



# Education (Scotland) Bill

## Call for Views – Stage 1

### About Together (Scottish Alliance for Children's Rights)

Together (Scottish Alliance for Children's Rights) is an alliance that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) and other international human rights treaties across Scotland. We have over 550 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs and interested professionals. The views expressed in this submission are based on wide consultation with our members but may not necessarily reflect the specific views of every one of our member organisations.

### Introduction

Together (Scottish Alliance for Children's Rights) welcomes the opportunity to provide input on the Education (Scotland) Bill at Stage 1. This is a key opportunity for MSPs to reflect on delivering the commitment made to babies, children, and young people through the UNCRC (Incorporation) (Scotland) Act 2024, which made the UNCRC binding in Scots law for the first time just six weeks ago. As Professor Muir noted in his report:

*"[T]he incorporation into Scots law of the United Nations Convention on the Rights of the Child (UNCRC) is a game changer when it comes to how we view and provide the educational experiences for children and young people"<sup>1</sup>*

Due to limited capacity to consult our members on the detail of the provisions, our response emphasises the following key recommendations:

Scottish Government must **adopt a child rights-based approach to education reform**, including by:

- **Ensuring that reforms achieve the ambitions of recent reviews and the expressed needs of children and young people;**
- **Establishing and maintaining opportunities for the continued participation of children and young people;**
- **Ensuring coherence between the Education (Scotland) Bill and the UNCRC (Incorporation) (Scotland) Act 2024.**

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<sup>1</sup> Muir, K. (2021). Putting Learners at the Centre: Towards a Future Vision for Scottish Education, p2.  
<https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2022/03/putting-learners-centre-towards-future-vision-scottish-education/documents/putting-learners-centre-towards-future-vision-scottish-education/putting-learners-centre-towards-future-vision-scottish-education/govscot%3Adocument/putting-learners-centre-towards-future-vision-scottish-education.pdf> [Date accessed: 04.09.2024].

## **1. Several reports, including the OECD Review of the Curriculum for Excellence and Professor Ken Muir’s report “Putting Learners at the Centre. Towards a Future Vision for Scottish Education”, have recommended reforming the current Scottish Qualifications Authority. How well do you think the Bill addresses the concerns raised in those reports?**

Professor Muir’s recommendations were ultimately designed to enhance the quality of learning, teaching, achievements and to “ensure the rights of the child are respected and honoured across our education system”.<sup>2</sup> The Bill seeks to address some of the report’s recommendations – such as SQA reform – but wider reform is needed if Scottish Government is to deliver a system that fully upholds children and young people’s rights, and delivers upon the ambitions of recent reviews.

Every child (under 18) has rights under the UN Convention on the Rights of the Child (‘UNCRC’). These rights are interdependent, meaning respect for children’s rights requires consideration of all UNCRC articles. A rights-based approach to education reform therefore requires consideration of the best interests of children (Article 3), the principle of non-discrimination (Article 2), right to participation (Article 12) and right to information (Article 13), as well as all other rights under the UNCRC. Particularly relevant in this context is the right to education set out in Articles 28 and 29. These articles are clear that education is about much more than narrow understandings of ‘academic’ achievement, calling on governments to: ensure children’s dignity; develop their personality, talents, mental and physical abilities to their fullest potential; develop respect for human rights, parents/carers, cultural values and the natural environment. The UN Committee on the Rights of the Child has offered further guidance including General Comment No. 1 on the aims of education.<sup>3</sup>

Children and young people are clear about the need to put their rights at the heart of education reform.<sup>4</sup> Last year, Together supported Members of the Children’s Parliament and Scottish Youth Parliament (SYP) to give evidence to the UN Committee. They called for an education system that is “stronger, more inclusive and fairer for all learners than it was before” and that Article 29 should be at the heart of reforming the system.<sup>5</sup> In response, the UN Committee issued a series of recommendations on education including calls to:<sup>6</sup>

- address educational inequalities experienced by children in poverty, migrant, refugee and asylum-seeking children, young carers, disabled children and other children whose rights are most at risk;
- ensure children’s right to be heard in decisions about their education, with specific attention to the views of younger children, disabled children and Care Experienced children;
- ensure inclusive education within mainstream schools;
- prohibit restraint and seclusion;

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<sup>2</sup> *Ibid.*

<sup>3</sup> CRC/GC/2001/1

<sup>4</sup> Together, SYP, Children’s Parliament (2021). Consulting with Children and Young People.

<https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2022/03/putting-learners-centre-towards-future-vision-scottish-education/documents/consulting-children-young-people/consulting-children-young-people/govscot%3Adocument/consulting-children-young-people.pdf> [Date accessed: 04.09.2024].

<sup>5</sup> Together, Children’s Parliament, Scottish Youth Parliament, CYPCS (2023). The problems adults don’t see.

[https://www.togetherscotland.org.uk/media/3265/cyp\\_report\\_2023\\_digital\\_final.pdf](https://www.togetherscotland.org.uk/media/3265/cyp_report_2023_digital_final.pdf) [Date accessed: 18.12.23].

<sup>6</sup> CRC/C/GBR/CO/6-7

- limit the use of exclusions so they are only ever used as a last resort and prohibited in primary schools;
- take action to address bullying;
- guidance on inclusion of trans and gender-questioning children;
- take action to ensure education is anti-racist;
- make children’s rights education a mandatory part of the curriculum;
- ensure systematic children’s rights training for teachers;
- put an end to testing measures that contribute to high levels of stress owing to academic pressure; and
- ensure that children benefit from a creative learning environment.

The Committee should consider how these UN recommendations could be best addressed in the approach to reforming the education system. We understand that the Education (Scotland) Bill is a first step and that many changes do not require primary legislation. For reform to meet the ambitions set out in the reports – and the needs of children and young people – it is essential that we do not lose focus on these wider issues. We hope that this Bill is just the start of a wider process on education reform.

## **2. The Bill sets out measures designed to better involve learners, teachers and others in the new body’s decision-making. What do you think about these measures?**

Article 12 UNCRC sets out children and young people’s right to have their views heard and be taken seriously in decisions that affect them. As noted above, children, young people and the UN Committee on the Rights of the Child have called for improvements to ensure this right is upheld for *all* children in the context of their education. Children and young people who gave evidence to the UN Committee said the new system should focus on the importance of relationships and put children and young people’s views at its heart.<sup>7</sup>

There have been several opportunities for children and young people’s involvement in the lead up to the Bill, including engagement around the National Discussion facilitated by Together, SYP and Children’s Parliament.<sup>8</sup> More needs to be done to ensure participation opportunities are embedded throughout the whole process and accessible to children and young people whose rights are most at risk.

We welcome the commitment to embed the views and experiences of children and young people into the work of Qualifications Scotland – but note that children and young people have raised concerns that such measures could be tokenistic. Detail on the proposed Learner Interest Committee is lacking. The way the Bill is currently drafted makes it possible for the Learner Interest Committee to include no children at all.<sup>9</sup> More detail is needed on how the Learner Interest Committee would be developed and operate to ensure it fully meets the requirements

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<sup>7</sup> Together, Children’s Parliament, Scottish Youth Parliament, CYPCS (2023). The problems adults don’t see, p9. [https://www.togetherscotland.org.uk/media/3265/cyp\\_report\\_2023\\_digital\\_final.pdf](https://www.togetherscotland.org.uk/media/3265/cyp_report_2023_digital_final.pdf) [Date accessed: 18.12.23].

<sup>8</sup> Together, SYP, Children’s Parliament (2021). Consulting with Children and Young People. <https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2022/03/putting-learners-centre-towards-future-vision-scottish-education/documents/consulting-children-young-people/consulting-children-young-people/govscot%3Adocument/consulting-children-young-people.pdf> [Date accessed: 04.09.2024].

<sup>9</sup> Part 4, Chapter 1, Sections 10(3)-(4), Education (Scotland) Bill [as introduced]. <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/education-scotland-bill/introduced/bill-as-introduced.pdf> [Date accessed: 04.09.2024].

of Article 12, including the basic requirements of participation set out in General Comment 12.<sup>10</sup> Children and young people should be involved in this process from the outset.

We welcome the requirement that Qualifications Scotland “must have regard to the importance of communicating in a way that best meets the needs of children and young people (including those with additional support needs)”.<sup>11</sup> This duty should be strengthened so that it is a duty to *actually publish* a child-friendly version of reports, rather than simply (as currently drafted) a duty to *think about publishing*. Strengthening the Bill in this way would align it with reporting duties under the UNCRC (Incorporation) (Scotland) Act 2024 – duties which Qualifications Scotland will also be subject to.<sup>12</sup>

In summary, while the intention is welcome, more is needed to ensure Article 12 is fully upheld, including stronger requirements to ensure that children are provided opportunities to express their views (if they wish to do so), that they are empowered and supported to express these views in the way that works best for them, and that these views are given due weight. Particular attention must be paid to children and young people whose rights are most at risk, who face additional barriers to participation and may require additional support.

### **3. The Bill also creates several Charters, designed to let people know what they can expect when interacting with Qualifications Scotland. What is your view of these Charters?**

The Bill places a duty on Qualifications Scotland to prepare and publish a Learner Charter within six months. This should set out what children and young people can expect from the body in the exercise of its functions. We note that children’s rights are not referenced in these provisions. Indeed, the only mention of the UNCRC in relation to the Learner Charter is a reference to Article 12 within the Policy Memorandum.<sup>13</sup>

The Policy Memorandum says it is ‘paramount’ that the contents of the Learner Charter, and how it is developed, are underpinned by Article 12.<sup>14</sup> As currently drafted, the Bill places a duty on Qualifications Scotland to consult “such persons as it considers appropriate” when preparing the Learner Charter yet, once more, the Bill is drafted in a way that could mean children are excluded entirely. The Bill lists three categories who must be consulted, including “persons undertaking a [qualification]” and persons who represent their interests.<sup>15</sup> As the Children and Young People’s Commissioner Scotland has noted, a person “undertaking a qualification” can include adult learners. Further, consulting with organisations who represent the interests of children and young people cannot be a substitute for engaging with children and young people themselves. Our view is that the provisions around the Learner Charter should be strengthened from a children’s rights perspective.

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<sup>10</sup> CRC/C/GC/12: Paras: 132-134.

<sup>11</sup> Section 25, Education (Scotland) Bill [as introduced]. <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/education-scotland-bill/introduced/bill-as-introduced.pdf> [Date accessed: 04.09.2024].

<sup>12</sup> Section 18(4), UNCRC (Incorporation) (Scotland) Act 2024. <https://www.legislation.gov.uk/asp/2024/1/contents> [Date accessed: 04.09.2024].

<sup>13</sup> Scottish Government, (2024). Policy Memorandum, para 78. <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/education-scotland-bill/introduced/policy-memorandum-accessible.pdf> [Date accessed: 04.09.2024].

<sup>14</sup> *Ibid.*

<sup>15</sup> Section 10(4), Education (Scotland) Bill [as introduced]. <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/education-scotland-bill/introduced/bill-as-introduced.pdf> [Date accessed: 04.09.2024].

#### **4. Part 2 of the Bill establishes the role of HM Chief Inspector of Education in Scotland, setting out what they will do and how they will operate. What are your views of these proposals?**

We support the proposal for HMCIE to be reinstated as an independent body. It is crucial that children's human rights are embedded into the role and inspection remit of the HMCIE and we encourage the Scottish Parliament to scrutinise what further measures may be needed to ensure this.

The HMCIE will be a public authority within the meaning of the UNCRC (Incorporation) (Scotland) Act 2024 and accordingly under duties to ensure compliance with the UNCRC requirements. As currently drafted, we consider that opportunities to embed children's rights and views into the new body have been missed. As with the Learner Interest Committee, there is no statutory guarantee that children and young people will be involved in governance arrangements for HMCIE. Members of the Advisory Council must be "representative of the interests of persons likely to be affected by the Chief Inspector's functions" but there is no requirement that this should include a route for children and young people to participate directly (as opposed to indirect representation via children and young people's organisations).<sup>16</sup>

#### **5. What are your views on the reporting requirements set out in the Bill, including the requirement to report on the performance of the Scottish education system?**

We welcome the recognition in the Explanatory Memorandum that reports are important for compliance with Article 13 and 17 UNCRC (access to information). To fulfil this role, the reports must be child-friendly and accessible. We welcome the requirement that HMCIE "must have regard to the importance of communicating in a way that best meets the needs of children and young people (including those with additional support needs)".<sup>17</sup> This is the same formulation as used earlier for Qualifications Scotland and so we take the same view: the duty should be strengthened so that it is a duty to *actually publish* a child-friendly version of reports, rather than simply (as currently drafted) a duty to *think about publishing*. This will align the duty with reporting requirements on HMCIE under the UNCRC (Incorporation) (Scotland) Act 2024.<sup>18</sup>

#### **7. In your view, what should the outcomes of the Bill be?**

As stated in our response to Question 1, the aim of the Bill – and education reform more broadly – should be the advancement of children and young people's human rights under the UNCRC.

#### **8. Do you have any other comments on the Bill?**

The commencement of the *UNCRC (Incorporation) (Scotland) Act 2024* means that Scottish Government, education authorities and schools are now under legal duties to act compatibly with children's rights under the UNCRC. While it was necessary to narrow its scope to bring it within devolved competence, the Act still offers an *additional* layer of protection for children's

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<sup>16</sup> Section 35, Education (Scotland) Bill [as introduced]. <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/education-scotland-bill/introduced/bill-as-introduced.pdf> [Date accessed: 04.09.2024].

<sup>17</sup> Section 25, Education (Scotland) Bill [as introduced]. <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/education-scotland-bill/introduced/bill-as-introduced.pdf> [Date accessed: 04.09.2024].

<sup>18</sup> Section 18(4), UNCRC (Incorporation) (Scotland) Act 2024. <https://www.legislation.gov.uk/asp/2024/1/contents> [Date accessed: 04.09.2024].

rights in certain areas. Section 6 provides that it will be unlawful for a public authority to act (or fail to act) in connection with a relevant function in a way which is incompatible with the UNCRC requirements. A “relevant function” means one which is within devolved competence and is set out in an Act of the Scottish Parliament, Scottish secondary legislation or Scots common law. This means that UK Acts which otherwise relate to devolved matters will fall outwith the scope of the amended UNCRC Act – including the Education (Scotland) Act 1980.

Together has called on Scottish Government to commit to using specific legislative opportunities to expand the scope of the UNCRC Act.<sup>19</sup> Our view is that the Education (Scotland) Bill offers a significant opportunity to identify key provisions of the Education (Scotland) Act 1980 and bring these into Scots law and therefore within the scope of the UNCRC Act.

We would urge the Scottish Government to consider whether key provisions of the 1980 Act, such as the duty to provide education; school starting age; access to social, cultural and recreational activities; education for children unable to attend school; provision of school meals; administration and finance; and rules on independent schools could be brought within the scope of the UNCRC Act via amendments to the Education (Scotland) Bill.

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<sup>19</sup> Together (2023). Letter to the Cabinet Secretary for Social Justice, [https://togetherscotland.org.uk/media/3520/letter\\_cabinetsecretary\\_27-10-23\\_final\\_members.pdf](https://togetherscotland.org.uk/media/3520/letter_cabinetsecretary_27-10-23_final_members.pdf) [Date accessed: 04.09.2024].