



A Response to the Scottish Government's Consultation on Extending Rights to Children with Legal Capacity under the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) and on Proposals in relation to Section 70 of the Education (Scotland) Act 1980

Scottish Youth Parliament

Background to SYP

Our vision is of a stronger, more inclusive Scotland that empowers young people by truly involving them in the decision-making process.

The Scottish Youth Parliament (SYP) is democratically elected to represent Scotland's young people. We listen to young people, recognise the issues that are most important to them, and ensure that their voices are heard.

In working towards our aims, we support the following values:

Democracy - All of our plans and activities are youth-led, and we are accountable to young people aged 14-25. Our democratic structure, and the scale of direct participation across Scotland, gives us strength and sets us apart from other organisations.

Inclusion - We are committed to being truly inclusive. The Scottish Youth Parliament believes that all young people have a right to a voice, it doesn't matter who we are or where we come from. We celebrate our diversity.

Political independence - We are independent from political parties. Only by working with all legitimate political parties can we make progress on the policies that are important to young people.

Passion - We believe that drive and energy are key to successful campaigning. We are passionate about the key issues and believe that young people are part of the solution, not the problem.



Methodology

The Scottish Youth Parliament is committed to a completely youth led structure. Our strategic policy direction is set by our elected MSYPs through manifesto development, Members Motions at our National Sittings, and through consultation with constituents.

Therefore, our responses to public consultations are fundamentally shaped by the genuine views of young people.

The response to this consultation is based on a focus group session with the Scottish Youth Parliament's Education and Lifelong Learning Subject Committee at our March National Sitting. The Committee based their response on a number of existing SYP manifesto statements from our 2010 youth manifesto, "Change the Picture."¹

Existing SYP Policy

The response from the Education and Lifelong Learning Subject Committee is based on existing SYP policy.

The consultation with young people for our most recent youth manifesto, Change the Picture, which received almost 43,000 responses, produced the following manifesto statements:

89% of respondents agreed that "Disabled children and young people should have the same rights and opportunities as other young people. More support should be available so disabled young people can do more independently."

89% of respondents agreed that "Disabled young people should have the opportunity to have a say about the services which affect them. Employers need to support disabled people in the workplace."

85% of respondents agreed that "Young People are entitled to as much protection of their human rights as the law can give them. This means the United Nations Convention on the Rights of the Child (UNCRC) should be given more force in Scots law."

¹ For more information about the Scottish Youth Parliament's policy structures, visit our website: www.syp.org.uk



The Scottish Youth Parliament's Response to the Proposals

Based on the existing policy statements contained in our youth manifesto outlined above, the Scottish Youth Parliament supports the proposals outlined in questions one to three. The Education and Lifelong Learning Committee, who considered this consultation in their most recent subject committee meeting, supported the proposals outlined in questions four and five.

1(a) Do you think children with capacity should have their own rights in relation to Additional Support for Learning?

1(b) Please offer comments to support your answer to 1(a).

Yes, the Scottish Youth Parliament believes that children with capacity should have their own rights in relation to Additional Support for Learning.

Young people have told us through our consultation work that they fully support the incorporation of the UNCRC into law, particularly Article 12. This proposal is an extension of rights of young people to make decisions or at the very least, be consulted about decisions that affect their lives.

In addition, we believe that young people with disabilities or complex needs have the same rights as other young people to make decisions about their own lives, and where possible they should be given the support to do so.

When discussing this issue, the Education and Lifelong Learning (ELL) Committee supported this proposal expressing concern that there is a possibility that vulnerable young people who still have capacity to make decisions about their own lives are often not consulted and that the education system fails to take account of their views.

In addition, the Committee felt that the age where a young person should be deemed to have capacity cannot be fixed, as it depends on a wide range of factors such as upbringing, level of maturity and other circumstances. Therefore, the age of twelve is not always an appropriate benchmark to assess whether a young person has capacity to make decisions about their own lives.



2(a) Do you think Scottish Ministers should extend the right to enable children to make an appeal to the Additional Support Needs Tribunals for Scotland under the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended)?

2(b) Please offer comments to support your answer to 2(a).

Yes, the Scottish Youth Parliament believes that Scottish Ministers should extend the right to enable children to make an appeal to the Additional Support Needs Tribunals for Scotland under Education (Additional Support for Learning) (Scotland) Act 2004 (as amended).

We believe that all young people should have the right to appeal as a fundamental right. We are, therefore, supportive of this proposal as an extension of rights under the UNCRC.

The Scottish Youth Parliament's ELL Committee raised some additional issues with this proposal. The Committee suggested that there should be support and information to support and empower young people and children in this process. The Committee recommended that a body of some description should be established to support young people and children through this process, or perhaps the Scottish Commissioner for Children and Young People could undertake this role in partnership with local services.

The involvement of an external body was felt to be important by the Committee to avoid a conflict of interest on the part of the local authority.

3(a) Do you think Scottish Ministers should extend the rights which are currently afforded to parents and young people (with capacity) under the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) to children to enable them to take up their own rights where they have capacity to do so?

3(b) Please offer comments to support your answer to 3(a).

Yes, the Scottish Youth Parliament believes that Scottish Ministers should extend the rights which are currently afforded to parents and young people (with capacity) under the Education (Additional Support for Learning)(Scotland) Act 2004 (as amended) to children to enable them to take up their own rights where they have capacity to do so.



During the focus group with the ELL Committee, young people said that there were other factors other than age that should be taken into account. The group felt that the current age of twelve may not be accurate benchmark in terms of assessing whether a young person or child has capacity.

4(a) Do you think the Scottish Ministers should amend the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) to ensure that disagreements are resolved at as local a level as possible, therefore ensuring that a complainant has attempted independent mediation?

4(b) Please offer comments to support your answer at 4(a).

Yes, the Scottish Youth Parliament believes that the Scottish Ministers should amend the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) to ensure that disagreements are resolved at as local a level as possible, therefore ensuring that a complainant has attempted independent mediation.

The young people in the Scottish Youth Parliament's ELL Committee were unanimous in their agreement that there should be an impartial organisation or body to aid and facilitate mediation at a local level to avoid any potential conflicts of interest.

Q5. Do you think the Scottish Ministers should repeal section 70 of the Education (Scotland) Act 1980, removing the opportunity to complain directly to the Scottish Ministers with the exception of the area of school closures?

If yes, do you agree that, in future, the Scottish Public Service Ombudsman should consider failure of duty complaints which are currently considered under section 70 of the Education (Scotland) Act 1980?

With the exception of school closures, do you think that the Ministerial powers under section 70 to make an order to carry out a duty should be transferred to the Scottish Public Service Ombudsman?

If so, why?



Yes, the Scottish Youth Parliament believes the Scottish Ministers should repeal section 70 of the Education (Scotland) Act 1980, removing the opportunity to complain directly to the Scottish Ministers with the exception of the area of school closures.

Yes, the Scottish Youth Parliament believes that, in future, the Scottish Public Service Ombudsman should consider failure of duty complaints which are currently considered under section 70 of the Education (Scotland) Act 1980 and that it should have the additional power of being able to make an order to carry out a duty.

The Education and Lifelong Learning Committee felt that the Scottish Public Service Ombudsman would satisfy the appropriate impartiality criteria. However, the Committee expressed concern about whether the Ombudsman is sufficiently resourced to be able to cope with the increase in duties and cases. The ELL Committee believed that the Scottish Government would need to carefully consider what additional resources the Ombudsman would require to carry out these new duties both on a local and national scale.

Contact

Gareth Brown

Public Affairs Co-ordinator

Scottish Youth Parliament

gareth.b@syp.org.uk

Follow us on twitter @OfficialSYP