

MSP Briefing Children (Scotland) Bill Stage 1 Debate

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.

The Commissioner welcomes the introduction of this bill, which provides an important and timely opportunity to increase compliance with the UNCRC.

We therefore ask you to support the general principles of the bill in the Stage 1 Debate this Wednesday.

In our written evidence to the Justice Committee, we highlighted a number of areas in which the realisation of children's rights could be strengthened through amending this bill. These included:

- Create an explicit presumption, in sections 1, 2 and 3, that all children, regardless of age are presumed to be capable of forming a view.
- Amending sections 1, 2 and 3 to read: "ensure that all children have the right to express their views and have those views taking into account" or words to that effect.
- Removing all exceptions and exemptions based on a child being incapable of forming a view.
- Redrafting section 1, to ensure that new sections 11ZA and 11ZB of the 1995 Act reflect a children's rights perspective
- Amending Section 15 to place a duty on the court to explain to the child the reasons for their decision and to include explaining where an order has not been made or a where a substantive decision has not been made or the case continued.

We welcome the Stage 1 report produced by the Justice Committee which reflects many of our key recommendations.

Our full written evidence can be found [here](#). This provides a full human rights context for this bill and detail on how this applies to specific proposals. Our evidence also contains a separate list of our recommendations to the Scottish Government relating to the Family Justice Modernisation Strategy (FJMS).

We provided evidence to the Committee on 7th January 2020 and contributed to a roundtable discussion on children's participation in family court proceedings on 17th December 2019 and the official report of these is available on the Scottish Parliament website.

Best interests

One of the strengths of the current legislation is that it provides children with greater protections than the minimum required by the UNCRC, by making best interests paramount. The UN Committee on the Rights of the Child has made it clear that it welcomes States exceeding minimum requirements in this way. Whilst proposed new sections 11ZA and 11ZB are welcomed, we believe that they could be strengthened if they were redrafted from a children's rights perspective, particularly in light of the Scottish Government's commitment to incorporation of the UNCRC into Scots law. We would welcome an amendment at Stage 2 which achieved this.

Voice of the child and the right to participate

Both the UN Committee on the Rights of the Child¹ and the Council of Europe² have made it clear that a child's right to have their views heard in judicial and administrative proceedings should be available to all children who are able to do so, regardless of age. We therefore welcome the Justice Committee's recommendation in regard to improving the realisation of these rights and call for an amendment at Stage 2 to create a positive presumption that **all** children have the right to have their views heard, regardless of age, with those views being given due weight in line with their evolving capacities³.

Advocacy and support

Children have the right to be supported to understand and exercise their rights. We therefore support calls for the Scottish Government to continue to explore how to provide advocacy and support for all children involved in family court proceedings.

Explanation of decisions

An important part of the participation of a child in decisions being made about them, is explaining to a child how their views were taken into account, including where no action is taken and particularly where a decision is not in line with their views. We therefore welcome a duty on the Court to explain decisions to the child and has provided flexibility in who carries this out.

Child's Right to Privacy

Article 8 of the European Convention on Human Rights (ECHR) provides that *"everyone has the right to respect for his private and family life, his home and his correspondence..."*. It is sometimes necessary, in family court proceedings, to interfere with that right to further the best interests of the child. It is also sometimes necessary to do so to ensure that the parties' right to a fair trial (ECHR Article 6) is realised. However, any such interference with a child's rights must be carefully considered and take account of their best interests and views. In our response to the Scottish Government [consultation](#) prior to the introduction to this bill, we stated that during commission and diligence, specifications should be tightly drawn, with applicants stating what is sought and why.

¹ In [General Comment 12: The Right of the Child to be Heard](#)

² In the [Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice](#)

³ Further information on the concept of evolving capacities can be found in our evidence to Justice Committee and in "[The Evolving Capacities of the Child](#)" by Gerison Lansdown

Alternative Dispute Resolution

Mediation, family group decision making (FGDM) and other forms of alternative dispute resolution (ADR) have a valuable role to play in reducing conflict and thus the number of family law cases which reach the courts. However, we recognise that mediation and FGDM is not appropriate in some situations, particularly where there is a history of domestic abuse and we note that research suggests this may be the case in around half of cases which reach the courts. We feel that primary legislation is not the best way of encouraging the use of ADR and instead call on the Scottish Government to explore how it can further be encouraged and supported.

Child Welfare Reporters

We support the establishment of a centralised register of Child Welfare Reporters and the removal of any financial barrier to one being appointed where required. We are pleased to see that registration will be subject to minimum standards of training and qualification and outlined our recommendations for that training in our [evidence](#) to the Justice Committee.

Contact Centres

We support proposals to regulate contact centres, including the introduction of minimum standards for training of staff, to ensure the safety of children who attend them.

Sibling Contact

We welcome the creation of a duty, in s10 of the bill, on local authorities to promote regular contact between looked after children and their siblings. It is important that contact between siblings is seen as being at least as important as contact with parents.

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