



UNCRC (Incorporation) (Scotland) Act 2024

Consultation on draft statutory guidance – Parts 2 and 3

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 550 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs and interested professionals. 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.

Part 2 Guidance

Question 2

Section 3, 'Background and introduction to the UNCRC Act', provides sufficient information on the UNCRC and the background to incorporation.

Strongly agree.

The information is clear. In our view, it strikes the right balance between the level of detail and accessibility for those who may be newer to the subject of children's rights.

We note the framing around "voice" (p9). Our members who support pre- and non-verbal children have highlighted that all forms of children's communication must be recognised and taken into account. It may be beneficial to indicate that 'voice' in this context is a shorthand for all forms of expression – including verbal and non-verbal.

Question 3

Section 3.3, 'Meaning of UNCRC requirements', clearly articulates what is meant by this in relation to the section 6 duty.

Agree.

It should be made clear from the outset that 'UNCRC requirements' includes the rights and obligations arising from the first and second optional protocols, as well as from the UNCRC itself. We would welcome this being clarified in the first paragraph of this section.

We welcome the clear statement that independent and third-sector organisations may meet the definition of 'public authority'. We would welcome further explanation as to the circumstances in which this may occur – i.e. introductory lines on what constitutes 'delivering functions of a public nature' (s6(6)). While we recognise that this is covered more extensively in section 4.3, we consider that this addition would help to give clarity at an earlier point in the guidance and ensure those who may meet this definition are signposted to where further detail can be found in later sections.

We would welcome reference being made to section 4 of the Act. Section 4 outlines the different sources that may be taken into account when interpreting the meaning of the UNCRC requirements. This

includes the preamble to the UNCRC, UN General Comments and concluding observations. Again, we recognise that section 4 is covered later in the guidance (Annex B) but introducing it here would aid clarity while signposting to where further detail can be found.

Question 4

Section 4.2, 'Remedies for unlawful acts (sections 7 to 10)' is useful.

Agree.

This section is useful but would be clearer with the following edits:

Structure:

We note that this section starts with discussion of remedies before going on to discuss the definition of a public authority and the nature of the duties. It may be clearer to re-order this section as:

- (1) Definition of public authority, including functions of public nature (i.e. **who** needs to follow the law);
- (2) Explanation of the duties (i.e. **what** these people have to do); and
- (3) Remedies for unlawful acts (i.e. **what** happens if they don't do what they're supposed to do).

The current order means that the consequences of breaching a duty are set out before the duty itself has been fully explained. A more accessible approach may be to outline the remedies *after* the reader has ascertained that duties apply to them and what these duties are.

Remedies for unlawful acts (sections 7-10) – introductory section:

Omissions as well as actions (p.13):

There is a need to clarify from the outset that the compatibility duty applies to both actions and omissions/failures to act (s.6(1)). Reference is repeatedly made to public authorities that "have acted or intend to act" incompatibly or "acted (or proposed to act)" but to the first reference to a failure to act is only made later (p14 last paragraph, then emphasised further at p.19). The coverage of omissions needs to be made clear from the outset of the remedies section.

Child-friendly complaints processes (p.13):

We note the reference that SPSO guidelines will:

*"give consideration to how best to support children and their caregivers to potentially resolve complaints **before** these are lodged through the judicial system"* (emphasis added).

It should be made clear that "before" in this sentence does not indicate any requirement to 'exhaust' SPSO routes as a condition of being able to access the courts. To do so could create additional barriers for children in accessing justice.

Proceedings for unlawful acts (section 7)

"Sufficient interest" to raise proceedings (p.14):

The guidance refers to the child's ability to raise proceedings under the Act, as well as the powers of CYPCS and SHRC to raise or intervene in legal proceedings (ss.11-12). It should be made clear that the Act also enables those with 'sufficient interest' to raise proceedings on behalf of children and that this can include third sector organisations.

The guidance should also make clear that legal proceedings can be raised against those delivering 'functions of a public nature (s6(6)). Making these changes would give added clarity on who can raise proceedings and against whom.

Rights at risk:

The first paragraph notes the challenges many children face in raising legal proceedings. We suggest updating the final sentence to include the framing of children whose “rights are at risk”. This would ensure clarity as to the breadth of children who may face such challenges, as well reflect the language used in [non-statutory guidance](#) and the Children’s Rights Scheme (s14(3)(b)). We encourage Scottish Government to amend the sentence to read:

“This is particularly so for children whose rights are at risk, including children with additional needs or those experiencing violence, abuse and trauma.”

Time limits:

Scottish Government should review the second paragraph on p14 which outlines the time limits for raising proceedings. We understand the need to closely align with the wording of the Act but consider that there may be a way to express the rule and its exceptions in a way that is more readily understood.

Audit trail:

We note Scottish Government’s instruction that public authorities should “maintain a robust audit trail in relation to decision-making and service delivery” due to the fact that proceedings may be raised “for a relatively considerable period of time after an alleged breach took place”. It is important to ensure that information is gathered and held in a way that is proportionate and does not infringe children’s right to privacy (Article 16 UNCRC). We encourage Scottish Government to amend the final sentence to read:

“It would be advisable to maintain a robust audit trail in relation to decision-making and service delivery in a way that is compatible with the UNCRC requirements.”

Question 5

Section 4.3.2 ‘Definition of a public authority’ is clear.

Disagree.

Structure

This section is fairly lengthy and complex. The structure/ordering requires further consideration to ensure this is clear and supports readers’ understanding. Further signposting within the introductory line may be beneficial in setting out what the section will cover.

We note that the section starts by defining “functions of a public nature” before defining a “public authority”. Since the definition of a public authority *includes* those “whose functions are functions of a public nature”, our concern is that the guidance currently defines “functions of a public nature” without the prior context of why this status is relevant. It may be beneficial to consider changing this order and/or inserting further signposting into the introductory line, for example:

“This section shares the definition of key terms in the Act, to support organisations to determine whether the section 6 duty is applicable to them. The section 6 duty applies to those who meet the definition of a “public authority”. Importantly, this definition includes those delivering “functions of a public nature” and so can extend to the private, voluntary and independent sector in certain situations. This section outlines the definitions of these key terms and the application of the section 6 duty to the private, voluntary and independent sector.”

Human Rights Act definition of public authority

While the relevant provisions of the Human Rights Act ('HRA') and UNCRC Act share similarities, they must be recognised as separate and distinct. This distinction is not sufficiently clear from the guidance as it currently stands.

As stated in our [Stage 2 briefing on the UNCRC Bill](#), the HRA definition of a public authority is limited and has been interpreted restrictively by the courts. Scottish Government accepted this position and introduced an amendment – now section 6(6) - which sought to overcome the limits of the HRA definition. Section 6(6) makes clear that “functions of a public nature” includes those carried out under a contract or other arrangement with a public authority.

While our members welcomed this amendment, they remained concerned that there was a risk of creating a “two-tier” system as certain entities which provide key services for children are neither contracted out nor funded by the local authority/Scottish Government. This includes private/independent schools, private care homes, private healthcare and private transport providers. At Stage 3, we supported a further amendment – now section 6(7) – that clarifies that public funding, although indicative, is not determinative. Actions which are privately funded may still constitute “functions of a public nature”.

Our concern is that opening this section with an overview of HRA caselaw risks clouding the important distinction in the way the two Acts have been drafted.

Consistency of terminology

We note that “Convention” has been used to mean the European Convention on Human Rights (ECHR) in this section while elsewhere it is used to mean the UNCRC. This dual use may give rise to confusion. There is a need for consistency and clarity in the way that different treaties are referred to.

Application to Private, Voluntary and Independent Sector (PVI)

While the three reflective questions on p18 are helpful touchpoints, it is unlikely that they will give PVI organisations clarity unless amendments are made to other parts of the guidance, particularly the section on “Definition of functions of a public nature”. See below.

Question 6

Section 4.3.1 'Definition of functions of a public nature' is clear.

Disagree.

Human Rights Act definition of “functions of a public nature”

The quote given to define “public function” comes from an article on interpreting the Human Rights Act (HRA). As above, focusing on interpretation of the HRA articles risks confusion as the HRA and UNCRC Act are drafted in different ways. The UNCRC Act was specifically drafted in a way that attempted to overcome the challenges experienced with HRA.

This section of the guidance does not clearly explain sections 6(6), 6(7) or 6(8) which are key to defining what constitutes “functions of a public nature”. Instead, discussion of these is left to the subsequent section. The guidance needs to give further explanation that “functions of a public nature” can include actions/inactions by private/third sector organisations under contract or other arrangement with a public authority, such as provision of secure care or school transport. The guidance also needs to be clear that actions/inactions by private/third sector organisations may be covered even if they are not publicly funded – for example non-publicly funded childcare or education. We understand that there are limits as to the level of detail and examples that can be included in statutory guidance – but further information on the content of sections 6(6), (7) and (8) is key to ensuring clarity.

Question 7

Section 4.4, 'Explanation of the duties on public authorities in Part 2, section 6' clearly explains the nature of the section 6 duty on public authorities, including clearly articulating that the section 6 duty applies only when a public authority is carrying out devolved functions conferred under Acts of the Scottish Parliament or common law powers.

Agree.

We welcome the opening statement that nothing in the guidance should be interpreted as preventing a public authority from acting compatibly in *any* situation where they are carrying out functions in relation to children. This reflects Scottish Government's commitment to a maximalist approach. It also echoes the fact that the UNCRC is a "floor" and not a ceiling of rights compliance. It sets minimum standards beyond which duty bearers can and should strive. So too does the UNCRC Act set out the legislative "starting point" for rights compliance, but duty bearers can and should go beyond this insofar as that is possible.

Legislative competence – 2(a)

The final sentence of this paragraph states that the compatibility duty "does not apply to any reserved functions, but public authorities can still **choose** to act compatibly..." (emphasis added). This appears to contradict the [Cabinet Secretary's clear statement](#) that public authorities should embed the UNCRC into *all that they do*, regardless of the scope of the Act or the legal 'source' of the power they are exercising. Our view is that the line should be amended to read:

*"The legal duty therefore does not apply to any reserved functions, but public authorities **are expected** to act compatibly unless the source of the reserved function prevents them from doing so."*

This framing would mirror the language used at the beginning of this section (p19) which states: "[a]s the UK has ratified the UNCRC, compliance is in any event expected under international law obligations, unless the legislation prevents a public authority from acting compatibly."

We would recommend a similar amendment at p21, removing the line:

*"There is however no barrier to a public authority **choosing to act** compatibly under all or any of their devolved functions..."*

And replacing it with:

*"There is however no barrier to a public authority **acting** compatibly with all or any of their devolved functions..."*

Common law functions

The reference to the "rule of law" in the opening sentence risks confusion. The opening sentence reads:

"The 'rule of law' refers to what is known as 'common law'".

This could lead to confusion with the "Rule of Law" in a human rights sense. It would be clearer to quote the full text from the relevant provision, namely:

"A 'rule of law not created by an enactment' means what is known as the 'common law'.

Legislation – 2(b)

The final sentence of this section is ambiguous and risks being read in a way that is incorrect. The relevant section reads:

*“...the duty does not apply to text inserted by ASPs (or subordinate legislation made under powers in ASPs) into **other enactments** (such as UK Acts or subordinate legislation made under powers in a UK Act).”* (emphasis added)

The risk arises in situations where an Act of the Scottish Parliament (ASP) is used to amend another ASP. In these situations, the resulting provision *will* be subject to the compatibility duty. However, the guidance could be read in a way that leads to the opposite conclusion since it states that the duty will not apply to text inserted by ASPs into “other enactments” (which could be interpreted as including another ASP).

Our view is that the section should be redrafted to read:

*“...the duty does not apply to text inserted by ASPs (or subordinate legislation made under powers in ASPs) into **UK enactments** (such as UK Acts or subordinate legislation made under powers in a UK Act)”*

Structure/summary

The summary at the end of this section is useful. It may be helpful to include a summary introduction at the beginning of the section, to set out the parameters before going into further detail.

Question 8

Annexes A.1 – A.5, ‘Clarification of conceptual aspects of the UNCRC’ are clear.

Disagree.

Introductory text

It may be beneficial to add a cross-reference to Annex B (sources to guide interpretation) after the sentence that ends: *“...there are many sources which may assist in further understanding and interpreting them”*.

Article 2: Non-discrimination

The opening line of this section is inaccurate. The UN Committee has made clear that Article 2 is not an obligation to “treat all children equally”:

“It should be emphasized that the application of the non-discrimination principle of equal access to rights does not mean identical treatment.” ([General Comment 5, paragraph 12](#)).

Article 2 is about ensuring that children have “equal access to their rights”. This is a fundamental distinction that recognises that some children will need more support to access their rights than others.

It may be beneficial to include examples of what may constitute “other status” within the meaning of Article 2(1). This could be presented as an indicative, non-exhaustive list of children whose rights are at risk, such as children affected by imprisonment, young carers, children with Care Experience, children with a parent/carer in the armed forces and so on.

Article 12: Views of the child

We encourage Scottish Government to revisit this section, drawing from the nine basic requirements for children’s right to be heard as set out in paragraphs 132-134 of General Comment 12.

While it is very welcome to see reference to General Comment 12, the guidance should also make clear that the other General Comments provide detailed guidance on implementing Article 12 in specific contexts and for certain groups of children. For example, we would encourage Scottish Government to refer to specific guidance in relation to:

- Adolescents (General Comment 4 and General Comment 20)

- Asylum-seeking and unaccompanied children (General Comment 6, General Comment 22 and General Comment 23)
- Babies and young children (General Comment 7)
- Disabled children (General Comment 9)
- Indigenous children (General Comment 11)
- Children affected by violence (General Comment 13)
- Children in the justice system (General Comment 24)
- Children affected by climate change (General Comment 26)

Respecting, protecting and fulfilling children's rights

We welcome the diagram that clearly sets out the three categories of human rights obligations. We note that the descriptions provided are very brief and that it may be difficult to understand the examples that follow as a result.

We believe that more detailed explanations would be beneficial, with an example 'built in' for each. Potential text could be:

“Respect: *This obligation requires States to refrain from interfering with the enjoyment of human rights. In terms of children's rights, it means that the government must not take any actions that infringe upon these rights. For example, respecting children's rights involves not taking forward policies that discriminate against children.*

Protect: *States must protect individuals from human rights abuses, including those that might be committed by private bodies. This involves establishing mechanisms to prevent violations of children's rights by third parties, such as protection from abuse by parents, carers, or companies. For example, this could include legislating and enforcing laws that prevent child labour or exploitation.*

Fulfil: *This requires States to take positive action to facilitate the enjoyment of basic human rights. Regarding children's rights, this means ensuring that all children have access to education, healthcare, and an adequate standard of living. For example, fulfilling children's rights can involve a wide range of actions, from funding schools and hospitals to ensuring that legal frameworks support the best interests of children.”*

Progressive realisation

Progressive realisation (and its constituent concepts) stem from ICESCR Article 2(1) – later captured by Article 4 UNCRC.

Progressive realisation includes:

- Maximum available resources;
- Minimum core obligations;
- Non-retrogression.

It would be beneficial for the guidance to present these constituent concepts as sub-headings under “progressive realisation”. We note that “Maximum available resources” currently sits as its own section of equal weight – which means the relationship between the two is not immediately clear.

We have drafted the following text, drawing from [CESCR General Comment 3](#), which may be useful to refer to. It highlights the inter-related nature of the above concepts:

“Progressive realisation requires States to work gradually towards the full realisation of rights, based on the maximum resources available. This means that States are expected to take continuous and purposeful steps forward, rather than achieving full compliance instantly.

In the context of the UNCRC, progressive realisation particularly applies to economic, social, and cultural rights. This includes ensuring the right to education, the highest attainable standard of health, and an adequate standard of living. States are required to demonstrate that they are making measurable progress towards these goals, based on their available resources, and are also expected to prioritise these rights in their policy and budget decisions. Progressive realisation does not mean indefinite postponement of action but rather a steady and purposeful advancement towards the full realisation of human rights, while immediately respecting and protecting the rights that can be addressed without substantial resource allocation. It encompasses the principles of:

Use of Maximum Available Resources: States are obliged to utilise the maximum of their available resources to fulfil human rights. This includes financial, natural, human, technological, and organisational resources.

Non-Retrogression: Under this principle, States must avoid taking steps backwards. In times of economic crisis, regressive measures may only be considered after assessing all other options and ensuring that children are the last to be affected, especially children whose rights are at risk.

Minimum Core Obligations: Despite the allowance for phased implementation, States have immediate obligations to ensure at least the minimum essential levels of each right are met.”

Evolving capacities

The guidance should make clear that the concept of evolving capacities is as relevant to very young children as it is to adolescents. Reference should be made to [General Comment 7 \(Early Childhood\)](#) which emphasises that evolving capacities “*should be seen as a positive and enabling process, not an excuse for authoritarian practices that restrict children’s autonomy and self-expression and which have traditionally been justified by pointing to children’s relative immaturity and their need for socialisation*” (paragraph 17).

Question 9

Annexes B.1 – B.4 ‘Sources to guide interpretation’ are useful.

Agree.

Consistency of terminology

Terminology used to refer to the UNCRC must be clear so that there is no risk of confusion with other treaties. The guidance most often refers to it as the “UNCRC” but at other times as “the Convention” or “the international Convention”. Our experience with members has shown that moving between several terms for the UNCRC can be confusing – we believe the same may be true of public authorities and their workers.

Committee on the Rights of the Child (p32)

We advise removing the line “periodic reports every five years” and replacing it with “periodic reports approximately every eight years”. A variety of internal and external pressures have reduced the frequency of UN reviews.

General Comments (p33)

The reference to General Comment 10 should be removed as it has been re-written and is no longer used. Scottish Government may wish to replace this with General Comment 24 (which replaced General Comment 10) or alternatively another example altogether – such as General Comment 19 on public budgeting.

Days of General Discussion (p33)

We would suggest referring to the various occasions on which children from Scotland have participated in the Day of General Discussion. This would support public authorities to understand the relevance and connection to experiences in Scotland.

A good example would be the 2018 Day of General Discussion on children as human rights defenders. Two members of Children’s Parliament participated as part of the Children’s Advisory Team helping to plan the event. Additional members of Children’s Parliament, Scottish Youth Parliament and representatives from Who Cares? Scotland also took part. [See further coverage on our website.](#)

Concluding observations (p34)

It would be beneficial to include a hyperlink to the latest concluding observations so that public authorities can readily access these.

We welcomed that Scottish Government published an initial response to the concluding observations in March 2024. We would welcome a reference and hyperlink to these being added to the guidance, alongside the child-friendly version.

Question 10

Annex C, ‘Framework for Reviewing Compatibility (s.6 duty)’ is presented in an accessible manner, e.g. the content, style, and length make this a user-friendly and practical resource.

Agree.

The style and language of this section are clear. We envisage the Framework being a helpful tool to support public authorities in delivering upon their duties. We would like to make the following comments about its contents:

Interaction with CRIA

The Compatibility Review Framework will add to the existing tools that public authorities can use to ensure compliance with children’s rights – most notably Child Rights Impact Assessments (CRIA). We would welcome the guidance offering further clarity on the relationship between the Compatibility Review Framework and CRIA. Public authorities must be supported to understand the similarities and distinctions between the two – and when they should use a CRIA and when they should follow the Compatibility Review Framework.

Compatibility with the UNCRC

We note that the Compatibility Review Framework begins with an assessment of whether or not the relevant function is within the scope of the UNCRC Act and then considers compatibility with the UNCRC requirements. In line with its commitment to a maximalist approach, Scottish Government should insert a line encouraging organisations to use the compatibility test widely across their work to provide reassurance that UNCRC obligations are always being met. This would support and operationalise [Scottish Government’s expectation](#) that public authorities should act compatibly across *all* areas of their work, whether or not a specific function falls within or outwith the scope of the UNCRC Act. If

organisations have satisfied themselves of UNCRC compatibility first, then this reduces the pressure on determining whether or not the relevant function is within scope.

Acronyms

The flowchart on p45 includes the acronym “CRBA” but this is not defined or explained. We understand that it may refer to a “children’s rights-based approach”. If so, it would be beneficial to use terminology which is consistent with other Scottish Government outputs, including the UNCRC Skills & Knowledge Framework. The UNCRC Skills & Knowledge Framework uses the term “children’s human rights approach”.

Annex D

Scope of the Compatibility Review Framework:

The Framework is a tool to help public authorities review their compatibility with the “UNCRC requirements” as defined by the UNCRC Act. As has been noted earlier in the guidance, the “UNCRC requirements” has a specific meaning which, although closely related, is distinct from the UNCRC and its optional protocols due to the limits of devolved powers. As such, we believe Annex D would benefit from an explanation that it reflects the “UNCRC requirements” as set out in the schedule to the Act, rather than the UNCRC and the optional protocols per se.

Article numbering:

We note some inconsistencies in the numbering in Annex D when compared with the UNCRC and schedule to the UNCRC Act. For example, the schedule to the UNCRC Act sets out Article 38(1), (2) and (4) but this is incorrectly reflected in Annex D as Article 38(1), (2) and (3). We ask Scottish Government to review the numbering in Annex D against the UNCRC articles and the schedule to the UNCRC Act.

Question 11

I clearly understand how to use the Compatibility Review Framework.

Neither agree nor disagree.

Please refer to our earlier comments on the relationship/interaction between CRIA and the Compatibility Review Framework. It is essential that public authorities have clarity on the specific scope, role and purpose of each tool and when to use them.

Question 12

Overall, the guidance is presented in an accessible manner, e.g. the content, style, and length make this a user-friendly and practical resource.

Neither agree nor disagree.

Question 13

Overall, the guidance supports an improved understanding and ability to fulfil the duties under Part 2 of the Act.

Agree.

Question 14

Are there any areas where you think the Part 2 guidance could be improved? Please cite specific parts of the guidance if relevant.

Aim and scope of this guidance

At p5, the document reads: “[t]his guidance aims to provide meaningful support for....any organisation who is or would be a ‘public authority’ as defined in sections 6(5), (6), (7) and (8) of the Act **and** those acting under contract or other arrangement” (emphasis added).

As mentioned earlier in our response, there needs to be clarity that those acting “under contract or other arrangement” are public authorities within the meaning of the Act (s6(5)(a)(iii) and s6(6)). The use of “and” creates a risk of confusion around the definition that these contracted bodies are something ‘other’. We would suggest replacing “and” with “including” so the sentence reads:

*“This guidance aims to provide meaningful support for....any organisation who is or would be a ‘public authority’ as defined in sections 6(5), (6), (7) and (8) of the Act **including** those acting under contract or other arrangement”* (emphasis added).

Consistency of terminology

We note that there is some inconsistency in how the Children and Young People’s Commissioner Scotland (CYPCS) is referred to. At p5 and in several other places, they are referred to. as “the Commissioner” which could risk confusion with the other commissioner roles. At p15, they are referred to as CYPCS. We would encourage Scottish Government to use consistency terminology to avoid any risk of confusion.

Answers to Part 3 follow on next page.

Part 3 Guidance

Question 16

Section 4, 'Reporting duties of listed authorities' is sufficiently clear on the reporting requirements under Part 3 of the Act.

Agree.

Introductory section

We welcome the clarity that the reporting duty is both backwards and forwards looking. This will support listed authorities to reflect on what actions they have taken during the current reporting period, reflect on their effectiveness and what steps they intend to take in the subsequent reporting period.

Section 4 is clear from the outset that listed authorities must produce both a 'main' report and a child-friendly version. We welcome the statement that listed authorities can explore with children and young people what format would best meet their needs when planning the child-friendly version. While we would ordinarily encourage this to be framed in stronger terms (i.e. "should explore" or "are encouraged to explore"), we understand that there are limits on the wording that Scottish Government can use within statutory guidance.

4.1 Reporting cycles and due dates for children's rights reports

The first reporting period is noted as beginning on "the day on which section 18 comes into force and ending on 31 March 2026". We encourage Scottish Government to insert an additional line to clarify that section 18 will come into force on 16 July 2024. We note that this date is already mentioned in the Preface (p3). Repeating it in section 4.1 would give the reader the information they need in one place, without the need for cross-referencing.

4.2 Developing baseline information

We note the statement that "[l]isted authorities may wish to consider reporting on the impact these actions have had on all children or a targeted group of children". Consideration of the impact of actions is crucial to ensuring that children's rights reports are effective. If impact is not considered, then listed authorities will be less able to reflect on what worked and what did not. If possible, we would welcome stronger language of encouragement, in contrast to the merely permissive "may wish to consider".

We welcome the recognition of the importance of disaggregated data and the reference to guidance from the UN Committee on the Rights of the Child in relation to same. To help reiterate the scope of data that should be considered, reference could also be made to the UN Committee's [2023 Concluding Observations to the UK](#) which recommended the strengthening of data collection "with regard to both qualitative and quantitative indicators to encompass all areas of the Convention and ensure that the data are disaggregated by age, sex, disability, geographical location, ethnic origin, nationality and socioeconomic background" (Para 12(a)). Our members highlight examples of situations in which a lack of disaggregated data has been a barrier to identifying, understanding, and addressing the specific needs of children whose rights are at risk.

The direction to existing sources – such as the Promise Data Map and local authority joint strategic needs assessments – is welcome. This should encourage listed authorities to identify and use what information is already available to them, allowing them to identify where there are gaps that need to be addressed.

We welcome the direction that additional evidence may need to be gathered in some areas, “for example, to understand which groups of children are most at risk of not having their rights met”. This is key given that some children will not be covered by the bullet point list of considerations set out at p8. For example, protected characteristics under the Equality Act do not include all situations where children’s rights are at risk, such as Care Experienced children, children with a parent in prison, young carers, and children in armed forces families.

We welcome the clear statement that listed authorities must consider the actions taken by all services in their reports – and not just the actions of children’s services.

4.3 Consultation and engagement

We note the statements that listed authorities “should consider engaging” with infants, children and young people when developing their reports, and that such engagement “may be helpful”. While these statements are welcome, the language could be stronger by *encouraging* such engagement, rather than merely ‘permitting’ it. Again, we recognise that there are constraints on what can be included within statutory guidance. We would encourage Scottish Government to strengthen this language if possible.

We welcome the statement that listed authorities may use previously gathered views from children and young people where this information is still relevant. This upholds feedback from children and young people that they are frequently asked the same questions even when the relevant ‘landscape’ has not changed. In line with this statement, we would also recommend that Scottish Government reconsiders the rich and informative views given by children and young people throughout the passage of the 2024 Act when further reviewing the Part 3 guidance. Throughout the passage of the 2024 Act, children and young people presented innovative and creative ideas as to how all levels of government can be more transparent in the implementation of children’s rights. They were clear about the need to not only involve children and young in *what* public authorities report on but also *how* public authorities report. For example, in relation to preparing UNCRC reports, a member of the Scottish Youth Parliament suggested:

“It should be done in the same way as the ‘Point, Explain, Example’ method in modern studies essays. This will help them be more transparent about their decision-making, including in the consultation stages.” (Quote taken from SYP’s [2019 UNCRC Consultation Response](#))

We would recommend that Scottish Government revisit [children and young people’s responses to the 2019 consultation](#) to ensure the views given on the importance of reporting and transparent decision-making are embedded into the Part 3 guidance.

4.4 Preparation for reporting

UNCRC assessment framework:

The hyperlink over “UNCRC assessment framework” leads to the landing page for the UNICEF Innocenti document library. It is unclear what specific document is being referred to. It may be that the link should in fact lead to the section by the same name in Annex B of the Part 3 Guidance.

The reference to chapter 6 on “Frameworks for children’s rights reporting” appears to be incorrect. The reference to chapter 6 should be replaced with a reference to Annex B.

UNCRC Compatibility Review Framework:

Part 2 Guidance sets out the “UNCRC Compatibility Review Framework” at Annex C. It is likely that undertaking such a review would constitute an action/evidence that listed authorities would wish to include in their children’s rights reports. The Part 3 Guidance would benefit from clarifying the relevance and significance of the UNCRC Compatibility Review Framework as regards listed authorities’ duty to prepare children’s rights reports.

Rights and wellbeing:

We welcome the acknowledgement that the SHANARRI wellbeing indicators do not satisfy all incorporated articles of the UNCRC.

4.5 Requirement to produce a child friendly report

We welcome the clear statement that listed authorities should pay attention to the views of children and young people when considering what format to use for the child-friendly report. The suggestions on p10 are a helpful starting point for listed authorities considering how best to engage with babies, children and young people – e.g. co-design workshops, consultations with children, editing based on their feedback, regular check-ins. The guidance and links to more information Easy Read and inclusive versions is helpful.

Question 17

Section 5, ‘Publication requirements of reports’ is sufficiently clear on the publication requirements under Part 3 of the Act.

Agree.

Introductory section

There is an error in the cross-reference in the fifth paragraph. The line currently reads:

*“A child friendly version of reports must be made accessible alongside full reports, as mentioned **below** in more detail.”*

Instead, this should read:

*“A child friendly version of reports must be made accessible alongside full reports, as mentioned **in earlier sections.**”* (or equivalent)

Further engagement

We welcome the statement that listed authorities may wish to engage with children and their families in discussions about the findings of children’s rights reports once published. The guidance notes that feedback can then be used to inform the next reporting cycle. In this way, the guidance recognises the value in participation as an ongoing process, rather than a ‘one off’ event, in line with Article 12 and General Comment 12.

Question 18

Section 6, ‘Policy intention of children’s rights reports under section 18 of the Act’, clearly explains how the reporting process contributes to progressing children’s rights.

Agree.

We feel section 6 clearly sets out the policy intention – both in terms of the national and international relevance of the children’s rights reports.

As per our response to the guidance on Part 2, the reference to reporting to the UN “approximately every 5 years” should be updated to “approximately every eight years”.

Question 19

Annexes B.1 – B.4 Frameworks for children’s rights reporting are helpful.

Agree.

The UNCRC Act does not prescribe a format for children’s rights reports. As such, the suggested frameworks set out in Annex B1-B4 offer a helpful starting point.

We welcome the suggestion of structuring reports around the UNCRC cluster areas. In our view, this suggestion would offer the most comprehensive approach to structuring children’s rights reports. This view is backed up in [recent research published by the Observatory on Children’s Human Rights](#) which found that use of the cluster approach in public authorities UNCRC reports stemming from the 2014 Act “contribute to effective children’s rights reporting”. The cluster approach would mirror the approach to UNCRC monitoring at state level, enabling listed authorities to easily refer to issues highlighted in the UN Committee’s concluding observations and to consider relevant steps within their remit to address these. In turn, it will also support Scottish Government in producing its contribution to the UK report and separate position statements. We welcome the reflective questions and consider that listed authorities will find these helpful when planning and developing their reports, as well as evaluating the effectiveness of steps taken.

We note that the UN established a new cluster in 2023 titled [“Children’s rights and the environment”](#). Scottish Government should include this in the Part 3 guidance.

We note that there are several references to the “voice” of the child within Annex B. Our response to Part 2 guidance is relevant here: *“Our members who support pre- and non-verbal children have highlighted that all forms of children’s communication must be recognised and taken into account. It may be beneficial to indicate that ‘voice’ in this context is a shorthand for all forms of expression – including verbal and non-verbal.”*

Question 20

Annex C, ‘Scottish Government use of children’s right’s reports’, is clear.

Agree.

Question 21

The guidance is presented in an accessible manner, e.g. the style, length and content are useful in aiding implementation of duties in respect of the Act.

Agree.

Question 22

Are there any areas where you think the Part 3 guidance could be improved? Please cite specific parts of the guidance if relevant.

Section 3: Part 3 of the Act

Section 3 refers to child rights and wellbeing impact assessments (CRWIA) and the fact that there is no legal obligation on anyone other than the Scottish Government to conduct these. The guidance notes that public authorities may, however, conduct CRWIA at their own discretion. In this regard, it may be helpful to reflect on our response to Question 10 of the consultation on Part 2 Guidance, which called for greater clarity on the interaction of the UNCRC Compatibility Review Framework with existing tools such as CRIA.

Annex A: Background

We note that the contents of Annex A are mostly a repeat of text from the Part 2 Guidance. There are several areas where the two texts diverge – notably the paragraph on Articles 43 to 54 UNCRC, and the paragraph on the Children (Scotland) Act 1995 and Children (Scotland) Act 2020. We highlight this as it is not immediately clear to us why the text differs across the two sets of guidance.

Annex E: Glossary of key terms

There are several places where the UNCRC Act is referred to as “the Bill” and section references are out of date. For example, at p36 on the definition of a public authority, it refers to listed authorities being set out “under section 16 of the Bill”. This should be Section 19 of the UNCRC Act.

Consistency of terminology

The guidance moves fluidly between using “public authority” and “listed authority”. While all listed authorities will also be “public authorities” within the meaning of section 6 of the UNCRC Act, it would be beneficial to review the text for consistency to ensure there is absolute clarity between duties that pertain to all public authorities, and those additional duties on ‘listed authorities’.

Terminology used to refer to the UNCRC must be clear so that there is no risk of confusion with other treaties. The guidance most often refers to it as the “UNCRC” but at other times as “the Convention” (which could be confused with the ECHR). Our experience with members has shown that moving between several terms for the UNCRC can be confusing – we believe the same may be true of public authorities and their workers.

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