



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

Joint briefing on the Stage 3 debate, 16th March 2021

The [UNCRC \(Incorporation\) \(Scotland\) Bill](#) follows over a decade of campaigning by children, young people and wider civil society. It marks a significant step towards ensuring children's human rights are respected, protected and fulfilled across Scotland.

This briefing addresses final amendments ahead of the Stage 3 debate on 16th March 2021. It sets out amendments which will strengthen the Bill further and help it "deliver a revolution in children's rights".

We encourage MSPs to pass the Bill at Stage 3.

Regulations: power to modify schedule (section 3)

We support amendments 1, 2, 36.

The Schedule sets out the "UNCRC requirements". These are the substantive provisions of the UNCRC, first and second Optional Protocols, with certain [redactions](#) to ensure legislative competence.

Amendment 36 strengthens the existing provision by clarifying Scottish Ministers must consult the Children and Young People's Commissioner Scotland, the Scottish Human Rights Commission and other stakeholders as appropriate when considering whether to modify the schedule. We support this amendment as it will ensure greater scrutiny of proposed changes.

Interpretation of the UNCRC requirements (section 4)

We support amendments 3, 4, 5.

The UNCRC requirements should be interpreted in light of the rich and valuable guidance emanating from the UNCRC (including general comments, concluding observations and reports from Days of General Discussion), sources arising from broader UN treaty bodies, the Council of Europe, comparative law and others.

We welcomed amendments to this effect at Stage 2, noting the addition of these sources would help clarify the content of UNCRC rights, support an understanding of how rights have been developed and interpreted over time, and would help Scotland prepare for incorporation of broader human rights treaties through the work of the National Taskforce for Human Rights Leadership.

We acknowledge there are some concerns about how these provisions are now worded. We accept Scottish Ministers' position that specifying courts "must" consider certain sources could place too high a burden on courts and cause delays. We further accept that the current wording may raise issues of legislative competence. As such, we support amendment 3 which replaces "must" with "may".

We appreciate the efforts that have been taken to ensure the interpretative provisions remain as broad as possible. This includes amendment 5 which removes the listing approach to wider international sources, and amendment 4 which implements a broader approach in its place. This has the dual benefit of avoiding any perceived "ranking" of listed and non-listed sources, as well as accommodating new sources which may arise. The amendment will ensure that broader international sources which are of particular importance to children inform how the UNCRC requirements are interpreted, such as the UN Convention on the Rights of Persons with Disabilities, UN Convention on the Elimination of All Forms of Discrimination Against Women, Council of Europe Guidelines on Child Friendly Justice and Council of Europe Guidelines on Children Affected by Imprisonment.

Definition of Public Authority (section 6)

We support amendments 6, 7, 8, 9.

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, ‘contracted out’ or accessed privately.

At Stage 2, we welcomed the amendment that ‘functions of a public nature’ include functions carried out ‘under a contract or other arrangement with a public authority’. However, our members remain concerned that there is a risk of creating a “two-tier” system as certain entities which provide key services for children are neither contracted nor funded by the local authority/Scottish Government. This includes private/independent schools, private care homes, private healthcare and private transport providers.

We support amendment 9 which seeks to address this issue by specifying that public funding, although indicative, is not determinative. This amendment will ensure that services provided for children and families that are not funded by Scottish Government or public authorities are included within the scope of the Bill. For example, the Children 1st-led Barnahus pilot which is currently funded by People’s Postcode Lottery and will uphold children’s rights to care, protection and recovery will be included within the scope of this amendment.

We welcome supporting amendments to the Children’s Rights Scheme (see below), which will require Scottish Government to report on the steps it is taking to protect children’s rights in the context of private business. These amendments will help ensure children’s rights are protected, respected and fulfilled across all settings – public or private. We call on Scottish Government to commit to considering the issue further through the work of the National Taskforce for Human Rights Leadership.

Regulations: remedies for unlawful acts (section 7)

We support amendment 10, 11, 12, 13, and 37.

At Stage 2, we welcomed a range of amendments that will strengthen children’s access to justice and right to an effective remedy. This included a successful amendment that Scottish Ministers “must”, where necessary, specify by way of regulation additional remedies courts or tribunals may grant.

We support amendment 37 which further strengthens this provision by clarifying Scottish Ministers must consult the Children and Young People’s Commissioner Scotland, the Scottish Human Rights Commission and other stakeholders as appropriate before laying draft regulations. This amendment supports greater scrutiny of any proposed changes.

Guidance for Public Authorities

We support amendment 38.

Children and young people are clear that incorporating the UNCRC into law is a first step; it is crucial that adults know about children’s human rights and know how to implement the new law in practice. We support amendment 38 which requires Scottish Ministers to prepare statutory guidance to support public authorities in fulfilling their duties under Part 2 of the Bill. This will support public authorities in understanding their duties, promoting child rights-respecting practice and securing better or further effect to children’s rights. Importantly, amendment 38 requires Scottish Ministers to consult with children and other stakeholders in the preparation of the guidance. Together and our members are keen to support this work through their experience and expertise.

Children’s Rights Scheme

Contents of Children’s Rights Scheme (section 11)

We support amendments 14, 39, 15, 40, 41.

We welcome amendments which insert additional requirements into the Children’s Rights Scheme. These will help ensure the Scheme’s effectiveness by encouraging systematic, robust and consistent consideration of children’s rights across all decisions and reporting.

The amendments require Scottish Government to report on steps being taken across additional factors such as: access to children’s advocacy services (amendment 14); children’s rights in relation to private entities (amendment 15); steps to identify and address any situation where a child’s rights are (or are at significant risk of) not being fulfilled (amendment 39); and steps to ensure inclusive ways of communicating (amendment 40).

Children and young people have frequently discussed the importance of receiving help, support and advocacy to enable them to assert their rights. They have particularly mentioned the importance of children’s advocacy workers and how crucial it is to have a supportive adult who can help them. Amendment 14 seeks to ensure this.

Amendment 39 is about making sure we understand and recognise the rights issues facing children and young people from specific population groups. This will include children and young people with learning disabilities, care experienced children and young people, children with experience of (or who are at risk of experiencing) domestic abuse and all other forms of abuse and/or neglect, children affected by parental imprisonment and other groups. It is crucial that the Children’s Rights Scheme reflects these children’s experiences and the considerable barriers they face in accessing their human rights. Amendment 39 will commit Ministers to identify these types of issues and outline how they will be addressed. To be effective, amendments to the Children’s Rights Scheme must be supported by thorough monitoring and assessment against child rights-based indicators.

Interpretation

We support amendments 16, 17, 18, 19, 23 and 24.

Amendments 16, 17, 18, 19, 23 and 24 align the interpretative provisions of the Children’s Rights Scheme with what is proposed in relation to section 4 (see above). These amendments will support consistent interpretation of the UNCRC requirements across the Bill and demonstrate Scottish Government’s recognition of the importance of wider sources of interpretation and their role in ensuring the Bill “keeps pace with” and exceeds international standards.

Reviewing and reporting on the Scheme (section 13)

We support amendments 20, 21, 22.

At Stage 2, we welcomed a Scottish Government’s amendment to create a proactive culture of children’s rights through the Children’s Rights Scheme. This amendment added that the Children’s Rights Scheme must set out the arrangements that Scottish Ministers have put in place or planned to “secure better or further effect of the rights of children”, in addition to steps taken or planned to satisfy the compatibility duty under section 6.

Amendment 21 ensures this proactive approach is echoed in the provisions for reviewing and reporting on the Children’s Rights Scheme. This will ensure a consistent approach is taken and support the desired culture shift anticipated by the Bill.

Child Rights and Wellbeing Impact Assessments (CRWIA) (section 14)

We support amendment 42, 25, 26, 27, 28, 29

We support amendment 42 which strengthens the existing provision by requiring the preparation *and publication* of CRWIA relating to education decisions. This amendment will ensure consistency with sections 11(3)(e), 14(2) and 14(3) which require both preparation and publication of CRWIA.

We broadly support the amendment brought at Stage 2 by Rachael Hamilton MSP and support amendments 25, 26, 27, 28 and 29 as necessary to meet the policy intention.

Listed authorities (sections 15-16)

We support amendments 43, 44, 30, 45

Scope of reporting duty

We support amendment 43 which requires listed authorities to send a copy of their reports to Scottish Ministers as soon as practicable after publication. This amendment will support improved communication between listed authorities and Scottish Government and promote effective implementation.

We support amendment 44 which will bring the reporting schedule into line with that under the Children and Young People (Scotland) Act 2014.

We support amendment 45 which requires Scottish Ministers to prepare guidance to support listed authorities in fulfilling their reporting duties. Importantly, this amendment requires Scottish Ministers to consult with children and other stakeholders in preparing the guidance. We note that existing statutory guidance under the Children and Young People (Scotland) Act 2014 may prove useful in shaping new guidance under the Bill.

Listed authorities

In previous evidence, we highlighted the need to include the Scottish Prison Service (SPS) in the list of authorities required to report. While often viewed as an adult service, it has a leading role to play in implementing the UNCRC requirements, particularly in relation to the best interests of the child (Article 3 UNCRC), children's relationships with their parents (Article 9), respect for the views of the child (Article 12), supporting children unable to live with their parents (Article 20) and youth justice (Article 40).

At Stage 2, an amendment was passed which added Scottish Ministers in the exercise of their powers under the Prisons (Scotland) Act 1989 into the list of authorities required to report every three years. We now accept reassurance given by Ministers that, as an Executive Agency, SPS falls within the scope of the annual reporting duty under the Children's Rights Scheme. We recognise that the reporting duty under the Children's Rights Scheme will allow for greater scrutiny than listing SPS in section 16.

We welcome Scottish Government's commitment that the Explanatory Notes to the Bill will make clear that the Scottish Prison Service is included in the scope of the Children's Scheme. We further welcome the commitment to work with Families Outside, SPS and other stakeholders on how these issues should be approached in practice. In light of the above and this reassurance, we support amendment 30 which will remove Ministers' functions in relation to prisons from section 16.

Reporting duty of the Scottish Parliament

We support amendment 46.

The Scottish Parliament should be a human rights guarantor and play a leading role in ensuring that children's human rights are upheld by all levels of government. The Scottish Parliament must ensure that children and young people's rights are embedded into its work and across all policy areas, including through direct engagement with children and young people. In this way, the Scottish Parliament can build upon the positive steps taken by the Equalities and Human Rights Committee in engaging children and young people around the current Bill.

In previous evidence, we asked the Equalities and Human Rights Committee to consider whether the Scottish Parliament should be included within the definition of "public authority". We accept that this may raise issues of legislative competence. However, if the Bill is to secure widespread culture change then it is essential that

it drives progress not only at Scottish Government and public body level, but also within the Scottish Parliament itself.

As such, we support amendment 46 which requires Scottish Parliament to report annually on what it has done and is planning to do to secure better or further effect to children's rights. This amendment will help to secure the culture change in the Scottish Parliament that we are seeking to achieve across Scotland.

Statements of compatibility (section 18)

We support amendments 47, 48.

Effective scrutiny of legislation is essential to protecting, respecting and fulfilling children's rights in practice. As currently drafted, section 18 only requires a statement of compatibility in relation to Scottish Government-led Bills. The omission of non-government Bills creates a gap in children's rights protection. We support amendment 47 which addresses this inconsistency by requiring a statement of compatibility for non-government bills. This amendment will further secure the Scottish Parliament's role as a human rights guarantor.

Sections 19-30

We oppose amendments 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59.

Amendments 49-50 and 52-54 risk narrowing the Bill's "maximalist approach".

We are unclear of the policy intention behind amendments 51, 55-56. What they seek to achieve regarding intervention is already possible through the current Bill and the Scotland Act and would therefore be unnecessary duplication. Further, given that the Bill is about devolved competencies, it is unclear why there is a need to give the Advocate General additional powers. We ask MSPs to oppose these amendments at Stage 3 as it is not clear they are necessary and there is a risk of unintended consequences.

Rules of Court

We support amendments 31, 32, 33.

Commencement (section 40)

We support amendments 34, 35.

Rapid commencement of the Bill 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 warmly welcomed the Stage 2 amendment requiring commencement within six months of Royal Assent.

We welcome Scottish Government's recognition that the Bill should be commenced as soon as possible and welcome amendment 35 which allows certain provisions to commence ahead of the six-month commencement date. This amendment will allow Scottish Government and public authorities to begin the necessary preparations to ensure compliance by the time the Bill enters into force.

Supporting organisations







Supporting individuals

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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.

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