

PAS response to the Scottish Parliament consultation on the UN Convention on the Rights of the Child (Incorporation) (Scotland) Bill

Parenting across Scotland welcomes the Bill to incorporate the UN Convention on the Rights of the Child into Scots Law. It is an important move towards ensuring that children's human rights are respected, protected and fulfilled in Scotland.

We are happy that the Scottish Government has taken a maximalist approach and intends to fully use its devolved powers to incorporate the UNCRC as far as is possible into Scots Law and has future-proofed this to include any further devolution of powers. While we have some recommendations which we believe would strengthen the Bill further, we believe that this Bill is a significant step forward in ensuring that children's rights are upheld and that families are supported in their crucial role of bringing up their children.

As an organisation which believes that by supporting families, we support children, we are fully supportive of the UNCRC and see incorporation as a significant milestone in supporting families to bring up their children. PAS is a member of Together and has been active in the campaign for UNCRC incorporation; we endorse Together's consultation response.

The UNCRC recognises the family as the natural environment for children to grow up in, stating in its Preamble:

“Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community. Recognizing 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.”

It goes on to say in Article 27:

“1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing."

At a time when years of austerity have taken their toll on families causing inequality and poverty for many, supporting families to meet their basic needs has never been more important and the UNCRC provides the framework to do this. With one in four children and rising living in poverty, many in unaffordable and inadequate housing, too many families are struggling against unfair odds to bring up their children. We know that a disproportionate number of families living in poverty have their children removed from their care (Child Welfare Inequalities Project, Bywaters et al, 2020). Recently Scotland's Independent Care Review final report, *The Promise*, recognised that poverty was a major factor in family breakdown and the removal of children from their families; it concluded "*Scotland must do all it can to keep children with their families*".

Part of that promise has to be UNCRC incorporation with its guarantee of support to families in Article 27:

"Every child has the right to a standard of living that is good enough to meet their physical and social needs and support their development. Governments must help families who cannot provide this."

Incorporation of the UNCRC is a step-change in realising children's rights, and these rights cannot be realised without supporting their families to thrive.

1 Will the Bill make it easier for children to access their rights?

PAS believes the Bill will make it easier for children to access their rights. The underlying framework of the Children's Rights Scheme, Child Rights and Wellbeing Impact Assessments (CRWIAs) and reporting duties on listed authorities should develop a culture where children's rights become an integral part of decision making at every level ensuring that children's and families' needs are met and their rights respected. Additionally, while these proactive measures should be used to guarantee a rights respecting approach, where, for whatever reason, this has not happened, the powers included in the Bill to assess whether legislation is compatible with the UNCRC and the ability for children to be able to challenge breaches of their rights in court are necessary to ensure remedy and redress.

However, more child-friendly complaints mechanisms and procedures need to be developed to ensure that children can access their rights. As the University of Edinburgh's response states there are decisions taken that significantly affect children's lives to which they have no redress or remedy, such as child welfare reports which affect decisions about contact with parents and children's hearings decisions. Child-friendly complaints procedures must be developed within all public authorities which take decisions which affect children's lives.

Parents and carers are usually the guardians of their children's rights, and accordingly, awareness raising about the UNCRC and its relationship to parental rights and responsibilities must be carried out so that parents and carers are cognisant of how the UNCRC protects family life and how they can uphold their children's rights.

2 What do you think about the ability to take public authorities to court to enforce children's rights in Scotland?

The ability to take public authorities to court to enforce children's rights is a necessary part of incorporation. The UN Committee on the Rights of the Child states that:

"Incorporation should mean that the provisions of the Convention can be directly invoked before the courts and applied by national authorities..."

While, if used comprehensively, the proactive measures that put in place a child rights-based framework in decision making through the Child's Rights Scheme, CRWIA and other duties should act to ensure that recourse to the courts is seldom needed, nonetheless it remains necessary that access to the courts should be available where needed to allow remedy and redress and prevent future breaches of rights.

Recourse to the courts should always be a last resort for both adults and children with, where at all possible, resolution of complaints settled by other means before they reach the courts. More child-friendly mechanisms should be put in place so that issues can be resolved as soon as possible after they arise with the authority which is in breach of the UNCRC. This should include more child friendly complaints procedures along with independent advocacy and mediation.

While access to justice can be an issue for both adults and children, children face additional barriers in accessing justice and require extra support. Parents are often the people that uphold their children's rights and advocate on their behalf; it will be necessary to educate parents about their children's rights, about access to justice and what support is available to them in this role as they may be the person raising an action on behalf of their child.

3 What more could the Bill do to make children's rights stronger in Scotland?

We welcome this Bill and believe it is a strong foundation upon which to build a culture of children's rights in Scotland. Nonetheless there are a number of ways in which the Bill could make children's rights stronger in Scotland.

- 1. Extend the duty to carry out and publish CWRIAs to public authorities.** Public authorities already have a duty to report on their activities "on the steps they have taken to secure better or further effect of the UNCRC requirements". In order to fulfill their reporting duty, and to take steps to further UNCRC implementation, carrying out CWRIAs is a logical next step which would assist in developing a child's rights culture. Carrying out CWRIAs and EQIAs are a crucial part of the policy making process to ensure that all Scotland's citizens are enabled to fully realise their rights.
- 2. Clearly define public authority and private providers carrying out duties of public authorities.** There needs to be a clear definition and list of public authorities; this should include the Scottish Parliament. Increasingly many public sector functions are carried out by private or voluntary sector bodies, for example, childcare, fostering and adoption, housing, and should fall within the ambit of this Bill to ensure that child's rights are observed in carrying out any of these functions. Given the Serco judgement (Ali (Iraq) v Serco Ltd [2019]), there is doubt that if it were left up to the courts that this would hold. Therefore, we would suggest that a definition should be included in secondary legislation which should also include a full list of public bodies (including the Scottish Parliament) and define private and voluntary sector bodies carrying out public sector functions
- 3. Include provision for statutory guidance to accompany the Bill.** There needs to be accompanying guidance to the Bill, including guidance on CWRIAs. We believe that this should be statutory guidance to strengthen its effect and to ensure consistency and compliance.
- 4. Extend the awareness raising duty to include parents and carers.** The UNCRC is a treaty that is fully supportive of the family as the natural place to bring up children. This is not widely understood. We believe both for this to be more widely understood and to enable parents and carers to uphold and realise their children's rights, and to be able to act when these rights are breached it is crucial that they understand these rights.
- 5. Include a duty in the Bill to ensure that awareness raising materials are made accessible to parents and carers and children with protected characteristics (including those with disabilities (including learning and intellectual disabilities), BAME communities) so that they are educated and informed about their rights and about how to make complaints.** These rights must be extended to all children and to ensure this different means of communication and outreach will be necessary to reach some communities of children and families. It is often those who are most disadvantaged who are least aware of their rights and consequently least able

to realise them. The Bill must take proactive steps to make sure this is not the case.

6. **Widen section 4 to allow the courts to consider General Comments, Concluding Observations, opinions under the third optional protocol and as well as comparative law and future advances.** These provide extensive comment and interpretation of the UNCRC and the jurisprudence and comparative case law would be useful to the judiciary as an aide in their opinion forming and decision making.
7. **Specify an early commencement date on the face of the Bill. Currently the Bill does not have a commencement date on the face of the Bill.** Given preparation for incorporation has taken place over a period of several years, including reporting to the UN Committee and the significant moves towards incorporation in the Children and Young People (Scotland) Act 2014, we believe Scotland is ready for incorporation and that this Bill should be come into force at the earliest possible date.

4. If you work for an organisation or public authority, what resources do you need to help children and young people access their rights?

Will you require additional resources or training to implement the Bill, for example to make or respond to challenges in court?

Parenting across Scotland is part of a Scottish Government Working Group looking at parents' awareness of children's rights; because of Covid-19 the work of this group has been delayed. However, it will be important as we move towards implementation to ensure that parents and carers are more fully aware of children's rights and of how this relates to them. It is desirable that there should be some resource to support raising awareness with parents.

5. Are there any relevant equalities and human rights issues related to this Bill, or potential barriers to rights, that you think we should look at?

As always there are relevant equalities and human rights issues and presumably the Scottish Government has carried out an Equalities Impact Assessment to identify them. Of course, the Bill itself addresses a significant equalities and human rights issue in ensuring that children's rights are met and is to be applauded for doing so.

However, if it is to fully realise its potential in promoting and securing children's rights then it needs to ensure that it gives all children equal opportunity to secure their rights. There are certain groups of children and families who are less likely to be aware of and able to access their rights, and arguably may be those who are most likely to have their rights breached. It is crucial that awareness raising must be

accessible and targeted to ensure that all groups are reached (see our recommendation at 3 above).

Certain groups of children and their families were already disproportionately disadvantaged prior to Covid-19, and this has been exacerbated by the pandemic. Families affected by disability, and BAME families, in particular, are more likely to face poverty. Increasing numbers of families have been thrown into poverty as a result of the pandemic, particularly those headed by single parents.

To ensure that more disadvantaged children have their rights respected and their families are *“afforded the necessary protection and assistance so that [they] can fully assume [their] responsibilities within the community”* it is crucial that the Bill, associated guidance and implementation methods recognise and proactively address these inequalities.

6. What are your views on the provisions in the Bill that allow the courts to strike down legislation judged to be incompatible with the UNCRC?

PAS welcomes the power for courts to strike down legislation which is incompatible with the UNCRC. This will ensure that domestic law is compliant with the UNCRC as it is with ECHR rights. This power only relates to Acts (or parts thereof) which pre-date incorporation, but also includes provision for the courts to make an incompatibility declarator for legislation which post-dates the Bill. Both are necessary in ensuring that domestic legislation is compatible with the UNCRC.

7. What are your views on the Children’s Rights Scheme and the requirement on public authorities to report?

PAS welcomes the duty on Scottish Ministers to put a Child’s Rights Scheme in place setting out how they intend to comply with the UNCRC. The duty to consult with children, Scotland’s Commissioner for Children and Young People and other appropriate persons is also welcome; however, while parents and carers may be implicitly included as ‘appropriate persons’, we would welcome their explicit inclusion on the face of the Bill.

As noted earlier, we would welcome a duty on public authorities to undertake CRWIAs as part of their strategic decision-making processes. We believe that as well as adding to more robust attention to children’s rights at local level, this would translate to and add weight to the Child’s Right Scheme at national level.

Currently, what is to be included in a Child’s Right’s Scheme is not clearly specified. Currently it only states what it ‘may’ include we support Together’s call here for ‘may’ to be replaced with ‘shall’ at section 11(3) to ensure consistent and comprehensive consideration of children’s rights.

11(3)b states the Child's Rights Scheme should 'raise awareness of and promote the rights of children'. We would argue that this should be stronger and that there should be a duty both within the Child Rights Scheme and more widely within the Act that replicates the duty within the Children and Young People (Scotland) Act 2014 at section 1(3) (which will be repealed by this Bill) to "promote public awareness and understanding (including appropriate awareness and understanding among children) of the rights of children." We would further recommend that this awareness duty should include specific reference to parents and carers.

8. Is there anything else you want to tell us about the Bill?

Our recommendations for making children's rights stronger through the Bill are detailed above at Q3.

Beyond this, we believe that effective implementation is critical. Too often, policy and legislation are passed which, on paper, make significant changes, but unless this translates to action and change its purpose is lost. There needs to be a robust implementation plan which must include children and families at every stage of the process.

There needs to be comprehensive monitoring and evaluation of the implementation of the Bill. We would echo the call by the submission from Morrison, McCormack and Tisdall (at the University of Stirling and University of Edinburgh) for the development of a system of children's rights indicators *'underpinned by robust data, which is gathered systematically and disaggregated, on how children's human rights are implemented by courts and public authorities'*. Disaggregation is particularly important to examine whether certain groups of children are more likely to have their rights breached than others; this then gives the opportunity to address and remedy this.

Together's forthcoming report, ***Making children's rights real: turning a vision into reality for every child in Scotland***, offers a route map to implementation and change.

Parenting across Scotland and its partners welcome the Bill and believe that it offers the opportunity to effect transformational change for all Scotland's children and their families.