

SCOTLAND'S CHILDREN: GETTING OUR ACT TOGETHER?

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With the publication in August of the White Paper **Scotland's Children: Proposals for Child Care Policy and Law**, there is a degree of optimism afoot that the foundation has been laid for integrated Scottish legislation along the lines of the Children Act which applies largely to England and Wales. In replying to a question on this at a conference organised by Children in Scotland in 1992, the Scottish Office Minister in charge of the legislation, Lord Fraser, himself stated (Asquith 1993, p.49) that

..our intention is to have a broad Child's Act for Scotland. I think we ought to reflect carefully just how far we want it to go: whether it should seek to be all embracing in the way that you have suggested. I should say that it has been propose to me that such a bill as presented to Parliament would be acceptable..... Just exactly what the format of the legislation would be remains to be determined but as I concluded in my opening remarks there are some foundations in 1968 on which to build; it is not to knock down that whole edifice and start again.'

The general thrust of Lord Fraser's reply is confirmed with the publication of the White Paper in which there is a clear commitment to the philosophy of the 1968 Social Work (Scotland) Act but nevertheless at the same time a comprehensive review of major aspects of child care policy and law. Whether this will result in a piece of integrated child care legislation, or even whether the necessary parliamentary time will be found to take the proposals forward,

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is at present uncertain. But what is clear is that the proposals contained in **Scotland's Children** provide the basis for major and important developments in the way we deal with our children.

The main purpose of this article is to examine the key elements in **Scotland's Children** and to question just how far they will contribute to improvement in our child care law, policies and practices at a time when children are experiencing the effects and implications of major social and demographic change.

BACKGROUND TO THE WHITE PAPER

Scotland's Children has generally been welcomed in as much as it presents a statement for change in our policies and practices for children in care. Nevertheless it has to be said that there are no major surprises in terms of the proposals contained in it and that this has contributed to a feeling of disappointment in some quarters. This is largely due to the fact that the White Paper contains proposals drawn from a number of official reports which were published in 1992 and also from the earlier report of the Child Care Law Review Group. Child care has been under review in Scotland for some three or four years, and **Scotland's Children** is the direct product of a lengthy and sustained period of examination of and questioning about child care.

The White Paper not surprisingly attracted considerable press and media attention the day it was published though it has to be said that the inference which could have been drawn from the various reports and discussions was that it was largely concerned with child protection and young offenders. What this reflected was the preoccupation with the Clyde Report and the aftermath of the events in Orkney as well as the general concern at the apparent increase in levels of crime by children and young people. We will return to these issues later, and indeed it would have been surprising had child protection and youth crime not been a the focus of considerable attention in the White Paper, but the fact is that **Scotland's Children** is a document with a much broader focus.

In addition to child protection and offending behaviour it also makes proposals regarding residential care, children with disabilities, the Children's Hearings generally and the role of Reporters to the Children's Hearings. In that respect, the reports which appeared in 1992 have all been influential in determining the content of the White Paper and they included the Finlayson Report on the Role and Functions of the Reporter (1992); the Kearney Report

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on Child Care Policies in Fife (1992), the Clyde Report on the Removal of Children from Orkney (1992), and the Skinner Report on Residential Child Care (1992). In the same year the Scottish Law Commission had produced a Report on Family Law, which was also to influence the tone of the White Paper. In addition, the earlier Report of the Child Care Law Review Group (1989) has not only been influential in determining some of the recommendations of the White Paper itself but also played a crucial role in determining the agenda for examination of child care in Scotland.

A number of general themes have pervaded the discussions about child care in Scotland, and indeed the UK generally, in the four or five years before the publication of the White Paper. They all receive considerable attention in it. One is the changing nature of the social world in which children generally find themselves and the implications this has for child care policies and practices; another is the dramatic increase in reports of child sexual abuse; and the last is the significance of children's rights and in particular the implications of the United Nations Convention on the Rights of the Child which the UK became the 105th country in the world to ratify in December 1991. All are very closely related and all are important factors in understanding the nature of some of the major proposals in the White Paper. They provide a backcloth against which the promise of the White Paper can be judged.

Social and Demographic Trends

The White Paper gives a clear statement of the main trends affecting children and in particular addresses the experiences of children at a time of major change in family structure. In common with most European countries the proportion of children in the Scottish population is falling; the proportion of children born outwith marriage is increasing; and the marriage rate has dropped. There is also the likelihood that 1 in 4 of all Scottish marriages will end in divorce and that, of all divorces, 1 in 8 is the second divorce for at least one of the partners. Moreover, divorce or separation is increasingly likely to affect younger children, and the number of children in Scotland living in one-parent families, with all the implications this has in terms of poverty, has risen significantly. 1 in 6 of all families in Scotland with dependent children are now one-parent families.

The main implication of all this is that children are being asked to cope with the demands of separation or divorce, in some cases on more than one occasion; experience very different family lifestyles; and increasingly find themselves in poverty. The White Paper very positively acknowledges the

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need to offer help to children in such situations, a welcome perspective given some of the more punitive statements to emerge from other governmental sources. As **Scotland's Children** asserts

Despite these changes, families remain and will remain the foundation of care for children and the development of young people. In this changing world, families will need support in ensuring a consistently high quality of care.(para 1.10, p2)

The Scottish Law Commission's Report on Family Law had also suggested that family law should give greater recognition to the concept of parental responsibility rather than parental rights and that where parents do not live together this in itself does not absolve them of their responsibilities to play a parenting role in the lives of their children. The role to be played by the state and parents in relation to families, whatever their structure, is to be one of support and recognition of the needs of the children.

Child Protection and Child Sexual Abuse

Child protection, and in particular child sexual abuse, has occupied much of the middle ground in child care over the past decade or so, and **Scotland's Children** contains proposals which derive from concerns which had been voiced already not only in the Clyde Report but also in the earlier Cleveland Report (1987). What both reports shared was concern that the adequacy of training offered those charged with dealing with child sexual abuse cases was inadequate; that parents should have the right of early appeal against any decision to remove a child from home; that there should be a greater degree of co-operation between agencies; and that the child should not be lost sight of despite the number of professionals and others involved in cases.

As Lord Fraser argues (Asquith 1993), the situation in Orkney could not be seen as simply a 'little local difficulty' but had much wider implications in terms of the ability of child protection procedures in Scotland to deal with such cases: 'the Orkney situation provided a very stringent test of existing legislation, of professional practice and of public values. It would be complacent to play that test down'.

What also has to be remembered is that, though we should not underestimate the significance of occurrences such as those that happened in Orkney, there is a much wider picture to be considered in relation to child protection. In particular, the increase in child protection referrals to the Children's Hearings

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System poses special problems in terms of resources available to deal with what is acknowledged to be a highly labour intensive and demanding area of child care. Between 1981 and 1991, the total number of referrals to Reporters on offence grounds increased by 5% but fell as a proportion of all grounds referred from 79% to 58%; the number of non-offence referrals over the same period increased dramatically by 182% mainly due to the increases in the cases where it was alleged the child referred was lacking parental care or was the victim of an offence (Statistical Bulletin 1993). While it is not the case that the increase in non-offence grounds can be attributed solely to an increase in the number of referrals involving child sexual abuse, there can be no doubt that there has been a significant increase in such referrals with significant resource implications for the Children's Hearings system.

Children's Rights and the UN Convention on the Rights of the Child

Most of the Reports which had been published in 1992, a year of frenetic activity in the child care field in Scotland, had alluded to the need to incorporate the principles of the UN Convention on the Rights of the Child into policies and practices relating to children. Lord Clyde, for example, had formulated as his first recommendation that '...future developments in child law and especially in child protection should proceed under reference to the UN Convention on the Rights of the Child'.

The rapid social and demographic changes which children have experienced in the last decade and will continue to be exposed to have been accompanied by gradual but continuing alteration to their social and political status. In particular, the United Nations Convention on the Rights of the Child embodies a whole new philosophy which will influence current and future developments relating to children.

By ratifying the Convention, governments are committed to the full implementation of the rights set out in the Convention and which can be grouped into three broad categories:

- Protection:* children have a right to protection from cruelty, abuse, neglect and exploitation
- Participation:* children have a right to play an active role in society and to have a say in their own lives
- Provision:* children have a right to have their basic needs met

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By granting children (those under 18) universal rights, the convention at the same time places children's issues on the political agenda and also puts them in an international context. Moreover, the universality of the rights granted through the convention means that children cannot be discriminated against on grounds of age, gender, ethnicity, religious affiliation or class.

The convention is based on the philosophy that children are equals and that they have the same value as adults. But they are also at the same time vulnerable because of their age and because of the ways in which their lives are subject to the decisions and behaviour of adults. Herein lies a tension, not just for the Convention but for adults either as parents or as members of agencies responsible for children - how best to treat children as equals but at the same time recognise their vulnerability; how to give them more responsibility for determining what happens to them but also recognising and meeting the needs that they have as children.

Two Articles in the convention are crucial in this respect in ways that have significant implications for child law and child care in Scotland.

Article 3.1 states :

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Thus, the interests of others including parents and such as, for example, social work, education or health agencies are less important than those of the child.

Moreover, the child should also have a say in decisions about his or her future. Article 12.1 states that:

States' Parties shall assure to the child who is capable of forming his or her own views the right to express these views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

What these Articles reflect is the view that the protection of children has to be balanced with a concern for their growth to independence, responsibility and respect for their rights as individuals. The Convention, far from

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establishing a framework which would allow children to do simply what they wanted, allowing them a 'Brat's Charter', relates rights to responsibilities. Children are to be offered protection when needed but are also to be given greater opportunities for participation in and exercising responsibility over decisions affecting their lives as and when appropriate. The right of children to their childhood, particularly younger children, is protected against excessive demands imposed by the expectation that they should behave as adults.

One of the key issues which arise from the Convention is that of who should protect the rights of children and what role this person should have. When the UK ratified the convention, certain reservations were made in respect of Scotland and in particular in relation to article 37(d) relating to the representation of children. We will return to the whole question of the protection of children's rights later.

The main implications of the Convention is that developments in child care and child law will increasingly give children the right to be involved in decisions in all situations in which they find themselves whether they concern their parents or other adults in key agencies such as health, social work or education.

The UN Convention provides not simply a statement of the rights of children but, almost by definition, a set of minimum rules and standards against which countries can evaluate the way in which they deal with children. According to Lord Butler-Sloss, though the UK is a signatory to the Convention, we have no reason to be complacent:

We in the United Kingdom are signatories to that Convention; we would then perhaps hope, compared to Third World countries, that we do quite a good job for our kids. But we don't do anything like good enough and we ought to be, each of us, very worried about the way in which we fall below standards that our country has signed as being the minimum standards for our children. (Asquith 1993, p54)

The question that has to be asked and which underlies my comments in this article is how far **Scotland's Children** will further the rights of children and at the same time bring about meaningful change in the policies and practices we adopt towards them.

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There will be no attempt here to offer a comprehensive analysis of the White Paper. Rather, some of the key proposals contained in it will be considered against some of the trends and developments outlined above and also against some of the objectives set in the White paper itself. What follows will concentrate on three main areas - Resource Implications, Child Protection and Children's Rights in which some of the more detailed recommendations and proposals will be considered. All three areas are of course related in that the proposals for change in child protection procedures and the furtherance of children's rights have important resource implications which could well inhibit the potential for change contained in the White Paper.

'SCOTLAND'S CHILDREN': RESOURCE IMPLICATIONS

There is little doubt that **Scotland's Children** has been generally well received in that it provides the baseline for a major restructuring of child care in Scotland in line with many of the proposals of the earlier reports to which we have already referred. Nevertheless, there is also at the same time general concern that the proposals and recommendations, positive though they are, will not be realised in the absence of substantial additional funds being made available. In their respective press releases this point was made by a disparate body of agencies including the Association of Children's Reporters, the Association of Directors of Social Work, the Royal Scottish Society for Prevention of Cruelty to Children (RSSPCC) and the British Association of Social Workers (BASW). The RSSPCC press release reflects the general concern '...that a set of strategic objectives relevant to the principles of child care must be backed by the necessary political will and the provision of the required level of resources'.

And in relation to the increasing demands on social work departments, BASW asserts:

...however, the White paper does not go far enough. In particular there is no mention of additional funds for the many developments recommended despite the current difficulties of social work departments in funding all the initiatives introduced by the Government in recent years. A number of the proposals are seen to have serious resource implications which will have to be addressed.

For BASW and others it is not simply a question of lack of resources to underpin developments recommended in **Scotland's Children**. Rather this is simply a particular instance of the more general concern at the low level of

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funding to social work departments to undertake the increasing responsibilities imposed on them in recent years.

Training

One of the key recommendations made by Lord Clyde was the need to institute a three-year training course for social workers. This was in part recommended because of the difficulty of training social workers within what was seen to be the restrictive framework of the current two-year training programmes. Social workers would not be sufficiently knowledgeable or have the appropriate expertise to meet the demands of the different kinds of cases they are expected to deal with, including in particular child sexual abuse cases. Both the Cleveland and Clyde Reports had raised questions about the adequacy of the training available to social workers who often find themselves making crucial decisions about people's lives without, it is argued, a sufficient level of expertise.

For those who attended the Children in Scotland Conference in 1992 there can really be no surprise at the lack of support, or indeed resources for a three-year training programme, because Lord Fraser also stated categorically that '...until such time as resources will permit a move towards a three-year training, we should focus as best we can on our post-qualifying training in relation to child protection.' (Asquith 1993, p 46)

Nevertheless, what this does not indicate is whether the failure to move to a three-year training programme for social workers is because of a lack of resources or because the government is ideologically against an extension of the current qualifying courses and committed to post qualifying. Whatever the case, there is a number of proposals in **Scotland's Children** which have direct resource and training implications for social work departments; these include the development of national standards for the supervision of children, the use of contracts with children on supervision, the development of a wider range of options than currently available to Children's Hearings and increased collaboration between agencies for children with disabilities as well as for other groups of children experiencing care. The commitment to strengthening the powers of the children's hearings to deal with offenders is couched in highly emotive language reminiscent of the appeals for more punitive sanctions for young offenders made south of the border in the wake of the tragic murder of Jamie Boulger in Liverpool. But it actually amounts to a more positive proposal, with obvious resource implications, that panel members be better equipped through training to deal with young offenders, that hearings should be able to prescribe early review dates for hearings and

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that there should be national standards and guidelines governing the nature of supervision.

What has not been taken into consideration, though, is the possibility that, as a result of impending local authority reorganisation, the increased number of smaller authorities may have greater resource problems than the politically and geographically larger units. (I am grateful to John Smith for our discussions on this point.) The irony is that, as was pointed out in the Clyde Report, part of the difficulties encountered in Orkney was attributed to the small size of the authority and the difficulty of providing appropriate levels of resources.

Nevertheless the commitment of the government to implement some of the recommendations of the Skinner Report on Residential Child Care is a welcome development given the general lack of training of workers in what has been recognised as the Cinderella area of social work and child care. Funds have been made available to improve the quality of training available to residential child care workers especially through the funding of a Residential Child Care and Consultancy Centre.

Prevention

A cornerstone of the Kilbrandon welfare philosophy was the commitment to a preventive strategy though the lack of resources for the implementation of truly preventive measures has been a characteristic feature of developments in child care since the early sixties, and indeed even before then. There is little prospect that the situation will alter substantially through the White Paper. Again, there has been general agreement that the proposal to extend the general welfare duty of local authorities is a positive move but that in the absence of additional resources the development and extension preventive measures can only be very limited.

CHILD PROTECTION

Scotland's Children makes a number of significant proposals in relation to child protection, many of which derive directly from the 194 recommendations of the Clyde Report. The relationship between the best interests of children, the rights of parents to decide on how to bring up their children, and the role of the state in intervening in family life has been a notoriously difficult one to formulate with any semblance of clear guidelines. Child protection, and in particular child sexual abuse, crystallises neatly the

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difficulties encountered by social workers in judging when to remove children from their homes in their best interests and by the law in establishing an early opportunity for parents to challenge such judgements. As the Orkney case clearly illustrated, the decision to remove children from their home in their best interests is the point at which the rights of children, the rights of their parents and the rights of state agencies to intervene clash.

Possibly reflecting the quality of the report produced by Lord Clyde and the public nature of the debates surrounding his recommendations (in sharp contrast to the Kearney Report on child care practices in Fife), the proposals made in relation to child protection have been most favourably received. Two proposals in particular have received favourable comment.

The first relates to the proposal for an Exclusion Order whereby the suspected child sexual abuser, not the child, would be required to leave the home. Though there are clearly implications in terms of the civil rights of the suspected abuser, the balance of support is in favour of the development of exclusion orders in the interests of the child. Whereas exclusion is regarded as an acceptable proposition, some including BASW have expressed regret at the lack of any meaningful support for work with abusers. Exclusion in itself can never be enough as there will always be the question of the appropriate policy and strategy to adopt towards the abuser. The fact that there is little if any mention of proposed work with abusers may well reflect the fact that this area of work has as yet little public acceptance.

The second relates to the emergency protection of children from harm, and the White paper draws on the Child Care Law Review, the Kearney Report and the Clyde Report. In recognition of some of the difficulties surrounding the decision to remove a child from home discussed above, the emergency procedures proposed in **Scotland's Children** are based on four main considerations:

- the child's right to protection from harm;
- the parent's responsibilities for the child and the rights necessary for the exercise of those responsibilities;
- full justification and legal authority for removal and subsequent care of the child;

and

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- the opportunity for the child and parents to mount full legal challenge to removal.

In accepting Lord Clyde's recommendations and based on the above considerations, the White Paper proposes the introduction of a new Child Protection Order governed by stringent criteria. Only a Sheriff should ideally be able to grant a Child Protection Order (CPO) but, in recognition of the difficulty of finding sheriffs at short notice, Justices of the Peace may authorise removal, though their authorisation has to be confirmed or otherwise by a Sheriff within 24 hours. The new arrangements are also supported by the availability to the child and the parents of a direct appeal to the Sheriff against the CPO; and by early consideration by a children's hearing of the welfare of the child. In addition, the child and his or her parents can apply at any time for recall or variation of the CPO, and the Reporter would be empowered to discharge the CPO where he or she considered the criteria for its application no longer applied. Similarly, in recognition of the need to protect the rights and interests of the child, the Sheriff may appoint a safeguarder.

We will return to the question of protecting the rights of the child later but at this point what has to be emphasised is general acceptance of the proposals in the White Paper in regard to Child Protection, though, as those who have read **Scotland's Children** will testify, the procedures for dealing with child protection cases is a highly complicated and intricate affair. (A cursory look at the diagram on page 29 of the report outlining proposed emergency protection procedures will certainly confirm that.)

Nevertheless, the adoption of rigorous procedures, and subjecting them to judicial scrutiny, will not in itself ensure that professional judgement about when or whether sexual abuse has taken place or whether a child is exposed to harm can be exercised with any expectation of guaranteed certainty. The judgement that a child has been abused and the decision to remove him or her from home is a high risk business and will always remain so. Evidence from the United States (Cash 1993) on the large number of wrongful or unsubstantiated claims of sexual abuse confirms this, and the Orkney Affair itself indicates the difficulty of dealing with such cases.

What is also apparent from both the content of the Clyde Report and the White Paper is that there is a movement to constrain the discretion and professional judgement associated with welfare decisions through the establishment of clear rules, guidelines and judicially supervised procedures. As King points out (1993), legalism or the adoption of rule-bound procedures

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in cases involving emergency protection may merely disguise the fundamental paradox that our policies and practices in relation to child sexual abuse are based on unclear and vague philosophies and definitions.

CHILDREN'S RIGHTS

The White Paper has clearly accepted the recommendation in a number of the reports in 1992 that the principles of the UN Convention on the Rights of the Child be embodied in child care practice and policy. No fewer than eight principles which are offered as the basis for future development are derived from the main Articles of the UN Convention. These include the treatment of a child as an individual; the right of children to express their views about any issues or decisions affecting or worrying them; the need to preserve the child's family home and contacts; the commitment that parents should normally be responsible for the upbringing and care of their children; the right of children to be protected from all forms of abuse, neglect and exploitation; the right of every child to a positive sense of identity; the need for formally stated grounds as justification for intervention in the life of a child or family; and the need for collaboration between all relevant agencies.

The White Paper clearly then accepts the spirit and philosophy of the UN Convention and, in that respect alone, it is a welcome document. Nevertheless, in terms of just how far it will promote and enhance the rights of children in practice there are several questions which have to be addressed. These are not peculiar to **Scotland's Children** but have to be asked of any policy development designed to further the rights of children. What we have to ask is whether the proposals will enhance the rights of children; what rights are being furthered; and who, if anyone, has or should have the responsibility for protecting such rights as are granted to children.

In rather simplistic terms rights imply duties. That is, if children are to be granted rights, whatever form they take, the implication is that duties are imposed on others - on adults, on local authority agencies and on our major social institutions - to meet those rights. What has been recognised in Scotland by most of the agencies commenting on the day of publication as one of the failings of the White Paper is that, in the absence of adequate financial and other resources, a statement of principles derived from the UN Convention may operate only at the level of rhetoric. Article 27 of the Convention imposes on states clear duties to provide the means whereby children's physical and social development can be best realised. And, as we have seen, in the White Paper itself there is a clear commitment - again in

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principle - to the provision of a wider range of measures available to the Children's Hearings and to an extension of the welfare role of local authorities generally.

In the current climate of restrictions on local authority budgets there has to be some doubt as to whether the principles on which **Scotland's Children** proposes that child care be based can be realised in practice. It has to be recognised that establishing a framework of rights for children costs money, and that where a statement of principles is not matched by adequate resourcing, the commitment to a realistic implementation of a programme of rights has to be seriously questioned.

What is surprising, though, about the White Paper is not so much what it contains but the lack of any reference to the debates in Scotland, and elsewhere for that matter, on the appointment of a child advocate or even on the establishment of a Child Welfare Commission as had been mooted for consideration by the Child Care Law Review Group.

The Clyde Report had recognised that, despite the number of individuals concerned with the children involved in what has become known as the Orkney Affair, sight had somehow been lost of the children, and that there was a need for someone to be appointed to both protect the interests of children (in accordance with Article 3 of the UN Convention) and to represent their views and wishes (in accordance with Article 12 of the Convention). Just who that someone should be has been a matter of considerable discussion in Scotland.

Suggestions have included the appointment of a young person's advocate, a child representative, a child advocate and the extension of the work of children's rights officers. The Clyde Report identified the 'safeguarder' as the most appropriate person to undertake the responsibility. Safeguarders were introduced in 1985 under Section 34A of the 1968 Social Work (Scotland) Act 'to safeguard the interests of cases before children's hearings or the Sheriff court where there may be conflict between the interests of a child and those of his or her parents'.

Under the Clyde proposals the role of the safeguarder would be enhanced to include representing the child and being present when the child is interviewed. What Clyde had also suggested was that consideration may have to be given in the future to the appointment of a child advocate. Now the difficulty here is that it is by no means clear just what the role of such a person would be nor what training he or she would be expected to have. The

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difficulty is compounded by the fact that because of the differences in child care legislation between Scotland and England, certain reservations were made in respect of Scotland when the UK ratified the UN Convention on the Rights of the Child in December 1991. In particular, because there is no legal representation at a children's hearing, a reservation was made in respect of Article 37(d) which states that

Every child deprived of his or her liberty shall have the right to prompt legal and other appropriate assistance as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and a prompt decision on any such action.

What the debates in Scotland have focused on are whether there should or shouldn't be a child advocate appointed to protect the rights and the interests of children, and to represent their views and wishes; whether the child advocate should be legally qualified or not; and whether having a child advocate, particularly if legally qualified, would in some way interfere with the integrity of the Children's Hearings system. The Clyde Report (para 17.17) does seem to suggest that a child advocate should be legally qualified and that would certainly fit with the drive towards legalism and the commitment to rule-governed procedures and national standards.

The White Paper does assert that more emphasis should be given to considering the appointment of safeguarders, but makes no direct statement about the extension of their role in the interest of protecting the rights of children in care nor about child advocacy. The fact is, though, that safeguarders are appointed in only a very few cases and have a more limited role than advocates of children's rights would prefer. Only in relation to residential care, following the philosophy of the Skinner Report and the work of *Who Cares?* Scotland, is specific reference made to the potential for protecting children's rights through the provision of local charters. What this reflects is not so much a new commitment but the fact that residential care is much further ahead in terms of the promotion of children's rights than other areas of child care.

The debate on child advocacy and representation has still to be played out, and there is some disappointment that **Scotland's Children** makes little contribution to it and has effectively ignored the discussions which have already been held. The proposal that safeguarders be appointed in certain cases leaves open the questions: in which cases are they to be appointed?;

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what is their role to be?; and why should they not be appointed in all cases given the concern with the rights of children generally?

For the same reason, the absence of any reference to the merits or otherwise of a Child Welfare Commission or a Child's Ombudsperson has received critical comment from a number of sources north of the border. Granting children rights is an important element in the reappraisal of their social, political and economic status generally, but where there is no independent agency concerned exclusively with policies and issues relating to and important to children themselves, the significance of the rights granted to them is surely diminished. A lead could have been taken from other European countries such as Norway or Germany or even from the Children's Family Charter, produced by Lothian Region, and which is supported by the post of Adjudicator, an individual with responsibilities and duties not unlike those of an Ombudsperson.

'SCOTLAND'S CHILDREN': PRINCIPLES INTO PRACTICE

There can be no doubt that **Scotland's Children** seeks to promote the rights of children, and the commitment in principle to the UN Convention on the Rights of the Child will have significant implications for the future direction of child care policy and law in Scotland. In particular, the recognition of the importance of listening to children as a central feature of the White Paper is to be welcomed. It does appear, though, that greater emphasis is given to the right of children to express their views and wishes (a participatory right) than to the right of children to have their interests treated as a primary consideration (a protection right). Whereas both are important rights for children, the White Paper does keep clear of the rather muddy area of attempting a definition of children's interests.

Many of the proposals relating to child protection and residential care are also to be welcomed. In that respect the White Paper has to be viewed as a positive document and an element in the drive towards integrated legislation for child-care policy and practice and one which promotes the rights of children. This is the first document of its kind in Scotland to contain a coherent set of principles on children's rights. But in the absence both of sufficient resources to finance and support developments in child-care policy, and of an independent individual or agency to further and protect the rights of children, the principles may not be realised in practice.

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This is also the first major review of child care in Scotland for 25 years, and has great potential to improve the situation and experiences of many of our children. We shouldn't, however, be too surprised if the wherewithal or political will is not provided to carry through its main proposals. The history of many reports and white papers in the child welfare and child care field is one in which the rhetoric is not matched by the necessary resources. The hope is that in a few years time we will be unable to tolerate the claim made by Lord Butler-Sloss and referred to above that we fall well below the minimum standards set for our children by the UN Convention on the Rights of the Child. We will only be able to do that by getting our Act together.

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