

Children and Young People (Scotland) Act 2014 Non statutory guidance Part 1: children's rights duties

What is your name or your organisation's name?

Children and Young People's Commissioner Scotland

Is the suggested framework for reporting on children's rights helpful? Can you suggest other information or details that would be useful?

The information on the UN Convention on the Rights of the Child is both informative and helpful and supports an understanding of the Part 1 duties. A link to the various UNCRC General Comments which aid interpretation could also be useful.

The cluster reporting approach is helpful as it accords with the UNCRC reporting framework. It is worth noting, however, that a new cluster area has been added by the Committee on the Rights of the Child. This is now included in the reporting guidelines to States Parties and also features in the Committee's most recent concluding observations to the UK, which were published in early June 2016. This new cluster 'Violence Against Children' covers articles 19, 24, para.3, 28, para. 2, 34, 37 (a) and 39), relating to article 19 (freedom from violence); article 24 para. 3 (abolishing traditional practices prejudicial to the health of children); article 28 para. 2 (school discipline); article 34 (protection from sexual exploitation); 37(a) (protection from torture and cruel, inhuman and degrading treatment) and 39 (promoting recovery of child victims).

Does the guidance make clear what the terms "secure better" and "give further effect" mean in the context of Part 1 (section 2) of the 2014 Act? What changes would you suggest?

This is unclear and may currently may lead to diverse interpretations. For example, does 'securing better' mean focusing on improvement (*i.e.* on what is currently happening), with 'giving further effect' relating to what more could be done in terms of future planning? Further information is needed to clarify the meaning of these terms. Pages 23 - 37 provide helpful reflective statements, but these appear to cover both current steps and future improvements. Some clarity around this would be useful. The need for a baseline from which to measure this will be important and this is recognised on page 90. In the recent consultation on children's rights and service planning on 31st May, many of those present called for further information and support on establishing

baseline information and aligning this with other processes, bearing in mind that this aspect of reporting is viewed by the UN Committee as extremely important. Ensuring the active and meaningful involvement of children and young people will be an essential part of this.

Is the relationship between 'rights' and 'wellbeing' clear? - What changes to the guidance do you suggest?

No, although there is a valiant attempt to make it so. Rights and 'wellbeing' are both important, but they are not synonymous and are often in competition with each other. Whilst both are concerned with seeking improvement in children and young people's lives, they have different rationales and purposes. Child wellbeing could be said to be more aspirational - and possibly more ambitious – and to include ideas such as love and happiness, whereas children's rights focus on minimum standards to which children and young people are entitled and, importantly, that States (as the duty bearers and contracting party to the UNCRC) have obligations to provide (and can be held to account when they fail to do so). Importantly, the CRC is based on the recognition that children are holders of rights.

The guidance attempts to clarify the relationship between 'rights' and 'wellbeing', but struggles to do so. This is understandable as it is working within the constraints of an Act which brought these concepts into one framework. Aligning rights and wellbeing too closely could diminish the very purpose of human rights – that they are indivisible, inter-related and inter-dependent. There will be a degree of overlap with wellbeing, given the wide scope of the UNCRC, but invariably the full range of rights will be missed. More work is required to align these two concepts better.

The CRWIA uses two frameworks for assessment – the UNCRC and the wellbeing indicators developed as part of the GIRFEC approach to children's rights, yet child rights indicators are somewhat different to wellbeing indicators as they also focus on responsibilities of duty bearers and their activities in furthering children's rights, rather than solely on outcomes for children. Conflating the two makes monitoring and measuring the implementation of children's rights somewhat difficult. In para 55, the guidance states that 'it is suggested that public authorities explore their organisational understanding of the interaction between children's rights and the wellbeing indicators in advance of undertaking children's rights reporting'. This will be a challenge, and it will be important that the Scottish Government monitor and evaluate how public bodies are taking forward these duties (and those in Part 3) to ensure that what materialises is neither fragmented nor inconsistent. Key to children's rights reporting and evaluation will be the involvement of children and young people - where appropriate - at every stage of the process. General Comments (particularly No 12 on article 12) can act as an aid to interpretation.

What other comments do you have on the Part 1 (section 2) guidance? Please cite specific parts of the guidance if relevant. - What other comments do you have on the Part 1 (section 2) guidance? Please cite specific parts of the guidance if relevant.

This non statutory guidance is aimed at those within public authorities with responsibilities for implementing and delivering on the provisions in the Act. This

might vary of course across local authorities (and health board areas) and we appreciate that there needs to be flexibility so as to fit in with different reporting systems. Some examples of good practice would helpfully put this in context.

Because children's rights are so extensive, covering economic, social, cultural, civil and political rights, this will invariably impact on other services which may not seem a natural fit, but which are covered by the UNCRC. It is important that guidance is clear about the impact other services in local authorities will have in progressing children's rights, especially those which sit outside children's services such as planning and economic development. In their recent concluding observations, published in June 2016, the UN Committee on the Rights of the Child noted its concern at the 'high level of air pollution that directly affects child health in the UK' and called on the State party, including the devolved administrations, to 'set out a clear legal commitment, with appropriate technical, human and financial resources, to scale up and expedite the implementation of plans to reduce air pollution levels, especially in areas near schools and residential areas'. Local authorities might wish to consider how children's rights are being progressed in their Local Air Quality Management (LAQM) processes. The Committee on the Rights of the Child has become much more interested in this area of children's rights. Its forthcoming General Day of Discussion (September 2016) focuses on children's rights and the environment, with one of the main workshops addressing the impact of toxic environmental exposure. With so many local authorities still using glyphosate (recently labelled as a probable carcinogen by the World Health Organisation) near to schools and in parks, this might be also be considered as an area to consider in reports.

The impact of adult services on progressing children's rights (such as drug or alcohol services and mental health social work) should also feature in reports. As a result of its flexibility, the guidance is rather vague and in some parts requires further detail. For example, paras 43 and 46 refers to the duty to report being 'as soon as practicable at the end of each year period'. Some explanation of what is expected would be helpful. At para 110, the guidance further notes that 'authorities will need to consider their other duties and responsibilities that will be falling upon them at or around that time' and highlights the importance of long term planning, especially if authorities are seeking to maximise effort by combining and/or aligning reporting mechanisms and processes. Further explanation is needed here. There will be a need for clear links to be made between Part 1 reporting duties and those in other legislation such as the Education (Scotland) Act 2016, along with corporate parenting reports, the requirement to publish BSL plans under the BSL (Scotland) Act 2015 etc.

It would also be useful to flesh out how the Part 1 (1) duties on Scottish Ministers align with the duty on public bodies in Part 2 (*i.e.* the duty to keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements and, if they consider it appropriate to do so, take any of the steps identified by that consideration). Ministers are expected to lay a report before Parliament on the steps they have taken. There is little mention of this in the guidance, although at para 124 on page 141, it notes that as part of the process of utilising evidence from different sources (*i.e.* for the UK State report), the Scottish Government may cite and illustrate

activity within Scotland by references to the reports prepared by authorities within both their own report and their submission to the UK Report. It further notes that the intention of Scottish Government is that the Children's Rights Reports are made public and that authorities are not required to submit reports to Government directly. It is also suggested that scrutiny of, observation and comment on the reports is intended to come from children and young people, families, practitioners, the wider community, public bodies and civic society. Public authorities are advised to give consideration on how, or if, they intend to respond formally and publicly to such scrutiny. At the consultation event, attendees were asking for good practice examples in this regard. With relation to reflective statements at para 80, the point is made that these may be used as a basis for consideration and further development by authorities in consultation with other stakeholders, including children and young people, parents and carers and third sector organisations. It would be useful to provide examples of how this will be/could be undertaken.

**Is the guidance sufficiently clear about the purpose and objectives of Part 3?
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How could this be improved?**

This has been submitted separately.

Children and Young People's Commissioner Scotland

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