

Consultation Response

Early learning and childcare statutory guidance

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights.

The Commissioner is fully independent of the Scottish Government and Parliament.

We welcome the publication of this draft statutory guidance. Early learning and childcare plays an important role in realising children's rights to education, health and development. Early learning contributes to fulfilling a child's right to an education, under Articles 28 and 29 of the UNCRC, while provision of high quality, flexible childcare contributes to meeting the State's duty to provide support to parents in performing their child-rearing responsibilities, including "the development of institutions, facilities and services for the care of children" (Article 18(2) of the UNCRC). By supporting parents who work or study, it also contributes to the realisation of children's right to an adequate standard of living (UNCRC Article 27).

It is disappointing therefore, in light of the government's commitment to incorporation of the UNCRC, that a human rights-based approach has not been fully embedded in this draft of the statutory guidance. The introduction, interpretation and context sections neglect to refer to the UNCRC, save a single reference on page 10 to Article 31. This is despite the fact that provision of early learning and childcare should be understood not only with regard to the entirety of the UNCRC but also with reference to other relevant international human rights treaties, including the UN Convention on the Rights of Persons with Disabilities (particularly Articles 7, 24 and 28). More specifically, the guidance should be informed by the UN Committee on the Rights of the Child's General Comment No 7 (2005) on Implementing child rights in early childhood¹. General Comments are an authoritative source of interpretation of the UNCRC and should be taken into account by the Scottish Government when developing policy.

1

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f7%2fRev.1&Lang=en

In this case, General Comment 7² provides additional information on the nature of education rights for very young children (from birth), It makes clear the importance of a rights-based education as set out in Article 29 and in General Comment 1 on the aims of education³.

The draft guidance makes only limited reference to the right of the child to have their best interests as a primary consideration in all actions concerning them (UNCRC Article 3). To comply with the UNCRC, this principle should underpin all decision making in relation to early years and childhood, whether relating to individuals or a group. Likewise, decision making should also have regard to the views of children and young people, in line with their evolving capacities (Article 12), and for ensuring that the rights of all children are respected, without discrimination of any kind (Article 2). General Comment 7 provides addition context on how these principles can be embedded in policy.

In terms of the delivery of childcare, General Comment 7 further outlines the State's role in relation to community-based and private providers of early education. The sections of the guidance relating to education authorities' interaction with these providers would be strengthened by explicit reference to the General Comment and to education authorities' responsibilities as part of the State.

We are pleased to see that the guidance requires additional flexibility in the planning and provision of early learning and childcare by education authorities and anticipates additional changes in relation to children whose parents opt to defer their entry to primary school.

Aside from alignment with the Government's commitment to incorporation, locating statutory guidance firmly within the international human rights framework has considerable other advantages. For example, it provides the opportunity to emphasise the importance of rights-based approaches and to enhance the understanding of public sector service providers, including education authorities, of their duties - as part of the State - in realising children's human rights.

We therefore recommend that the statutory guidance be redrafted to fully reflect a human rights-based approach to early learning and childcare.

2

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f7%2fRev.1&Lang=en

3

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2001%2f1&Lang=en