

# Rights of Children and Young People Bill

## Consultation Paper

### Response Booklet

#### Responding to this consultation paper

We are inviting written responses to this consultation exercise by **Thursday 1 December 2011**.

We would be grateful if you would indicate clearly in your response to which questions or parts of the consultation paper you are responding to. We recommend using this response booklet, if possible. Please complete the respondent information form contained within the booklet.

#### Please send your response to:

[earlyyearslegislation@scotland.gsi.gov.uk](mailto:earlyyearslegislation@scotland.gsi.gov.uk)

or

Chris Bain  
Scottish Government  
Children's Rights and Well-being Division  
Area 2B (North)  
Victoria Quay  
EDINBURGH  
EH6 6QQ

If you have any queries or any comments on the consultation process, please contact Chris Bain at the address/email above or telephone 0131 244 4906.

#### Public engagement events

Five public engagement events have been arranged at cities across Scotland. All public engagement events will cover the same material and will follow the same format. Spaces at the seminars will be limited: to register your interest in attending one of these events, please visit <http://bookings.shscevents.co.uk/all/2787>. You will be contacted in due course to confirm whether or not you have a place.

## **Accessing this and other consultations**

This consultation, and all other Scottish Government consultation exercises, can be viewed online at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is. The Scottish Government now also has an email alert system for [SE consultations](#). You can register to receive a weekly email containing details of all new Scottish Government consultations at <http://www.scotland.gov.uk/consultations/seconsult.aspx>.

## **Access to consultation responses**

We will make all responses available to the public in the Scottish Government Library by 1 February 2012 unless confidentiality is requested. All responses not marked confidential will be checked for any potentially defamatory material before being logged in the library.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

**Scottish Government  
Children and Families Directorate  
September 2011**

## RESPONDENT INFORMATION FORM

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately:

### YOUR DETAILS

Name	Marion Macleod
Address	Children in Scotland
	Princes House 5 Shandwick Place
	Edinburgh
Postcode	EH2 4RG
Contact telephone number	0131 222 2435

1. Are you responding as: (please tick one box)

- (a) an individual  (go to 2a/b)
- (b) **on behalf of** a group or organisation  (go to 2c)

### INDIVIDUALS:

2a. Do you agree to your response being made available to the public (in the Scottish Government library and/or on the Scottish Government website)?

Yes (go to 2b below)

No, not at all  (We will treat your response as confidential.)

2b. **Where confidentiality is not requested**, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

### ON BEHALF OF GROUPS OR ORGANISATIONS:

3. Your name and address as respondents **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government website). Are you content for your response to be made available also?

Yes

No  (We will treat your response as confidential.)

### SHARING RESPONSES/FUTURE ENGAGEMENT

4. We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in the future in relation to this consultation response?

Yes

No

### YOUR BACKGROUND

In analysing your response, it would help us to know what your background is. Please indicate using the boxes provided below the area which best describes your involvement with children and add any further comments you wish to make about this.

Early Years  Education  Health

Justice  Parent/Carer  Police

Social Work  Sport and Leisure  Voluntary Organisation

Other

Further comments:

## YOUR VIEWS

### On the need for legislation

- 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?

**Children in Scotland firmly believes in the importance of children's rights and welcomes legislation that demonstrates the commitment of the Scottish Government to embedding the UNCRC in its decision-making. We see it as a commendable statement of principle. 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.**

**The Bill, as it stands, does not incorporate the UNCRC into domestic law, nor convey any specific entitlements. It applies to ministerial decisions only. Thus, it will create no new statutory duties to adhere to the UNCRC, in a transparent and accountable manner, in the decisions made by other public bodies – including local councils/authorities and health boards. This is significant since they make most of the governmental decisions that affect the day-to-day lives, and ultimate life chances, of children and young people throughout Scotland.**

**Children in Scotland, therefore, urges the Scottish Government to consider full incorporation of the UNCRC into Scottish domestic law. We believe that issues of interface with other constitutional or legal requirements can be overcome and need not present an insuperable obstacle to incorporation.**

### Proposal 1

**Q2** Do you agree that "due regard" is the appropriate level of regard for the duty on the Scottish Ministers? If not, why not?

**‘Due regard’ requires demonstration that children’s rights have been taken into account when Scottish Ministers take a decision. Compliance is likely to be evidenced by completion of some form of ‘impact assessment’ procedure. This will inevitably result in increased bureaucracy (and cost) without necessarily making any meaningful change to – or benefit for – children’s lives.**

**The potential for recourse, even when a significant infringement of the law may have taken place, is limited to initiating a procedure of judicial review. Firstly, it is not clear who would instigate such proceedings, and whether legal advice and financial assistance to pursue legal action of this kind would be available. Secondly, even were it to be found that ‘due regard’ had not been given, this would only require that the decision be reconsidered. It would not mean that the decision was reversed, nor would it create a legal precedent for any future decisions.**

**We believe that the legislation should be strengthened so that children and young people (and those acting on their behalf) have their rights articulated as specific entitlements and have an accessible and effective process of complaint and redress.**

**Take, for example the EU’s agreed Barcelona targets on the provision of full-day care for pre-school children. Making this a specific entitlement would: firstly, generate more effective government compliance with these targets for early childhood education and care; and, secondly, provide the possibility of redress for those children disadvantaged as a consequence of not meeting the Barcelona targets. ‘Due regard’ means only that a Scottish minister has been aware, and has considered the impact on children, of taking (or not taking) steps towards bringing Scotland into compliance. It does not create an effective means of challenging a decision that may, in fact, have adverse impacts upon children.**

**Similarly, the Bill does not make clear how it is intended to be enforced. As it stands, no agency or other named body has a duty of oversight and enforcement. Accordingly, individuals and voluntary organisations have no clear procedure to follow where there may have been a failure to comply with this proposed law.**

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

**We agree that it should apply to all functions of the Scottish Ministers. We understand that the Bill has drawn on the Children's Rights measure adopted by the Welsh Assembly Government. We are pleased to see that the Scottish Government has gone a step further by proposing that the legislation apply to *all* ministerial functions, not just the ambiguous "strategic decisions" as in the Welsh model.**

## Proposal 2

**Q4** Do you agree with the proposed arrangements for reporting?

**We would prefer increased frequency, possibly annually. We agree with the proposed method of reporting.**

## 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?

**We agree with this proposed extension, but believe that there are other groups for whom extension should also be considered, such as (but not limited to) young people with disabilities. The interface with rights and equalities legislation applying to adults should, however, be carefully considered.**

## Proposal 4

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

**Generally, we agree with the proposals, but would welcome more detailed information. Since our view is that the UNCRC should be fully incorporated into Scots law, then careful consideration would have to be given to the implications of future amendments to the UNCRC itself.**

## 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.)

**We would urge that consideration is given to full incorporation of the UNCRC into domestic law. We are aware that the Scottish Parliament cannot, constitutionally, pass any legislation that may conflict with the European Convention on Human Rights. This potential conflict has been cited as a reason not to seek full incorporation. We believe that it is at least debatable whether such a conflict would, in fact, arise. Even if such a situation is more than a theoretical possibility, efforts could, and should, be made to find a legally competent solution before the Bill is considered in the Scottish Parliament.**

**Whatever the terms of the Bill eventually are, we believe that specific entitlements aligned with the UNCRC articles should be set out. This should set the tone for the forthcoming Children's Services Bill, with wellbeing and healthy development being identified as a right, and with designated statutory responsibilities for providing services that support children in achieving their rights. If full incorporation is not pursued, then a robust set of guiding principles (as in other legislation, such as the Adults with Incapacity Act) should be clearly stated and should underpin any actions the Act would require.**

**The Bill should apply to other public bodies such as local authorities and NHS Boards; not solely to Scottish Ministers.**

**The process of redress or legal challenge should be clear, accessible and affordable when children's rights appear to have been ignored or abrogated. If governmental decisions cannot be *effectively* scrutinised or challenged under this proposed Act, then the Act implementation will be entirely dependent upon the goodwill and proper understanding of the UNCRC by the public policymakers and decision-makers of the moment. While this may not be a problem at present, it would remain a structural weakness within this legislation – and not provide the firm foundation needed for this proposed Act.**

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

**We have no comment other than to urge that the administrative burdens associated with the legislation should not be costly and complex. That said, however, we are in favour of robust monitoring and evidence-based reporting on the implementation and impacts upon children and young people.**

**Q9** Do you have any other comments?

**We think that the enactment of this proposed legislation must be immediately followed by a sustained process of awareness raising and education. It is not sufficient for this legislation simply to exist. It must also be understood, valued and acted upon in a *meaningful* way by all those who would be affected by it – rather than allowed to degenerate into a formal, ‘tick box’ exercise that increases bureaucracy without increasing child well-being. This Act must also become widely known – and taken on board – by children and young people themselves in order for this welcome legislation to achieve its good intentions.**

**Thank you for your consideration of these points.**