

## **CELCIS Response to the Scottish Parliament’s Equalities and Human Rights Committee’s call for views on the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill.**

We warmly welcome the opportunity to respond to the Scottish Parliament’s Equalities and Human Rights Committee’s call for views on the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill (the Bill). We strongly support the intent of this legislation to incorporate the UNCRC into Scots Law. With a comprehensive approach to implementation, this historic Bill can embed children’s rights across our public services, change how we view and realise rights in Scotland, and raise the status of all children in Scotland.

### **Key Considerations**

- We strongly support this progressive approach promoting systemic change through legislation for the promotion of children’s rights through incorporation of the United Nations Convention of the Rights of the Child.
- A comprehensive, multi-agency approach to planning and taking actions to implement the Bill should commence as soon as possible to ensure that all children, including the most vulnerable are able to enjoy their rights in practice.
- Implementation should build on lived experience as well as targeting the barriers to change: the leadership required; the ability to use evidence and data to inform decision making and effective supports for the workforce.
- Awareness raising and engagement about the changes required is critical at every level of Scottish society, but especially for children, about what children’s rights mean in their everyday lives and how to uphold them.
- We welcome the mechanism for children to seek redress where their rights are not upheld, but emphasise that this should be a last resort, with the prevention of rights breaches prioritised.

The rights enshrined in the UNCRC apply to *all* children under the age of 18. They are interrelated, indivisible and interdependent. This means that the enjoyment of one right can often be impacted by the fulfilment or infringement of another. The ambitious, progressive approach taken in the Bill to incorporate the UNCRC within the powers of the Scottish Parliament will help ensure that the full range of children’s rights are understood and realised. In light of their additional vulnerability, particular efforts must be made to ensure that the rights of children in vulnerable situations are upheld. International evidence shows that children in vulnerable groups can continue to fare less well in comparison to their peers even after the UNCRC is incorporated. This is particularly so when competing public interest concerns result in a lower awareness of how the rights and needs of these groups differ from the general child population.<sup>i</sup> This must be addressed to ensure children’s rights are accessible and obtainable for all children.

The implementation of the Bill has the potential to make a profound difference to the lives of children in need of care and protection. This includes children who

are care experienced, those who are care leavers, and those who are currently being cared for in foster care, residential care, kinship care, or living at home with one or both birth parents whilst receiving support from social work. This also includes children referred to the Scottish Children's Reporter Administration (SCRA) on 'care and protection' grounds or those 'at risk of significant harm' and thus on a Child Protection Register. There are also children who are in need of care and protection who are not known within formal child protection systems.<sup>ii</sup> These children come from a range of backgrounds and like all children, are individuals who have their own unique strengths and needs. Nonetheless, they are all children whose rights are often challenged, and less likely to be fully realised.<sup>iii</sup>

We know that children in need of care and protection can be particularly disenfranchised from their rights. Children's Parliament research involving children with care experience recognises the importance of children being involved in decision-making processes that affect them.<sup>iv</sup> Whilst each experience is unique, all children with care experience have encountered difficulties in their lives, which have a detrimental impact on their development, their opportunities, and their life chances.

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

Yes. We strongly welcome this ground-breaking Bill and the "maximalist" approach (seeking to incorporate the UNCRC fully and directly within the devolved competence of the Scottish Parliament) that has been taken. We know that where full and direct incorporation has taken place in countries such as Belgium, Norway and Spain, cultural shifts in the public support and understanding of children's rights have been galvanised, and the arguments of politicians, public officials and the third sector when advocating for children's rights in legislation and policy have been strengthened, resulting in positive changes that enable children to better enjoy their rights.<sup>v</sup>

The COVID-19 pandemic has resulted in a number of detrimental effects on the rights of children and their families, especially those who are living in poverty for whom vulnerabilities and barriers to accessing their full rights have been exacerbated.<sup>vi</sup> In their 2016 Concluding Observations to the UK, the (UN) Committee on the Rights of the Child highlighted continued concerns in relation to: high rates of child poverty; discrimination and stigmatisation of children in care; insufficient respect given to children's views; inadequate family support; instability of care placements and relationships; inequalities in education and health services; and the treatment of child witnesses.<sup>vii</sup> This makes the introduction of the Bill to incorporate children's rights into Scots Law even more pertinent. Robust and comprehensive courses of action and redress to uphold these rights are needed to ensure that recovery from the COVID-19 pandemic upholds the rights of the most vulnerable children. This is only possible by carefully considered and evidence informed implementation planning. We welcome then that the Bill takes both a proactive and preventative approach to upholding children's rights, including Child Rights and Wellbeing Impact Assessments (CRWIA), Children's Rights Schemes and strike down powers for Courts.

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

### **Prevention**

Providing opportunities to enforce children's rights, including children themselves claiming their rights through redress, is a crucial part of UNCRC implementation.<sup>viii</sup> However, the need to go to court to ensure that children's rights are enforced should be looked upon as a last resort, not a primary mechanism for giving effect to those rights. Children may find legal action and court processes difficult to navigate and, at times, traumatic.<sup>ix</sup> In addition, while the use of litigation remains an important tool to secure realisation of the UNCRC it can often be reactive to individual grievances rather than enabling systemic change and prevention of rights breaches.<sup>x</sup> A focus on cultural changes to promote respect for children's rights, along with comprehensive actions to prevent rights breaches must be seen as a priority so that the need to resort to legal redress is rarely required.<sup>xi</sup> Doing so is closely aligned with Getting it Right For Every Child (GIRFEC), which is underpinned by a preventative approach, and aims to support children and families to reduce the escalation of difficulties and the need for formal state intervention. Supporting children and families at an early stage, before the need for high level formal interventions (for example, by courts and Children's Hearings) is a foundational recommendation of the concluding report of Scotland's Independent Care Review, The Promise,<sup>xii</sup> and will only be possible with the full, and effective implementation of GIRFEC. Such an achievement will take a fundamental shift in Scotland's approach to guiding and resourcing implementation but will be necessary if we want to give meaningful effect to UNCRC incorporation.

### **Child-friendly justice**

Where legal action to enforce rights is necessary, court processes can be difficult and traumatic experiences for children. There is a need to remedy this.<sup>xiii</sup> One possibility would be to introduce a complaints mechanism which would reduce the need to go to court.<sup>xiv</sup> It is important that any complaints mechanism put in place is simple to access and use and is also child-friendly. The development of local and uniform processes across all Public Authorities in Scotland could enable swift redress and the prevention of further breaches. These should include the provision of child-friendly information and the availability of local support including advocacy and legal services. Details of these processes, supports and how they can be accessed should be readily available locally. The processes for all 32 local authorities could also be accessed via, for example, the websites for advocacy services, Children's Hearings Scotland, SCRA or the Children's Hearing Improvement Partnership. However it is imperative that any complaints mechanisms introduced do not create barriers that prevent children accessing redress through the courts if that is required. It will also be necessary to make access to legal advice and the court system more user-friendly for children, in line with the Council of Europe's Guidelines for Child Friendly Justice.<sup>xv</sup>

Full incorporation of the UNCRC means that children are protected under domestic law and are therefore able to take a case in their own name. Under Scots Law, children have legal capacity at age 16 and are presumed to be able to instruct a solicitor over the age of 12. However, it is recognised that taking a case to court for a rights violation is rarely desirable for an individual child and preventative measures are required so that court action is a last resort. It should

be considered that taking a court case for a collective group of children (e.g. led by the Children and Young People's Commissioner Scotland) would be preferable. There is also an option of strategic litigation in the public interest on behalf of children to be taken without individual children having to face a court case. We welcome the power given to the Commissioner to bring, or intervene in, proceedings.

### **Legal Aid**

Greater access to legal aid and legal advice and assistance is required.<sup>xvi</sup> We would also draw attention to the rights challenges for some children in need of care and protection in relation to access to a fair and just trial (UNCRC Article 40). For many children in need of care and protection support to seek redress may be more difficult if such redress involves breaches of their rights by their carers or corporate parents. This heightens their need for advocacy support. Advocacy workers and solicitors instructed by children on these cases must have the skills to enable them to communicate well with children. They must be knowledgeable about children's rights, including the particular needs of vulnerable children in need of care and protection and training and support should be available to them in these areas.<sup>xvii</sup> Children should be made aware of their right to access an advocacy worker, instruct a solicitor or access legal aid to ensure their rights are upheld where appropriate. A solicitor assessing a child or young person's eligibility for legal aid when seeking civil advice and assistance must take into account the financial circumstances of anyone who owes a 'duty of alimenter' to that child or young person. There is an exemption to this rule, whereby if it would be unjust or inequitable to treat the resources of persons with an obligation for aliment as the child's resources they can be disregarded, in accordance with guidance in Scottish Legal Aid Board's Civil Assistance Guidelines for Assessment for Special Categories of Applicant. The onus is on the solicitor to justify to the Scottish Legal Aid Board why it would be unjust or inequitable, and decisions are made on a case by case basis. Thus, whilst children who are looked after away from home would be considered exempt and should not experience complications accessing legal aid in their own right, children who are looked after at home or with other family members are in a more complex position. An application for legal aid for some children may require the involvement of family members, breaching the child's right to confidentiality.

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

We welcome the progressive approach taken by this legislation to incorporate the UNCRC within the powers of the Scottish Parliament. We make the following suggestions in order to further strengthen the capacity of this legislation to realise the rights of children in Scotland.

### **Commencement Date**

We note that no date has been given for the commencement of this legislation within the Bill or accompanying documents. Learning from CELCIS's implementation programmes across Scotland consistently shows that planning and engagement must begin as early as possible to instigate meaningful change, so we would argue that a commencement date for this legislation should be given now.

## **Planning and Resource Allocation**

We would also draw attention to the plans and resource allocation included within the Financial Memorandum, including levels of funding and timescales for implementation of the Bill. Effective implementation will require time and cannot be taken forward without adequate funding. We would suggest further scrutiny by the Committee on both time and financial resource commitments to implementing this legislation.

## **Devolved Competence of Scottish Parliament**

This legislation does not seek to extend the powers of the Scottish Parliament nor Ministers beyond devolved competence, and so excludes some articles of the Convention that relate to matters in which governance is reserved to the UK parliament. We are encouraged that the omission of Articles from the Bill for this reason has been minimal and that there is capacity for the addition of Articles if further powers should be devolved to Scotland in the future, but not the removal of Articles. We know that where efforts have been made to implement the UNCRC in other devolved or federal regions, such as in Victoria in Australia, Catalonia in Spain, and Berlin in Germany, evidence shows that these approaches have played a crucial role in encouraging good practice beyond those federal or regional borders.<sup>xviii</sup> The passing of this legislation would offer the opportunity for Scotland to be bold and lead the way in promoting and protecting children's rights across the UK. To do so means that regard must be paid to how the interrelated and indivisible rights of children under the UNCRC can be upheld with specific attention given to ensuring that no children in Scotland are left out of actions to implement this legislation where the rights that most affect them fall outside devolved competency.

## **Interpretation of 'the UNCRC requirements'**

We note that Section 4 of the Bill stipulates that the Scottish courts can look to the UNCRC preamble and all articles, including redacted articles, as well as the first and second Optional Protocol articles to assist with their interpretation of the UNCRC; however, this does not include the General Comments, Concluding Observations or decisions under the third Optional Protocol, which provide incredibly valuable assistance in the interpretation of the implementation of the UNCRC. Scottish courts already have a history of using UNCRC in case law so there is existing clear competency in the understanding of international law. We would strongly urge inclusion of these as sources of support and guidance for the courts within the Bill.

## **Child Rights and Wellbeing Impact Assessments (CRWIA)**

We welcome the requirement for the Scottish Government to prepare a CRWIA for new Bills as well as for certain statutory instruments and 'decisions of a strategic nature relating to the rights and wellbeing of children as they consider appropriate'. We understand the need for some ministerial discretion as to which decisions of a strategic nature will be subject to these reporting duties in order to enable relevant and high quality assessments. However, we would suggest that the wording 'as they consider appropriate' be removed to ensure that this discretion is limited and there is accountability around decision making duties to assess. This presents an opportunity to implement learning on best practice to produce robust and meaningful rights reports and impact assessments, as outlined in question 7 of this response. This evidence highlights

the importance of accountability in decision making processes about which functions are subject to reporting duties and which are omitted, as well as giving further information about what resources are required to enable high quality rights reporting.<sup>xxix</sup>

### **Definition of Public Authorities**

Section 6 of the Bill states that Public Authorities must not act in a way that is incompatible with the UNCRC, and that they must provide reports every three years on how they are complying with the UNCRC. We would suggest that the Scottish Courts and Tribunals Service be added to the list of authorities required to report. We note that private bodies carrying out 'functions of a public nature' fall within the definition of a public body in this legislation, similar to provisions in the Human Rights Act 1998. Children in need of care and protection are frequently supported by private bodies that carry out functions 'of a public nature' on behalf of public authorities; including childcare, private foster care, private residential care and public schools. It is imperative that the rights of children cared for in these settings are upheld, with the private bodies who care for them subject to the same reporting duty as public authorities. Current case law under the Human Rights Act 1998 informing the responsibilities of private bodies carrying out public functions is not always straightforward.<sup>xx</sup> The interpretation of these duties have at times been narrow, and we would suggest that the scrutiny of the Bill by the Committee be used as an opportunity to clarify these duties and to ensure that the rights of all children, including those receiving care and support from private bodies, are upheld.

#### **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?**

Full incorporation of the UNCRC, if implemented sustainably, will have a transformative effect on children's ability to exercise and enjoy their rights. This will mean deep and wide-ranging changes to many public bodies, which must be planned, resourced and implemented with care.

The UNCRC's General Measures of Implementation offer a useful, practical framework of measures which support the realisation of children's rights, including non-legislative measures such as budgeting; national plans of action; monitoring processes; education, awareness and training; and participation of civil society.<sup>xxi</sup> Evidence also shows that to achieve the changes sought by this legislation will require that positions of strategic leadership across Scotland build capacity to develop and sustain new functions within existing systems, and support the confidence and ability of the workforce to uphold children's rights in practice. Training and awareness raising play an important role in this process.<sup>xxii</sup> However, discrete actions to disseminate information, whether this is training, publicity campaigns or policy and guidance, are not sufficient on their own to enact the changes that are possible through incorporation of the UNCRC into Scot's law. We advise a focus on the following key areas to ensure that every child in Scotland benefits from incorporation of the UNCRC.

### **Participation**

We fully support the Independent Care Review Promise, which recognises that legislation, policy and practice are vital in assuring children's rights, but that rights exist within relationships and the daily care that children receive.<sup>xxiii</sup>

Participation is time and resource intensive, and to carry out this engagement meaningfully requires sufficient time and resources to ensure that children are able to form and express their views freely. This is seen to be particularly difficult at a time when funding is stretched.<sup>xxiv</sup> It is essential then that public bodies are supported with the resources to build capacity, and provided with guidance, training, coaching and ongoing support to ensure that anyone who works with a child is able to uphold their rights, and listen to and act upon their needs.

### **Implementation planning and Capacity Building**

Our experience has shown that participatory and effective implementation is an ongoing process that takes intentionality, so implementation teams, plans, action and resourcing to make changes should be commenced at the earliest opportunity across all public bodies. To support public bodies in this process, it will be necessary to have both legislation and implementation support to ensure the desired change is achieved.<sup>xxv</sup> Comprehensive national guidance, explaining how existing domestic legislation and processes comply with the UNCRC, can be supportive of these processes. These actions must be complemented by planning to ensure that public bodies have sufficient time to develop organisational readiness, with sufficient resource allocation to develop the capacity and structures to support, embed and sustain ways of practicing with or on behalf of children that uphold rights. This should include administrative and data collection processes that support these practices, as well as rights-based budgeting to ensure adequate resources are in place for implementation.

We understand implementation plans are at an early stage and note from the financial memorandum that budgets and timelines have not yet been fully defined. We welcome then a willingness from the Scottish Government to consult on the planning of this implementation.

### **Multi-agency working**

Strong multi-agency working and resourcing for local authorities will be required to ensure the rights of the UNCRC are realised at a local level. There is evidence of the value of collaborative partnership working in areas such as Corporate Parenting, GIRFEC and the Children's Hearings Improvement Partnership (CHIP, of which CELCIS is a member). Incorporation of the UNCRC is an opportunity to renew and add further energy to this method of working. This should involve working in partnership across agencies and government departments to identify and respond to need.

Strong, collaborative leadership will be required to secure buy-in, build capacity, and create the conditions for meaningful implementation. Examining the types of practices that can uphold rights, based on children's experiences, can enable us to ensure that the infrastructures to support and embed such practices are present. This is especially true for supporting changes to complex systems such as child protection, for which strategic leadership will need to prioritise and sustain capacity building for changes, such as for prevention and early intervention to support children and families, in the face of immediate demands and risks facing children. Robust practice-policy feedback loops to connect senior

leadership teams with the experience of children, their families and practitioners at the frontline must be in place to support this systemic change.<sup>xxvi</sup>

## **Data**

Systematic collection and monitoring of data is integral to monitoring implementation of rights. Gaps in data collection and monitoring in the UK have been highlighted in 2016 concluding observations by the UN Committee on the rights of the child,<sup>xxvii</sup> as well as by an independent child rights impact assessment on the response to Covid-19 in Scotland.<sup>xxviii</sup> Meaningful national and local data is needed, as well as professionals who are equipped to understand this data or any gaps in it, and ensure that different systems for collecting data can be compared to understand the holistic needs of all populations of children across Scotland. Scotland requires a vastly different approach to data collection and usage. At a minimum this should include the establishment and use of baseline data relevant to children's rights and wellbeing, measurement and data that enables improvement of practices to be adherent to a child's rights approach in practices with or on behalf of children, and data which can guide decision making within organisations on how to adjust supports to workforces in order that they can deliver upon rights respecting services. Gathering direct feedback from children routinely and as an integral part of public service delivery will aid the assessment and achievement of quality in practice.

## **Raising awareness**

Effective implementation of children's rights is contingent on an awareness of their rights across every sphere of society, which is recognised in the Scottish Government action plan 2018-21 on 'Progressing the Human Rights of Children in Scotland'.<sup>xxix</sup> This awareness raising needs to take place with children themselves so that they know their own rights. This should take place through formal education in schools but also through extracurricular activities within clubs and teams and include those taking place in community centres and other settings outside formal education.

Awareness raising should also include specific and tailored efforts for children in need of care and protection. The form that training or awareness raising takes is also key. In order to facilitate this awareness and to uphold these rights, it is also crucial that the families and communities children belong to understand these rights, as well as the wider general public. For example, Iceland and Spain have developed websites that include resources for children, teachers and other professionals to understand children's rights. Any resources developed to increase awareness of these rights by children, their families and communities should be disseminated through a range of accessible mediums, with caution not to further entrench a 'digital divide' in Scotland,<sup>xxx</sup> by making additional and intentional efforts to reach children and communities who have faced barriers to accessing information or to exercising their rights.

The Rights Respecting Schools programme is a positive example of raising the awareness of rights in over 4,500 schools. This requires the commitment of the entire school community to include child rights and provides online resources and support from professional advisors for schools. An evaluation of 12 UK schools over three years concluded that the approach has had a 'profound effect', influencing rights understanding, relationships and behaviour, supporting children's respect of the environment and others, inclusivity and diversity,

advancing student participation in school decision-making, and resulting in improved student learning and standards.<sup>xxxii</sup>

In the same vein, the practitioners and professionals that work directly or indirectly with children, for example health, education and child protection professionals, as well as the judiciary, must have a full and comprehensive understanding of children's rights and what is needed in practice to uphold them. This will require a wide-encompassing programme of training, support and capacity building for public bodies, including an integration of rights into professional training codes, educational curricula, recruitment processes, child rights training and coaching. This could mean, for example that training for front-line staff who interact with children would ensure that they are confident in their knowledge of children's rights, but also the manner in which they can assist children to seek local support to give full effect to their rights and to remedy any breaches at an early stage. Successful implementation requires excellent leadership, and involves detailed consideration of context, and the use of the best strategies and tools in particular local contexts.

### **Training**

Evidence shows the importance of training, awareness raising and capacity building in fulfilling a rights-based approach.<sup>xxxiii</sup> Despite the importance of training, evidence suggests that examples of systematic training for duty bearers internationally are not numerous.<sup>1</sup> In a study of implementation of the UNCRC across 12 countries, research found that effective implementation relied on training and support for the workforce "at every level from legislation to case law, and policy development to service provision for children".<sup>xxxiv</sup>

An important example of good practice which could be replicated in Scotland is training for the legal profession and judiciary (e.g. in Norway and Belgium), which has led to an increased number of cases where the UNCRC is cited.<sup>xxxv</sup> Training programmes for teachers offer another example of systematic training that will be crucial to increasing children's knowledge of their rights. In Norway the UNCRC is included in the curriculum in primary and lower secondary education and training on the UNCRC for professional groups takes place for pre-school and generalist teachers as well as child welfare practitioners in education, whereas colleges and universities have scope to plan training themselves.<sup>xxxvi</sup> As well as learning from the international sphere, experience can be drawn from the implementation of recent policy in Scotland, for example Corporate Parenting and Continuing Care, where young people have been involved in the design and delivery of practitioner training.

The evidence is clear that training alone will not enable public bodies to develop the conditions for children to access their rights; however, allied with the course of actions that has been described in this response, in which change is adequately resourced, supported and sustained can make a significant impact in doing so.<sup>xxxvii</sup>

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<sup>1</sup> Examples of systematic training include the [International Child Rights Education for Professionals \(CRED-PRO initiative\)](#) for all professional services and policies related to children in place from 2005–2013, as well as [SOS Children's Villages International](#) training on child rights for professionals working with children in care.

**5. Are there any relevant equalities and human rights issues related to this Bill, or potential barriers to rights, that you think we should look at?**

There is a need to pay specific attention to how rights are upheld for children who are the most vulnerable, including children in need of care and protection. A study of UNCRC implementation across 12 countries showed that a lack of awareness and consideration of the needs of vulnerable children, including children who are separated from their parents, children seeking asylum, indigenous children and children in conflict with the law, resulted in these children experiencing barriers to enjoying their rights in comparison to their peers. This was compounded by a perception from the wider public that the resources required to support the needs of these children were seen to compete and encroach upon the needs of other children.<sup>2</sup> xxxvii

This international evidence highlights the importance of including the needs and rights of vulnerable children within campaigns to the wider public. This evidence also demonstrates the importance of ensuring that all rights under the UNCRC are upheld for all children in Scotland. Although some articles of the UNCRC have been omitted from this legislation due to being outside the competence of the Scottish Parliament, this does not detract from the commitment to uphold the rights of all children, including the most vulnerable children in Scotland.

**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 the provision in the Bill to allow the courts to strike down legislation judged to be incompatible with the UNCRC, with clear information about the mechanisms that will be in place to facilitate this process. This provision places a CRWIA on a statutory footing, and thus the requirement that any future Bill introduced to the Scottish parliament be accompanied by a CRWIA would support scrutiny of compliance with the UNCRC. This can ensure that the process of developing legislation itself enhances children's rights. The evidence outlined in response to the subsequent question, which outlines learning from a range of children's rights reporting processes will be equally applicable to ensuring that meaningful and comprehensive CRWIAs are produced. Continuous support, guidance and feedback on the process of CRWIAs (both in advance of decision-making, and afterwards to assess and evaluate impact) should be in place for Ministers.

**7. What are your views on the Children's Rights Scheme and the requirement on public authorities to report?**

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<sup>2</sup> In Belgium it was noted that competing public interest concerns could hamper efforts to make changes that uphold rights for marginalised children. This was also the case in Norway where changes aimed at improving the rights of the general child population, concerning for example child protection and welfare, parental responsibility and education, have been successful and well supported, but this was not the case for the rights most pertinent to children at the margins of society, which had been more difficult to advocate for.

We welcome the inclusion in the Bill of a requirement for Scottish Ministers to report on steps taken to ensure all children can enjoy their rights and prevent breaches of these rights through publishing a Children’s Rights Scheme. Whilst related to existing requirements under Part 1 of the Children and Young People (Scotland) Act 2014, the establishment of a Children’s Rights Scheme will usefully place additional requirements on Scottish Ministers and ensure detailed consideration of the measures needed to prevent breaches of rights, enhance transparency, and ensure greater participation.

We also welcome the extension of duties on public authorities to report on their compliance with the UNCRC, and, as outlined above, highlight the critical role of objective data in being able to track and evidence compliance. It is important that Ministers and public authorities are supported to carry out these reporting duties to ensure that doing so is meaningful and comprehensive in preventing rights breaches against children.

Evidence on the efficacy of other child rights reporting mechanisms, including those for CRWIAs can be useful in highlighting what is needed to support these reporting duties. In order for meaningful and comprehensive reporting to take place, a clear mandate from and active engagement of leadership is required.<sup>xxxviii</sup> The inclusion of these reporting duties in the Bill will further establish this mandate, but engagement with leadership at local levels will also be vital. As is the case for many of the actions involved in implementing change, evidence emphasises the importance of a comprehensive range of actions being taken simultaneously to effect change, such as: strategic leadership and coordination; comprehensive awareness raising; sufficient and disaggregated data to identify the needs, quality in practices and outcomes for different groups of children; as well as information about funding decisions.<sup>xxxix</sup>

At the most preliminary stages of reporting, there is a need for robust and accountable screening procedures to justify decisions on whether to undertake an assessment, or not.<sup>xl</sup> This is relevant to decisions by public authorities about which of their functions should be assessed, and to decisions by Ministers about the contents of the Children’s Scheme, for which the Bill does not set requirements, instead setting out which contents ‘may’ be included. For reporting processes to be robust, we would urge for the procedures for the inclusion or exclusion of content from reporting should be transparent and accountable.

Effective reporting on compliance with the UNCRC is dependent not only on a working level of knowledge of the UNCRC itself, but also upon knowledge of reporting processes; whether this is a CRWIA, the Children’s Rights Scheme or reporting by a public authority. Training on reporting processes in addition to the UNCRC provides an opportunity to increase the efficacy of reporting; and learning from interactive training processes can be used to build upon guidance that ensures there is ongoing support throughout reporting.<sup>xli</sup> In Wales the Section 1 UNCRC duty is part of ministerial training, and the template used by officials to provide Ministerial Advice includes content on children’s rights and the UNCRC. In addition, Ministers can also access a CRC Impact Assessment Tool, an e-learning training course and advice and support. Exemplar CRIAs are also

provided. The provision of this ongoing support and guidance beyond initial training is crucial in reporting processes.<sup>xliii</sup>

The meaningful participation of children in reporting processes is also crucial to upholding the rights of children in Article 12, as well as for increasing the efficacy of changes or procedures which concern children. The duty on Ministers to prepare the Children's Scheme does not require children's participation, but sets out guidance for inclusion of this and other content. We argue that the Bill would be strengthened by replacing 'may' with 'shall' in section 11(3) to ensure that children's participation is required in preparation of the Scheme. In order to do so, the resources required to facilitate effective and meaningful participation should be considered, including the time taken to build relationships; the skill and communication required to ensure informed participation in often complex issues and transparency about the outcome of this participation on the decisions that result from it.<sup>xliii</sup>

## **8. Is there anything else you want to tell us about the Bill?**

In considering the future implementation of the Bill when it becomes law, we urge a focus on the following areas in order to fully uphold, protect and realise the rights of all children.

### **Implementation of the Promise**

Full implementation of the Independent Care Review Promise will strongly support the realisation of rights for care experienced children. Political will, establishing and sustaining effective implementation teams at a national and local level will be required to deliver the fundamental changes identified by The Promise; however, a fulfilment of these commitments will go some way to upholding the rights of care experienced children and young people.

### **Access to advocacy**

Independent advocacy ensures children have the opportunity to raise comments and complaints about their care, and can be a critical safeguard for looked after children.<sup>xliv</sup> The Scottish Government has funded a scheme to provide advocacy services to all children involved in the Children's Hearing System, as required by section 122 of the Children's Hearings (Scotland) Act 2011. We look forward to the commencement of this important service. We know that children's use of solicitors in Hearings is low compared to that of adults and the availability of and access to high quality advocacy is critically important to ensure positive experiences of participation for all children, and particularly for those not accessing solicitors in their Hearings.<sup>xliv</sup>

### **Enabling active participation in formal processes**

Children in need of care and protection are often involved in formal processes, such as Team around the Child meetings, Child Protection Case Conferences, Looked After Child Reviews, and Children's Hearings. Despite children's right to participate and express their views, adults often act as 'gatekeepers' to children's access to these rights, particularly in formal settings.<sup>xlvii</sup> We urge additional support –from a trusted adult that a child has a positive relationship with – to be provided in these decision-making processes, so that children have a more positive experience of participation.<sup>xlviii</sup>

## **Raising the Age of Referral**

Raising the age of referral to the Children's Reporter to 18 in all cases is a key step in realising children's rights and aligning legal mechanisms which support and protect children in Scotland with the UNCRC. Article 1 of the UNCRC is unequivocal in defining a child as all those under the age of 18,<sup>xlviii</sup> we support the raising of the age of referral so that 16-17 year olds can enjoy the rights of being a child with the protections that this brings. Ensuring children aged 16 and 17 access child-friendly justice systems recognises the distinct developmental needs of this age group and will support the rights of all children in need of support to be upheld and their needs met.

## **Supporting relationships between brothers and sisters**

When brothers and sisters are separated through their care experience, the impact of this separation and limited, poor quality contact can be devastating. This has been articulated clearly by many care experienced children, and is noted by the national advocacy agency, Who Cares? Scotland, as consistently one of their most common advocacy requests.<sup>xlix</sup> Furthermore, positive experiences and outcomes (particularly in terms of stability and mental health) are promoted through siblings being placed together.<sup>i</sup> Despite this, when decisions are made relationships have often not been prioritised, resulting in children being separated from their brothers and sisters with limited support to maintain their relationships. We welcome the provisions within the Children (Scotland) Act 2020 strengthening the duties of local authorities to promote contact where children cannot be placed with their brothers and sisters. The implementation of this duty will be crucial to upholding the rights of children.

## **Maintaining positive, continuing relationships**

Relationships with key adults are of critical importance to children and young people in need of care and protection. Evidence indicates that supportive, enduring relationships with those who care for and about children (such as carers, teachers, befrienders, social workers and other significant adults) are the "golden thread" in children's lives, and the quality of these relationships should be prioritised.<sup>ii</sup> However, care experienced children and young people report feeling relationships are not prioritised and they are not supported to sustain relationships with significant adults in their lives.<sup>iii</sup>

## **Variability in access to Continuing Care and Aftercare**

Care leavers in Scotland continue to have poor outcomes and unmet needs. Throughcare and aftercare service provision is variable across the country, and not all eligible young people are able to access a service.<sup>iv</sup> Additionally, challenges remain in the implementation of Part 11 (Continuing Care) of the Children and Young People (Scotland) Act 2014, affecting young people's right to remain in positive, stable care settings for longer.

## **Family support and engagement with families**

Despite an enabling policy context (for example, GIRFEC, which is focussed on working in partnership with families to ensure children's wellbeing needs are met at the earliest possible stage), concerns remain regarding access to the early help and support that would prevent families from reaching a point of crisis. For example, Part 12 (Children at risk of becoming looked after) of the Children and Young People (Scotland) Act 2014, places duties on local authorities to provide

relevant services, including Family Group Decision Making services and support for parenting services, where children are at risk of becoming looked after. However, a recent review of the implementation of this legislation found this to be inconsistent, highlighting the need for attention to be paid to the drivers of culture change, relationships, skillsets and resources, in addition to changes to law and policy.<sup>liv</sup>

### **Realisation of the rights of children who are looked after at home**

The needs and circumstances of children looked after at home can be complex, and as pressing as the needs of children looked after away from home. Outcomes for this group are some of the poorest in society, in particular poor education outcomes and involvement in the criminal justice system. Evidence has shown that support services provided are often limited and inconsistent, with service providers prioritising other groups of looked after children.<sup>lv</sup>

### **Continued participation.**

We would urge Government to continue to engage with the children's sector organisations, public bodies and with children and young people directly, to further develop and safeguard implementation plans.

### **Poverty and child welfare interventions.**

Children in the most deprived 10% of small neighbourhoods in Scotland are nearly 20 times more likely to be 'looked after' or on the Child Protection Register than children in the least deprived neighbourhoods.<sup>lvi</sup> Article 27 of the UNCRC clearly identifies the right of every child to a standard of living adequate for their physical, mental, spiritual, moral and social development, however these rights are not being met across Scotland, and the impact is felt disproportionately by those subject to child welfare interventions.

We strongly support this historic Bill, which has the potential to ensure that the rights of *all* children in Scotland are realised. For these rights to be accessible and obtainable, including to the most vulnerable children, comprehensive planning and actions for implementation must commence as soon as possible. This must involve children at the earliest opportunity, building on their lived experiences to understand what changes are needed to uphold their rights as experienced in their day to day lives. This will involve deep and wide ranging changes to public authorities, targeting the barriers to change and developing new functions that uphold rights. Positions of strategic leadership across Scotland at both local and national levels will need to build implementation team capacity in order to strengthen and sustain practices fully adherent to rights, and to ensure that the workforces have the necessary supports to consistently uphold children's rights in practice.

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