



Briefing Paper: Incorporation in Context

Over the past decade, there have been consistent calls from civil society, academia and importantly children and young people to incorporate the UNCRC into Scots Law. This has been accompanied by significant developments throughout the UK which have further propelled debate, yet full incorporation of the UNCRC remains to be achieved.

UK Context

In their 2008 Concluding Observations, the United Nations Committee on the Rights of the Child reiterated their consistent support for incorporation, and recommended that the UK “take measures to bring its legislation into line with the Convention”.¹

In 2009, Baroness Walmsley introduced the Children's Rights Bill² into the House of Lords. The Bill was drafted by the Rights of the Child UK (ROCK) Coalition, and sought to incorporate the UNCRC and its Optional Protocols into UK law. The May 2010 General Election meant that the Bill could not progress beyond the first reading, but it did raise the profile of child rights and facilitate conversations on how best to protect them.

The following year in January 2011, the Welsh Measure³ was passed at the National Assembly for Wales. It placed a duty on all Welsh Ministers to have due regard to the substantive rights and obligations within the UNCRC and its Optional Protocols.

Scottish Context

Following these key developments in the UK, in 2011 the Scottish Government began consulting on the Rights of Children and Young People Bill, which aimed to establish a duty upon Scottish Ministers akin to the Welsh Measure to have due regard to the rights and obligations in the UNCRC and its Optional Protocols.

¹ Committee on the Rights of the Child, 3 October 2008. Concluding Observations on the UK and Northern Ireland. CRC/C/GBR/CO/4. para.10—11

² <https://publications.parliament.uk/pa/ld200910/ldbills/008/10008.i-ii.html>

³ Rights of Children and Young Persons (Wales) Measure 2011. Available at <http://www.legislation.gov.uk/mwa/2011/2/contents>

Despite there being no questions on incorporation when consulting on this Bill, 25% of public bodies and 40% of NGOs voiced their support for full incorporation⁴.

Importantly, calls for incorporation came from children and young people, too. Children aged 9-13 who took part in the Children's Parliament consultation sessions⁵ demonstrated a clear understanding of the key issues, and expressed concerns that the due regard model could mean that "*Children's rights might be forgotten about*". They also expressed that they felt rights and duties were important for public services including police, schools and social work. There was a clear call from children to "*enforce children's rights instead of just letting it be optional to people*".

However, the duty was subsequently diluted to the current duty on Ministers to keep the UNCRC 'under consideration', to raise 'awareness and understanding' of its principles and provisions, 'take account' of views of children and submit a report to the Scottish Parliament every three years on the changes that have been made to UNCRC implementation over the period. It also contains a duty on public bodies to report on UNCRC implementation.

The Bill became the newly named Children and Young People (Scotland) Act 2014 and while it fell short of incorporation, it provided a focal point for children's rights discourse.

Consultation on Incorporation

Discussions on incorporation have been ongoing, allowing for nuanced debate on what this could look like in Scotland. Following the 2016 Concluding Observations recommendation to bring all legislation in line with the CRC, calls for incorporation continued from civil society and from children and young people in the subsequent State of Children's Rights report⁶.

The Scottish Youth Parliament's 2017 campaign 'Right Here, Right Now' was initiated after more than 76% of the 700,000 young people who responded to the

⁴ See <https://www.togetherscotland.org.uk/pdfs/Overview%20of%20RCYP%20responses.pdf>

⁵ <https://www.gov.scot/Resource/0038/00386681.pdf>

⁶ <https://www.togetherscotland.org.uk/pdfs/TogetherReport2016.pdf>

2016-21 manifesto agreed that the UNCRC ‘should be fully incorporated into Scots law’⁷.

A series of Scottish University Insight Institute (SUII) seminars led by Together (Scottish Alliance for Children’s Rights) in 2017⁸ brought together over 300 people to explore CRC incorporation and implementation in Scotland. This included Children and Young People’s Commissioner for Scotland, Minister for Childcare and Early Years, members of youth councils, government officials, academia, civil society and the public sector.

These calls for incorporation were continued in 2017 for the Rights of the Child UK (ROCK) conference⁹, which was held in Scotland and gathered delegates from across the UK. Juliet Harris, Director of Together is currently the Chair of ROCK, a position held for more than 2 years following the strength of support for incorporation in Scotland and recognition of the potential for meaningful change.

Children and young people have continued to advocate at the highest levels of government for their rights to be recognised through incorporation including at both the first¹⁰ and second¹¹ annual Cabinet Meeting with Children and Young People.

Scottish Government Commitments

The commitment from the Scottish Government to exploring incorporation has been similarly consistent. The First Minister, when speaking in December 2015 at the SNAP Human Rights Innovation Forum welcomed the chance to “*explore implementing and incorporating into Scots law some of the key international human rights treaties – for example...the Convention on the Rights of the Child*”¹².

This has been repeated in the most recent Programme for Government announcements, which set out the Government’s workplan and priorities for the year

⁷ https://www.syp.org.uk/right_here_right_now

⁸ <https://www.togetherscotland.org.uk/resources-and-networks/uncrc-in-scotland-seminar-series/>

⁹ http://www.rights-of-the-child.org.uk/pdfs/ROCK_briefing_10.11.17_FINAL.pdf

¹⁰ <https://www.gov.scot/Resource/0053/00531243.pdf>

¹¹ <https://beta.gov.scot/publications/second-annual-meeting-of-ministers-with-children-and-young-people/>

¹² <https://news.gov.scot/speeches-and-briefings/snap-human-rights-innovation-forum>

ahead. In 2017, the Scottish Government committed to undertake “a *comprehensive audit on the most effective and practical way to further embed the principles of the UN Convention on the Rights of the Child into policy and legislation, including the option of full incorporation into domestic law*”.¹³

This audit is currently underway, and the Scottish Government’s pledge has since evolved to “*enshrining children’s rights by incorporating the principles of the UN Convention on the Rights of the Child into law*”.¹⁴

The Scottish Government has since clarified that this commitment is about incorporating the full intent of every article, and not just the General Principles.

Recent action has been taken by the Scottish Government to improve further implementation measures, such as through a recent consultation on a Child Rights Action Plan¹⁵. The Plan focusses on measures such as a Participation Strategy, Awareness Programme, Child Rights Impact Assessments and a review of existing legislation. These discussions give a solid base on which incorporation can sit to ensure legislative measures have impact.

Why Now?

The debate in Scotland is mature, and there has been extensive research and consultation carried out over the last decade. We believe that proposing a draft Bill which enshrines the best model of incorporation for Scotland, drawing on this group’s expertise, will provide both the catalyst and vehicle for incorporation in Scotland. There is currently a political majority in the Scottish Parliament supporting incorporation of the UNCRC, and the uncertainties arising from Brexit means that there is a need for urgency to ensure that a Bill is passed in this Parliamentary session to secure rights protections for children in Scotland as set out in international law.

¹³ A Nation with Ambition: The Government’s Programme for Scotland 2017-18, page 15
<https://www.gov.scot/Resource/0052/00524214.pdf>

¹⁴ Delivering for Today, Investing for Tomorrow The Government’s Programme for Scotland 2018-19, page 5
Available at <https://beta.gov.scot/publications/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/>

¹⁵ <https://consult.gov.scot/children-and-families/childrens-rights/>