

Incorporating the United Nations Convention on the Rights of the Child into Domestic Law in Scotland: Working Group, 3rd Meeting, 31 July 2019

Summary of Workshop Discussions

Introduction

1. At the third meeting of the Working Group, which took place on 31 July 2019, facilitated workshop-style discussions were held around issues raised in Theme 2 of the [consultation](#) on Embedding Children's Rights in Public Services, including the following:

- Children's Rights Scheme;
- Preparation of the sector; and
- Non-legislative activities required for further implementation of the Convention

2. This note seeks to summarise the varying views and opinions expressed by individual Members, setting out the points raised under key themes.

Scottish Children's Rights Scheme

3. Members discussed steps taken to incorporate the Convention in Wales, including provisions in the Rights of Children and Young Persons (Wales) Measure 2011, which require Welsh Ministers to establish a Children's Scheme, setting out the arrangements for ensuring compliance with the due regard duty.

4. Some Members considered that the Welsh model for a Children's Rights Scheme could complement the existing child rights framework in Scotland. However, it was noted that a Scottish Scheme would need to align with the proposed mechanisms for incorporating the UNCRC into Scots law. Also relevant is Part 1 of the Children and Young People (Scotland) Act 2014 (2014 Act), which already places duties on Ministers and specified public authorities in relation to children's rights. Members also noted that the current non-statutory requirement for a Child Rights and Wellbeing Impact Assessment to be undertaken for all new Scottish Government policies and legislation was also an important starting point.

5. Some Members proposed that a Scottish Children's Rights Scheme could support the embedding of a child rights-based approach to the delivery of public services. Some suggestions for the purpose of such a scheme could be to raise awareness and understanding of children's rights; specify and deliver effective training; and establish clear, supporting infrastructure to ensure that all children and young people, particularly the most vulnerable, can experience all of their rights when the Bill is implemented.

6. Individual Members discussed in more detail that the Scheme could include the following elements:

i. The promotion of awareness and understanding of children's rights.

- It was stressed by a number of Members that there should be a requirement for children's rights education to be provided in schools. It was also considered important for appropriate information to be provided for parents, throughout the course of their children's lives. The relationship between children's rights and parents' rights was also discussed.
- It was also noted that effective advice and training on how to embed children's rights should be made available across all levels of public authorities, with dedicated training provided on the responsibilities of duty bearers. The current trauma-informed training in Scotland and approach utilised in Sweden were cited as possible examples.
- Members also discussed the common misconception that children's rights are linked with responsibilities. The importance of promoting understanding that an individual's entitlement to their human rights is not dependent on the acceptance of responsibilities was stressed by some Members.

ii. The Child Rights and Wellbeing Impact Assessment (CRWIA)

- Some Members considered that there should be a statutory requirement for CRWIAs to be undertaken on national policies and legislation and noted that this was a recommendation of the advisory group convened by the Children's Commissioner and Together Scotland.
- Members noted that section 2 of the 2014 Act currently places a reporting duty on specified public bodies in relation to the UNCRC.¹ It was suggested by some Members that it might be possible to place obligations in relation to the CRWIA on public authorities, as well as on the Scottish Government. However, other Members suggested that, whilst the Scottish Government might be required to undertake CRWIAs, public authorities should have discretion in their use of this impact assessment.
- It was also suggested that the use of integrated impact assessments, covering a breadth of human rights, could also be helpful.

¹ Section 2 of the 2014 Act places a duty on a wide range of public authorities to report every 3 years on the steps they have taken to secure better or further effect of the UNCRC requirements within their areas of responsibility. The first reports are due as soon as practicable after 1 April 2020.

iii. Child Rights Budgeting

- Some Members suggested that measures to support public authorities and Scottish Ministers in considering the rights of children in budget planning and decision making should also be included in a Children's Rights Scheme. It was also noted that there was a need for effective examples of such budgeting arrangements.

iv. Complaints Procedure

- It was suggested by some Members that, to ensure that all children and young people can experience their rights, they should have access to a local complaints scheme and a clear and accessible complaints procedure. It was considered that these arrangements would be necessary to bridge the current gap between issues being raised by children with individual practitioners, for example, teachers and social workers, and a formal judicial process. It was also suggested that there should be an assumption of early resolution.
- Some Members also considered that advocacy support for children and young people should also be included in the Children's Rights Scheme.
- The role of the Children's Commissioner and the Scottish Public Services Ombudsman in dealing with complaints was discussed. However, it was suggested that children may not be aware of these arrangements, including the conditions that have to be met before these mechanisms can proceed. It was recognised that current investigation processes can take time to be fully resolved.

Preparation time for public services

7. Members also discussed issues around the preparation time as discussed in the consultation paper.²

8. Some Members suggested that some public services would require time to be able to meet the required standards of new duties. It was also suggested that the courts and judiciary would need to be ready to consider possible legal challenges and would need time to prepare for this. It was further noted that there was a risk of losing the goodwill of public authorities if the new duties were commenced before services were able to prepare. It was also suggested that children and young people would lose faith in incorporation of the UNCRC if public bodies were not given time to further embed children's rights in their services, as children's experiences of services would still be the same as before the new duties.

9. Members also discussed the experiences of other countries that have incorporated the Convention into domestic law. It was suggested that delayed

² [Incorporating the UN Convention on the Rights of the Child into Scots Law: Consultation](#), p24/25.

commencement was common practice and provides time for improvements in services to be made. It was noted that Sweden had delayed commencement of provisions in its Incorporation Act by 2 years to allow sufficient time for public authorities and the judiciary to prepare. If it was considered desirable to give bodies time to prepare for implementation, as would be the norm with introduction of any new statutory duties, some Members suggested that this should be provided for.

10. However, other Members noted that provisions in Part 1 of the 2014 Act, already require specified authorities to publish a report every 3 years on the steps they have taken to secure better or further effect of the UNCRC. It was suggested that it should, therefore, be assumed that those specific public authorities are already taking steps towards compatibility. It was also suggested by some that an explicit commitment on the date for enforcement of the duties on the face of the Bill would be welcomed. It was also noted that many children and young people had asked for the provisions to be commenced as soon as possible.

11. Some Members suggested that the Bill could include a duty to plan for commencement (ahead of other duties in the Bill coming into force) and for children and young people to be consulted in the resulting planning process. Other Members suggested that a duty to plan and prepare could also apply to the Scottish Government, and would allow time for the resources to support implementation of the new Act to be identified and provided to public authorities.

12. It was also noted that consideration of where the Convention had already been implemented in Scotland would help in preparing public authorities for implementation of new duties.

Non-legislative activities required for further implementation

13. Members were also asked to consider additional non-legislative measures that might better support children and young people in experiencing their rights.

14. It was acknowledged that the potential costs of new duties and delivery of rights-based services must be considered. Some Members considered that funding would be one of the biggest challenges that public authorities would face in implementing the new provisions. Members also suggested that consideration of how the new Act would align with the other statutory obligations on public bodies was needed.

15. It was suggested that advocacy, mediation and youth work services are services which enable children to claim their rights. It was suggested that, in the context of tight resources, non-statutory services such as these are often not prioritised for funding. It was suggested that the delivery of these supporting services needs to be given a statutory basis or have dedicated funding made available to ensure that children across Scotland can experience their rights fully. Similarly, it was also suggested that it would be important to ensure that the strategic approach to participation included in the [Progressing the Human Rights of Children in Scotland: An Action Plan 2018-2021](#) was adequately resourced. It was also suggested that existing participation capacity could be utilised more effectively to avoid duplication

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