



## **A Human Rights Bill for Scotland**

### **Response from Barnardo's Scotland: October 2023**

#### **About Barnardo's Scotland**

Barnardo's is the UK's largest national children's charity. Barnardo's Scotland works with thousands of children, young people, and families each year in over 100 services. We deliver a wide range of services which include provision of family support and early intervention, supporting children, young people and families through fostering and adoption services, helping children affected by sexual abuse and exploitation, helping young people entering employment, education, and training, and supporting young people and families affected by drug and alcohol use.

We use information and experience from our services across Scotland, and from the children and young people we work with, to seek positive change in policy and practice based on what matters to the people who use our services and what we see working in communities. We work collaboratively across all sectors and political parties to achieve the best outcomes for children and young people.

#### **1. What are your views on our proposal to allow for dignity to be considered by courts in interpreting the rights in the Bill?**

**Allow**/Don't Allow

At Barnardo's Scotland, ensuring dignity lies at the heart of our work with the children, young people, and families we support across the country. This work is underpinned by the rights and principles contained in Getting It Right For Every Child (GIRFEC), The Promise, and the United Nations Convention on the Rights of the Child.

Following consultation with staff working within our services, we found that our staff routinely encounter instances where the right to dignity is not always upheld for our service users by statutory providers – particularly in relation to engagement with court systems, social services, and support for children with Additional Support Needs (ASN) within educational settings. There were concerns raised that a multidisciplinary approach to service provision in particular can result in person-centred and dignity respecting approach being lost; with families sometimes being physically present at planning meetings but excluded from meaningful engagement.

When consulted on the reasons why this may occur, one practitioner told us that:

"Dignity can be seen as an "extra step", I feel that it being a legally enforceable right will hopefully embed it as something that needs to be considered at every stage. I also hope this will make it easier for young people and families to be taken seriously if they raise a concern that they are not being treated with dignity."

When asked about the need for this right to be legally enforceable, another told us that:

“Dignity also has to be upheld when "no one's looking" i.e. in conversations with colleagues or in notes and recordings. Upholding dignity needs to be a mindset not just a procedure.”

Overall, we feel that a legal obligation to consider dignity will provide greater consideration of the rights of children, young people, and families in relation to:

1. Requiring children, young people, and families to be actively engaged within planning process which impact their lives.
2. Improved access to essentials which allow children, young people, and families to live with dignity - such as adequate housing, food, and sufficient social security.
3. Provision of a stronger platform on which we can continue to build on the work of The Promise – with an emphasis on upholding the dignity of all who engage with the care system.
4. A more participatory system to engage those whose rights are most risk. This should be undertaken from the very beginning of relevant planning for legislative, policy or budgetary changes.

## **2. What are your views on our proposal to allow for dignity to be a key threshold for defining the content of minimum core obligation (MCOs)?**

At Barnardo’s Scotland we work with children, young people, families who often feel like their dignity is not respected, their voices go unheard, and that decisions about their lives are made for them, rather than with them. This is particularly poignant in relation to engagement with court systems, social services, and support for children with Additional Support Needs within educational settings. We recognise that change is urgently needed to ensure that they can live a life where, as a minimum standard, their right to dignity is considered integral.

We therefore agree with proposals to allow the right to dignity to be incorporated as a key threshold to be met within Minimum Core Obligation (MCOs). This threshold will work to ensure that a person-centred and dignity-upholding approach is required by public bodies – providing greater security to access justice when rights are not upheld.

However, we do feel that greater clarity on the defining standard for these obligations – including the extent to which they will be derived from existing MCOs internationally. Furthermore, the Bill must be clear that these MCOs set a floor, rather than a ceiling, of what is expected from public bodies in relation to service provision. The actual expected standard of provision should be delivered at a much higher level.

## **4. What are your views on the proposed model of incorporation?**

We agree that incorporation of the four international human rights treaties within the scope of the Bill will strengthen rights protection for people across Scotland – and allow valuable opportunity to challenge public bodies when these rights are not upheld.

While we understand challenges introducing a duty to comply regarding rights which are contested at UN level (e.g. differing opinions between treaty bodies), we feel strongly that a maximalist approach is necessary, and that the right to comply should be introduced for all rights contained within the four treaties where:

1. The Scottish Parliament has the power to legislate.
2. Interpretations of relevant rights are not contested at UN level (e.g. differing opinions between treaty bodies).

Finally, we agree that in interpretation of rights within the Bill should be derived from international standards. Interpretive provisions should be designed to mirror those included in the UNCRC (Incorporation) (Scotland) Bill – allowing for consideration of:

1. General comments.
2. Concluding observations.
3. Comparative law.
4. Other relevant international law.

## **6. Do you agree or disagree with our proposed basis for defining the environment?**

### **Agree/Disagree**

We welcome the Scottish Government's recognition that access to safe greenspaces is an important element in ensuring children can obtain their rights to health and play. The need for such spaces has been confirmed through internal consultation with colleagues across Barnardo's Scotland, who have told us that without these spaces:

"Often young people and families have little access to community spaces that are free or affordable, safe, and welcoming. Many of these spaces have closed due to funding issues. This amplifies the issues that people have when their homes also are not a healthy environment. This has a real impact on mental health and wellbeing."

When asked what the legally enforceable right to a healthy environment would mean to the children and young people they work with, colleagues told us that:

"There is so much research to link healthy environments, access to green space, to a healthy mind and body. Hopefully a legally enforceable right would be able to give us language to demand more parks and green space."

"Nationally and globally, this would mean a commitment to environmental repair, whether the planting of trees, access to green spaces free from pollution where nature can thrive, education on how to live harmoniously with the planet and real change and consequences in the industries which are the biggest causes of climate change and environmental harm."

Green spaces were particularly highlighted as an important space for children and young people with Additional Support Needs (ASN) to access safe, educational, and therapeutic experiences which mainstream education spaces cannot provide.

Therefore, with regard to the proposed basis for defining the environment within this Bill, and based on the information above, we particularly concur with the following:

"In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention."

"Recognizing that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself."

We feel that the latter point particularly resonates with what we feel represents a healthy environment able to effectively promote the rights of the children and young people we work with across Scotland.

**9. Do you agree or disagree with our proposed approach to the protection of healthy and sustainable food as part of the incorporation of the right to adequate food in International Covenant on Economic, Social and Cultural Rights (ICESCR), rather than inclusion as a substantive aspect of the right to a healthy environment?**

Agree/**Disagree**

While access to adequate food is an area of concern for many of the children, young people, and families we work with at Barnardo's Scotland, this issue extends further than simply availability of produce - encompassing a range of factors such as the quality of available food, sustainability of agricultural practices, and affordability of groceries which can be considered healthy or sustainable.

During internal consultation, colleagues told us that many of the families they work with rely on bulk buying, often ultra-processed, produce which is cheap and able to be stored for long periods of time. While often necessary on a restricted budget, this food is simply not able to provide the balanced and nutritious diet that children and young people need to develop and thrive.

One of the colleagues raising these concerns told us that:

"The right to food must also include the right to *\*some\** choice and dignity in food availability. This means that those who do rely on support to access food should not by default be expected to eat whatever is cheapest and has the longest shelf life, often foods which have low nutritional value, they should also not be expected to eat the same thing every day, or be forced to be unable to follow the principals of sustainability simply because they have no choice in where their food comes from."

Furthermore, colleagues told us that when families require access to food banks, that there are often limited options which do not always promote a balanced diet, and may not be able to cater for allergies, or cultural or religious requirements. Alongside this, questioning of those accessing food banks was found in some cases to be invasive, long, and inappropriate for those lacking sufficient literacy skills – making it more difficult for children, young people, and families to obtain their rights in relation to food.

One practitioner told us that:

"Many, many of the families I work for do not have adequate access to food. I ran a children's group over the summer and one of the young people would come in immediately and eat everything. We organised food parcels and supported the family but within our service there is a limit to what we can do. One of the families I support are forced to transport through their own funds the two boys to court mandated contact which they do not wish to attend so mum is forced to take a taxi as they refuse to take the bus, this often leads to mum not having the money to pay for her own meals."

Another told us that there is a need for:

"A reduction in stigma and barriers to access in getting food provisions, and a say in what food is available, particularly regarding healthy eating, cultural foods, and individual needs such as disabilities. People should never have to choose between eating or having electricity or paying for fuel/public transport, food is fundamentally needed to survive and should never be gone without. It also means supporting families and individuals to achieve other goals as well as independence so that they feel empowered to succeed even when relying on external support for food."

Provision of universal and healthy free school meals for school pupils were raised as one change which could be used to improve the availability of nutritious, sustainable food for children and young people. Free school meals were additionally highlighted as one area through which health education could be discussed and furthered within school environments. Universal free school meal provision for all primary school aged pupils is already one of Barnardo's Scotland's calls on the Scottish Government, and research demonstrates the positive role this would play in tackling child poverty in Scotland.<sup>1</sup>

While we do agree that incorporation of the right to adequate food as defined within ICESCR will be a positive development, guaranteeing adequate, culturally appropriate, accessible, and available food, we also feel that this can be strengthened through additional provision within the Bill. This is particularly relevant in relation to the sustainability of agricultural practices, availability of locally sourced produce, and affordability of healthy and sustainable options. For these reasons, we strongly disagree that this should be omitted within provisions related to the right to a healthy environment.

### **10. Do you agree or disagree with our proposed approach to including safe and sufficient water as a substantive aspect of the right to a healthy environment?**

#### **Agree/Disagree**

At Barnardo's Scotland we run a project called B-Wild, designed to support children and young people to engage with nature in a therapeutic manner. This project is based within our services across Scotland, and consultation with practitioners was undertaken to inform our response to this question.

Our practitioners identified a marked reduction in safe waterways across Scotland in recent years – with land predominately being used instead for residential development. Remaining waterways were found to be frequently polluted, contaminated with blue algae, or otherwise unsafe for children and young people to access. Therefore, even where waterways did exist, they risked compromising children's right to health as enshrined in Article 24 of the UNCRC.

Parental knowledge of polluted waterways was further considered a concern, with lack of knowledge of water quality, and inability to identify problem areas being highlighted. Several practitioners specifically mentioned legionaries as a risk to the health of the children and young people whom we work with. This is a particular relevant in relation to healthy child development, as we are keenly aware that outdoor opportunities for children and young people can have a hugely positive impact - supporting education on water and increasing pride in their local environment.

One practitioner specifically raised lack of access to safe drinking water as an issue impacting the children, young people, and families engaging with their service – particularly within urban areas, but not solely.

Overall, based on evidence from B-Wild, we agree with the inclusion of the right to safe and sufficient water as a social right defined in ICESCR, but additionally support inclusion as part of the right to a healthy environment. The right to adequate sanitation further supports the latter right, particularly in relation to tackling widespread sewage pollution across Scotland.

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<sup>1</sup> 'A Crisis on Our Doorstep', Barnardo's Scotland: March 2023

<https://cms.barnardos.org.uk/sites/default/files/2023-03/crisis-on-our-doorstep-barnardos-report-march2023.pdf>

Finally, we feel that one of our B-Wild practitioners strongly outlined our views on the right to safe and sufficient water as follows:

“Children and families have the right to safe drinking water but also water to bathe in at a beach.”

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

Barnardo’s Scotland supports use of the Lundy Model of participation - establishing a need to consider the space within which participation is undertaken, and place voice (creative, writing, oral etc.) at the centre of effective participation. It is imperative that where participation is undertaken, participants are informed of the influence their views have had, and the audiences that they have reached (e.g. appropriate decision makers).

Time is a vital component of effective participation. This means ensuring that appropriate time is given to establish relationships with participants, plan accessible activities, undertake participation work itself, and follow-up later. When working with participants who may have additional barriers to participation, such as pre-verbal children and non-verbal and/or disabled people, this time is especially important.

Participation must be undertaken with all primary groups that services will engage with, even if these groups are by nature more challenging to engage. This will ensure that the hardest to reach voices, often those whose rights are most at risk, are meaningfully heard within decision making processes, service planning, and service design. Participation work with groups should not repeatedly be undertaken on similar issues without being able to demonstrate meaningful change.

Funding is a key element of successful participation. Participants should be remunerated for their time; however, this could take the form of gifts-in-kind, provision of an activity day within the participation session, or financial compensation etc. Staff should be sufficiently resourced, both in terms of time and money, to undertake meaningful participation – resources which should be embedded within all services from implementation of the Bill onwards.

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

Similar to the UNCRC (Incorporation) (Scotland) Bill, we believe that the powers contained within the Human Rights Bill should be legally binding for as many public bodies as possible within the competence of the devolved settlement of the Scottish Parliament. This would include organisations such as Barnardo’s Scotland who would be subject to indirect obligations through government funding requirements, as well as other private actors delivering public functions.

Children, young people, and families across Scotland should be able to expect their human rights to be respected, protected, and fulfilled by every public body, whether it is within devolved or reserved competence. We urge the Scottish Government and UK Government to continue open discussions and collaboration to ensure all public bodies actively promote and protect human rights.

### **22. Do you think certain public authorities should be required to report on what actions they are planning to take, and what actions they have taken, to meet the duties set out in the Bill?**

We believe that reporting for the Human Rights Bill should be similar to the model introduced through the UNCRC (Incorporation) (Scotland) Bill in relation to duties on public bodies to monitor, evaluate, and plan for human rights progression over time.

We feel that public bodies should be required to:

1. Report every three years on their work to progress rights, and their plan for the next period.
2. Publish accessible materials (large font, child-friendly etc.).
3. Include those whose rights are most at risk in planning processes – embedding participation from the onset of potential legislative, policy or budgetary changes.
4. Complete relevant impact-assessments prior to the introduction of potential legislative, policy or budgetary changes.

Reports should be produced in collaboration with service users, with lived experience being used as a threshold to determine whether MCOs are being met at a minimum. Guidance should be produced in collaboration with relevant service users to support public bodies in understanding how best to uphold and promote relevant rights at a much higher standard than obligation by MCOs. If users feel that MCOs in relation to dignity in particular are not met, there should be systems in place to address this as a priority.

Finally, public bodies must ensure that reports are examined by those able to hold them to account when concerns arise. While a peer-review process may be helpful to some extent – we support the view of the Human Rights Consortium Scotland that it should additionally be mandated that reports are sent to the Scottish Human Rights Commission (SHRC), and the Children and Young People’s Commissioner for Scotland (CYPCS) where relevant, for review.

Any required increases in staff capacity to undertake this function should be appropriately resourced. This will help to ensure that rights compliance is determined through an independent process of monitoring and evaluation. Overall, this Bill should ensure that Scotland has some of the best rights-based legislation, but it is important to emphasise that without embedded rights-based budgeting this will be challenging to implement.

## **27. What are your views on the most effective ways of supporting advocacy and/or advice services to help rights-holders realise their rights under the Bill?**

**Please give us your views on advocacy.**

Barnardo’s Scotland has delivered advocacy to children and young people for over 20 years, and currently do so across six local authority areas alongside our Children’s Hearing System provision.

We would be supportive of the right to independent advocacy being referenced on the face of the Bill and for the Human Rights Scheme to specify that there should be independent advocacy for those whose rights are most at risk.

To do this effectively, a right to access independent advocacy will only be fully realised if advocacy provision is properly resourced. This should take into account the work which Barnardo’s Scotland is supporting with The Promise to develop a model of lifelong advocacy for care experienced people.

## **38. What are your views on our proposals for bringing the legislation into force?**

If passed, this Bill will substantially strengthen the rights of people across Scotland – including those of children and young people most at risk of having their rights breached. As such, implementation of the Bill must be timely and must from the onset lie within the remit of legislative powers devolved to the Scottish Parliament.

It is necessary that powers within the Bill are as strong as possible within devolved competency, including through the extension of an obligation to comply to include rights contained within treaty provisions where:

3. The Scottish Parliament has the power to legislate.
4. Interpretations of relevant rights are not contested at UN level (e.g. differing opinions between treaty bodies).

The Bill must establish an appropriate redress scheme to intervene when rights are breached - providing accessible, affordable, and supportive access to justice for complainants. This should be clearly defined from the introduction of the Bill and must ensure that it is designed in collaboration with those whose rights are most at risk.

Timescales for implementation of the Bill must be specified from its introduction, with a commencement date of no later than six months following Royal Assent.

In relation to the duty to comply, we recognise that time will be required to allow for public sector capacity building, guidance development, and potential commissioning and procurement changes prior to introduction of binding legal obligations. As such, we feel that this duty should apply within two years following commencement of the Bill.

Finally, children across Scotland have waited more than two years to see the United Nations Convention on the Rights of the Child incorporated into Scottish law. The Scottish Government and Scottish Parliament must ensure that this Bill does not face similar delay – falling entirely within legislative competence to ensure that rights are introduced in as swift and effective a manner as possible.

#### **44. What are your views on monitoring and reporting?**

Expectations for monitoring and reporting should be clearly outlined to public bodies, through robust guidance, prior to the introduction of any compliance duties. This will allow for appropriate training for staff and relevant planning to ensure that changes are meaningfully embedded within organisations from the onset.

Furthermore, relevant guidance should be clear that, while public bodies will be required to uphold progressively higher MCOs, that these represent a floor, rather than a ceiling, of what is expected in relation to service provision. The actual expected standard of provision should be delivered at a much higher level.

As previously stated, we support the view of the Human Rights Consortium Scotland that public bodies must ensure that reports are examined by those able to hold them to account when concerns arise. While a peer-review process may be helpful to some extent – it should additionally be mandated that reports are sent to the Scottish Human Rights Commission (SHRC), and the Children and Young People’s Commissioner for Scotland (CYPCS) where relevant, for review.

Finally, monitoring and reporting should be undertaken in collaboration with service users, with lived experience. The experiences of service users should be placed at the heart of service design, and as such effective delivery of this should be reflected through increasingly positive evaluation by these groups over time.