

Response ID ANON-4HQB-BQ83-D

Submitted to **Children's Rights: Consultation on incorporating the United Nations Convention on the Rights of the Child into our domestic law in Scotland**

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Theme 1: Legal mechanisms for incorporating the UNCRC into domestic law

1 Are there particular elements of the framework based on the HRA as described here, that should be included in the model for incorporation of the UNCRC in domestic law?

Yes

Please explain your views.:

Yes.

We believe that the Human Rights Act is an important framework for ensuring compatibility with the model of UNCRC incorporation for Scotland. It ensures that public bodies act compatibly with the HRA and ECHR and provides mechanisms for redress before the courts.

2 Are there any other aspects that should be included in the framework?

Yes

Please explain your views.:

We also believe that there should be proactive duties as well as reactive (HRA offers redress in the event of breach but does not include measures to prevent breaches occurring). A duty to promote children's rights and a due regard duty in formulating legislation and policy would be effective in creating a more rights based environment.

3 Do you agree that the framework for incorporation should include a "duty to comply" with the UNCRC rights?

Yes

Please explain why.:

The UN Committee on the Rights of the Child states that:

States parties need to ensure, by all appropriate means, that the provisions of the Convention are given legal effect within their domestic legal systems.

Incorporation must mean making children's rights binding rather than simply guiding. The purpose of incorporation is to do exactly this - putting duties on public bodies to promote and uphold children's rights and allowing children redress when their rights are breached. This duty along with the complementary preventative due regard duty ensures exactly that.

4 What status, if any, do you think General Comments by the UN Committee on the Rights of the Child and Observations of the Committee on reports made by States party to the UNCRC should be given in our domestic law

What status, if any, do you think General Comments by the UN Committee on the Rights of the Child should be given in our domestic law?:

General Comments and Observations ought to be considered as guidance so that Scottish domestic law keeps pace with international developments, one of the benefits of having an overarching international framework used by a number of countries. Formulation of legislation and policy should have regard to them in drawing up new law and policy and courts should use them as interpretative guidance.

5 To what extent do you think other possible aids would provide assistance to the courts in interpreting the UNCRC in domestic law?

To what extent do you think other possible aids would provide assistance to the courts in interpreting the UNCRC in domestic law?:

Courts already use a range of international guidance including the ECHR and UNCRC and will continue to do so. Many of the general principles are already contained in Scots Law, such as the best interests of the child (Children (Scotland) Act 1995) and courts are well used to dealing with them.

However, it is likely that the legal profession and judiciary will have views on what aids would enable them to fulfill their duties competently in the event of incorporation.

6 Do you agree that it is best to push forward now with incorporation of the UNCRC before the development of a Statutory Human Rights Framework for Scotland?

Yes

Please explain your views.:

The two are separate and necessary processes and can happen side by side. Development of one does not preclude the other. We believe that incorporation should move forward in line with the Scottish Government and First Minister's commitments.

7 We would welcome your views on the model presented by the advisory group convened by the Commissioner for Children and Young People in Scotland and Together (the Scottish Alliance for Children's Rights).

We would welcome your views on the model presented by the advisory group convened by the Children and Young People's Commissioner in Scotland and Together (the Scottish Alliance for Children's Rights).:

It is a simple and clear mechanism for incorporation recognising and dealing with the complexities of a devolved nation. We believe it offers a straightforward route to achieving full incorporation and, as such, would be happy to see it or a very similar model adopted.

In particular, as an organisation supporting families, we welcome the drawing down of the Preamble, as well as the Articles and First and Second Protocols. The Preamble recognises the family as the best place for children, sees parents as rights holders and places obligations on the State to provide them with support in this duty.

8 How should the issue of whether particular UNCRC rights are self-executing be dealt with?

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N/A

9 How could clarity be provided to rights holders and duty bearers under a direct incorporation approach, given the interaction with the Scotland Act 1998?

How could clarity be provided to rights holders and duty bearers under a direct incorporation approach, given the interaction with the Scotland Act 1998?:

Yes. The UNCRC provides an overarching framework to operate under and many years of operating under a devolved settlement have given the Scots legal system a clear and comprehensive understanding of the limits of devolved powers. The legislation incorporating the UNCRC needs to make clear (as the draft Bill drawn by the Expert Incorporation Group does) how the UNCRC can operate within the areas that are devolved to Scotland. Rights holders and duty bearers already do this for a multiplicity of measures and would continue this with UNCRC incorporation. Guidance and training would be helpful.

10 Do you think we are right to reject incorporating the UNCRC solely by making specific changes to domestic legislation?

Yes

Please explain why.:

Changes can be made piecemeal and in an unco-ordinated manner whereas incorporation is an overarching legal framework governing future development of legislation, policy and practice and acting as an organic entity responding to and being informed by international best practice. Making selective changes to domestic legislation would not be incorporation. Full incorporation would ensure a comprehensive and rigorous programme to bring legislation into line with the UNCRC and ongoing review to ensure continuous improvement.

11 If the transposition model was followed here, how would we best enable people to participate in the time available?

If the transposition model was followed here, how would we best enable people to participate in the time available?:

What the consultation refers to as transposition is effectively cherry-picking rights and creating a separate Scottish children's rights framework. This seems unnecessary given a well recognised and regarded international framework already exists which is enacted in several other legislatures and if incorporated would provide a clear and logical basis for development of future legislation, policy and practice. It's undesirable given that the UNCRC is comprehensive, outlining children's rights which are universal, indivisible and inter-related. We are supportive of the First Minister's commitment to full incorporation rather than piecemeal and potentially inconsistent adoption of certain rights and not others.

12 What is your preferred model for incorporating the UNCRC into domestic law?

Please explain why.:

We are supportive of full incorporation and believe that the Children's Rights (Scotland) Bill, developed by the Expert Advisory Group convened by Together and Children and Young People Commissioner Scotland, is a clear mechanism for achieving this, ensuring full incorporation within the restraints of the Scotland Act 1998.

Theme 2: Embedding Children's Rights in public services

13 Do you think that a requirement for the Scottish Government to produce a Children's Rights Scheme, similar to the Welsh example, should be included in this legislation?

Yes

Please explain why. :

Experience from Wales as well as other jurisdictions that have incorporated the UNCRC show that a range of implementation measures are necessary to ensure best practice and compliance. This should include requirements for Child Rights Impact Assessments, complaints, regular progress reports and children's participation in decision making.

Such a scheme should be drawn up in consultation with children, their families and other stakeholders.

14 Do you think there should be a "sunrise clause" within legislation?

Don't know

Please explain why. :

We don't see a need for a sunrise clause in the legislation given that the UNCRC was ratified in the UK in 1991. As a signatory both UK and the devolved administrations are committed to taking all necessary steps to implementation. Since 1991 progress has been made towards its implementation with law and court judgements already influenced and informed by it.

However we do see a need for an audit of existing legislation and guidance for new legislation, as well as public information for children, families and other stakeholders. Nonetheless we believe that as with other legislation this could be developed alongside the legislation and any time needed could be gained through appropriate enactment dates.

15 If your answer to the question above is yes, how long do you think public bodies should be given to make preparations before the new legislation comes into full effect?

Please explain why. :

N/A

16 Do you think additional non-legislative activities, not included in the Scottish Government's Action Plan, are required to further implement children's rights in Scotland?

Yes

Please explain why.:

UNCRC incorporation should be accompanied by effective implementation measures that ensure a children's rights approach is used across all levels of government and society. In addition to Child's Rights Impact Assessments, and the other measures outline above, there should be clear information for parents about what the UNCRC means for families and for their children. Training for those working with parents such as health visitors, ELC practitioners and others should also be included in core training packages as well as in CPD.

Theme 3: Enabling compatibility and redress

17 Do you agree that any legislation to be introduced in the Parliament should be accompanied by a statement of compatibility with children's rights?

Yes

Please explain your views.:

This would ensure that future legislation enacted by the Scottish Parliament would be compatible with the UNCRC. It would promote greater accountability and awareness of children's rights among decision makers.

18 Do you agree that the Bill should contain a regime which allows right holders to challenge acts of public authorities on the ground that they are incompatible with the rights provided for in the Bill?

Yes

Please explain your views.:

Justice must ensure redress when rights are breached. This is as true for children as for adults but children have more difficulty in challenging breaches. There should be child-friendly approaches which make this easier for children; these should include advocacy and child-friendly information. Additionally where parents are the rights holders for their children it may be that they are the ones who challenge the breach where the child has not reached the age of legal capacity. Again, justice should be made accessible to this group.

19 Do you agree that the approach to awards of financial compensation should broadly follow the approach taken to just satisfaction damages under the HRA?

Yes

Please explain your views.:

UNCRC Article 39 enshrines this right, and it therefore follows that if the Scottish Government goes ahead with full incorporation as per its commitment then this would be part of Scots Law and would need to be implemented. Article 39 makes it clear that there "should be appropriate reparation, including compensation".

20 Do you agree that the UNCRC rights should take precedence over provisions in secondary legislation as is the case under the HRA for ECHR rights? Are there any potential difficulties with this that you can see?

Don't know

Please explain why.:

N/A

21 Do you agree that the Bill should contain strong provisions requiring an ASP to be interpreted and applied so far as possible in a manner which is compatible with the rights provided for in the Bill?

Yes

Please explain your views.:

Yes, this is needed to ensure that legislation of the Scottish Parliament is read in a way that where possible complies with the UNCRC. This is compatible with similar provisions in the Scotland Act 1998.

22 Should the Bill contain a regime which would enable rulings to be obtained from the courts on the question of whether a provision in an ASP is incompatible with the rights secured in the Bill?

Yes

Please explain your views.:

Yes. Through the Scotland Act, Scottish courts have the powers to strike down legislation passed which is not compatible with ECHR and human rights. Similar provisions ought to be applied here. Given that any model of incorporation needs to respect the devolution settlement this should be within Scottish powers to enact.

Please explain your views.:

23 Do you consider any special test for standing to bring a case under the Bill should be required?

No

Please explain your views.:

It is a basic requirement that children should be able to seek redress for breach of their rights. Children have full legal capacity from 16 but if they have sufficient understanding can instruct a solicitor from the age of 12.

Nonetheless it is intimidating for anyone, especially a child, to take such action and mechanisms for enabling collective actions ought to be explored so that groups of children affected by the same action ought to be able to take action together.

Children and those with sufficient interest ought to be able to bring proceedings; this will include parents as well as such bodies as the Children and Young People Commissioner Scotland, the Scottish Human Rights Commissioner and the Equalities and Human Rights Commission.

About you

What is your name?

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Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Parenting across Scotland

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response only (without name)

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Please enter comments here.:

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Please enter comments here.: