
Key messages that form the basis of the consultation response to be submitted by my office:

1. The entire UNCRC must be incorporated as written, in order to ensure the human rights protections, agreed 30 years ago, are given full effect. Incorporation will make rights real for children and parents in Scotland.

2. The UNCRC is clear and comprehensive and does not require to be rewritten to be incorporated into Scots Law. Guidance from the United Nations has been developed to help interpret the UNCRC. Rewriting the articles risks undermining the rights of children.

3. Urgency is required to ensure the UNCRC can be incorporated within this session of the Scottish Parliament. A bill should be introduced this year marking the 30th Anniversary of the UNCRC. This allows enough time for the Scottish Parliament to give it proper scrutiny. We have developed a draft bill for this.

4. Incorporating the UNCRC will help to support children to claim their rights and build upon the existing human rights framework. This process also supports and complements wider work to create new human rights legislation for Scotland as recommended by the First Minister’s Advisory Group on Human Rights Leadership. The Group’s final report was unequivocal in its support for incorporation of the UNCRC.
Introduction


Context

Children’s Commissioners and civil society have been campaigning for the incorporation of the UNCRC into Scots law for a long time. It is the most important thing we can do to ensure children’s rights are respected, protected and fulfilled.

The majority of political parties committed to incorporation in their manifestos and we welcomed the Scottish Government’s commitment in 2018 within its Programme for Government to incorporate the UNCRC into Scots law.

In response to this the Children and Young People’s Commissioner Scotland and Together (Scottish Alliance for Children’s Rights) established an expert group in October 2018 tasked with producing a model of incorporation for Scotland (draft bill).

The resulting draft Children’s Rights (Scotland) Bill draws on the Advisory Group’s international and Scots law expertise. The Advisory Group, alongside UN Committee on the Rights of the Child member Mikiko Otani, presented the draft bill to the Deputy First Minister and Minister for Children and Young People on 20th November 2018, Universal Children’s Day.

This model is referred to in the current Scottish Government consultation on incorporation of the UNCRC into Scots law.

Key Issues

Full and Direct Incorporation

The UNCRC represents the minimum standard that all States should ensure for children and young people.

The rights contained within the UNCRC are indivisible, interdependent and interrelated, so incorporation of the complete UNCRC is the best way to ensure rights are properly understood.

The UNCRC does not require to be rewritten to be incorporated into Scots Law. The Convention was written to be incorporated and there has been extensive consideration over the last 30 years of the meaning of the Articles by states, the United Nations and judicial bodies across the world. It is important that the wording is preserved to ensure that meaning is understood.

The proposal to directly incorporate all of the substantive articles of the UNCRC put forward by our Advisory Group draws on international evidence, as well as expertise in Scots law in order to make it workable within the devolved context. At a seminar
held in May 2019, full and direct incorporation was backed by a wide range of Scotland’s legal experts.

The First Minister’s Advisory Group on Human Rights Leadership “encourages UNCRC incorporation” as a “separate process” to its work and urges that its recommendations “should not cause any delay to UNCRC incorporation.”

Full incorporation of the UNCRC is one important part of implementation of children’s rights. We welcome the broader work being done to ensure children’s rights are respected, protected and fulfilled. We also welcome the aspirations to go further than the UNCRC and develop a comprehensive legal framework for human rights in Scotland. Incorporation of the UNCRC within this session of Parliament is an important first step. It will establish a strong baseline upon which to build. Future work which includes a wider human rights public participation process offers a further opportunity to engage children and young people within this exciting time of change and allows for more ambitious thinking without risking delay of ensuring protections for existing rights under the UNCRC.

**Justiciability**

**Children and young people must be able to rely on the UNCRC in courts and tribunals for their rights to be fully protected.**

Incorporation requires proactive measures, protections and processes to ensure that children’s rights are central in all decisions which affect children and young people; but it also requires effective remedies to ensure enforceability and accountability.

We are pleased that the Scottish Government acknowledges the need for an effective remedy within the consultation paper. This is an essential part of incorporation as set out by the UN Committee on the Rights of the Child.

The strength of the Scottish legal system means that it has consistently been able to develop jurisprudence and adjudicate on points of law, and our Advisory Group’s Bill sets out considerations to help inform these decisions. Full and direct incorporation would place children’s human rights firmly as a priority within our legal system.

**Timescales**

**Urgency is required to ensure the UNCRC can be incorporated within this session of the Parliament** as committed to by the First Minister on 28th April 2019.

The Scottish Government must set out a clear timeline for how this can be achieved, ensuring sufficient time for the Scottish Parliament to give it proper scrutiny.

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1 Page 54, “Recommendations for a new human rights framework to improve people’s lives Report to the First Minister”, First Minister’s Advisory Group on Human Rights Leadership, December 2018
2 See paragraphs 24-25, General Comment No. 5 (2003), CRC/GC/2003/5 27 November 2003
Robust scrutiny and examination of legislation is essential; therefore a Bill should be introduced this year – the 30th Anniversary of the UNCRC – in order to allow sufficient time for this scrutiny to take place. A draft bill was presented to the Deputy First Minister and Minister for Children and Young People on 20th November 2018.

Children’s human rights must be protected now; this cannot and should not wait any longer.

Next steps

The [Scottish Government consultation](#) closes on 14 August 2019.

The completed consultation response by the Children and Young People’s Commissioner will be made public in July 2019. [Sign up to our newsletter](#) to receive an alert to this.

For more information please see our extensive body of work on Incorporation on [our website](#) or contact Sarah McDermott or Diego Quiroz on 0131 346 5350 sarah.mcdermott@cypcs.org.uk; Diego.Quiroz@cypcs.org.uk.

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