



Children & Young People (Scotland) Bill

June 2013

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 229 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.
- 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 in Scotland.
- 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.

Introduction

This briefing specifically focuses on the extent to which the provisions in the Children & Young People Bill will succeed in achieving the Scottish Government's policy aim of 'making rights real' for children and young people. It aims to provide an overview of key children's rights issues raised by Together's members to inform the Education and Culture Committee ahead of the evidence-giving session with the Scottish Government.

Overview

Together welcomes the policy intentions of the Children & Young People Bill and the Scottish Government's commitment to "*make rights real*". We welcome the proposed duty on Scottish Ministers to promote public awareness and understanding of the rights of children, and the extension of the powers of Scotland's Commissioner for Children and Young People (SCCYP) to include investigations relating to individual children and young people. We would urge the Scottish Government to ensure that both provisions are appropriately resourced to ensure the policy intentions are realised.

In terms of the specific child rights duties on Ministers, the Bill is a real step back from the original commitment made by the Scottish Government in the Rights of Children & Young People Bill consultation. Together is concerned that this Bill does not place strong duties on Scottish Ministers or public bodies to systematically consider children's rights and that the provisions fall far short of providing the meaningful framework needed to fulfil the Scottish Government's commitment to "*make rights real*" for all children.

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 The Scottish Government should show its commitment to 'making rights real' by taking forward this recommendation and setting the leading benchmark for children's rights in the UK. Together urges the Scottish Government to use the opportunity offered by the Children & Young People Bill to set out its vision for the incorporation of the UNCRC's principles and provisions into Scots Law.

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

Key issues: Together would like to highlight the following key issues to the Education & Culture Committee:

1. Child Rights Impact Assessment

Concerns have been raised throughout Together's membership that children's rights have not been systematically considered throughout the Bill and that some provisions (particularly around information sharing) may violate children's rights. The Scottish Government has committed to "*consider a trial of child rights impact assessment [...] to see how it can help promote and develop a consideration of children's rights in the policy making process*"² and to "*develop a child rights impact assessment model*"³. However, no child rights impact assessment has been conducted on this flagship bill. A child rights impact assessment on the entire Bill would provide a valuable tool for the Education & Culture Committee to assess and address the child rights concerns and ensure that unintended consequences of the Bill on the rights of children and young people are predicted, monitored and, if necessary, avoided or mitigated.

- **Given the Scottish Government's commitment to child rights impact assessments and its policy intention to 'make rights real', why hasn't there been a specific child rights impact assessment on the entire bill to fully assess its impact on children and young people?**

2. Duties on Ministers and Public Bodies

In 2011, a commitment was made to give the UNCRC a statutory basis in Scots law through a legal duty on Ministers to give '*due regard*' to the UNCRC in all of their decisions⁴. This duty was subsequently watered down in the Children & Young People Bill consultation. Responses to the consultation from NGOs, academics and public bodies called for a stronger duty on Ministers. The Scottish Government's own commissioned analysis of the consultation responses states "*it was commonly felt that although intentions are well meaning, the proposals do not go far enough...*"⁵. However, the final duty put forward in the Children & Young People Bill on Ministers to '*keep under consideration...*' is even weaker. It is seen as ambiguous, difficult to implement and could make little meaningful difference either politically or administratively.

- **Given the widespread support shown in recent consultations for a strong duty on Ministers to further children's rights, why is the Scottish Government taking such a step back from its original commitment as proposed in the Rights of Children & Young People Bill?**

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 to further the UNCRC would affect only high level policy-making and fail to be effective in tackling patchy implementation of the UNCRC. Although Together welcomes the reporting duty on public bodies, we are clear that this needs to be accompanied by a new duty on public bodies to further the UNCRC. Such a duty on public bodies would 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 local authorities and health boards in their responses to the Rights of Children Bill consultation, in which they called for the proposed '*due regard*' duty on Ministers to be extended to include public bodies⁶.

- **What thought has been given to placing a corresponding duty on public bodies – as well as Ministers – to further implement the UNCRC?**

² Scottish Government (2009) Do the Right Thing pg 10

³ Scottish Government (2012) Do the Right Thing Progress Report pg 12

⁴ Scottish Government (2011) Rights of Children & Young People Bill consultation

⁵ Scottish Government (2012) Analysis of Responses to the Children and Young People Bill Consultation

⁶ Scottish Government (2012) Rights of Children & Young People Bill consultation analysis