



# Rights of Children & Young People bill Overview of Consultation Responses

February 2012

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## Introduction

The legislative programme for 2011/12 included two bills for children and young people. The first was a Rights of Children and Young People Bill which aims to establish in law a duty upon Scottish Ministers to have due regard to the rights and obligations in the UNCRC. The second was to be a wide-ranging Children's Services Bill that would offer further scope for embedding children's rights in local and national government processes.

The proposed Rights of Children and Young People Bill, aimed to establish in law a duty upon Scottish Ministers to have due regard to the rights and obligations in the UNCRC and its Optional Protocols when exercising any of their functions. The duty, if passed, is to come into force in 2014.

The Scottish Government stated the benefits of the Rights of Children and Young People Bill as being:

- Increased prominence of the UNCRC
- Providing greater consistency and clarity on Ministerial obligations with regard to the UNCRC
- Improved transparency and increased Parliamentary scrutiny
- Increase accountability to the Scottish people.

The Scottish Government's was very clear that the Bill as proposed does **not** amount to full incorporation into domestic law as recommended by the UN Committee.

The proposed bill that the Scottish Government consulted on in the autumn had four elements:

- Scottish Ministers must have due regard to the UNCRC and its two Optional Protocols when exercising any of their functions
- The duty will be subject to a five-year reporting process to the Scottish Parliament, coinciding with international reporting obligations
- The duty will extend to those aged under-21 who have been looked after
- The Bill will be future-proofed against changes to the UNCRC and its Optional Protocols.

The Bill would not:

- Achieve direct and full incorporation of the UNCRC
- Extend to public authorities (e.g. local authorities, health boards)
- Relate to the General Comments of the UN Committee on the Rights of the Child
- Be retrospective (although opportunities will be taken through new legislation to amend existing legislation in related areas) .

The Scottish Government received 118 responses to the Rights of Children and Young People bill consultation. This comprised of:

- 38 public bodies (including 19 local authorities, 7 NHS, 3 education and 3 others).
- 2 individuals
- 77 NGOs

The Scottish Government consultation comprised of 8 questions:

1. Is there a need for legislation to embed the UNCRC within the Scottish Government's decision-making and day-to-day business?
2. Is "due regard" the appropriate level of regard for the duty on Scottish Ministers?
3. Should the duty apply to all functions of Scottish Ministers?
4. Are the proposed arrangements for reporting suitable?
5. Is it correct that the duty be extended to young persons under 21 who have been looked after?
6. Are the proposals correct in terms of handling future amendments to the Convention or Optional Protocols?
7. Are there other provisions that should be made in the bill?
8. Comments on implementation costs.

### **1. Is there a need for legislation to embed the UNCRC within the Scottish Government's decision-making and day-to-day business?**

All respondents who answered this question, other than the Faculty of Advocates, agreed that there was a need to embed the UNCRC within the Scottish Government's decision making and day-to-day business. Across public bodies and NGOs there was general agreement that this would increase awareness of children's rights across Government departments and ensure that the rights of children and young people are considered in the formulation of all new policy.

Many respondents stated that they did not think the proposed legislation was the best method of embedding the UNCRC into Scottish Government decision-making. Despite there being no question in the consultation paper around the incorporation of the UNCRC into domestic law:

- 25% of all responses from public bodies voiced support for incorporation, including NHS Greater Glasgow and Clyde, NHS Lothian, Glasgow City Council and Dundee City Council. (6% that explicitly voiced an opinion against incorporation).
- 40% of NGOs voiced their support for incorporation, including Barnardo's, NSPCC, Save the Children, Together and UNICEF (4% were explicitly against incorporation).

The Faculty of Advocates stated that they did not consider the Bill to be necessary. They stated that, in relation to devolved matters, it is already the responsibility of the Scottish Government to comply with the United Kingdom's obligations in international law, and that compliance with the UNCRC may be already be justiciable in the Scottish courts.

## 2. Is “due regard” the appropriate level of regard for the duty on Scottish Ministers?

Over half of those who responded to this question stated that ‘due regard’ was not the appropriate level of duty and that it should be strengthened. Again, this was echoed across a range of responses from NGOs such as Aberlour, Children’s Parliament, Enable, NSPCC, Quarriers and UNICEF through to public bodies such as Argyll and Bute Council, Dundee, Glasgow, Midlothian, Scottish Borders Council, Stirling, east Renfrewshire, West Lothian and NHS Health Scotland. Responses from legal professionals also raised concerns about the lack of strength of the ‘due regard’ duty, with responses including:

*“‘due regard’ is vague as to be virtually meaningless. Ministers should ensure compliance with the UNCRC.”*

Elaine Sutherland, Professor of Law, University of Stirling

*“It is our concern that this duty of ‘due regard’ may be a watering down of the existing duty as set out for contracting State Parties to the UNCRC.”*

Law Society Scotland

Of the 47 organisations that responded that “due regard” is the appropriate level of regard, the majority still stated that they would like to see the duty strengthened, extended to include public bodies and/or widened to include General Comments of the UNCRC. These opinions were expressed by a range of NGOs and public bodies including City of Edinburgh Council, Coalition of Care Providers Scotland, NHS Glasgow and Clyde.

## 3. Should the duty apply to all functions of Scottish Ministers?

All those who responded to this question agreed that the duty should apply to all functions of Scottish Ministers. This is where the proposed bill was seen to have the most potential to improve the rights of children and young people in Scotland. However, the majority of these respondents – including 11 local authorities – explicitly stated that the duty should be extended to include public bodies if it is to make a real, meaningful difference to the lives of children.

*“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 Council

*“If the Bill it is to be introduced we agree that the duty should apply to all the functions of the Scottish Ministers. However, we would go further: we take the view that duties should be applied to all relevant public bodies. As the Scottish Government intends to bring forward a Children’s Services Bill in 2013, we consider the appropriate legislative mechanism would be one Bill which would impose specific powers and duties on Scottish Ministers and on the relevant public bodies. Those specific powers and duties are likely to apply to a wide range of public bodies who provide services to children including local authorities, the Principal Reporter, the Lord Advocate. It would be appropriate for the Children’s Services Bill to introduce an overarching duty on Scottish Ministers in the exercise of all functions and specific powers and duties for public bodies.”*

Faculty of Advocates

#### **4. Are the proposed arrangements for reporting suitable?**

Although there was a split between the number of respondents who stated that they agreed or disagreed with the proposed reporting arrangements, there were a number of issues raised by consistently by both sides. These included the need for:

- Ongoing transparent, internal evaluation to be built in to the overall system
- Independent monitoring and evaluation of the Scottish Government's progress
- An action plan to remedy any identified gaps
- Views of children and young people to be considered and taken into account.

#### **5. Is it correct that the duty be extended to young persons under 21 who have been looked after?**

The majority of respondent supported the extension of the duty to young people under the age of 21 who have been looked after. However, some respondents raised a concern about extending the duty to those over the age of 18, when some of the UNCRC's provisions may be seen as incompatible with adulthood. Many respondents, although welcoming the extension, had reservations about singling out a particular group and called for the duty to be extended further to include other vulnerable groups of young people, include those with a disability, with mental health issues, young carers, asylum seekers and refugees and others.

#### **6. Are the proposals correct in terms of handling future amendments to the Convention or Optional Protocols?**

Of those who answered this question, the majority stated that more clarity was needed from the Scottish Government in what it meant by 'futureproofing' the Bill against subsequent changes to the UNCRC, Optional Protocols or UK Government Declarations

#### **7. Are there other provisions that should be made in the bill?**

As already mentioned, respondents made reference through their consultation responses to additional provisions that should be included in the bill. These include:

- Incorporating the UNCRC into Scots law
- Extending the duty to include public bodies
- Extending the duty to include UNCRC General Comments
- Including a clear process to evidence compliance with the UNCRC
- Strengthening the proposed reporting process

In addition, many respondents stated the need to:

- Provide a means of redress for children facing violations of their rights

- Include a duty to promote knowledge and understanding

### **Means of redress**

Concerns were raised by a number of organisations that children would have no means of redress if their rights were not upheld under the UNCRC. The proposed 'due regard' will not have an effect on judicial remedies and would not give a child facing a rights violation the opportunity to access redress through Scottish courts. 'Due regard' does allow for Judicial Review in relation to a failure to comply with the duty, this is a very cumbersome legal mechanism and not one which is easily accessible to children and young people due to its complexity and cost.

Respondents stated that the Scottish Government should provide an alternative child-friendly framework to legally establish a means of redress for children and young people away from the courts. Suggestions included Independent advocacy to enable children and young people to take complaints forward and the possibility of expanding the remit of Scotland's Commissioner for Children and Young People to allow for individual complaints.

### **Promote knowledge and understanding**

A number of respondents stated that the Scottish Government should consider introducing a duty to promote knowledge and understanding of the UNCRC. These respondents disagreed with the Scottish Government's position that this is not necessary given that SCCYP has a similar duty. The lack of a duty to promote public awareness makes the Scottish bill weaker than the Welsh measure. The Welsh Measure includes a duty for Ministers to *"...take such steps as are appropriate to promote knowledge and understanding ...of the Convention."*

Respondents stated that this duty is needed to ensure that the Scottish Government engages all sectors of society, from government officials, parliamentarians and the judiciary through to teachers, healthcare workers, the police and the media to ensure that the duty on Ministers is translated into practice in all work with and for children. It was also stated that the duty should include children and young people to ensure they are fully aware of the rights enshrined to them in the UNCRC.

## **8. Comments on implementation costs.**

Few respondents commented on implementation costs of the bill. Of those who did, they stated that they would be difficult to estimate until the final scope of the bill.

## **Annex 1: Respondents**

### 38 public bodies

19 local authorities	Aberdeen City Council, Integrated Children's Services Aberdeen City Council, Social Care and Wellbeing Children's Services Argyll and Bute Council City of Edinburgh Council Dundee City Council, Social Work Department East Dunbartonshire Council East Lothian Council East Refrewshire Council Glasgow City Council Midlothian Council North Lanarkshire Council Perth and Kinross Council, Education and Children's Services Renfrewshire Council Scottish Borders Council South Ayrshire Council, Children and Community South Lanarkshire Council Stirling Council West Dunbartonshire Council West Lothian Council
3 education	Association of Directors of Education in Scotland General Teaching Council for Scotland Scottish Council of Independent Schools
7 NHS authorities	NHS 24 NHS Greater Glasgow and Clyde NHS Health Scotland NHS Lanarkshire NHS Lothian, Women and Children's Services NHS National Services Scotland Royal Hospital for Sick Children - Glasgow
10 other	ACPOS Youth Issues Sub Group COSLA Highland Joint Committee on Children and Young People Scottish Courts Service Scottish Library and Information Council Scottish Social Services Council Skills Development Scotland Skills for Justice The Chartered Institute of Library and Information Professionals in Scotland University of Edinburgh

## 77 NGOs

- Aberlour Childcare Trust
- Action for Sick Children (Scotland)
- Amnesty International
- Article 12 in Scotland
- Barnardo's Scotland
- British Naturism
- Capability Scotland
- CARE for Scotland
- Catholic Education Commission
- Centre for Excellence for Looked after Children in Scotland - University of Strathclyde
- ChildLine in Scotland
- Children in Scotland
- Children's Hearings Scotland
- Children's Hospice Association Scotland
- Children's Parliament
- Church of Scotland
- CIRCLE
- Clan Childlaw
- Coalition of Care and Support Providers in Scotland
- Educational Institute of Scotland
- ENABLE Scotland
- Equality and Human Rights Commission Scotland - JH
- Evangelical Alliance Scotland
- Faculty of Advocates
- Families Need Fathers Scotland
- Families Outside
- Glasgow Housing Association
- Govan Law Centre
- Greenspace Scotland
- International Play Association: Promoting the Child's Right to Play
- Keys to Inclusion
- Kibble Education and Care Centre
- Long Term Conditions Alliance Scotland
- Midlothian Association of Play
- National Day Nurseries Association
- National Deaf Children's Society
- NSPCC Scotland
- Parenting across Scotland
- Play Scotland
- Quarriers
- Relationships Scotland
- Respect Me
- Rights of the Child UK Coalition
- Royal College of Nursing Scotland
- Royal Society for the Prevention of Accidents
- SACRO
- Save the Children
- Scotland's Commissioner for Children and Young People
- Scotland's Disabled Coalition
- Scottish Child Law Centre
- Scottish Children's Reporter Administration
- Scottish Children's Services Coalition
- Scottish Council for Single Homeless
- Scottish Independent Advocacy Alliance
- Scottish Marriage Care
- Scottish Out of School Care Network
- Scottish Parent Teacher Council
- Scottish Pre-School Play Association
- Scottish Wildlife Trust
- Scottish Women's Aid
- Scottish Youth Parliament
- Sense Scotland
- Shakti Women's Aid
- The Law Society of Scotland, Family Law Committee
- The Prince's Trust Scotland
- Together (Scottish Alliance for Children's Rights)
- Together for Short Lives
- UNICEF UK
- UNISON Scotland
- Urban Saints
- Victim Support Scotland
- Who Cares Scotland
- Young Scot
- Youth for Christ
- YouthLink Scotland
- Ypeople

## 2 individuals

Dr Alison McCallum, Director of Public Health and Public Policy, NHS Lothian  
Elaine E Sutherland, Professor of Child and Family Law, Stirling Law School