



## Response to United Nations Convention of the Rights of the Child (Incorporation) (Scotland) Act 2024: Statutory Guidance on Part 2 and 3, section 18 consultation

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### About Parenting across Scotland

Parenting across Scotland (PAS) is a membership organisation. We work together with our members, partners and stakeholders to help realise our vision - a Scotland where all parents and families are valued and supported to give children the best possible start in life.

We spend time listening to parents and carers and those working with them to understand their priorities. We use the evidence we gather to influence decision makers where we can. For this consultation response we have drawn evidence from our previous UNCRC consultation activity and from our members and partners including [Together](#) and [My Rights My Say](#).

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### Part 2 Guidance

#### **Question 1: I have read the draft statutory guidance on Part 2 of the UNCRC Act**

Yes.

#### **Question 4: Section 4.2, 'Remedies for unlawful acts (sections 7 to 10)' is useful.**

Agree.

In Parenting across Scotland's 2020 response to the Scottish Parliament consultation on the UN Convention on the Rights of the Child (Incorporation) (Scotland) Bill, we highlighted the need for those in parenting roles to be informed of how to access justice and support.

The guidance states that the Scottish Public Services Ombudsmen (SPSO) guidelines will "give consideration to how best to support children and their caregivers to potentially resolve complaints before these are lodged through the judicial system". It is crucial that this guidance is clear and accessible for all audiences to ensure that those in parenting roles, as well as children and young people, know how to access remedy when it is

required. Public bodies must also ensure that this accessible information is readily available.

**Question 5: Section 4.2.3 ‘Definition of a public authority’ is clear.**

Disagree.

Parenting across Scotland supports the definition of ‘public function’ in the guidance to comprise ‘things that a public body or someone acting on its behalf does when delivering a public service or carrying out activities that are public in their nature’. We recognise that this could include services provided by third or private sector organisations on behalf of public authorities and we believe this is an important and necessary inclusion.

However, we find the term ‘hybrid public authority’ to be unclear and potentially misleading. We accept that this is a term used in the Human Rights Act 1998 but understand that this has not been without its challenges, as outlined in Together’s response to this consultation.

From our own perspective as a membership organisation, we are doubtful that many third sector organisations would find the term ‘hybrid public authority’ appropriate for themselves. If a charity is registered with OSCR for example, they must adhere to the ‘charity test’ which is set out in law<sup>1</sup>. Charities may provide public services and be recipients of public funds, but they are still charities first and foremost.

Likewise, we feel that children, families and indeed public authorities themselves may find the term ‘hybrid public authority’ confusing and may not realise third sector and private organisations are within scope. As a consequence, we would suggest that the term ‘hybrid public authority’ is removed and the emphasis placed on organisations providing ‘public functions’ regardless of their sector.

**Question 8: Annexes A.1 – A.5, ‘Clarification of conceptual aspects of the UNCRC’ are clear.**

Disagree.

Parenting across Scotland supports Together’s consultation response, which calls for a rewording of the text relating to Article 2: Non Discrimination and a widening of the scope of Article 12: Views of the Child.

Annex A.5 Evolving Capacities is an important consideration when ensuring that the rights of all babies, children and young people are realised. It recognises that the role parents, carers and other adults play in a child’s life changes as they grow and mature. We welcome the guidance’s recognition that ‘children’s capacities can differ according to the nature of the rights being exercised’. This is not always a clear linear process.

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<sup>1</sup> <https://www.oscr.org.uk/guidance-and-forms/meeting-the-charity-test-guidance/>

We also welcome the guidance's recognition that evolving capacities should never be used to dismiss a child's view. We strongly believe that children and young people's views should be considered, regardless of age, stage or capacity.

However overall, the content of this section is rather vague in terms of providing information about how public authorities are expected to navigate evolving capacity.

It may be helpful to frame this section in relation to how public authorities support a child's involvement in decision making about services they are accessing, as an example. Parents and carers are often involved in this process, particularly when children are younger. But sometimes a parent's involvement will be because services are not equipped with the tools, resources or skills to meaningfully involve the child directly. This is a communication challenge, rather than a capacity issue.

Specialist services such as [My Rights My Say](#) enable children aged 12-15 with additional support needs to have a say in decisions made about their education. It can be a huge relief for parents and carers when a service is able to truly listen to and involve their children, as it takes pressure off parents being expected to do this on their children's behalf. We are concerned that without more services like this, some children may not be deemed as having the capacity to be involved, when in truth they do. It is the services who do not have the capacity.

We would recommend that public authorities work with parents and carers to understand their perspective on evolving capacity and how children's capacity can be recognised and supported.

**Question 13: Overall, the guidance supports an improved understanding and ability to fulfil the duties under Part 2 of the Act.**

Agree.

**Question 14: Are there any areas where you think the Part 2 guidance could be improved? Please cite specific parts of the guidance if relevant.**

We recognise that guidance on the compatibility review process does recommend that public authorities consider whether parents / carers should be involved. However at present this is only in relation to evolving capacity considerations. We believe this could be extended more widely.

Regardless of evolving capacities, we believe parent-carer engagement has an important role to play as part of the compatibility review process. There may be circumstances in which parent-carers can provide specific perspectives and insights on how services are or are not compatible with children's rights. They may also be able to offer helpful suggestions for future processes.

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## Part 3 Guidance

The following consultation questions 14-20, relate to the draft statutory guidance on Part 3 (section 18) of the UNCRC Act. This is particularly relevant to public authorities listed in section 19 of the Act.

**Question 15: I have read the draft statutory guidance on Part 3 (section 18) of the UNCRC Act**

Yes.

**Question 16: Section 4, 'Reporting duties of listed authorities' is sufficiently clear on the reporting requirements under Part 3 of the Act**

Neither agree nor disagree.

Section 4.2 Developing baseline information – we would suggest the views and experiences of parent-carers are added as another form of evidence that listed authorities are encouraged to consider. This may be particularly helpful when considering early years services for example.

Section 4.3 Consultation and engagement – we welcome the inclusion of parents being included in the consultation process.

**Question 17: Section 5, 'Publication requirements of reports' is sufficiently clear on the publication requirements under Part 3 of the Act.**

Agree.

We welcome the reference to providing different languages, easy to read copies and audio to ensure that information is accessible those with a wide range of needs.

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## Contact information

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