



United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill

Joint briefing on the Stage 1 debate, 19th January 2021

We warmly welcome the introduction of the [UNCRC \(Incorporation\) \(Scotland\) Bill](#). This historic Bill marks a significant step towards ensuring children's human rights are respected, protected and fulfilled across Scotland. We welcome the Equalities and Human Rights Committee's (EHRC) [Stage 1 report](#) and commend the approach taken to ensure children and young people were proactively included in the scrutiny of the Bill. As currently drafted, the Bill provides a strong foundation for placing children's human rights at the heart of decision making and enabling them to assert their rights.

As such, we encourage MSPs to support the general principles of the Bill in the Stage 1 debate this Tuesday.

In our [written](#) and [oral](#) evidence to the Equalities and Human Rights Committee, we highlighted a number of areas in which the Bill should be strengthened. Many of these have been highlighted in the Committee's [Stage 1 report](#) and in the subsequent response from the Deputy First Minister submitted on 15th January 2021. The following briefing provides further detail on areas where we would welcome amendments to strengthen the bill at Stage 2:

Ensuring commencement within six months of Royal Assent:

A commencement date must be included on the face of the Bill (section 40) that is no later than six months after Royal Assent. This is essential to mitigate against the disproportionate impact that both COVID-19 and Brexit are having on children and young people, and to ensure their human rights are at the heart of all we do as Scotland moves towards recovery.

We welcome EHRC's recommendation that commencement within six months of Royal Assent should be on the face of the Bill. We urge Scottish Government to take such an amendment forward at Stage 2.

Providing consistency in the protection of children's human rights across services:

The definition of "public authority" (section 6) must be amended to ensure certainty that all those providing services of a public nature are included within the duty. This will ensure children have equal protection of their rights across services, including private housing providers, childcare, private foster care and public schools.

In response to EHRC's recommendation, we welcome Scottish Government's commitment to bring forward an amendment to ensure the definition of public authority includes all those providing services of a public nature.

Promoting international human rights guidance and norms across decision-making:

The interpretation provisions throughout the Bill (sections 4, 12(2) and 13(2)) must be strengthened to ensure the rich and valuable guidance provided by the UN Treaty Bodies and comparative law is taken into account insofar as relevant.

In response to EHRC's recommendations, we welcome Scottish Government's commitment to bring forward an amendment to encourage the use of sources which emanate from the UNCRC to support the interpretation of the UNCRC. We urge the Committee to go further and include jurisprudence from UN Treaty Bodies and comparative law.

Supporting children's access to justice and promoting the rights of children with protected characteristics or in situations of vulnerability:

The Children's Rights Scheme (sections 11-13) and Public Body Reporting duty (sections 15-16) must be strengthened to support action and scrutiny of steps taken to improve access to justice and independent advocacy, human rights education and training, and to progress the rights of children in vulnerable situations.

In response to EHRC's recommendations, we welcome Scottish Government's commitment to strengthen the Children's Rights Scheme but believe Scottish Government could go further to ensure the desired 'proactive culture' to children's rights.

Supporting children's participation and the preparation of child-friendly versions of reports

The Bill must be strengthened to support children's participation in decision-making and the preparation of child-friendly reports – particularly regarding the reporting duty on listed authorities (section 15) and ministerial action following court declarators (section 23).

In response to EHRC's recommendations, we welcome Scottish Government's commitment to bring forward an amendment requiring child-friendly reports under section 23 but push the Committee to go further in relation to section 15 to ensure all aspects of the Bill encourage child-friendly reporting.

Supporting organisations





Supporting individuals

Professor Kay Tisdall, *Professor of Childhood Policy, Childhood and Youth Studies Research Group, University of Edinburgh.*

Dr Fiona Morrison, *Lecturer, Centre for Child Wellbeing and Protection, University of Stirling.*

Máire McCormack, *Honorary Fellow, Edinburgh University.*

Supporting Information

Commencement (section 40)

It is crucial that the commencement date is placed on the face of the Bill. This is currently absent, leaving the matter to Scottish Government's discretion. We support EHRiC's conclusion that no significant additional preparation time is needed before commencement as public authorities should already have many relevant mechanisms in place. We welcome Scottish Government's assertion that the Bill should be commenced as quickly as possible. COVID-19 and the impact of the UK leaving the European Union have exacerbated the immediate and pressing need to ensure legal protections for children's human rights. As such, a firm commitment to rapid commencement should be included through a commencement date on the face of the Bill.

We support EHRiC's recommendation that the commencement date is placed on the face of the Bill. This should be no later than six months following Royal Assent.

Interpretation (sections 4, 12(2), 13(2) and 14)

Courts (section 4)

The UNCRC requirements should be interpreted in light of the rich and valuable guidance provided through General Comments, Concluding Observations, decisions made under the third Optional Protocol, reports from Days of General Discussion in addition to comparative law.

The guidance provided by other UN Treaty Bodies – including on the rights of persons with disabilities, the elimination of discrimination against women and the elimination of racial discrimination - can help to clarify the content of UNCRC rights and support an understanding of how the CRC has been developed and interpreted over time. Whilst not being determinative, these sources can help to inform rights-based decision-making and are of particular importance in the interpretation of economic and social rights. Including wider UN Treaty Body jurisprudence within the Bill's interpretation provisions would ensure recognition of the interrelated and indivisible nature of human rights, encourage greater alignment with broader human rights treaties and help courts prepare for the incorporation of these - in line with the work of the National Taskforce for Human Rights Leadership.

We welcome Scottish Government's commitment to bring forward an amendment regarding sources which emanate from the UNCRC. This, however, falls short of the EHRiC recommendation of including sources from across all UN Treaty Bodies.

We support EHRiC's recommendation that the interpretation clause is widened to include a range of other UN materials, including treaty body decisions; other relevant optional protocols (including opinions under the third protocol); general comments, concluding observations, and recommendations (pertaining to the UNCRC and other relevant international treaties); comparative law; and reports resulting from Days of General Discussion.

Children's Rights Scheme, reporting duties on listed authorities and CRWIA (sections 12(2), 13(2) and 14)

It is crucial that children's rights are interpreted consistently across the entirety of the Bill and in its implementation.

We would support an amendment that ensures that the additional sources listed above are taken into account in the context of the Children's Rights Scheme, reporting duties on listed authorities and child rights and wellbeing impact assessments (CRWIA).

Children's participation and child-friendly versions of reports

While the Bill makes welcome changes to support children's participation in decision making, there are several areas where this could be further strengthened:

Listed authority reporting

We note that certain provisions which apply in relation to the Children's Rights Scheme do not extend to the reporting duty on listed authorities. **We would support an amendment to extend these provisions to the reporting duty - namely the requirement to consult with children when preparing a report and to produce a child-friendly version of reports.** These changes would support children's participation rights and ensure coherence with other sections of the Bill.

Ministerial action following declarators

There is currently no duty on Scottish Ministers to produce child-friendly versions of statements on the steps they are taking to address court declarators. **We welcome Scottish Government's commitment to bring forward an amendment requiring Scottish Ministers to produce child-friendly versions of these statements.** This would echo earlier provisions requiring Scottish Ministers to produce a child-friendly version of annual reports on the Children's Rights Scheme.

Definition of public authority (section 6)

Private and third sector bodies play an increasing role in the delivery of children's services. It is essential that all children across Scotland have equal treatment and redress, regardless of whether the service they receive is provided by the local authority or 'contracted out'. We agree with EHRiC's view that the definition of a public authority, as set out in Bill, risks being interpreted by the courts in a way that would be contrary to the spirit and intention of this Bill. As such, we welcome Scottish Government's commitment to bring forward an appropriate amendment to strengthen the protection provided by the Bill in this regard.

We welcome the Scottish Government commitment to put forward an amendment clarifying the definition of public authority.

Challenging breaches of children's rights (sections 7-8)

Provisions on standing and remedy must be clear and achieve the Bill's policy intention of enabling children to assert their rights by removing barriers to justice.

Standing

We welcome that the Bill does not include the restrictive 'victim test' but note that the rules on standing are not clear from the face of the Bill.

We support EHRiC's recommendation that the "sufficient interest" test be placed on the face of the Bill to improve clarity around which individuals and organisations can raise court proceedings. We note Scottish Government's rationale as to why this would not be necessary on the face of the Bill.

Remedies

The Bill provides that where a public authority has acted unlawfully, the court can grant an order that it considers "just and appropriate". While this is positive, the meaning of "just and appropriate" is not clear.

We welcome Scottish Government's commitment to bring forward amendments that support EHRiC's recommendation that a right to an "effective remedy" is placed on the face of the Bill, together with a definition of what constitutes an effective remedy. We welcome Scottish Government's commitment to bring forward an amendment that supports the EHRiC recommendation to ensure that the child is asked their views on what would constitute an effective remedy in their case. We urge that this amendment includes a complementary duty to take the child's views into account.

Children's Rights Scheme (sections 11-13)

Contents of the scheme

To be effective, the Children's Rights Scheme must ensure systematic, robust and consistent consideration of children's rights across all decisions. As currently drafted, the Bill does not set requirements for the contents of the Scheme, instead suggesting what it "may" include.

We welcome Scottish Government's support for the EHRiC's recommendation to replace "may" with "must" in section 11(3) to ensure consistent consideration of children's rights.

The list of issues to be included in the Children's Rights Scheme should be broadened to include scrutiny of the steps taken by Scottish Government to ensure children's access to justice and embed proactive measures to progress children's rights.

We welcome Scottish Government's support for an amendment to include child-friendly complaints mechanisms and ensuring effective access to justice for children and young people. We also call for this to be expanded to include access to independent advocacy; human rights education and training; data collection; steps taken to respect, protect and fulfil the rights of children with protected characteristics or in situations of vulnerability; and training for Ministers.

We note EHRiC made similar recommendations in its Stage 1 report. We suggest that the wording "children with protected characteristics or in situations of vulnerability" is used in preference to EHRiC's wording "protected characteristics and vulnerable groups". The former more closely reflects wording in [General Comment 14](#) and moves away from the term "vulnerable groups" which is viewed as disempowering.

Child Rights and Wellbeing Impact Assessment (section 14)

We welcome the duty on Scottish Government to prepare child rights and wellbeing impact assessments (CRWIA) for new legislation and certain decisions but note this duty could be strengthened. There are currently two levels of ministerial discretion – determining what constitutes a "decision of a strategic nature" and whether conducting a CRWIA is "appropriate". A Welsh Parliamentary inquiry found that a weak CRWIA duty prevented them from becoming fully embedded in decision-making and recommended that Welsh Government should conduct CRIA for *all* decisions "unless there is a clear reason for not undertaking one".

We support EHRiC's recommendation to remove ministerial discretion.

Listed authority reporting (sections 15-16)

We welcome the duty on listed authorities to report every three years on steps taken to ensure compliance with the UNCRC requirements. **We welcome Scottish Government's confirmation that an amendment will be brought forward to support EHRiC's recommendation that this provision is strengthened to include a duty to report on planned future actions.** We agree with EHRiC's conclusion that this approach "would support the desired culture shift anticipated by the Bill".

The Bill would be strengthened further by specifying topics upon which listed authorities must report. **This should include steps taken and planned to: ensure children's participation; raise awareness and promote rights; consider rights in budgetary processes; contribute to the Community Empowerment Act; prepare CRWIA; ensure processes for child friendly complaints; access to independent advocacy; human rights education and training; secure the rights of children with protected characteristics or in situations of vulnerability; and data collection.** Specifying these issues will support listed authorities in taking a comprehensive approach to reporting and planning future steps.

We note that the Scottish Courts and Tribunals Service and Scottish Prison Service are not included in the list of authorities required to report. **We call on MSPs to support the addition of the Scottish Courts and Tribunals Service and Scottish Prison Service as listed authorities.**

About Together (Scottish Alliance for Children's Rights)

Together (Scottish Alliance for Children's Rights) is an alliance that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) and other international human rights treaties across Scotland. We have over 450 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs and interested professionals. Our activities include collating an annual State of Children's Rights report to monitor progress in implementing the UNCRC in Scotland. The views expressed in this submission are based on wide consultation with our members but may not necessarily reflect the specific views of every one of our member organisations.

18th January 2021

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