



# Children and Young People (Scotland) Bill

## Stage 1 Written Evidence – July 2013

### Introduction

Together welcomes the opportunity to respond to this Stage 1 Call for Evidence on the *Children & Young People (Scotland) Bill*. This response specifically focuses on the extent to which the provisions in the Bill will succeed in achieving the Scottish Government's policy aim of *'making rights real'* for children and young people. In producing this response, Together has consulted widely with its membership through seminars, meetings and ongoing face-to-face consultation.

Together recognises that the Bill provides a crucial opportunity to ensure that the principles of the UNCRC become a reality for all children and young people in Scotland. We warmly welcome the policy intentions behind the Bill and particularly endorse the intention to *'ensure children's rights properly influence the design and delivery of policies and services by placing new duties on Scottish Ministers and the public sector'*.<sup>1</sup> However, Together is disappointed that the Bill does not provide the strong duties on Ministers and public bodies needed to fulfil this policy intention. Together's key messages to the Education & Culture Committee are that:

- **The provisions around children's rights in Part 1-3 of the Bill fall short of providing the overarching child rights framework needed to fulfil the Scottish Government's policy intentions.**
- **Together urges the Education Committee to consider the full incorporation of the UNCRC into Scots law. Incorporation is the best way for the Scottish Government to realise its ambition to make Scotland *'the best place to grow up'*.**<sup>2</sup>
- **Together urges the Education Committee to consider the need for a child rights impact assessment (CRIA) to be undertaken on the Bill. Some provisions included in the Bill may actually violate children's rights (particularly around information sharing) and be contrary to the Scottish Government's intentions. A CRIA would ensure there is an informed and systematic approach to considering children's rights across the Bill.**

### Incorporation of the UNCRC into Scots law

1. **Together is clear that the Scottish Government's policy intentions would be best realised through the full incorporation of the UNCRC into Scots Law.** The UN Committee on the Rights of the Child has twice recommended that the UK Government takes measures to bring its legislation in line with the UNCRC.<sup>3</sup> Incorporation would provide the overarching legislative framework that is needed. It provides strong, clear and robust duties for Ministers and public bodies that systematically embed children's rights into policy-making and service delivery. It brings about comprehensive accountability mechanisms including legal redress for children. Full incorporation would embed children's rights into the planning, implementation and monitoring of all policies and services, providing the legislative and culture change needed to truly *'make rights real'* to children.
2. **Incorporation would create a culture of respect for children and their rights.** An important consequence of incorporation would be the culture it would help to create. It would provide a strong signal from the Scottish Government that all levels of government - and society at large - must take the UNCRC seriously. A recent UNICEF UK study revealed that incorporation of the UNCRC not only influences the development and implementation of legislation, but is also crucial in fostering a

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

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

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

children's rights culture.<sup>4</sup> The study concludes that incorporation '*increases the likelihood that children are perceived as rights holders, and over time generates a culture of respect for children's rights.*' It showed that incorporation gave politicians, public officials and non-governmental organisations who wanted to advance the cause of children's rights a '*hook*' or '*leverage*' that was particularly influential when it came to ensuring integration of the principles of the UNCRC in domestic law and policy.<sup>5</sup>

3. **The Scottish Government themselves recognise the fundamental role of legislation in inspiring a step-change in Scotland's ambition for its children**, stating in the Policy Memorandum of the Bill that: '*While there is no one policy or initiative that can bring about the kind of change required, there is a fundamental role for legislation: to accelerate the progress that has already been made and to ensure a consistent structure within which services operate; [...] and to inspire renewed debate and ambition for what Scotland's children and young people can expect.*'<sup>6</sup>
4. **An example of this in practice is the development of equality law in Scotland and across the UK.** This has effected real cultural change through the introduction of legal liability for public bodies, private bodies and individuals. Inclusion, equality of opportunity and anti-discrimination are now central principles of government policy and have been welcomed by Scotland at large. The Welsh Government reflects that the duty placed on Ministers to have '*due regard*' to the UNCRC has already resulted in a culture change and is having positive outcomes for children. Since the introduction of the duty in 2012, there has been more commonplace participation of children in developing policy across the Welsh Government, and a shift in the way Ministers consider children's rights alongside budgets.<sup>7</sup>
5. **The gradual reform of legislation in Scotland in different areas has led to inconsistent implementation of the UNCRC across local and national government** and across a range of public bodies. In turn, this has led to uneven and inconsistent outcomes for different groups of children. Examples of this include children with a disability being disproportionately affected by funding cuts within local authorities and inconsistent access to advocacy for looked after children.<sup>8</sup>
6. **Support for incorporation of the UNCRC into Scots law continues to be widespread.** This was reflected in responses to the *Rights of Children and Young People Bill* consultation in December 2011.<sup>9</sup> Despite there being no question in the consultation paper around the incorporation of the UNCRC into domestic law, 40% of all responses from children's organisations and 25% of all responses from public bodies (including several local authorities and NHS Boards) voiced their support for the full incorporation of the UNCRC into law. Only 6% of children's organisations and 4% of public bodies specifically expressed an opinion against full incorporation.<sup>10</sup> 86% of children taking part in the Children's Parliament's consultation on the Bill said that the UNCRC should '*be like a law that people have to obey.*'<sup>11</sup>
7. **Very many countries have either directly incorporated the UNCRC or given it a prominent place in their domestic law.** This includes European countries such as Belgium, France, Norway and Spain through to those more far afield such as Japan and Argentina.<sup>12</sup> Many other countries that have ratified the UNCRC do not need to incorporate it into domestic law as their international treaty obligations automatically form part of their domestic law or are otherwise applicable and can be invoked in domestic courts. This is not the case in Scotland.
8. **Incorporation is possible in Scotland.** A legal opinion from Aidan O'Neill QC commissioned by UNICEF UK is clear that it is within the powers of the Scottish Government and Scottish Parliament to directly and fully incorporate the UNCRC into Scots law in relation to devolved issues.<sup>13</sup>

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

5 Including Belgium, Norway, Cyprus, Finland, France, Portugal, Spain, Japan and Argentina.

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

7 Welsh Government (2013) Report on the compliance with the duty under section 1 of the Rights of Children and Young Persons (Wales) Measure 2011.

8 Together (2012) State of Children's Rights report

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

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

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

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

13 UNICEF UK (2012) Advice from Aidan O'Neill QC, Matrix Chambers on the ability of the Scottish Government under current devolved arrangements to fully and directly incorporate the UNCRC into domestic law

## Part 1 - Rights of Children

9. Together agrees with the Scottish Government that legislation is needed to ensure the UNCRC influences future legislation, policy and practice<sup>14</sup> and welcomes the recognition that the articles of the UNCRC '*form a framework against which to evaluate legislation, policy and decision-making structures*'.<sup>15</sup> Together also welcomes the intention to place a duty on Ministers to recognise their responsibility to implement the UNCRC.
10. An essential mechanism needed to achieve these policy intentions is the routine use of child rights impact assessments (CRIA). The Welsh Government reports that the Welsh Measure introduced in 2012 has had a positive impact on children's rights across policy, legislation and practice and that CRIA are now used to systematically consider the UNCRC. CRIAs have been routinely conducted on policy and legislation including the Climate Change Commission, Housing White Paper and End Violence and Domestic Abuse Against Women White Paper. As a result, more guidance documents are making reference to the UNCRC and influencing how public bodies comply with the guidance issued. The Welsh Government believes that children, young people and their families will soon see the positive impact this is making, as organisations and those working with and for children become more aware of the UNCRC and its implications in their work.<sup>16</sup> **In order to ensure the UNCRC influences future legislation, policy and practice, the routine use of Child Rights Impact Assessments to inform government decision-making must be included on the face of the Bill.**
11. The duty on Ministers to '*keep under consideration*' lacks transparency and provides no mechanism through which Ministers are accountable in their decision-making. Ministers would be under no obligation to demonstrate how they have fulfilled the duty, nor outline how they assess if they '*consider it appropriate*' to take steps to further the UNCRC. The Scottish Government has disregarded responses from NGOs, academics and public bodies to the Bill consultation in which they called for a stronger duty on Ministers and one that is extended to include public bodies.<sup>17</sup> **Incorporation of the UNCRC into Scots law would place strong, meaningful duties on Ministers and public bodies that would systematically embed the UNCRC into policy and practice.**
12. Together welcomes the intention to promote a greater understanding of children's rights and recognises the impact the duty on Ministers could have if properly implemented. Together welcomes the Scottish Government's assertion that this duty is '*providing a mechanism in domestic law*'<sup>18</sup> to ensure future governments continue to recognise what is already an existing international obligation. If this duty is to achieve its policy intention, it must be included within a stronger, overarching child rights framework. **Together recommends that the Education Committee considers placing an implementation scheme on the face of the Bill that provides a strategic and comprehensive approach to executing and resourcing all duties on Ministers and public bodies in relation to the rights of children.**
13. Together welcomes the duty on Scottish Ministers to report to the Scottish Parliament every three years. It is questionable whether placing a duty on public bodies to report without an accompanying implementation duty will make any tangible difference. A public body would be able to fulfil this duty by reporting that no steps were taken to further its responsibility of the UNCRC requirements. This would make no difference to the lives of children and is a very long way from the Scottish Government's policy intention. To make reporting duties meaningful, they must be matched by strong, clear and robust children's rights duties as detailed above. **Incorporation of the UNCRC would embed clear and robust measures of accountability and provide the transparency needed to ensure key bodies understand the impact their work is having on protecting and promoting children's rights.**

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

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

16 Welsh Government (2013) Report on the compliance with the duty under section 1 of the Rights of Children and Young Persons (Wales) Measure 2011.

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

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

## Part 2 - Commissioner for Children & Young People

Together welcomes the Bill's proposed extension to the Commissioner's powers. This will serve as a useful and important tool to examine alleged violations of children's rights and must be resourced adequately. It will not address all instances where children may wish to seek redress and should not be viewed as a substitute for child-friendly redress mechanisms across public bodies and services. In order to fully meet the intention of '*empowering children to exercise their rights*'<sup>19</sup> the UNCRC must be incorporated into Scots law. The proposed extension to the Commissioner's powers is welcomed. Incorporation of the UNCRC would complement this non-legal means of redress for children by providing a means of legal redress when obligations under the UNCRC are not met and progress cannot be made through other means.

## Part 3 - Children's Services Planning

14. Together welcomes the duties on public bodies to prepare, review, implement and report on children's services plans. However, there is a disjoint between the provisions in Part 1 around children's rights and those in Part 3 around children's wellbeing. To successfully realise the policy intention of ensuring '*children's rights properly influence the design and delivery of policies and services*'<sup>20</sup> there needs to be an overarching framework that explicitly embeds the UNCRC into the planning, implementation and monitoring of children's services. This would ensure services are provided in a way that best safeguards, support and promotes both the UNCRC requirements and the wellbeing of children. **Incorporation of the UNCRC into Scots law would provide an overarching legislative child rights framework that embeds the UNCRC into the planning, implementation and monitoring of children's services.**

## Part 4 - Provision of Named Person

15. The Bill proposes a new information sharing duty for public bodies and service providers which would introduce a radical change in the existing information sharing provisions. It would involve significantly lowering current accepted information sharing thresholds and broadening the grounds for such information sharing to concerns in all areas of a child's wellbeing. The Scottish Government has not consulted on this new duty. If the current proposals for information sharing are implemented in legislation, professionals will be likely to share more information than is necessary and proportionate and important information will be lost amongst large quantities of information being shared. There is also a risk that children will be less likely to engage fully with confidential services which could in turn put vulnerable children at risk. **Any proposals around information sharing must take consideration of the best interests of the child, consideration of the child's views and involve the child's consent. The current proposals do not offer a balance between children's rights and the need to share information.**

## Child Rights Impact Assessment

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

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

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

## 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 232 members including large international and national non-governmental organisations (NGOs) such as UNICEF UK, Save the Children, Barnardo's and CHILDREN 1st through to volunteer-led playgroups and 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.
- Working in partnership with the Scottish Government and Scotland's Commissioner for Children and Young People (SCCYP) on the *Scottish Children's Rights Implementation Monitoring Group* to develop a common understanding on progressing the UNCRC.
- Submitting the NGO alternative report to the UN Committee on the Rights of the Child to provide an independent NGO perspective on the extent to which Scotland is meeting its UNCRC obligations.

***For more information, contact:***

***Juliet Harris, National Development Manager***

*Together (Scottish Alliance for Children's Rights),  
Princes House, 5 Shandwick Place, Edinburgh, EH2 4RG*

***Email:*** [juliet@togetherscotland.org.uk](mailto:juliet@togetherscotland.org.uk) ***Tel:*** 0131 229 3666

***Web:*** [www.togetherscotland.org.uk](http://www.togetherscotland.org.uk)