

Consultation on a proposal for a Children and Young People Bill



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

Please key F11 to move between fields

1. Name/Organisation

Organisation Name

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3. Permissions - I am responding as...

Individual

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

4. Background

In analysing your response, it would be helpful to know your background. Please indicate the area which best describes your involvement with children from the options below.

Please tick box as appropriate:

- | | |
|-------------------------------|-------------------------------------|
| Early Years | <input type="checkbox"/> |
| Education | <input type="checkbox"/> |
| Health | <input type="checkbox"/> |
| Justice | <input type="checkbox"/> |
| Parent/Carer | <input type="checkbox"/> |
| Police | <input type="checkbox"/> |
| Social Work | <input type="checkbox"/> |
| Sport and Leisure | <input type="checkbox"/> |
| Voluntary Organisation | <input checked="" type="checkbox"/> |
| Other | <input type="checkbox"/> |

Comments

Together (Scottish Alliance for Children's Rights) was set up in 1996 to seek the full implementation of the UN Convention on the Rights of the Child in Scotland. It began as a small, informal network drawn from Scottish children's organisations and has grown to have over 200 members and registered supporters, providing a focal point for non-governmental organisations in Scotland on children's rights issues.

As part of the process for developing our response to this consultation, Together has worked closely with Children in Scotland to convene a Rights of Children Working Group involving over 60 representatives of voluntary organisations and public bodies, including local authorities to health boards. Discussions at the Rights Working Group have focussed on how the bill could be used to improve outcomes for children and young people and better realise their rights under the UNCRC. In addition, Together's members have provided feedback on the Scottish Government's proposals through the consultation for Together annual *State of Children's Rights* report.

Although a range of views were presented by Together's members and supporters throughout this consultation process, there was a broad consensus around specific issues relating to the bill. This submission represents this broad consensus.

A key theme in Together's consultation with its members has been the need for the Scottish Government to fully incorporate the UNCRC into Scots Law. The UN Committee on the Rights of the Child has twice called for the UK Government to fully incorporate the rights, principles and provisions of the UNCRC into domestic law.¹ Together urges the Scottish Government to show

¹ UN Committee on the Rights of the Child (2008) and (2002) Concluding Observations on the UK of Great Britain and Northern Ireland

their commitment to making children's rights 'real' and set the leading benchmark for children's rights in the UK by taking forward this repeated recommendation.

Only the incorporation of the UNCRC into Scots law will bring its rights within reach of all children living in Scotland, regardless of their background or circumstances. The incorporation of the UNCRC into Scots law would provide accountability, both demonstrating the Scottish Government's commitment to upholding children's rights under the UNCRC and requiring this commitment to be maintained on an ongoing basis. It would provide:

- More extensive realisation of children's rights, especially the right to be heard.
- A clear channel of redress for breaches of children's rights.
- A consistent approach to policy for all public policies and services relating to children.
- Increased knowledge and understanding of the UNCRC and children's rights.

The Scottish Government should use the introduction of the *Children and Young People Bill* to commit to a timescale laying out how it will work towards full incorporation.

CONSULTATION QUESTIONS

1. A SCOTLAND FOR EVERY CHILD

More effective rights for children and young people

1. Do you feel that the legislative proposals will provide for improved transparency and scrutiny of the steps being taken by Scottish Ministers and relevant public bodies to ensure the progressive realisation of children's rights?

Comments

Together broadly welcome the proposals outlined in the Children and Young People Bill. The Scottish Government has taken on board many of the views expressed in the initial consultation on the Rights of Children and Young People Bill, including the need to raise awareness and understanding of the UNCRC and embed a children's rights approach within public bodies.

There is concern among Together's members that the Scottish Government's current proposals could represent a missed opportunity for Scotland's children. The consultation document does not provide adequate detail to assess the extent to which the proposals will further the implementation of the UNCRC in Scotland. Together would urge the Scottish Government to consult on a draft bill to provide further clarity and better consideration of the duties proposed.

In this response, Together would like to outline the steps that the Scottish Government should take to strengthen their proposals and achieve their aim of '*making rights real*' for children. In taking these steps, the Scottish Government can ensure the Bill is successful in providing an overarching children's rights framework that influences all areas of policy and practice, and puts what is best for children at the centre of how Scotland is governed.

- **In the absence of full incorporation of the UNCRC, a duty on Scottish Ministers to further progress the realisation of children's rights should:**
 1. **Apply to all functions of all Scottish Ministers**
 2. **Be extended to include public bodies and all bodies acting on behalf of or contracted by a public body**
 3. **Ensure processes are put in place to ensure children's rights are considered in both decision-making and the final outcome of any decision.**
 4. **Confer rights directly on children by providing a means of legal redress for those facing violations of their rights.**

It is unclear from the consultation paper what the duty on Ministers *to take appropriate steps to further the rights of children and young people* would look like or how it would achieve the desired outcomes for children and young people. In the previous consultation on the *Rights of Children and Young People Bill*, the Scottish Government had proposed a duty on Ministers of '*due regard*' to the UNCRC. Although this duty was perceived as weak in legal terms, the children's sector recognised in their responses to the consultation that it could make a significant difference politically and administratively. It would raise the profile and status of children's rights and the UNCRC across government departments and also more widely among the public.

Together believes that the views expressed by children's organisations in their responses to the *Rights of Children and Young People Bill* consultation should be used to inform the discussion around the duty in Children and Young People bill consultation.

1. Any duty should apply to all the functions of all Scottish Ministers.

The strength of any duty would lie in it being a cross-government duty that ensures the rights of children are taken into account across all areas of policy, including those that are not directly related to children (such as transport, housing or the environment). It must ensure a joined-up approach across all Ministerial remits and all Ministerial functions to reflect the central principle of the UNCRC that all children's rights are inter-related, interdependent and indivisible.

2. Any duty on Ministers should be extended to include other public bodies and all bodies acting on behalf of or contracted by a public body.

The majority of decision-making that affects the lives of children takes place at a local level through health boards, local authorities, the police, Children's Reporters and other public bodies. As such, there is a concern that a duty on Ministers alone would affect only high level policy-making and fail to be effective in tackling patchy implementation of the UNCRC. Together it is clear that any duty on Ministers should be extended to public bodies more broadly. The need to extend the duty is further reinforced through the proposal to extend the powers of SCCYP to investigate infringements of children's rights. The Bill consultation paper states that this proposal will draw '*attention to the rights and point out where public bodies are failing to implement them fully*'. For this additional power to be effective, it is essential that there is a duty on public bodies in domestic law to comply with the UNCRC in the first place. Extending the duty to include public bodies could provide them with a useful framework through which they can make better and more consistent decisions in line with the UNCRC. These benefits were recognised by a number of public bodies, including local authorities and health boards, who called for the 'due regard' duty proposed in the Rights of Children Bill consultation to be extended.

"The duty should probably extend past that of Ministers to public bodies also, which will ensure a much more consistent approach to children's rights. ...A consistent application of children's rights across Scotland is the only way to ensure that all Scotland's children enjoy equal access to their rights"

Stirling Council²

3. Any duty should ensure that a process is put in place to ensure that children's rights are considered in both the decision-making process and the final outcome of any decision.

The proposed duty should be strengthened to ensure that decision-making processes not only have to take children's rights into account, but that the final decision must comply with the UNCRC. Doing this would enable the Scottish Government to maximise the impact of the duty in areas of policy that are not solely child focused and ensure the duty achieves the aim of ensuring that children's rights are '*at the heart of the design and delivery of policy and services*'.³

² Stirling Council (2011) *Rights of Children and Young People consultation response*

³ Scottish Government (2012) *Children and Young People Bill consultation para 51.*

4. Confer rights directly on children by providing a means of legal redress for those facing violations of their rights.

The UN Committee recommends that a clear channel of redress for breaches of children's rights should include provision of child-friendly information, advocacy, and access to independent complaint procedures and the courts when necessary with legal and other assistance. It is unclear whether or not the proposed duty would have an effect on judicial remedies. It would certainly not give a child facing a rights violation the opportunity to access redress through Scottish courts. In order to meet the Scottish Government's objective to '*make rights real*' for children, the rights and principles contained within the UNCRC must be justifiable and children must have the option of being able to go to court to enforce their rights. Although Together recognises that redress through the courts should only be seen as a last resort, it can play an essential role in allowing the most vulnerable in society to claim and protect their rights and entitlements. More importantly, legal liability can be a powerful incentive for decision-makers to avoid violations of rights without the need to go to court.

Promoting and raising awareness of the rights of children

In the absence of a question in this consultation paper to comment on the duty on Ministers to '*promote and raise awareness of the rights of children and young people*', Together would like to make the following comments: Together welcomes the Scottish Government's proposal although would like to see the duty widened to raise '*awareness and understanding of the UNCRC*'. This would reflect the need to promote understanding of the principles and provisions of the UNCRC. For the duty to achieve its purpose, Ministers should engage all sectors of society, from government officials, parliamentarians and the judiciary through to teachers, health care workers, the police, the media and parents and carers, with the involvement of children at the core. To support such a duty, the Scottish Government should develop a comprehensive strategy for disseminating knowledge of the Convention throughout society, including child-friendly educational resources and learning through the school curriculum. The strategy should include further awareness-raising and competence-building measures, such as ongoing, high-quality training and development programmes for Scottish Government staff, those working for public bodies and other relevant groups of professionals.

2. On which public bodies should a duty to report on implementing children's rights be applied?

Comments

- **The reporting duty on Scottish Ministers and public bodies on how they are implementing the rights of children should be integrated with the proposed duty to report on a common set of high level outcomes. It should be accompanied by a process for ensuring compliance with the UNCRC on the face of the Bill.**

Together welcomes the duties on Ministers and public bodies to report both on the rights of

children and on a common set of high level outcomes (question 9). However, the two duties should be integrated. This would provide coherence in the reporting requirements on public bodies and ensure that children's rights are embedded across reporting structures. To ensure any combined reporting duty is effective, it should be accompanied by a process for ensuring compliance with the UNCRC on the face of the Bill. This should clearly evidence how the Scottish Government and public bodies visibly integrate the rights of children and young people into policy-making and practice. In order to show compliance, there should be a continuous process of child rights impact assessment and child impact evaluation built into government at all levels. To help embed the process and improve the decisions being made, this process must be included at as early a stage as possible in policy development. In addition, reporting should be integrated with existing reporting mechanisms including the UNCRC reporting process and single outcome agreement annual reports.

In relation to which public bodies should have this duty to report, Together suggests that the Scottish Government compares the list provided in Annex B to the list in Schedule 19, Part 3 of the Equality Act 2010 in order to ensure commonality between the two. The Equality Act, for example, specifies educational establishments (e.g. further education colleges) as well as local authorities.

3. Do you agree that the extension of the Children's Commissioner's role will result in more effective support for those children and young people who wish to address violations of their rights?

Comments

- **The extension of the powers of SCCYP is welcome, but must be seen as only one of a range of options for children seeking redress for violations of their rights.**

Together welcomes this proposal. A power for SCCYP to undertake investigations on behalf of children and young people would be a welcome step forward in having the voices of children and young people heard with regard to their own rights. It could help to inform policy and practice at a local and national level and assist in the progressive realisation of children's rights. However, it is essential that the Scottish Government ensures the extended powers are properly resourced. It is recognised that the extension of the power raises many complex practical issues, as outlined in SCCYP's briefing paper, and Together would encourage the Scottish Government to continue working closely with the SCCYP to explore them in more detail.

It is essential that the extension of the powers of SCCYP is seen as only one of a range of options for children seeking redress for violations of their rights. More emphasis needs to be put on the participation of children and young people and on listening to their concerns at earliest stage possible before they become a formal complaint. It is preferable that any complaint from a child around a violation of their rights is addressed as close to the source as possible. Particularly attention needs to be given to ensuring that there are effective, child-sensitive procedures available to children and their representatives at all level of public services. Child-friendly

complaints mechanisms should include:

- **Public bodies**, which should review existing complaint mechanisms to complement existing ‘adult’ mechanisms. These should be introduced across local authorities, health boards and other public bodies and be supported by information, advice and advocacy for children where needed.
- **Scottish Public Services Ombudsman (SPSO)**, which should introduce a child-friendly mechanism to address complaints that have been through the formal complaints mechanisms of public bodies.
- **Additional powers of SCCYP** to address violations of children’s rights that cannot be addressed through SPSO.
- **Redress through the courts** as a last, yet essential resort to enable children to enforce their rights.
- **Optional Protocol to the UNCRC** on a complaints mechanism for violations of children’s rights. The Scottish Government should urge the UK Government to ratify the new Optional Protocol. This would enable children and their representatives to bring complaints to the UN Committee on the Rights of the Child when all domestic remedies have been exhausted.

A new focus on wellbeing

4. Do you agree with the definition of the wellbeing of a child - or young person - based on the SHANARRI Wellbeing Indicators, as set out in the consultation document?

Comments

- **The emphasis on a child’s ‘wellbeing’ does not necessarily fulfil the Scottish Government’s commitment to ‘make rights real’ for children. A definition of ‘wellbeing’ needs to explicitly rooted within a framework of children’s rights.**

Whilst Together welcomes a duty on public bodies to work together to focus on children, the emphasis on a child’s ‘wellbeing’ does not necessarily fulfil the Scottish Government’s commitment to ‘make rights real’ for children. The Children and Young People Bill offers the opportunity to embed children’s rights across the design and delivery of policy and services. To achieve this, the definition of ‘wellbeing’ needs to be contained within the overarching framework of children’s rights. To give a definition of wellbeing meaning, the proposed guidance to supplement the definition should include cross-referencing the SHANARRI indicators with the UNCRC. This will ensure that the SHANARRI indicators can contribute towards an overarching children’s rights framework underpinned by the key principles of the UNCRC.

5. Do you agree that a wider understanding of a child or young person's wellbeing should underpin our proposals?

Comments

- **As stated above, the proposals should be underpinned by a wider understanding of children's rights, within which it would be suitable to include an understanding of wellbeing.**

Better service planning and delivery

6. Do you agree that a duty be placed on public bodies to work together to jointly design, plan and deliver their policies and services to ensure that they are focussed on improving children's wellbeing?

Comments

- **The duty should also be extended to 'improving children's rights'.**

Together welcomes a duty on public bodies to '*work together to jointly design, plan and deliver their policies and services*', particularly one that includes areas such as joint service design, financial planning and training. However, echoing the comments made above around the definition of wellbeing, this duty should also be extended to 'improving children's rights'. This would offer yet another opportunity to ensure that the rights enshrined in the UNCRC are at the heart of public body decision-making and service delivery. Such a duty would form part of an overarching children's rights framework that would, in turn, improve children's wellbeing. This duty could be reinforced through updated guidance for Community Planning Partners.

7. Which bodies should be covered by the duties on joint design, planning and delivery of services for children and young people?

Comments

As in question 2, Together would suggest that the Scottish Government refer to the list in Schedule 19, Part 3 of the Equality Act 2010 in order to ensure commonality between the two.

8. How might such a duty relate to the broader Community Planning framework within which key service providers are expected to work together?

Comments

- **The SOA Guidance for Community Planning Partnerships should be updated to reflect a set of common national child rights-based indicators to embed children’s rights across the community planning process.**

Improved reporting on outcomes

9. Do you agree that we should put in place reporting arrangements making a direct link for the public between local services and outcomes for children and young people?

Comments

- **The duty to report on outcomes should be integrated with the duty on Ministers and public bodies to report on implementing the rights of children.**

The proposed duty to report on outcomes should be integrated with the duty on Ministers and public bodies to report on implementing the rights of children to avoid duplication and improve effectiveness and transparency by use of one overarching reporting framework. See question 2.

10. Do you think that these reporting arrangements should be based on the SHANARRI Wellbeing Indicators as set out in this consultation paper?

Comments

- **Reporting arrangements should be based on a set a common national set of consistent indicators across Scotland which are rights-based, include the participation of children and be capable of being disaggregated.**

The reporting arrangements should be based on a set a common national set of consistent indicators across Scotland which are rights-based, include the participation of children and be capable of being disaggregated to provide information on various groups of children (such as children living in poverty, Gypsy Traveller children, other minority ethnic children, looked after children, children with disabilities, LGBT children etc). Such a set of common, national indicators would enable the Scottish Government and public bodies to maintain systematic information on children’s outcomes. This information could then be used to help plan, implement and evaluate policies and services for children and as well as supporting the Scottish Government to evidence the progressive realisation of children’s rights and wellbeing.

11. On what public bodies should the duty for reporting on outcomes be placed?

Comments

As in questions 2 and 7, Together would suggest that the Scottish Government refer to the list in Schedule 19, Part 3 of the Equality Act 2010 in order to ensure commonality between the two.

2. A SCOTLAND FOR EACH CHILD

Improving access to high quality, flexible and integrated early learning childcare

12. Do you agree that the Scottish Government should increase the number of hours of funded early learning and childcare?

Comments

Yes. There is a consistent achievement gap between children who grow up in poverty and their more affluent peers. It emerges early in a child's life and persists throughout the education system. Far too many children growing up in poverty have their life chances seriously damaged by poor educational achievement.⁴ Children from disadvantaged backgrounds fall behind their peers in cognitive ability as early as 3 years old.⁵ In Together's 2012 State of Children's Rights report, members called on the Scottish Government to address the achievement gap between those growing up in poverty and their more affluent peers. Together outlined key policy areas that would have the highest impact, including providing affordable, high quality and extensive early education and care provision for all children in poverty from a young age.

13. Do you agree that the Scottish Government should increase the flexibility of delivery of early learning and childcare?

Comments

Yes. In the *State of Children's Rights* report 2012⁶, Together members highlight the need to increase access to affordable, accessible, quality childcare in order to tackle child poverty. The stresses of combining work and family life, coupled with difficulties in accessing childcare, can be

⁴ Joseph Rowntree Foundation (2010). 'The Importance of attitudes and behaviour for poorer children's educational achievement'

⁵ *Growing Up in Scotland* (2011). Research Findings No.2/2011: *Growing Up in Scotland: Changes in child cognitive ability in the pre-school years*

⁶ Together (2012) *State of Children's Rights* report

barriers to good parenting. Affordable childcare enables parents to take up and remain in work. This in turn can raise family incomes and tackle poverty. Work is the best route out of poverty, but for too many parents the high costs of childcare means that work simply doesn't pay. The Scottish Government should use then opportunity presented by the *Children and Young People Bill* to outline a long term plan – including a clear timetable - to extend affordable, high quality and flexible childcare to all parents, beginning with those experiencing poverty.

14. Do you think local authorities should all be required to offer the same range of options? What do you think those options should be?

Comments

- **Particular attention should be focussed on guaranteeing appropriate and effective access to early years services to particularly vulnerable children.**

The range of options offered by local authorities must take account of the UN Committee on the Rights of the Child's *General Comment 7 on Implementing Children's Rights in Early Years and Childhood*.⁷ The General Comment is clear that particular attention should be focussed on guaranteeing appropriate and effective access to early years services to particularly vulnerable children. It specifically refers to children living in poverty, children with disabilities, children belonging to indigenous or minority groups, children from migrant families, looked after children, children of prisoners, refugee and asylum-seeking children, children infected with or affected by HIV/AIDS, and children of alcohol- or drug-addicted parents. The Scottish Government should support local authorities to develop sufficient appropriate and effective early learning and childcare to meet the needs of these groups.

15. How do you think the issue of cross-boundary placements should be managed, including whether this might be through primary or secondary legislation or guidance?

Comments

- **The best interests of the child must be the primary concern in all decisions (including budgetary) of where and how the early learning and childcare entitlement is made available.**

Cross-boundary placements should be managed in line with Article 3 of the UNCRC, the best interests of the child. The best interests of the child must be the primary concern in all decisions (including budgetary) of where and how the early learning and childcare entitlement is made available. The home authority and other local authority should have an obligation to assess the impact of their decision and to elevate the child's interests to the level of a primary consideration

⁷ UN Committee on the Rights of the Child (2005) *General Comment 7: Implementing Children's Rights in Early Years and Childhood*

in the final decision. The best interests principle should be embedded into local authority decision-making through primary legislation as outlined in question 1 (extending a duty on Ministers to include public bodies).

16. Do you agree with the additional priority for 2 - year olds who are 'looked after'? What might need to be delivered differently to meet the needs of those children?

Comments

- **This should be extended to include all 2 year-old children 'in need' to support other vulnerable children as outlined in the UN Committee's General Comment 7 (see question 14).**

The Named Person

17. Do you agree with the proposal to provide a point of contact for children, young people and families through a universal approach to the Named Person role?

Comments

- **Together's members have raised concerns about the impact that legislating on the named person might have on children's right to privacy.**

Article 16 of the UNCRC states that *'no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence...'*⁸ Together recognises the challenge of balancing the right to privacy with the need to share appropriate information to safeguard children. Whilst the appropriate sharing of information is to be welcomed when it better protects children, Together's members have put forward a great deal of anecdotal evidence that the GIRFEC is already resulting in a lack of privacy and confidentiality for children. The proposal for every child to have a 'named person' will have direct impact on the sharing and storing of information especially with regards to paper and online files, through transitions and at multi agency meetings.

Regardless of whether or not the 'named person' is brought into primary legislation, Together would like to see the Scottish Government introduce more robust information sharing protocols. These need to be supported by clear guidance from SCCYP and the Information Commissioner. The Scottish Government should take account of recommendations made in a paper from ChildLine Scotland and the Centre for Learning in Child Protection in September 2011.⁹ These include:

⁸ *United Nations (1989). Convention on the Rights of the Child. Article 16*

⁹ *ChildLine Scotland and the Centre for Learning in Child Protection (2011). Finding the balance: Children's right to*

- Overarching principles and values around confidentiality and information sharing must be agreed. There should be consolidation of the same coherent message with regards to confidentiality across all relevant guidance to ensure a clear and shared understanding amongst all partner agencies.
- There should be a strong position statement in GIRFEC on the importance of respecting children’s confidentiality as a fundamental principle and on the parameters on information sharing.
- The position statement in GIRFEC should be supported through multi agency child protection training with a clear emphasis on confidentiality and information sharing to increase practitioner confidence and support professional judgement.
- The principles and values around confidentiality and information sharing should be properly explained to children. There should be meaningful involvement of children in decisions and their consent should be sought to share information wherever possible.

18. Are the responsibilities of the Named Person the right ones? Are there any additional responsibilities that should be placed on the Named Person?

Comments

Please see question 17.

19. Do you agree with the proposed allocation of responsibilities for ensuring that there is a Named Person for a child at different stages in their lives set out in the consultation paper?

Comments

- **Allocation of responsibilities to the ‘named person’ must be matched by a robust training programme underpinned by children’s rights.**

Any proposed allocation of responsibility for the role of named person at different stages of a child’s life must be matched by a robust training programme for the ‘named person’. This should result in a full understanding of the principles and provisions of the UNCRC and an ability to translate this learning into practice. This training should be provided in a way that enables the ‘named person’ to reflect on their own practice and how they can promote a children's rights approach. All those working with and for children should undertake this training, including senior managers. Such steps would help to address the issues identified by Together’s members every

year in the *State of Children's Rights*¹⁰ reports whereby children's rights are implemented inconsistently between local authority areas and across different services with a risk of children 'slipping off the radar'.

20. Do you think that the arrangements for certain groups of school-aged children as set out in the consultation paper are the right ones? What, if any, other arrangements should be made? Have any groups been missed out?

Comments

- **Children excluded from education should also be included in guidance.**

In line with the 2008 UN Concluding Observation to '*reduce the number of exclusions and get social workers and educational psychologists in school in order to help children in conflict with school*'¹¹ additional guidance should be set out to clarify the arrangements that would be put in place for the 'named person' of children who have been excluded from school.

Statistics show that the most vulnerable children, including those who are looked after and looked after away from home, those with additional support needs or those living in deprivation are still far more likely to be excluded from school than others. The number of children with learning disabilities being excluded remains extremely high. Children with an additional support need are five times as likely to be excluded and children with a disability are almost twice as likely. It is essential that any guidance around the 'named person' takes particular account of the rights of this vulnerable group.

The Child's Plan

21. Do you think a single planning approach as described in the consultation paper will help improve outcomes for children?

Comments

- **The Single Planning Approach described should relate to a child or young person's**

¹⁰ *Together (2010, 2011, 2012) State of Children's Rights reports*

¹¹ *Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 67d.*

'rights and wellbeing' rather than just wellbeing alone.

The Single Planning Approach described in the consultation paper should relate to a child or young person's 'rights and wellbeing' (see question 4) rather than just wellbeing alone.

As a foundation of an integrated approach, a single planning approach, underpinned by children's rights, could help to improve outcomes for children. However, in order for this to be effective:

- All those involved in the planning approach must have knowledge and understanding of children's rights (as outlined in the Common Core of Skills¹²);
- Children must have the opportunity to share their views and have their views respected and listened to (see *UN Committee General Comment No. 12, the Right of the Child to be Heard*¹³);
- Proposals for a single planning approach should not impact on the right of children with additional support needs to access coordinated support through the development and implementation of a Co-ordinated Support Plan.
- Specific attention must be given to the child's right to privacy (see question 17).

22. How do you think that children, young people and their families could be effectively involved in the development of the Child's Plan?

Comments

- **The Scottish Government should refer the UN Committee's General Comment No 12 on the Right of the Child to be Heard when considering how children can be involved in the development of the Child's Plan.**

As referred to in question 21, the UN Committee's *General Comment No 12, the Right of the Child to be Heard* provides essential guidance that should be used to inform guidance as to how children, young people and their families could be effectively involved in the development of the Child's Plan. Section D of *General Comment No 12* sets out basic requirements for the implementation of the right of the child to be heard, which includes:

- A transparent and informative process;
- Children's views being treated with respect
- Child-friendly environments and working methods with adequate time and resources
- Inclusive process that encourage opportunities for marginalised children
- Training for professionals to prepare them with the skills and support to facilitate children's participation effectively
- Processes that are safe and sensitive to risk and minimize the risk to children of violence,

¹² Scottish Government (2012). *Common Core of Skills, Knowledge & Understanding and Values for the "Children's Workforce" In Scotland*

¹³ UN Committee on the Rights of the Child (2009) *General Comment No 12 The Right of the Child to be Heard*

exploitation or any other negative consequence of their participation.

- Accountable with a commitment to follow-up and evaluation

Together would urge the Scottish Government to consider General Comment No 12 when considering how children and young people can be meaningfully involved in the development of a Child's Plan.

Right to support for looked-after children

23. Do you agree that care-leavers should be able to request assistance from their local authority up to and including the age of 25 (instead of 21 as now)?

Comments

Yes. Although the definition of a child in the UNCRC is everyone under the age of 18, Together recognises that many vulnerable groups need support in their transition to adult services. Young people who have been in care are particularly vulnerable and need support into early adult life. Together is unsure whether a proposal for care-leavers to '*request assistance from their local authority*' will have much impact as the duty does not put local authorities under a duty to provide such assistance. In the current financial climate, such assistance may rarely be granted. Therefore, young care leavers should be given the right to receive support rather than just ask for it. Consideration must also be given to extending such assistance to other vulnerable groups, such as children with disabilities.

Corporate Parenting

24. Do you agree that it would be helpful to define Corporate Parenting, and to clarify the public bodies to which this definition applies? If not, why not?

Comments

Yes. The focus on defining corporate parenting is to be welcomed. Corporate Parenting is a difficult concept and should be clearly defined, not only for the benefit of practitioners but also for children and young people, parents, kinship carers, foster carers etc.

25. We believe that a definition of Corporate Parenting should refer to the collective responsibility of all public bodies to provide the best possible care and protection for looked-after children and to act in the same way as a birth parent would. Do you agree with this definition?

Comments

- **Any definition of Corporate Parenting should be meaningful, transparent for children and young people and underpinned by the principles and provisions of the UNCRC.**

No. The definition needs to be clearer and rooted in the promotion and protection of a child's rights. Any definition of Corporate Parenting should be meaningful, transparent for children and young people and underpinned by the principles and provisions of the UNCRC. In order to make the definition meaningful, the Scottish Government should listen to the views and experiences of looked after children and young people on their proposals for a definition of a Corporate Parent.

Kinship care

26. Do you agree that a new order for kinship carers is a helpful additional option to provide children with a long-term, stable care environment without having to become looked after?

Comments

From the outset, the UNCRC refers to the role of family in ensuring a child's rights. It specifically states that:

“the family, as the fundamental group in society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community”¹⁴

And goes on to recognise:

“that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding”¹⁵.

Where it is in the best interests of the child and in line with the principles and provisions outlined in the UNCRC, Together welcomes steps to support kinship carers provide a long-term stable environment.

¹⁴ UNCRC preamble

¹⁵ UNCRC preamble

27. Can you think of ways to enhance the order, or anything that might prevent it from working effectively?

Comments

The order must be underpinned by the principles and provisions of the UNCRC.

Adoption and permanence

28. Do you agree that local authorities should be required to match adoptive children and families through Scotland's Adoption Register?

Comments

The UN Committee made a recommendation in 2008 that the UK '*strengthen its efforts to facilitate a situation in which children, always in their best interests, be adopted as speedily as possible, taking in due account, inter alia, their cultural background*'¹⁶ Together welcomes any steps to take this recommendation forward in line with the UNCRC.

Better foster care

29. Do you agree that fixing maximum limits for fostering placements would result in better care for children in foster care? Why?

Comments

No comment.

30. Do you agree foster carers should be required to attain minimum qualifications in care?

Comments

¹⁶ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4)*. No 47.

- **All foster carers should have the skills, knowledge, values and understanding outlined in the *Common Core of Skills*.**

All foster carers should have the skills, knowledge, values and understanding outlined in the *Common Core of Skills*. Any proposed qualification for foster carers should result in a full understanding of the principles and provisions of the UNCRC and an ability to translate this learning into practice.

31. Would a foster care register, as described, help improve the matching by a local authority (or foster agency)? Could it be used for other purposes to enhance foster care?

Comments

No comment.

32. Do you think minimum fostering allowances should be determined and set by the Scottish Government? What is the best way to determine what rate to pay foster carers for their role – for example, qualifications of the carer, the type of 'service' they provide, the age of child?

Comments

No comment.

Assessing Impact

33. In relation to the Equality Impact Assessment, please tell us about any potential impacts, either positive or negative; you feel the legislative proposals in this consultation document may have on any particular groups of people?

Comments

- **The Scottish Government should undertake a child rights impact assessment on all aspects of the Bill to ensure that children's rights underpin its proposals.**

There has been little consideration of the impact of the proposals outlined in this consultation on children with disabilities. Together would urge the Scottish Government to consider children with

a disability and other vulnerable groups (as outlined in question 14) when drawing up the Bill.

Echoing a recommendation from SCCYP, Together would urge the Scottish Government to undertake a child rights impact assessment on all aspects of the Bill to ensure that children's rights underpin its proposals.

34. In relation to the Equality Impact Assessment, please tell us what potential there may be within these legislative proposals to advance equality of opportunity between different groups and to foster good relations between different groups?

Comments

No comment

35. In relation to the Business and Regulatory Impact Assessment, please tell us about any potential economic or regulatory impacts, either positive or negative; you feel the legislative proposals in this consultation document may have, particularly on businesses?

Comments

No comment

Thank you for responding to this consultation.

Please ensure you return the respondent information form along with your response.

The closing date for this consultation is 25 September 2012. Please return to childrenslegislation@scotland.gsi.gov.uk

or

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