

Cross Party Group on Children and Young People
Thursday 27 October 2011
12:30-14:00 Committee Room 2

Attendees:

Marco Biagi MSP
Kezia Dugdale MSP
Fiona McLeod MSP

Bruce Adamson, Scottish Human Rights Commission
Lesley Anderson, Young Scot
Laura de Baar, The University of Edinburgh
Linda Bailey, Partners in Advocacy
Jeni Bainbridge, Children in Scotland
Margaret Barclay, CCNUK
Alison Bennett, Church of Scotland
Karen Tsz Hing Chan, The University of Edinburgh
Sara Collier, Children in Scotland
Gerry Croall, A4e Scotland Ltd
Rhona Cunningham, Fife Gingerbread
Shirley Cusack, Keys to Inclusion
John Forysth, Families Need Fathers
Maurice Frank, Personalised Education Now
Billy Hamilton, Partners in Advocacy
Juliet Harris, Together
Claire Hill, Barnardo's
Marguerite Hunter Blair, Play Scotland
Nicki James, For Scotland's Disabled Children
Fiona Jones, CI@n Childlaw
Tamsin Jones, The University of Edinburgh
Ibrahim Kamal-Deem, The University of Edinburgh
Lesley Kelly, The University of Edinburgh
Carine Le Borge, University of Edinburgh
Euan Lloyd, Save the Children
Brandi Lee Lough Dennell, LGBT Youth Scotland
Sara Lurie, The Fostering Network
Kirsteen Mackay, University of Edinburgh
Marion Macleod, Children in Scotland
Maire McCormack, SCCYP
Hanna McCulloch, Capability Scotland
Robert McGeachy, Action for Children Scotland
Ann McInnes, Rathbone
Ann McKenzie, One Parent Families Scotland
Lesley McNab, CHAS
Melanie Main, DofE Scotland
Elizabeth May, Action for Sick Children (Scotland)
Susan Millar, Prince's Trust
Sue Milne, The University of Edinburgh
Louise Morgan, The Princess Royal Trust for Carers

Muriel Mowat, Scottish Independent Advocacy Alliance
Paul Mullan, NDCS
Satwat Rehman, One Parent families Scotland
Alison Reid, CI@n Childlaw
Tracy Rodger, CLIC Sargent
Barbara Schuler, Youthlink Scotland
Lesley Scott, TACT Scotland
Gordon Stewart, Quarriers
Kay Tisdall, The University of Edinburgh
Winfried van der Sluijs, The University of St Andrews
Mandy Young, CI@n Childlaw
Gemma, Amnesty

Apologies:

Jackie Baillie MSP
Alison Johnstone MSP
Joan McAlpine MSP
Alison McInnes MSP
Stuart Aitlen, Sense Scotland
Mark Ballard, Barnardo's
Mo Colvin, RNIB Scotland
Mig Coupe, Mindroom
Helen Davis, West Lothian Youth Action Project
Carole Ewart, Ewart Communications
Nancy Fancott, CCPS
David Ferrier, YPeople
Mairi Ferris, Fife Council
Kate Higgins, CHILDREN 1ST
Louise Hill, Centre for Excellence for looked after Children in Scotland
Richard Knott, Salvation Army
Nancy Loucks, Families Outside
Cathy McCulloch, The Children's Parliament
Helen McMeekin, Ocean Youth Trust Scotland
Andy Mount, West Lothian Youth Action Project
Calum Munro, Highland Children's Forum
Arianna Patterson, Afasic Scotland
Eileen Prior, Scottish Parent Teacher Council
Maggie Simpson, Scottish Childminding Association
Rachael Tonge, Sense Scotland
Amy Westendarp, Enquire

Welcome

Marco Biagi MSP welcomed the members to the meeting and thanked everyone for attending, before asking Robert McGeachy, Action for Children Scotland, to update the group on the welfare reform legislation that was discussed at the previous meeting held on Thursday 29 September 2011.

Update on welfare reform issues

Robert McGeachy outlined the timetable for the legislation; the amendments that are being sought; and the way forward for the children and young people's sector in relation to lobbying on the Bill.

The Bill is currently at Committee stage in the House of Lords, with at least four additional Committee meetings scheduled. Once it reaches Report stage, which is not likely to happen until mid December at the earliest/possibly the New Year, Peers will have the opportunity to vote on the issues contained in the legislation. In terms of lobbying this is the crucial stage at which to try and influence the Bill.

Amendments to the Bill were sought by Action for Children Scotland (AfCS), CHILDREN 1st, Barnardo's, Children in Scotland, One Parent Families Scotland et al on issues relating to childcare. The amendments seek to ensure that claimants with dependent children do not face sanctions if they are unable to take up paid employment due to a lack of access to appropriate, high-quality childcare. Robert explained that there is cross-party support for the amendments. The Minister for Welfare Reform, Lord Freud, although supportive of the amendments, stopped short of putting appropriate safeguards on the issue of childcare and sanctions on the face of the Bill. Robert also expressed concern that some of the debate in the Lords seemed to suggest that the Childcare Act 2006 applied to Scotland, when it only applies to England and Wales.

Robert explained that the focus would now be on taking stock of what had been a detailed debate on these amendments in the House of Lords, and speaking to Peers about revisiting these and other amendments, including those raised in the House of Commons which would allow suitable safeguards on these issues to be introduced through regulation.. AfCS had also pursued their own amendment in relation to vulnerable claimants such as hard-to-reach young people, ensuring that when such claimants are made aware of their responsibilities they are also informed about their right to access support which meets their needs.

The way forward is now to seek additional support from other children's and young people's organisations.

- Action point: Circulate amendments to the group (Robert McGeachy, Sara Collier/Barbara Schuler)

Marco Biagi MSP commented that the Scottish Parliament's decision not to pass the Legislative Consent Motion for the Bill had sent out a very strong message, but that the full implications of this had perhaps not been reflected in the media coverage.

Rights of Children and Young People

Marco introduced the topic of the Rights of Children and Young People Bill, which seeks to ensure that Scottish Ministers have 'due regard' for the United Nations Convention on the Rights of the Child (UNCRC) when formulating any policy, legislation or guidance. He invited Juliet Harris (Together) to speak.

Juliet set the context of the Bill by explaining what the UNCRC is and the existing reporting obligations and role of civil society in monitoring UNCRC compliance.

The UNCRC sets out the civil, political, economic, social, cultural etc rights of children and young people. In 1991 the UK became a signatory and ratified the UNCRC plus the two optional protocols. This means that the UK has a binding obligation to honour the UNCRC and is required to submit a report every 5 years on how it is fulfilling the rights enshrined in the Convention. The role of the children and young people's commissioners is to submit their own reports reflecting on how the Government and devolved administrations are achieving this. Civil organisations such as Together have a role in the independent scrutiny of government. Together publishes an annual report into the state of children's rights in Scotland.

The UN Committee on the Rights of the Child last looked at the UK in 2008 and made Concluding Observations on the areas in which the UK was required to make progress in relation to the UNCRC. In 2009 the Scottish Government responded to the Concluding Observations with its action plan, *Do the Right Thing*, which listed 21 priority areas.

The UN Committee has twice called on the UK to incorporate the UNCRC in domestic law. Of the four nations of the UK, so far the devolved administration in Wales has made the most progress and in 2014 will enact the Welsh Measure on children and young people's rights.

Marco thanked Juliet for her contribution and then invited Fiona Jones from cl@nchildlaw to present.

Fiona focused on Proposal 1 in the Bill, the duty on Scottish Ministers to have 'due regard' for the UNCRC when exercising their functions.

Fiona explained that 'due regard' amounts to a requirement to consider the UNCRC, but not to comply with it. This means that while Ministers have to consider the UNCRC they can decide to give it no weight.

With regards to the scope of functions, the Bill covers any and all of the Scottish Ministers' functions, including Bills, policy, guidance and representations to the UK Government.

Fiona then looked at judicial review. The current situation is that UNCRC is not directly actionable in UK courts, but that it can be used as an aid to creating domestic legislation.

The Bill proposes that it will be possible to petition the Court of Session for failure by Scottish Ministers to comply with the duty and that it will be possible to ask the Court for remedies such as interdict, declarator etc. This will have the potential advantage of enabling Courts to scrutinise the functions of Scottish Ministers. However, it will only be possible to review the decision-making process, not the substance of a particular policy or Bill. In effect, judicial review will be inaccessible to individual children and young people, who would in any case face barriers to obtaining legal aid to raise any such review.

The fact that there is no incorporation of the UNCRC into Scots Law means that it will not be directly actionable, in contrast with the European Convention on Human Rights

(ECHR) which requires that legislation and acts of public authorities must comply with ECHR.

Maire McCormack, SCCYP, was then invited to speak to the group. Maire explained that the Scottish legislation has been in part based on the Welsh Measure, which strengthened as it passed through the Welsh Assembly. Maire stressed that it is not possible to compare like with like due the differences in the devolved settlements. However it is helpful to draw on the Welsh experience of progressing this legislation.

There are areas in which the Welsh Measure is stronger than the Scottish Bill. The Welsh Measure contains a duty to promote the knowledge and understanding of UNCRC, which is not in the Scottish Bill. Section 6 of the Welsh Measure gives power to amend legislation, which the Scottish proposals do not.

The Welsh Measure also requires a Children's Scheme to be created which sets out the arrangements for Welsh Ministers having due regard to the UNCRC. This contains a requirement to consult with children and young people, as well as external stakeholders, in the development of the Scheme.

Training is also given prominence in the Welsh Measure as it contains detailed plans for UNCRC-training for those developing and implementing legislation, policy etc. The details of how training, monitoring and reporting will be carried out are not specified in the Scottish Bill.

Maire summarised by saying that while SCCYP recognizes the symbolic importance of this legislation, it is disappointing that the Bill falls short of incorporating UNCRC into domestic law.

Marco then opened up the wider discussion. He asked the group whether they felt that the level of regard should be stronger. The Bill will reach Committee stage in the New Year and this will present an opportunity for lobbying.

Bruce Adamson, Scottish Human Rights Commission commented that the legislation is limited in scope. The Scottish Government's concerns about incorporation are not warranted. The argument that incorporation would lead to conflict between UNCRC rights and human rights is unwarranted. The consultation document suggests that the Scottish Government does not want to move towards incorporation at all.

Marco asked whether there is any evidence for a potential conflict between rights enshrined in the UNCRC and those contained in the ECHR, for example.

Bruce replied that this is not the case since children and young people have human rights too. The ECHR is not 'for adults' but is for everyone. Different claims are balanced through decision-making, the Courts etc. There are absolute rights and qualified rights and there is plenty of precedent for balancing these.

Maire from SCCYP commented that paragraph 73 in the consultation document sets the tone for the debate and that this is unfortunate as it shows a lack of understanding that human rights apply to children and young people the same as they apply to anyone else.

Maurice Frank, Personalised Education Now, commented on how there is a need for decision-makers to be fully informed on the ways rights can fail to be met.

Marco asked the group if anyone had examples of where the judicial review powers might have been called on.

Marina Shaw from Circle explained that her organisation works with families affected by imprisonment and gave examples of cases where children and young people's needs have not been met, and that she had hoped that this legislation would have an impact of the rights of this hard-hit group, but it will not.

Marco asked what action points the group would like to see as a result of the meeting.

Marguerite Hunter Blair, Play Scotland, asked whether there was any legal impediment to incorporation into domestic law, perhaps due to the devolved settlement, and asked if anyone was able to provide the Group with a further legal opinion on constitutional restrictions.

Bruce Adamson, Scottish Human Rights Commission, said that under the Scotland Act there is no impediment as the Scottish Parliament can seek to incorporate international instruments if relevant to devolved matters.

Fiona Jones, cl@n childlaw, agreed that there is no reason why UNCRC could not be incorporated into Scots Law.

Action Points

It was agreed that the Group discussion had been sufficient action in itself and that members would take forward their responses to the Bill within their own organisations.

Details of consultation seminars on the Bill being organised by Together will be circulated to the Group.

Next meeting

The next meeting will be on Thursday 1 December 2011 and will be held jointly with the Cross-Party Group on Mental Health. The Minister for Public Health is attending and the meeting will be chaired by Marco Biagi MSP.