



# Consultation on a proposal for a Children and Young People Bill

## RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

Please key F11 to move between fields

### 1. Name/Organisation

Organisation Name

Scottish Refugee Council

Title Mr  Ms  Mrs  Miss  Dr  *Please tick box as appropriate*

Surname

Tudor

Forename

Clare

### 2. Postal Address

5 Cadogan Square 170 Blythswood Court

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### 3. Permissions - I am responding as...

Individual / Group/Organisation

*Please tick as appropriate*

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

*Please tick as appropriate*  Yes  No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

*Please tick ONE of the following boxes*

Yes, make my response, name and address all available

or

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

or

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

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

*Please tick as appropriate*  Yes  No

(d) 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 Scottish Government to contact you again in relation to this consultation exercise?

*Please tick as appropriate*

Yes

No

#### 4. Background

In analysing your response, it would be helpful to know your background. Please indicate the area which best describes your involvement with children from the options below.

**Please tick box as appropriate:**

- |                        |                                     |
|------------------------|-------------------------------------|
| Early Years            | <input type="checkbox"/>            |
| Education              | <input type="checkbox"/>            |
| Health                 | <input type="checkbox"/>            |
| Justice                | <input type="checkbox"/>            |
| Parent/Carer           | <input type="checkbox"/>            |
| Police                 | <input type="checkbox"/>            |
| Social Work            | <input type="checkbox"/>            |
| Sport and Leisure      | <input type="checkbox"/>            |
| Voluntary Organisation | <input checked="" type="checkbox"/> |
| Other                  | <input type="checkbox"/>            |

#### Comments

Scottish Refugee Council is an independent charity dedicated to providing advice, information and assistance to asylum seekers and refugees in Scotland and to campaigning on their behalf.

#### **Scope of response**

Our response to the consultation is solely relating to the components of the proposed Bill that focus on separated children (asylum seeking, refugee and trafficked children). Given our area of expertise we are limiting our responses to just a few of the set questions.

#### **Further consultation and discussion**

We would be very happy to further discuss any of the issues affecting the group of young people we work with and happy to coordinate a focus group on asylum seeking and trafficked children's rights whereby Scottish Government could meet directly with young people and professionals including specialist legal representatives, guardians, NGO's, and mental health professionals to further explore how the rights of this particularly vulnerable group of young people may be understood and furthered and to discuss how we ensure that the young people themselves are engaged and educated in their rights during their stay in Scotland.

## CONSULTATION QUESTIONS

### 1. A SCOTLAND FOR EVERY CHILD

#### **More effective rights for children and young people**

1. Do you feel that the legislative proposals will provide for improved transparency and scrutiny of the steps being taken by Scottish Ministers and relevant public bodies to ensure the progressive realisation of children's rights?

## Comments

Scottish Refugee Council warmly welcomes many of the proposals laid out in the Children and Young People Bill. However, we work with separated children, many of whom may have been the victims of Human Trafficking and we feel that some of the proposals have not taken into account or acknowledged their idiosyncratic needs. We wish to draw the Minister's attention to some of the obstacles and barriers this particularly vulnerable group of young people experience in the hope that they may be specifically recognised and addressed in the forthcoming legislation.

In general, and having been party to several discussions about the Bill over the preceding months, we support the contention that the proposals need to be strengthened so that **all** public bodies and agencies contracted by public bodies working with children in any capacity at all should be under the same duty as that which is being suggested for Ministers. Failure to do this would result in a disconnect between what is taking place and being directed at ministerial level and what is actually happening in practice when agencies are working with young people. This would undoubtedly make it very difficult for young people to challenge poor practice at a local level and surely create more bureaucracy as matters young people wish to challenge would have to be sent up ultimately to ministerial level in order to seek appropriate redress.

In terms of the recurrent theme of promotion and awareness of rights throughout the Bill we wish to highlight that separated, including trafficked and asylum seeking children, and presumably migrant children in general, may have little conceptual awareness of the notion of "right". Within the Scottish Guardianship Service a great deal of work is undertaken with young people on what rights are and how they may be exercised. It is recognised within the project that many of the young people struggle with the concept having come from countries where "rights" may not exist. Furthermore several of the children and young people we work with have been abused, violated and exploited in their country of origin, en route to the UK and within the UK so find the concepts of rights confusing and alien. We ask that the Minister ensures there is further exploration of how young people whose first language is not English and who may have only recently arrived in Scotland may be accessing information on their rights, be educated in the concept of rights and the UNCRC and how they may seek redress if their rights are violated. It has to be noted that many of these children and young people are not travelling through the normal education and health pathways but have often "parachuted" in to Scotland aged 16 or 17 and are faced with an entirely new culture, language, and socio - welfare and legal processes they have no experience or knowledge of.

To ensure that the duty is adhered to by all those working with young people there would need to be a comprehensive training programme and relevant updated

materials that are circulated to all relevant professionals and specifically in our field, social workers, residential unit staff, police, Scottish Reporters Administration staff and panel members, legal representatives and all tiers of educational staff in all institutions together with health staff and voluntary sector staff in order that all are fully aware of the duty and provide a consistent message to young people, accepting that some young people may need more support in understanding their rights than others.

Key to separated children accessing their rights is the need for high quality and specialist legal representation and specialist advocacy as the precariousness of their immigration status and the fact that they may have been the victim of crime, but also forced to commit crime through their exploitation, means that they are very susceptible to having their rights violated. We have become particularly concerned, for example, at the number of young people who have been found to be incarcerated in Young Offenders Institutions and prisons having travelled through the entire criminal justice system without identification as potential victims of trafficking, and who have been convicted of a crime that may have been committed because they had been trafficked. These young people appear to have had little or no access to information pertaining to their rights and their rights may be seen to have been severely impinged because of a lack of understanding of their situation.

2. On which public bodies should a duty to report on implementing children's rights be applied?

It is respectfully suggested that the Scottish Government integrates the list provided in Annex B to the list in Schedule 19, Part 3 of the Equality Act 2010 as amended (<http://www.legislation.gov.uk/ssi/2011/233/article/2/made>) in order to ensure a common approach and consistency and to make it absolutely clear that all public bodies who work with children and young people in any capacity at all should be aware of their duty to actively implement children's rights.

Whilst immigration and asylum matters are reserved to Westminster it should be noted that the United Kingdom Border Agency placed itself under a statutory duty to promote and safeguard the welfare of children in November 2009 under section 55 of the Borders Citizenship Immigration Act 2009, please see <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/legislation/bci-act1/>

Embedded within the statutory guidance is the obligation to respect differences in legislation and local arrangements for making referrals to appropriate bodies. The guidance makes specific reference to Scotland in terms of differing legislation and national guidance such as the Children's Charter. It would be important to note the frustration between the reserved and devolved matters where an agency is handling children and young people's claims for leave to remain in Scotland and has operations

based within Scotland, yet adheres to reserved guidance and legislation. It is imperative that the UKBA children's leads in Scotland are aware of any legislative changes in Scotland pertaining to the rights of children and young people, are involved in discussion and are encouraged to be involved in reporting activity together with any agency they sub contract service provision to.

3. Do you agree that the extension of the Children's Commissioner's role will result in more effective support for those children and young people who wish to address violations of their rights?

We welcome the proposal to extend the role of the Children's Commissioner and urge that the office be sufficiently resourced to ensure that it has the capacity to fulfil any new functions. It would also be necessary to clarify the role of the Commissioner in relation to those other bodies that have responsibility for overseeing and scrutinising the practice of public agencies in this regard. The ideal situation would be one whereby there was a comprehensive system of scrutiny and safeguards which ensured that children and young people were aware of their rights and could easily access the means to ensure that they are observed. This would provide a continuum of support from the provision of information through the active support of advocates and mediators to the involvement of the Commissioner and legal redress. It will be important that there is a willingness and capacity in public bodies to have proper resolution mechanisms and processes in place throughout all stages of service provision to young people rather than unnecessarily encouraging large numbers of cases to be taken up by the Commissioner when other measures could have been used or problems prevented at an earlier point. The involvement of independent figures and of advocates at key points in the systems affecting children would be of particular value.

Separated children are particularly vulnerable and, lacking the knowledge and resources more easily accessed by indigenous children, their reliance on additional safeguards is all the greater. This has been acknowledged through the creation of the Scottish Guardianship Service and, given the centrality of children's rights to the work of the Guardians, it is suggested that any investigation undertaken by the Commissioner into a case of a separated child should acknowledge and make use of their particular expertise and potential role in contributing to the investigation.

### ***A new focus on wellbeing***

4. Do you agree with the definition of the wellbeing of a child - or young person - based on the SHANARRI Wellbeing Indicators, as set out in the consultation document?

We believe it is necessary to specifically include reference to the role of children's rights in any definition of 'Wellbeing'. This should note how the observance of

children's rights, in spirit as well as in letter, will promote the intended outcomes expressed in the SHANARRI indicators. These should be explicitly linked, particularly with reference to 'Respected' and 'Included', where there is an opportunity to note their importance and impact. Currently there is no explicit reference to children's rights in the SHANARRI indicators and this should be changed to reflect their interaction and mutual dependence. The special circumstances that apply to refugee children are acknowledged within the UNCRC and integrating the UNCRC more visibly into the SHANARRI indicators and a linked definition of 'Wellbeing' would greatly assist in encouraging agency practices to become more aware of, and responsive to, the needs of this group.

5. Do you agree that a wider understanding of a child or young person's wellbeing should underpin our proposals?

The proposal to allow the Scottish Government to issue Guidance relating to Wellbeing is welcomed. However whilst the concept of Wellbeing has a universal element, the particular needs of individual groups, such as refugee and asylum seeking children, would need to be reflected in any additional guidance so as to take account of their special circumstances and what 'Wellbeing' means in that context.

### ***Better service planning and delivery***

6. Do you agree that a duty be placed on public bodies to work together to jointly design, plan and deliver their policies and services to ensure that they are focussed on improving children's wellbeing?

We would broadly agree with this though we believe protocols would need to be put in place in terms of information sharing to protect young people. Furthermore we would wish to highlight the need for the public bodies in question to work more closely with the Third Sector agencies who also work with the young people as, for example, the Scottish Guardianship Service in supporting over eighty young people across Scotland has developed a great deal of understanding with regard to separated and trafficked young people's needs and could greatly contribute to any designing or planning of policies and services.

We feel that this proposed legislation affords a unique opportunity to look more holistically at the provision of services to separated young people. There are now, we believe, around 200 separated young people being actively supported by Local Authorities across Scotland and we have through the Guardianship Service detected inconsistent practices and ad hoc arrangements and at times a general lack of understanding of young people's rights to services and representation. We ask that the Government take this opportunity to clearly define separated young people's rights in the legislation, utilising the specific articles in the UNCRC relating to refugee children as a base line for service provision but also in tandem developing specific guidance similar to what has been developed in Wales to ensure understanding of the issues across Scotland and consistency in practice

for care and support of this vulnerable group of young people. Please see <http://www.childreninwales.org.uk/policy/news/16946.html>

It also needs to be noted that some children will in fact not be deemed to be children until they have undergone an age assessment. Many young people will arrive in Scotland with no documentation pertaining to their identity and no clear evidence to prove their age as often their births are not recorded in the country of origin. In such cases, age may be disputed and an age assessment may be triggered by either the immigration authorities or social workers. Having found that assessment practices were inconsistent and that often young people were not aware they were being assessed, nor understanding of the ramifications of an age assessment determination, Scottish Refugee Council in collaboration with leads from Glasgow City Council and with the support of the Scottish Government recently launched a best practice pathway for social workers conducting assessments. This can be found at:

<http://www.scottishrefugeecouncil.org.uk/search?q=age+assessment+>

We hope that this may be seen as a key example of how public bodies together with the voluntary sector worked together to plan and develop services to protect and advance the rights of this particular group of children and young people.

7. Which bodies should be covered by the duties on joint design, planning and delivery of services for children and young people?

Please refer to the answer given at question 2

8. How might such a duty relate to the broader Community Planning framework within which key service providers are expected to work together?

We feel we do not have adequate expertise in this area to comment

### ***Improved reporting on outcomes***

9. Do you agree that we should put in place reporting arrangements making a direct link for the public between local services and outcomes for children and young people?

Having listened to and participated in discussions surrounding this issue we would concur with many of the other agencies on the sector that the proposed duty to report on outcomes should be brought in line and be completed in tandem with reporting on implementing the rights of children. We believe this would lessen the amount of reporting necessary, whilst also making the reporting more robust, transparent and holistic.

10. Do you think that these reporting arrangements should be based on the SHANARRI Wellbeing Indicators as set out in this consultation paper?

Yes, we believe this would be a useful and consistent approach

11. On what public bodies should the duty for reporting on outcomes be placed?

Please refer to the answer in questions 2

## 2. A SCOTLAND FOR EACH CHILD

### ***Improving access to high quality, flexible and integrated early learning childcare***

12. Do you agree that the Scottish Government should increase the number of hours of funded early learning and childcare?

We feel we do not have adequate expertise in this area to comment

13. Do you agree that the Scottish Government should increase the flexibility of delivery of early learning and childcare?

Comments

We feel we do not have adequate expertise in this area to comment

14. Do you think local authorities should all be required to offer the same range of options? What do you think those options should be?

Comments

We feel we do not have adequate expertise in this area to comment

15. How do you think the issue of cross-boundary placements should be managed, including whether this might be through primary or secondary legislation or guidance?

Comments

We feel we do not have adequate expertise in this area to comment

16. Do you agree with the additional priority for 2 - year olds who are 'looked after'? What might need to be delivered differently to meet the needs of those children?

Comments

We feel we do not have adequate expertise in this area to comment

***The Named Person***

17. Do you agree with the proposal to provide a point of contact for children, young people and families through a universal approach to the Named Person role?

Comments

Yes, the principle of having a central point of contact, a named individual, within mainstream services in theory provides a sensible approach to protecting the welfare of children and ensuring that no child falls under the radar. The separated young people we work with however have not travelled through mainstream services but rather are parachuted into services after they have presented in Scotland. It may take some young people a few weeks to access educational and health services, and in some cases, access to education can be delayed for a substantially longer period of time. They will, however, normally be known to the Local Authority Social Work services and to the Scottish Guardianship Service, a specialist service part funded by the Scottish Government to assist young people to navigate the complexities of the socio welfare and legal systems they immediately upon arrival. We would at this juncture wish to draw the Minister's attention to article 22 of the UNCRC which obliges state parties to :

*take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the*

*present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.*

The Scottish Government have been pioneering in supporting the development of the UK's first Guardianship service for separated children and it is very much hoped that the Scottish Government will fund the continuation of this beneficial service which is making a significant difference to the lives of these young people.

In terms of asylum seeking children in families, we believe there should be an added requirement to ensure that families fully understand the role and remit of the named person. Our experience in working with asylum seeking families has shown, again, because they face complex legal processes in claiming asylum, they meet many people they perceive to be in authority and are often wary of professionals, or may not have a thorough understanding of the role and remit of all the professionals surrounding them. In addition, many such families have only recently arrived in Scotland from countries that may have little or no state welfare system, and they may have limited or no understanding of child welfare systems or child led practice.

It would seem sensible that any named person connected with either asylum seeking children in families or separated children has some knowledge of the particular issues these children face, and the agencies that the young people will also be working with, for example the Home Office and solicitors. It would also be important that the named person has some understanding of the processes the young person may encounter, for example the asylum process or trafficking identification process as well as potentially the age assessment process.

18. Are the responsibilities of the Named Person the right ones? Are there any additional responsibilities that should be placed on the Named Person?

There would need to be consistency in the use of the term "named person" and a very defined role outlined as already there appears to be some confusion with the terms "lead professional" and indeed "guardian".

19. Do you agree with the proposed allocation of responsibilities for ensuring that there is a Named Person for a child at different stages in their lives set out in the consultation paper?

Yes, but we assume that there will be a need for a robust training programme for

named persons particularly in the needs of specific groups of young people, including those that are subject to immigration control, are seeking asylum, or have been victims of child trafficking. We would urge that training would also focus on the safe and appropriate sharing of information.

20. Do you think that the arrangements for certain groups of school-aged children as set out in the consultation paper are the right ones? What, if any, other arrangements should be made? Have any groups been missed out?

We ask that the Government make specific mention of separated children (asylum seeking, trafficked and refugee children) and children within asylum seeking families in order that they are fully included and explicitly protected in any forthcoming legislation and that the Government consider developing best practice guidance when working with these groups of young people similar to that which has been developed in the devolved region of Wales.

### ***The Child's Plan***

21. Do you think a single planning approach as described in the consultation paper will help improve outcomes for children?

To be successful in achieving positive outcomes for children and young people the Single Planning Approach would need to ensure that there is a clear and explicit focus upon children's rights as part of their overall wellbeing. This would require a common understanding between agencies and a shared approach as to how rights issues interact with intended outcomes. The vulnerability experienced by asylum seeking and refugee children referred to earlier makes this especially important for this group and it is necessary to ensure that the processes affecting them take place with a clear reference to the UNCRC.

22. How do you think that children, young people and their families could be effectively involved in the development of the Child's Plan?

There is already a substantial body of literature which details how good practice can facilitate children, young people and family participation in planning processes. Making processes user friendly, and supporting this by encouraging the use of advocacy and independent scrutiny, will provide important benefits. In

the case of separated children the role of the Guardians is key and it is important that this role is recognised within any new procedures. It would also be highly beneficial to develop national practice guidance specifically for this group. By so doing, it would be possible to encourage consistency of practice and provide quality measures which would assist with reporting arrangements.

### ***Right to support for looked-after children***

23. Do you agree that care-leavers should be able to request assistance from their local authority up to and including the age of 25 (instead of 21 as now)?

Yes. This should include specific supports that take account of the needs of asylum seeking, trafficked and refugee children (something which could be included in the practice guidance referred to above).

### ***Corporate Parenting***

24. Do you agree that it would be helpful to define Corporate Parenting, and to clarify the public bodies to which this definition applies? If not, why not?

Yes. The focus on defining corporate parenting is to be welcomed. Corporate Parenting is a difficult concept and should be clearly defined, not only for the benefit of practitioners but also for children and young people, parents, kinship carers, foster carers etc.

25. We believe that a definition of Corporate Parenting should refer to the collective responsibility of all public bodies to provide the best possible care and protection for looked-after children and to act in the same way as a birth parent would. Do you agree with this definition?

Yes, in general though we concur with other agencies view that the definition should not be confined to care, protection and provision but expanded to incorporate the promotion of wellbeing and maximisation of a young person's potential, taking into account that young person's views, and religious, cultural, linguistic and racial background.

***Kinship care***

26. Do you agree that a new order for kinship carers is a helpful additional option to provide children with a long-term, stable care environment without having to become looked after?

We feel we do not have adequate expertise in this area to comment

27. Can you think of ways to enhance the order, or anything that might prevent it from working effectively?

We feel we do not have adequate expertise in this area to comment

***Adoption and permanence***

28. Do you agree that local authorities should be required to match adoptive children and families through Scotland's Adoption Register?

We feel we do not have adequate expertise in this area to comment

***Better foster care***

29. Do you agree that fixing maximum limits for fostering placements would result in better care for children in foster care? Why?

We feel we do not have adequate expertise in this area to comment

30. Do you agree foster carers should be required to attain minimum qualifications in care?

We have no specific locus of expertise in this area however we would wish to draw

the Minister's attention to the fact that there is no specific "safe" accommodation to protect the victims of child trafficking. A great deal of work and learning has been shared by the campaigning group End Child Pornography and Trafficking on this issue and the organisation has called for specialist fostering placements to be made available. This is something that we echo as we are now working with a number of trafficked children, many of whom may greatly benefit from being placed within a safe and specialist family setting.

31. Would a foster care register, as described, help improve the matching by a local authority (or foster agency)? Could it be used for other purposes to enhance foster care?

We feel we do not have adequate expertise in this area to comment

32. Do you think minimum fostering allowances should be determined and set by the Scottish Government? What is the best way to determine what rate to pay foster carers for their role – for example, qualifications of the carer, the type of 'service' they provide, the age of child?

We feel we do not have adequate expertise in this area to comment

### ***Assessing Impact***

33. In relation to the Equality Impact Assessment, please tell us about any potential impacts, either positive or negative; you feel the legislative proposals in this consultation document may have on any particular groups of people?

It is important to note that young people newly arrived in Scotland whose age is disputed may become subject to an age assessment, and may as a consequence not be treated as children when in fact they are. This group of young people can be particularly vulnerable, as there is an increased risk that they will not be able to secure their rights effectively until the question of their age is fully resolved.

It is also important to note that in relation to protecting the victims of Human Trafficking, there will be a new EU directive that will be in force from April 2013, this may be found at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF> .

This will require the Scottish Government to be fully compliant with all components of the directive. In particular, we note that the EU directive definition of a child is someone who is below aged eighteen, while in Scots law a child is generally defined as someone under sixteen years of age. We submit that the latter definition may result in gaps in the provision of services granted to child victims of trafficking which might fall below that required by the directive. The directive also states that a trafficking victim requires the services of an allocated guardian, access to specialist legal representation, and adequate time for recovery and reflection. The EU directive also clearly establishes that such victims must not, in any circumstances, be prosecuted for crimes committed because they were trafficked.

34. In relation to the Equality Impact Assessment, please tell us what potential there may be within these legislative proposals to advance equality of opportunity between different groups and to foster good relations between different groups?

35. In relation to the Business and Regulatory Impact Assessment, please tell us about any potential economic or regulatory impacts, either positive or negative; you feel the legislative proposals in this consultation document may have, particularly on businesses?

We feel we do not have adequate expertise in this area to comment

**Thank you for responding to this consultation.**

**Please ensure you return the respondent information form along with your response.**

**The closing date for this consultation is 25 September 2012. Please return to [childrenslegislation@scotland.gsi.gov.uk](mailto:childrenslegislation@scotland.gsi.gov.uk)**

or

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