

Rights of Children and Young People Bill

Consultation Paper

Response Booklet

RESPONDENT INFORMATION FORM

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately:

YOUR DETAILS

Name: Elaine E Sutherland, Professor of Child and Family Law
Address: Stirling Law School
University of Stirling
Stirling
Postcode: FK9 4LA
Contact telephone number: 01786 467294
E-mail: elaine.sutherland@stir.ac.uk

1. Are you responding as: (please tick one box)

(a) an individual (go to 2a/b)

(b) **on behalf of** a group or organisation (go to 2c)

INDIVIDUALS:

2a. Do you agree to your response being made available to the public (in the Scottish Government library and/or on the Scottish Government website)?

Yes (go to 2b below)

No, not at all (We will treat your response as confidential.)

2b. **Where confidentiality is not requested**, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS:

3. Your name and address as respondents **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government website). Are you content for your response to be made available also?

Yes

No (We will treat your response as confidential.)

SHARING RESPONSES/FUTURE ENGAGEMENT

4. We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in the future in relation to this consultation response?

Yes

No

YOUR BACKGROUND

In analysing your response, it would help us to know what your background is. Please indicate using the boxes provided below the area which best describes your involvement with children and add any further comments you wish to make about this.

Early Years Education Health

Justice Parent/Carer Police

Social Work Sport and Leisure Voluntary Organisation

Other Further comments:

YOUR VIEWS

On the need for legislation

- Q1** Do you agree that legislation to embed the UNCRC within the Scottish Government's decision-making and day-to-day business is necessary and appropriate?

Any proposal designed to ensure better compliance with the UN Convention on the Rights of the Child is to be welcomed. However, this proposal does not go far enough. A real commitment to children's rights requires *incorporation*, by statute, of the Convention into Scots law.

Given the competence of the Scottish government in respect of reserved matters, an alternative approach would be to pass a statute incorporating all of the Convention's provisions except those dealing with reserved matters (e.g. nationality).

An additional benefit of incorporation and, to a lesser extent, embedding, might be to heighten awareness of the Convention amongst the general public, including children. It will be remembered that article 42 requires states parties to "make the principles and provisions of the Convention widely known to adults and children alike." Neither the Scottish nor United Kingdom government has done nearly enough, in this respect, to date.

It might be argued that embedding is better than doing nothing at all, but it would amount to little more than a cosmetic exercise.

Proposal 1

Q2 Do you agree that "due regard" is the appropriate level of regard for the duty on the Scottish Ministers? If not, why not?

No.

Arguably, this requires less of the Scottish Ministers than is required of United Kingdom government ministers (and, derivatively, Scottish Minister) under international law in respect of a treaty ratified by the United Kingdom.

The term "due regard" is so vague as to be virtually meaningless, albeit, it is found in other legislation. The obligation placed on the Scottish Ministers should be to "ensure compliance with the provisions of the United Nations Convention on the Rights of the Child".

Doubtless, issues will arise where there is disagreement over precisely what is required for compliance, but the ensuing debate can only serve to further understanding of the Convention and what it requires.

Q3 Do you agree that the duty should apply to all the functions of the Scottish Ministers? If not, why not?

Yes.

Proposal 2

Q4 Do you agree with the proposed arrangements for reporting?

Yes.

Proposal 3

Q5 Do you agree with the extension of the duty in respect of UNCRC to young persons aged under 21 who have been looked after?

Yes.

Proposal 4

Q6 Do you agree with the proposals for handling future amendments to the Convention or Protocols or new Protocols?

Yes.

Other matters

Q7 Is there other provision which should be made in the Bill? (See section 3.3 which sets out what the Bill would not do.)

Please see answer to question 1.

Q8 Do you have any comments on implementation costs or how they should be estimated?

No.

There is a need to prioritise respect for children's rights in government and within the country as a whole. Cost should not be an issue. In any event, others are better qualified to assess implementation costs.

Q9 Do you have any other comments?

Please see answer to question 1.

Thank you for your time.