



Children & Young People (Scotland) Bill

Stage 3 Amendments Briefing - Children's Rights

Monday 17th February 2014

This briefing outlines the child rights specific amendments to the Children and Young People (Scotland) Bill at Stage 3 that are supported by Together and its members. It has been explicitly endorsed by the following Together members¹:



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¹ The following Together members have explicitly supported this briefing: Aberlour, Action for Children, Action for Sick Children Scotland, Barnardo's Scotland, CHILDREN 1st, Children in Scotland, Children's Parliament, cl@n childlaw, Includem, National Deaf Children Society, NSPCC Scotland, Parenting Across Scotland, Quarriers, Save the Children, Scottish Youth Parliament UNICEF UK, Youthlink Scotland, Wave Trust, Who Cares? Scotland.

Overview

Overall, we welcome the stated policy intentions of the Bill and support the Scottish Government's ambition to '*make rights real*', including the proposal to place a duty on Scottish Ministers to promote public awareness and understanding of the rights of children and the United Nations Convention on the Rights of the Child (UNCRC).

However, we believe the legal provisions behind the Bill still fall short of ensuring the policy intentions are fully met. The duty it places on Ministers and public bodies to '*keep under consideration*' steps to further children's rights is a real step back from previous commitments in the Rights of Children and Young People Bill² consultation, to give '*due regard*' to the UNCRC in line with legislation already in place in Wales³.

From the initial consultation to its passage through the parliamentary process, Together has repeatedly called for steps to be taken to meaningfully embed children's rights into the Children and Young People (Scotland) Bill. We have continued to highlight the significant gap between the Bill's welcome policy intentions and its weak child rights provisions. We were disappointed that the child rights amendments at Stage 2 - which echoed recommendations from the Education and Culture Committee's Stage 1 report - were not given full consideration and were not taken forward. This was particularly frustrating given the Scottish Government's explicit commitment to consider incorporating the UNCRC into Scots Law in its Independence White Paper⁴.

Together remains concerned that the Scottish Government risks missing a significant opportunity to move towards '*making Scotland the best place to grow up*'. As this Bill passes through Stage 3, it is time to push for a meaningful commitment to the UN Convention on the Rights of the Child and ensure this Bill provides the legislative framework needed to make its policy intentions a reality. Stage 3 provides a final opportunity to effectively embed children's rights across local and national government and ensure a debate beyond the Bill as to how Scotland can further progress, protect and promote children's rights.

We urge members of the Scottish Parliament to approve the following amendments at Stage 3. We also support a number of other amendments that have been put forward around primary prevention and children with disabilities that would help to take forward children's rights. Together is a signatory to the "Putting the Baby IN the Bathwater" coalition.⁵ In taking these amendments forward, the Scottish Parliament will ensure the Bill contains a more meaningful and coherent child-rights framework that will help to deliver its policy ambitions.

² Scottish Government (2011). *Consultation on Rights of Children and Young People Bill*

³ National Assembly for Wales (2011). *Rights of Children and Young Persons (Wales) Measure 2011*

⁴ pg 357 Scottish Government (2013) *Scotland's Future*

⁵ WAVE Trust (2014). *Putting the Baby IN the Bathwater coalition: Stage 3 Briefing: Children and Young People (Scotland) Bill*

Part 1 Rights of Children

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

Amendment 116 A duty on Ministers to establish a group (“the body”) to consider whether the UNCRC should be given legislative effect and to help continue the discussion on UNCRC incorporation.
Jean Urquhart

Throughout the passage of the Bill, debate about the incorporation of the UNCRC has become mired in controversy about the legality and appropriateness of different approaches to putting the UNCRC into law. This amendment would require Ministers to establish a group (“the body”) on the UNCRC within one year of the Bill receiving Royal Assent. The group would have to consider the merits of different approaches to incorporating the UNCRC into law, and then report back to Ministers and the Parliament as to how the UNCRC could be given legislative effect in Scotland.

The amendment would not put any aspects of the UNCRC into Scottish law now, and would not lead to any requirement to incorporate the UNCRC in a particular way. It would be a matter for the Ministers, under the scrutiny of the Parliament, to indicate whether they subsequently intended to give legislative effect to the UNCRC. Ultimately the decision would always be for Parliament to decide if incorporation was appropriate and what basis it should be carried out. The group’s report would ensure that any such decision was informed by the best available evidence.

Please refer to Together’s separate briefing on Amendment 116 for further detail.

Duties on Ministers to further the UNCRC requirements

Amendment 117 A duty on Ministers to have regard to the best interests of the child in all Ministerial decisions that affect them (Article 3 of UNCRC).
Liam McArthur

Amendment 118 A duty on Ministers to ensure that the views of children who are likely to be affected by Ministerial decisions are sought and taken into account (Article 12 of UNCRC).
Liam McArthur

Together welcomed the Education and Culture Committee’s call at Stage 1 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 Bill⁶. These articles are key principles of the UNCRC and similar provisions are increasingly being included in Scots law and policy. Placing duties 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 law⁷.

Together notes Amendment 93 put forward by Aileen Campbell. Whilst agreeing with its intention, it is tied to the already weak duty included in section 1(1) of the Bill and would allow too broad a discretion as to when children’s views are sought. Amendment 118 would build on existing law to ensure that children’s views are sought and given due weight in a range of decisions that may affect them.

⁶ Education and Culture Committee (2013) Stage 1 report on the Children and Young People (Scotland) Bill para. 44

⁷ UNICEF UK (2012), The UN Convention on the Rights of the Child: A study of legal implementation in 12 countries.

Duties on Ministers to report

Together welcomes the proposed amendments to enhance the duty on Ministers to report the steps taken to secure further and better effect of the UNCRC.

Amendments 121, 123, 124 *Neil Bibby* **To strengthen the existing reporting duty on Ministers to allow for meaningful transparency and scrutiny.**

These amendments would strengthen the current reporting duties on Ministers by allowing for greater external scrutiny and adding a requirement on Ministers to demonstrate how they have responded to General Comments or recommendations made directly to the UK by the UN Committee on the Rights of the Child. These amendments would bring the reporting duty more in line with the Children's Scheme included in the Rights of Children and Young Persons (Wales) Measure, which has been widely welcomed by those working with and for children in Wales.

Child Rights Impact Assessment

Amendment 125 *Liam McArthur* **A duty on Ministers to make a compatibility statement (or assessment of compatibility) in relation to every relevant Bill introduced to the Scottish Parliament.**

Amendment 126 *Liam McArthur* **A duty on Ministers to undertake a CRIA on every relevant Bill and subordinate legislation introduced.**

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*'⁸. The lack of a CRIA on the Children and Young People (Scotland) Bill was apparent at Stage 2. A raft of amendments were considered to better embed children's rights into children's services and ensure children's views are taken into account. There was a need for government-backed amendments to address concerns around the impact of the information-sharing provisions on children's rights.

These amendments 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 requirement for Ministers to make a compatibility statement draws on the Human Rights Act (Section 19) and a similar approach adopted in Australia which has generally been received positively. The duty on Ministers to undertake a CRIA on every relevant Bill and subordinate legislation introduces discretion for Ministers as to when CRIAs are conducted to enable the best use of resources whilst also ensuring that the Bill embeds a legacy of the ongoing systematic consideration of the impact of government decision-making on children.

⁸ Education and Culture Committee (2013) Stage 1 report on the Children and Young People (Scotland) Bill para. 44

Protecting children from all forms of violence

Amendment 119
Alison Johnstone

A duty on Ministers to take steps to protect children from all forms of violence

There has been a great deal of positive policy and practice development in Scotland around this issue, including through many aspects of the Children and Young People Bill. There is, however, still no clear indication of whether and how the Scottish Government will progress a strategy to deal with the violence experienced by children in a coherent way. Article 19 of the UNCRC⁹ specifically deals with protecting children from violence, and Amendment 119 would enable Ministers to bring current law and practice into line with this. Violence is a societal problem and not something that can be addressed only at an individual level. Primary prevention is key, and a clear, coherent statement about the Government's commitment to tackling violence towards children would help to develop society's understanding of the problem, and willingness to tackle it.

Part 2 Commissioner for Children and Young People

Amendments 198 - 200
Liam McArthur

To ensure the Children's Commissioner remains fully independent from executive interference

Together was key in supporting the establishment of Scotland's Commissioner for Children and Young People and is keen to ensure the Commissioner remains independent and impartial. Together welcomes amendments 77 and 86 put forward by the Minister for Children and Young People but notes that these do not go far enough to ensure the continued independence of the Commissioner's office in line with UN guidance¹⁰ and international best practice. As such, Together supports amendments 198-200 which are essential to the credibility of the office, particularly given its new investigations function granted through the Bill. Together endorses the SCCYP briefing on this amendment.

Part 4 Provision of Named Persons

Section 26-27 Information sharing

Amendment 166-168
Liam McArthur

Consent to information-sharing with and by the Named Person

This amendment addresses the concern raised at Stage 1 that there is a significant risk that children and young people will be reluctant to access and engage with confidential services if they feel that confidential information is likely to be shared without their consent.³ It will enable the correct balance to be struck between the need to share confidential information with the child's right to privacy by placing a requirement on the information holder to seek informed and explicit consent from the child (or their parent if the child lacks capacity) where the information to be shared is confidential. The amendments proposed include an exception to the requirement to seek consent if 'the information holder considers that to seek consent would be likely to adversely affect the wellbeing of the child or young person.' Together supports cl@n childlaw's briefing on this amendment.

⁹ <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

¹⁰ UN Paris Principles and the UN Committee on the Rights of the Child General Comments 2 and 5
Protecting children from all forms of violence