

Scottish Out of School Care Network



The Rights of Children and Young People Bill – consultation response

Background:

The Scottish Government is currently consulting on the above Bill, (Until 1 December 2011) which, together with the forthcoming Children's Services Bill, is intended to create a firmer policy framework around the UNCRC and services for children and young people. It is proposed that a law will be established that Scottish Ministers will have "due regard" to the principles and obligations in the UN Convention on the Rights of the Child, 1989, (UNCRC), through the Rights of Children and Young People Bill, and to embed (as yet undefined) further processes and obligations in relation to this, within the Children's Services Bill (this will have a forthcoming consultation).

The Scottish government aims for the Rights of Children and Young People legislation to lead to:

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

We are a member of "Together" (Scottish Alliance of Children's Rights), and we are grateful to them for the useful briefing notes and discussion events they have delivered in relation to the above Bill, which we are drawing on, in our response to the specific consultation questions below.

Our response will be made available on our website for out of school care providers and interested organisations to use or adapt, as they see fit, in their own responses.

The link to the Scottish government consultation: Closing date 1 December 2011:

<http://www.scotland.gov.uk/Publications/2011/09/07110058/0>

The link to Together; to access their briefing note:

<http://www.togetherscotland.org.uk>

~This page does not form part of our consultation response. SOSCN: 17th December 2011

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1. Introduction:

The Scottish Out of School Care Network (SOSCN) welcomes the opportunity to respond to the above consultation. SOSCN represents the 1,100 service providers of out of school care for up to 37,000 children in Scotland, as well as children who need access to such services now, and in the future. Out of school care includes breakfast clubs and all day care during school holidays and in service days, as well as after school care in term time. This is children's leisure time, therefore play opportunities, indoors and outdoors, free play and choice are integral to good quality services, which also promote children's health and wellbeing, and learning through play and social relationships.

Out of School Care services, by their very existence, support many of the provisions of the UNCRC, especially in terms of Article 31; children's rights to play and leisure opportunities. School age childcare especially supports Article 18; where states parties should support working parents, the informal learning opportunities provided also support children's education in terms of Articles 28 and 29, as well as, for many services, the inclusion of children with disabilities; in terms of Article 23. Overall, out of school care has a clear role in promoting the UNCRC, and ensuring that there is *provision* of services for children, *child protection*, *participation* of children in all aspects of their service, and supporting children's rights to *privacy*, in terms of how information is gathered and used about children in their care.

SOSCN has, for many years, promoted and embedded the provisions of the UN Convention on the Rights of the Child, 1989, (UNCRC), in our work. For example, in order to meet the standards of Aiming High Scotland, our quality assurance scheme for providers of school age childcare, all services must demonstrate their commitment to the UNCRC and provide evidence that children's views are sought and acted upon, in their service (Articles 12 and 13). We have also consulted children ourselves, in research work, and we promote the UNCRC, and the work of the SCCYP and Together, through our networks, events, training and publications.

We have also argued that the provision of high quality childcare, play and learning services should be based on a children's rights approach, (as well as the undoubted benefits to the family, community and economy in providing childcare for parents in work or training). In this respect, alongside many national and international children's organisations, we have led this approach by, for example, back in the 1990s inviting one of the first ombudsmen for children (from Norway) to Scotland, both to speak at our events and to meet politicians interested (then) in creating a similar post in Scotland.

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2. General comments

We understand that this proposed legislation will be strongly linked to the forthcoming Children's Services Bill, therefore some of the points we make here may, in fact, be more applicable to that Bill.

As an organisation which advocates the UNCRC, we see the need for a much stronger promotion of and backing of the UNCRC in the UK, and, in terms of this consultation, in Scotland. It is perhaps a missed opportunity to not be able to consider both proposed Bills together as, in order to interpret potential impact of the strengthened duties relating to the UNCRC on Ministers, we really need to see how this might be backed by specific statutory measures in the accompanying Children's Services Bill. Nevertheless, we welcome the fact that the Scottish Government is considering a strengthening of our country's support of the UNCRC and stronger recognition of the rights of children and young people.

As the second largest provider of childcare places for children in Scotland, the school age childcare sector is also one of the largest providers of play opportunities for children in their communities. Such care also complements their learning through play and leisure, outwith school hours, and such learning is recognised in the Curriculum for Excellence. Therefore, if we are taking a children's rights approach to all children's services; this must relate closely to ensuring that there is actual *provision* of services for children; in terms of their health, well being, protection, play, cultural and leisure activities, education and learning, across all ages of children and young people; and this should include school age childcare.

The provision of school age childcare is not supported by any statutory requirements locally or nationally, in Scotland, yet, we would argue at least, in terms of Articles 18 and 31 of the UNCRC, that it should be supported through legislative means. A small test of the proposed Bill, therefore, is to examine what difference it would really make to children of school age who need care and play services.

Under the proposed "due regard" in this paper, ministers with responsibility e.g.: for education, childcare, early years, social inclusion, employment strategies, possibly would have to pay attention to the provision of school age childcare, and the quality of such provision, including ensuring children's participation and protection. Yet, there would still not be any enforceable mandate to meet Articles 18 and 31 for children and families, who need the care and play opportunities that such services provide. Furthermore, by not extending even this "due regard" to public bodies, even when government ministers do use this opportunity to ensure such services are included, this is not then enforceable on a local level. This is, therefore, hardly likely to meet the aims of the UNCRC in supporting the rights of children to the play, care and learning needed for their positive development.

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While we fully support the outcomes proposed for the Bill, and welcome these positive moves in the right direction, we are concerned that the Bill does not go far enough, and that some of the perceived barriers to more stringent legislation could be tackled, and we will cover that in our answers to the set questions below. We are grateful to "Together" for their work in covering many of the more technical issues, which we are drawing on in our response below.

3. Consultation questions:

Proposal 1

Q1 Do you agree that legislation to embed the UNCRC within the Scottish Government's decision-making and day-to-day business is necessary and appropriate?

YES

Q2

Do you agree that "due regard" is the appropriate level of regard for the duty on the Scottish Ministers? If not, why not?

No.

We follow "Together" in recommending that the duty to comply with the UNCRC by Ministers (and others) should be embedded within Scots law and that Ministers (and others) should ensure that they "act compatibly" with the UNCRC.

We believe that "due regard" is a far too flexible concept; it does not go far enough in meeting, for example, Article 4 of the UNCRC, or the Concluding Observations on the UK of Great Britain and Northern Ireland (2008, 2002, cited in Together, 2011) or the (2007) recommendations, from the UN Committee on the Rights of the Child (CRC):

"44. The Committee recommends that State parties ensure that domestic adjudicating bodies are able to give full *justiciability* to economic, social and cultural rights of children, to ensure the full realization of these rights. {My emphasis}

45. State parties should ensure that judicial procedures are child-sensitive and child-friendly, and that accessible and independent legal advice is made available to children and their representatives through,



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inter alia, the Children's Ombudsperson or the National Human Rights Commission where appropriate. "(CRC Recommendations, 2007, p 12)

At the moment the proposal is that "judicial review" could be brought into the process in terms of deciding whether "due regard" has been made by Ministers, this however, reviews the methods not the outcomes, (Together, 2011) and is certainly not in the spirit of the above point 44 (CRC, 2007) recommendations for child sensitive, accessible legal advice.

The UNCRC is fairly strong on the best interests of the child *and the* rights to a family life and stresses the rights of children to be with their parents, except in circumstances where this would clearly not be in their best interests. This is hardly incompatible with other equality legislation relating to, for example, parental rights under the ECHR (Scottish Government, 2011) as in each case, there would be due consideration given to the balance of conflicting rights. In such a situation, if the right of the best interests of the child should take precedence, by embedding the UNCRC in Scots law, surely this is compatible with, for example, the Children Act 1995 and the ethos of our children's hearing systems, both uniquely Scottish legislation.

Q3 Do you agree that the duty should apply to all the functions of the Scottish Ministers? If not, why not?

Yes, and we also believe the duty to "act compatibly" or with "due regard" with the UNCRC (see Q.2) should be extended to all public bodies and services for children in order to address the inconsistent and fragmentary knowledge in terms of support for and implementation of the UNCRC across Scotland (Together, 2011).

We believe that if we can, in our work, ask small scale, usually third sector, often poorly funded, childcare organisations, to meet the UNCRC in their work, and to demonstrate how they do so, in our quality assurance, (SOSCN, 2007) then it is certainly not beyond the scope of much larger agencies and public bodies to do so, whatever their resources. Part of what we ask these small scale school age childcare providers to do is to ensure that the UNCRC is promoted to the children in their care, their staff team and parents (Article 42), also in ensuring children's rights to play (Article 31), their views are included (Articles 12 and 13) as well as wider remits to child protection and supporting parents in family life.

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Proposal 2

Q. 4 Do you agree with the proposed arrangements for reporting?

The UK and Scottish Governments are already on a five year cycle for reporting on the implementation of the UNCRC to the CRC, therefore we assume that this proposal is intended to align feedback on the outcomes of this Bill, with that process.

Given that this Bill, and the proposed and aligned Children's Services Bill, are new processes, which inevitably may require adjusting and fine tuning, and that these are very specific outcome based proposals; perhaps building in processes of at least bi-annual evaluation, within the first ten years, may be required.

If the process remains at the level of "due regard" it is essential that there is clarity and transparency in how Ministers, and their advisors, interpret this requirement in order to ensure consistency and indeed ongoing application of the measures in the Bill. Built into such ongoing evaluation should be the steps which will be taken to ensure compliance and consistency, should this not be forthcoming. There should be ongoing transparent, internal evaluation built in to the overall system and invited external evaluation every second or third year.

Once again, we strongly recommend that it is not only Ministers, but other public bodies and children's services, which should follow the recommendations in this Bill, and the reporting and evaluation processes outlined above, should also apply to this wider group.

Proposal 3

Q5 Do you agree with the extension of the duty in respect of UNCRC to young persons aged under 21 who have been looked after?

Yes. This is in line with SCCYP duties. Young adults with complex physical disabilities and/ or learning difficulties may also benefit from an extension of the age range to 21, unless their needs would be better catered for under equality and human rights legislation.

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Proposal 4

Q6 Do you agree with the proposals for handling future amendments to the Convention or Protocols or new Protocols?

In our understanding of the UNCRC the various recommendations set out by the CRC are intended to help clarify themes and understanding of the UNCRC and are therefore an integral part of the process of abiding with the UNCRC, therefore, we do not see why the Bill cannot include compliance with existing as well as potential future recommendations or Protocols.

We see that the argument against doing so, is based on not wanting to put into Scots law, an adherence to potential future protocols that we have not had a role in creating. Perhaps a way to deal with this (from a layperson viewpoint, not a legal or international treaty expert view here), would be to include adherence to current recommendations and Protocols with an “opt out” proviso for any new Protocols. This would safeguard against the adoption of a Protocol against Scots law or interests.

We understand the need for “future-proofing” but we are not clear, from the proposals, on how this really will be achieved.

Other Matters:

Q7 Is there other provision which should be made in the Bill? (See section 3.3 which sets out what the Bill would not do.)

In our response to earlier questions we have set out why we believe that there should be a stronger requirement than “due regard” to the UNCRC, such as to “act compatibly” with the UNCRC, and this could be included in Scots law. We have also set out why we believe such duties should not just be for Scottish government Ministers, but for all agencies and organisations with duties towards children. Also we do not see that recommendations and Protocols should not be included, but that there could be an “opt out” clause to address issues of incompatibility with Scots Law or other priorities.

Compliance with Article 42 is not included in the Bill, yet it is one of the core principles of the UNCRC to ensure that the UNCRC, in itself, is widely promoted. While the work of the SCCYP goes some way towards this, government departments, Ministers, public bodies and organisations, especially using electronic communication, could ensure ongoing promotion of the UNCRC, as a matter of course, in their work relating to children and young people.

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Q8 Do you have any comments on implementation costs or how they should be estimated?

We do realise that the stronger and wider measures we recommend would likely add to the costs of implementation. In terms of the 2007 recommendations, the CRC made it quite clear that resources should be directed towards the realisation of at least the core rights of children in terms of the UNCRC (CRC, 2007).

In our own experience of resources, mentoring and training in relation to UNCRC awareness and implementation, UNCRC compliance is often about changing attitudes and behaviour towards children and young people, not large or expensive projects. Like many services for children, investment now in, for example, ensuring their play and care needs are met, is also an investment which is well repaid in the future, as well as improving the quality of children's lives in the present and in meeting the true spirit of the UNCRC.

Q9 Do you have any other comments?

We are pleased that the Scottish Government is taking steps to move more closely towards embedding the UNCRC in our domestic law and governing processes. We would prefer to see a bigger leap towards this and we recommend stronger measures; nevertheless, we are glad the process is underway.

We would have preferred to have considered, at the same time, the forthcoming Children's Services Bill; as we see that there are interlocking themes and issues. We look forward to the consultation process for this forthcoming Bill.

The Rights of Children and Young People are integral to our work and the purpose of our organisation in supporting the development of high quality out of school care in Scotland. We believe the UNCRC should be integral to any level of children's services, from international to national and local levels, across professions and activities. We therefore support this Bill, even if we want it to go further than proposed.

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References:

Committee on the Rights of the Child (2007), *Recommendations; Day of general discussion on "Resources for the Rights of the Child – Responsibility of States"*, UN, available at:
<http://www2.ohchr.org/english/bodies/crc/docs/discussion/recommendations2007.doc>

Scottish Government (2011), Consultation on the *Rights of Children and Young People Bill*, available at: <http://www.scotland.gov.uk/Publications/2011/09/07110058/5>

Scottish Out of School Care Network (2007), *Aiming High Scotland, Quality Assurance Workbook* (2nd Edition), SOSCN, Glasgow

Together (2011), *Together Briefing, Rights of Children and Young People Bill*, available at:
<http://www.togetherscotland.org.uk/pdfs/Rights%20of%20CYP%20bill%20briefing%20-%20October%202011>

United Nations (1989), *UN Convention on the Rights of the Child*, available at:
<http://www2.ohchr.org/english/law/crc.htm>

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RESPONDENT INFORMATION

Irene Audain - responding on behalf of:

The Scottish Out of School Care Network – address and contact details at foot of page

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The Scottish Out of School Care Network is a national charitable voluntary organisation supporting childcare, play and learning for children of school age.

Category: "other" – childcare.

I agree to our response being available to the public and to be contacted for further information if required.

Irene Audain, 17th November 2011