

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

Stage 3 Briefing

From the Children and Young People's Commissioner Scotland 12th March 2020

Almost 18 years ago to the day, the Scottish Parliament demonstrated its commitment to children's rights by creating the office of the Commissioner for Children and Young People. During the final debate, the member in charge of the Bill, Karen Gillon MSP said:

“The Commissioner for Children and Young People (Scotland) Bill will, I believe, prove the most significant legacy that we, the members of the first Scottish Parliament in 300 years, can leave our children and our children’s children.”

Now, the Scottish Parliament has the opportunity to go even further. To pass a law which shows children that we value them enough to put their rights fully and directly into our law. Incorporating the UNCRC into domestic Scots law is the most important thing we can do to ensure children’s rights are respected, protected and fulfilled.

This Bill is the result of decades of work by children and young people, civil society organisations and our office to secure a stronger legal framework for children’s rights. The progress of this Bill through the Scottish Parliament has drawn international attention, particularly given the context of the coronavirus pandemic.

We thank the Equalities and Human Rights Committee for their scrutiny of this Bill at Stage 1 and 2, and particularly recognise the engagement with children and young people which has helped deepen the Committee’s understanding of the importance of this legislation to children. We welcome the positive amendments made by the Committee at Stage 2, which significantly strengthened the protections it offers to children’s rights.

We are particularly pleased to see not only a commencement date on the face of the Bill, but one which will ensure that, by World Children’s Day this year, this Bill be in force and we can truly say that the UNCRC is incorporated into Scots law.

“One of the main impacts of putting the UNCRC more into domestic laws is that it creates a culture of respect for children's rights. I think more than the legal aspect, it'll start more discussions about children's rights. People will be more aware; it will be more ingrained into day-to-day society.” **CYPCS Young Adviser**

Our position on amendments:

Marshaled list order	Support amendments	Oppose amendments
Section 3	1, 2, 36	
Section 4	3, 4, 5	
Section 6	6, 7, 8, 9	
Section 7	10, 11, 12, 13, 37	
After Section 10A	38	
Section 11	14, 39, 15, 40, 41	
Section 12	16	
Section 13	17, 18, 19, 20, 21, 22, 23, 24	
Section 14	42, 25, 26, 27, 28, 29	
Section 15	43, 44	
Section 16	30	
After Section 16	45, 46	
Section 18	47, 48	
Section 19		49, 50
Section 20		51, 52, 53, 54
Section 22		55, 56
Section 29		57, 58
Section 30		59
Section 35	31	
Section 37	32, 33	
Section 40	34, 35	

PART 1 – THE UNCRC REQUIREMENTS

Section 3 – Power to modify the schedule

We support amendments 1, 2 and 36

We support these amendments. Amendment 36 will enable greater scrutiny of proposed changes.

Section 4 – Interpretation of the UNCRC

We support amendments 3, 4 and 5

As outlined in our evidence at stage 1, courts may draw upon a wide range of sources in interpreting the UNCRC. At stage 2, we welcomed the Committee’s recognition of this.

We support amendment 4 and the Government’s formulation of “other international law and comparative law”. This is a definition which is understood and used elsewhere and avoids any perceived ranking of listed and non-listed sources, as well as accommodating new sources which may arise.

In taking this approach, we support amendment 3 which replaces “must” with “may” to enable courts and tribunals to take the widest possible interpretation of international sources in proceedings affecting children’s lives.

PART 2 – DUTIES ON PUBLIC AUTHORITIES

Section 6 – Acts of public authorities to be compatible with the UNCRC requirements

We support amendments 6, 7, 8 and 9

We acknowledge the value of the approach taken in the Bill, to use the Human Rights Act 1998 model as a starting point, to build on understood and established law.

Given the uncertainty in ensuring that all relevant bodies are included in the definition of ‘public authorities’, highlighted in existing cases under the Human Rights Act 1998, it was important that this Bill make it clear that children’s rights will be protected regardless of how services are funded and delivered.

Amendments at Stage 2 strengthened these protections. We support these further amendments to section 6 and the intention that relevant services, including those not funded by Scottish Government or public authorities, will be included within the scope of the Bill. Amendment 9 seeks to clarify that public funding, although indicative, is not determinative.

Sections 7 – Proceedings for Unlawful Acts

We support amendments 10, 11, 12, 13 and 37

After Sector 10A – Guidance on 10A (Restrictions on proceedings in respect of judicial acts)

We support amendment 38

We welcome the duty to produce guidance on the operation of Part 2 of the Bill. This will support public authorities in understanding their duties and promote child rights-respecting practice.

PART 3 – CHILDREN’S RIGHTS SCHEME, CHILD RIGHTS AND WELLBEING IMPACT ASSESSMENTS AND REPORTING DUTIES

Section 11 – Children’s Rights Scheme

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

The Children’s Rights Scheme will be essential for successful implementation across the Scottish Government and public authorities. We welcomed amendments made at Stage 2 to strengthen this section of the Bill by including specific reference to complaints handling and effective access to justice.

We support these amendments which will further strengthen the scheme. Amendment 14 will require Ministers to set out arrangements for children to be able to access support (including advocacy services) to enable them to participate in decision making processes. Through amendment 39, Ministers must set out specific arrangements for children whose rights are most at risk. Amendment 15 establishes a requirement for Ministers to set out steps to protect children’s rights in any context,

not only through publicly funded services. Amendment 40 seeks to ensure inclusive communication is explicitly considered and used.

Sections 12 & 13 – Procedure for making, amending and remaking the scheme & Reviewing and reporting on the scheme

We support amendment 16, 17, 18, 19, 20, 21, 22, 23 and 24

We support these amendments, clarifying expectations of reporting within the scheme.

Section 14 – CRWIA

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

We support these minor amendments which seek to clarify the policy intent in this section.

Section 15 – Reporting Duties of Listed Authorities

We support amendments 43 and 44

We welcome the addition of a deadline for listed authorities to publish their initial reports under this section.

Section 16 – Listed Authorities

We support amendment 30

We accept the view that the Scottish Prison Service, as an Executive Agency of the Scottish Government, is already included within the scope of the scheme.

After Section 16 – Guidance on section 15

We support amendments 45 and 46

We warmly welcome the inclusion of reporting duties for the Scottish Parliament. The essential role of parliaments as human right guarantors, upheld by ongoing monitoring of human rights at national level, has been clearly articulated by international human rights bodies.

It is important that children and young people are active participants in the Scottish Parliament's work and that the Parliament's procedures are developed to ensure MSPs are able to act as human rights guarantors. An annual report on action which has been taken, and which will be taken by the Parliament and its committees to further children's rights, will improve children's ability to engage in parliamentary processes.

PART 4 – LEGISLATION AND THE UNCRC REQUIREMENTS

Section 18 – Statements of compatibility in relation to legislation

We support amendments 47 and 48

We welcome the inclusion of Non-Government Bills within the legislation.

Sections 19 & 20 – Interpretation of legislation & Strike down declarators

We oppose amendments 49, 50, 51, 52, 53 and 54

We do not consider these amendments to be in the spirit of the maximalist approach otherwise taken throughout the Bill. The Bill already states that legislation should only be read and given effect “So far as is possible to do so”.

Section 22 – Power to intervene in proceedings...

We oppose amendments 55 and 56

The policy intent of these amendments is unclear. Under the Scotland Act 1998, the Advocate General for Scotland may already take part in proceedings in relation to decisions on legislative competence. Without opportunity for further scrutiny and consideration of the intent, at this late stage in the Bill, we do not support these amendments.

PART 5 – COMPATIBILITY QUESTIONS AND UNCRC COMPATIBILITY ISSUES

Sections 29 & 30 – Direct references to Supreme Court...

We oppose amendments 57, 58 and 59

The policy intent of these amendments is unclear. Under the Scotland Act 1998, the Advocate General for Scotland may already take part in proceedings in relation to decisions on legislative competence. Without opportunity for further scrutiny and consideration of the intent, at this late stage in the Bill, we do not support these amendments.

PART 7 – FINAL PROVISIONS

Sections 35 & 37 – Interpretation & Rules of Court

We support amendments 31, 32 and 33

Section 40 – Commencement

We support amendments 34 and 35

We welcomed the Stage 2 amendment for a commencement date within six months of Royal Assent, on the face of the Bill. We support these amendments, which would enable earlier commencement by Ministers.

“Incorporation is a way of children having their voices heard, they know that they will be listened to, and they know that they matter. A lot of young kids feel overlooked in society as a whole, but incorporation of the UNCRC is saying ‘you are here, we see you, and we’re helping you out.’ Having any knowledge of that is really going to do the world of good for a lot of children.” **CYPCS Young Adviser**

For further information, please contact Megan Farr, Policy Officer at megan.farr@cypcs.org.uk or 07803 874 774