



Shirley-Anne Somerville MSP, Cabinet Secretary for Social Justice
The Scottish Government
St. Andrew's House
Regent Road
Edinburgh
EH1 3DG

Copied to: Kaukab Stewart, Convenor, Equalities, Human Rights and Social Justice Committee

Friday 27th October 2023

Dear Ms Somerville

UNCRC (Incorporation) (Scotland) Bill reconsideration

As members of Together (Scottish Alliance for Children's Rights), we warmly welcome the return of the *UNCRC (Incorporation) (Scotland) Bill* to the Scottish Parliament for reconsideration. This is a significant step on Scotland's journey towards ensuring all children and young people have their human rights respected, protected and fulfilled. We would like to offer our ongoing support towards achieving Scottish Government's mission of delivering a revolution in children's human rights.

As organisations working every day to support children, young people and their families, we know that the challenges facing them have never felt more acute or overwhelming. This is especially true for children whose rights were already at greatest risk and who now face the brunt of the cost-of-living crisis. It is more important than ever that children's human rights are put into law as a matter of urgency. In your leadership role, you have a crucial part to play in communicating how the UNCRC Bill will both add to existing legal protections and drive positive culture change.

We know from our work with children, young people and our members that the mere prospect of the UNCRC Bill is already contributing to this change. In-depth research conducted across countries that have already incorporated the UNCRC into law demonstrates that this culture change will continue to gain momentum as the UNCRC Bill passes and children's rights become integrated into all aspects of children's lives. Through the Children's Rights Scheme, provisions on child rights impact assessments, child-friendly complaints mechanisms, reporting requirements and more, the UNCRC Bill will help to prevent rights breaches from occurring and help children and young people feel safe and supported to raise concerns when necessary.

While we understand that it has been necessary to narrow the scope of the UNCRC Bill somewhat, it is within the power of the Scottish Government to bring additional areas into the scope of the UNCRC Bill over time. We encourage you to emphasise that the amendments made to the UNCRC Bill at this stage do not take anything away from the existing legal framework. It is essential that children, young people, their families and the wider public sector are all supported to understand

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this. Instead, the UNCRC Bill will add an additional layer of protection for children’s rights in certain areas that can be built upon in coming years. Children and young people should be able to speak with a trusted adult if they are concerned about their rights in *any* area of their lives – and these concerns should be listened to and taken into account with a view to making any immediate changes needed to avoid the need to escalate their complaint. Whilst the amendments narrow the scope of the UNCRC Bill, it is ultimately only recourse to court action using the UNCRC which may not be available in certain areas. Court action may still be possible under a basis other than the UNCRC Bill.

As we enter the reconsideration stage, we are writing to request that you make four specific commitments. As well as ensuring this Bill – and the subsequent Human Rights Bill for Scotland - realise their full potential, these four commitments will also help to alleviate concerns raised by other stakeholders as the Equalities, Human Rights and Civil Justice Committee scrutinises the reconsideration stage of the UNCRC Bill:

1. Set out a clear timetable for legislative review:

Scottish Government should set out a timescale in which it will conduct a review of legislation to identify Acts of the UK Parliament (and amendments to Acts of the UK Parliament) that are within devolved powers and impact on children’s human rights – and commit to taking the necessary steps to bring such legislation within the scope of the UNCRC Bill. We understand that acting on the review’s findings will inevitably involve an element of prioritisation and encourage you to involve children and young people in decisions about which areas should be addressed first, balancing the urgency of the need to address specific areas of legislation with the opportunities presented through the legislative programme.

2. Commit to using specific legislative opportunities to expand the scope of the UNCRC Bill:

Scottish Government should commit to use forthcoming legislative opportunities to bring provisions of priority UK Acts identified in the legislative review into Scots law. For example, this could include bringing provisions of the Children (Scotland) Act 1995 and the Social Work (Scotland) Act 1968 into Scots law through the Promise Bill, and bringing the Education (Scotland) Act 1980 into Scots law through the Education Reform Bill. We would urge Scottish Government to report annually on its progress in bringing UK legislation into scope as part of the existing reporting duty in the UNCRC Bill.

3. Commit to minimising future Scottish Parliament amendments to UK Acts:

Scottish Government should commit to always consider the scope of the amended UNCRC Bill when drafting future legislation (both its format and content) and strive to ensure that this falls within the scope of the UNCRC Bill. This would mean minimising the approach whereby Acts of the Scottish Parliament are used to amend UK Acts as this would fall outwith the scope of the amended UNCRC Bill. Instead the focus should be on bringing forward ‘stand alone’ Acts of the Scottish Parliament. This approach will support the Scottish Government’s broader human rights agenda and will also help to ensure that the forthcoming Human Rights Bill for Scotland has as full an effect as possible. Scottish Government should provide evidence through Child Rights and Wellbeing Impact Assessments (CRWIA) that the best drafting approach has been used, including an assessment of any potential negative impact on children’s rights of opting to amend a UK Act rather than creating a ‘stand alone’ Act of the Scottish Parliament.

4. Commit to the continuation of the UNCRC Implementation Programme:

Scottish Government should revisit the Financial Memorandum published at Stage 1 of the UNCRC Bill process and commit to continue the UNCRC Implementation Programme beyond March 2024. The work undertaken through the UNCRC Implementation Programme – particularly that of the Improvement Service – has already proved to be essential in delivering the culture change we are seeking. It is essential that this work is built on and developed to support and build the capacity of

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public bodies to deliver the policy intentions of the UNCRC Bill. The UNCRC Implementation Programme must include:

- Clear resources for children, young people and the adults around them to help them understand their rights and recognise when they are breached;
- Funding and capacity building to increase the number of specialist lawyers for children;
- A holistic approach to the UNCRC Implementation Programme which aligns actions with existing policies and structures, such as the Promise and GIRFEC, and supports capacity building bodies such as the Improvement Service, the Scottish Public Services Ombudsman and the broader children's sector.

We look forward to working constructively with you to ensure these requests are taken forward and that structures are put in place to ensure children and young people can hold Scottish Government and public authorities to account on progress throughout this process.

We would welcome any opportunities to discuss these issues further and to reiterate our support for the UNCRC Bill.

Yours sincerely

Juliet Harris
Director, Together (Scottish Alliance for Children's Rights)