



Consultation response: **Children (Scotland) Act 2020 - registers of child welfare** **reporters, curators ad litem and solicitors** July 2021

About Together (Scottish Alliance for Children's Rights)

Together (Scottish Alliance for Children's Rights) is an alliance that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) and other international human rights treaties across Scotland. We have over 450 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. The views expressed in this submission are based on wide consultation with our members but may not necessarily reflect the specific views of every one of our member organisations.

Question 1	Answer
Who should provide the operation and management of the register of child welfare reporters? (please select one answer). (a) the Scottish Government (b) the Scottish Government should contract this out to a third party (c) this should be run by the SCTS on a national level. (d) another option (e) don't know	e) Don't know
Why did you select your answer?	

Question 2	Answer
Do you agree/disagree with the proposed process for including an individual on the register of child welfare reporters? Agree Disagree	Don't know

Don't Know	
Why did you select your answer?	

Question 3	Answer
Do you agree/disagree that child welfare reporters should be included on the register for a three year period? Agree Disagree Don't Know	Don't know
Why did you select your answer?	

Question 4	Answer
Do you agree/disagree with the proposed reappointment process for child welfare reporters? Agree Disagree Don't Know	Agree
Why did you select your answer?	<p>Together welcomes the opportunity to submit a consultation response on registers of child welfare reporters, curators ad litem and solicitors. We support the submission made by the Scottish Women's Aid and have drawn from this in preparing our response.</p> <p>We agree that automatic reappointment is not appropriate and that child welfare reporters must continue to demonstrate that they are eligible for inclusion. We believe this should specifically include requirements for them to participate in ongoing child rights-based training.</p>

Question 5	Answer
For each of the following categories of people, should they be ineligible for inclusion on the	Yes for all the options given

<p>register of child welfare reporters? (Please select yes/no/don't know for each option)</p> <ul style="list-style-type: none"> • an individual directly involved in the establishment, maintenance, operation or management of the register of child welfare reporters • an individual employed by the SCTS • a member of the judiciary • a member of the Scottish Government or junior Scottish Minister • an individual barred from regulated work with children by virtue of the Protection of Vulnerable Groups (Scotland) Act 2007 	
<p>Why did you select your answer?</p>	<p>Article 12 of the UN Convention on the Rights of the Child (UNCRC) sets out the child's right to be heard in all decisions affecting them and to have their views taken into account. It says that the child's views may be expressed directly or gathered by a representative. It is of utmost importance that the child's views are transmitted correctly to the decision maker by the representative and that the views of the child are expressed 'freely' i.e., without undue pressure or influence.</p> <p>The representative must be aware that they represent exclusively the interests of the child and not the interests of other persons, institutions or bodies.</p>

Question 6	Answer
<p>Is there anyone else who should be ineligible for inclusion on the register of child welfare reporters?</p> <p>Yes / No /Don't Know</p>	<p>Yes</p>
<p>Why did you select your answer?</p>	<p>Any person barred from regulated work with children and/or protected adults under the PVG legislation, should be ineligible for inclusion on the register, in order to keep children, young people and adults safe.</p>

	Any person with a relevant complaint upheld by their professional or regulatory body, or barred from working in that professional role, should be ineligible for inclusion.
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Question 7	Answer
Do you agree/disagree with the approach proposed when an individual is removed from the register of child welfare reporters? Agree Disagree Don't Know	Don't know
Why did you select your answer?	

Question 8	Answer
Do you agree/disagree with the proposed requirements that a person must satisfy in order to be included on the register of child welfare reporters? Agree Disagree Don't Know	Agree
Why did you select your answer?	<p>Together agrees with the majority of proposed requirements that a person must satisfy in order to be included on the child welfare reporter register. Many of the areas suggested are essential to ensure the rights of children and young people are protected, respected and fulfilled.</p> <p>In line with a child rights-based approach, appointment criteria should not only be about setting minimum standards but also seeking to encourage higher standards from those applying for and remaining on the child welfare reporter register.</p> <p>Together notes the proposed requirement on 'understanding the ways adults can influence a child'. It is crucial that any such</p>

	<p>requirement is interpreted consistently with General Comment no. 14 on the best interests of a child. Paragraph 34 stresses the importance of decisions being made in a <i>child's</i> best interests, and the need to guard against parents who may try to manipulate the concept to defend their own interests.</p> <p>We also wish to stress, in relation to the proposed requirement of having skills and experience in 'communicating with children including obtaining the views of children', it is not so much a matter of simply obtaining the views of children but ensuring children and young people are able to meaningfully exercise their right to participate and share their views (UNCRC Article 12). To do this, child welfare reporters should be required to have the skills set out in the Council of Europe Guidelines on Child-Friendly justice to ensure effective communication with children both before, during and after proceedings. Such skills include:</p> <ul style="list-style-type: none"> • The ability to use child-friendly, accessible information which is age appropriate and in a language that the child can understand. • The ability to successfully adapt the length of discussions, interviews and other procedures to be suitable for the child's age and attention span. • The ability to provide specific protection and further assistance if needed to children with particular vulnerabilities, such as children with learning disabilities. <p>In line with the Council of Europe's guidelines, child welfare reporters should also have the competences laid out in the Common Core which was launched by Scottish Government in 2012. This sets out the core knowledge, skills and understanding that all members of the children's workforce should demonstrate.</p> <p>Requiring child welfare reporters to have these minimum skills before being included on the register can help to ensure children</p>
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	and young people have their views and experiences reflected in the child welfare report.
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Question 9	Answer
<p>Are there any other requirements that a person must satisfy in order to be included on the register of child welfare reporters?</p> <p>Yes / No /Don't Know</p>	Yes
<p>Please give the additional requirements you feel are necessary and why you feel they are important.</p>	<p>Prospective child welfare reporters should be able to evidence knowledge and understanding of children’s human rights, as set out in the UNCRC, in addition to a practical understanding of how to help realise these rights through their role. They should demonstrate an understanding of trauma-informed practice (UNCRC Article 39). In doing so, children who are victims of a criminal offence, sexual abuse, violence and other forms of mistreatment can feel supported to share their views whilst being fully protected (General Comment no. 12).</p>

Question 10	Answer
<p>Do you agree/disagree that existing child welfare reporters having to apply to be on the new register?</p> <p>Agree Disagree Don't Know</p>	Agree
<p>Why did you select your answer?</p>	<p>We support the position that existing child welfare reporters should have to apply to be on the new register, as this will ensure consistency, and provides confidence that all child welfare reporters are of the same</p>

	high standard and working to the same principles and requirements.
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Question 11	Answer
<p>Do you agree/disagree with the proposed training requirements for child welfare reporters?</p> <p>Agree Disagree Don't Know</p>	<p>Don't know</p>
<p>Why did you select your answer?</p>	<p>Together welcomes the proposed training requirements, but we would like to stress the UN Committee on the Rights of the Child's recommendation that children's rights training is systematic and ongoing (General Comment no. 5). This training should include specific training on the UNCRC itself, as well as ensuring all other training is child rights-based. The Council of Europe supports this approach, as framing all training in terms of children's rights will aid practical application and implementation of the rights of children. For example, it will help child welfare reporters to:</p> <ul style="list-style-type: none"> • Create trusting environments in which children feel comfortable to exercise their right to be heard. • Provide accessible, child-friendly information so children have knowledge of all aspects of the matter affecting them. • Facilitate the views of minoritised ethnic children and children who do not speak the majority language. <p>The importance of children's rights-based training is further reinforced with the recently passed UNCRC (Incorporation) (Scotland) Bill, which sets out that public authorities must not act incompatibly with children's rights, and that Scottish Ministers must report on the steps they are taking and have planned to raise awareness and understanding of children's rights.</p>

Question 12	Answer
<p>Is four days of paid training per year for child welfare reporters appropriate?</p> <p>Yes No, I believe it should be fewer days No, I believe it should be more days Don't know</p>	<p>No, I believe it should be more days</p>
<p>Why did you select your answer?</p>	<p>The UN Committee on the Rights of the Child's recommends that child's rights training is systematic and ongoing. This includes both initial training and re-training (General Comment no. 5).</p> <p>Training must be part of a wider implementation strategy to ensure the Children (Scotland) Act 2020 achieves its objectives. Infrastructure that supports a child rights-based approach, leadership, ongoing attention to quality of provision, data gathering and disaggregation of data, accountability systems that ensure that improvements in provision are sustained and expanded are all necessary elements of the package.</p>

Question 13	Answer
<p>How should fee rates for child welfare reporters be applied?</p> <p>Hourly rate Per page rate Another way Don't know</p>	<p>Don't know</p>
<p>Why did you select your answer?</p>	

Question 14	Answer
<p>Do you have any comments on the proposed policy in relation to expenses for child welfare reporters?</p>	<p>No</p>

Yes	
No	
Please provide your comments	

Question 15	Answer
<p>When a child welfare reporter is selected should this be:</p> <p>The next person on the register A person with specific areas of expertise requested by the court Through another system</p>	No answer
Why did you select your answer?	The views of the child should be sought in relation to the appointment of a child welfare reporter. There may be cases where a child has had a specific child welfare reporter in the past but did not feel listened to or that their rights were respected, protected and fulfilled.

Question 16	Answer
<p>Should a child welfare reporter provide recommendations on what is in the best interests of the child in their report?</p> <p>Yes No Don't know</p>	No
Why did you select your answer?	<p>The concept of the child's best interests set out in Article 3 of the UNCRC is aimed at ensuring both the full and effective access to all of their rights recognised in the UNCRC.</p> <p>In line with General Comment no. 14, the full application of a child's best interests requires development of a rights-based approach, engagement of all actors, to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote his or her human dignity.</p> <p>General Comment no. 14 says a multidisciplinary team of professionals should be involved in assessing the child's best interests which itself involves</p>

	<p>consideration of a wide range of factors. As the child welfare reporter is unlikely to have had access to all the evidence held by the court, it would not be appropriate for a child welfare reporter to make such recommendations. It is the role of the child welfare reporter to articulate the factors which should be taken into account by the court in determining what would be in the best interests of the child – rather than it being for the child welfare reporter to recommend what they consider would be in the child’s best interests.</p> <p>It is important to note that when assessing and determining the child’s best interests, the court should consider the elements set out in General Comment no. 14 and there should be widely accessible mechanisms for children to have these decisions reviewed or appealed.</p>
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Question 17	Answer
<p>Do you have any comments on the proposed procedure for complaints from individuals who are unsuccessful when applying to be on the register of child welfare reporters or are removed from the register?</p> <p>Yes No</p>	No
Please provide your comments	

Question 18	Answer
<p>Where a child welfare reporter has a grievance about fees or expenses or comments on their appraisal should this be dealt with by the body appointed to operate and manage the register?</p> <p>Yes No Don’t know</p>	No
Why did you select your answer?	

Question 19	Answer

<p>Do you have any comments on the proposed procedure for complaints about child welfare reporters?</p> <p>Yes No</p>	<p>Yes</p>
<p>Please provide your comments</p>	<p>Children have expressed the need to access a range of ‘tools’ to challenge breaches of their rights – from child-friendly complaints mechanisms through to a supportive adult with the time, expertise and patience to help them assert their rights. Barriers such as long-drawn-out complaints processes can seriously compromise a child’s ability to assert their rights. In General Comment no. 5, the UN Committee on the Rights of the Child reiterates the importance of ensuring that there are child friendly procedures in place through which children, and those advocating on behalf of children, can access justice. It is recommended that any complaints procedures should incorporate both the UN Committee’s recommendations set out in General Comment no. 5 and the Council of Europe’s Guidelines on Child-Friendly Justice. These should include child-friendly information, advice, advocacy, and access to independent complaints procedures.</p> <p>Children and young people should have a role to play in designing and shaping the complaints process to ensure it meets their needs (Article 12 UNCRC).</p>

Question 20	Answer
<p>Do you agree/disagree with the proposed requirements that a person must satisfy in order to be included on the register of curators ad litem?</p> <p>Yes No Don’t know</p>	<p>No</p>
<p>Why did you select your answer?</p>	<p>Given the role and responsibility the curator would have in safeguarding children and young people’s rights, Together recommends the person must satisfy at the very minimum the requirements imposed on child welfare</p>

	reporters, including the additional requirements outlined in our answers above.
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Question 21	Answer
Should there be any other requirements that a person must satisfy in order to be included on the register of curators ad litem? Yes No Don't know	Yes
Please give the additional requirements you feel are necessary and why you feel they are important.	Please see our response to question 20.

Question 22	Answer
Do you have any comments on the proposed training requirements for curators ad litem? Yes No Don't know	Yes
Why did you select your answer?	Similar to our comments in our response to question 20, the training requirements should at least match the training requirements made of child welfare reporters that we have set out in questions eight, nine and 11.

Question 23	Answer
Do you agree that four days of paid training per year for curators ad litem is appropriate? Yes No, I believe it should be fewer days No, I believe it should be more days Don't know	No
Why did you select your answer?	As per our comments on child welfare reporter training, child rights-based training for curators ad litem should be systematic and ongoing. Please see our response to question 12, above.

Question 24	Answer
Do you have any comments on the proposed process for appointing a curator ad litem in a case under section 11 of the 1995 Act?	Don't know
Yes No Don't know	
Please provide your comments	

Question 25	Answer
How should fee rates for child welfare reporters be applied?	Don't know
Hourly rate Per page rate Another way Don't know	
Why did you select your answer?	

Question 26	Answer
Do you have any comments on the proposed approach in relation to expenses for curators ad litem?	No
Yes No	
Please provide your comments	

Question 27	Answer
Do you have any comments on the proposed procedure for complaints by or about curators ad litem?	Yes
Yes No	
Please provide your comments	Together wishes to reiterate the comments made in our response to question 19 regarding a child-friendly complaints process in relation to child welfare reporters.

	In relation to para 3.40, we query what criteria will be used to decide whether a complaint has 'any merit', and whether there is an appeals process.
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Question 28	Answer
Do you have any comments on the proposed approach in relation to expenses for curators ad litem? Yes No	No
Please provide your comments	

Question 29	Answer
Do you agree/disagree with the proposed requirements that a person must satisfy in order to be included on the register of solicitors? Agree Disagree Don't know	Don't know
Why did you select your answer?	

Question 30	Answer
Do solicitors on this register require fewer days training each year than child welfare reporters and curators ad litem, on the basis that they are likely to receive fewer appointments? Yes No Don't know	No
Why did you select your answer?	Together does not agree that solicitors on this register require fewer days training than child welfare reporters and curators ad litem. They are dealing with the same complex issues and to ensure children and young people's rights are respected, protected and fulfilled solicitors need to be adequately equipped to take a rights-based

	approach to these issues, alike to child welfare reporters and curators ad litem.
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Question 31	Answer
Are there any other training requirements that you think should be included? Yes No	Yes
Please give the additional requirements you feel are necessary and why you feel they are important.	Please see Together's response to questions eight, nine and 11.

Question 32	Answer
Do you have any comments on the proposed process for the court appointing a solicitor from the register? Yes No	No
Why did you select your answer?	

Question 33	Answer
Do you agree/disagree with the proposed procedure for expenses for individuals appointed to this register? Agree Disagree Don't know	Don't know
Why did you select your answer?	

Question 34	Answer
Do you have any comments on the proposed procedure for complaints by or about solicitors on this register? Yes No	Yes
Why did you select your answer?	Within the consultation paper, there is very little information included on how parties would make a complaint against a solicitor

	<p>on the register. Despite stating that a child could raise a complaint (para 4.32), there is no mention on the need for a child-friendly complaints process. We would therefore like to echo our response to question 19, that to fulfil children’s right to be heard, a child-friendly complaints system must be established. We recommend any complaints procedures to incorporate the Council of Europe’s Guidelines on Child-Friendly Justice.</p>
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Question 35	Answer
<p>Do you have any comments about, or evidence relevant to:</p> <ul style="list-style-type: none"> a) the draft Business And Regulatory Impact Assessment Yes/No b) the draft Child Rights and Wellbeing Impact Assessment; Yes/No c) the draft Data Protection Impact Assessment; Yes/No d) the draft Equality Impact Assessment; Yes/No e) the draft Fairer Scotland Impact Assessment Yes/No or f) the draft Islands Communities Impact Assessment Yes/No 	<p>b) yes</p>
<p>Please provide your comments</p>	<p>The use of CRWIA is strongly welcomed by Together as it helps to ensure children’s rights are front and centre of decision-making. Together recommends analysing the potential impact of this policy on rights children have that are set out in other international human rights instruments, general comments of the UNCRC and recommendations made through the Universal Periodic Review. This can ensure that the CRWIA links with the broader human rights obligations. To ensure successful assessment of children’s rights, recommendations set out by students from University of Edinburgh should be incorporated and training on how to conduct an effective CRWIA should be provided.</p>

Question 36	Answer
Do you have any further comments? Yes No	Yes
Please provide your comments	Together welcomes the regulation of child welfare reporters, curators ad litem, and solicitors appointed when a person is prohibited from conducting their own case. The introduction of eligibility criteria, of mandatory training, and of accessible complaints processes, in an important first step to transforming our civil justice system to create a child-friendly environment where children and young people's rights are respected, protected and fulfilled.

For further information, please contact Naomi Sutton, Policy and Communications Assistant

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