



A Consultation on draft proposals for a Mental Health (Scotland) Bill

Consultation Response - March 2014

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 250 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 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. Together works with partner organisations across the UK to report to the UN Committee on the Rights of the Child on the extent to which Scotland is meeting its obligations under the UNCRC.

2. Introduction

Together welcomes the opportunity to respond to 'A Consultation on draft proposals for a Mental Health (Scotland) Bill.' This consultation response specifically focuses on the rights of children and young people and mental health. It reflects on the need to consider the impact of the proposals on children and young people; considers Child and Adolescent Mental Health Services (CAMHS) and equal access to services; recommends a preventative approach to mental health services and considers children and young people with a parent affected by mental illness.

3. Overview

According to Article 24 of the UNCRC, State Parties must "*recognize the right of the child to the enjoyment of the highest attainable standard of health...*"¹ General Comment 15 to the UNCRC is based on the importance of approaching children's health from a child-rights perspective and emphasises that children's health is affected by a variety of factors including the attention given to and the importance of mental health care.²

In its 2008 UK Concluding Observations, the UN Committee on the Rights of the Child recommended the following:

*"additional resources and improved capacities be employed to meet the needs of children with mental health problems throughout the country, with particular attention to those at greater risk, including children deprived of parental care, children affected by conflict, those living in poverty and those in conflict with the law."*³

Together welcomes the Scottish Government's commitment to further the UNCRC through the Children and Young People (Scotland) Act, which will come into force in April 2015 and places duties on Scottish Ministers to further the rights of children and young people. The Mental Health (Scotland) Bill provides an opportunity for Ministers to demonstrate how they will take forward this obligation and to ensure that their intention to "*make rights real*" for children and young people is furthered.

¹ UN General Assembly (1989) UN Convention on the Rights of the Child. Art. 24.

² Committee on the Rights of the Child (2013). General Comment No.15 on the right of the child to the enjoyment of the highest attainable standard of health (article 24)

³ Committee on the Rights of the Child (2008) Concluding Observations (CRC/C/GBR/CO/4). No. 57.

Together recommends that the Scottish Government uses UNCRC General Comment 15 to inform the development of the Mental Health (Scotland) Bill and underpins its development with a child rights framework.

4. Key points

Child Rights Impact Assessment

In order to fully consider the impact of the proposals on children and young people, a Child Rights Impact Assessment (CRIA) is essential. A CRIA would predict and monitor, and if necessary, avoid or mitigate, the impact of the proposals. Undertaking a CRIA would also help to raise awareness of children's rights and ensure that they are factored into policy development.

During Stage 3 of Parliamentary scrutiny of the Children and Young People (Scotland) Bill, the Minister for Children and Young People, Aileen Campbell MSP, stated the following:

“the Scottish Government recognises the importance of assessing our decisions against the rights of children, and we are developing a children’s rights impact assessment for use across Government as a direct consequence of the duty in section 1(1).”⁴

Together strongly recommends that the Scottish Government takes forward the above and carries out a Child Rights Impact Assessment (CRIA) on the draft proposal for a Mental Health (Scotland) Bill, to systematically and fully consider its impact on children and young people.

Consideration of children and young people

The Scottish Government launched its Mental Health Strategy in September 2012. It identifies child and adolescent health as one of its four key change areas which was welcomed by children's organisations, as highlighted in Together's 2013 'State of Children's Rights' report.⁵ Together welcomes Commitment 5 of the Strategy to *“develop and increase the focus on rights as a key component of mental health care in Scotland.”⁶*

The Mental Health (Scotland) Bill defines adults as aged 16 and above. Article 1 of the UNCRC defines a child as under the age of 18 years old.⁷ Together is concerned by the lack of reference made to the mental health of children and young people under 16.

Together urges the Scottish Government to take account of the needs and rights of all children and young people throughout the Mental Health (Scotland) Bill. Together further recommends that the Scottish Government considers the implications of this proposed legislation for 16 and 17 year olds.

Child and Adolescent Mental Health Services (CAMHS)

Reflecting on mental health care in Scotland for children and young people, members of Together have raised concerns that the vast majority of children are not able to access specialised Child and Adolescent Mental Health Services (CAMHS) because they are not diagnosed or not seen as needing that level of intervention.⁸ Together's members have reported that although the quality of CAMHS is generally thought to

⁴ Scottish Parliament (2014). Official report: meeting of the Parliament. Wednesday 19th February. 27746.

⁵ Together (2013) State of Children's Rights in Scotland (pg 60)

⁶ Scottish Government (2012) Mental Health Strategy for Scotland: 2012-2015

⁷ UN General Assembly (1989) UN Convention on the Rights of the Child. Art. 1

⁸ Together (2013) State of Children's Rights in Scotland (pg 60)

be good, it is hugely under-resourced, leading to long waiting lists that can cause more damage to the child as well as longer, and ultimately more expensive, treatment.⁹

Members of Together have reported that children in foster and kinship care are disproportionately affected by emotional, behavioural and mental health issues and yet are not being provided with CAMHS support. Children's organisations are clear that there is still a lot to be done in terms of children's mental health, including more work with young people who experience mild to moderate mental health problems, sustained support to prevent relapses and access to psychological therapy.¹⁰

Together recommends that a Mental Health (Scotland) Bill should be used as an opportunity to address the difficulties many children and young people face in accessing CAMHS.

Ensuring equal access to mental health services

In terms of an Equality Impact Assessment, Together welcomes the Scottish Government's commitment to pay due regard to the impact of the proposals for the Bill on particular groups of people, with reference to the protected characteristics listed in the consultation document.

The Mental Health Strategy 2012 recognises that there is more that could be done to provide mental health support to those who are most vulnerable and focuses on the needs of looked after children and children with learning disabilities.¹¹ Particular attention must be paid to those who are more likely to experience mental health difficulties and members of Together have specifically identified a number of vulnerable groups. These include children of prisoners, asylum seeking children, children from ethnic minority communities, young carers, young offenders, looked after children, those who have suffered abuse or neglect and those with hearing loss.

Ensuring consistent and timely provision of mental health services to support all children and young people and especially those from vulnerable groups is essential to prevent children from developing more serious mental health problems in later life.

The Bill should ensure consistent and timely provision of mental health services to support all children and young people, and particular attention must be paid to ensuring equality of access for more vulnerable groups.

A preventative approach to mental health in Scotland

The importance of supporting a preventative approach whilst taking forward mental health policy in Scotland is recognised in the Mental Health Strategy 2012¹². Together's 2012 *State of Children's Rights in Scotland* report urged the Scottish Government to ensure it promotes sufficient preventative measures for children and young people to help avoid mental health problems from escalating.¹³ The report advocates for a holistic approach to mental health and support and services that are not seen in isolation from other strategies and policies (including the Children and Young People (Scotland) Act¹⁴ and the National Parenting Strategy¹⁵).

⁹ Together (2011) *State of Children's Rights in Scotland* (pg 45)

¹⁰ Together (2013) *State of Children's Rights in Scotland* (pg 60)

¹¹ Scottish Government (2012) *Mental Health Strategy for Scotland: 2012-2015*

¹² Scottish Government (2012) *Mental Health Strategy for Scotland: 2012-2015* (pg 11)

¹³ Together (2012) *State of Children's Rights in Scotland* (pg 48)

¹⁴ Scottish Government (2014). *Children and Young People (Scotland) Act*

¹⁵ Scottish Government (2012). *National Parenting Strategy for Scotland*

Despite the above, there is no explicit statutory foundation for preventing mental health problems in the proposals cited in the consultation.

Together recommends that proposals to amend the Mental Health (Scotland) Act 2003 should pay particular attention to vulnerable groups of children and young people and include preventative measures to avoid children from developing more serious mental health problems later in life.

Children with parents affected by mental health problems

Each year in Scotland, many children and young people are affected by a parent experiencing mental health issues. This can result in the child becoming withdrawn or deterioration in performance at school. All children and young people with a parent affected by mental health issues must be able to access their rights under the UNCRC. Children affected by a parents mental health issues can be regularly discriminated against and particularly as a result of adult-focused agencies overlooking the rights of children. The best interests of the child must be taken into account as a primary consideration when a parent is accessing mental health services.

Provision of services for certain mothers with post-natal depression

Article 24 of the UNCRC asserts that States should “ensure appropriate pre-natal and post-natal health care for mothers.”¹⁶

In General Comment No. 15 published last year, the UN Committee on the Rights of the Child emphasised the short and long term impact of health risks occurring during postnatal periods on the health and wellbeing of both mother and child.

Together recommends that the Scottish Government refer to General Comment 15 when developing the proposals for a Mental Health (Scotland) Bill. Together is keen to offer support to the Government in this area if needed.

Together welcomes the Scottish Government’s proposal regarding services and accommodation offered to mothers during postnatal periods, to widen the scope of this provision.

Together recommends that adequate resources are put forward to ensure that the proposal to widen support to mothers during the post-natal period is fully realised.

5. Conclusion

We encourage the Scottish Government to carefully consider the recommendations included above to fully take into account children’s rights within the Mental Health (Scotland) Bill, as enshrined in the UNCRC.

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¹⁶ UN General Assembly (1989). UN Convention on the Rights of the Child. Art. 24