

Keeping our Promise: Bringing the Bill within reach of the UNCRC Act



Response to the Education, Children and Young People Committee

15th August 2025

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 600 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 consultation with our members but may not necessarily reflect the specific views of every one of our member organisations.

Introduction

We strongly support the aims of the Children (Care, Care Experience and Services Planning) (Scotland) Bill (CCESP Bill), which reflect the Promise to Scotland's babies, children and young people to "grow up loved, safe and respected so that they realise their full potential". This is echoed in the preamble to the UNCRC, which recognises that "the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding". Through incorporating the UNCRC into Scots law and committing to Keep the Promise, the Scottish Government and Scottish Parliament have both pledged to make this vision a reality.

Despite this, three key provisions within the CCESP Bill have been drafted in a way that means they will fall outside the scope of the [UNCRC \(Incorporation\) \(Scotland\) Act 2024](#) (UNCRC Act):

- Section 1 – Aftercare etc. for persons looked after before age 16 - Amends sections of the Children (Scotland) Act 1995.
- Section 2 - Aftercare for persons looked after in Northern Ireland - Amends sections of the Children (Scotland) Act 1995.
- Section 10 – Register of foster carers - Inserts new sections into the Children (Scotland) Act 1995.

As these functions have been drafted to sit within a UK Act passed before devolution, they are outwith the compatibility duty and remedy provisions of the UNCRC (Incorporation) (Scotland)

Act 2024.¹ In practice, this means that children cannot use the UNCRC Act to seek remedy or redress if their rights are not upheld when these provisions are applied. In addition, questions remain over whether definitions originating from UK Acts could be considered outside the UNCRC Act's scope. For example, section 7 of this Bill refers to the 1995 Act when defining "looked after." These drafting choices undermine the promise Parliament has made to Scotland's children and risks setting a precedent for future legislation that weakens UNCRC protections.

Why this matters

The UNCRC Act was passed to make children's rights binding in Scots law and to give children a clear route to remedy when their rights are breached.

Following the UK Supreme Court judgment², the scope of the UNCRC Act was narrowed to ensure compatibility with the judgment. This means the UNCRC Act's compatibility duty applies where powers are exercised under an Act of the Scottish Parliament – but does not apply to provisions contained in pre-devolution UK statutes, even where those provisions have been inserted or amended by an Act of the Scottish Parliament (for example, amendments to the Children (Scotland) Act 1995). The result is that if a public authority fails to respect a child's rights when applying sections 1, 2 or 10 of this Bill:

- Children cannot bring a claim under the UNCRC Act.
- Children are left with more complex, less accessible legal routes (e.g. judicial review, ECHR claims) which are not child-specific.
- The Bill misses an opportunity to maximise the reach of the Bill's UNCRC protections and align with Scotland's wider human rights ambitions.

Our previous calls and Government commitments

In [our letter to the Cabinet Secretary on 27 October 2023](#) (during UNCRC Bill reconsideration), we asked Scottish Government to:

¹ Under section 6(2) of the UNCRC (Incorporation) (Scotland) Act 2024, the "compatibility duty" applies only to functions conferred by Acts of the Scottish Parliament (or certain instruments made under them). It does not apply to provisions in pre-devolution UK Acts, even where those provisions have been inserted or amended by an Act of the Scottish Parliament. As a result, where functions remain in statutes such as the Children (Scotland) Act 1995, public authorities are not bound by section 6 when exercising them, and children cannot use sections 7 or 8 of the UNCRC Act to seek a remedy.

² UKSC 2021/0079 concerned whether certain provisions of the UNCRC (Incorporation) (Scotland) Bill were within the Scottish Parliament's competence under the Scotland Act 1998. The Court unanimously held provisions that applied to pre-devolution legislation were not, and the Bill was returned for reconsideration. See Reference by the Attorney General and the Advocate General for Scotland – United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill [2021] UKSC 42 <https://supremecourt.uk/cases/uksc-2021-0079>

“Commit to minimising future Scottish Parliament amendments to UK Acts... and instead bring forward stand-alone Acts... [to] ensure that the forthcoming Human Rights Bill for Scotland has as full an effect as possible.”³

The Equalities, Human Rights and Civil Justice Committee supported this, [writing on 17 November 2023](#):

“We encourage the Scottish Government to give consideration to each of the four asks from Together’s letter... to ensure the gaps in rights protection are addressed.”⁴

In [her reply on 28 November 2023](#), the Cabinet Secretary committed:

“To ensure that as much future legislation as possible is in scope for the powers in the UNCRC Bill, we can try to minimise making amendments to UK Acts and instead make relevant provisions in standalone Acts of the Scottish Parliament... The Government’s commitment to maximise the reach of the Bill’s UNCRC protections... will be a factor weighing in favour of making freestanding provision in future Acts.”⁵

Despite this, the CCESP Bill embeds key provisions in the Children (Scotland) Act 1995, directly contradicting that commitment.

The Bill’s supporting documents

The fact that this UNCRC Act scope gap is not identified in the Bill’s supporting documents undermines the Cabinet Secretary’s commitment to *“maximise the reach of the Bill’s UNCRC protections”*. It also poses a risk that future legislation will continue to be drafted in a way that fails to realise the transformative potential of the Act, leaving children without enforceable rights in key areas.

Child Rights and Wellbeing Impact Assessment (CRWIA)

Whilst the [CRWIA](#) recognises some positive impacts, it does not acknowledge that choosing to amend a pre-1999 UK Act means children affected by these provisions will not be able to seek remedy under the UNCRC Act.

There is no indication that the Scottish Government considered whether a different drafting approach could have avoided this problem – something Together has consistently called for.

³ Together (Scottish Alliance for Children’s Rights). *Letter to the Cabinet Secretary for Social Justice on the reconsideration of the UNCRC (Incorporation) (Scotland) Bill*, 27 October 2023. https://togetherscotland.org.uk/media/3520/letter_cabinetsecretary_27-10-23_final_members.pdf

⁴ Equalities, Human Rights and Civil Justice Committee. *Letter to the Cabinet Secretary for Social Justice: Reconsideration of the UNCRC (Incorporation) (Scotland) Bill*, 17 November 2023. Scottish Parliament. <https://www.parliament.scot/-/media/files/committees/equalities-human-rights-and-civil-justice-committee/correspondence/2023/reconsideration-of-the-uncrc-incorporation-scotland-bill-17-november-2023.pdf>

⁵ Cabinet Secretary for Social Justice. *Response to the Equalities, Human Rights and Civil Justice Committee on the reconsideration of the UNCRC (Incorporation) (Scotland) Bill*, 28 November 2023. <https://www.parliament.scot/-/media/files/committees/equalities-human-rights-and-civil-justice-committee/correspondence/2023/reconsideration-of-the-uncrc-incorporation-scotland-bill-cabsecsj-28-november-2023.pdf>

Policy Memorandum

The [Policy Memorandum](#) contains a UNCRC compatibility statement, but does not discuss the scope gap or the choice between amending a UK Act and creating stand-alone provisions.

Conclusion

This Bill is part of delivering The Promise – a commitment born from what children and young people told us they need: loving, supportive and nurturing relationships, and a system that helps families stay together wherever possible. This vision is at the heart of the UNCRC, which recognises that every child should grow up “in an atmosphere of happiness, love and understanding”.

But when key provisions intended to promote children’s rights are placed outside the UNCRC Act’s scope, the “promise” Parliament made to Scotland’s children is weakened. The Act is a mechanism to fulfil the promise made to Scotland’s babies, children and young people – and to hold duty-bearers to account when it is not met.

This decision has wider implications for children’s rights in Scotland. If we allow this drafting approach to pass unchallenged, we set a precedent that risks hollowing out the UNCRC Act’s protections. The Committee has the opportunity to recommend a simple fix that will keep the Bill’s policy aims intact while ensuring that children’s rights can be fully realised – and enforceable – in practice.

Recommendations to the Committee

We ask the Committee to recommend that:

- The Bill is amended so that Sections 1, 2 and Section 10 are re-enacted as stand-alone provisions in this Bill, rather than amendments to the Children (Scotland) Act 1995.
- The Bill is amended so that all definitions of “looked after” are set out in full within this Bill, rather than adopted from the Children (Scotland) Act 1995, to avoid uncertainty about whether it falls within the scope of the UNCRC Act.
- The CRWIA and Policy Memorandum is strengthened to evidence why the drafting route was chosen, assess the negative impact on children’s access to remedy under the UNCRC Act and demonstrate that the Government’s November 2023 commitment to minimise amendments to UK Acts will be followed.

For further information, please contact Juliet Harris, Director

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