

**Education and Culture Committee  
Children and Young People (Scotland) Bill**

**CARE for Scotland**

**Introduction**

1. CARE is a well-established mainstream Christian charity which provides resources and helps to bring Christian insight and experience to matters of public policy and practical caring initiatives. For many years CARE has been active in the field of education. We have produced resources for schools, parents and teachers. We have a particular interest in those areas of the curriculum and education which interact with religious belief, the development of personal values and parental rights. CARE is also involved in advancing a Christian understanding of marriage and the family, including the important rights and responsibilities of parents with regard to the welfare and wellbeing of their children, and seeking to encourage agencies of the state to recognise the important role of parents in the raising of children. Within this context we have engaged at the international, European and domestic levels in debates over the drafting of human rights (including child rights) documents and laws.

**General Comments**

1. Children's rights should not be viewed in isolation from parental rights and the family context. Our view is that the rights of children are best protected by being brought up by their natural parents within the context of the wider family and in a loving and secure home. CARE's view of the central role of parents and importance of the wider family for children's well-being is echoed in the UN Convention on the Rights of the Child (UNCRC). The preamble to the UNCRC states that the State Parties are:

*“Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can assume its responsibilities with the community.*

*Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.”*

2. Article 3:2 states:

*State 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 ...”*

3. Article 5 states:

*State Parties shall respect the responsibilities, rights and duties of parents or, where applicable, members of the extended family or community as provided for by local custom ... 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.”*

4. Article 29 of the Convention requires education provided by State Parties to encourage:
 

*“the development of respect for the child's parents, his or her own cultural identity, language and values ...”*
5. These, and other, parts of the UNCRC indicate the central role of parents in the raising of children and the duty of State Parties to respect the rights of, and support, parents in this role. However, those groups which advocate for child rights often fail to present the UNCRC in a holistic manner, but rather articulate a view which highlights specific rights (e.g. Article 12 – the right for the child to express his/her views and for these views to be taken into consideration) without drawing attention to the wider context of parental and family rights. This can lead to a distorted interpretation of the UNCRC and its implementation in a manner which undermines family structures and views the child as a wholly autonomous individual. Such an interpretation is contrary to the overall content of the UNCRC.

### **Duty on Scottish Ministers in Relation to the Rights of Children**

6. Scottish Ministers should take a holistic approach to the implementation of the UNCRC, including placing an emphasis upon the rights of parents and the wider family context. This approach should be reflected in the duties placed on Scottish Ministers. Ministers should recognise that the rights and wellbeing of children and young people do not stand in isolation. Children and young people should not be seen as being totally autonomous from their parents, other adult relatives or carers. Rather the rights and wellbeing of children and young people should be viewed within the context of marriage, parental rights and responsibilities, the wider family and the social and cultural context. It is imperative that this perspective is reflected in the legislation and in subsequent guidance which is issued by the Scottish Government. This holistic approach should be adopted in education programmes and materials regarding the UNCRC which are used in schools in order to fulfill the Article 42 requirement.
7. CARE notes the requirement in the Bill that Ministers are required to keep under consideration whether there are steps which they could take to further effect the UNCRC requirements. We raise one caveat with regard to this requirement which relates to the third optional protocol of the UNCRC. This protocol has not been adopted by the UK and CARE would have concerns about the Scottish Government endorsing it. The third optional protocol allows children to submit complaints regarding the violation of their rights to the UN Committee on the Rights of the Child. We have concerns about the operation of the UN Committee on the Rights of the Child, its democratic accountability, its receptiveness to being overly influenced by organised child rights pressure groups, its supra-national nature and its authority to determine the correct interpretation of the UNCRC. We consider that the appropriate mechanism for redress is at the national level and that State Parties are the appropriate bodies in international law to interpret the UNCRC.

## **Duties of Public Authorities in Relation to the UNCRC**

8. We would reiterate our comments in paragraphs 2-6 with regard to our concerns regarding the unbalanced manner in which the UNCRC is interpreted on occasions. It is important that Scottish public bodies adopt a holistic approach to the UNCRC which respects the rights of parents, wider family religious, ethnic and cultural communities. There should be an explicit requirement in the reporting of public bodies to consider child rights within this wider context.

## **The Role of the Commissioner for Children and Young People**

9. As with other public bodies, the Commissioner should be required to take a holistic approach to the UNCRC which includes respect for the rights of parents. In addition, the Commissioner must have regard to the European Convention of Human Rights, including the parental rights contained within that convention as exemplified in Protocol 1, Article 2 of that Convention which states that parents have a right to have their children educated in accordance with their religious and philosophical beliefs.
10. CARE was of the view when the Commissioner was established in 2003 that the correct balance had been struck with regard to his/her powers. We remain of this view and are not convinced that he/she should be able to investigate individual cases. Rather we suggest that his powers of investigation should be limited to issues of a general nature.

## **Provision of Named Persons**

11. We are concerned by the proposal to introduce a 'named person' for every child in Scotland. We are concerned that the rights and the important role of parents may be eroded by state officials and civil liberties infringed. Our concern is that the named person provision reflects an ideological view which denies the primacy of parental authority in relation to child rearing. Rather it reflects an ideology which emphasises society as a corporate parent and views children essentially as the property of the state. There is a danger that the civil liberties of parents and families could be infringed by over-intervention on the part of public officials. For example, health board or local authority officials might use the Public Sector Equality Duty as a reason to undermine the values or religious beliefs of parents with regard to issues of human sexuality. This may include the provision of sexual health education programmes at a pre-school or primary level against the wishes of parents. Pressure may be brought to access contraceptive services or termination of pregnancy with little regard to the religious beliefs or ethical objections of parents. Full information or spiritual guidance may not be available, leading to regret and emotional trauma later in life on the part of the young person concerned.

## **Childcare Provision**

12. We welcome the additional funding for childcare and the increased flexibility it allows for working parents. We are concerned, however, that parents who wish to stay at home to look after their children should not feel under pressure to go out to work and place their children in childcare from an early age. In addition, parental involvement in a

child's pre-school education should be supported and the values promoted in the nursery should not undermine the values of the family or their cultural and religious identity. In order to do so a diversity of pre-school provision should be facilitated in order to increase parental choice. One means of addressing both these issues would be to allow the funding to follow the child, rather than perpetuating the current arrangements which give the local authority control over the allocation of funding between the council, private and voluntary sectors.

## **Wellbeing**

13. Whilst CARE understands the motivation of the Scottish Government for wishing to adopt a wider definition of the child or young person's wellbeing than has traditionally been incorporated in the term 'welfare', we have some concerns that this move may represent an approach which sees the child or young person as a wholly autonomous individual. Autonomy is never absolute (at any stage in life) and is a developing characteristic which should accompany a growing sense of moral responsibility. In the Christian tradition, children are to be valued as individuals made in the image of God, but are also to be instructed by their parents in right living as they grow up. This understanding is compatible with a positive view of child rights, but does place limitations on the extent to which the rights of children and young people should be viewed as paramount within the wider context of family or societal life. For example, the role of moderate physical chastisement may be defended in order to raise children with an appropriate sense of respect for authority and the rule of law.
14. We are concerned that the approach being adopted in the Bill may undermine efforts to view children as part of the wider community of family and society, instead prioritising individual autonomy across a spectrum of aspects of life. For example, some health officials may argue that children and young people should have access to comprehensive sexual health education, even if this runs contrary to the value system of the family, religious community or school. The family's preference might be for education in these matters for the child or young person which reflects their religious or cultural identity. However, the approach to 'wellbeing' being contained in the Bill could be used by health board and local authority officials to prioritise the perceived physical health benefits for the child from comprehensive sexual health education over the religious or cultural values of the family and indeed over the child or young person's own spiritual development and emotional health.

**CARE for Scotland**  
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