

Response to Scottish Government's consultation on a Human Rights Bill for Scotland

October 2023

We welcome the opportunity to submit our views in response to the Scottish Government's consultation on a Human Rights Bill for Scotland.

This short response focuses on four questions asked by the consultation exercise on the Scottish Government's draft Human Rights Bill, where CELCIS has particular expertise. This response draws on the evidence developed for our comprehensive response to the Scottish Government's consultation on the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill in 2020.

Our response is underpinned by research evidence, practice experience, and extensive insight and intelligence from lived experience and professional practice gathered through our long-standing, cross-organisational and interest-specific networks, as well as our group of consultants with lived experience of care. These networks include people across the workforce, including leaders working across the spectrum of children's services and other public services working in support of children, young people and their families, adults with care experience, amongst others.

Questions and responses

Question 13. How can we best embed participation in the framework of the Bill?

Our response to this question has been developed with engagement from CELCIS's group of consultants with lived experience of care, alongside research evidence, practice and policy experience, and expertise offered through CELCIS' long-standing, cross-organisational networks.

We know that for services to meet the needs of babies, children, young people, and families, these must be informed by their participation, voice and experience: "Children must be listened to and meaningfully and appropriately involved in decision-making about their care, with all those involved properly listening and responding to what children want and need." ¹

¹ Scottish Government (2020) *The Independent Care Review*. [online] Glasgow: Studio LR. Available at: https://www.carereview.scot/wp-content/uploads/2020/03/The-Promise_v7.pdf [Accessed 21 September 2023].

We are encouraged to note that the Human Rights Bill strives to make participation a 'must-have' rather than a 'nice-to-have' by establishing this as a duty for public bodies. However, there are significant areas to be addressed in the implementation of this duty to ensure that participation makes a positive difference to the lives of babies, children, young people, and families. The implications and capacity-building required to implement this measure must be comprehensively considered. Above all, the Human Rights Bill must consider how public bodies will be supported and held accountable to their participation duty, so it does not become simply about hearing voices of experience but ensuring that concrete changes are made based on what is heard.

Definitions

In particular, clarity is needed regarding the definition of participation in the context of the Human Rights Bill. Organisations use the term participation in many different ways to describe a wide range of activities, from pre-designed consultations to authentic co-production of services. Roger Hart's Ladder of Children's Participation² demonstrates that there can be degrees of participation. Additionally, there are also a range of models and approaches which have been developed that an organisation might utilise when using a 'participatory' approach.³ It will be necessary to establish consistency in the definitions and standards that will be used, as well as clear processes for how participatory work will be measured to support accountability and transparency regarding how organisations are able to be participatory and where there are changes or improvements which need to be made.

The following points are made in relation to any guidance that may be associated with implementing the Act.

Relationship Based Practice

Within the guidance associated with this legislation it will be important for organisations to attend to establishing who is best placed to undertake participation activity within the organisation. Effective participation would normally involve those who already hold trusting relationships with individuals and communities, as well as having the skill, capacity and time to undertake the breadth of the work involved in participation, including necessary preparatory and follow-up work. Without the necessary investment in preparation, including the provision of required resources, capacity-building, and evidence-based tools

² Hart, R. (1992) *Children's Participation: Tokenism to Citizenship*. UNICEF International Child Development Centre, Spedale degli Innocenti, Florence, Italy.

³ For example, see Lundy, L. (2007) 'Voice' is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child', *British Educational Research Journal*, 33:6, 927-942

for practitioners, there is a risk that participation work will manifest as tokenistic. This would mean the work is unrepresentative, inaccurate and risks future engagement.

Capacity

The guidance associated with this legislation will need to make reference to what organisations may need to attend to ensure there is the necessary capacity to embed participation in a planned, sustainable and meaningful way. Given that many public bodies in Scotland are already struggling to meet the requirements of new policy and legislation that involves a change and/or an expansion of their professional roles, particularly in the context of issues including reduced levels of funding and workforce recruitment and retention issues, participation could understandably be perceived as another demand or an "add-on" activity. Instead, it should be recognised and promoted as an integral element of effective service design, delivery, and evaluation processes.

Co-production

Participation work should be led by the needs of the community concerned. As outlined by the Christie Commission,⁴ and then in Scotland's National Standards for Community Engagement,⁵ participation is "a purposeful process that develops a working relationship between communities, community organisations and public and private bodies to help them to identify and act on community needs and ambitions." People with lived experience should be involved from the earliest possible stage in developing any guidance associated with implementing the Act, so they can actively shape the objectives and design.

Capacity-building

To ensure a consistent, ethical, and inclusive approach across public bodies, best practice in relation to compensation for participants should be incorporated into the framework of the Human Rights Act. Too often it is not well understood that there is an imbalance between those whose job or role it is to engage, and those who have lived experience and are co-producing, or participating in work. Consideration needs to be given to how their time and contribution is valued. People should also be engaged on a reciprocal basis, with appropriate compensation offered for participants' time and contributions. This compensation may be financial, or it may take the form of training or other development opportunities.

People with lived experience must also be appropriately equipped before they can participate meaningfully, for example, through capacity-building and

⁴ Christie, C. (2011) *Commission on the future delivery of public services*. APS Group Scotland

⁵ Scottish Government (2016) *National Standards for Community Engagement*

upskilling. As one consultant with lived experience has explained, good participation means “being able to understand the improvements that are needed within the systems but also learning more information that I don't already have.”

Valuing participation

It is important that public bodies are encouraged and supported to seek out insight from those who are often excluded or marginalised in participation activity, for example, babies and infants, children and young people with additional support needs, children in kinship care arrangements, unaccompanied and asylum-seeking children and young people, and parents whose children are subject to child protection and/or care processes.

This requires more than a commitment in theory. The National Leadership Network is a project which aims to support individuals with care experience to explore leadership in all its shapes and forms through engagement in opportunities that support personal and professional development, social activity, peer support, active citizenship and democratic participation.⁶ The initiative has reported that good participation practice often demands more time and resource than initially expected, especially at the relationship and capacity-building stage. If participation is made a duty without the necessary time and resource investment, these crucial stages may be cut, resulting in unsafe or tokenistic practice.

Trauma-informed practice

Participants have the potential to suffer harm as a result of poor-quality participation, especially participation that is not designed in-line with trauma-informed practice. Participants require the support of caring facilitators in order for participation work to be safe. The facilitators also require emotional and practical support.⁷ The importance of trauma-informed reflective practice, and the need for regular quality supervision to ensure worker wellbeing, is recognised within The Promise of the Independent Care Review and the National Guidance for Child Protection in Scotland 2021.⁸

⁶ The National Leadership Network, Scottish Throughcare and Aftercare Forum (Staf). [online] Available at: <https://www.staf.scot/blog/what-is-the-national-leadership-network>

⁷ Edmond, R., Steckley, L. & Roesch-Marsh, A. (2016) *A Guide to Therapeutic Child Care*, Jessica Kingsley Publishers

⁸ Scottish Government (2021) *National guidance for child protection in Scotland*, Edinburgh: Scotland

Meaningful participation

The guidance for implementing a Human Rights Act must set out clear information on meaningful participation. Low-quality, superficial work, such as repeated consultation without acting upon what has already been learned, or work that takes place without the development of necessary trusting relationships, may create or deepen suspicion towards services and further disempower marginalised groups. This point is emphasised by another consultant with lived experience of care who, when asked the characteristics of good participation practice, said "above all actually listening and actioning what we've learned." There is a risk of participation fatigue if expectations are unmet by non-responsive public bodies. Simply put: no participation can be better than poor participation.

Finally, participation activity should not be undertaken on a one-off, ad-hoc basis. It must be an ongoing, in-depth engagement with an in-built feedback loop so that the people participating remain both informed and involved at all stages, doing so takes planning and adequate resource allocation.

Question 19. What is your view on who the duties in the Bill should apply to?

The rights enshrined in the draft Human Rights Bill are designed for all people living in Scotland. This includes babies, children, young people, and adults of all ages.

Given our area of work, our response considers the specific needs of:

- all children who need support, protection and/or care, from birth to eighteen years old (as per the definition of a child in [Article 1](#) of the [United Nations Convention on the Rights of the Child](#)) and accepted by Scotland's legislative and policy approaches;
- young people with support needs beyond the age of 18, some of whom are entitled to support from corporate parents up to the age of 26;
- adults with experience of care; and
- the implications and considerations necessary for the families, carers and workforces who support children and adults with experience of care.

We note the proposal for the duties of the Bill to apply to bodies carrying out functions of a public nature, including private bodies acting under a contract or other arrangements with a public body. We also note that the plans for this Bill intend to consider the learning from the outcome of the current reconsideration stage of the UNCRC (Incorporation) (Scotland) Bill. It will be important to understand the developments here and the necessary alignment in approach.

Children and young people in need of care and protection are frequently supported by organisations that carry out functions 'of a public nature' on behalf of public authorities; including private childcare providers, private foster care, private residential care, and public schools. It is imperative that the rights of children and young people cared for in these settings are upheld, with the organisations who care for them subject to the same reporting duty as public authorities.

Current case law under the Human Rights Act 1998 informing the responsibilities of private bodies carrying out public functions is not always straightforward.⁹ The interpretation of these duties has at times been narrow, and we would suggest that this consultation for the draft Human Rights Bill be used as an opportunity to clarify these duties and to ensure that the rights of all children and young people, including those receiving care and support from private bodies, are upheld.

Minimum Core Obligations

In relation to the participatory process to define the minimum core obligations, we would like to emphasise the importance of involving those who experience the most barriers to accessing their rights. Children and young people in need of care and protection, and care experienced people, have been recognised as a group who are often unable to access their rights.¹⁰ Specific work must be done to enable a participative process which includes this group when defining the minimum core obligations.

Sunrise Clause

We welcome the inclusion of a sunrise clause allowing duty-bearers time to prepare for full commencement of the legislative framework. This time should be used for implementation planning to develop organisational readiness including sufficient resource allocation. Our answer to question 42 gives a detailed response with regard to capacity-building.

⁹ Ali (Iraq) v Serco Ltd [2019] CSIH 54

¹⁰ Scott, D (2023) *Incorporating International Human Rights: The protection of Care Experienced People's Rights in the Scottish Human Rights Bill*, Human Rights Consortium, Scotland

Question 40. What are your views on our proposals for a Human Rights Scheme?

We welcome the inclusion in the draft Bill of a requirement for Scottish Ministers to report on steps taken to ensure all people can enjoy their rights and prevent breaches of these rights through publishing a Human Rights Scheme. The establishment of a Human Rights Scheme will usefully place additional requirements on Scottish Ministers and ensure detailed consideration of the measures needed to prevent breaches of rights, enhance transparency, and ensure greater participation.

Evidence on the efficacy of other rights reporting mechanisms, including those for Children's Rights and Wellbeing Screening Sheet and Impact Assessment (CRWIA), can be useful in highlighting what is needed to support these reporting duties. In order for meaningful and comprehensive reporting to take place, a clear mandate from and active engagement of leadership is required.¹¹ The inclusion of these reporting duties in the Bill will further establish this mandate, but engagement with leadership at local levels will also be vital. Public bodies at local and national level have a range of different reporting duties already, and it will be important to ensure there is the commitment and capacity to carry out any new reporting duties meaningfully. As is the case for many of the actions involved in implementing change, evidence emphasises the importance of a comprehensive range of actions being taken simultaneously to effect change, including: strategic leadership and co-ordination; comprehensive awareness-raising with practitioners; sufficient and disaggregated data to identify the needs, quality in practices and outcomes for different groups; as well as information about funding decisions.¹²

Training on reporting processes provides an opportunity to increase the efficacy of reporting; and learning from interactive training processes can be used to develop guidance that ensures there is ongoing support throughout reporting.¹¹ In Wales, the Section 1 UNCRC duty is part of ministerial training, and the template used by officials to provide Ministerial Advice includes content on children's rights and the UNCRC. In addition, Welsh Ministers can also access a CRC Impact Assessment Tool, an e-learning training course and advice and support. Exemplar CRWIAs are also provided. The provision of this ongoing support and guidance beyond initial training is crucial in reporting processes.¹³

¹¹ Payne, L (2019) 'Child Rights Impact Assessment as a policy improvement tool', *International Journal of Human Rights* Vol 23 (3) page 409

¹² Ibid.

The meaningful participation of people with lived experience in reporting processes is also crucial. In order to do this well, the resources required to facilitate effective and meaningful participation should be considered, including the time taken to build relationships; the skill and communication required to ensure informed participation in often complex issues and transparency about the outcome of this participation on the decisions that result from it.¹⁴

Question 42. How can the Scottish Government and partners effectively build capacity across the public sector to ensure the rights in the Bill are delivered?

Incorporation of Human Rights Treaties into a Human Rights Act will mean deep and wide-ranging changes to many public bodies, which must be planned, resourced and implemented with care. We make the following suggestions in order to further strengthen the capacity of this legislation.

Implementation planning and capacity-building

Our experience has shown that participatory and effective implementation is an ongoing process that takes intentionality, with implementation teams, plans, action and resourcing to make changes, all of which should be started at the earliest opportunity across all public bodies involved in the change desired.

To support public bodies in a process of implementing a new Human Rights Act in Scotland, it will be necessary to have implementation support to ensure the desired legislative change is achieved.¹⁵ Comprehensive national guidance can be supportive of these processes. This must be complemented by planning to ensure that public bodies have sufficient time to develop organisational readiness, with sufficient resource allocation to develop the capacity and structures to support, embed and sustain new, different or improved ways of practice. This should include administrative and data collection processes that support these practices.

¹³ Ibid.

¹⁴ Hanna, K; Hassall, I; and Davies, E. (2006) *Child Impact Reporting*. Social Policy Journal of New Zealand, Issue 29.

¹⁵ Fixsen, D., Naoom, S., Blase, K., Friedman, R., and Wallace, F. (2005) *Implementation Research: A synthesis of the literature*, Tampa: University of South Florida

Approaches to complex change

We recognise the complexity involved in incorporating international human rights standards into domestic law in Scotland. Successful incorporation of these standards will require a whole-systems approach to changing current systems and procedures. It will require commitment from leadership to understand where systems or provisions do not uphold rights, and to develop new systems that will deliver high quality rights-based practice consistently across Scotland, including the investment required to do so.

Any model of change must ensure that government, organisations and individuals can clearly understand what action is required of them to make these changes. From our work supporting the implementation of complex change, we know that stating what must be done is not enough to enable practitioners to make this change. Clear and comprehensive direction about the steps that must be taken to get there (including what support and resources must be in place) will need to be articulated.

Supporting culture change: Theory of Change

The evidence, and our experience in Scotland, tells us that practice change across complex settings requires an intentional approach to implementation, especially if changes in practice are to be sustained or to occur at scale, so that everyone can experience the benefit of changes consistently.

We recommend a Theory of Change is developed as soon as practicable. A Theory of Change sets out, using the best available evidence, how a change is expected to occur. The process of developing a Theory of Change makes explicit any underlying assumptions of cause and effect within a change process (i.e. if we do X, with these resources, then we expect Y to occur) and any risks associated with this. The United Nations Development Group (2017) published technical guidance on how to develop and use Theories of Change as part of the UN Development Assistance Framework in which they set out standards and practical steps for developing complex programmes of work and translating them into practice.¹⁶ For the intentions of this bill to succeed, a Theory of Change must ensure that there is capacity to attend to the very human challenges at the heart of this transformation. It is crucial to effectively plan to mitigate any disruption that naturally comes from change, and to invest time to create readiness across the system.

We would emphasise that evidence from our work to implement complex change has repeatedly highlighted that it is the combination of leadership and the

¹⁶ United Nations Development Group (2017) *Theory of Change - United Nations Development Assistance Framework (UNDAF) Companion Guidance*. [online] New York: UNDG. Available at: <https://undg.org/wp-content/uploads/2017/06/Theory-of-Change-UNDAF-Companion-Pieces.pdf>

commitment of leadership, giving information, fully articulating the support and resources that need to be in place, paying attention to building the capacity required to make the changes, and testing new ways of working, that is needed to achieve the required changes. If it is possible to begin to articulate the supports and resources that need to be in place, as well as including some consideration of the capacity building required, this would significantly strengthen the Theory of Change.

To truly build confidence and competence in a rights-based approach, it will be necessary to:

- create the enabling context for practice change
- provide a clear definition of good rights-based practice, alongside ongoing training and coaching to enable that practice to be embedded and sustained
- develop clear channels of communication with leadership to ensure that practitioners have everything they need to be able to deliver the practice as intended and achieve the ambitions of the Human Rights Bill.¹⁷

Incorporation of Human Rights Treaties into a Human Rights Bill are an example of a complex transformational reform. CELCIS is currently undertaking the Children's Services Reform Research study, which has analysed complex transformational reforms related to Children's Services in five countries, as well as the development of Police Scotland¹⁸. A clearly articulated theory of change is a vital stage in the transformational reform process. A theory of change should include clearly articulated aims (or vision), the key changes needed, the outcomes that will be expected and how they will be measured, and what the overall impacts of the reform are intended to be. In communicating the theory of change, it is important that clear connections are made between these different aspects of the theory of change to ensure there is coherence across the transformational reform programme. A clear articulation of the 'how' and the 'who', alongside the 'why', 'what' and 'when', will support everyone in Scotland to understand how to achieve the aims and vision of a Human Rights Act, their roles and responsibilities and the roles and responsibilities of others, what specific outcomes are required and how to monitor progress.

Underpinning this with a commitment towards evidence-informed and phase-based approaches to change, that outline the conditions, infrastructure and support required to address the implementation gap, is vital to implementing

¹⁷ Fixsen, D.L, Blasé, K.A. and Van Dyke, M.K. (2019) *Implementation Practice and Science*

¹⁸ McTier, A., Mackinnon, K. and Ottaway, H. (2023) *Children's Services Reform Research study: Case Studies of Transformational Reform Programmes*, Glasgow: CELCIS.

and sustaining complex change efforts¹⁹. This also prevents leaders spending time on approaches that are not sufficient to realise the transformational change. The need for evidence-informed and phase-based approaches to change were strongly supported by the Independent Review of Adult Social Care in Scotland, which noted that transformational change requires attention to improvement and innovation in social care that maximises learning opportunities and creates a culture of developing, testing, discussing and sharing methods that improve outcomes¹⁹.

Support for multi-agency and collective leadership

Creating space for leaders to engage in collaborative and reflective planning is central to any change programme, and supporting leaders to navigate uncertainty as transformation unfolds has been a key element of our work. The intentions of the Human Rights Bill offer opportunities for improvement but will cause significant disruption to the status quo. Preparing leaders for such complex change, will be an important part of this work. Promoting leadership practices that value and nurture a learning culture within and across organisations as this is also key to supporting significant change.

There is clear evidence about the critical role of multi-agency leadership and collaboration in supporting change efforts. In particular: building a collective vision; ensuring there is required capacity; and that there is a shared methodology in place for change at a national, regional and local level. For example, our recent Rapid Evidence Review for the Children's Services Reform Research study²⁰ noted that continual attention must be paid to the interfaces between services across health and social care, such as when children and families need to access specialist services, or young people are transitioning from children's services to using adult services.

Our published case studies of transformational reform, which is also part of the Children's Services Reform Research study, identified the key characteristics of such leadership as including:

- An understanding of complex, multi-disciplinary systems and how to bring about changes in such systems
- Recognition of the need to have a theory of change that sets out the structural, process and/or practice change(s) involved and the expected outcomes and impacts of these, and

¹⁹ Feely, D (2021) *Independent Review of Adult social Care in Scotland*, Edinburgh: Scottish Government

²⁰ Porter, R., Young, E., Scott, J., McIver, L., Mackinnon, K., Fowler, N. and Ottaway, H. (2023) *Children's Services Reform Research study: Rapid Evidence Review*, Glasgow: CELCIS.

- Effective and inclusive communication of the reforms to internal and external stakeholders and audiences, explaining clearly what the change is, how it will be brought about, and why it is needed.

Of these, explaining the 'bigger picture' or the 'why' for the change was found to be particularly important. Critically, if these transformational change skills and expertise are not held by senior leaders within the health and social care system, then these skills and expertise should be brought in from external experts"¹⁸.

Raising awareness

Effective implementation of a Human Rights Act is contingent on an awareness of rights across every sphere of society, which is recognised in the Scottish Government action plan 2018-21 on 'Progressing the Human Rights of Children in Scotland'.²¹ Awareness-raising needs to take place so that people know their own rights. Specifically, clear information would need to be provided regarding the rights which will be afforded within a Human Rights Act and their interaction with the rights afforded to children in a UNCRC (Incorporation) (Scotland) Act.

Awareness-raising should also include specific and tailored efforts for both children in need of care and protection and young people leaving care. The form that training or awareness-raising takes is also key. In order to facilitate this awareness and to uphold these rights, it is also crucial that the families and communities that children and young people belong to understand these rights, as well as the wider general public.

For example, learning from work embedding children's rights, Iceland and Spain have developed websites that include resources for children, teachers and other professionals to understand children's rights. Furthermore, the Children and Young People's Commissioner for Scotland has an important role in raising awareness and producing materials for children and young people to understand their rights. Any resources developed to increase awareness of these rights for children, their families and communities, should include explicit links between different sources of information about rights, particularly where there are known barriers to accessing certain rights, such as between rights under the UNCRC and Human Rights Bill, or specific information about human rights for care experienced children, adults and families. These resources should be disseminated through a range of accessible mediums, with caution not to further entrench a 'digital divide' in Scotland,²² by making additional and intentional

²¹ Scottish Government (2018) *Progressing the Human Rights of Children in Scotland: An Action Plan 2018-2021*, Edinburgh: Scottish Government

²² McGee, K., and Roesch-Marsh, A. (2020) *Bridging the Digital Divide for Care Experienced Young People in Scotland: If Not Now, When?*, Glasgow: Scottish Care Leavers Covenant

efforts to reach children and communities who have faced barriers to accessing information or to exercising their rights.

In the same vein, the practitioners and professionals who work directly or indirectly with children and young people, for example, health, education and child protection professionals, as well as the judiciary, must have a full and comprehensive understanding of rights and what is needed in practice to uphold these. This will require a wide-encompassing programme of training, support and capacity building for public bodies, including an integration of rights into professional training codes, educational curricula, recruitment processes, child rights training and coaching. This could mean, for example, that training for front-line staff who interact with children and young people would ensure that these staff are confident in their knowledge of rights, but also the manner in which they can assist children and young people to seek local support to give full effect to their rights, and to remedy any breaches at an early stage. Successful implementation requires excellent leadership, and involves detailed consideration of context, and the use of the best strategies and tools in particular local contexts.

Workforce

Active engagement with the range of people involved in the implementation of the Human Rights Act will be fundamental to its relevance and success in providing better protection and upholding human rights in Scotland. CELCIS's recently published case studies of transformational reform set out a range of key factors necessary to achieve complex change (not specific to the incorporation of rights treaties). The research highlighted, in particular, the central role of building the buy-in and readiness of multi-disciplinary leaders to provide the "effective and inclusive communication of the reforms to internal and external stakeholders and audiences, explaining clearly what the change is, how it will be brought about, and why it is needed" as fundamental to the success of any transformational change effort¹⁸. Relationship-based practice between the workforce, children and their families as well as *within and across* workforces are essential to carrying out and sustaining complex change²¹.

Furthermore, the case studies highlighted the current challenges across multiple workforces in Scotland around working with increased complexity of need in the context of significant recruitment and retention issues. This is combined with the challenges of working with multiple transformational reform programmes at the same time, for example The Promise, Getting it right for every child (GIRFEC) and the development of the National Care Service (NCS). The research highlighted that working with too many transformational reforms risks none of them being fully implemented.

Training

Evidence shows the importance of training, awareness-raising and capacity-building in fulfilling a rights-based approach.²³ In a study of implementation of the UNCRC across 12 countries, research found that effective implementation relied on training and support for the workforce "at every level from legislation to case law, and policy development to service provision for children".²⁴ However, despite the importance of training, evidence suggests that examples of systematic training for duty bearers are not numerous.¹⁵

An important example of good practice which could be replicated in Scotland for the Human Rights Act is the training for the legal profession and judiciary regarding children's rights (e.g., in Norway and Belgium), which has led to an increased number of cases where the UNCRC is cited.²⁴ Training programmes for teachers offer another example of systematic training that will be crucial to increasing children's knowledge of their rights. In Norway, the UNCRC is included in the curriculum in primary and lower secondary education and training on the UNCRC for professional groups takes place for pre-school and generalist teachers as well as child welfare practitioners in education, whereas colleges and universities have scope to plan training themselves.²⁵

Training alone will not enable public bodies to develop the conditions for children to access their rights; however, as part of a package of actions, it plays a key role in how change can be adequately resourced, supported and sustained to can make a significant impact in doing so.²⁶

The complex policy and improvement landscape

It is important to note that many of those who lead children's, young people's and family services and those in front line practice in Scotland, are struggling to meet the requirements of the plethora of policies and legislative advances that has been introduced and involves a change and/or an expansion of their professional roles in recent years. This is made even more challenging in the context of reduced levels of funding to local areas. Implementation of a Human

²³ Lundy, L., Kilkelly, U., Byrne, B. & Kang, J. (2012) *The UN Convention on the Rights of the Child: a study of legal implementation in 12 countries*, UK: Unicef

²⁴ Ibid.

²⁵ Ibid.

²⁶ Fixsen, D., Naoom, S., Blase, K., Friedman, R., and Wallace, F. (2005) *Implementation Research: A synthesis of the literature*, Tampa: University of South Florida

Rights Act would need to support multi-agency strategic leadership at a national, regional and local level to co-ordinate the planning of complex and/or multiple change programmes and identify priorities where the greatest impact can be realised. Should both bills be passed, clear integration would also be needed between the implementation of the UNCRC (Incorporation) (Scotland) Act and the Human Rights Act for leaders, and practitioners, across all services.

Monitoring and Reporting

The systematic collection and monitoring of data is integral to monitoring implementation of rights. In relation to children's rights, gaps in data collection and monitoring in the UK have been highlighted in the 2016 concluding observations by the UN Committee on the rights of the child,²⁷ as well as by an independent child rights impact assessment on the response to the COVID-19 pandemic in Scotland.²⁸ Without high quality data that provides evidence relating to the needs of children (e.g. the number of children living in poverty, receiving mental health support services, or receiving additional support for learning), decision makers cannot make informed choices on the policies and programmes needed to respect, protect and fulfil children's human rights.

Meaningful national and local data is needed, as well as professionals who are equipped to understand this data or any gaps in it and ensure that different systems for collecting data can be compared to understand the holistic needs of all populations of children and young people across Scotland.

Scotland requires a vastly different approach to data collection and usage than we have at present. In relation to children and young people, this should include, at a minimum: the establishment and use of baseline data relevant to children's rights and wellbeing; measurement and data that enables improvement of practices to be adherent to a child's rights approach in practices with or on behalf of children; and data which can guide decision-making within organisations on how to adjust supports to workforces in order that they can deliver rights-respecting services. Furthermore, gathering direct information from children on their experiences routinely and as an integral part of public service delivery, will aid the assessment and achievement of quality in practice.

²⁷ UNCRC (2016) *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*

²⁹ Observatory of Children's Human Rights Scotland (2020) *Independent Children's Rights Impact Assessment on the Response to Covid-19 in Scotland*, Edinburgh: Children and Young Person's Commissioner Scotland

The evidence, and our experience, tells us that there are a number of structural components and activities that are the core components needed to initiate, support, and sustain change at practitioner, service, and local area levels. Data measures should be in place so that these different components can all be assessed, and this would include measures around the quality of practice and/or service delivery and the outcomes resulting from the support received by children and families. To be useful, data needs to be collected, analysed, and reported over time and across actionable levels. Capacity needs to be built across local areas to retrieve useful data available from across the system so that progress can be recognised, needs identified, and improvement plans generated. Implementation teams provide a key role in ensuring that such data continues to be relevant and informs ongoing decision-making.

Collection and use of data collection to support improvement

With regards to the collection, collation and usage of data for improvement purposes, Scotland is yet to systematically prioritise the kinds of data that will allow for a fuller assessment of quality in practice that will drive better support for workforces to make a meaningful impact in improving the lives of children and families. Data that can provide a picture of what is happening in relation to the realisation or otherwise of rights, in line with the provision of a new Act, will be essential to drive improvement.

It is possible to align organisational, improvement, regulation and inspection functions to prioritise this kind of data and to use it to ensure that workforces get the training, supervision, and other supports that enhance these elements of practice and services. Such an approach would include a range of data collation and analysis mechanisms that collectively enable the effectiveness of all parts of system to be assessed – and in timely manner, drive improvements across all parts of system. These mechanisms include:

- Tools to assess (and learn from) practice
- Tools and measures to assess child and parental wellbeing and associated outcomes
- Tools to assess implementation capacity across workforces and organisations/agencies
- Outcome measures to assess system-wide changes.

About CELCIS

CELCIS, the Centre for Excellence for Children's Care and Protection, is a leading improvement and innovation centre in Scotland. We improve children's lives by supporting people and organisations to drive long lasting change in the services they need, and the practices used by people responsible for their care.



Thank you for providing us with this opportunity to respond. We hope the feedback is helpful; we would be happy to discuss any aspect in further detail.

Contact:

Katherine Anderson
Policy Implementation Lead
katherine.anderson@strath.ac.uk