briefing has been explicitly endorsed by the following members of Together<sup>1</sup>:



Tackling the roots of violence



### For more information, please contact:

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<sup>1</sup> The following members of Together have explicitly supported this briefing: Aberlour, Barnardo's Scotland, CHILDREN 1st, Children in Scotland, cl@n childlaw, Down's Syndrome Scotland, Enable Scotland, LGBT Youth Scotland, NDCS Scotland, NSPCC Scotland, Parenting Across Scotland, Quarriers, Save the Children, UNICEF UK, Wave Trust, Who Cares? Scotland.

## Part 1 Rights of Children

### Section 1 Duties of Scottish Ministers in relation to the rights of children

#### *Duties on Ministers to further the UNCRC requirements*

**Amendment 190**      **A duty on Ministers to give fuller effect in Scotland to Articles 3 (the best interests of the child) and 12 (the views of the child) of the UNCRC.**  
*Liam McArthur*

Together welcomed the Education and Culture Committee's call for the Scottish Government to respond to the Children's Commissioner's suggestion that Article 3 (the best interests principle) and Article 12 (the child's right to be heard) are included in the Bill<sup>2</sup>. These articles are key principles of the UNCRC and similar provisions are increasingly being included in Scots law and policy. Placing a duty on Ministers to give legal effect to articles 3 and 12 would help to provide a coherent child-rights framework through which children and their views are placed at the centre of all decisions that affect them. It builds on the ongoing extension of established principles and provisions of Scots Law to new areas of policy and practice. Internationally, articles 3 and 12 are the common UNCRC principles represented in domestic law<sup>3</sup>.

**Amendment 119-120**      **A duty on Ministers to have due regard to the UNCRC when exercising any of their functions.**  
*Liam McArthur*

Together shared the Education and Culture Committee's reservations that the duty on Scottish Ministers to keep the UNCRC under consideration may be "*little more than a restatement of existing obligations*"<sup>4</sup>. It is unclear as to what the duty would mean in practice and it is doubtful whether it provides an option for an effective legal challenge<sup>5</sup>. This amendment proposes a "*due regard*" duty as originally put forward in the draft Rights of Children and Young People Bill<sup>6</sup>. It would bring the Bill more in line with the Rights of Children and Young Persons (Wales) Measure 2011, which places a duty on Welsh Ministers to have due regard to the UNCRC and its optional protocols<sup>7</sup>. The Welsh Measure is having a transformative effect on the way legislation and policy considers children.

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<sup>2</sup> Education and Culture Committee (2013) Stage 1 report on the Children and Young People (Scotland) Bill para. 44

<sup>3</sup> UNICEF UK (2012), *The UN Convention on the Rights of the Child: A study of legal implementation in 12 countries.*

<sup>4</sup> Education and Culture Committee (2013), Stage 1 Report on the Children and Young People (Scotland) Bill, paragraph 40

<sup>5</sup> Education and Culture Committee (2013) Stage 1 report on the Children and Young People (Scotland) Bill para. 26

<sup>6</sup> Scottish Government (2011) Consultation on the Rights of Children and Young People Bill

<sup>7</sup> Welsh Government (2012). *Children's Rights Scheme: Arrangements for having due regard to the UNCRC in the Welsh Government's work on policy and legislation*

## ***Duties on Ministers to report***

Together welcomes the proposed amendments to the duty on Ministers to report the steps taken to secure further and better effect of the UNCRC. To ensure these amendments have a systematic and long-term impact, they should be viewed in association with amendment 195 for an implementation scheme.

**Amendment 87-88**                      **Extends the reporting duty on Ministers to outline how they will take forward their UNCRC duties in the next 3 year period and take appropriate steps to consult with children and young people.**  
*Aileen Campbell*

Together welcomes the amendment from the Scottish Government to report on the activities they intend to undertake to further children's rights and to consult with children and young people on the 3-yearly UNCRC report. A forward-looking strategy is held by the UN Committee on the Rights of the Child as an essential tool for putting the UNCRC into practice<sup>8</sup>. This amendment will ensure that Scottish Ministers are more accountable to children, and that children's views and experiences are reflected in the 3-yearly UNCRC report and inform future developments.

**Amendment 193**                      **A duty on Ministers to consult with public bodies, children and voluntary organisations in the preparation of the three-yearly UNCRC report.**  
*Liam McArthur*

The UN Committee on the Rights of the Child is clear that effective implementation of the UNCRC requires visible cross-sectoral coordination and must involve national human rights institutions, the voluntary sector and children<sup>9</sup>. In Wales, there is a duty on Ministers to consult with the Children's Commissioner for Wales and with children and young people in the preparation and revision of the Children's Scheme. This amendment provides a welcome expansion to amendment 88, bringing the Bill more in line with the Wales Measure and ensuring that the expertise of SCCYP and the voluntary sector is used to inform and support Scottish Ministers in the production of the 3-yearly UNCRC report.

**Amendment 121-2**                      **A duty on Ministers to produce a child-friendly version of the 3-yearly UNCRC report and to promote public awareness and understanding of the findings of the 3-yearly UNCRC report, including among children.**  
*Liam McArthur*

It is essential that the Scottish Government should use appropriate methods of communication to involve children and young people in all matters that affect them. This welcome amendment will ensure that Ministers can be held to account by children and young people themselves in their duties to further the UNCRC requirements. It will also help to support the Ministerial duty to 'promote awareness and understanding' of the UNCRC throughout Scotland.

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<sup>8</sup> UN Committee on the Rights of the Child (2003), *General Comment 5: General Measures of Implementation*

<sup>9</sup> UN Committee on the Rights of the Child (2003), *General Comment 5: General Measures of Implementation Para 27*

## Child Rights Impact Assessment

### Amendment 194

Liam McArthur

**A duty on Ministers to prepare and publish a child rights impact assessment in relation to every bill introduced to the Scottish Parliament and lay the CRIA before Parliament.**

Together welcomed the recommendation made by the Education and Culture Committee in the Stage 1 report that the Scottish Government should commit to undertake CRIAs *'in relation to all relevant future legislation'*<sup>10</sup>. The Scottish Government's response was that the requirement to undertake a CRIA can be achieved through *"non-legislative means"*<sup>11</sup>. In its 2008 UNCRC action plan, *Do the Right Thing*, the Scottish Government committed publicly to *"consider a trial of child rights impact assessment [...] to see how it can help promote and develop a consideration of children's rights in the policy making process"*<sup>12</sup>. Despite this commitment, the Scottish Government is yet to conduct a CRIA on any legislation or policy. The lack of a CRIA on the Children and Young People (Scotland) Bill is apparent now it is at Stage 2. A raft of amendments are being considered to better embed children's rights into children's services, ensure children's views are taken into account and address concerns around the impact of the information-sharing provisions on children's rights.

This amendment would ensure that the impact of all future legislation on children is predicted, monitored and, if necessary, avoided or mitigated. It will ensure that the duties on Ministers in Part 1 are conducted in the spirit of the Bill's policy intentions and that the current and future governments take account of children's interests and factor them into policy development. The use of CRIAs is widespread both across the UK and internationally and there are many good examples of child rights impacts assessments being used to child-proof legislation and policy. In Wales, since the implementation of the Welsh Measure in 2012, CRIAs have been used as a matter of routine on policy and legislation. As a result, more guidance documents are making reference to the UNCRC and influencing how public bodies comply with the guidance issued. The Welsh Government believes that children, young people and their families will soon see the positive impact this is making, as organisations and those working with and for children become more aware of the UNCRC and its implications in their work.<sup>13</sup>

A CRIA on the face of the Bill would provide an essential mechanism for the ongoing systematic consideration of the impact of government decision-making on children, particularly in a system where adult processes and perceptions dominate.

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<sup>10</sup> Education and Culture Committee (2013) Stage 1 report on the Children and Young People (Scotland) Bill para. 44

<sup>11</sup> Scottish Government (2013) Children and Young People (Scotland) Bill Scottish Government Response Stage 1 Report

<sup>12</sup> Scottish Government (2009) Do the Right Thing pg 10

<sup>13</sup> Welsh Government (2013) Report on the compliance with the duty under section 1 of the Rights of Children and Young Persons (Wales) Measure 2011.

## Implementation Scheme

### Amendment 195

Neil Bibby

**A duty on Ministers to establish an implementation scheme to set out the arrangements they have taken or propose to make to comply with their UNCRC duties under section 1 of the Bill.**

Together welcomed the Education and Culture Committee's call for the Scottish Government to provide 'an explanation of the practical actions it intends to take to increase awareness of children's rights'<sup>14</sup>. A strong focus on effective implementation is essential to address the 'implementation gap' between policy and practice.

This amendment would require the production of an "Implementation Scheme", in line with the Wales Measure<sup>15</sup>. This would ensure a strategic and comprehensive approach is taken to execute and resource the duties placed on Ministers in section 1 of the Bill. It would require Scottish Ministers to:

- set out the arrangements put in place to deliver the duties to further the UNCRC requirements;
- have consideration to the UNCRC and any recommendations from the UN Committee on the Rights of the Child in setting out the scheme;
- consult with children, the Children's Commissioner and other relevant stakeholders in the development, implementation and evaluation of the scheme;
- Enable parliamentary and public scrutiny of the steps taken to further the UNCRC requirements.

The Welsh Children's Rights Scheme sets out the arrangements that Welsh Ministers will have in place to make sure that they, and Welsh Government staff, comply with the duties placed on them by the Measure. Welsh Ministers report on the compliance arrangements as set out in the Children's Rights Scheme every five years. The first report was published on 31<sup>st</sup> January 2013<sup>16</sup>. Although the Welsh Measure has only been in place for a relatively short space of time, the positive impact of an implementation scheme is beginning to become clear. For example, more children and young people are involved in influencing legislation, there have been more child-friendly government publications<sup>3</sup> and Ministers have been accountable in their consideration of children's rights when developing policies and legislation including the End Violence & Domestic Abuse Against Women White Paper, Housing White Paper and Human Transplantation Bill<sup>17</sup>.

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<sup>14</sup> Education and Culture Committee (2013) Stage 1 report on the Children and Young People (Scotland) Bill para. 40

<sup>15</sup> Welsh Government (2012). Children's Rights Scheme: Arrangements for having due regard to the UNCRC in the Welsh Government's work on policy and legislation

<sup>16</sup> Welsh Government (2013). Children's Rights Scheme: Report on the compliance with the duty under section 1 of the Rights of Children and Young Persons (Wales) Measure 2011

<sup>17</sup> Welsh Government (2013). Children's Rights Scheme: Report on the compliance with the duty under section 1 of the Rights of Children and Young Persons (Wales) Measure 2011



## Part 3 Children's Services Planning

### Section 9 Aims of children's services plan

**Amendments 169, 174, 175**      **Ensure that children's services plans are prepared and related services are provided with a view to securing better or further effect of the UNCRC requirements.**  
*Neil Bibby*

One of the notable challenges in the Children and Young People (Scotland) Bill has been to join up the GIRFEC approach to children's services with the broader children's rights framework the Scottish Government aspires to. There is a disjoint between the provisions in Part 1 of the Bill around reporting on children's rights and the provisions in Part 3 around children's services planning. Together agreed with the Education and Culture Committee's observation that some of the reporting and planning duties in the Bill *'could be better integrated'*<sup>21</sup> and is encouraged by the Scottish Government's response that they *"remain open to suggestions regarding how the Bill might be strengthened to support these aims"*<sup>22</sup>.

These amendments explicitly embed children's rights into children's services planning to provide a framework through which public bodies can safeguard, support and promote the rights and well-being of children in their area. It will ensure that children's rights are considered from the outset of children's services planning and will reduce the reporting burden on local authorities by (rightly) bringing together their responsibilities for children's rights with those for child well-being.

### Section 10 Children's services plan: process

**Amendments 176**      **A duty on local authorities and health boards to obtain the views of children when preparing a children's services plan.**  
*Liam McArthur*

It is a key principle of the UNCRC that children should be consulted in matters that affect them. Given the impact that children's services have on their daily lives, it is essential that public bodies involve and consult children in the preparation of the children's services plan. This amendment will not only ensure that public bodies are more accountable to children and that children's views and experiences are reflected in children's services planning, but will also support public bodies to develop and deliver child-centred and child-friendly services.

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<sup>21</sup> Education and Culture Committee (2013) Stage 1 report on the Children and Young People (Scotland) Bill para. 42

<sup>22</sup> Scottish Government (2013) Children and Young People (Scotland) Bill Scottish Government Response Stage 1 Report Pg 4