



'All rights are important, so all rights should be law'

A consultation on incorporating the UNCRC into domestic law in Scotland
September 2019

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About Children's Parliament

Children's Parliament 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 as the foundation for all our work to remind individual citizens and public bodies that children's rights are human rights.



0131 558 9030

www.childrensparliament.org.uk

info@childrensparliament.org.uk

[@creative_voices](https://twitter.com/creative_voices)

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INTRODUCTION

Children's human rights are about ensuring that children grow up in an atmosphere of happiness, understanding and love, and have a say about their lives. At Children's Parliament we use a rights-based approach in our engagement with children so that they learn about and experience their rights as outlined in the UN Convention on the Rights of the Child (UNCRC). The UNCRC provides a set of minimum standards against which we can measure how we are doing and below which we must not fall. We therefore welcome the commitment of Scottish Government to incorporate the UNCRC into domestic law in Scotland.

Given the complicated nature of the consultation and the focus on legal mechanisms, it was challenging to make the information and questions accessible for children. However, as the incorporation of the UNCRC will have a direct impact on the lives of children, it was imperative that we sought their views on how Scotland moves forward with the process of incorporation.

As part of the public consultation on the incorporation of the UNCRC into our domestic law in Scotland, Children's Parliament delivered workshops to explore children's experiences, views and ideas on incorporation of the UNCRC, embedding rights in public services, and redress for rights violations.

Specifically, this consultation gathered children's views on the following themes and associated topics:

- Incorporation of the UNCRC
 1. The meaning of incorporation and the different models of incorporation that Scotland could adopt
 2. The difference between compliance and due regard
 3. The role of General Comments and the Concluding Observations from the UN Committee on the Rights of the Child
- Embedding rights in public services
 1. Non-legislative activities that would help implement the UNCRC
 2. Consideration of timescales to embed the UNCRC into law
- Redress for rights violations
 1. Statement of compatibility with UNCRC for any new legislation
 2. Raising complaints in court if children's human rights are not respected or fulfilled

This report, along with our catalogue of past work, has informed a full Children's Parliament response to the Scottish Government consultation on incorporation of the UNCRC.

About the children

The 22 MCPs involved in this consultation have been part of other Children's Parliament programmes, projects and consultations. Due to the complexity of the themes presented in the Scottish Government consultation paper on incorporation of the UNCRC, we felt it important to work with children who had an established awareness and understanding of children's human rights and the UNCRC. This allowed them to discuss the themes with greater confidence, nuance and detail.

We delivered two workshops, involving children age 10 to 14 from five local authorities: Aberdeen, Dundee, East Lothian, Edinburgh and Fife. These children had previously participated in the following projects:

- Imagining Aberdeen
- Scottish Learning Panel Dundee
- Children as Human Rights Defenders East Lothian
- What Kind of Edinburgh
- Seen + Heard Fife

These 22 MCPs represent diverse backgrounds, experiences and abilities, allowing for a wide range of views to be reflected in this report.

The quotes and artwork in this report come directly from the MCPs.



THEME 1:

How should Scottish Government incorporate the UNCRC?

In this section, children explored the importance of children's human rights, what a law is, the different models of incorporation, and how Scottish Government might go about making children's human rights into law in Scotland.

What are children's human rights and why are they important?

Children's human rights are what keep children healthy, happy and safe. They are the promises made to children by adults around the world through the UN Convention on the Rights of the Child.

"Because they are your own rights and they should be respected."

"Adults should obey them anyway, even if they aren't law."

"We need our rights so that bad things don't happen to us."

For children, having their rights realised would mean significant improvements to their lives, for example:

"Children would get the right support [for mental health and learning difficulties] if people actually listened to children and asked them how they're feeling."

"If you're constantly worried, it's nice to have time to play and relax."

"You have the right to join clubs and not be stopped. It helps you be with your friends and learn skills and not be bored."

"You should be able to settle in one place if you're in foster care, like have a proper home."

"I think that if the UNCRC was incorporated fully, happiness and school performance would rise."

What is incorporation?

After reflecting on the meaning and importance of children's human rights, the children considered what it might mean to 'incorporate' the UNCRC. A few children were familiar with the concept of incorporation and explained to the other children that it meant "to include something", in this case, to include the UNCRC in the domestic laws of Scotland.

The children felt that it was very important for children's human rights to be included in law in Scotland.

"I think you should make children's rights law because it will keep a lot more children safe."

"It's important for children's rights to become the law because it's for our protection."

"I think that incorporating children's rights is important because some people don't even know what the UNCRC is."

What is a law?

To children, a law is:

Something that should be respected
Something about politics
Something to follow for the better
Enforcement
Can't break it
Guidelines of what you can do
Something to abide by to keep peace –
to make sure everything is stable and not crazy
Rules to keep you safe, healthy and
protected and to have a good life
An important rule to follow
or you go to jail/pay a fine



The children discussed how laws are made. Some of the children had never heard the term 'Bill' in relation to the law. Instead, it was connected to money and something you paid at a restaurant. It was helpful for the children to understand that a Bill was a draft law that was presented to the Scottish Parliament to be discussed, checked out, and amended before being passed and made into a Law.

What model of incorporation is best?

According to the consultation paper, the Scottish Government has outlined two possible models for incorporation:

- Direct incorporation – this means writing a Bill that uses the exact language of the UNCRC (“copy and paste”) to embed all the articles into law.
- Scottish suite of rights – this means developing a new set of rights that are specific to Scotland and are rooted in the UNCRC.

After discussing the positives and negatives of each model of incorporation, the children discussed their preferred model. The children reached a group consensus, preferring direct incorporation because it would reflect the UNCRC exactly 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 sounds good [a suite of rights], 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 recognised the challenges for Scotland with regards to its devolved powers, but felt that Scotland has an opportunity to be a world leader by passing optimal legislation to respect, protect and fulfill children's human rights.

"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."



Children might
not know what
a right is.

What is the difference between 'compliance' and 'due regard'?

Looking at how the UNCRC might become law in Scotland, the children discussed aspects of the new proposed models of incorporation, specifically the difference between a 'duty to comply' with the UNCRC and the 'duty to give due regard' to the UNCRC; how the former is binding (something that must be met) and the latter is guiding (something to think about).

Children felt strongly that making the UNCRC a 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."

"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."

How should other documents from the UN Committee on the Rights of the Child be used in Scotland?

In order to help countries understand and implement the UNCRC, the Committee produces two resources: General Comments and Concluding Observations.

It was explained to children that *General Comments* are guidance written by the Committee for governments across the world to help them understand what they should be doing to protect children's rights. They go into detail about specific UNCRC articles and cover many different topics from listening to children and young people to children and young people's health and education.

The Committee is also in charge of checking how countries are respecting children's human rights, and every few years each country is reviewed to see what they've been doing and where they need to change or get better. The Committee produces a set of *Concluding Observations*, like a school report card, with recommendations for the country to take forward.

Children view General Comments and Concluding Observations as valuable resources which should be used by Scottish Government to ensure that 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.”



THEME 1:

Embedding rights in public services

In this section, children thought about what needed to be done by Scottish Government and other public bodies so that their rights were respected, protected and fulfilled in practice.

Besides the new law, what else should Scottish Government do to make children's human rights real in Scotland?

Children emphasised that a new law was not enough to create culture change and to shift the broader attitudes towards children's rights and the perception of children and young people in Scotland. 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."

Children thought it was important that children and young people, parents and carers, teachers, social workers, doctors and other professionals working with children, and 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
- On radio and television, let adults and children know about rights
- Having an assembly/shows about rights at schools for children and adults
- Send out awareness leaflets for parents and parents-to-be in the baby box or Book Bug bags
- Write a picture book about rights
- Guidance for carers who are looking after children with care experience
- A museum about human rights
- Human rights having 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.”

“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. A big statue of my shield.”

“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 who work 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, and should involve children directly.

“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.”

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.

“More chances for children to interact with local and national government.”

“The government make the decisions for the children when it should happen with the children.”

"Club where kids can say what's happening about rights."

"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 that more children have their rights fulfilled is to directly support them through legislation, policy and practice. Children often speak to Children's Parliament 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 fair and support those members of our society who are most vulnerable.

"Support for children who are refugees or immigrant."

"Put funding towards support for disabled people."

"Increased funding for families and other vulnerable groups."

"Put more money into supporting low-income families."

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 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."



How long should Scottish Government and other public bodies have to make sure they are following the new law?

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 not the right ones or not thought through properly.

"They should have a period of time because if it happened overnight, they wouldn't be ready."

"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."

"Better to do it gradually, then you can see what works and what causes problems."

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 amount of time. Children felt 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."

Therefore, 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 so long that decisions become diluted or less meaningful.



THEME 3:

Redress for rights violations

In this section, children thought about how best to ensure that children's human rights were respected, how to raise complaints if they were not and what barriers they might experience in seeking redress with the courts.

Should Scottish Government make a 'statement of compatibility' with the UNCRC for any new laws?

As with the discussion about 'compatibility' and 'due regard', children felt that a statement of compatibility for children's human rights was an essential step in the incorporation process. It shows that the government has done all it can to ensure that children's human rights have been considered and respected throughout the development of a bill. By completing a statement of compatibility, Scottish Government is signing on the dotted line that each bill will not impact negatively on the human rights of children.

"We need something to prove it follows children's rights."

"It makes them [new laws] safer for children."



Children also recognised that it was putting additional requirements on politicians and civil servants, which may impact the speed that bills can move through the process to become a law. However, it was still seen as an important step towards respecting, protecting and fulfilling children’s human rights.

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

Why is it important that children can raise a complaint if they feel their rights are not respected or fulfilled?

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 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 with 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 assistants (PSAs)
- Friends
- Children’s Parliament
- Children and Young People’s Commissioner Scotland
- Childline
- Police
- Doctor
- The local council
- MSPs or MPs
- Scottish Courts



"Adults need to know all of children's rights to understand how to help a child."

"All adults, like teachers and PSAs need to know children's rights so they understand what's going on and what the child's rights are if they make a complaint."

"A child might be more confident to speak up and then the problem can be solved."

"If a lot of people complain about things then the council will have to listen."

"Children might be more excited to go to school if teachers have to respect them."



What might prevent a child from raising a complaint?

However, the children recognised that raising complaints can be difficult and frightening. They worry that adults might not listen or take them seriously, that nothing will change or the issue will be ignored, that they may face repercussions for having raised the complaint, and 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.”

“Adults might try to avoid the problem.”

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 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.

“Children might be afraid to speak up.”

“If a child can’t speak English, they won’t be able to speak up about their worry or complaint.”

“If parents can’t speak to adults at school.”

With this in mind, 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.

Should children, or adults representing them, be able to bring complaints to the Scottish Courts?

It is essential that children, as rights-holders themselves, can bring forward complaints in court if they feel their rights are being violated. Children felt that it is important that they are heard and can raise complaints in court.

“If there’s something happening in our lives, if it’s bad we have to speak about it. If it’s good, we want to talk about it.

We need to be listened to.”

“If enough children raise a complaint, people might listen. But really, it should always count – even if it’s only affecting one child.”

However, given that children can face specific vulnerabilities and can feel like they lack the knowledge, experience and power to engage with bureaucratic processes, the requirement to bring a case to court as the victim of a rights violation could be challenging for many children. 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.”

FINAL THOUGHTS

Children should grow up in an atmosphere of happiness, understanding and love. By incorporating the UNCRC into domestic law, Scottish Government can take a big step towards all children experiencing their rights all of the time and growing up in such an environment.

Children believe that the UNCRC should be made law through full and direct incorporation without delay. The practical implementation of the UNCRC across public authorities should be accompanied by a wide-spread awareness-raising programme to ensure that children, parents and carers, professionals and decision makers all understand the value and importance of children's human rights. Vitally, children must have access to mechanisms to address any violations of their rights so that something might change, for them individually or for children generally.

"Children's rights are important because they are essential to make a child's life liveable."



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