



Children & Young People (Scotland) Bill

November 2013

1. About Together

Together (Scottish Alliance for Children's Rights) is an alliance of children's charities that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) in Scotland. We have over 240 members ranging from large international and national non-governmental organisations (NGOs) including UNICEF UK, Save the Children, Barnardo's and CHILDREN 1st through to small volunteer-led 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. Our next report is to be launched on 20th November 2013 and copies are available on request.

2. Introduction

This briefing specifically focuses on the Education and Culture Committee's Stage 1 report on the Children and Young People (Scotland) Bill. It aims to provide a response to the conclusions reached in the report specifically relating to children's rights ahead of the Stage 1 debate to be held on 21st November 2013.

3. Overview

Together welcomes the publication of the Committee's Stage 1 report. Although Together is disappointed that the Committee is not persuaded of the case for incorporation of the UNCRC into Scots law, we welcome the Committee's statement that *'there may be opportunities to improve the Bill by incorporating specific elements of the UNCRC.'*¹ Together shares the concerns outlined in the Committee's report that the duties in Part 1 may be *'little more than a restatement of existing obligations'*² but welcomes the Committee's call to the Scottish Government to commit to explore how to include Articles 3 and 12 (Best Interests and Participation) in the Bill³.

The Committee's conclusions help to highlight that the Bill currently fails to create a consistent and overarching children's rights framework across government decision-making and local service delivery. Together remains concerned that the absence of such a framework will compromise the effective implementation of the proposed duties included in Part 1.

Together strongly supports the incorporation of the UNCRC in Scots law, which would promote transparency and accountability and ensure the systematic consideration of children's rights at a national and local level. In the absence of incorporation, many of the Committee's recommendations could be taken forward through an implementation scheme. As in Wales, the requirement to produce an implementation scheme should be on the face of the Bill. The development of such a scheme in Wales to support the *Rights of Children and Young Persons (Wales) Measure* is already proving effective in driving progress and supporting officials and practitioners to develop a child rights approach to their work. It has meant that, even with a change in Government, the commitment and momentum to further children's rights has continued.

The Committee's report helpfully highlights a number of opportunities through which a child-rights framework could be progressed. As detailed below, many of these opportunities could be included within an implementation scheme.

¹ Education and Culture Committee (2013) Stage 1 report on the Children and Young People (Scotland) Bill para. 40

² Education and Culture Committee (2013) Stage 1 report on the Children and Young People (Scotland) Bill para. 40

³ Education and Culture Committee (2013) Stage 1 report on the Children and Young People (Scotland) Bill para. 43

4. Key points

4.1. *Inclusion of UNCRC articles 3 and 12*

Together welcomes the Committee's call 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 Bill. These articles are key principles of the UNCRC and similar provisions are increasingly being included in Scots law and policy. Giving 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. We would hope to bring forward some proposals at Stage 2 on how this might be achieved for the consideration of Government and the Committee.

4.2. *Duties on Ministers and public bodies*

Together agrees with the evidence presented to the Committee that the duty on Scottish Ministers to 'keep under consideration' is not a practical or effective duty to further children's rights. It is unclear as to what this duty would mean in practice and doubtful whether there could be an effective legal challenge to the duty⁴. Together would urge the Scottish Government to consider how it can commit to a meaningful obligation to the UNCRC in the Bill. At the very least, Together would urge the Scottish Government commit to the 'due regard' duty originally proposed in the in the Rights of Children and Young People draft Bill.⁵

Together welcomes the Committee's call for clarification as to why Scottish Government has chosen not to extend the duty on Ministers to include public bodies.⁶ 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. In its written and oral evidence to the Committee, Together highlighted concerns that a duty on Ministers alone to further the UNCRC would affect only high level policy-making and fail to be effective in tackling patchy implementation of the UNCRC. A duty on public bodies would provide a useful framework through which they can make better and more consistent decisions in line with the UNCRC. This has been long recognised by a number of local authorities and health boards who, in their responses to the Rights of Children Bill consultation, called for the proposed '*due regard*' duty on Ministers to be extended to include public bodies.⁷

4.3. *Child Rights Impact Assessment (CRIA)*

Together welcomes the recommendation made by the Committee for Scottish Government to commit to undertake CRIsAs '*in relation to all relevant future legislation*'.⁸ CRIsAs permit the impact of legislation on children and young people to be predicted, monitored and, if necessary, avoided or mitigated. They raise awareness of children's interests and ensure that they are factored into policy development. In order to ensure that the Scottish Government's ambitions are realised in the longterm, the use of CRIsAs should be included on the face of the Bill in relation to all future legislation and policy.

⁴ Education and Culture Committee (2013) Stage 1 report on the Children and Young People (Scotland) Bill para. 26

⁵ Scottish Government (2011) Consultation on the Rights of Children and Young People Bill

⁶ Education and Culture Committee (2013) Stage 1 report on the Children and Young People (Scotland) Bill para. 41

⁷ Scottish Government (2012) Rights of Children & Young People Bill consultation analysis

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

4.4. Implementation scheme

An implementation scheme would require the Scottish Government to set out the arrangements they have put in place to deliver the duties to further the UNCRC requirements and consult on the scheme with children, the Children's Commissioner and other relevant stakeholders. It would provide a strategic and comprehensive approach to executing and resourcing all duties on Ministers and public bodies. As in Wales, the requirement to produce an implementation scheme would need to be on the face of the Bill. The implementation scheme would need to be published by Scottish Government on a three yearly basis and approved by the Scottish Parliament.

Together welcomes the Committee's call for the Scottish Government to provide '*an explanation of the practical actions it intends to take to increase awareness of children's rights*⁹'. Particular attention needs to be given to how an awareness and understanding of children's rights can be embedded across national and local government and all those working with and for children. Together would urge the Scottish Government to include an implementation scheme on the face of the Bill to outline how the duty to 'raise awareness and understanding' of the UNCRC will be delivered and resourced on an ongoing basis.

4.5. Integration of reporting duties

Together agrees with the Committee's observation that some of the reporting and planning duties in the Bill '*could be better integrated*¹⁰'. There is a disjoint between the provisions in Part 1 of the Bill around reporting on children's rights and the provisions in Part 3 around reporting on children's wellbeing. The UNCRC should be explicitly embedded into the aims of children's services plans to ensure children's services are provided in a way that best safeguards, support and promotes both the UNCRC requirements and the wellbeing of children.

5. Conclusion:

Together welcomes the Children and Young People (Scotland) Bill and shares the aspiration of '*making rights real*'. We particularly welcome the focus of the Education and Culture Committee in its Stage 1 report on issues relating to the children's rights provisions included in Part 1. As outlined in this briefing, Together concurs with many of the conclusions reached and the recommendations made. We hope that all MSPs will support these and that the Scottish Government will respond positively at Stage 2. In the meantime, we accept the general principles of the Bill and encourage MSPs to vote for the Bill at Stage 1.

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⁹ Education and Culture Committee (2013) Stage 1 report on the Children and Young People (Scotland) Bill para. 40

¹⁰ Education and Culture Committee (2013) Stage 1 report on the Children and Young People (Scotland) Bill para. 42