



Education Reform: A consultation on the provisions of the Education Bill

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 550 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs and interested professionals. 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.

Introduction

Together (Scottish Alliance for Children's Rights) welcomes the opportunity to comment on Scottish Government's proposals for the Education Bill. We welcome the reference to Article 12 UNCRC (right to be heard) in the consultation paper and call on Scottish Government to:

- **Ensure that children's human rights are at the heart of the reforms and new systems;**
- **Explore the opportunities presented by the Education Bill to bring provisions of the Education (Scotland) Act 1980 within the scope of the UNCRC (Incorporation) (Scotland) Bill.**

The need to ensure a children's rights-based approach

Every child (under 18) has rights under the UNCRC. This includes the right to education, the right to play, to be safe from harm and to be free from discrimination. Children's rights are interrelated and indivisible – to fully uphold one right you must uphold them all. Accordingly Scottish Government must ensure it considers *all* articles of the UNCRC in the development, drafting and implementation of the Education Bill.

Article 28 recognises children's right to education. It calls on governments to provide free primary education, ensure access to secondary and higher education, encourage regular attendance, reduce drop-out rates, uphold children's dignity and share learning internationally. Article 29 outlines the aims of education, including that education should focus on developing the child's personality, talents, mental and physical abilities to their fullest potential. Education should also develop respect for human rights and understanding others, respect for the child's parents/carers and cultural values and develop respect for the natural environment. As such, the UNCRC is clear that education is about far more than a narrow understanding of 'academic' achievement. The UN Committee on the Rights of the Child has offered further guidance in the form of General Comments, including General Comment No. 1 on the aims of education.¹ Scottish Government should draw from this authoritative guidance as it develops the Education Bill and proposed systems.

Children and young people are clear about the need to put their human rights at the heart of education reform. Earlier this year, Together supported Members of the Children's Parliament and Scottish Youth Parliament to present evidence to the UN Committee on the Rights of the Child ('UN Committee') as part

¹ CRC/GC/2001/1

of the UK's review. The children and young people called for an education system that is "*stronger, more inclusive and fairer for all learners than it was before*".² The group was clear that Article 29 should be at the heart of reforming the education system. They said: "*Scottish Government should change the definition of a 'successful learner' and develop an education system that enhances children and young people's skills, talents and personalities rather than focusing on tests and exams.*" The children and young people reflected on evidence gathered from their peers and from children and young people's views shared as part of Professor Kenneth Muir's consultation,³ concluding that the new system should focus on the importance of relationships and put children and young people's views at its heart:

"It doesn't help your talent. It only helps with literacy and numeracy." (Education Reform consultation)

"The reality is that young people in education have felt let down and ignored over the course of the pandemic." (MSYP)

In response to children and young people's calls, the UN Committee issued a series of recommendations on education.⁴ These calls included the need to address educational inequalities experienced by children in poverty, migrant, refugee and asylum-seeking children, young carers, disabled children and other children whose rights are most at risk. Specific recommendations included the need to ensure children's right to be heard in decisions about their education (with particular attention to the views of younger children, disabled children and Care Experienced children); inclusive education within mainstream schools; prohibition on restraint and seclusion; limiting the use of exclusions so they are only ever used as a last resort and prohibited in primary schools; action to address bullying; guidance on inclusion of trans and gender-questioning children; action to ensure education is anti-racist; making children's rights education a mandatory part of the curriculum; systematic children's rights training for teachers. The UN Committee also called for an end to testing measures that contribute to high levels of stress owing to academic pressure and to ensure that children benefit from a creative learning environment. Scottish Government should consider how it can best respond to these recommendations in its approach to the Education Bill.

Bringing legal provisions within the scope of the UNCRC (Incorporation) (Scotland) Bill

The recent passage of the *UNCRC (Incorporation) (Scotland) Bill* will soon mean that Scottish Government, education authorities and schools will be under legal duties to act compatibly with children's rights under the UNCRC. While it has been necessary to narrow the scope of the Bill to bring it within devolved competence, it will still offer an *additional* layer of protection for children's rights in certain areas. Section 6 of the amended Bill, passed unanimously on 7th December 2023, provides that it will be unlawful for a public authority to act (or fail to act) in connection with a relevant function in a way which is incompatible with the UNCRC requirements. A "relevant function" means one which is within devolved competence and is set out in an Act of the Scottish Parliament. This means that UK Acts which otherwise relate to devolved matters will fall outwith the scope of the amended Bill – including the Education (Scotland) Act 1980.

² Together, Children's Parliament, Scottish Youth Parliament, CYPCS (2023). The problems adults don't see. https://www.togetherscotland.org.uk/media/3265/cyp_report_2023_digital_final.pdf [Date accessed: 18.12.23].

³ Together, Children's Parliament, Scottish Youth Parliament (2021). Education Reform: consulting with children and young people. https://www.childrensparliament.org.uk/wp-content/uploads/Education-Reform-CP_SYP_TOGETHER-Report-March-2022_2.pdf [Date accessed: 18.12.23].

⁴ CRC/C/GBR/CO/6-7

Together has called on Scottish Government to commit to using specific legislative opportunities to expand the scope of the UNCRC Bill.⁵ Our view is that the proposed Education Bill offers a significant opportunity to identify key provisions of the Education (Scotland) Act 1980 and bring these into Scots law and therefore within the scope of the UNCRC Bill.

We would urge the Scottish Government to consider whether key provisions of the 1980 Act, such as the duty to provide education; school starting age; access to social, cultural and recreational activities; education for children unable to attend school; provision of school meals; administration and finance; and rules on independent schools could be brought within the scope of the UNCRC Bill via the proposed Education Bill.

We welcome Scottish Government taking the time to consider these comments in line with its commitment to take a maximalist approach to UNCRC incorporation. We look forward to engaging further in the education reform process in due course.

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⁵ Together (October 2023). Joint letter from Together members to Cabinet Secretary for Social Justice. https://togetherscotland.org.uk/media/3520/letter_cabinetsecretary_27-10-23_final_members.pdf [Date accessed: 18.12.23].