



Scottish Government Consultation on
The Rights of Children and Young People Bill
Written Submission from CCPS

About CCPS

CCPS is the coalition of care and support providers in Scotland. Its membership comprises 70 of the most substantial third sector providers of care and support, supporting approximately 270,000 people and their families, employing over 45,000 staff, and managing a combined total annual income in 2009-2010 of over £1.2 billion, of which an average of 73% per member organisation relates to publicly funded service provision.

Within its governance structure, CCPS convenes a committee on the care and support of children and young people: the committee oversees the work of CCPS in this area and its combined membership:

- supports more than 150,000 children, young people and families in Scotland
- manages a combined total income in Scotland of over £160 million (£161,425,803)
- employs 5,800 staff.

Services provided cover the range of services to children, young people and families including early years provision; family and parenting support; residential child care and other support for looked after children; support for children and young people who have experienced abuse and neglect; support for disabled children and young people and their families; young people with mental health problems; and services for young offenders.

Our locus in relation to the present consultation stems directly from this major role in providing support to children and their families in Scotland.

Introduction and Key Messages

CCPS members very much welcome this initiative by the Scottish Government to further embed the principles of the United Nations Convention on the Rights of the Child (UNCRC) into the policy and practice of the Scottish Government. The Rights of Children and

Young People bill (the 'Bill') provides a very good opportunity to raise awareness among MSPs of children's rights and a platform on which children's rights are formally considered in the operations of all departments of government. In particular, we welcome the establishment of a rights based approach in preparation for the development of the Children's Services Bill, scheduled to begin the process of consultation in the winter of 2012.

In respect of the specific questions raised in the consultation, we have provided some detailed comment below. To summarise:

- there is wide support among our members for the eventual incorporation of the UNCRC into Scottish law. However, in recognition of the range of issues full incorporation implies, we suggest a staged process that would allow for public authorities and civil society to resolve these issues and carefully plan for full incorporation within an agreed timeframe.
- there need to be clear mechanisms for compliance, monitoring and evaluation on the face of the Bill.
- the extension of age is supported by many of our members but we recognise there may need to be some further thought on how this would work in practice, as well as detailed consideration of this issue in the Children's Services Bill.
- the promotion of awareness of the UNCRC is critical to the success of this Bill and requires greater commitment from Scottish Government, as well as further detailed provisions in the Children's Services Bill.

Responses to specific questions

Q1 – Do you agree legislation is necessary and appropriate?

Yes. As noted above, we welcome the move by the Scottish Government to bring the principles of the UNCRC closer to the heart of government policy and practice. We see this Bill as a stage on the journey towards the goal of ensuring the rights of children across Scotland, as set out in the UNCRC, are respected and protected at every level of government decision-making in ways that will make a positive and practical difference to children's well-being.

We support the goal of full incorporation of the UNCRC into Scottish law, in keeping with the recommendations of the UN Committee on Children's Rights. In recognition of the range of issues this raises, we suggest that this is achieved in stages. To that end, we would like to see a provision in the Bill whereby the Scottish Government commits to incorporation within a specific period of time. The

process of full incorporation could coincide with the next review and report to the UN Children's Committee. This would allow sufficient time to consider and plan for the practical implications of full incorporation.

Q2 – Do you agree that 'due regard' is the appropriate level for duty on Scottish Ministers?

As noted above, we support the goals of this Bill and welcome the introduction of a duty on Scottish Ministers. We echo the concerns of many who have questioned the impact of a duty of due regard and the extent to which it may limit the practical means of redress for children and young people whose rights have been violated. One proposed solution would be to strengthen the level of regard by replacing 'due regard' with a more comprehensive duty. This could also be considered as an option at the 5 year review stage. What is important is that there is a practical and accessible form of redress for children and young people in the event of a failure by Scottish Ministers in their duty regarding the UNCRC.

In keeping with our view on incorporation as noted above, we suggest that rather than debating the level of duty at this time, the Scottish Government should commit to the goal of full incorporation within an agreed timeframe, accompanied by a clear plan for what needs to be done in preparation.

In addition, while the nature of the duty on Scottish Ministers is a fundamental element of the Bill, of equal importance is the need for proper scrutiny and monitoring of compliance with the duty. There must be a clear mechanism for holding Scottish Ministers to account regarding their duties under the Bill. We comment further on this in response to Q5 below.

Q3 – Do you agree that the duty should apply to all the functions of the Scottish Ministers?

Yes. The application of the duty to all the functions of Scottish Ministers is welcome. It recognises the fact that children's issues arise and are relevant across the full spectrum of government responsibilities and departments.

There is however concern that it does not apply to many public bodies, including local authorities and health boards, which have responsibility for much of the day to day service provision for children and young people, or those public bodies that have a

significant impact on well-being because of other circumstances (e.g. the Scottish Prison Service).

We believe that further work needs to be done to fully understand the implications of extending the scope of the Bill more widely and suggest that forms a key part of the process leading to full incorporation.

Q4 Do you agree with the proposed arrangements for reporting?

No. We consider that a 5 year reporting cycle is too long to be an effective mechanism for accountability.

There are two issues here. One is that there needs to be transparency about how the Scottish Government will comply with the duty. The other is that there needs to be a mechanism for monitoring and evaluating that compliance. Both these elements should be on the face of the Bill.

In terms of the compliance mechanism, we support the approach taken in the Welsh Measure to set out on the face of the Bill the specifics of how this is going to work, including a process of child impact assessment. We strongly urge the Scottish Government to consider a similar method. We also strongly support the inclusion of an independent monitoring mechanism that includes a wide range of stakeholders, including children and young people and the voluntary sector.

We suggest that instead of a 5 year reporting cycle, there should be an annual reporting mechanism. This annual report should provide details of how the duty has been complied with and in particular what difference that compliance has made, including specifically the links with better outcomes for children and young people. This report should be presented to the Scottish Parliament, via the relevant parliamentary committee. The committee should then ideally have an opportunity to take evidence on the content of the report.

Separate to the proposed annual reporting, the Scottish Government has an existing duty to report to the UN, not just on the duty of Scottish Ministers but across the whole of Scotland, in relation to implementation of the UNCRC. This should not be conflated with any annual reporting requirement to the Scottish Parliament, not least because it is a broader obligation to report on behalf of all of Scotland.

Q5 Do you agree with the extension of the duty to looked after children under age 21?

Our members have a range of views on this proposal. However, common to most is the view that consideration would need to be given to whether other vulnerable groups should also be included in this extension. This will require careful planning were it applied across all public bodies.

We suggest that one solution could be for the eventual full incorporation of the UNCRC to apply to children as defined in the Convention (i.e. below the age of 18). In addition, this would be complemented with a further duty placed on public bodies to have due regard to the Convention, applicable to specified groups of young people aged 18 to 21 (or even beyond), including looked after children and other identified vulnerable groups. Scottish Ministers and other public bodies would then have a level of flexibility necessary to consider what is appropriate for the particular circumstances/context of each group in that extremely important transition period.

Whatever is decided in relation to the Rights Bill, we believe this issue is going to require further detailed development in the Children's Services Bill.

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

There is no detail in the consultation paper on this point. However, the approach taken by the Welsh Measure appears to provide adequately for any future amendments to the UNCRC and its protocols. We suggest the Scottish Government adopts the terms of the Welsh Measure, where appropriate.

Q7 Is there other provision which should be made in the Bill?

We note the Welsh Measure includes a duty on Welsh Ministers to promote knowledge and understanding of the UNCRC. We also note the similar statutory duty placed on the Scottish Commissioner for Children and Young People. However, we do support the view expressed in the Together submission that there remain significant gaps in awareness, particularly within the public sector (local

authorities, health boards and other civil servants) and the public in general. If the Scottish Government wants this Bill to have any practice effect, it must commit to increase knowledge and understanding of the Convention.

We accept that there is a collective responsibility on all those working to promote the welfare of children and young people to raise awareness of the Convention. However, we believe there is an opportunity here for the Scottish Government to demonstrate its commitment to the Bill by including a duty to promote awareness.

In addition, there is opportunity for the Scottish Government to raise awareness and make the links with a range of existing initiatives including programmes like GIRFEC, the Early Years framework, the Curriculum for Excellence, and the wider context of work with children and young people at different levels of government.

For example, we understand that in Wales the government undertook a training programme for civil servants. We urge the Scottish Government to consider what additional measures could be taken to encourage greater understanding and support the huge cultural shift required to bring practical effect to the principles of the UNCRC. These measures need to target not only civil servants but existing service users, carers and parents and need to be collaborative in nature, supporting existing and new partnership work with the different statutory agencies, the two human rights commissions, the voluntary sector, as well as parliamentary committees.

Finally, this will also be a key element of the Children's Services Bill, where a range of more detailed proposals can be developed, based on the overarching principle (and duty) set out in the Rights Bill.

Q8 Have any comments on implementation costs or how they should be estimated?

N/A

Q9 Any other comments?

We recognise the importance of considering this Bill in the light of the whole range of issues affecting children and young people. We particularly welcome the intention of the Scottish Government that this Bill sets the guiding principles that will inform the Children's Services Bill. While there is little indication of the specific content of

the Services Bill at this time, it is vital that there is a continuum of principles between the two.

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