



Together members' briefing

Children & Young People (Scotland) Bill - Stage 1

July 2013

1. Introduction

This briefing is to inform Together's members' responses to the Education & Culture Committee's call for written evidence on the general principles of the *Children and Young People (Scotland) Bill*. It specifically looks at the children's rights and children's service planning provisions included in Parts 1-3 of the Bill. In producing this briefing, Together has consulted widely with its membership through seminars, meetings and ongoing face-to-face consultation.

Together recognises that the *Children & Young People (Scotland) Bill* provides a crucial opportunity to ensure that the principles of the UNCRC become a reality for all children and young people in Scotland. We warmly welcome the policy intentions behind the Bill and the Scottish Government's ambition to make Scotland *'the best place to grow up'*¹. We particularly endorse the intention to *'ensure children's rights properly influence the design and delivery of policies and services by placing new duties on Scottish Ministers and the public sector'*².

However, elements of the Bill are seen as a real step back from the original commitment made by the Scottish Government to the UN Convention on the Rights of the Child (UNCRC) in the *Rights of Children & Young People Bill* consultation. The Bill does not place strong duties on Scottish Ministers or public bodies to systematically consider children's rights and the provisions fall short of providing the meaningful framework needed to fulfil the Scottish Government's commitment to *'make rights real'* for all children. Together is concerned that children's rights have not been systematically considered throughout the Bill. Some provisions may actually violate children's rights (particularly around information sharing) and be contrary to the Scottish Government's intentions.

The key messages to the Education & Culture Committee at their Stage 1 consideration of the *Children & Young People (Scotland) Bill* are that:

- **The provisions around children's rights in Part 1-3 of the Bill fall short of providing the overarching child rights framework needed to fulfil the Scottish Government's policy intentions.**
- **Together urges the Education Committee to consider the full incorporation of the UNCRC into Scots law. Incorporation is the way for the Scottish Government to realise its ambition to make Scotland *'the best place to grow up'*³.**
- **Together urges the Education Committee to consider the need for a child rights impact assessment to be undertaken on the Bill. This would ensure there is an informed and systematic approach to considering children's rights across the Bill.**

¹ Para. 2 Scottish Government (2013) Children & Young People (Scotland) Bill Policy Memorandum

² Para. 3 Scottish Government (2013) Children & Young People (Scotland) Bill Policy Memorandum

³ Para. 2 Scottish Government (2013) Children & Young People (Scotland) Bill Policy Memorandum

2. Incorporation of the UNCRC into Scots law

Together is clear that the Scottish Government's policy intentions would be best realised through the full incorporation of the UNCRC into Scots Law.

A recent UNICEF study revealed that the incorporation of the UNCRC not only influences the development and implementation of legislation, but is also crucial in fostering a children's rights culture.⁴ It would provide a strong signal from the Scottish Government that all levels of government - and society at large - must take the UNCRC seriously. It would lead the culture change needed to ensure the rights of children are always of a paramount consideration.

Incorporation of the UNCRC into law would provide the overarching legislative framework that is needed by the Scottish Government to fulfil the policy intentions of the *Children & Young People Bill*. It provides strong, clear and robust children's rights duties for Ministers and public bodies that systematically embed children's rights into decision-making processes. It provides comprehensive accountability mechanisms including legal redress for children and young people. Full incorporation would embed children's rights into the planning, implementation and monitoring of all policies and services and would provide the legislative and culture change needed to truly '*make rights real*' to children and young people in Scotland.

Support for incorporation of the UNCRC into Scots law continues to be widespread across Scotland. This was reflected in responses to the *Rights of Children and Young People Bill*⁵ consultation in December 2011. Despite there being no specific question in the consultation paper around the incorporation of the UNCRC into domestic law, 40% of all responses from children's organisations and 25% of all responses from public bodies (including several local authorities and NHS Boards) voiced their support for the full incorporation of the UNCRC into law. Only 6% of children's organisations and 4% of public bodies specifically expressed an opinion against full incorporation.⁶ 86% of children taking part in the Children's Parliament's consultation on the Bill said that the UNCRC should '*be like a law that people have to obey*'.⁷

3. The principles of the Children & Young People Bill

PART 1 - RIGHTS OF CHILDREN

Together agrees with the Scottish Government that '*legislative steps are essential in order to ensure that the Convention continues to influence legislation, policy and practice in the future*'⁸. Together welcomes the Scottish Government's recognition that the articles of the UNCRC '*form a framework against which to evaluate legislation, policy and decision-making structures*'⁹. However, the provisions around children's rights in Part 1 of the Bill fall short of full incorporation of the UNCRC, which would provide the overarching child rights framework needed to fulfil the Scottish Government's policy intentions.

- **Duty on Ministers to further the UNCRC**

Together welcomes the intention to '*explicitly recognise the Scottish Ministers' responsibility to review their approach to implementing the UNCRC and to implement policies which they believe will support the effective realisation of children's rights where possible*'¹⁰. However, the duty on Ministers to '*keep*

⁴ Lundy, L., Kilkelly, U. Byrne, B. & Kang, J. (2012). The UN Convention on the Rights of the Child: A study of legal implementation in 12 countries. Belfast, Northern Ireland: Queen's University Belfast

⁵ Scottish Government (2011). Consultation on the Rights of Children and Young People bill

⁶ <http://www.scotland.gov.uk/Publications/2012/02/8619/downloads> (accessed July 2012)

⁷ Children's Parliament (2011) Rights of Children and Young People Bill: A response from children facilitated by the Children's Parliament

⁸ Para. 43 Scottish Government (2013) Children & Young People (Scotland) Bill Policy Memorandum

⁹ Para 41. Scottish Government (2013) Children & Young People (Scotland) Bill Policy Memorandum

¹⁰ Para 44. Scottish Parliament (2013) Children & Young People (Scotland) Bill Policy Memorandum

under consideration...' furthering the UNCRC and to act *'if they consider it appropriate to do so'* is weak, ambiguous and falls short of realising this intention. It provides no mechanism through which Ministers are accountable in their decision-making and raises key questions:

- What process will Ministers use to fulfil their obligation to keep the UNCRC *'under consideration'*?
- How will Ministers assess if they *'consider it appropriate'* to take steps to further the UNCRC?

The Scottish Government has disregarded responses from NGOs, academics and public bodies to the Bill consultation in which they called for a stronger duty on Ministers. The duty is a real step back from the *'due regard'* duty proposed in 2011 through the *Rights of Children & Young People Bill*. Indeed, the Scottish Government's own commissioned analysis of the consultation responses states *'it was commonly felt that although intentions are well meaning, the proposals do not go far enough...'*¹¹.

Incorporation of the UNCRC into Scots law places strong, meaningful duties on Ministers and public bodies that will systematically embed the UNCRC into decision-making, policy and practice and supports the 'effective realisation of children's rights'.

- **Duty on Ministers to raise awareness and understanding**

Together welcomes the intention to promote a greater understanding of children's rights and recognises the impact the duty on Ministers could have if properly implemented. Together welcomes the Scottish Government's assertion that this duty is *'providing a mechanism in domestic law'*¹² to ensure future governments continue to recognise what is already an existing international obligation. If this duty is to achieve the policy intention of *'highlighting the important role that professionals and communities must play'*¹³ in empowering children to exercise their rights, it must be included within a stronger, overarching child rights framework.

The duty to 'raise awareness' is welcomed and must be adequately resourced. Together recommends that the Education Committee considers placing an implementation scheme on the face of the Bill that provides a strategic and comprehensive approach to executing and resourcing this duty.

- **Reporting duties on Scottish Ministers and public bodies**

Together welcomes the intention that *'key bodies involved in protecting and promoting rights properly understand the impact their work is having.'*¹⁴ and the accompanying duty on Scottish Ministers to report to the Scottish Parliament every three years. It is questionable whether placing a duty on public bodies to report without an accompanying implementation duty will make any tangible difference. A public body would be able to fulfil this duty by reporting that no steps were taken to further its responsibility of the UNCRC requirements. This would make no difference to the lives of children and young people and is a very long way from the Scottish Government's policy intention to *'properly understand the impact [key bodies'] work is having'*. To make reporting duties meaningful, they must be matched by strong, clear and robust children's rights duties as detailed above.

Incorporation of the UNCRC will embed strong, clear and robust measures of accountability and provide the transparency needed to ensure 'key bodies' understand 'the impact their work is having' on protecting and promoting children's rights.

¹¹ Scottish Government (2012) Analysis of Responses to the Children and Young People Bill Consultation

¹² Para 52. Scottish Parliament (2013) Children & Young People (Scotland) Bill Policy Memorandum

¹³ Para 45. Scottish Parliament (2013) Children & Young People (Scotland) Bill Policy Memorandum

¹⁴ Para 47. Scottish Parliament (2013) Children & Young People (Scotland) Bill Policy Memorandum

PART 2 – COMMISSIONERS FOR CHILDREN AND YOUNG PEOPLE

Together welcomes the Bill's proposed extension to the Commissioner's powers that allows for investigations of cases or complaints brought by or on behalf of individual children and young people. This will serve as a useful and important tool to examine alleged violations of children's rights and must be resourced adequately. However, it will not address all instances where children and young people may wish to seek redress and should not be viewed as a substitute for child-friendly redress mechanisms across public bodies and services. In order to fully meet the intention of 'empowering children to exercise their rights'¹⁵ the UNCRC must be incorporated into Scots law to enable children to seek redress through the courts when obligations are not met and progress cannot be made through other means.

The proposed extension to the Commissioner's powers is welcomed and must be adequately resourced. Incorporation of the UNCRC will complement this non-legal means of redress for children and young people by providing a means of legal redress when obligations under the UNCRC are not met and progress cannot be made through other means.

PART 3 – CHILDREN'S SERVICES PLANNING

Together welcomes the duties on public bodies to prepare, review, implement and report on children's services plans. However, to successfully realise the policy intention of ensuring 'children's rights properly influence the design and delivery of policies and services'¹⁶ there needs to be an overarching child rights framework that embeds the UNCRC into the planning, implementation and monitoring of children's services. There is a disjoint between the provisions in Part 1 of the Bill around children's rights and the provisions in Part 3 around children's wellbeing. The UNCRC should be explicitly embedded into children's services planning to ensure children's services are provided in a way that best safeguards, support and promotes both the UNCRC requirements and the wellbeing of children.

Incorporation of the UNCRC into Scots law will provide an overarching legislative child rights framework that embeds the UNCRC into the planning, implementation and monitoring of children's services.

4. Child Rights Impact Assessment

Together has already written to the Convenor to urge the Education & Culture Committee to consider the need for a Child Rights Impact Assessment (CRIA) to be undertaken on the *Children & Young People (Scotland) Bill* to inform the Committee's gathering of evidence at Stage 1. Such an impact assessment would provide a valuable tool to support the scrutiny of evidence presented to the Committee at Stage 1 and ensure that there is an informed and uniform approach to considering children's rights across the entire Bill. The measures already taken to assess the impact of the Bill on children and young people are welcome and provide a solid foundation from which a CRIA can be started. However, they do not currently equate to a full CRIA and do not systematically consider children's rights across the entire Bill. Both the Privacy Impact Assessment and human rights considerations included in the Policy Memorandum are out-of-date and there has been no systematic analysis of the Bill's provisions against the rights enshrined in the UNCRC. Unless a full child rights impacts assessment is undertaken on the Bill, there is a real danger that its provisions could bring a patchy and inconsistent approach to considering children's rights across government, resulting in some violations of children's rights being embedded in legislation.

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¹⁵ Para 45. Scottish Parliament (2013) Children & Young People (Scotland) Bill Policy Memorandum

¹⁶ Para. 3 Scottish Government (2013) Children & Young People (Scotland) Bill Policy Memorandum

Appendix A: Summary of the Bill

This briefing concentrates on the provisions included in parts 1, 2 and 3 of the *Children and Young People (Scotland) Bill* as outlined below:

Part 1 - Rights of Children

Part 1 includes provisions for Ministers and a range of public bodies to have a greater consideration of children's rights as enshrined in the UN Convention on the Rights of the Child (UNCRC). It includes:

Duties on Ministers to:

- *'Keep under consideration'* their approach to the implementation of the UNCRC and to *'take steps'* which they believe are appropriate as a result of that consideration;
- Promote public awareness and understanding of the rights of children;
- Lay a report before the Scottish Parliament every 3 years detailing the steps taken to further the UNCRC.
- A duty on Public Bodies to:
- Publish a report every three years detailing the steps taken to further the UNCRC.

Part 2 - Commissioner for Children & Young People in Scotland

Part 2 gives an additional power to the Children's Commissioner to investigate cases or complaints brought by or on behalf of individual children and young people into the extent to which service providers have regard to children's rights in their decision-making and actions.

Part 3 - Children's Services Planning

Part 3 contains duties on children's services planning for public bodies that aim to ensure the full implementation of GIRFEC across Scotland and improve the wellbeing of children and young people. It includes:

Duties on local authorities and health boards to:

- Prepare a children's services plan every three years with input from other service providers (including the police, children's hearings, court service and others)
- Implement the children's services plan and keep it under review
- Report on the children's services plan every year, including what services have been provided and the extent to which it has achieved its aims.

The aims of a children's service plan include children's services being provided in a way that "*best safeguards, supports and promotes the wellbeing of children in the area concerned*" and that related services in the area concerned are provided in a way that "*safeguards, supports and promotes the wellbeing of children in the area concerned*".

Appendix B: Parliamentary Timetable

Lead Committee Education and Culture

Other Committees Local Government and Regeneration Committee
Finance Committee

Stage 1 written evidence deadlines

Education Committee - closing date for written submissions is **26 July 2013**.

Finance Committee - closing date for written submissions is **24 August 2013**.

Stage 1 oral evidence dates

Date	Committee	Theme
<i>3 September</i>	Education	General overview on the principles of the Bill and how it will work in practice
<i>4 September</i>	Local Government & Regeneration	Part 3 of the Bill
<i>10 September</i>	Education	Session to help the Committee understand children's and families' views on the main provisions of the Bill that would affect them
<i>17 September</i>	Education	Two panels: the first will examine the duty to secure a minimum provision of 600 hours per annum early learning and childcare; the second panel will scrutinise the implications of the named person for various organisations.
<i>24 September</i>	Education	Discussion of the Bill's provisions on kinship carers
<i>1 October</i>	Education	Discussion of children's rights and the named person duty from a civil liberties and rights perspective
<i>8 October</i>	Education	Session with the Minister for Children and Young People, Aileen Campbell MSP

Stage 2 - late 2013

Stage 3 - early 2014

Commencement dates

2014	Duties on the Scottish Ministers relating to the UNCRC Duties on public bodies to report on the steps that they have taken to further children's rights
2016	Duties relating to GIRFEC Extending the power of Scotland's Commissioner for Children & Young People