



# Smith Commission

Submission from Together (Scottish Alliance for Children's Rights)

Thursday 30<sup>th</sup> October 2014

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## 1. Introduction

Together (Scottish Alliance for Children's Rights) is an alliance of children's charities that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) in Scotland. We have over 260 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs. Our activities include collating an annual State of Children's Rights report to set out the progress made to implement the UNCRC in Scotland. We also provide a focal point through which Scottish NGOs report to the UN Committee on the Rights of the Child. The views expressed in this submission are based on the general principles of the UNCRC and do not necessarily reflect the specific views of each member organisation.

Together welcomes the opportunity to contribute to the Smith Commission and comment on the devolution of further powers to strengthen the Scottish Parliament within the UK. Our response is focussed on securing and strengthening the protection of children's human rights in Scotland.

## 2. The principles underpinning our proposals

Our proposals are based on the principles embedded in the international human rights system, most specifically the rights enshrined in the UNCRC and the European Convention on Human Rights. Taking a child rights focus to the further devolution of powers will ensure there is a clear, shared long-term goal of ensuring the rights, needs and views of children are at the heart of a future Scotland. It will ensure the Scottish Parliament has the capacity to identify and address the underlying causes of children's rights violations, address gaps in realising children's rights and implement policy and practice changes. It will encourage the active participation of children and empower them to take action to hold the Scottish Parliament to account.

The purpose of our submission is to:

- highlight the importance of securing and strengthening the framework for children's human rights across Scotland (both through the Scottish and UK Parliaments)
- ensure that Scotland has the power to protect, respect and fulfil children's rights in line with the UK's international treaty obligations.

Given the tight timescale for the consultation, we are clear that the Smith Commission should be seen as the first step in a longer-term process of debating what new powers are needed for Scotland.

### 3. The need for a Child Rights Impact Assessment

A child rights impact assessment (CRIA) should be undertaken in order to effectively assess any proposals put forward by the Smith Commission. This will provide the Commission - and the Scottish and UK governments – with a valuable resource with which they can understand and assess the impact the proposals will have on the rights of children. A CRIA will ensure that any unintended consequences of the proposals are identified and mitigated. It will also ensure that the impact of the proposals are fully considered from the perspective of the most vulnerable children including those with a disability, child victims of trafficking, asylum seeking children and children living in poverty.

The use of CRIAs is widespread both across the UK and internationally and there are many examples of their effectiveness in child-proofing legislation and policy. The Scottish Government is currently developing a CRIA model to support the new Ministerial duty to consider children’s rights, as enshrined in the Children and Young People (Scotland) Act.<sup>1</sup> At a UK level, Cabinet Office guidelines for officials responsible for drafting public Bills reflect a commitment to consider the impact of legislation on children's rights, suggesting *‘it would be helpful to Parliament and the Joint Committee on Human Rights if explanatory notes published alongside Public Bills included a summary of the anticipated effects of legislation on children and on the compatibility of draft legislation with the UNCRC’*.<sup>2</sup> In Wales, since the implementation of the Welsh Measure in 2012, CRIAs have been used as a matter of routine on policy and legislation including the Climate Change Commission, Housing White Paper and End Violence and Domestic Abuse Against Women White Paper. The Welsh Government believes that children and their families will soon see the positive impact this is making, as organisations and those working with and for children become more aware of the UNCRC and its implications in their work.<sup>3</sup>

In conducting a CRIA, the Smith Commission would be able to draw from the widespread experience of Scotland’s Commissioner for Children and Young People, Together (Scottish Alliance for Children’s Rights) and those working on the new CRIA model within the Scottish Government.

### 4. Key Points

#### **Ensure the voices of children and young people are heard and taken into account**

Together welcomed the extension of the voting franchise for the referendum to include 16-17 year-olds. This has resulted in an unprecedented level of political engagement among children and young people. Children and young people's voices are intrinsically part of the civic contribution that the Smith Commission should be encouraging and listening to.

However, there are limited structures in place to enable children to participate politically. Many vulnerable and isolated groups of children face multiple barriers in getting their voices heard, such as children with a disability, Gypsy/Traveller children and children outwith mainstream education. As a result, they can often be voiceless and have their best interests overlooked.

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<sup>1</sup> Children and Young People (Scotland) Act (2014) Part 1 Section 1

<sup>2</sup> Cabinet Office (June 2012) Guide to making legislation, para 11.29

<sup>3</sup> Welsh Government (2013) Report on the compliance with the duty under section 1 of the Rights of Children and Young Persons (Wales) Measure 2011.

The timeframe of the Smith Commission's consultation is extremely tight. Together is concerned that this will hinder the Commission's ability to fulfil its terms of reference to facilitate an *'inclusive engagement process'*. It will prevent children and young people from being able to engage meaningfully with the consultation and have their views and experiences taken into account. The Commission should pro-actively ensure opportunities are created to take into account the perspectives of the next generation.

*Together urges the Smith Commission to harness and encourage the political engagement of children and young people in its consultation. The Commission should take the time to meaningfully engage with children and young people to establish their views and take the extra steps needed to involve more vulnerable and isolated groups of children.*

### **Secure and strengthen the existing framework for children's human rights**

Scotland, as part of the UK, has played an important part in developing international human rights laws. The Human Rights Act and the Scotland Act currently bring a means through which some of the human rights in the European Convention on Human Rights can be directly enforced through the Scottish legal system. Scotland's distinct approach to children's rights is reflected through the recently passed Children and Young People (Scotland) Act. This places duties on Ministers and public bodies that specifically relate to the UNCRC. It also enhances the powers of Scotland's Commissioner for Children and Young People.

Scotland must have the power to ensure that any repeal of the Human Rights Act or withdrawal from the European Convention on Human Rights at a UK level does not impact on children's human rights protections in Scotland. This is essential in relation to both devolved and reserved issues.

Consideration should be given to:

- Giving legal weight to the Sewel Convention to ensure that the UK Parliament does not legislate on devolved matters, or alter the powers or duties of the Scottish Parliament or Government, without the express consent of the Scottish Parliament.
- Putting in place a statutory duty to undertake a human rights impact assessment for Scotland into the UK government's legislative process.

*Together urges the Smith Commission to ensure that the Scottish Parliament has the power to secure and strengthen its existing human rights and children's rights protections across devolved and reserved issues.*

### **International representation**

Through the UK as state party, Scotland has an obligation to report to the UN on the extent to which it is meeting its human rights obligations. This reporting relates to both UN Treaty Committees, such as the UN Committee on the Rights of the Child, and the Human Rights Council through the Universal Periodic Review. The extent to which Scotland is involved in reporting – and held to scrutiny at a UN level – can be patchy and is very dependent on the will to involve the devolved nations at a UK level.

*Together urges the Smith Commission to ensure a formal mechanism is put in place at a UK level to ensure that Scotland is routinely and comprehensively involved in international human rights reporting mechanisms. This should include clear representation of distinct Scottish issues within the UK reports to treaty bodies and representatives from Scotland being included in delegations to the UN as a matter of routine.*

## Take account of Scotland's National Action Plan for human rights

Scotland's National Action Plan (SNAP) for human rights was launched in December 2013 after an extensive process of research, development and collaboration. In line with UN guidance on National Action Plans for human rights, it was developed inclusively, based on evidence of gaps in human rights protection and will be independently monitored. It has been widely welcomed by children's organisations who recognise its potential in terms of ensuring the rights of children are protected, respected and fulfilled. Key partners across government, civil society and the public sector are actively involved in taking the action plan forward in order to deliver practical and sustainable improvements in the protection of people's rights.

*Together urges the Smith Commission to draw from the skills, knowledge and experience gained through the development and implementation of SNAP. The Commission should ensure that the lessons learnt are fed into the development of structures, culture and policy relating to the further devolution of powers to the Scottish Parliament.*

## 5. Financial Considerations

The key points raised in our response concentrate on the need to ensure Scotland can secure and strengthen its human rights framework for children. Most points relate to process and culture changes that should not result in significant resource requirements.

However, we recognise that any devolution of new powers must take account of related financial considerations. Compliance with the UNCRC requires governments to analyse public expenditure on children and determine that in line with Article 4 of the Convention they are spending the 'maximum available resources' to fulfil children's rights.<sup>4</sup> As such, it is essential that full consideration is given to the impact any financial settlement might have on the rights of children and young people. A CRIA will ensure that children's rights are at the heart of all discussions relating to any new financial settlement. This will ensure Scotland is able to fulfil its obligations to children in implementing the UNCRC.

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<sup>4</sup> UN Committee on the Rights of the Child (2003) General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child