

Aberlour Response to the Scottish Parliament's Equalities & Human Rights Committee Call for Evidence on the United Nations Convention on the Rights of the Child (UNCRC) Bill

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Prepared by Martin Canavan, Head of Policy & Participation

Overview

Aberlour works with vulnerable children, young people and families throughout Scotland, providing services and support in communities around the country across a range of settings. We help to overcome significant challenges, like growing up in and leaving care, poor mental health, the impact of drugs and alcohol on family life, living with a disability, or the impact of poverty and financial hardship. We aim to provide help and support at the earliest opportunity to prevent problems becoming intractable or spiralling out of control.

As an organisation that has children's rights at the heart of the work we do every day with children, young people and families, we are committed to supporting, promoting and protecting children and young people's human rights. Therefore, we welcome this Bill and the continuing commitment of the Scottish Government to the incorporation of the United Nations Convention of the Rights of the Child (UNCRC).

Introduction

The UNCRC has been understood and acknowledged within domestic law since it was ratified by the United Kingdom in 1991 and since the advent of the Scottish Parliament in 1999 has been further developed and recognised as a legal concept within Scots law. All subsequent legislation and policy in Scotland pertaining to children and young people has been informed and guided by the UNCRC. This international framework of children's rights, which continues to develop and evolve to recognise and reflect our further understanding of what children and young people's human rights are and how they should continue to be supported, promoted and protected, is the central tenet that establishes universal rights for all children and young people around the World.

We welcome and support this Bill and believe incorporation of the UNCRC through this Bill will ensure that those universal rights of children and young people are rooted and protected in domestic law. This is essential if Scotland is to be a country where the human rights of all our citizens, including children and young people, are embedded across all aspects of our society.

1. Will the Bill make it easier for children to access their rights?

Yes. We believe the Bill will make it easier for children in Scotland to access their rights. Through the introduction of the Children's Rights Scheme, Child Rights and Wellbeing Impact Assessments (CRWIA) and reporting duties on public bodies, the systemic and cultural change needed to enable children to better access their rights will be further progressed.

In addition, those provisions within the Bill ensuring courts can assess the compatibility with UNCRC of any legislation and that children (or their representatives) can legally challenge breaches of their rights, ensures legal accountability for all duty holders to uphold the rights of children. International evidence of legal incorporation from a range of countries, including Belgium, Iceland, Norway and Spain, has shown that the ability of children to access their rights and the wider recognition of the rights of children has improved as a result¹.

2. What do you think about the ability to take public authorities to court to enforce children's rights in Scotland?

We welcome this. It is our opinion that there must be a mechanism for remedy and redress within law that allows children and young people, and those who represent them, to challenge in circumstances where rights have been breached. Children and young people face additional barriers to accessing justice and therefore a legal mechanism which allows children and young people to challenge instances of breaches of their rights by public authorities is essential. Any mechanism to achieve this must also be child-centred and ensure that its processes and procedures must not present further barriers to children and young people challenging rights breaches and seeking remedy and redress.

3. What more could the Bill do to make children's rights stronger in Scotland?

Public authorities

We welcome that the Bill provides that "*it is unlawful for a public authority to act in a way which is incompatible with the UNCRC requirements*", including private actors whose "*functions are of a public nature*". This provision recognises that many services which impact children are provided by private or voluntary organisations. However, instances of private companies providing public services being found not be liable to human rights breaches, such as in the recent Serco case where asylum seekers experienced lock changes and were evicted from their accommodation by the service provider³, provide concern that such private actors may escape liability in instances of children's rights breaches. We believe strengthening the definition of 'public authorities' within the Bill or accompanying guidance can help prevent against the possibility of similar instances in relation to UNCRC and the potential for children's rights violations by outsourced agencies providing public services. We support the detailed proposals by Together (the Scottish Alliance for Children's Rights)

¹ <https://www.tandfonline.com/doi/abs/10.1080/13642987.2018.1558974>

² <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/introduced/bill-as-introduced-united-nations-convention-on-the-rights-of-the-child-scotland-bill.pdf>

³ <https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2019csoh34.pdf?sfvrsn=0>

outlined within their submission to the Committee⁴, as to how public authorities can best be defined, and their role as duty holders regarding children's rights when delivering public services recognised, within the Bill.

Standing

We believe that the Bill must be clear on 'standing' and who can bring a case on behalf of children and young people where rights breaches have occurred. Children and young people can encounter multiple additional barriers to challenging breaches of their rights and seeking legal remedies, therefore it is correct that the Bill ensure others can bring a case on their behalf if required, whilst still ensuring that those who have the capacity to can bring a case in their own name. The rules on 'standing' are not entirely clear from the face of the Bill. We believe anyone with a 'sufficient interest' should be able bring a case on a child or young person's behalf and that this should be more explicit within the Bill.

Children's Rights and Wellbeing Impact Assessment (CRWIA)

We welcome that the Bill will require that the Scottish Government must prepare a CRWIA for new Bills, certain statutory instruments or where 'strategic decisions' are taken by Scottish Ministers which will impact upon the rights and wellbeing of children. We believe this could provide unnecessary scope for interpretation as to what constitutes a 'strategic decision'. In addition, further discretion provided to Scottish Ministers in the Bill to produce a CRWIA as they consider appropriate will create even more scope for interpretation for when a CRWIA is required to be produced. Therefore, we believe that the Bill should instead require that a CRWIA should be prepared by Scottish Ministers in all instances where the rights and wellbeing of children will be impacted by the development of Scottish Government strategy, as well as for new Bills and other statutory instruments.

4. If you work for an organisation or public authority, what resources do you need to help children and young people access their rights? Will you require additional resources or training to implement the Bill, for example to make or respond to challenges in court?

As a national children's charity which places the rights of the children and young people at the heart of everything we do, Aberlour aims to ensure the children and young people we work with can access their rights. We work every day to promote children and young people's own agency and ensure they empowered to realise their own rights, and where they encounter barriers to realising those rights we work to advocate on their behalf to remove barriers and ensure their rights are fulfilled. In addition, we continue to work with partners across sectors and around the country to further influence policy and practice to further progress children's rights in Scotland and beyond.

However, many organisations across the public, private and voluntary sectors will require help and support to meet their duties regarding children's rights, and to ensure children and young people can access their rights. We believe there are a number of non-legislative activities which will be essential in order to make children's rights 'real' and to translate what this Bill says into action, and which will require additional resource. To embed and implement children's rights so that they exist

⁴ https://www.togetherscotland.org.uk/media/1727/crc_ehric_response_071020.pdf

and are recognisable in children and young people's day-to-day lives and across wider society. Such activities that would help further implement and embed awareness and knowledge of children's rights and the UNCRC in Scotland include: public awareness raising; children's rights education in schools for children, young people and parents; independent advocacy for children and young people; children's rights training for professionals who work with children and young people; children's rights training for policy makers at both a local and national level.

Young people Aberlour works with suggested a variety of ways in which their rights can be supported, promoted and protected beyond those duties outlined in legislation, with one young person noting: *"The difficulty would be changing the attitude of adults in the world and making them understand us [young people] better. It's ok putting our rights into law but what if nothing changes?"*. Another commented: *"these things should be happening naturally anyways... [and it is] important that everyone knows that these are actual rights so that everyone can make sure they get treated the same"*. Young people at Aberlour have suggested ways in which the Scottish Government, public authorities and others can actively promote and implement children's rights in Scotland included: the Scottish Government, local authorities, children and young people's organisations working together to address rights-based issues; a children's rights panel in each local area run by children, young people and local councillors; a public information campaign on social media to inform everyone across Scotland about children's rights.

6. What are your views on the provisions in the Bill that allow the courts to strike down legislation judged to be incompatible with the UNCRC?

We welcome this. We believe those provisions included in the Bill which will enable courts in Scotland to rule on whether legislation is incompatible with the UNCRC and to declare that legislation to be unlawful are crucial to securing the equal status of children's rights in law, as with wider human rights. The UN Committee on the Rights of the Child makes clear that UNCRC incorporation insists that it must prevail over conflicting domestic legislation.⁵

The use of 'strike down' powers can already be used by Scottish courts in relation to ECHR and human rights breaches. Therefore, the provisions in this Bill will ensure consistency regarding children's rights, enabling courts to use the same powers in relation to legislation passed by the Scottish Parliament which is incompatible with the UNCRC.

5. What are your views on the Child Rights Scheme and the requirement on public authorities to report

We welcome both. We believe that a Child Rights Scheme, as included within the Bill, can help promote rights-based decision making, transparency and accountability for duty bearers, and has been shown to be effective at helping to implement a children's rights approach to policy making. The example of a Children's Rights Scheme in Wales⁶, which has informed and influenced decision making and policy development at a national level, has not only strengthened the protection of children's rights there, but also provided clear opportunities for children and young

⁵ <https://www.refworld.org/docid/4538834f11.html>

⁶ <https://senedd.wales/Laid%20Documents/GEN-LD9732%20-%20Children's%20Rights%20Scheme%202014-22042014-255569/gen-ld9732-e-English.pdf>

people, and those who represent them, to participate and be represented in policy development and decision making.

The requirement on public authorities to report on, and for public scrutiny of how they are meeting, their duties supporting, promoting and protecting children's rights is a key feature of ensuring compliance with those duties. Therefore, we welcome the duty on public authorities to report every three years on how they are ensuring compliance with the UNCRC requirements.

For further information contact Martin Canavan (Head of Policy & Participation)

Martin.Canavan@aberlour.org.uk