



Getting it Right for Young Performers: National consultation on the arrangements for ensuring the wellbeing of children involved in performances

Together consultation response: June 2014

1. About Together

Together (Scottish Alliance for Children's Rights) is an alliance of children's charities that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) in Scotland. We have over 260 members ranging from large international and national non-governmental organisations (NGOs) including UNICEF UK, Save the Children, Barnardo's and CHILDREN 1st through to small volunteer-led after school clubs. Our activities include collating an annual *State of Children's Rights* report to set out the progress made to implement the UNCRC in Scotland. We also provide a focal point through which Scottish NGOs report to the UN Committee on the Rights of the Child.

2. Introduction

Together welcomes the Scottish Government's decision to update and improve existing arrangements to ensure the wellbeing of children involved in performances, and the opportunity to comment on proposed improvements to be delivered through revising either secondary legislation or non-statutory guidance of the Children (Performances) Regulations 1968.

Together also welcomes the Scottish Government's recognition within the introduction to the consultation document that the UNCRC sets out the guarantees that every child must have in Scotland, and that wellbeing describes the outcomes that children are likely to experience as a result of the guarantees within the UNCRC being delivered.¹

The process of updating the current arrangements for children involved in performances with the aim of '*Getting it Right for Young Performers*' is an opportunity for the Scottish Government to further its commitment to '*make rights real*' across Scotland. It is also an opportunity to progress the commitments made to children's rights within Part 1 of the Children and Young People (Scotland) Act 2014.²

3. Overview

Article 31 of the UNCRC recognises the right of every child to participate freely in cultural, artistic, recreational and leisure activity³ and General Comment No. 17 to the UNCRC highlights clearly the enriching value of fulfilling Article 31 in relation to benefiting children's health and development.⁴ The opportunity to perform can help to respect and fulfil Article 29 of the UNCRC, which requires

¹ Scottish Government (2014). <http://www.scotland.gov.uk/Resource/0044/00447880.pdf> (pg 2)

² Scottish Government (2014). *Children and Young People (Scotland) Act 2014*

³ UN General Assembly (1989). *UN Convention on the Rights of the Child (Article 31)*

⁴ UN Committee on the Rights of the Child (2013). *General Comment No. 17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts*

State Parties to ensure that education is directed to the development of a child's personality, talents and mental and physical abilities to their fullest potential.⁵

The UN Committee on the Rights of the Child is clear that participation in many types of recreational, cultural and leisure activities is essential to the health and wellbeing of children and young people. However, the Committee is also clear that whilst the right of children to take part in competitive sports, games, performing arts must be protected, this must not be at the expense of the fulfilment of other rights enshrined in the UNCRC.⁶

For example, state Parties are obliged under Article 32 to recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. Measures to ensure the wellbeing of children involved in performances must reflect the implementation of Article 32.⁷

By using a child rights approach, the following response will express the values which Together encourages to be the foundation for any updates to the existing arrangements for children involved in performances.

4. Key points

Child Rights Impact Assessment

Ensuring that the provisions within the UNCRC are respected, protected and fulfilled in legislation, policy development and delivery at all levels of government demands a continuous process of impact assessment and evaluation.⁸

A child rights impact assessment (CRIA) must be undertaken on the Scottish Government's proposals to update and improve existing arrangements in the current licensing process of children involved in performances. This will ensure that the proposals are fully assessed in terms of their impact on the rights of children and that the impact is predicted, monitored, and if necessary, avoided or mitigated.

It would be in line with the Scottish Government's commitments to children's rights as evident in Part 1 of the Children and Young People (Scotland) Act 2014. During Stage 3 of Parliamentary scrutiny of the Act, the Minister for Children and Young People, Aileen Campbell MSP, stated that:

“the Scottish Government recognises the importance of assessing our decisions against the rights of children, and we are developing a children's rights impact assessment for use across Government as a direct consequence of the duty in section 1(1).”⁹

Together strongly recommends that the Scottish Government demonstrates this commitment by carrying out a full CRIA on the proposals outlined in this consultation document. It is crucial if the

⁵ UN General Assembly (1989). *UN Convention on the Rights of the Child (Article 29)*

⁶ UN Committee on the Rights of the Child (2013). *General Comment No. 17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts*

⁷ UN General Assembly (1989). *UN Convention on the Rights of the Child (Article 32)*

⁸ UN Committee on the Rights of the Child (2013). *General Comment No. 5: General measures of implementation of the UNCRC (pg 11)*

⁹ Scottish Parliament (2014). *Official report: meeting of the Parliament. Wednesday 19th February. 27746.*

Scottish Government is to meet its aspiration of ensuring the wellbeing of children under school leaving age involved in performances.

Process of applying for a license

The proposals to introduce a revised and updated license application form must be combined with a requirement to involve affected children throughout the process. As stated in Article 12 of the UNCRC, children must be able to express their views freely when decisions are being made which may affect them, and for these views to be taken fully into account in accordance with their age and maturity.¹⁰

Together recommends that children should have the opportunity to play an active role in completing a licensing application form and that information regarding this process should be provided and explained in a child-friendly format, taking the age and maturity of a child into consideration.

Article 16 of the UNCRC requires that no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, or to unlawful attacks on his or her honour and reputation.¹¹ With reference to the proposals on pages 9 and 10 the consultation paper about when information is shared by the Named Person or when a licensing authority requests additional reports, Article 16 must be upheld. Information shared within additional reports by the child's chaperone, private tutor, Named Person (which includes head teacher or health visitor) and any other party must be relevant and proportionate. Consent from the child and family must be given whilst adhering to Article 3 of the UNCRC, which states that in all actions concerning children, their best interests shall be a primary consideration.¹²

Education arrangements

Together welcomes the proposal to continue the current case that licensing authorities cannot grant a license unless they are satisfied that a child's education will not suffer. This reflects Article 32 which requires that children must be protected from performing any work likely to be hazardous or to interfere with their right to education (as outlined in Article 28 of the UNCRC).¹³

Article 12 of the UNCRC outlines the right of the child to participate meaningfully in any decisions affecting them, with their views being given due weight in accordance with their age and maturity. Proposals regarding the provision of a child's course of study during a performance (pages 11 and 12) must be agreed upon not only through dialogue with the local authority, the child's teacher and the child's parents, but with the child too. The child's views should be taken fully into account when arrangements for private tutors and a course of study are made, reflecting a tailored approach to each child recognising their individual needs. Article 3 of the UNCRC highlights that the child is at the centre of any provisions put in place affecting them; this and the obligations under Article 12 must be reflected in legislation and guidance, on the arrangements for ensuring an effective system for supporting the education provisions of children involved in performances.

Together is concerned that the proposals relate to children under school leaving age, which may leave children above school leaving age and under 18 with inadequate support. We urge the Scottish

¹⁰ UN General Assembly (1989). *UN Convention on the Rights of the Child (Article 12)*

¹¹ UN General Assembly (1989). *UN Convention on the Rights of the Child (Article 16)*

¹² UN General Assembly (1989). *UN Convention on the Rights of the Child (Article 3)*

¹³ UN General Assembly (1989). *UN Convention on the Rights of the Child (Articles 32 & 28)*

Government to take account of this and ensure that all children involved in performances have their rights as enshrined in the UNCRC respected, protected and fulfilled.

Chaperone proposals

Together welcomes the proposal that guidance setting out the basic skills and knowledge that every chaperone should have must include the Common Core of Skills, Knowledge and Understanding & Values for the children's workforce in Scotland.¹⁴ Together urges the Scottish Government to ensure that the Common Core of Skills is central within the guidance and that a clear understanding of this document is considered a fundamental requirement of all chaperones.

The proposals suggest that the licensing authority will be responsible for assessing and approving a chaperone, with regards to a new voluntary registration scheme with a detailed assessment building on updated guidance.¹⁵ Together urges the Scottish Government to ensure that requirements are put in place so that children are active participants in the assessment and approval process of chaperones, influencing the development of this process and throughout its implementation. Children's views on what they consider should be the basic skills and knowledge of chaperones must be gathered and given due weight, with ongoing interactions and feedback regarding the influence of their participation.

Together welcomes the proposal for all chaperones to be members of the PVG scheme, which may significantly help to further protect children's rights in the areas of safety and health during performances. Any changes to the current arrangements for chaperones during performances must be approached using the best interests principle, as required by Article 3 of the UNCRC.¹⁶

Age and the duration of attendance, performance and breaks

The proposals in the consultation document set out the maximum duration of attendance and performance per day; the latest and earliest hours of attendance and breaks and working hour limits based on specific age groups. Together would like to highlight that such guidelines are crucial to ensuring that Article 32 is fully realised.¹⁷

Yet it is essential that such guidelines are able to take account of and recognise an individual child's evolving capacities and maturity, recognising their specific needs and the tailored approach necessary. Arrangements for working hours, times of attendance and breaks should involve consultation with the child involved in a performance, taking into account their views and preferences and keeping their best interests as a primary consideration.

Awareness & understanding and non-compliance

Together urges the Scottish Government to give careful consideration of how to raise awareness and understanding of updated legislation and guidance in this area, across licensing authorities, local authorities, schools and teachers, companies and organisations involved in performances, and critically, for parents and children for whom arrangements are put in place. This could be crucial in

¹⁴ Scottish Government (2012). *Common Core of Skills, Knowledge and Understanding & Values for the children's workforce in Scotland*

¹⁵ Scottish Government (2014). <http://www.scotland.gov.uk/Resource/0044/00447880.pdf> (pg 14)

¹⁶ UN General Assembly (1989). *UN Convention on the Rights of the Child (Article 3)*

¹⁷ UN General Assembly (1989). *UN Convention on the Rights of the Child (Article 32)*

order for the new arrangements to be effective and for collaboration and joined-up working to take place.

The legislation and guidance should be widely accessible in a clear and easily understood format and there must be age appropriate child-friendly versions available. Children and parents must be aware of the arrangements in place to protect them and mitigate risk, so that they are able to identify situations where they feel that their needs are not being met / their rights have been violated.

Article 32 requires State Parties to provide appropriate penalties or other sanctions to ensure the effective enforcement of arrangements to protect the rights of children involved in performances.¹⁸ There must be clear channels for children and parents to take complaints to in a safe and secure environment. Together supports Children in Scotland's response which urges the Scottish Government to ensure that new guidance should clearly spell out the sanctions for failing to comply with the legislation, guidance and associated guidelines, to protect, respect and fulfil children's rights.

Consultation with children and young people and non-discrimination

Together advocates that the Scottish Government consult with children and young people when legislation is being updated and guidance is being produced for these proposals. Children should have the opportunity to be active participants in government decision-making processes and in the promotion, protection and monitoring of their rights. General Comment No. 5 to the UNCRC on General Measures of Implementation of the UNCRC outlines that if consultation is to be meaningful, documents as well as processes need to be made accessible.¹⁹ Appearing to "listen" to children is relatively unchallenging; giving due weight to their views requires real change. Listening to children should not be seen as an end in itself, but rather as a means by which States make their interactions with children and their actions on behalf of children ever more sensitive to the implementation of children's rights.

Consulting with children and young people on the proposals and corresponding guidance could help to further the duty on Scottish Ministers in Part 1 of the Children and Young People (Scotland) Act 2014, to take account as they consider appropriate, of relevant views of children.²⁰

Article 2 of the UNCRC is clear that State Parties must respect and ensure the rights set forth in the Convention to every child without discrimination of any kind, irrespective of a child's disability, sex, religion or any other status.²¹ The right of all children to have the opportunity to take part in performances must be delivered regardless of any status. Children with additional support needs and their specific rights and needs must be taken into account to ensure that the opportunity to take part in performances is fully realised. The Scottish Government must also take Article 2 into account when consulting on the development of guidance and ensure children with additional support needs have equal opportunity to be involved.

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¹⁸ UN General Assembly (1989). *UN Convention on the Rights of the Child (Article 32)*

¹⁹ UN Committee on the Rights of the Child (2013). *General Comment No. 5: General measures of implementation of the UNCRC (pg 4)*

²⁰ Scottish Government (2014). *Children and Young People (Scotland) Act 2014*

²¹ UN General Assembly (1989). *UN Convention on the Rights of the Child (Article 2)*