

Scottish Government Consultation on incorporation of the UNCRC into our domestic law in Scotland

Children's Parliament Response



About Children's Parliament

Children's Parliament (CP) is Scotland's Centre of Excellence for children's participation and engagement.

Children's Parliament works for a future where all children in Scotland are actively engaged in shaping our world so that everyone is healthy, happy and safe. We believe all children should live and grow with dignity and be valued for what they can offer the world.

We work creatively through projects, consultations and programmes to improve communication between children and adults and to build relationships based on mutual respect and understanding. This enables us to explore our world together. We provide children with opportunities to share their experiences, thoughts and feelings so that they can influence life at home, in school and in the community through change at a local and national level. Our interest is in working with children, the adults who love and care for them, and the wider community in which they live in order to support our country to meet its obligations to our youngest citizens.

Children's Parliament uses children's rights and the UN Convention on the Rights of the Child (UNCRC) as the foundation for all our work to remind individual citizens and public bodies that children's rights are human rights.

About this consultation response

This consultation response is compiled based on Children's Parliament's 23 years' experience of engaging with children about their human rights and their lives at home, at school and in the community. In addition to drawing on our breadth of historical work with public bodies, we have reviewed a range of Children's Parliament consultations, projects and programmes that have over the years addressed the issues and questions raised in this Scottish Government consultation paper on incorporation of the UNCRC.

Finally, we facilitated workshops with 22 Members of Children’s Parliament about incorporation of the UNCRC; a separate report was published based on these workshops (“All rights are important so all rights should be law”).

The following reports have been referenced in this response and specific quotes from children have been included in this response to answer relevant questions:

- **"All rights are important so all rights should be law"** (a 2019 consultation on incorporating the UNCRC into domestic law in Scotland)
- **2019 Cabinet Meeting with Children and Young People**
- **Seen + Heard Fife** (a 2015-2020 project with children with care experience in Fife)
- **"It's one of your rights to know your rights!"** (a 2019 consultation on the Progressing Children’s Rights in Scotland Action Plan 2018-2021)
- **What Kind of Edinburgh?** (a 2018/19 programme supporting children and young people across Edinburgh to influence the city’s services)
- **Children as Human Rights Defenders** (a 2018/19 programme exploring children’s views on what rights they feel need to be defended in Scotland)
- **"Love and protect us forever"** (a 2018 consultation for the Review of Part 1 of the Children (Scotland) Act 1995)
- **"If an adult just listens..."** (a 2017 consultation on the F9 Form used to gather children’s views for Sheriff Court)
- **"Together we can fix it"** (a 2015 consultation about a child’s right to complain – commissioned by CYPCS)
- **"How does your garden grow?"** (a 2013 consultation on the Children and Young People Bill)
- **"Children say what they think..."** (a 2011 consultation on the Scottish Government Rights of Children and Young People Bill)

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? Please explain your views.

Yes.

The Human Rights Act framework contains important mechanisms to ensure compatibility with human rights standards and provides redress and remedy if rights are breached. These mechanisms should be included in the model of UNCRC incorporation for Scotland.

2. Are there any other aspects that should be included in the framework? Please explain your views.

Yes.

'Proactive' duties and measures to promote rights-based decision-making should also be included to complement the 'reactive' duties and measures from the Human Rights Act framework. We believe that the framework should include a duty on public bodies to pay 'due regard' to the UNCRC and Optional Protocols.

In recent years, there has been a lot of discussion about the need for models of prevention and early intervention in Scotland. If we are to move beyond rhetoric and see true preventative and early intervention policies and programmes put in place, then it is essential that the Bill includes 'proactive' duties around children's human rights. It is not enough to rely on 'reactive' approaches that are put into effect after a human rights breach has occurred. Through our experience working with public bodies, if 'proactive' duties and commitments around children's human rights are lacking, then it is unlikely that children's human rights will be respected, protected and fulfilled through rights-based decision-making.

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

Yes.

While 'due regard' should be part of rights-based decision-making across public bodies, it is essential that the Bill contains a 'duty to comply' with the human rights laid out in the UNCRC in order to ensure that they are respected, protected and fulfilled and provides an *outcome* that is consistent with the UNCRC. Language is important – by ensuring compatibility with the UNCRC rights, Scottish Government is demonstrating its commitment to pursuing the highest level of human rights protections for children in Scotland. Compatibility means that incorporation is binding, not just guiding.

Children tell us that making the UNCRC and Optional Protocols law in Scotland will result in more people respecting children's rights and taking them seriously. To children, the idea of incorporation is naturally binding – there should be no question that the government and adults more generally should have to know, understand and fulfill children's human rights.

"It's important because if you don't make children's rights law, then there will still be children that need help. If they are made law, then more adults will listen."

"Enforce children's rights instead of just letting it be optional to people."

"What's the point if they don't have to abide by them?"

"Children's rights might be forgotten about."

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

General Comments, Concluding Observations and opinions made by the UN Committee in relation to Optional Protocol 3 should be given consideration by public bodies and the courts. This body of interpretive guidance provides clarity around the interpretation and content of rights, highlights potential violation of rights, and offers advice on how to best comply with the UNCRC obligations. By giving them consideration in our domestic law it will ensure that Scotland keeps pace with developments in international human rights law and practice whilst being able to apply learning in a way that can be adapted to fit the Scottish context.

Children view General Comments and Concluding Observations as valuable resources which should be used by Scottish Government to ensure that children have their rights respected, protected and fulfilled.

"Because [the UN] have said how to do it, so if sometimes you're not very sure, it's a good thing to have help."

"It's better for us – you'd be listening to the feedback [from the Concluding Observations] and this would make things better."

"It would make things easier for them when deciding because you'd have something to help you."

Children also viewed General Comments and Concluding Observations as the collective knowledge and experience of all the countries reporting to the UN Committee.

"If a country has really good results in play, it would be amazing if every country could learn and take from the one that is doing well and then every country would be amazing."

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

Courts in Scotland and across the UK are already accustomed to drawing from the UNCRC when considering cases under existing legislation, including the Human Rights Act and wider EU law. There is developing jurisprudence through case law from countries that have already incorporated the UNCRC, such as Norway and Iceland. In addition, courts will be able to draw from wider jurisprudence from countries that have incorporated wider international human rights protections into law, such as South Africa.

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

Yes.

Due to the significant steps that Scotland has taken in recent years, we now have a solid foundation for incorporation. Now is the time to fully incorporate the UNCRC and this process should not be held up by the development of a Statutory Human Rights Framework for Scotland. Developing this Statutory Human Rights Framework can be done as a subsequent process to embed human rights more broadly, a conclusion supported by the First Minister's Advisory Group on Human Rights Leadership.

Through our work with children, parents/carers, professionals, and decision-makers, it is clear that there is still a lack of awareness and understanding about children's human rights and how they keep children healthy, happy and safe. As a result, children continue to face difficult and sometimes traumatic circumstances that infringe upon their rights and reduce outcomes for their later lives. Children have been, and continue to be, failed by the adults and systems around them and therefore any delay in moving forward with incorporation will continue to place children at risk of harm. When children (and the adults around them) are aware of their human rights, then this knowledge brings with it an understanding that when rights are infringed, that remedial structures are in place and can be accessed by rights holders.

Children have been telling us since the establishment of Children's Parliament over 20 years ago that they want to see children's human rights as law in Scotland. The current commitment in the Programme for Government to incorporate the UNCRC indicates that Scottish Government is catching up with the children's desire to see the UNCRC enshrined in domestic law. Children are often dismayed to learn that children's human rights are not already law in Scotland.

Incorporating the UNCRC will have a direct impact on the outcomes that children experience in Scotland and children recognise that having their rights respected in law will make a huge difference in their lives.

“If adults obey these rules, then millions of children could have much better lives than at present.”

“I think that children’s rights should be a law because if a kid can’t get their rights, it can ruin their day or even their life.”

“Children’s rights are important because they are essential to make a child’s life liveable.”

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 (Scottish Alliance for Children’s Rights).

The Children’s Rights (Scotland) Bill is informed by international best practice as well as experience gained within the UK through the implementation of the Human Rights Act 1998 and the Welsh Measure. It provides a comprehensive legal framework to proactively promote children’s human rights whilst also providing remedy and redress if these rights are breached. We support this model of UNCRC incorporation and believe that it meets the First Minister’s aspiration for children in Scotland.

At Children’s Parliament, we recognise the importance and impact that a rights-based culture can have on the experiences of and outcomes for children. Incorporating the UNCRC into domestic law is a huge step, but one that needs to be supported by broader measures to spur a larger culture change in Scotland. In addition to legal protections and mechanisms for remedy and redress, there needs to be a holistic approach to incorporating and implementing children’s human rights so that children grow up in an atmosphere of happiness, love and understanding.

“Rights should be part of the culture of life.”

“Ministers need to think about us and tell the truth. They need to know how we are feeling and what we think. So, speak to more children and visit more schools and communities. But really do it, not just see it in the paper.”

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

We do not believe that the concerns raised by Scottish Government are relevant to Scotland. The act of incorporating the UNCRC into Scots law is what gives UNCRC rights practical effect.

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?

Over the past 20 years of devolution, public bodies have had to develop a clear understanding of devolved competencies and functions. UNCRC incorporation could only apply and be exercised within those areas that fall within the responsibility of the Scottish Parliament. Public bodies would have to apply their existing understanding of devolved competencies and functions when implementing duties resulting from UNCRC incorporation. This could be supported through guidance, training, awareness-raising and other measures included within the Children's Scheme.

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

Yes.

Making changes to current domestic legislation to ensure that it complies with children's human rights is one way of ensuring Scots law complies with the UNCRC and is outlined as an essential step for implementation in the UN Committee's General Comment No. 5. However, this is not full incorporation and does not go far enough in codifying children's human rights in Scots law. Only full direct incorporation fully upholds the range and extent of children's human rights contained in the UNCRC and the Optional Protocols.

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

We do not support the transposition model of incorporation. Children's rights are universal, indivisible, interdependent and interrelated. All rights are equal in importance and cannot be fully enjoyed without the others. We believe that full and direct incorporation provides the legal certainty and clarity sought by the Scottish Government.

After 23 years of engaging with children about their rights and their lives at home, at school and in the community, we believe that there is a role for children to influence how the UNCRC is implemented in Scotland, as well as any future legislation that impacts on their lives. Through our experience working with public bodies, we have seen the impact that children can have on informing and shaping law, policy and practice – children have the power to influence conversations so they are more flexible, productive and honest. We need systems and processes that are designed to include children, so that they can participate in appropriate and meaningful ways, instead of forcing them to engage in ones that are design by and for adults. Children's participation is critical to making human rights real in practice.

“Our views are important. We see the world in an imaginative and positive way. We need to be valued for what we can offer the world now as children and not just as citizens to be.”

“Children should have a say in the country they grow up in!”

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

Full and direct incorporation.

The rights identified in the UNCRC are inalienable, indivisible, interdependent and interrelated. If Scotland is looking to incorporate children’s human rights, then all of the rights in the UNCRC must be included. Direct incorporation ensures that children’s human rights are not undermined by omission or by rewriting new variations of the articles, which would not be able to be held up against international standards.

Children prefer the direct incorporation option because it exactly reflects the UNCRC and nothing would be left out, it would be fairer, and it would be more in line with what other countries are doing.

“If the UNCRC makes rights that are international, everyone should use those rather than alternative versions for different countries.”

“A ‘copy and paste’ approach would be easier as it would allow for things to be checked better.”

“If it’s the same language, then it will be familiar to people who already know the UNCRC.”

“You should have to make all rights into a law because if it’s not a law, then you might disregard some, but all rights are important so all rights should be law.”

“Some of these things sound like pros but they could actually be cons, like making something specific to Scotland [a suite of rights] sounds good, but then it’s not necessarily what other countries are doing so it could be missing some things out.”

“I think it [alternative versions of the UNCRC] is a con because it’s already been thought about so there’s no point thinking about it again!”

Children also recognised that Scotland has an opportunity to be internationally recognised for putting into practice its commitment to children’s human rights through legislation that respects, protects and fulfills the rights outlined in the UNCRC and the Optional Protocols.

“Please make people follow children’s rights better and make an effort to enforce them in Scotland. Then we will inspire other nations to do the same.”

“If we make good decisions [about how we incorporate the UNCRC], then other countries might look to us.”

Through the draft Children’s Rights (Scotland) Bill, developed by an Expert Advisory Group convened by Together and the Children and Young People’s Commissioner Scotland, Scottish Government already has a Bill that provides for full and direct incorporation and which considers the devolved powers held in Scotland and ‘future-proofs’ for developments in international human rights law and any further powers that might be devolved to Scotland. It also encourages and embeds rights-based decision-making across all levels of government and provides children with access to redress if their rights are breached. This Bill was drafted using extensive international experience and knowledge around UNCRC incorporation and allows Scottish Government to progress with incorporation quickly.

13. Do you think that a requirement for the Scottish Government to provide a Children’s Rights Scheme should be included?

Yes.

A Children’s Rights Scheme will clarify the practical steps that Scottish Government and other public bodies are committed to undertaking in order to implement the UNCRC in practice. It will connect the measures already in place through current legislation and structures, and supplement them with further mechanisms to ensure accountability and transparency.

Through our work with public bodies, it is clear that there is still a lack of awareness and understanding about children’s human rights and how they should inform rights-based decision-making, policy development and service delivery. Public bodies will need help implementing children’s human rights throughout their institutions beyond the top-line duties outlined in the Bill. There are frequently workforce cultures and behaviours that are not in line with human rights and which will need to be addressed to ensure that public bodies meet, and ideally exceed, their duties. There needs to be substantive reporting against the UNCRC which is linked to outcomes and performance at all levels within public bodies.

14. Do you think there should be a ‘sunrise clause’ within legislation? Please explain your views.

No.

The UK ratified the UNCRC almost 30 years ago in 1991. The UK’s ratification of the UNCRC placed binding obligations on the Scottish Government and, as a result, the UNCRC has already been embedded into legislation, policy and practice in Scotland over many years, albeit on a piecemeal basis. The Children and Young People

(Scotland) Act 2014 has further raised awareness and understanding of UNCRC obligations among public bodies by placing reporting duties on Ministers and public bodies to set out what steps are being taken to further children's rights. As such, public bodies should be ready by 2021 to apply the more comprehensive duties that result through UNCRC incorporation.

While public bodies will need time to prepare before the new legislation comes into full effect, many of the foundations for implementation are already in place through previous Scottish laws and policies. Through an implementation scheme, the Scottish Government should outline the essential practical steps public bodies need to take to fulfill their duties, and this will need to be framed within an adequate timescale.

Children felt that public bodies should have enough time to make the required changes in a thorough and thoughtful manner. They did not want public bodies to rush any changes, resulting in decisions that were incorrect or inadequate.

“Things don't happen overnight, so they'll need time to prepare and it takes years for laws to go through the process and be set. If it's too short, then it'll be rushed.”

However, children recognised the need for this time period to be clearly defined and limited, so that public bodies were required to make necessary changes in a reasonable period. Children feel that decisions impacting on their lives can sometimes drag on, leaving them confused about what is happening or doubtful that anything will ever change.

“If it's too long or gets extended, then it may never get done.”

Any time period granted to public bodies to make preparations needs to be long enough for them to go about the process properly but not too long that decisions become diluted or less meaningful. Additionally, the UNCRC includes the concept of 'progressive realisation' of children's human rights, so irrespective of timescales and resources, public bodies must seek to ensure that every child has, at the very least, minimum levels of rights and then make every effort to improve children's realisation of their rights over time.

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 your views.

See above.

16. Do you think additional non-legislative activities are required to further implement children's rights?

Yes.

In order to fully incorporate and implement children's human rights in Scotland, Scottish Government needs to deliver a comprehensive range of legislative and non-legislative activities. Some of these have been outlined in the Scottish Government's Action Plan; however, the specifics of this plan need to be explored in more detail.

Children recognised that a new law is not enough to create a culture change; any new legislation needs to be accompanied by a wide-spread, comprehensive awareness-raising programme.

“It shouldn't be just about following the law, but also about everyone knowing about their rights.”

However, it is not enough to generally raise awareness in vague terms, it is vital that this programme leads to a bigger culture change by helping adults increase their awareness and understanding about children's human rights and the impact that full implementation can bring. As outlined in General Comment No. 1 on “*The aims of education*”, ‘human rights education should provide information on the content of human rights treaties. But children should also learn about human rights by seeing human rights standards implemented in practice at home, in school and within the community. Human rights education should be a comprehensive, lifelong process and start with the reflection of human rights values in the daily life and experiences of children’ (pg. 295).

Children thought it was important that children and young people, parents and carers, teachers, social workers, doctors and other professionals working with children, civil servants and politicians all know about children's human rights. As part of the awareness-raising programme, they suggested:

- Big, colourful, eye-catching posters and billboards
- Social media adverts
- Radio and television segments to let adults and children know about rights
- Having school assemblies/shows about rights at schools for both children and adults
- Send out awareness leaflets for parents and parents-to-be in the baby box
- Write a picture book about rights for Book Bug bags
- Guidance about rights for foster/kinship carers and adoptive parents
- A museum about human rights
- Give human rights a more prominent place in the school curriculum

“You know how you do a nativity in P1/P2, you could do a children's rights show for local teachers, doctors, people in the community. Children are learning about rights and then sharing and teaching adults.”

“When you’re young, you get a wee bag with the Wee Book of Promises all about rights and another one later on, like a care package.”

“Write a picture book about children’s rights so children and adults can read about children’s rights together.”

“Put it in the school curriculum. Kids learn and go home and tell adults.”

“I’d like the Scottish Government to put children’s rights in the curriculum in more depth.”

“The government should make a giant museum of all the Children as Human Rights Defenders [CHRD] shields.”

“Parents who are new to school (nursery children). They would start an assembly where they give out clothes and talk about rights.”

Children also felt that training for professionals working with children was vital. Members of Children’s Parliament have raised this as a recommendation at the last two Cabinet Meetings with Children and Young People. They said that this training should be regular (at least every three years) for teachers, social workers and other professionals working with children, and that children themselves should be involved directly. As outlined in General Comment No. 5, ‘the purpose of this training is to emphasise the status of the child as a holder of human rights, to increase knowledge and understanding of the Convention and to encourage active respect for all its provisions’ (pg. 13).

“Teachers should have a course on children’s rights, showing how much of a difference it makes.”

“Teachers, doctors and other people working with children should have a course on children’s rights when they are training.”

“I want to change the world by making people actually understand children’s rights and make them act upon them, because people say they know about them, but they don’t actually do anything.”

Children identified that increased meaningful participation in decision-making was important. They wanted more opportunities to be involved, particularly when decisions had a direct impact on their lives. Real participation is when children are able to influence decisions, locally and nationally. In order to do so, they need a choice of how they can participate, access to appropriate and accurate information, and the opportunity to build relationships while participating. Listening to children’s views and experiences will lead to better policies, practices and laws as well as better outcomes for children. Children, after all, are experts in their own lives.

Through our work with local authorities like Aberdeen, Fife, Edinburgh and East Lothian, we have recognised the impact that children can have on the development of Local Outcome Improvement Plans, Children’s Partnership Boards, and Corporate Parent

Plans. Through incorporation, children's involvement in this type of planning and decision-making should be more firmly embedded in the culture of public bodies.

"Children have opinions and they should not be overlooked just because of their age."

"Adults think that some children are silly, so they assume all of them are like that and then they won't listen to them. No one seems to trust children, and they should!"

"The government makes decisions *for* the children when it should happen *with* the children."

"The council could make appointments with Children's Parliament members to get a chance to talk to them about what's not going right."

"The reason that a child should be listened to is that they might have better ideas than the adult."

Additionally, children identified that one of the principal ways to ensure more children have their rights fulfilled is to directly support them through legislation, policy and practice. Children often speak about the impact of poverty, disability, discrimination and other social issues have on their lives and they want Scottish Government to create laws, policies and programmes that are fairer and support those members of our society who are most vulnerable.

- Increase funding for low-income families and other vulnerable groups
- Support for children who are refugees or immigrants
- Increase funding for children with disabilities
- Fight the stigma that children with care experience face
- Support children's emotional wellbeing and increase funding for children struggling with poor mental health
- Listen to children who are experiencing these difficulties in their lives

Finally, children felt that no matter what happens, there will always be children who face difficult or dangerous circumstances in their lives and need additional help and support. They want more services, like a helpline, that children can easily access if they need help.

"It's important to know that children can act fine, but they're not fine."

"It feels like a weight has been lifted from you when you get to talk about something that is important to you."

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

Yes.

The Children’s Rights (Scotland) Bill includes a duty to complete a Children’s Rights and Wellbeing Impact Assessment and a ‘duty to comply’- a statement of compatibility is the natural next step towards ensuring that any piece of new legislation has been robustly interrogated by Scottish Government and is found to be compliant with children’s human rights.

Additionally, there is precedent for statements of compatibility established through the Human Rights Act 1998 and the Scotland Act 1998. By including a statement of compatibility about children’s human rights, the Scottish Government is recognising the international importance of the UNCRC and establishing the place it holds legally and culturally in Scotland.

Children felt that a statement of compatibility for children’s human rights was an essential step in the incorporation process. While recognising that it will put additional pressures on lawmakers while drafting Bills, they felt that it would ultimately make the legislative process more robust and respectful of children.

“It makes [new laws] safer for children.”

“We need something to prove it follows children’s rights.”

“A Minister needs to know that when they make a decision about anything, he or she has to have your best interests and rights at heart.”

“It probably will make children’s lives safer, but the Scottish Government’s jobs harder and it might take longer to pass things.”

18. Do you agree that the Bill should contain a regime which allows rights holders to challenge acts of public bodies on the ground that they are incompatible with the Bill?

Yes.

Children have told us that they worry about a range of issues, from daily stressors like homework, playground arguments and losing important toys to larger concerns about the climate crisis, family finances, war, lack of mental health support, and problems at home. They want adults to listen to them and take their worries seriously. In some instances, these worries can develop into rights violations and may prompt them to raise a complaint, with the hope that something might change, for them individually and for children generally.

Children recognise that some issues can be dealt with closer to home, while others need to be addressed by adults or organisations wielding more power. They identify the following individuals or groups with whom they would raise a complaint:

- Parents or carers
- Other adult relatives
- Teachers or pupil support
- Friends
- Children's Parliament
- Children and Young People's Commissioner Scotland
- Childline
- Police
- Doctor
- The local council
- MSPs or MPs
- Scottish Courts

"I think more people in Scotland (especially kids) need to know about their rights. If something unfair happens, then they know what to do."

However, children recognise that raising complaints can be difficult and frightening. They worry that adults will not listen or take them seriously, that nothing will change, or adults will avoid the problem, that they may face repercussions for having raised the complaint, or that the outcome might be disappointing or negative.

"Just because people have power, it doesn't mean they'll do the right thing."

"Adults are capable of being nastier than children, and children should be able to say something."

"Children might think adults might not take them seriously. They might think children are lying."

"Children feel powerless."

Children also face difficulties in raising complaints because they can be viewed as problematic if speak up about issues impacting on their lives and are therefore often not encouraged to complain. Additionally, the institutions created to respond to complaints are not perceived as child-friendly, leaving children excluded or confused as to how to have their complaints heard. Children feel like they may not have the knowledge, skills or confidence to raise complaints.

It is essential that the Bill outlines a clear and accessible process for how children, or adults representing children, can raise complaints if they feel Scottish Government or other public bodies are not respecting or fulfilling children's human rights, including access to the courts as a last resort.

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? Please explain your views.

Yes.

The UN Committee is clear that where there are breaches of children's UNCRC rights, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration. This is enshrined in UNCRC Article 39.

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?

Yes.

The UN Committee is clear that '...incorporation should mean that the provisions of the Convention [...] will prevail where there is a conflict with domestic legislation or common practice'. Learning from countries that have incorporated the UNCRC shows that ensuring the UNCRC is accorded high priority in the Scottish domestic legal system, particularly when in conflict with domestic legislation, would guarantee that incorporation has an impact on children's experiences of their rights.

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? Please explain your views.

Yes.

Provisions should be included in the model of UNCRC incorporation to ensure courts read and give effect to primary and subordinate legislation of the Scottish Parliament in a way which is compatible with the UNCRC.

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? Please explain your views.

Yes.

It is unclear why Scottish Government believes it would not be possible to introduce 'strike down' powers. We would like Scottish Government to explain the reasoning behind this assertion.

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

The model of UNCRC incorporation should include provisions that enable children and others with sufficient interest to bring proceedings if and when a public authority has failed to comply with the UNCRC or Optional Protocols.

It is essential that children, as rights-holders themselves, are enabled to bring forward complaints in court if they feel their rights are being breached. However, given that children can face specific vulnerabilities and can feel like they lack the knowledge, experience and power to participate in bureaucratic processes, the requirement to bring a case to court as the victim of a rights violation could be challenging for many children. It is important that Scottish Government takes a broader definition of standing so that children can be represented by adults or organisations with 'sufficient interest' in the case, as proposed in the consultation paper.

Children felt that it is important that they are heard and get the opportunity to raise complaints in court.

“Children and young people have lived experiences and these decisions affect their lives, so it is important that their voices are heard. Children and young people are the experts in themselves. To understand what we need and how we feel, it is not enough for adults to voice their opinions. Children and young people must be consulted to inform better practice.”

“For us, it’s our whole lives and it’s really big, but then the Sheriff gets to choose and it’s not big for him. It’s your life and he decides? That would make me nervous.”

However, children felt that it was unfair to ask children, especially young or vulnerable children, to raise their own complaints in court. They felt that it was sometimes necessary for children to be represented by adults or organisations in court.

“Not all children should be expected to know what they are doing in court, like really young children.”

“Children should have someone to talk to who can take the government or whoever to court and the children don’t have to go directly.”

“Not all children would know to go to the council [with a complaint] but some parents might tell them.”

They also felt that children needed to be supported by adults to understand the legal process and the outcome of the case. If they are involved in court proceedings, children ask that judges and other adults involved in the process:

- Respect children’s human dignity and right to privacy
- Support children to understand what is happening at all stages of the process

- Clarify how and with whom their information will be shared
- Use clear, simple and child-friendly language, especially with younger children, children with learning difficulties or disabilities, and children who do not speak English as a first language
- Update children on what will happen next, and on any decisions made that impact their lives

“It’s really frustrating because people are making decisions about you and you don’t know the outcome.”