



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

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Full name or organisation's name

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- Yes  
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**Response to the *Scottish Government* consultation on incorporation of the *United Nations Convention on the Rights of the Child [UNCRC]* into Scots Law**

*» An ethical, rights-based society is one in which each person is guaranteed a decent and dignified life and opportunities for personal development, but is also guaranteed freedom of expression and freedom of association. A principle that, if to be realised, should be set within a legally binding framework that facilitates informed choice, freedom, dignity, respect and the right of remedy; all of which demonstrate an acceptance that children and young people have the same rights entitlements as adults: that, in the eyes of domestic law, age, ethnicity or ability are no exceptions; there are no conditions attached.«*

## **Introduction**

Established in 1996, *Article 12 in Scotland* is a young person focused organisation that works to promote young people's human rights as set out in international and domestic law.

Our work is underpinned by the principle of free participation: the right to participate as equal citizens at all levels of society, without fear or favour, and a process that facilitates the participation of all young people on their own terms and according to their own realities; a principle that, if realised, facilitates informed choice, freedom, dignity, respect and demonstrates an acceptance that young people have the same human rights entitlements as adults: that age or ability is no exception, that there is no glass ceiling that deflects those who have not come up through the ranks of established participatory structures or those who do not 'fit' the cultural norms of mainstream society: that there are no conditions attached.

We work to achieve this by supporting some of the most marginalised and seldom heard young people, such as young Gypsy/Travellers; care experienced young people; LGBTQI+ young people; young people with disabilities; young offenders and young people experiencing mental ill-health to:

- undertake research to identify needs and concerns relating to their human rights;
- have those needs and concerns given due weight and attention by key decision makers at local, national and international level.

As such, this response is inclusive of, and weighted towards, the views of young people engaged in our current work.

## **Key Points:**

- The *UNCRC* must be incorporated in its entirety;
- To ensure incorporation within the current session of the *Scottish Parliament* a Bill must be introduced without delay;
- Scrutiny of implementation and impact at national and local level similar to the current international processes must be part of the incorporation journey – children and young people must be at the heart of this.

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

Yes. Particularly a duty to ensure policy and practice is compliant, and the right to legal remedy. Section 2 of the *Children's Rights [Scotland] Bill*<sup>1</sup> alludes to these and other necessary inclusions – *Article 12 in Scotland* is fully supportive of the content and context of the *Bill* and recommends it as key guidance in the development of the incorporation process.

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

Yes. See question 1 response.

**Question 3:** *Do you agree that the framework for incorporation should include a “duty to comply” with the UNCRC rights?*

Yes. A ‘duty to comply’ will facilitate equality and continuity of access to the rights as set out in the *UNCRC* thus ensuring that all children and young people can enjoy their human rights. Further, a legal duty would enable legal redress in cases of non-compliance.

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

The framework of incorporation should give equal weight and attention to General Comments, Concluding Observations and opinions made by the *UNCRC Committee*. This will ensure that duties and provisions remain ‘live’ and relevant to changes and developments at the international level.

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

A number of *UNCRC* principles now sit within Scots Law [see, for example, the *Children's Hearings Scotland Act (2011)* and *Standards in Scotland's Schools etc. Act (2000)*]. The judiciary of countries who have already incorporated the *UNCRC* in full have not declared difficulties in interpreting the *UNCRC*, consequently we do not envisage that the Scottish judiciary would be any different in its understanding and analysis. In any case, should

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<sup>1</sup> <https://www.togetherscotland.org.uk/media/1200/childrens-rights-scotland-bill-2019.pdf>

unforeseen issues arise, there is opportunity to scrutinise case law in, or take advice from, those engaged in the processes, in countries who have incorporated.

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

Yes. If incorporation is to happen within this parliamentary session, the government must act without delay.

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

As noted at Question 1, *Article 12 in Scotland* is fully supportive of the content and context of the model.

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

The dualistic nature of our domestic law means that all or any international law requires incorporation before it has status within our legal systems. Therefore, the issue of 'self-executing' is not relevant here.

**Question 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?*

Training and awareness-raising of the suite of devolved matters, and where the *UNCRC* sits within them, will be required.

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

Yes. This would lead to patchy provision and interpretation and thus would fall short of the spirit and intention of universality and indivisibility.

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

We do not see any benefit to a ‘transposition model’. Such a model fails to take cognisance of the universality and indivisibility of the suite of rights that is the *UNCRC*.

We recommend that opportunities are created to ensure that children and young people [particularly those whose voice is seldom heard] and relevant agencies, NGOs and civil society organisations are fully involved in the development processes.

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

*Article 12 in Scotland* fully supports the model as proposed in the *Children’s Rights (Scotland) Bill (2018)*.

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

Yes. This will ensure monitoring and evaluation of progress and compliance by all stakeholders.

***Question 14:*** *Do you think there should be a “sunrise clause” within legislation?*

No. Current legislation such as the *Children and Young People (Scotland) Act (2014)* has established firm foundations for incorporation. As mentioned earlier, if incorporation is to be achieved in the current parliamentary session then the process must begin as soon as is possible.

***Question 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?*

N/A.

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

Yes. As *Article 12 in Scotland* and many others have consistently recommended in the past, a suite of trainings and awareness-raising events at all levels are required. This should be ongoing during - and following - incorporation. Children and young people, and those advocating for their rights, should be at the heart of the design and delivery of this.

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

Yes. This would be in line with current requirements vis a vis the *Human Rights Act (1998)*.

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

Yes, as public authorities are likely to be the first [or indeed only] point of contact for children and young people such a regime will be crucial.

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

Yes. It is important that compensation for damages vis a vis violations of children and young peoples' rights carries the same weight as those applicable to adults. It is however up to the judiciary to determine the 'how and the what' in individual cases.

**Question 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. Directives for the *UNCRC* should not differ from other human rights instruments. To do so would be to assume or assign children and young people's rights as having lesser value.

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

Yes. This will serve to strengthen the human rights of children and young people in Scotland and encourage [or, if required, enforce] compliance.

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

Yes. As above.

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

Children, young people [and/or their advocates should the child or young person request it] must be able to bring cases in their own right.

**During this consultation, Article 12 in Scotland sought the views of various groups of seldom heard young people, this is what they had to say about the UNCRC and what it means to them:**

What does the *United Nations Convention on the Rights of the Child [UNCRC]* mean to you?

- *“No LGBT child rights”;*
- *“I have never heard of it” [stated numerous times];*
- *“I have no clue what it is”;*
- *“Making sure a child’s life is the best it can be”;*
- *“It protects my rights”;*
- *“Important to have when successfully enforced”;*
- *“Don’t know what that is”;*
- *“It should give us rights but we don’t get them all”;*
- *“I can’t go to school so it doesn’t give us the right to education. If it wasn’t for Article 12 we [young Gypsy/Travellers] wouldn’t get any education”;*
- *“People think we [young Gypsy/Travellers] get everything for free so there needs to be education for people to tell them it isn’t true”;*
- *“Protection for rights”;*
- *“That every child has rights that adults follow – very important to me”;*
- *“That I’m not a slave”;*
- *“Right to an education, it means people have a future that are less affluent”.*

How important is the *UNCRC* in ensuring that your rights are protected?

- *“Probably important but we aren’t told”;*
- *“Pretty damn important”;*
- *“Very, but needs to be enforced more and talked about more in school”;*
- *“It means a lot, as it means in Scotland children have the right to life”;*
- *“It’s good to know what people should be held accountable for”;*
- *“It is good that there is someone above our government telling them that they have to look after you”;*
- *“Extremely, my rights as a young person are as important and valued as an adult”;*
- *“Very important”.*

Do you think that the *UNCRC* should be incorporated into domestic law in Scotland?

- *“Yes” [stated numerous times];*
- *“Yes! That’s important”;*



- *“Yes, because it protects children’s rights”;*
- *“Yes, we would feel more confident and could go to the police if it was all law”;*
- *“We need clear laws saying treating Travellers badly is wrong and the UNCRC being law might cover it”;*
- *“Yes, I thought it already was...”.*

What is your top reason for why the *UNCRC* should [or should not] be incorporated?

- *“Because it helps kids”;*
- *“It can protect young people”;*
- *“Gives much needed rights that are not currently enforced enough”;*
- *“Because children and young people and their rights are as important and valued as adults and should be treated as such”;*
- *“I think it should be as it helps impoverished children have a better life”;*
- *“Domestic law deals with kids so their rights need to be respected”;*
- *“Sounds like a good thing to do”;*
- *“There is lots of hate. Police don’t help. If they hear the name [...] they won’t come. We broke down on the road and the police just got in their cars and left when they heard our name. If it was in the law then they would have no choice but to help you”;*
- *“On YouTube under the videos on ‘Traveller Traditions’ there are really awful comments. We would feel more confident and could go to the police if it was law”;*
- *“We could have a happy life like everyone else and wouldn’t need to hide behind doors and put our hoods up when we go out to hide who we are”;*
- *“Because it protects children’s rights”.*

*“Rights are more important now than ever, don’t let the current political climate erode them!”*

Young Person, *Article 12 in Scotland: UNCRC Concluding Observations Seminar*, Glasgow, March 25<sup>th</sup> 2017.

The rights to live a life free from discrimination and to be respected are key rights’ entitlements; however, many children and young people continue to face discrimination, negative stereotyping and social stigmatisation on a daily basis, with marginalised children and young people being disproportionately affected by this. If we are to see a meaningful change in realising the rights of vulnerable children and young people – and indeed all children and young people across Scotland - it is essential that the *UNCRC* is incorporated into Scots Law. In the spirit of Article 12 of the *UNCRC*, young people must be consulted on and participate in the development of this; increased participation and advocacy are essential and must be sincere and meaningful. Knowledge surrounding the *UNCRC* is still low, but what is clear is that the *UNCRC* is highly valued by the children and young people who know of it’s existence, as is the ‘right to know your rights’; those who do not have knowledge of the *UNCRC* must be ensured of its protection, and by incorporating it into Scots Law, this can be guaranteed.

*“The government need to listen to what we need”.*

Young Person, *Article 12 in Scotland: UNCRC Concluding Observations Seminar*, Glasgow, March 25<sup>th</sup> 2017.