

Consultation on the Rights of Children and Young People Bill

Education, Children and Families Committee

15 November 2011

Purpose of report

- 1 The purpose of this report is to inform the Committee about:
 - a) the Scottish Government's consultation on the Rights of Children and Young People Bill;
 - b) the steps that are being taken to generate a City of Edinburgh Council response to the consultation;
 - c) the findings of the consultation (*not available as yet due to the timescale*).

Main report

- 2 The First Minister announced on 7 September 2011 that the Scottish Government would bring forward a Rights of Children and Young People Bill in 2012 which will establish in law the responsibilities of the Scottish Government in regard to the United Nations Convention on the Rights of the Child (UNCRC). It will also provide the foundation for a later Children's Services Bill which will focus on children's service delivery. In order to develop the Bill, the Scottish Government has launched a consultation paper (included as Appendix 1). Responses are invited by Thursday 1 December.
- 3 The purpose of the Bill is to put the UNCRC on a statutory footing. The Bill will establish in law the responsibilities of Scottish ministers to have due regard to the UNCRC when exercising any of their functions. The focus is on all aspects of the Scottish Government and not on other public bodies at this stage – these will be addressed through the Children's Services Bill which will not be published until spring 2013. The UNCRC consists of 54 articles which encompass the civil, political, economic, social and cultural rights of children and young people.
- 4 The Bill aims to:
 - increase the prominence of the UNCRC
 - provide greater consistency and clarity
 - improve transparency and parliamentary scrutiny
 - increase accountability to the Scottish people

5 Four specific proposals are made:

Proposal 1: Duty on the Scottish Ministers to have due regard to the UNCRC and Optional Protocols in the exercise of any of their functions. The duty specifically excludes the General Comments of the Committee;

Proposal 2: Duty on the Scottish Government to report on implementation every five years;

Proposal 3: Extension to young persons aged under 21 who have been looked after;

Proposal 4: Future proofing against changes to the UNCRC and Protocols.

Council Response

6 Children and Families was part of the United Nations Children's Fund (UNICEF) UK 'Child Friendly Communities' pilot. This involved work on children and young people's rights across the department, including Rights Respecting Schools. UNICEF has reviewed the Child Friendly Communities pilot and is developing a new programme – Child Rights Partners - to work in partnership with local authorities. The focus will continue to be on embedding the UNCRC in policy development and implementation. As a result of our work in partnership with UNICEF, on young people's participation, on Getting it Right For Every Child, Curriculum for Excellence and in a range of other areas, Edinburgh is in a strong position to contribute to the discussion on children's rights.

7 Planning and Performance will collate responses to the consultation from across the Council. The consultation paper has been sent to:

- a) Children and Families Heads of Service and officers who have either expressed an interest or have particular responsibilities which are relevant to the consultation. Heads of Service have been asked to circulate the consultation document as appropriate in their teams;
- b) Other Council departments;
- c) Partner agencies (through the Children's Partnership).

Young People's Input

8 Some content from the Edinburgh Youth Issues Forum event in 2010 on the Scottish Commissioner for Children and Young People's 'Right Blether' is relevant to the consultation and will help inform the response.

9 A series of interactive sessions on rights will be run with young people via pupil/student councils and Modern Studies classes in schools – sessions will be held at Craigroyston Community, St. Augustine's and Boroughmuir High Schools. The sessions will concentrate on what young people think the focus should be in terms of children and young people's rights.

10 Members of the Scottish Youth Parliament will contribute through a Scottish Youth Parliament and Young Scot consultation exercise on the Bill.

- 11 Local Youth Forums will also have the opportunity to contribute to the consultation.

Responses to the Consultation

- 12 These will be collated and summarised here before the Committee meeting.

Financial Implications

- 13 There are no financial implications arising from participating in the consultation.

Equalities Impact

- 14 Given that the Bill is focussed on the rights of children and young people, it is very closely aligned to the public sector duties of the Equality Act 2010. The Bill seeks to establish in law the duties on Scottish Ministers to have due regard to the UNCRC when exercising any of their functions. 42 of the 54 articles in the UNCRC relate directly to the rights of children and young people. These articles cover protection from discrimination, respect for the views of the child, freedom of expression, protection, children with disability, children of minorities, right to education and wide range of other rights. Our consultation will make specific efforts to include children and young people in equalities groups.

Environmental Impact

- 15 There are no adverse environmental impacts from participating in the consultation.

Recommendations

- 16 It is recommended that the Committee:
- a) Notes the consultation process and thanks those who have submitted their feedback
 - b) Approves the collated feedback from across the Council and agrees for it to go forward as a Council response to the consultation.

Gillian Tee
Director of Children and Families

Appendices	1. Consultation on Rights of Children and Young People Bill http://www.scotland.gov.uk/Publications/2011/09/07110058/0
Contact/tel/Email	David Maguire 0131 529 2132 david.maguire@edinburgh.gov.uk
Wards affected	
Single Outcome Agreement	Potentially relevant to all National Outcomes
Background Papers	

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8 September 2011

Dear Consultee

CONSULTATION ON RIGHTS OF CHILDREN AND YOUNG PEOPLE BILL

The First Minister announced on 7 September 2011 that the Scottish Government would bring forward a Rights of Children and Young People Bill in 2012. I am writing to you following the launch of the consultation exercise today to provide you with a copy of the consultation paper and to invite you to respond.

The Rights of Children and Young People Bill will establish in law the responsibilities of the Scottish Ministers to have due regard to the United Nations Convention of the Rights of the Child (UNCRC) when exercising any of their functions. The UNCRC spells out the basic human rights of children up to the age of 18 everywhere. The Scottish Government's approach to children's rights is already firmly based on the UNCRC. The Bill will ensure that all Scottish Government policy and legislation takes account of the rights of children and young people and can be framed in such a way as to promote and secure those rights.

We are inviting written responses to this consultation paper by **1 December 2011**. We have provided a **response booklet** which contains details of the consultation process and questions to help you focus your response. Please see the response booklet for details of how to respond. If you have any queries which are not answered by the response booklet, contact Chris Bain on 0131 244 4906.

All responses will be analysed and considered along with any information from the public engagement events in order to develop the Bill. The Scottish Government will issue a report on this consultation process in spring 2012 and introduce legislation early in the summer.

Yours sincerely,

Phil Raines
Children's Rights and Wellbeing (CRW) Division

List of Consultees

Association of Chief Police Officers in Scotland
Care service providers
Chief Constables
Convention of Scottish Local Authorities
Crown Office and Procurator Fiscal Service
Disability Rights Commission
Disclosure Scotland
Faith groups
Housing Associations
Law Society of Scotland
Local Authority Chief Executives
Local Authority Directors of Education / Social Work / Finance / Children's Services
Lord President and Lord Justice General
Minority ethnic groups
NHS Board Chief Executives
Parent, carer and volunteer groups
Political parties
Professional regulatory and representative bodies
Scottish Court Service
Scotland's Commissioner for Children and Young People
Scottish Further Education Colleges
Scottish Higher Education Institutes
Scottish Human Rights Commission
School and teacher representative bodies
Sheriffs, Sheriff Principals and Sheriff's Association
Unions
Voluntary organisations

Consultation Paper



Rights of Children and Young People Bill

The Scottish Government
September 2011



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Ministerial Foreword by Angela Constance MSP

Governments have often talked of having the interests of children at their heart. And it is true that in the years of devolution the support and protection we offer our children and young people has improved significantly. In her report 'Joining the Dots' Prof Susan Deacon recognised that "Most children in Scotland get a good start in life and most parents do a pretty good job. But all of us could do more and do better". We agree.

This Government believes we can, and must, do better. Ours is a programme of ambitious reform and our vision for transforming public services aims to improve the life chances of our children and young people. At the centre of these plans is a fundamental shift in our philosophy and direction, recognising the essential importance of the early years of a child's life.

On 7 September, the First Minister announced our intention to introduce the Rights of Children and Young People Bill; this Bill represents the foundation stone on which a legislative programme that embeds a new approach based on prevention, appropriate early intervention and child centred service delivery will be built. Recognising and respecting the rights of every child is central to achieving our vision.

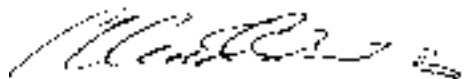
We can already see the benefits of this through, for example, the implementation of Curriculum for Excellence, which has a strong basis on developing each child as a well rounded individual with rights and responsibilities and a commitment to respecting the rights of others.

As a society we have a moral obligation to do the right thing by our children: to ensure they have a happy and healthy childhood; and that they have every chance to realise their potential as they grow. By recognising and respecting their rights in law, we can ensure that everything government does systematically places the interests of children at heart and that their voices and needs shape the support they should receive.

As a Government, we are passionate about the interests of our children and young people. Through this Bill, we intend to demonstrate that commitment to the people of Scotland by leading by example. This Bill will place a duty on Scottish Ministers to take account of children's rights (as expressed in the United Nations Convention on the Rights of the Child) in **everything we do**.

The Rights of Children and Young People Bill is central to the development of a Children's Services Bill to be introduced later in this Parliament. That Bill will build on a strong foundation of rights and will focus on the way that we support and deliver services to children. Together, the two Bills will result in a step change in how we protect, nurture and encourage children and young people, giving them all opportunities to achieve their potential.

We can, and must, do better for our children and at the beginning of this five-year term we have a unique opportunity to work together on a bold programme to improve their life chances. I encourage you to join us in this exciting work by taking part in the consultation exercise and sharing your views on our proposals.

A handwritten signature in black ink, appearing to read 'Angela Constance', with a small flourish at the end.

Angela Constance MSP
Minister for Children and Young People

Chapter 1: Introduction

1.1 - Our vision for Scotland's children and young people

1. Every child and young person in Scotland is unique and deserves the best start in life. Ours is a very clear vision: we will help everyone to fulfil their potential, by focusing on the quality of our education and support, from the earliest years right through life. We will raise and realise ambition and attainment for all, and support our vulnerable groups so that children, young people and their families get the help and support they need when they need it.
2. This will start with the earliest years – the best time for the best start. All the evidence and research tells us that this is when we can make the biggest impact on people's chances in life later on. Making sure the right support is there early on – for everyone who needs it – will benefit all of us - as individuals, and in our local communities. It can make a real difference to boosting our economic prosperity and strengthening our society as a whole. We will maintain that focus right through childhood and into young adulthood, ensuring that children and young people know what they can expect so that they can achieve their potential. We will work in partnership to make this vision a reality – with families and communities and with health, local government, police, private and voluntary sectors. Our plans for legislation will help us do this.
3. Much progress has been made. We have:
 - Set the agenda with the Early Years Framework and increased free nursery provision by almost 20% over the last four years, benefiting 100,000 children in the last year.
 - Developed and embedded in policy and practice of *Getting it right for every child* to help ensure all our services have the child's needs at their heart.
 - Implemented the Curriculum for Excellence, providing each child with learning opportunities suited to their requirements so they can fulfil their potential.
 - Established the Looked After Children Strategic Implementation Group to help drive tangible improvements in the life chances of this important group.
 - Carried out a national review of services for disabled children, together with the voluntary sector and COSLA, and identified where improvements can make the biggest impact in the lives of disabled children and their families.

- Launched a Child Poverty Strategy for Scotland – to coordinate actions across government and public services.
 - Developed a scoping study focussed on advocacy provision for children and young people.
 - Refreshed our approaches to maternity care, infant nutrition and support for vulnerable families in health care to ensure that we match our services to the specific needs of children and their families.
4. More detail about these is set out in chapter 2.
 5. There is, of course, more to do and the Scottish Ministers have set out a challenging new agenda, building on the foundation of what has already been achieved and driving forward progress towards the vision.
 6. That agenda includes:
 - A stronger emphasis on supporting children in their earliest years, giving them the right opportunities for learning and development that evidence shows makes a huge difference for the rest of their lives.
 - A fundamental shift in philosophy and approach from intervening only when a crisis happens, to prevention and appropriate early intervention. That means providing a supportive environment for children and the earliest possible identification of any help that may be needed.
 - Providing the right support to parents to enable them to effectively fulfil what is the most challenging role in society.
 - Re-focusing the delivery of services to children and young people on their needs, so that the child is at the centre of service delivery, receiving truly personalised services.
 - Recognising the rights of the child as being of paramount importance to achieving the vision of improving life chances for all children and young people.
 7. The report of the Christie Commission has reinforced the need to continue and further develop this approach, re-stating the importance of early years, prevention and personalised service delivery with a clear focus on the achievement of outcomes.
 8. In order to make this vision into reality, the Scottish Ministers intend to introduce new legislation that will seek to achieve the following:
 - embed the Early Years Framework, with a strong focus on appropriate early intervention;

- build upon the *Getting it right* approach to ensure that services are delivered in a child-centred way;
 - review and update the Children (Scotland) Act 1995 as a foundation for the delivery of care, support and services to children in the 21st Century;
 - support a stronger focus on the achieving outcomes and improving the life chances of children and young people; and
 - remove barriers to effective child-centred service delivery.
9. Underpinning all of this would be formal recognition of the rights of the child as set out in the UN Convention of the Rights of the Child.
10. This paper is a formal consultation paper seeking comments on the proposed Rights of Children and Young People Bill, which provides a critical foundation for the delivery of the wider vision. It is intended that this will be followed by a Children's Services Bill, which is expected to include provisions relating the issues outlined above. The timescales for both Bills are set out in section 3.4. The Children's Services Bill will be founded on extensive consultation both on the policy and the proposed legislative provisions and is expected to be introduced at the Scottish Parliament in autumn 2013.

1.2 - Why are children's rights important?

11. The realisation of rights is essential if children are to be successful learners, confident individuals, effective contributors and responsible citizens. Respect for children's rights ensures that policies and approaches are developed in a way which puts the child at the centre, ensuring that their best interests are a primary consideration and that they are listened to whenever decisions are being taken which might affect them. The Scottish Government is committed to creating a modern, inclusive Scotland that respects the rights of all Scotland's people. Accordingly, we have taken forward a broad range of actions over the last four years which build on the content of the United Nations Convention on the Rights of the Child, acting to ensure that children's rights are recognised, respected and promoted throughout society. In doing so, we recognise the importance of ensuring that children and young people themselves understand, and are able to exercise, their rights. Curriculum for Excellence, now adopted in all schools across Scotland, will play a key role in making this ambition a reality.

The United Nations Convention on the Rights of the Child

12. The United Nations Convention on the Rights of the Child (**the UNCRC**), which was adopted by the General Assembly of the United Nations in 1989, spells out the basic human rights of children up to the age of 18 everywhere. The UNCRC consists of 54 Articles which encompass the civil, political, economic, social and cultural rights of children and young people. The UK ratified the UNCRC in 1991 and is bound in international law by its terms. The Scottish Government's approach to children's rights is already firmly based on the United Nations Convention on the Rights of the Child.
13. A number of legislative changes in recent years have enshrined elements of the UNCRC in Scots law. Since 2007, the Scottish Government has implemented the Adoption of Children (Scotland) Act 2007 and the Protection of Vulnerable Groups (Scotland) Act 2007, as well as bringing forward measures in the Criminal Justice and Licensing (Scotland) Act 2010, the Public Services Reform (Scotland) Act 2010 and the Children's Hearings (Scotland) Act 2011. All of which have taken account of the relevant articles and protocols of the UNCRC.

1.3 - Why legislate for children's rights?

14. Legislation is not the only means for ensuring that children's rights are respected. The Scottish Ministers are already taking forward a suite of broader activity to implement the UNCRC. This activity is set out in *Do the Right Thing* – the Scottish Government's response to the 2008 Concluding Observations of the UN Committee on the Rights of the Child. The response makes commitments to improve support, access and outcomes for children in a whole range of circumstances.
15. However, placing the UNCRC on a statutory basis underpins existing progress and goes further, by ensuring that the development of all Scottish policy and legislation takes proper account of the rights of children and young people. The Rights of Children and Young People Bill sets out a clear commitment to recognising and respecting children and young people's rights in Scotland and introduces new mechanisms for ensuring that those rights are properly reflected in both the work of Government and public policy more generally. The benefits of the proposed Bill are far reaching, with the aim of ensuring that Scottish Ministers approach to the delivery of all public services takes account of the UNCRC in a way which is robust and appropriate.

16. The Bill will:

- **Increase the prominence of the UNCRC:** While the principles of the UNCRC have featured in domestic legislation for some time, the Convention itself does not currently have a place in Scots law. The Bill would address this point. Its provisions would also ensure that sufficient recognition is given to the UNCRC and its Optional Protocols in the development of all domestic legislation and national policy in the future.
- **Provide greater consistency and clarity:** The Bill would clearly set out what is expected of Scottish Ministers in terms of complying with the UNCRC. It would achieve this by identifying what Ministers must consider in respect of the Convention when exercising any of their functions. Further information on the nature of these considerations is set out under section 3.2 of this paper.
- **Improve transparency and parliamentary scrutiny:** The Bill would make the Scottish Ministers directly accountable to both the Parliament and the people of Scotland for their approach to implementing the UNCRC. It would achieve this by introducing a duty on Ministers to publish periodic reports focussing on compliance with the duties included in the Bill for consideration by the Scottish Parliament. Further information on the reporting process being proposed can be found at paragraph 69.
- **Increase accountability to the Scottish people:** The Bill would establish a clear accountability of the Scottish Ministers to the Scottish people to respect and take account of the rights of children and young people as set out in the UNCRC.

17. These benefits in themselves are substantial, strengthening the framework within which the Government works to improve life chances for children and young people across Scotland. More specifically, the Rights of Children and Young people Bill will lay the foundation for the development of more specific provisions focusing on child centred service delivery which will form basis of the subsequent Children's Services Bill.

Why have two Bills?

18. The Rights of Children and Young People Bill formalises a process of UNCRC proofing which already exists for all primary legislation and extends that process so as to apply it to all Scottish Government policy. Establishing a duty on the Scottish Ministers in this way will ensure that all Scottish Government policy and legislation takes account of the rights of children and young people and can be framed in such a way as to promote and secure those rights.

19. This legislation precedes the Children's Services Bill as it has a very broad reach across all the Scottish Ministers' functions. In effect, the Rights of Children and Young People Bill will set the strategic direction for the way that public services in Scotland should be delivered, respecting the rights of children and young people.
20. The Children's Services Bill will have a more specific focus on the delivery of services to children and young people. It will provide make specific provisions to assist public bodies in their work to improve the life chances of children and young people. The Scottish Government will propose whatever changes to legislation are needed to place public bodies under new duties and remove barriers to allow them to deliver services effectively. The reason for taking forward these measures in the separate Children's Services Bill is because they seek to address complex and difficult problems and the Scottish Government wants to take the time, with stakeholders, to develop solutions that really work.

The Consultation Paper

21. This consultation paper is divided into four chapters along with two annexes. A separate response booklet sets out some specific questions that the Scottish Government invites responses on and provides details of how to respond.
22. **Chapter 2** describes the United Nations Convention on the Rights of the Child. It provides an overview of the Convention itself, with the Articles and Optional Protocols and the General Comments of the UN Committee set out in Annexes A and B respectively and describes the role of the UN Committee and its general comments.
23. Chapter 2 then sets out the UK context of the UNCRC and the current Scottish position in relation to the Convention and the powers open to Scottish Ministers as regards legislation.
24. **Chapter 3** sets out the legislative proposals being consulted on. Four proposals are set out along with an explanation of each proposal and how it relates to the anticipated benefits. Chapter 3 also sets out what the Bill is not expected to cover and why, along with timetables, implementation issues and financial implications.
25. **Chapter 4** provides a brief summary and re-statement of the benefits.
26. **Annex A** sets out the articles of the UNCRC and the optional protocols.

27. **Annex B** provides a list of, and links to, the General Observations of the UN Committee on the Rights of the Child.

1.4 - Responding to the consultation

28. The main purpose of this consultation is to obtain your views on the Scottish Government's proposals for the Rights of Children and Young People Bill. In particular, the Scottish Government wants to know whether you agree that legislation is required to deliver the objective of putting the UNCRC at the heart of Scottish Government policy-making and decisions and, if so, to obtain your views on the detailed proposals for the Bill set out in chapter 3. The consultation also sets the agenda for the later Children's Services Bill and allows you to begin to consider how you would like to see this develop, especially in the context of children's rights.
29. The consultation closes on **1 December 2011**. A separate response booklet tells you how to respond and includes questions to guide your thinking.

Chapter 2: United Nations Convention on the Rights of the Child (UNCRC)

2.1 - Overview of UNCRC

30. The United Nations Convention on the Rights of the Child (**the UNCRC**)¹, which was adopted by the General Assembly of the United Nations in 1989, spells out the basic human rights of children up to the age of 18 everywhere. The Convention consists of 54 Articles which encompass the civil, political, economic, social and cultural rights of children and young people. These Articles form a framework against which to evaluate legislation, policy and decision-making structures. Implementation and compliance with the Convention is overseen by the UN Committee on the Rights of the Child.
31. The 42 articles which directly relate to the rights of children are summarised in the table below². (Articles 43 to 54 are concerned with compliance and monitoring and general treaty law provisions about accession, reservations etc.)

1. Definition of the child	22. Refugee children
2. Without discrimination	23. Children with disability
3. Best interests of the child	24. Health and health services
4. Protection of rights	25. Review of treatment in care
5. Parental guidance	26. Social security
6. Survival and development	27. Adequate standard of living
7. Registration, name, nationality, care	28. Right to education
8. Preservation of identity	29. Goals of education
9. Separation from parents	30. Children of minorities
10. Family reunification	31. Leisure, play and culture
11. Kidnapping and trafficking	32. Child labour
12. Respect for the views of the child	33. Drug abuse
13. Freedom of expression	34. Sexual exploitation
14. Freedom of thought, belief and religion	35. Abduction
15. Freedom of association	36. Other forms of exploitation
16. Right to privacy	37. Detention
17. Access to information from mass media	38. War and armed conflicts – see 'optional protocols'
18. Parental responsibilities; state assistance	39. Rehabilitation of child victims
19. Protection from all forms of violence	40. Juvenile justice
20. Children deprived of a family	41. Respect for better national standards
21. Adoption	42. Knowledge of rights

¹ The definitive version of the treaty and other information relating to it is available from the UN website: [United Nations Convention on the Rights of the Child](#).

² Article headings taken from UNICEF's two page [summary of the UNCRC](#).

32. The General Assembly of the UN adopted two **Optional Protocols** to the UNCRC on 25 May 2000. These are:
- the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography; and the
 - the Optional Protocol on the Involvement of Children in Armed Conflict.
33. These Optional Protocols are essentially supplementary treaties and States must sign and ratify them separately, should they choose to do so. The UK has signed and ratified both Optional Protocols³. A further Optional Protocol focussing on communications is expected to be opened for signature in 2012.
34. The relevant parts of the UNCRC, two Optional Protocols and the UK Government's Reservations and Declarations are attached at **Annex A** for ease of reference. In international treaty law, reservations enable States to accept as many of the rights and obligations under a treaty as possible, while expressly stating that there are some provisions of the treaty which they cannot accept⁴. The UK Government ratified the treaty with four Reservations but the last of these was withdrawn in 2008. Declarations are interpretative statements by the State of what it considers a particular provision of a treaty to mean. The UK Government ratified the UNCRC with two Declarations, both of which still stand. Furthermore, a UK Declaration in respect of the Optional Protocol on the Involvement of Children in Armed Conflict still stands.

Interpretation of the UNCRC

35. It is important to distinguish the UNCRC from the European Convention on Human Rights (ECHR). ECHR is incorporated into UK law through the Human Rights Act 1998, which requires that the Scottish Ministers act in a way that is consistent with the obligations and spirit of the Convention and the Act. Acts of the Scottish Parliament may be rendered invalid if they are found to be non-compliant with the Convention or the Act. Furthermore, disputes over the interpretation of ECHR are ultimately resolved at the European Court of Human Rights. This contrasts with the UNCRC, which the UK Government has signed and ratified (subject to two Declarations) but is not incorporated into

³ The Child Pornography Optional Protocol was signed on 7 September 2000 and ratified on 20 February 2009. The Armed Conflict Optional Protocol was signed on 7 September 2000 and ratified on 24 June 2003.

⁴ Where a State enters a Reservation to an entire Article then that Article does not apply to that State and the treaty binds the State to the exclusion of that Article. The UNCRC specifically provides for reservations in Article 51. All reservations by a State must be made at the time of ratification but they can be withdrawn subsequently.

any part of UK law. This means that the UK is bound to comply with the UNCRC as a matter of international law but the UNCRC is not currently actionable in any domestic UK courts. Furthermore, were the UNCRC to be incorporated, there would be no equivalent to the European Court to act as final arbiter. The Rights of Children and Young People Bill would not incorporate (the devolved elements of) the UNCRC into Scots law but would make the Scottish Ministers liable to judicial review over its provisions for the first time. The absence of a court-like final arbiter for UNCRC leaves it open to Scottish courts to interpret UNCRC in any such judicial review.

Meaning of “incorporation”

36. Treaties are only given full effect by the courts if they have been incorporated or implemented into legislation. Therefore, legal claims based on unincorporated treaties such as UNCRC are non-justiciable by the courts – i.e. outwith their jurisdiction. The UK is bound by the UNCRC in international law but, because the UNCRC has not been incorporated into domestic law, it is not directly enforceable in the domestic courts. That means, for example, that a child cannot sue his/her education authority on the grounds of a breach of the UNCRC. The courts may, however, refer to unincorporated treaties to resolve ambiguities in domestic legislation in order to interpret national law in conformity with international law. When construing and applying legislation dealing with the subject matter of the UNCRC, the courts will presume that the UK or Scottish Parliament has legislated to be in conformity with the UNCRC, and not in conflict with it.

The UN Committee on the Rights of the Child

37. The UN Committee on the Rights of the Child (“**the Committee**”) is composed of 18 independent experts who are “*persons of high moral character and recognized competence in the field of human rights*”. Members are elected for a term of four years by States parties in accordance with article 43 of the UNCRC. Members serve in their personal capacity and may be re-elected if nominated. Members are chosen on a largely geographical basis. Six members are from Europe.
38. The Committee plays an important role in interpreting the content of the Convention and does so through the publication of *General Comments and Recommendations* focussed on thematic issues (see below). But the UN Committee on the Rights of the Child, unlike the European Court of Human Rights, is not a judicial body. Should the UNCRC be given a formal status in Scots’ law such as is proposed in chapter 3, the Scottish courts may attach some weight to the Committee’s views in

interpreting the UNCRC which means that Committee members could have some influence over domestic law.

General Comments of the UN Committee on the Rights of the Child

39. As stated above, the Committee publishes *General Comments and Recommendations* focussed on thematic issues from time to time. Thirteen general comments have been published by the Committee to date and these are listed at **Annex B**. The Committee prepares these General Comments under Article 45(d) which states:

"In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties."

40. The Committee considers its own General Comments and Recommendations when considering individual reports from States. The Committee's own view of its General Comments and Recommendations is as follows:

"The Committee adopts general comments based on specific articles, provisions and themes of the Convention to assist the States parties in fulfilling their obligations under the Convention on the Rights of the Child and to stimulate the international organizations and the specialized agencies concerned in achieving progressively and effectively the full realization of the rights recognized in the Convention. Members [i.e. the UK] may propose at any time that a general comment relating to a specific article, provision or theme be prepared. The Committee sometimes decide to develop a general comment on an article, provision or theme that has been discussed earlier in one of its General Day of Discussion."

The Committee generally shares draft general comments with selected number of experts, including those from the other treaty bodies, for comments."

2.2 - UK Context

41. The UK Government ratified the UNCRC in 1991 and, as such, is bound in international law by its terms.
42. States Parties to the Convention are required to report on compliance every five years. It is the UK which is the State Party for the purposes of UNCRC, so a single UK report is prepared, to which the Scottish Government contributes (see below).
43. To date, the UNCRC has not been incorporated into any part of UK Law. Earlier this year, the Welsh Government's Rights of Children and Young Persons (Wales) Measure 2011 ("**the Welsh Measure**") was passed by the National Assembly for Wales and subsequently received Royal Assent⁵. The Welsh Measure places a duty on the Welsh Ministers to have due regard to the rights and obligations in the United Nations Convention on the Rights of the Child (UNCRC) and its Optional Protocols when making any decisions relating to policy or legislation from 1 May 2012 and, from 1 May 2014, when exercising any of their functions. Note that the Welsh Measure does not incorporate the UNCRC.

2.3 - Scottish position

44. Whilst the UNCRC has not been incorporated into Scots Law, it has been, and continues to be, the policy of the Scottish Government to reflect it in legislation and policy wherever possible.
45. The Scottish Government's 2007 report, A Report on the implementation of the UN Convention on the Rights of the Child in Scotland 1999-2007, provided a comprehensive survey of the position in Scotland. It stated that:

"The Convention is indicative of international standards and it is the policy of the Scottish Executive to reflect the provisions of the Convention wherever possible in the development of policy and legislation."

46. In 2009, Scottish Ministers published Do the Right Thing – the Scottish Government's response to the 2008 Concluding Observations of the UN Committee on the Rights of the Child. *Do the Right Thing* sets out

⁵ For more information about the Welsh Measure's [passage through the National Assembly for Wales](#).

a suite of priority actions focussing on UNCRC implementation which Ministers are committed to delivering over the short to medium term. In addition, *Together*, a coalition of NGOs with an interest in children's rights in Scotland, publish an annual report on the *State of Children's Rights in Scotland* (2010) which gives their view on the progress being made to implement the UNCRC in Scotland. Their next report is scheduled for publication in September 2011.

47. Through the Scottish Children's Rights Implementation Monitoring Group, the Scottish Government works with *Together* and Scotland's Commissioner for Children and Young People to consider the progress being made against the range of actions identified in both *Do the Right Thing* and the *State of Children's Rights in Scotland*. It remains the intention of the Scottish Ministers to publish in 2012 a detailed report setting out the progress made since the publication of *Do the Right Thing*.
48. There have been a number of legislative changes in recent years which have acted to enshrine elements of the Convention in Scots law. These include:
 - Children (Scotland) Act 1995
 - Standards in Scotland's Schools etc. Act 2000
 - Commissioner for Children and Young People (Scotland) Act 2003
 - Criminal Justice (Scotland) Act 2003
 - Mental Health (Care and Treatment) (Scotland) Act 2003
 - Education (Additional Support for Learning) (Scotland) Act 2004
 - Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005
 - Family Law (Scotland) Act 2006
 - Adoption of Children (Scotland) Act 2007
 - Protection of Vulnerable Groups (Scotland) Act 2007
 - Criminal Justice and Licensing (Scotland) Act 2010
 - Public Services Reform (Scotland) Act 2010; and
 - Children's Hearings (Scotland) Act 2011.
49. In addition, the Scottish Government has taken forward a wide range of initiatives which impact positively on the realisation of children's rights.
50. Work continues to implement the ***Getting it right for every child*** approach in Community Planning Partnership areas across the country. *Getting it right for every child* is our national programme to support and work with all children and young people in Scotland. It provides a common approach to all services for children as well as all services to

adults where children are involved. The *Getting it right for every child* approach is rooted in the principles of the UNCRC. It emphasises the importance of putting the child's needs first and ensures children and young people are listened to, and understand decisions that affect them. The approach supports individuals and agencies to work together in a co-ordinated way where this is required in order to improve a child's well-being, health and/or development.

51. Other actions include:

- The publication in December 2008 of the **Early Years Framework**, which sets out the Scottish Government's high level strategic vision for ensuring that all children get the best start in life, and the announcement of an £6.8m Early Years Action Fund in March 2011.
- The implementation of **Curriculum for Excellence** in schools across Scotland. Participation of children and young people in learning and the life of the school as well as the wider community are important parts of the new curriculum. Curriculum for Excellence is designed to raise standards for all children and enable our young people to be successful learners, confident individuals, effective contributors and responsible citizens, who have skills, knowledge, understanding and values to participate to their full potential in society.
- The establishment of the **Looked After Children Strategic Implementation Group** with responsibility for driving forward activity designed to improve how agencies work together for looked after children and their families, building on the *Getting it right for every child* approach.
- The publication of a **National Review of Services for Disabled Children**. The Review, jointly developed by the Scottish Government, COSLA and For Scotland's Disabled Children, includes an action plan setting out 15 measures aimed at improving the lives of disabled children and their families.
- The publication the **Child Poverty Strategy for Scotland** in March 2011. The strategy sets out what can and should be done to make the most impact on reducing levels of child poverty, and on improving outcomes for children growing up in poverty.
- The publication of a **scoping study focussed on advocacy provision for children and young people** and the subsequent establishment of a Scottish Government-led multi-agency steering group to consider issues of quality, consistency and availability of provision.
- The launch of the NHSScotland **Quality Strategy** as a shared understanding of healthcare quality for Scotland for everyone and of any age.

52. Other measures include:
- *Achieving Our Potential*
 - *Equally Well*
 - More Choices More Chances
 - Getting it right for young carers
 - Health for All Children; and
 - the revised National Child Protection Guidance, 2010

Powers of the Scottish Government in respect of UNCRC

53. Devolution is the delegation of power from a central government to local bodies. Scotland was granted devolution by the Scotland Act 1998, which means that Scotland has a Parliament with ‘devolved’ powers within the United Kingdom. Any powers which remain with the UK Parliament at Westminster are reserved. Reserved matters were set out in Schedule 5 of the Scotland Act. Essentially, the powers of the Scottish Parliament are limited by reference to those areas in which it does not have legislative competence (i.e. reserved matters), rather than by stating what it can do⁶.
54. The UNCRC is an international obligation of the UK and it is the UK, not Scotland, which is a party to the UNCRC. The power to conclude treaties in the UK is an exercise of the Royal Prerogative, being part of the monarch’s duties which are exercised by the UK Government. Treaties are then ratified by a procedure in the UK Parliament. Neither can Scotland withdraw or amend UK Declarations to the UNCRC. The Scottish Government could, as a matter of policy, act in devolved areas as if those Declarations did not exist but this is not required by the UNCRC and is not “implementing” the UNCRC in any legal sense.
55. The position under the Scotland Act is as follows. Paragraph 7 of Part I of schedule 5 to the Scotland Act reserves Foreign affairs to the UK Parliament. The reservation provides that international relations are reserved matters and this includes:
- relations with territories outside the UK, the European Communities (and their institutions) and other international organisations (such as the United Nations);
 - regulation of international trade; and
 - international development assistance and co-operation.
56. However, there are certain exceptions to this reservation:

⁶ Source: [Scottish Parliament website](#).

(a) Observing and implementing international obligations etc. This exception means that any obligations upon Ministers of the Crown to observe and implement international obligations in relation to devolved matters are transferred to the Scottish Ministers under section 53 of the Scotland Act. Therefore, the Scottish Government can implement UNCRC provisions in devolved areas.

(b) Assisting Ministers of the Crown (UK Ministers). This allows the Scottish Ministers to be involved in the discussions within the UK Government about the formulation of the UK's policy position in international negotiations on all issues which touch on devolved matters.

Chapter 3: Rights of Children and Young People Bill

3.1 - Overview

57. The purpose of the Rights of Children and Young People Bill is to put the UNCRC on a statutory footing. In essence, this involves the introduction of a duty on the Scottish Ministers to have due regard to the UNCRC when exercising any of their functions (see below). (Note that the Scottish Government is not proposing to *incorporate*⁷ the UNCRC into Scots law, see section 3.3.) The Scottish Government proposes to keep this Bill focused solely on the obligations of the Scottish Ministers in respect of the UNCRC. These obligations relate to all of the Scottish Ministers' functions and are therefore broad in focus. Development of the proposals set out below has been informed by the Welsh Measure and the discussions about that Measure during its passage through the National Assembly for Wales.
58. This Bill will be followed by the Children's Services Bill in 2013, which provides the opportunity to translate these provisions into specific powers or duties on either Ministers or public bodies in relation to the delivery of children's services.

3.2 - Legislative proposals

Proposal 1: Duty on the Scottish Ministers to have due regard to the UNCRC and Optional Protocols in the exercise of any of their functions. The duty specifically excludes the General Comments of the Committee.

59. The Scottish Government is proposing that the Bill will place a duty on the Scottish Ministers to have due regard to the UNCRC (and two optional Protocols) in the exercise of any of their functions. There are two dimensions to this proposition: the level of regard to which the Scottish Ministers must have in respect of the UNCRC and the scope of the functions to which the duty applies.

Level of regard

60. Commonly, legislation places a duty on somebody (an individual or a body corporate) to "have regard" to certain considerations in making a decision. The Equalities Act 2010 uses the expression to "have due regard" and this is the form of words which the Welsh Government

⁷ For an explanation of the meaning of "incorporation", see paragraph 40.

have used in their Welsh Measure. The Scottish Government is proposing a “due regard” duty as this seems to ensure not only that consideration of the UNCRC is guaranteed where it may be relevant, but that the consideration will be proportionate and focus the decision in question on how the particular circumstances of that decision relates to the UNCRC.

61. The Scottish Government proposes that the level of “regard” appropriate for this duty is to have due regard as this will ensure that, in making a decision, the Scottish Ministers:
- identify the relevant rights and duties in the UNCRC and its Optional Protocols;
 - consider whether alternatives exist which would better promote those rights and duties;
 - consider whether any aspect of the decision might run counter to those rights and duties; and
 - make their decision based on a proper assessment of the impacts of all the alternatives, taking account of all the other requirements on them when making decisions.

Scope of functions covered

62. The Scottish Government is proposing that the duty extends to the exercise of any of the Scottish Ministers' functions. Placing such a duty in respect of any of Scottish Ministers' functions is very widely cast and could include functions relating to the exercise of:
- any statutory duty or power;
 - any royal prerogative power;
 - any common law duty or power;
 - the prosecution functions of the Lord Advocate; and
 - any dealings with the UK Government.
63. This could include, for example:
- all development, revision or other changes to policy or guidance;
 - all representation to the UK Government on reserved policy matters;
 - all functions carried out by the Scottish Ministers under existing devolved legislation;
 - all future Bills and statutory instruments;
 - all public appointments;
 - all decisions on public expenditure; and
 - all executive agencies (but not distinct statutory bodies such as NDPBs or the police).

64. The Scottish Government's position reflects the final state of the Welsh Measure after its passage through the National Assembly for Wales. The functions of the Welsh Ministers to be covered by the Welsh Measure started off as "*relevant functions*" (which could be specified in secondary legislation) in the Welsh consultation exercise, but was changed to "*functions involving decisions of a strategic nature*" in the Welsh Measure as introduced. It was further revised to "*any functions*" during consideration by the National Assembly for Wales.
65. Note that devolution in Scotland, where everything is devolved subject to certain reservations, is structurally different to devolution in Wales, where specific powers are devolved one by one. So the effect of a due regard duty across all of the Scottish Ministers' functions is much broader in impact and may give rise to issues which do not apply in Wales. Respondents are asked to give particular consideration to any such issues.

Status of General Comments and Recommendations

66. The Scottish Government recognises the valuable work undertaken by the UN Committee on the Rights of the Child and, as a matter of practice, takes notice of its General Comments (see paragraphs 39 and 40). However, the Scottish Government proposes that the duty to have due regard to the UNCRC and Optional Protocols would not cover the General Comments and Recommendations made by the Committee. This would mean that the Scottish Ministers and Scottish courts would not be under any obligation to pay particular attention to them when interpreting substantive provisions of the UNCRC. But, of course, the Scottish Ministers would continue to take notice of them and Scottish courts may refer to them as appropriate.
67. The reason for taking this approach is that the Scottish Government believes that a distinction needs to be drawn between the UNCRC and Optional Protocols, which have been agreed by international negotiations between the State Parties, and General Comments, which have not. The Scottish Government does not consider it appropriate to present a Bill to the Scottish Parliament in which current and future General Comments are given a formal status in Scots law when the Scottish Ministers have little or no influence over the Committee's deliberations. The Scottish Government's view is that the appropriate mechanism for affording the General Comments due weight in Scots law is for them to be taken account of in any future changes to or renegotiations on the existing UNCRC or Protocols or new Protocols.

Failure to comply with the duty

68. For the first time, the Bill will bring the UNCRC formally into the remit of the Scottish courts. Currently, the UNCRC is not directly part of Scots law and is not actionable in Scottish courts (see paragraph 35) but the UNCRC has been cited in both criminal and civil cases⁸. Were this Bill to become law, any failure by the Scottish Ministers to comply with the duty to have due regard to the UNCRC in exercising their functions may lead to judicial review in the Scottish courts.

Proposal 2: Duty on the Scottish Government to report on implementation every five years.

69. The Scottish Government is proposing that the Bill would place the Scottish Ministers under a duty to report on a five-year basis as to their exercise of the "due regard" duty set out in Proposal 1. This timeframe is consistent with the other reporting commitments for the Scottish Ministers in respect of the UNCRC. A copy of the report would have to be laid before the Scottish Parliament.

Proposal 3: Extension to young persons aged under 21 who have been looked after.

70. The UNCRC defines children as individuals who have not yet attained the age of 18. The Scottish Government proposes that the Bill has the same coverage as for the Scotland's Commissioner for Children and Young People⁹, i.e. extending to persons aged under 21 who have been looked after. It should be noted that the remit of the Commissioner's interest in respect of persons aged 18 to 20 (promotion and awareness functions) is rather narrower than is the effect of this Bill in its coverage of persons aged under 21 (the Scottish Ministers' executive, policy and legislative functions).

Proposal 4: Future proofing against changes to the UNCRC and Protocols.

71. The Scottish Government proposes to ensure that the Bill is future-proofed against subsequent changes to the UNCRC¹⁰ or Optional Protocols or changes to the Declarations made by the UK Government. It should be noted that any future changes to UNCRC, Optional

⁸ For an overview, see paragraphs 23 to 31 in the Scottish Government's 2007 Report.

⁹ In the Commissioner for Children and Young People (Scotland) Act 2003, "children and young people" means natural persons in Scotland who are under the age of 18 years or, if they have at any time been in the care of, or looked after by, a local authority or Northern Ireland authority, under the age of 21 years.

¹⁰ These are infrequent and take time to progress. General Assembly resolution 50/155 of 21 December 1995 approved an amendment to article 43 of the UNCRC; the amendment entered into force on 18 November 2002.

Protocols or the Declarations are reserved subject matters under international relations and it is the UK which is the signatory. But the Scottish Government would seek to influence the UK Government position, as appropriate.

Benefits of these proposals

72. Paragraph 16 in chapter 1 sets out the benefits that the Bill is intended to deliver. Proposal 1 (due regard) is at the heart of the Bill and is key to delivering all four benefits. The increased prominence of the UNCRC is also supported by proposal 2 (reporting). The benefit of greater consistency and clarity is also supported by proposal 4 (future proofing). Improved transparency and parliamentary scrutiny is primarily delivered by proposal 2 (reporting). Increased accountability to the Scottish people is supported by all four proposals.

3.3 - What the Bill would not cover and why

Incorporation of UNCRC

73. The Scottish Government is not proposing to incorporate the UNCRC into Scots law. One reason for this is because the Scottish Ministers have other considerations and obligations to take into account in the exercise of their functions. Importantly, some of these considerations and obligations relate to human rights under ECHR and rights under the Equalities Act 2010 (which applies across the UK). When considering the rights of different persons, it is inevitable that there will be circumstances where those rights come into conflict. For example, in making any legislative provision or other decision promoting the rights of children, in pursuance of the UNCRC, these rights have to be balanced with the rights of parents, under Article 8 of ECHR, to have family life with their children. In such situations, the UNCRC, ECHR and the Equalities Act 2010 are all relevant to the provision made. The due regard approach outlined in Proposal 1 above gives the Scottish Ministers the opportunity to weigh up the requirements of the UNCRC against these other considerations and obligations. Furthermore, under the terms of the Scotland Act, the Scottish Parliament cannot pass legislation which runs contrary to ECHR.

Duties on other public bodies, such as local authorities, health boards or the police

74. The purpose of this Bill is to shape the way in which the Scottish Ministers exercise their functions. This means that the Scottish Government will be setting an example to public bodies in Scotland for the wide range of functions exercised by the Scottish Ministers. Separately, the Scottish Government is exploring legislative options

which will focus on the way that public bodies deliver services for children. These will be addressed through the Children's Services Bill, which will provide the opportunity to translate the general duty on the Scottish Ministers into more specific provisions in relation to the delivery of services. The implementation costs (estimated for the Scottish Government in section 3.5) would be substantially higher if the duty applied across all public bodies and at this stage any additional benefit is difficult to quantify.

75. The impact of placing a duty to have due regard to UNCRC on the Scottish Ministers is more limited than applying the duty to all public bodies. However, the Scottish Government believes that the duty on the Scottish Ministers, taken in conjunction with a renewed drive by Community Planning Partners to implement *Getting it right for every child* and any new provisions in the Children's Services Bill, will have the effect of helping re-shape the delivery of services in a child-centred way in line with the intent of the UNCRC.

Duty to promote knowledge of the UNCRC

76. The Scottish Government does not propose including a duty to promote knowledge and understanding amongst the public of the UNCRC and Protocols. The Scottish Ministers can do this without a legislative duty but, more importantly, the Scottish Commissioner for Children and Young People is already under a very similar statutory duty.

Power to amend legislation

77. The Scottish Government does not propose to include a power to amend primary legislation by order for the purpose of assisting the Scottish Ministers in giving further or better effect to the UNCRC or Protocols (but see Proposal 5). The Scottish Government considers that any amendments to primary legislation required from time to time for this purpose are best made through Bills, and the Children's Services Bill will provide an opportunity to do so in 2013.

Specific amendments to existing legislation

78. The Scottish Government does not propose to amend any primary legislation in this Bill. Any changes required to primary legislation are best identified as part of the preparation for implementation in the Scottish Government, once the Bill is passed and the baseline established. As stated above, the Children's Services Bill will provide an early opportunity to amend existing legislation where necessary (see timetabling information in section 3.4). The Scottish Government will note with interest any suggestions for changes to other primary legislation made by stakeholders which arise through this consultation

exercise. But the Scottish Government wishes to be clear from the outset that it has no intention of taking them forward in this Bill.

3.4 - Implementation

Measures

79. As the focus of the Bill is the duty on the Scottish Ministers, implementation measures will necessarily focus on Scottish Government people and processes. The detail of implementation measures will inevitably depend on the final provisions of the Bill. However, if the Scottish Ministers are to fully exercise the proposed duty to have due regard to the UNCRC, implementation measures are likely to include:

- Awareness raising and skills development, ensuring that individuals responsible for the development and implementation of policy have the right knowledge and information to enable them to review specific proposals against the UNCRC provisions.
- Development of specific tools and approaches to support the assessment of policies and legislation against UNCRC provisions and ensure that a comprehensive and coherent record of such assessments is maintained, not least to support reporting requirements.
- Review of core policies and processes such as budget allocation, in order to ensure that these facilitate compliance with the duty on Ministers.

80. Implementation is also supported by other activities such as *Getting it right for every child* and other reporting. The Scottish Government will also work with Scotland's Commissioner for Children and Young People to increase the knowledge and understanding of the UNCRC amongst children and young people and the public in general.

Timetable

81. The **Rights of Children and Young People Bill** would be ready for introduction in early summer 2012. However, it is unlikely that it could be fully in force for two to three years due to the time required to prepare for implementation within the Scottish Government. (The Welsh Measure does not come into force fully until May 2014, allowing 3 years for the Welsh Government to put the required changes in place.) The Bill is unlikely to be in force in time for the preparation and introduction of the Children's Services Bill. The following provisional timetable sets out the milestones:

Milestones:

Autumn 2011	Public engagement events (Consultation)
1 December 2011	Public consultation closes (12 weeks)
Early summer 2012	Introduction of Bill
Spring 2013	Bill is passed and receives Royal Assent
Autumn 2014	Bill comes into full force

82. The **Children's Services Bill** is likely to be a large Bill and deal with complex and difficult issues. Accordingly, the Scottish Government is proposing both a formal public consultation on policy and a formal public consultation on the draft Bill. Taking time to do this means that the Bill would not be ready for introduction before autumn 2013:

Milestones:

Autumn 2011	Public engagement events (Pre-consultation)
Winter 2011	Public consultation exercise
Spring 2012	Drafting of Bill begins
Spring 2013	Draft Bill published for consultation
Autumn 2013	Introduction of Bill
Autumn 2014	Bill receives Royal Assent
Autumn 2015	Full commencement of Bill with all secondary legislation

83. Although this consultation is not primarily concerned with the Children's Services Bill, there are clear links between both pieces of legislation, as explained in Chapter 1. Given the overarching nature of the provisions being proposed for Rights of Children and Young People Bill, the Scottish Government believes it makes sense for that Bill to precede the Children's Services Bill. That said, the timetabling is intended to reflect the clear connections which exist between both Bills.
84. Firstly, the public engagement events scheduled for autumn 2011, which serve as consultation events for the Rights of Children and Young People Bill, will also serve as pre-consultation events for the Children's Services Bill. Stakeholder feedback from these events will help shape the consultation paper for the Children's Services Bill. Secondly, stakeholder views and issues arising during the Parliamentary passage of the Rights of Children and Young People Bill will inform the drafting of the Children's Services Bill, where relevant.

Finally, the Rights of Children and Young People Bill will complete its parliamentary passage before the Children's Services Bill is published in draft for consultation. This means that the Children's Services Bill will be finalised in the context of a well-defined and stable position of UNCRC in Scots law.

3.5 - Financial implications

85. There would be no immediate cost, although the proofing of policies against the UNCRC may lead to additional costs. Firstly, any additional resource required to assure compliance in policy development would have cost implications (e.g. through staff time). Secondly, any arrangements put in place within the Scottish Government to monitor compliance would also have cost implications.
86. The equalities impact assessment process, which is already established, may provide a model for estimating these costs. The Scottish Government would welcome stakeholders' views on the financial costs of implementation. In particular, the Scottish Government would welcome any views on the opportunity cost of implementing this legislation as, necessarily, that means the money cannot be spent on other priorities.
87. The Welsh Government estimated an annual implementation cost of around £300,000 for their Welsh Measure *as introduced*¹¹. Allowing for the larger size of the Scottish Government and the differences between the Welsh Measure and the proposed Bill, a first estimate for the annual implementation costs in Scotland would be of the order of £500,000. A more detailed assessment of likely cost impact will be carried out once the final scope of the Bill is confirmed.

¹¹ See Option 2 on page 40 of the [Welsh Government's Explanatory Memorandum](#) accompanying the Welsh Measure as introduced.

Chapter 4: Conclusion

88. Whilst significant work has been taken forward over a number of years to enshrine the principles of the UNCRC into Scottish law, policy and procedure, the Scottish Government is now of the view that a legislative duty focussing on Ministers' responsibilities in this area is appropriate. The introduction of such a duty, supplemented by the other provisions which are set out in this consultation paper would strengthen the framework within which the Scottish Government works to improve life chances for children and young people across Scotland.
89. In bringing forward the Rights of Children and Young People Bill, the Scottish Government hopes to achieve:
- **Increase the prominence of the UNCRC:** While the principles of the UNCRC have featured in domestic legislation for some time, the Convention itself does not currently have a place in Scots law. The Bill would address this point. Its provisions would also ensure that sufficient recognition is given to the UNCRC and its Optional Protocols in the development of all domestic legislation and national policy in the future.
 - **Provide greater consistency and clarity:** The Bill would clearly set out what is expected of Scottish Ministers in terms of complying with the UNCRC. It would achieve this by identifying what Ministers must consider in respect of the Convention when exercising any of their functions. Further information on the nature of these considerations is set out under section 3.2 of this paper.
 - **Improve transparency and parliamentary scrutiny:** The Bill would make the Scottish Ministers directly accountable to both the Parliament and the people of Scotland for their approach to implementing the UNCRC. It would achieve this by introducing a duty on Ministers to publish periodic reports focussing on compliance with the duties included in the Bill for consideration by the Scottish Parliament. Further information on the reporting process being proposed can be found at paragraph 69.
 - **Increase accountability to the Scottish people:** The Bill would establish a clear accountability of the Scottish Ministers to the Scottish people to respect and take account of the rights of children and young people as set out in the UNCRC.
90. In addition to the benefits set out above, the Rights of Children and Young People Bill will lay the foundations for many of the Scottish Government's broader ambitions for services which support children

and families, much of which will be progressed through the Children's Services Bill planned for later in this Parliamentary session.

91. We welcome your views.

**The Scottish Government
Children and Families Directorate
September 2011**

ANNEX A

THE CONVENTION, PROTOCOLS, DECLARATIONS AND RESERVATIONS

PART 1

PART I OF THE CONVENTION

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1 States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2 States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1 In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2 States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3 States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child,

to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1 States Parties recognize that every child has the inherent right to life.

2 States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1 The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2 States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1 States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2 Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1 States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2 In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3 States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4 Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1 In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2 A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 2, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1 States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2 To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1 States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2 For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1 The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2 The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; or (b) for the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 14

1 States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2 States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3 Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1 States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2 No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1 No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2 The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall: (a) encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29; (b) encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources; (c) encourage the production and dissemination of children's books; (d) encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous; (e) encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1 States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2 For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3 States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1 States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2 Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1 A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2 States Parties shall in accordance with their national laws ensure alternative care for such a child.

3 Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1 States Parties shall 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.

2 For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1 States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2 States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3 Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4 States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1 States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2 States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) to diminish infant and child mortality;

- (b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- (c) to combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
- (d) to ensure appropriate pre-natal and post-natal health care for mothers;
- (e) to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
- (f) to develop preventive health care, guidance for parents and family planning education and services.

3 States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4 States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1 States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2 The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1 States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2 The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3 States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4 States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular,

where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1 States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) make primary education compulsory and available free to all; (b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; (c) make higher education accessible to all on the basis of capacity by every appropriate means; (d) make educational and vocational information and guidance available and accessible to all children; (e) take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2 States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3 States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1 States Parties agree that the education of the child shall be directed to: (a) the development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; *Rights of Children and Young Persons (Wales) Measure 2011 (nawm 2) 16* (c) the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; (d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; (e) the development of respect for the natural environment.

2 No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1 States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2 States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1 States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2 States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular: (a) provide for a minimum age or minimum ages for admission to employment; (b) provide for appropriate regulation of the hours and conditions of employment; (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; (c) the exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

(a) no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1 States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2 States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3 States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4 In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1 States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2 To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) no child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
(b) every child alleged as or accused of having infringed the penal law has at least the following guarantees:

- (i) to be presumed innocent until proven guilty according to law;
- (ii) to be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
- (iii) to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
- (iv) not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
- (v) if considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
- (vi) to have the free assistance of an interpreter if the child cannot understand or speak the language used;
- (vii) to have his or her privacy fully respected at all stages of the proceedings.

3 States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular: (a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law; (b) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4 A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in: (a) the law of a State party; or (b) international law in force for that State.

PART 2

PROTOCOLS

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

Article 1

1 States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Article 2

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

Article 3

1 States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection.

2 Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.

3 States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that: (a) such recruitment is genuinely voluntary; (b) such recruitment is done with the informed consent of the person's parents or legal guardians; (c) such persons are fully informed of the duties involved in such military service; (d) such persons provide reliable proof of age prior to acceptance into national military service.

4 Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

5 The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

Article 4

1 Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2 States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3 The application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict.

Article 5

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

Article 6

1 Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of this Protocol within its jurisdiction.

2 ...

3 States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

Article 7

1 States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary to the Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to this Protocol, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with concerned States Parties and relevant international organizations.

2 States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

Article 1

1 States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2

For the purpose of the present Protocol:

(a) sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(c) child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 3

1 Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether these offences are committed domestically or transnationally or on an individual or organized basis:

(a) in the context of sale of children as defined in article 2:

(i) the offering, delivering or accepting, by whatever means, a child for the purpose of:

- a. sexual exploitation of the child;
- b. transfer of organs of the child for profit;
- c. engagement of the child in forced labour;

(ii) improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

(b) offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;

(c) producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

2 Subject to the provisions of a State Party's national law, the same shall apply to an attempt to commit any of these acts and to complicity or participation in any of these acts.

3 Each State Party shall make these offences punishable by appropriate penalties that take into account their grave nature.

4 Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, this liability of legal persons may be criminal, civil or administrative.

5 States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Article 4

1 Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.

2 Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases: (a) when the alleged offender is a national of that State or a person who has his habitual residence in its territory; (b) when the victim is a national of that State.

3 Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the above-mentioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4 This Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 5

1 The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.

2 If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Protocol as a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3 States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4 Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5 If an extradition request is made with respect to an offence described in article 3, paragraph 1, and if the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

Article 6

1 States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2 States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 7

States Parties shall, subject to the provisions of their national law: (a) take measures to provide for the seizure and confiscation, as appropriate, of: (i) goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present Protocol; (ii) proceeds derived from such offences; (b) execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a)(i); (c) take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

Article 8

1 States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

- (a) recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
- (b) informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
- (c) allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
- (d) providing appropriate support services to child victims throughout the legal process;
- (e) protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
- (f) providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- (g) avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2 States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3 States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4 States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5 States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

6 Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

Article 9

1 States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to these practices.

2 States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

3 States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

4 States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

5 States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

Article 10

1 States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.

2 States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

3 States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

4 States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

PART 3

DECLARATIONS AND RESERVATIONS

Declarations

(a) The United Kingdom interprets the Convention as applicable only following a live birth.

(b) The United Kingdom interprets the references in the Convention to 'parents' to mean only those persons who, as a matter of national law, are treated as parents. This includes cases where the law regards a child as having only one parent, for example where a child has been adopted by one person only and in certain cases where a child is conceived other than as a result of sexual intercourse by the woman who gives birth to it and she is treated as the only parent.

ANNEX B

GENERAL COMMENTS OF THE UN COMMITTEE ON THE RIGHTS OF THE CHILD

The UN Committee on the Rights of the Child have made 13 so-called General Comments. These are listed below and linked to the website of the Office of the High Commissioner for Human Rights where the documents can be downloaded in English (click “E”):

No.	Title	Year
13	<u>The right of the child to freedom from all forms of violence</u>	2011
12	<u>The right of the child to be heard</u>	2009
11	<u>Indigenous children and their rights under the Convention</u>	2009
10	<u>Children's rights in Juvenile Justice</u>	2007
9	<u>The rights of children with disabilities</u>	2006
8	<u>The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment</u>	2006
7/Rev.1	<u>Implementing child rights in early childhood</u>	2005
6	<u>Treatment of unaccompanied and separated children outside their country of origin</u>	2005
5	<u>General measures of implementation for the Convention on the Rights of the Child</u>	2003
4	<u>Adolescent Health</u>	2003
3	<u>HIV/AIDS and the rights of the child</u>	2003
2	<u>The role of independent human rights institutions</u>	2002
1	<u>The aims of education</u>	2001

Rights of Children and Young People Bill

Consultation Paper

Response Booklet

Responding to this consultation paper

We are inviting written responses to this consultation exercise by **Thursday 1 December 2011**.

We would be grateful if you would indicate clearly in your response to which questions or parts of the consultation paper you are responding to. We recommend using this response booklet, if possible. Please complete the respondent information form contained within the booklet.

Please send your response to:

earlyyearslegislation@scotland.gsi.gov.uk

or

Chris Bain
Scottish Government
Children's Rights and Well-being Division
Area 2B (North)
Victoria Quay
EDINBURGH
EH6 6QQ

If you have any queries or any comments on the consultation process, please contact Chris Bain at the address/email above or telephone 0131 244 4906.

Public engagement events

Five public engagement events have been arranged at cities across Scotland. All public engagement events will cover the same material and will follow the same format. Spaces at the seminars will be limited: to register your interest in attending one of these events, please visit <http://bookings.shscevents.co.uk/all/2787>. You will be contacted in due course to confirm whether or not you have a place.

Accessing this and other consultations

This consultation, and all other Scottish Government consultation exercises, can be viewed online at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is. The Scottish Government now also has an email alert system for [SE consultations](http://www.scotland.gov.uk/consultations/seconsult.aspx). You can register to receive a weekly email containing details of all new Scottish Government consultations at <http://www.scotland.gov.uk/consultations/seconsult.aspx>.

Access to consultation responses

We will make all responses available to the public in the Scottish Government Library by 1 February 2012 unless confidentiality is requested. All responses not marked confidential will be checked for any potentially defamatory material before being logged in the library.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

**Scottish Government
Children and Families Directorate
September 2011**

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
Address
Postcode
Contact telephone number
E-mail

1. Are you responding as: (please tick one box) (go to 2a/b)
- (a) an individual ☐ (go to 2c)
- (b) **on behalf of** a group or organisation ☐

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?

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?

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

Proposal 2

Q4 Do you agree with the proposed arrangements for reporting?

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?

Proposal 4

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

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.)

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

Q9 Do you have any other comments?

Thank you for your time.



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