

Consultation on Rights of Children and Young People Bill

Scottish Government Response

The Scottish Government Response To The Consultation on Rights of Children and Young People Bill

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Acknowledgements

The Scottish Government would like to thank the organisations and individuals who provided written submissions in response to the consultation. We would also like to thank the participants and those involved in the organisation of the engagement events during the consultation period. In particular we welcome the contributions from Young Scot, the Children’s Parliament and Scottish Youth Parliament who were instrumental in consulting with children and young people.

1. Executive Summary

The Scottish Government is committed to bringing forward legislation which strengthens how we support children and young people, placing their rights at the heart of what we do. The consultation which we undertook on the rights of children and young people legislation towards the end of last year was the first step in achieving this.

The consultation responses clearly identified an appetite for the rights of children and young people to be placed on the legislative agenda and form part of a comprehensive approach that focuses not simply on obligations under the United Nations Convention on the Rights of the Child (UNCRC) but on how services can give practical effect to them.

A wide range of organisations and individuals responded to the consultation and a wealth of constructive comments and suggestions were provided through that process. A number of important issues were raised which require further detailed consideration.

Some of the key messages raised by respondents include:

- A view that there should be clear linkage of any legislative proposals to the practical implementation of the rights of children and young people;
- The importance of considering whether duties ought to be placed on other public bodies in addition to Scottish Ministers;
- A need to ensure that any redress system would be suitably accessible for children and young people;
- The importance of considering other duties, particularly around awareness raising;
- A feeling that more frequent reporting on the rights of children and young people would be useful.

It is clear that what is needed is an integrated approach to embedding the rights of children and young people. How this can be delivered – and the appropriate level of duties that should apply across the public sector – requires further exploration in cooperation with service deliverers and users alike.

Therefore, the Scottish Government feels that it would be sensible to secure and reinforce delivery of the rights of children and young people as part of a single integrated Children and Young People Bill that will also include measures to improve children's services, rather than in separate legislation. The Children and Young People Bill will be introduced to Parliament next year, paving the way for fundamental reforms to the ways in which children and their families are supported through, for example, embedding key elements of the Government's Getting it Right for Every Child (GIRFEC) approach in law.

2. Introduction

The Scottish Government believes that every child and young person in Scotland is unique and deserves the best start in life. As such, we are committed to making Scotland the best place in the world for children and young people to grow up.

In order to accomplish that we must make sure that the best interests of children and young people are a primary consideration when we are developing policies and approaches, and that they are listened to whenever decisions, which may affect them, are being taken.

Accordingly, we have already taken forward a broad range of activity over the last four years to implement the UNCRC, acting to ensure that children's rights are recognised, respected and promoted throughout Scotland. In doing so we recognise the importance of ensuring that children and young people themselves understand, and are able to exercise, their rights.

In addition to the plethora of activity currently underway to implement the UNCRC and strengthen children and young people's rights in Scotland, the Scottish Government announced its intention to develop proposals for Rights of Children and Young People legislation.

Placing the UNCRC on a statutory basis will underpin existing progress and go further, by ensuring that the development of all Scottish policy and legislation takes proper account of the rights of children and young people. Legislation will set out a clear commitment to recognising and respecting children and young people's rights in Scotland and will introduce new mechanisms for ensuring that those rights are properly reflected in both the work of Government and public policy more generally.

Proposals for a Rights of Children and Young People Bill underwent a formal public consultation in the last quarter of 2011. This report sets out the Scottish Government's response to the consultation by:

- briefly setting out the original proposals and context of the consultation paper, as well as the wider consultation/engagement activities that were conducted;
- providing an overview of the responses to the consultation;
- summarising the responses and provides an analysis of the key issues emerging; and
- setting out what the Scottish Government intends to do with its original proposals in response to the consultation.

A Rights of Children and Young People Bill consultation document was published on 8 September 2011 on the Scottish Government website at:
<http://www.scotland.gov.uk/Consultations/Closed/Q/page/1>

The consultation closed on 1 December 2011 and the full set of responses were published on 1 February 2012. These can be found here:

<http://www.scotland.gov.uk/Publications/2012/02/8619/downloads>

The consultation paper was divided in to four chapters along with two annexes. A separate response booklet sets out some specific questions which invited views on

each of the seven questions and also sought general comments on any of the other related issues and suggestions for consideration.

General Background

The proposals to advance the rights of children and young people proceeded from the long-standing commitment by the Scottish Government to implement the UNCRC. The UNCRC is the core international statement of children's rights. Adopted by the General Assembly of the United Nations in 1989, the UNCRC spells out the basic human rights of children up to the age of 18 everywhere. It consists of 54 Articles which encompass the civil, political, economic, social and cultural rights of children and young people. The UK ratified the UNCRC in 1991 and consequently, Scotland is bound in international law by its terms.

The Scottish Government's approach to children's rights is already firmly based on the UNCRC. The proposed legislation aims to ensure that all Scottish Government policy and legislation takes account of the rights of children and be framed in such a way as to promote and secure those rights. Four objectives of the proposed Bill were set out in the consultation paper:

- **Increase the prominence of the UNCRC.** While the principles of the UNCRC featured in domestic legislation for some time, the Convention itself did not currently have a place in Scots law. The Bill would address this point by ensuring that sufficient recognition would be given to the UNCRC (and its Optional Protocols) in the development of all domestic legislation and national policy in the future.
- **Provide greater consistency and clarity.** The Bill would clearly set out what would be expected of Scottish Ministers in terms of complying with the UNCRC. It would achieve this by identifying what Ministers must consider in respect of the Convention when exercising any of their functions.
- **Improve transparency and parliamentary scrutiny.** The Bill would make Scottish Ministers directly accountable to both the Parliament and the people of Scotland for their approach to implementing the UNCRC, by introducing a duty on Ministers to publish periodic reports on compliance with these duties for the Scottish Parliament.
- **Increase accountability to the Scottish people.** The Bill would establish a clear accountability of the Scottish Ministers to the Scottish people to respect and take account of the rights of children and young people as set out in the UNCRC.

The consultation paper outlined the following key proposals:

- a duty would be placed on Scottish Ministers to have due regard to the UNCRC and Optional Protocols in the exercise of any of their functions;
- a duty would be placed on the Scottish Government to report on implementation of the due regard duty every five years to Parliament;
- the due regard duty would apply to all children up the age of 18 and be extended to young persons aged under 21 who have been looked after; and

- the Bill would be future-proofed against changes to the UNCRC and Protocols.

Overview of Respondents

Stakeholder engagement events were held in Dundee, Edinburgh, Glasgow and Inverness during the consultation period with over 500 people in attendance and a good mix of organisations represented. Stakeholders from a diverse range of backgrounds responded to the consultation. A total of 123 responses were received from the following sectors and types of group.

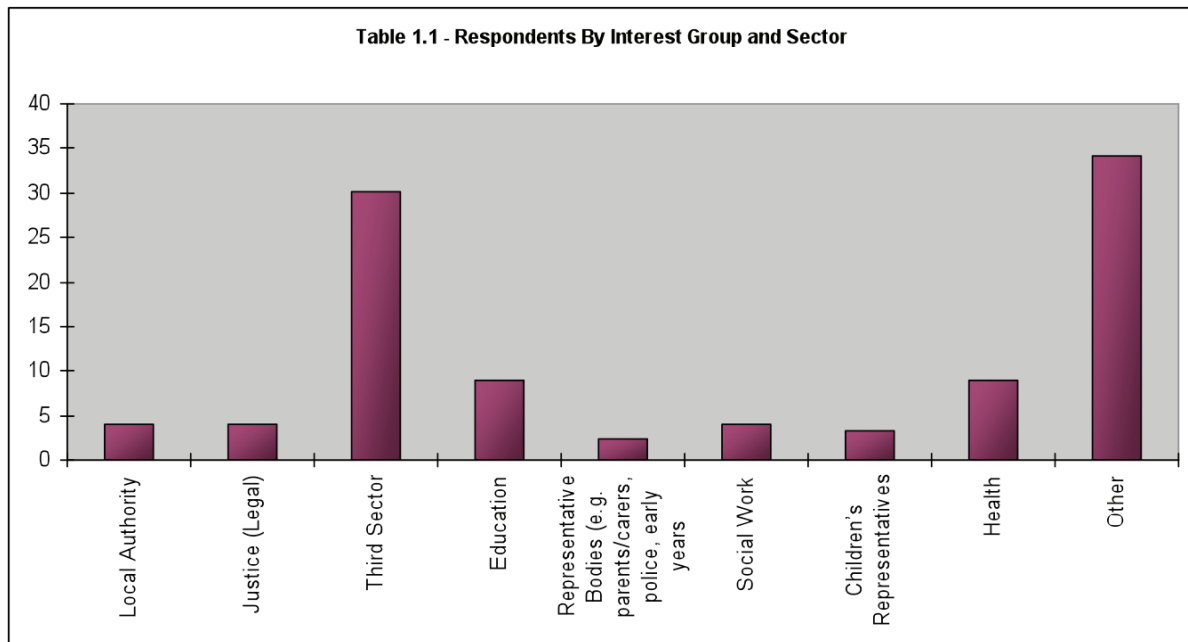


Table 1.2 – Complete List of Responses Categorised by Interest Group, Sector and by Percentage of the Number Received

Interest Group/Sector	Responded	Percent
Local Authority	5	4.07
Justice (Legal)	5	4.07
Third Sector	37	30.08
Education	11	8.94
Representative Bodies (e.g. parents/carers, police, early years organisations)	3	2.44
Social Work	5	4.06
Children's Representatives	4	3.25
Health	11	8.94
Other	42	34.15
Total	123	100%

The majority of respondents came from the 'other' sector as well as the third sector, showing the diverse range of interest in the issues set out in the proposals.

In addition, engagement on the Bill extended beyond the formal written consultation. A series of engagement events were held by the Scottish Government in September and October 2011 with stakeholders on the issues raised by Bill, taking place in Dundee, Edinburgh, Glasgow and Inverness. Feedback from the events can be found on the Scottish Government website at:

<http://www.scotland.gov.uk/Topics/People/Young-People/legislation/engagement-events/rights-bill>

During the events, voting occurred on a series of key questions with the following results:

- Should steps be taken to ensure that the UNCRC is appropriately reflected in the work of Government? **70% strongly agreed.**
- Is a due regard duty the best way to achieve this? **52% agreed, but 46% felt that this duty did not go far enough.**
- Is five-year timeframe for the submission of reports to Parliament correct? **61% felt that this was not sufficient.**
- Should the legislation extend to cover those up to the age of 21 who have previously been looked after? **67% agreed.**
- Should there be a duty to ensure that the child's views are heard in decisions made about them? **82% strongly agreed.**

Lastly, the Scottish Children's Parliament, Young Scot and the Scottish Youth Parliament conducted consultation with a selection of children and young people. All non-confidential responses have been published on the Scottish Government website at: <http://www.scotland.gov.uk/Publications/2012/02/8619/downloads>. The following comments highlight the views in response to the different issues.

In the Children's Parliament's response, children said that Ministers need to understand children's human rights so they make the best decisions for children:

- *"Ministers need to understand children's emotions and problems."*
- *"They need to make sure all policies are good for children."*
- *"A Minister needs to know that when they make a decision about anything he or she has to have your best interests at heart (your rights)."*
- *"The First Minister needs to know them and be able to refer to the children's rights."*

Through Young Scot's response, 44% of children and young people respondents felt that the Scottish Government should go beyond its current proposals and fully incorporate the UNCRC into law. However, there was still a significant number (40%) who thought that due regard was the appropriate level for Scottish Ministers to have in relation to the UNCRC.

In the Scottish Youth Parliament's response, there was a virtually unanimous consensus that more needed to be done to communicate the proposals to young people in a clear, concise and legible way. Moreover, the Scottish Youth Parliament recommended that the Rights of Children and Young People Bill fully incorporate the UNCRC into law, with its scope extended to cover other public bodies.

3. Responses to Consultation Questions

The consultation paper was divided in to four chapters as follows:

- Chapter 1 – Introduction
- Chapter 2 – UNCRC
- Chapter 3 – Rights of Children and Young People Bill
- Chapter 4 – Conclusions.

Questions 1 to 6 related to the four legislative proposals contained in the consultation whilst questions 7 to 9 referred to other matters. We have set out below the key findings based on the responses received to each of the nine questions in the consultation paper along with examples of quotations from respondents.

This report analyses the consultation responses according to the questions asked. We have included a qualitative analysis of the responses and supplemented this with quantitative data where appropriate. Many of the specific questions could be answered as ‘yes’ or ‘no’ but in many cases organisations gave a more detailed or indeed a qualified response, and set out the reasoning behind this. The analysis report attempts to capture these contributions.

Question 1: Is legislation necessary and appropriate?

- 111 (90.24%) respondents agreed with the proposal to introduce legislation to embed the UNCRC within the Scottish Government’s decision-making and day-to-day business.
- There were nine (7.32%) respondents who disagreed with the need to legislate.
- Three respondents (2.44%) did not comment.
- 35 of the 111 respondents who were in favour also felt that the legislation did not go far enough and there was a recurring view that the UNCRC should be incorporated into Scots domestic law.

There was strong agreement amongst respondents that the proposal to introduce legislation to embed the UNCRC within the Scottish Government’s decision-making and day-to-day business is necessary and appropriate.

- “We commend the Scottish Government’s decision to bring forward legislation which seeks to respect and recognise children’s and young people’s rights by increasing the prominence of the UNCRC in Scotland.” – **YouthLink Scotland**.
- “ENABLE Scotland welcomes the Scottish Government’s commitment to children’s rights and agrees that it is necessary for a rights-based approach to decision-making to be put on a statutory footing within the Scottish Government.” – **ENABLE Scotland**.

- “We agree and welcome this step and see it as a step in the right direction by the Scottish Government.” – ***Glasgow City Council Social Work Services.***
- “We are strongly in favour of the proposed legislation.” – ***NHS Lanarkshire.***

However, nearly a third of those in favour of legislation also believed that the proposals did not go far enough and several suggested that the UNCRC should be fully incorporated into Scots domestic law. Incorporation would entail the Articles of the UNCRC being more explicitly adopted into law.

- “It is important in this context to recall that the reasons for creating the UNCRC as a specific set of human rights that applies only to children were their relative immaturity that stems from their age and stage of development, their dependence on adults to meet their needs and protect their rights, and their relative lack of social, economic and political power. It is my view that the proposed legislation would do little to close the gap that exists in terms of accessible and effective remedies for violations of individual children and young people’s rights in Scotland, and this will remain outstanding with the passage of the proposed bill.” – ***Scottish Commissioner for Children and Young People.***

Some respondents commented that there should be plans for ensuring adequate integration of the proposed Rights of Children and Young People Bill and the forthcoming Children’s Services Bill that will ensure there would be no gaps in the provision.

- “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.” – ***The Scottish Out of School Care Network.***
- “We welcome that the Government’s intention is that the Bill will set the guiding principle for the future Children’s Services Bill. However at present the detail of the future Bill is unclear... [What is] crucial to the success of the Bill is consistency between the two.” – ***Who Cares? Scotland.***

There was occasionally a view that the legislation was unnecessary and there would be no meaningful change in the obligations of the Scottish Government.

- “We do not agree that legislation to embed the UNCRC is necessary and appropriate. The UNCRC has been signed and ratified by the Government. The United Kingdom is bound in international law to comply with the UNCRC.” – ***Faculty of Advocates.***

- “We have doubts, however, that the legislation in its presently proposed form will add as much practical value as is desirable to upholding and enhancing the rights of children and young people – or to achieving more positive outcomes for them” – ***Children in Scotland***.

Question 2: Is due regard an appropriate level of regard for the duty on Scottish Ministers?

- Opinion was split relatively equally between respondents who felt that due regard was an appropriate level of duty on Scottish Ministers (56, or 45.5%) and those who did not.
- 32 of the 56 respondents who were in agreement with the level of duty qualified their opinion with a further comment. For example, some welcomed due regard but were concerned that this duty fell short of a mechanism to ensure compliance with the UNCRC.
- 11 (9%) respondents had no comment to make.

Opinion was split on the issue of legislating for due regard. While many responses felt that it was the right level of ‘regard’, others questioned how it would work in practice. For example, a judicial review would ensure accountability, but not what should happen if Ministers were found to be non-compliant with the duty.

- “We agree that due regard as defined in the document would appear to be an appropriate level of regard.” – ***Aberdeen City Council***.
- “This leaves flexibility in weighing up the circumstances of each case.” – ***NHS National Services Scotland***.
- “The rationale presented for due regard is convincing.” – ***The General Teaching Council for Scotland***.
- “The term due regard is so vague as to be virtually meaningless, albeit, it is found in other legislation.” – ***Stirling Law School***.
- “Quarriers believes that the term due regard is ambiguous and needs clarification, particularly in how this will be demonstrated.” – ***Quarriers***.

There were recurring remarks that due regard did not carry sufficient weight, was not a strong enough measure and did not go far enough or ensure full compliance with UNCRC. Other responses included a suggestion that there needed to be more clarity around who would instigate legal proceedings.

- “Scottish Ministers having to have due regard offers little protection to a child or young person, or their representative if they wished to seek redress through Scottish courts.” – ***Sense Scotland***.

There were also comments about how the introduction of a duty on Scottish Ministers to have “due regard to the UNCRC in the exercise of their functions” would be implemented practically, ensuring a consistent application of children's rights across Scotland.

- “The consultation paper does not elaborate on the possible ramifications of any finding from judicial review that a Minister has not had “due regard” to any particular article of the UNCRC. It would be beneficial to have some clarity around the impact of implementing Government policy and the possible wider implications for Public Authorities, should such a successful challenge arise... The definition of due regard and the possible further consequences need to be clarified.” – **ACPOS Youth Issues Sub Group**.

Question 3: Should the duty apply to all functions of Scottish Ministers?

- 108 (88%) respondents held a view that the duty should apply to all functions.
- 38 of the 108 (35%) suggested that the duty should apply beyond Scottish Ministers and across the whole of the Scottish public sector.
- 15 (12%) had no comment to make.

There was very strong support for the duty applying to all the functions of Scottish Ministers. However, several respondents were also of the view that the Scottish Government should reconsider the scope of the proposed duty, with a view to placing the same duty on other public bodies, such as Local Authorities and Health Boards.

- “Save the Children believes that the duty must apply to all the functions of the Scottish Ministers if it is to have the weight to have a positive impact on the lives of children.” – **Save the Children**.
- “Given the centrality of children and young people’s rights to a wide range of public authority functions including the delivery of care, protection, education and health services, the Commission would encourage Government to consider extending the proposed duty on Ministers to all public authorities.” – **Equality and Human Rights Commission Scotland**.
- “The new legislation should apply to all functions of Scottish Ministers, and be extended to public bodies including Local Authorities.” – **Play Scotland**.
- “We feel that the Government should keep matters under review as regards whether the duty could be rolled out across the rest of the public sector at a later date.” – **Scottish Children’s Reporter Administration**.
- “The children identified a number of adults and agencies whose interactions with children must also be guided by Scotland’s commitment to the UNCRC and children’s human rights. This would suggest that public agencies, as the providers of Government funded programmes/services and so responsible for making Government policy real, should also be included in a Children and Young People’s Rights Bill.” – **Children’s Parliament**.

Despite these remarks, the views of those on whom such a duty might apply did not concur with the need to extend the duty.

- “We understand that the pressure on the legislative programme timetable limits the opportunity for such an extension to be fully considered and debated. We strongly believe that any extension of the duty of due regard does require fuller time for discussion.” – **COSLA**.

Moreover, it was not clear among all respondents that Ministerial functions should be covered by the due regard duty without further consideration.

- “An example where the complex inter-relationships between policy, procedure and practice may be challenged through the proposed legislation. an adult is defined in Scots Law as 16 years of age and over. Within the Summary Justice Reform framework this allows Antisocial Fixed Penalty Notices to be administered, where appropriate, for the agreed designated offences. It is possible therefore against this backdrop to consider a scenario where a 16 year old being issued with such a penalty, seeks to challenge its administration under the proposed Bill, by arguing that they should be treated as a child and be channelled through the diversionary route associated with Early and Effective Intervention. Whilst such a ruling would only apply to Ministers, under the proposal within the Bill, it is less clear what the possible ramifications on Public Authorities would be in practice.” – **ACPOS Youth Issues Sub Group**

Question 4: Do you agree with the proposed arrangements for reporting (i.e. to report on implementation every five years)?

- 56 (46%) respondents felt that the proposed reporting cycle was too long.
- 51 (41%) agreed with the arrangements set out in the consultation paper.
- 8 (15.7%) of these made alternative suggestions to the reporting timeframe.
- 16 (13%) did not have any comments.

More than half of the respondents felt that the proposed time frame of five years for reporting would be too long and preferred more frequent reporting, potentially once in every term of government.

- “Current proposals for reporting on the observance of the UNCRC and optional protocols every 5 years are inadequate. With a 5 year gap between reports, a whole parliamentary term could have elapsed with administrations being returned to government and then voted out of office without ever having had to account for their record on children’s rights.” – **Aberlour Child Care Trust**.
- “We consider that a 5 year reporting cycle is too long to be an effective mechanism for accountability.” – **Coalition of Care and Support Providers in Scotland**.
- “Although it is positive that a five-year reporting cycle would link to the UN periodic reporting process, five years is too long to enable the Scottish

Government to properly assess the impact of the Bill.” – ***Rights of the Child UK.***

- “The proposed reporting arrangements will not add anything substantial that will help to evidence the Scottish Government’s compliance with the UNCRC. The five year reporting cycle is too long to properly assess the impact of the Bill.” – ***For Scotland’s Disabled Children Coalition.***

The remainder of respondents were broadly content for the reporting cycle to align with the five-yearly reports to the UN Committee on the Rights of the Child.

- “A 5-year reporting cycle appears reasonable.” – ***Scottish Parent Teacher Council.***
- “It would seem appropriate that the timeframe for reporting should align with the 5 yearly reports to the UN Committee on the Rights of the Child.” – ***West Dunbartonshire Council.***

Question 5: Do you agree with the extension of duty to young persons aged under 21 who have been looked after?

- 83 (71.5%) agreed with the proposal.
- 21 (17%) did not consider the proposed extension appropriate.
- 37 of the 83 suggested extending the scope of the Bill to include other vulnerable groups.
- 19 (15.5%) had no comment.

This proposal was generally supported by respondents.

- “This is a sensible suggestion and would bring a vulnerable group of young people under the protection afforded by the proposed Bill.” – ***Children’s Hearings Scotland.***
- “Save the Children agrees with the proposal to extend coverage of the Bill to include persons aged under 21 who have been looked after.” – ***Save the Children.***

However, many also stated that there are other vulnerable groups who should also be considered, such as (but not limited to) young people with disabilities, asylum seekers and gypsy/travellers. There was sometimes concern about giving additional rights to one group of young people and not all could lead to confusion in policy making.

- “We support the extension of the duty with respect to young people who have been looked after, which mirrors the remit of Scotland’s Children’s Commissioner. We would also suggest that the government considers whether there are other groups of children and young people for whom the applicability of the duty could extend.” – ***NSPCC Scotland.***

- “Circle struggles with the extension of the duty in respect of the UNCRC to one particular group as this could be construed as positive discrimination and anti-discriminatory towards other young persons e.g. young people with complex needs such as disability.” – **Circle Scotland**.

Those who disagreed with the proposal also raised issues relating to the legal definition of age and inconsistency with the age ranges that apply to the work of the Scottish Youth Parliament, Young Scot and Children’s Hearings Scotland.

- “There is currently a range of conflicting rights and responsibilities for children and young people up to age 21 or even older. These include an age of criminal responsibility set at 8 years... while the age of consent to sexual activity is set at 16 years, and the age for marriage at 16 years, while for buying alcohol and for voting it is set at 18 years. To have yet another fairly arbitrary age set for UNCRC rights risks creating more muddle and inconsistency.” – **Ypeople**.

Question 6: Do you agree with the proposals for handling future amendments to the convention of protocols or new protocols?

- 66 (54%) agreed with the proposals.
- 28 of the 66 supported the proposal but raised issues such as the need for more clarity over ‘future-proofing’ the Bill.
- 28 (23%) respondents were not in favour.
- 29 (23.5%) did not comment.

Respondents generally agreed with the approach to handle future amendments but sometimes felt that there is a lack of detail in the consultation on how the Scottish Government intended to ‘future-proof’ the Bill against subsequent changes to the Convention or Protocols or new Protocols. In addition, more clarity was required in relation to how the Scottish Government can ensure it influenced the adoption of changes to the UNCRC, at a UK national level.

- “We welcome consideration by the Scottish Government of measures to ensure future compliance with new amendments to the Convention and optional protocols.” – **Aberlour Child Care Trust**.
- “UNISON is happy to support the proposals.” – **UNISON Scotland**.
- “Yes, the SSSC agrees with the proposals for handling future amendments to the Convention or Protocols or new Protocols.” – **Scottish Social Services Council**.
- “There is a lack of detail on how the Scottish Government intends to ‘future-proof’ the Bill.” – **YouthLink Scotland**.
- “The current proposals for ‘future proofing’ the developments of the UNCRC and optional protocols are unclear.” – **Centre for Excellence for Looked after Children in Scotland (CELCIS)**.

Question 7: Are there other provisions which should be made in the Bill?

- 81 (66%) respondents made further comments. These included a view that the general awareness of the UNCRC should be raised. For example: "The Scottish Government should include a duty on Ministers to promote awareness, knowledge and understanding of the UNCRC in the general public, and amongst children and young people in particular and the duty should be extended to other public bodies." – **Scottish Commissioner for Children and Young People**. Respondents also suggested that training and education should feature more prominently and there were concerns about methods of redress, other than judicial review.
- In total, 42 (34%) had no suggestions or comments.

There was a recurring view that general awareness of the UNCRC should be raised, complementing the role currently performed by the Scottish Commissioner for Children and Young People.

- "We do not agree that the Scottish Children's Commissioner should be the only body to promote children's rights. We feel that an awareness campaign should be led nationally by the Scottish Ministers." – **Glasgow City Council**.
- "We think that the enactment of this proposed legislation must be immediately followed by a sustained process of awareness raising and education." – **Children in Scotland**.

Respondents also suggested that training and education should feature more prominently.

- "To further promote and integrate knowledge of the UNCRC, a programme of training and capacity building should be implemented. This should include civil servants at all levels and in all Directorates but there is a real need to extend this to local authorities, despite some very good examples of practice such the Rights Respecting School Award, practice and knowledge of the UNCRC is patchy." – **Respect Me – The Scottish Association for Mental Health (SAMH)**.

Question 8: Do you have any comments on implementation costs or how they should be estimated?

Most respondents did not feel they were in a position to comment on the cost estimates in the consultation document without further information. In general, respondents felt that it was unclear how the implementation costs had been calculated and some found it difficult to judge the overall costs until the final scope of the Bill was agreed. There was broad agreement that any new Bill should contain sufficient budget provision to help raise awareness and cover any increased training costs.

"We believe that the costs of the Bill as currently drafted would be relatively small, and vastly outweighed by the ability of the Bill to deliver preventative spend benefits to the wider Scottish Government budget." – **Barnardo's Scotland**.

- “The outline proposals appear to take a reasonable approach. Making a fuller assessment once the full scope of the Bill is established is a sensible approach. We would also urge that an assessment is made of any potential preventative spend and consequent savings that are made as a result of the Bill.” – ***Parenting in Scotland***.
- “Training and awareness raising: an adequate budget needs to be allocated to support the training of Ministers on children’s rights and the UNCRC. There should also be a budget to support raising awareness of the UNCRC across all public bodies.” – ***Scottish Women’s Aid***.

Question 9: Do you have any other comments?

Many of the comments set out under this question underlined points that had been raised in responses to other questions. For example, respondents welcomed the move to legislate and strengthen the rights of children but several suggested that the Scottish Government should also include a duty on Ministers to promote awareness, knowledge and understanding of the UNCRC in the general public, and amongst children and young people in particular. There were a variety of comments and many of these were positive and supportive of the proposed legislation. Some respondents felt that legislation would help to redress the negative public view of children and young people and has the potential to ensure services are planned in a child-centred way.

- “Overall it is clear to see that, on the whole, many of the young people feel that these proposals have the potential to make a difference to the lives of young people in Scotland even if they do not think it will have a big difference on their own lives personally.” – ***Young Scot***.

There was a recurring view that the Scottish Government should reconsider the scope of the proposed duty, with a view to placing the same duty on other public bodies, such as local authorities and health boards.

- “A stronger requirement on Ministers than a duty to have regard to the CRC.” – ***UNICEF UK***.

There was sometimes a view that the Scottish Government should restate its position on the mutually reinforcing relationship between the European Convention of Human Rights and the UNCRC. In addition, there was a sense from some respondents that judicial review may not be the right mechanism to remedy any failure to comply with the UNCRC.

- “Although, as stated in the Scottish Government’s consultation paper, 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. - ***Together***.

This view was echoed by others.

- “Enforcement is limited to judicial review, which focuses on the correct process being followed, rather than whether young people’s rights have been breached.” – ***Scottish Youth Parliament***

4. Conclusions

The proposed Rights of Children and Young People Bill was intended to form part of the Scottish Government's wider programme of public service reform that aims to put the child at the centre of public services, a programme that includes both legislation and other activity. As such, the proposed legislation would be a touchstone for a wider consideration of the ways in which the public sector can drive greater implementation of children's rights.

In launching a consultation on how best to embed children's rights in the decisions that the Scottish Government make about children and young people, it was clear that this was likely to galvanise a debate over how to continue to mainstream the UNCRC in Scottish policy design and wider public sector delivery and how that will in turn deliver real benefits to children and young people.

There is clearly an appetite for this debate as demonstrated by the scale and breadth of response to the proposals set out in the consultation document, and the wider invitation to consider how the public sector can better support children and young people. A wide range of organisations responded to the consultation on the proposed Bill, showing that the interest in the importance of children's rights draws from the full spectrum of stakeholders.

The responses themselves show that there is agreement with much of what is set out, however there are strong views that something further may be required and diverse opinion over how it might be achieved. The overwhelming majority of respondents welcomed the fact that children's rights have been firmly placed on the legislative agenda. The need for some form of statutory footing for rights, grounded in the UNCRC, was set out in the consultation document and endorsed by the consultation responses, the accompanying engagement events and, perhaps most importantly, by those children and young people who took part in the events organised by the Children's Parliament, Young Scot and the Scottish Youth Parliament.

Nevertheless, the consultation also revealed that the Scottish Government's proposals – based on a duty of due regard placed on Scottish Ministers which was to be held accountable to the Scottish Parliament – did not alone meet the aspirations of stakeholders. A number of key points were made in this context.

- **There was a general feeling that the proposals should go further.** While the due regard duty was welcomed by many, there was a clear body of feeling that felt it alone was not sufficient to realise children's rights in the way that the consultation document aspired to do. Many respondents, particularly among children's rights and other representative organisations, called for incorporation of the UNCRC in legislation.

- **Duties should be placed on other public bodies.** Children’s rights legislation limited to the work of the Scottish Government was seen by many respondents as too limiting. The Scottish Government recognises that legislation that isolates one part of the public sector in the operation of children’s rights from the whole of the public sector would not best serve children and young people. What is needed is an integrated approach to embedding children’s rights. How this can be achieved – and the appropriate level of duty that should apply across the public sector – requires further exploration in cooperation with service deliverers and users alike.
- **Some respondents were uncertain about how accessible the judicial review process would be to children as a means of recourse if a challenge were made about non-compliance with the UNCRC.** The due regard duty split respondents. There was clear discomfort over the operation of judicial review as a means of ensuring that children and young people get the benefits of holding the public sector to account for its responsibilities through the UNCRC. Questions of access, cost and impact were raised by several respondents at different points in the consultation.
- **Other duties should be considered by the Scottish Government, particularly around awareness-raising.** While not raised consistently, a significant number of respondents suggested that this would be a suitable duty for the Scottish Government to consider as part of its work on children’s rights.
- **Reporting on children’s rights should occur more frequently than as set out here.** The introduction of a more regular and frequent reporting by the Scottish Government – and arguably, more widely into the public sector – was seen by several respondents as a way in which the current proposals could be improved.
- **Children’s rights should be linked more clearly to their practical implementation.** Lastly, and perhaps fundamentally, there was a strong sense that the separation of measures to ensure that children’s rights were rooted in decision-making from their more practical implementation in terms of the day-to-day services received by children and young people created an artificial and unhelpful distinction in the realisation of children’s rights. It was important that legislation provided clear proposals that ultimately demonstrated how children’s lives would be improved by linking the consideration of rights through to the way in which services were delivered.

In reflecting on these key messages, and the wealth of comments, arguments and suggestions provided by respondents, it is clear that the issues raised are not easily resolved. Rather they point to the need for a more comprehensive approach to realising children’s rights that focuses not simply on obligations under the UNCRC but on how services need to change to put practical effect to them.

For that reason, the Scottish Government feels that it would be better to secure and reinforce the delivery of children’s rights as part of a single integrated Children and Young People Bill that will also include measures to improve Children’s Services

rather than in separate legislation. It is intended to bring forward an integrated Children and Young People Bill in 2013.

As part of the development of proposals for the Children and Young People Bill, we will reflect on the responses here in developing further proposals on how children's rights can be taken forward by Scottish Ministers and the wider public sector. Part of that will be considering the strengths and limitations of the due regard duty and its alternatives as a way of embedding children's rights. Part will also involve inviting a wider discussion with the whole of the public sector on the range of duties and rights around children.

While the questions and issues raised in the Rights of Children and Young People Bill consultation will not be recapitulated, further children's rights issues will be raised as part of the Children and Young People Bill consultation which is due to be launched in the summer. The drafting of the Bill's proposals will draw on the results of both of these consultations.

However, as was noted earlier, the Rights of Children and Young People Bill consultation was not simply a discussion about legislation, but a touchstone for a wider consideration of the ways in which the public sector can drive greater implementation of children's rights. In engaging with stakeholders through the consultation, it has become clear that there are steps that the Scottish Government can take forward to improve the operation of children's rights without recourse to legislation.

Consequently, in the coming months we will be setting out plans to take forward actions to deliver children's rights in areas including the following.

- **Embedding the UNCRC in policy design and delivery.** As originally proposed in the consultation document, we will explore how we can take forward a Scottish Government-wide system of testing the development of new policies in line with the UNCRC, learning from our experience of implementing similar arrangements in relation to, for example, equalities.
- **Undertaking a duty of awareness-raising.** The Scottish Government will develop a new legislative duty around raising awareness of the UNCRC, further enhancing the work already being taken forward by Scotland's Commissioner for Children and Young People and ensuring that the level of debate over children's rights, encouragingly initiated here, can carry on, not least among Scotland's children and young people and those who have responsibilities in supporting them.

Annex A: Consultation Distribution List

Association of Chief Police Officers in Scotland
Care service providers
Chief Constables
Convention of Scottish Local Authorities
Crown Office and Procurator Fiscal Service
Disability Rights Commission
Disclosure Scotland
Faith groups
Housing Associations
Law Society of Scotland
Local Authority Chief Executives
Local Authority Directors of Education / Social Work / Finance / Children's Services
Lord President and Lord Justice General
Minority ethnic groups
NHS Board Chief Executives
Parent, carer and volunteer groups
Political parties
Professional regulatory and representative bodies
Scottish Court Service
Scotland's Commissioner for Children and Young People
Scottish Further Education Colleges
Scottish Higher Education Institutes
Scottish Human Rights Commission
School and teacher representative bodies
Sheriffs, Sheriff Principals and Sheriff's Association
Unions
Voluntary organisations

Annex B: Respondents to Consultation

The responses to the consultation paper on the proposed Rights of Children and Young people Bill are available on the Scottish Government website at:

<http://www.scotland.gov.uk/Publications/2012/02/8619/downloads>

Respondent	Reference
Aberdeen City Council (Education, Culture and Sport Service)	RCYPB 9
Aberdeen City Council (Children's Services)	RCYPB 104
Aberlour Child Care Trust	RCYPB 74
ACPOS Youth Issues Sub Group	RCYPB 110
Action for Sick Children (Scotland)	RCYPB 41
Amnesty International	RCYPB 109
Anonymous – individual	RCYPB 56
Argyll and Bute Council	RCYPB 63
Article 12 in Scotland	RCYPB 45
Association of Directors of Education in Scotland (ADES).	RCYPB 119
Barnardo's Scotland	RCYPB 97
British Naturism	RCYPB 101
Capability Scotland	RCYPB 13
CARE for Scotland	RCYPB 66
Catholic Education Commission	RCYPB 58
ChildLine in Scotland	RCYPB 103
Children and Young Persons Health Support Group	RCYPB 83
Children in Scotland	RCYPB 8
Children's Hospice Association Scotland	RCYPB 55
Children's Parliament	RCYPB 122
Children's Hearings Scotland	RCYPB 118
Church of Scotland	RCYPB 93
Circle Scotland	RCYPB 4
City of Edinburgh Council	RCYPB 22
Clan Childlaw	RCYPB 68
Coalition of Care and Support Providers in Scotland	RCYPB 64
COSLA	RCYPB 65
Creative Scotland	RCYPB 123
Dr Alison McCallum – individual	RCYPB 7
Dundee City Council, Social Work Department	RCYPB 87
East Dunbartonshire Council	RCYPB 102
East Lothian Council	RCYPB 29
East Renfrewshire Council (Education Department)	RCYPB 25
ENABLE Scotland	RCYPB 88
Equality and Human Rights Commission Scotland	RCYPB 69
Evangelical Alliance Scotland	RCYPB 79
Faculty of Advocates	RCYPB 39

Families Need Fathers Scotland	RCYPB 111
Families Outside	RCYPB 23
Foster Care Associates Scotland	RCYPB 121
Glasgow City Council (Social Work Services)	RCYPB 17
Glasgow Housing Association	RCYPB 117
Govan Law Centre	RCYPB 57
greenspace scotland	RCYPB 51
Highland Council (Joint Committee on Children & Young People)	RCYPB 19
International Play Association Scotland	RCYPB 94
Keys to Inclusion	RCYPB 106
Kibble Education and Care Centre	RCYPB 11
Long Term Conditions Alliance Scotland (LTCAS)	RCYPB 100
Midlothian Association of Play	RCYPB 76
Midlothian Council	RCYPB 52
National Day Nurseries Association	RCYPB 72
NHS 24	RCYPB 35
NHS Greater Glasgow and Clyde	RCYPB 20
NHS Health Scotland	RCYPB 42
NHS Lanarkshire	RCYPB 18
NHS Lothian (Women and Children Services)	RCYPB 70
NHS National Services Scotland	RCYPB 24
North Lanarkshire Council (Learning and Leisure Services)	RCYPB 14
NSPCC – Scotland	RCYPB 96
Orkney Community Planning Partnership	RCYPB 28
Parenting across Scotland	RCYPB 67
Perth and Kinross Council	RCYPB 107
Play Scotland	RCYPB 50
Quarriers	RCYPB 59
Relationships Scotland	RCYPB 85
Renfrewshire Council	RCYPB 120
Respect Me – The Scottish Association for Mental Health (SAMH)	RCYPB 77
Rights of the Child UK	RCYPB 73
Royal Hospital for Sick Children, Glasgow	RCYPB 47
Royal Society for the Prevention of Accidents	RCYPB 49
Sacro	RCYPB 6
Save the Children	RCYPB 99
Scotland's Commissioner for Children and Young People	RCYPB 82
Scotland's Disabled Children Coalition	RCYPB 44
Scottish Borders Council	RCYPB 53
Scottish Child Law Centre	RCYPB 114
Scottish Children's Services Coalition	RCYPB 36
Scottish Children's Reporter Administration	RCYPB 60
Scottish Council for Single Homeless	RCYPB 2
Scottish Council of Independent Schools	RCYPB 43
Scottish Court Service Headquarters	RCYPB 1
Scottish Independent Advocacy Alliance	RCYPB 95

Scottish Library and Information Council	RCYPB 38
Scottish Marriage Care	RCYPB 75
Scottish Parent Teacher Council	RCYPB 40
Scottish Pre-school Play Association	RCYPB 46
Scottish Social Services Council	RCYPB 26
Scottish Wildlife Trust	RCYPB 10
Scottish Women's Aid	RCYPB 92
Scottish Youth Parliament	RCYPB 91
Sense Scotland	RCYPB 32
Shakti Women's Aid	RCYPB 31
Skills Development Scotland	RCYPB 81
Skills for Justice	RCYPB 80
South Ayrshire Council	RCYPB 86
South Lanarkshire Council	RCYPB 116
Stirling Council	RCYPB 90
Stirling Law School	RCYPB 12
The Chartered Institute of Library and Information Professionals in Scotland	RCYPB 108
The Educational Institute of Scotland	RCYPB 84
The General Teaching Council for Scotland	RCYPB 34
The Law Society of Scotland	RCYPB 98
The National Deaf Children's Society	RCYPB 37
The Prince's Trust Scotland	RCYPB 105
The Royal College of Nursing Scotland	RCYPB 48
The Royal College of Paediatrics & Child Health	RCYPB 21
The Scottish Out of School Care Network	RCYPB 3
Together (Scottish Alliance for Children's Rights)	RCYPB 89
Together for Short Lives	RCYPB 78
UNICEF UK	RCYPB 71
UNISON Scotland	RCYPB 112
University of Edinburgh (Centre for Research on Families and Relationships)	RCYPB 61
University of Strathclyde (Centre for Excellence for Looked After Children in Scotland)	RCYPB 62
Urban Saints	RCYPB 15
Victim Support Scotland	RCYPB 5
West Dunbartonshire Council	RCYPB 27
West Lothian Council	RCYPB 16
Who Cares? Scotland	RCYPB 115
Young Scot	RCYPB 113
Youth for Christ	RCYPB 33
YouthLink Scotland	RCYPB 54
Ypeople	RCYPB 30



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ISBN: 978-1-78045-814-4 (web only)

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St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Government by APS Group Scotland
DPPAS12969 (05/12)

Published by the Scottish Government, May 2012

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