



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Equalities, Human Rights and Civil Justice Committee

**Tuesday 31 October 2023**

**Session 6**



The Scottish Parliament  
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - [www.parliament.scot](http://www.parliament.scot) or by contacting Public Information on 0131 348 5000

---

**Tuesday 31 October 2023**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	<b>1</b>
<b>UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION) (SCOTLAND) BILL: RECONSIDERATION STAGE .....</b>	<b>2</b>

---

**EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE  
21<sup>st</sup> Meeting 2023, Session 6**

**CONVENER**

\*Kaukab Stewart (Glasgow Kelvin) (SNP)

**DEPUTY CONVENER**

\*Maggie Chapman (North East Scotland) (Green)

**COMMITTEE MEMBERS**

\*Karen Adam (Banffshire and Buchan Coast) (SNP)

\*Meghan Gallacher (Central Scotland) (Con)

\*Fulton MacGregor (Coatbridge and Chryston) (SNP)

\*Paul O’Kane (West Scotland) (Lab)

\*Annie Wells (Glasgow) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Councillor Tony Buchanan (Convention of Scottish Local Authorities)

Chief Superintendent Derek Frew (Police Scotland)

Juliet Harris (Together (Scottish Alliance for Children’s Rights))

Nicola Killean (Children and Young People’s Commissioner Scotland)

Fiona Menzies (Law Society of Scotland)

Jan Savage (Scottish Human Rights Commission)

Dr Andrew Tickell (Glasgow Caledonian University)

Gina Wilson (Children and Young People’s Commissioner Scotland)

**LOCATION**

The James Clerk Maxwell Room (CR4)



**Scottish Parliament**  
**Equalities, Human Rights and**  
**Civil Justice Committee**

*Tuesday 31 October 2023*

*[The Convener opened the meeting at 09:45]*

**Decision on Taking Business in**  
**Private**

**The Convener (Kaukab Stewart):** Good morning, and welcome to the 21st meeting in 2023 of the Equalities, Human Rights and Civil Justice Committee in session 6. We have received no apologies.

Our first agenda item is to decide whether to take in private agenda item 3, which is consideration of today's evidence. Do members agree to do so?

**Members indicated agreement.**

**United Nations Convention on**  
**the Rights of the Child**  
**(Incorporation) (Scotland) Bill:**  
**Reconsideration Stage**

09:46

**The Convener:** Our second agenda item is to take evidence on the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill at the reconsideration stage. We will take evidence from two panels of witnesses this morning.

I welcome our first panel. Nicola Killean is the Children and Young People's Commissioner Scotland; Gina Wilson is head of strategy in the office of the Children and Young People's Commissioner Scotland; Juliet Harris is director of Together (Scottish Alliance for Children's Rights); Jan Savage is executive director of the Scottish Human Rights Commission; and Fiona Menzies is a policy manager at the Law Society of Scotland.

I refer members to papers 1 and 2.

Before we begin our questioning, I invite each of the witnesses to make some brief opening remarks, should they wish to do so.

**Nicola Killean (Children and Young People's Commissioner Scotland):** Good morning, everyone. Thank you for the opportunity to speak with you all and give evidence today.

I took office as the Children and Young People's Commissioner Scotland in August. During my interview for the role by children and young people, I was asked to outline my top priority. That was not a difficult choice for me to make. Ensuring that the UNCRC is incorporated into Scots law was and is my first priority, because of the following reasons: children and young people in Scotland have been campaigning for that for years, and they still are; doing that will accelerate the culture change that has started to ensure that children's rights are centred by decision makers; and it will give children and young people additional powers to hold decision makers to account.

I know that children and young people might be watching us today, so I want to be clear. I support the Scottish Government's proposed approach to amend the bill. If passed, the bill will provide greater protections for children's rights now, and it will create the foundations on which we can build on those protections in the future. That long-term investment will be focused on the future, beyond parliamentary cycles, not just on immediate returns. I am concerned that, if the bill is subjected

to further referral because of its scope, the opportunity will be lost.

The bill is an amended bill. However, the Scottish Parliament's intention to weave the UNCRC into the fabric of our law, our policy and our public life in Scotland is still achievable.

In opening the stage 3 debate on the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill in March 2021, the then Minister for Children and Young People, Maree Todd, said:

"I want this legislation to help deliver a huge cultural shift, but let us not forget the small changes that will also make a difference to children's everyday lives, and which can send clear and unequivocal messages about what a child-centred society truly looks like ... Raising awareness and understanding of children's rights will create a lasting legacy. It will mean that the children of today grow up to empower the children of tomorrow. We should make no mistake—this matters to Scotland's children."—[*Official Report*, 16 March 2021; c 99.]

My office agreed with the minister then, and I agree with her now.

You have received evidence from others explaining that the amended bill makes things more complicated. It does—for now. However, there is a path that the Scottish Government can create to help duty bearers and children and young people to understand what changes can happen now and how future legislation can continue to be adapted to bring more and more areas into scope.

As the convener mentioned, I am joined today by my colleague Gina Wilson, who is head of strategy for my office. We look forward to providing any information that we can provide to support the committee's scrutiny of the amended bill.

**The Convener:** Thank you, and welcome to your role. Congratulations on your appointment—I believe that this is your first appearance before the committee.

I see that Gina Wilson does not wish to add anything for now.

**Jan Savage (Scottish Human Rights Commission):** Good morning. The Scottish Human Rights Commission welcomes the commencement of the reconsideration stage of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill. Children, young people and their families have waited a very long time for this.

Incorporation of children's rights is essential for children and young people to secure accountability when the rights that they already have under the UN Convention on the Rights of the Child are not adequately considered by public bodies in

Scotland. That is also the view of the United Nations Committee on the Rights of the Child.

Is this where we thought we would be when this process started? No. Is this more complex than we envisaged at the start of this process? Yes. Is that a reason not to proceed? Absolutely not. Is this the best way to go forward with the bill? Yes. It is a messy and complex route, but it is the only route forward.

Our view is that this is the only way to proceed; we do not have an alternative to propose to you. We have reviewed through the lens of minimising the risk of referral back to the Supreme Court; reducing complexity and providing clarity for duty bearers and for children and young people alike; and maximising the coverage within devolved competence. We have not identified an alternative route.

Today, and as you move through the evidence sessions, you will hear concerns about complexity and the burden on duty bearers. It is complex, but the starting point is already complex. We do not have a straightforward system in which we can access justice in relation to human rights in Scotland.

In addition—this is a fundamental question that the committee and the Parliament faces—when it comes to progressing for now with improving children and young people's lives through stronger application of their human rights in the Scottish legal framework, do you give up because it is difficult or more difficult than envisaged, or do you progress? Do you start on a new path and a new journey and open the door for a new human rights framework for children and young people in Scotland? It is not really a choice. That must be done and, therefore, the commission supports the Scottish Government's proposals.

**The Convener:** Thanks.

**Juliet Harris (Together (Scottish Alliance for Children's Rights)):** Thank you for inviting me here today. To prepare, I have spoken widely to children and young people, and all of them have pointed out that today is Halloween. Two of our rights detectives, Oscar and Safiya, have helped me to prepare an opening statement with a Halloween theme that sets out what children and young people think about the amendments to the bill.

I have here a Halloween web. It is a strong web that represents protections for children's rights. I also have some flies, which, as they buzz around, represent breaches of children's rights, and they are caught by the web. Here is Shirley-Anne Spider, the cabinet secretary. She is in charge of the web, along with our spider MSPs and our spider courts.

The web represents the bill as it was passed in March 2021. You can see that it provides protections against breaches of children's rights across all devolved areas in Scotland. It was really tough for any of those flies to get through, but the United Kingdom Supreme Court judgment means that the web has had to change. We now have a looser web, where children's rights might not always be so well protected. Although it catches some flies, other flies might sneak through. Even though that web is not so neat, children and young people say that it is critical. The very fact that a web exists scares away the flies, much like the UNCRC bill will help to prevent breaches of children's rights through its very existence.

With no web, flies might fly everywhere—they might think that they can do as they please. Children and young people really worry that, without any UNCRC bill, adults might think that they do not need to worry about children's rights.

The not-so-neat web is not perfect, but it is still an essential framework for protecting children's rights, and, in years to come, the cabinet secretary, the Scottish Government, the courts and other MSPs will be able to strengthen it. They have the power to improve it. All the spiders can identify where there might be weaknesses and can get to work to fix them and improve the web in future years.

As I said, the Government, the courts and the Parliament all have the power to improve the web in years to come. All the spiders will be able to identify the weaknesses and where the flies get through. Although the bill that we are looking at now is not perfect, children are very clear that it is really important that it becomes law. It will provide the essential framework that we need in Scotland to promote a rights-respecting culture. Over time, the looser web can grow into a tighter web so that we have the strongest possible protections for children's rights in Scotland.

**The Convener:** Thank you. I am always impressed by the clarity of children's thoughts and how they can bring them alive through visual aids and storytelling.

**Fiona Menzies (Law Society of Scotland):** Good morning, everyone. Thank you for inviting the Law Society to join this panel.

The Law Society has a statutory duty to work in the public interest. As part of that work, we have a strong commitment to protecting and promoting the rule of law and seeking to influence the making of a fairer and more just society through the creation of good law—law that is clear, accessible and effective.

We are pleased that UNCRC incorporation is being reconsidered, and the committee will know that we were, and remain, supportive of what the

bill intends to achieve. Our comments on the amendments are included in our written submission. All that I intend to add in these brief opening comments is a word on the wider societal context in which we are considering those amendments.

We highlight again the importance of duty bearers having the necessary resources, education and capacity to be able to meaningfully comply so that the rights of children are not lost in that compliance. We also add that it will be important to balance the legal context with the everyday practicalities for end users—both duty bearers and children and young people. I look forward to contributing to a wider discussion on those important issues.

**The Convener:** I thank all of you for those opening comments.

To get us started, would any of you like to share your view of the Scottish Government's approach in responding to the Supreme Court's judgment and of its proposed amendments to the bill?

Jan Savage, I noticed that you said in your opening statement that you felt that that was the only way to proceed and that there were no alternatives. Could you offer a bit of insight into why you believe that so firmly and whether any alternatives were considered? We will hear from Jan first, but other members of the panel can indicate if they would like to come in.

**Jan Savage:** I am happy to give that a go. Our analysis has been informed by consultation with our colleagues at the Children and Young People's Commissioner's office, who have taken the lead in the interests of avoiding duplication of effort across both bodies. They have done sterling work in pulling together an expert group and ensuring that the appropriate analysis was given to the Scottish Government.

It is our judgment that, in the interests of having a lack of complexity, reducing the risk of referral back to the Supreme Court and establishing a framework whereby successive Scottish Governments and the Scottish Parliament can seek to close the web that Juliet Harris so eloquently and simply managed to explain to us, the option of amending the bill is the best—albeit the only—option that is available to the Scottish Government at this point in time. That is not where the journey started and the bill is not an ideal piece of legislation, but the route of amending the bill is the only route that we can see to enable the necessary steps to be taken. We do not have an alternative to propose.

**The Convener:** Did you have any involvement in the preparation or development of the amendments?

**Jan Savage:** We left that more formal work with our colleagues in the children's commissioner's office, as you would expect. They kept us fully apprised of those discussions, and we were able to confirm their analysis as informing ours.

10:00

**Nicola Killean:** As I said in my opening statement, we, too, are very supportive of the Scottish Government's response and the proposed amendments to the bill. For us, it is really important that we reiterate the focus on what is still in the bill. It will give children and young people additional protection and powers, which is important for us. It will also introduce the children's rights scheme and the requirements for children's rights impact assessments to be undertaken when strategic decisions are being made by duty bearers and for child-friendly complaints mechanisms.

I reinforce the point that, over the past month, the team has consulted partners, experts and children and young people to look at the amendments and assess whether there are alternative approaches. However, we have continually come back to the conclusion that the current approach would give the strongest opportunity for the UNCRC to be incorporated into Scots law. There is a path to broaden the scope of that over time.

On our contribution to the amendments, I will bring in Gina Wilson, as that came at a much later date.

**Gina Wilson (Children and Young People's Commissioner Scotland):** I can talk about the work that we did directly with the Government around the development of the amendments. We did not work with the Government to produce the amendments, and we did not see any of the Government's legal advice in advance of their production. However, the Government shared with us, after a period of time, that the tests that it was looking at were about how to minimise the risk of referral, maximise coverage and ensure that the legislation is accessible. We supported the approach that the Government was taking to examine the options for amendments that were available.

Immediately after the Supreme Court judgment, we took the view that the form of the amendments that we have now was the likely route—it was where we thought that we would end up. We thought that the current approach was probably the version that would be acceptable to the UK Government in that it did not seem to breach on scope again. We have ended up where we predicted we were going to be.

**Juliet Harris:** It is important to stress that incorporation is a journey and that we are still on that journey. Although the amendments mean that we are further on in that journey, we still need to continue forward. No matter the scale or the method, incorporation will always be worth while—it will always be that beneficial first step that helps to create the framework that Nicola Killean spoke about.

It is important to note that, earlier this year, the UN Committee on the Rights of the Child made a specific recommendation for the Scottish Government to bring the amendments expeditiously to the Scottish Parliament to ensure that we can continue on that journey towards incorporation. The work that we have done with our members, legal experts and children and young people shows that we have a framework that we can build on. We have shared with the committee a letter to the cabinet secretary in which we set out four specific asks—I will go into those later in my evidence—as to how, in future and with ministerial commitments, we can build on this initial framework for children's rights.

We have been involved with the Scottish Government. As Gina Wilson said, we have not seen the legal workings from the Scottish Government on the amendments, but it has kept us up to date, kept us informed and involved our membership. Back in June 2022, there was targeted engagement from the Scottish Government through the strategic implementation board. At that point, the Government let us know that it was seeking as much coverage as possible from the compatibility duty, that it was seeking to minimise the risk of referral to the Supreme Court and that it wanted the duty to be as accessible as possible. At that point, our members were supportive of that approach.

In June of this year, there was further detailed engagement with the children's commissioner's office, the Scottish Human Rights Commission and UNICEF. At that point, the Scottish Government set out some options for us. Although, as a membership organisation, we were unable to state our specific support for any one of those options—that would have meant consulting 550 different people or organisations—we were clear that we welcomed the Scottish Government's approach.

It is important to our membership that we do not see another UK Supreme Court referral—we just want to move forward on this journey. Therefore, although there might be criticism that the Scottish Government has perhaps been a little cautious in its approach to amendment and perhaps could have gone further, our membership is very content that we minimise the risk of another referral and take forward other commitments that can

strengthen the web in the way that children and young people have told me that they want, so that we build on the protections in the future.

**The Convener:** Thank you for that. I will bring in my colleague Paul O’Kane.

**Paul O’Kane (West Scotland) (Lab):** Good morning, and thank you for providing a helpful overview. I am going to ask questions about legal complexities, and about some of the views that have been shared by other organisations that we will hear from this morning.

The Convention of Scottish Local Authorities and Social Work Scotland have both indicated that the legal complexities that will be created following the amendments will be challenging. Indeed, Social Work Scotland told us that it viewed it as a “potentially impossible legislative landscape” to navigate. We have heard quite clearly from all of you in evidence that the approach that is being taken is the only option. What do you think that the impact will be on duty bearers under the bill? How can we help them to navigate and address those complexities?

**The Convener:** That might be a good question for Fiona Menzies to come in on.

**Fiona Menzies:** Obviously, the duty bearers here are better placed to answer specifically on how they feel about the impact on them. We need to consider and be conscious of the capacity of duty bearers, as others have highlighted in their written submissions, and there are, of course, some legal complexities. There are obviously many strands to that. If the bill becomes law, advisers will need to take into account children’s rights under the new act and relevant provisions in acts of the Scottish Parliament, and to assess compatibility with relevant provisions in acts of the UK Parliament, and their impact and effect.

The Scottish Government might look to provide some detailed guidance, taking into account each article of the UNCRC and identifying the relevant Scottish and UK legislation to aid duty bearers in their work. You will be aware that complexities and gaps have been highlighted that could potentially be created, so there will be a need to ascertain the compatibility of the large mix of legislation in place that is used by duty bearers that covers children’s rights, which is a mix of acts of the Scottish Parliament and of the UK Parliament. There is potential for a layer of complexity there and potential gaps where some of the legislation would fall outside the scope.

From a purely legal standpoint, that highlights the potential gaps and complexities that others have spoken about. However, duty bearers will have to find a balance in how and to what extent those are likely to play out when it comes to

practical implementation. I think that others will be better placed to talk to that.

**Nicola Killean:** Our clear message is that duty bearers should be focusing on acting compatibly across all elements of the UNCRC. Two years ago, that is what Scotland was preparing for, and we would urge everybody to continue to deliver and focus on that. We also believe that there are some really clear commitments that the Scottish Government can make to support duty bearers in relation to the legislative review and audit. There is a need for really clear communications to support everyone, including children and young people.

Ultimately, we feel that the bill gives additional powers, but whenever there are additional powers, it is a question of making choices and using those powers in circumstances where they are a last resort. We would always be looking to ensure that children’s rights are fulfilled at the local level, wherever possible. We should always look to ensure that, across all elements, children have opportunities with trusted adults at a local level who are able to identify those rights and support them. All duty bearers should be looking to act compatibly all of the time across all elements of the bill, and the Scottish Government can support that by giving clear guidance, commitments and communications about what changes now from a legislative point of view and what can continue to change into the future.

**Juliet Harris:** I completely support what Nicola Killean has said and the importance of focusing on the carrot rather than the stick.

It is important to note that the reduction in scope of the bill is only in relation to legal enforcement. All the other factors are included in the bill. It is a holistic bill that has been designed from the outset to prevent breaches of children’s rights. There is a whole section of the bill to prevent breaches that we are not looking at in reconsideration. The fly is being scared, so it is keeping away from the web.

It is important to note that that is in place and that the reduction in scope applies only if children’s rights are breached and they need to use the UNCRC to seek remedy and redress. As I mentioned before, there are all sorts of models of incorporation internationally, but those models do not always cover all the different parts of the UNCRC; they can be piecemeal across the board. We spoke to UNICEF, and it said that it has seen no evidence that places that have taken a partial or a unique approach are having issues in relation to legal complexity.

It is important to again go back to what children and young people think about these bits of legal complexity. For me, it is a case of learning the importance of listening to children and young people. In my preparation for today, I looked back

at the minutes of the strategic implementation board. I raised concerns at the strategic implementation board that children and young people might not know when their rights are protected by the UNCRC and when they are not, or how they might be able to access remedy and redress.

When I spoke to children and young people about that concern, they said to me, “Do you know when your rights are protected by different laws? Do you know which laws prevent somebody from stealing your handbag when you’re walking down the street? Do you have to quote those laws? No, you don’t. That is the job of a lawyer.” Children and young people have told me that the most important thing for them is to know about their rights, to recognise when their rights are breached and to know who they can complain to.

To go back to Social Work Scotland and COSLA’s concerns, the most important thing for children and young people is not whether they can speak to a lawyer and go to the courts; it is whether they have a trusting relationship with the adults around them, such as teachers and social workers, so that they can say, “I’m worried about my rights. I’m worried that they might have been breached.” The teacher or social worker should be able to deal with that straight away by saying, “Let’s put this in place. Let’s deal with your concern. Let’s make this better.”

There is no legal complexity in that. It is simply about the relationships that social workers, teachers and public authorities have with children and young people. That is the level that we need to talk about. We need to front load the system to make sure that children and young people are in a safe and secure environment where they feel that they can speak to those trusted professionals about their concerns. The legal complexities only really matter in the most serious and extreme cases.

**Paul O’Kane:** That was a helpful contribution in allowing us to understand, as Juliet Harris put it, the carrot-and-stick approach, and giving us an overarching sense that people should be doing this anyway.

However, concerns have been raised by COSLA, Police Scotland and others about the potential confusion between what is statutory and what is not statutory. In a time of ever-diminishing resources, with the challenge that that presents for public sector bodies in particular, how do we ensure that we address the points that Nicola Killean made about communication, taking rights-based approaches generally and training? On Juliet Harris’s point, how do we ensure that front-line professionals who are struggling with their day-to-day case load are able to implement all

that? What more does the Government need to do to progress that? I put that to Nicola Killean first.

**Nicola Killean:** I will reiterate some of the points that I made in my previous response. There is a consistent and clear ask from the Scottish Government around commitment to the legislative review and audit, which I think will be supportive. There needs to be clear leadership across all duty bearers to ensure that front-line workers know that the change for them is to continue to ensure that they deliver excellent services for children and young people, and that there should not be a diversion of funding and support to lawyers. This is about support for children and young people.

Ultimately, though, if children’s rights are being breached, and those are serious breaches, we want to know that. We as a society—not just me and my office—have to understand that, and we have to make plans to be able to do that. We need a clear commitment from the Scottish Government to the legislative review and audit, as well as to clear communications and to the on-going implementation plan.

There has been a programme of work for a number of years now, and there are excellent examples of work that has been undertaken by duty bearers to prepare for this and to change ways of working. There needs to be a clear commitment to that from a resource point of view as well. Overall, we need really good leadership so that front-line workers know that their job is and continues to be to ensure that we provide the best services for children and young people. When they feel that they are struggling with the resource to do that, that needs to be communicated clearly and everyone must listen to them.

10:15

**The Convener:** I want to move on, because time is precious. I know that members are going to be covering some of the points that will come up, so everyone will get an opportunity to comment.

**Meghan Gallacher (Central Scotland) (Con):** I offer a warm welcome to the panel. I will start with a reflective question. It has been almost two years since the Supreme Court ruling and it has taken that length of time for the Scottish Government to bring the bill back to the Scottish Parliament for reconsideration. In relation to the feedback that you have had from children and young people and, indeed, your own feedback, are you disappointed with the length of time that it has taken for the amended bill to come to Parliament to be reconsidered?

**Gina Wilson:** It would be fair to say that there is extensive frustration among children and young people about the delay. I think that what has caused the greatest issue for them is a lack of

understanding of what has been happening in that period. It has been a challenge for us to be able to share information with them candidly about what is being considered, what the challenges are, what progress will be made and what the timetable will be for us to hear about the next steps for the bill. Our office has been fairly vocal about the fact that the length of time has been quite challenging for children and young people. However, we recognise that the communication and the effort around communication now appear to be improving. It has been recognised by children and young people that there is now an intention to share information more meaningfully with them.

**Juliet Harris:** I have spoken widely to children and young people about the issue, and I have also been working with children and young people on it for 14 years, so many of them are now adults. There is quite a degree of frustration that it has taken so long, but there is also an understanding. Children and young people are not stupid—they understand that the bill is complicated and has far-reaching consequences.

I have spoken to Omima and Arden, who are members of the Children’s Parliament who came out to speak to the UN Committee on the Rights of the Child this summer about incorporation. Just the other evening, they said to me:

“We know it will take ages for things to change. There are so many things that children are affected by. Most children just want to know that the adults are trying. We know it won’t happen overnight, but we just want to know that people are trying and things are starting to change.”

I also spoke to Beau, Cris and Isla, who are members of the Scottish Youth Parliament. Isla said:

“It’s a big change we’re looking for and will take a lot of effort from a lot of people so change is likely to be slow. We know that.”

Children and young people really appreciate it when they hear directly from people with power—from decision makers—and have updates. The reason why I had Shirley-Anne Spider with me today is because the cabinet secretary wrote to children and young people just a couple of weeks ago to update them on where we are at with the UNCRC bill. When things are complicated and take time, as long as we are open, we communicate and we talk to children and young people, they understand that change takes a while—although I have to say, 14 years is rather a long time.

**Meghan Gallacher:** Thank you. It is useful to know that that communication is now happening between the cabinet secretary and young people, because that is vitally important, particularly as we move—we hope—towards getting the bill over the line. That is the crucial point and is why we are discussing the issue again.

I want to pick up on the points that Paul O’Kane raised about COSLA and Social Work Scotland. Juliet Harris, you also briefly mentioned redress. COSLA raised the concern that children might find it difficult to identify when they can seek redress for UNCRC incompatibilities using the powers in the bill. What are your thoughts on how the Scottish Government can ensure that all children who are deserving of redress receive it?

**Juliet Harris:** That is also something that I spoke to children and young people about. They were very clear that they do not need to know which laws protect their rights at different times. The most important thing for them is that they know that they have the rights that are in the UNCRC, that they are able to recognise when they are breached and that they know what they can do when they are breached—who they can speak to and complain to.

They also talked to me a lot about the fact that sometimes children and young people are scared about complaining. They can be nervous about it and not want to get people into trouble. For them, the most important thing was that they had lots of options, such as being able to complain anonymously. Perhaps they could have a peer mentor at school—a child or young person whom they could speak to about concerns about their rights. They were really clear about that and about the fact that they do not need to know the details of the laws; they just need to know the details of their rights.

They suggested things such as flow charts that children and young people and the adults around them should have, because they said that sometimes adults do not know that they have to listen to complaints from children and young people, which means that when they make complaints, they are not always respected and their complaints are not always taken into account. If there were flow charts for children and young people in their schools that showed them who they should speak to informally, first of all, if they were worried about their rights, that would help them. I think that the same would be the case with regard to children’s hearings and all aspects of children and young people’s lives.

It is also so important that the adults around them know what to do if a child complains about their rights, because the very worst thing that can happen is that children and young people raise a worry and the adults around them do not react.

I spoke to children specifically about the concerns of COSLA and Social Work Scotland, and they said that those are not concerns for them. They do not worry about knowing how their rights are protected. For them, it is more important to know about their rights and what they can do to raise any worries that they have.

**Meghan Gallacher:** That suggestion about flow charts goes back to the idea that children might expect to have some kind of visual demonstration of their rights.

Does anyone have any other comments on the redress scheme?

**Gina Wilson:** Building on what Juliet Harris said, when it comes to what we can do to address some of the concerns of COSLA and Social Work Scotland, we recognise that the trusted adults and professionals around children and young people need to understand. That means that we need to support capacity building for those professionals, to ensure that they understand what their obligations are, what rights children have and how they can be supported.

We would encourage the Scottish Government to ensure that it adequately resources and supports the on-going implementation programme for the UNCRC. Years of extensive work has already been done to get us to this point, but we want to see that work continue, with a particular emphasis on services such as the Improvement Service, which is creating fantastic professional development capacity training opportunities for adults who work with children and young people.

**Meghan Gallacher:** Thank you. I appreciate that time is precious, convener.

**The Convener:** We move on to questions from Fulton MacGregor, who joins us online.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** I hope that everybody can hear me. Good morning to the panel, and thank you very much for your input so far. I particularly liked Juliet Harris's opening statement. There was something a wee bit different there on the theme of the day.

I have two broad questions, although we have already covered the second one a wee bit. The bill provides that commencement will be six months after royal assent. What do you think about that timing? Does it represent sufficient time for duty bearers and rights holders to prepare for the approach? Convener, as I am not in the room, I am happy for you to decide who should answer.

**The Convener:** Juliet, do you want to comment?

**Juliet Harris:** Together members are clear that they are happy with the six-months commencement date. That builds on the fact that the UK signed up to the UNCRC in 1991 and the fact that policy in Scotland, under getting it right for every child, has built on the UNCRC since 2006. If the bill's provisions had commenced after it was unanimously passed by the Scottish Parliament back in March 2021, they would have been in force by now. The implementation programme,

which Gina Wilson spoke about, has already allowed a lot of time for the capacity of public bodies to be built in order for them to be ready for implementation.

The UNCRC implementation programme has been funded since March 2021. It is important that that is continued to ensure that duty bearers are ready for commencement. At present, however, the programme is funded only up to March next year. One of our specific asks of the cabinet secretary is that she commits to continuing that funding.

As Gina Wilson said, that funding has been providing vital support, through the Improvement Service, for public bodies and elected members. It has enabled the Scottish Public Services Ombudsman to develop a child-friendly complaints mechanism, which is being piloted across a lot of local authorities. It has allowed time for the UNCRC innovation fund, under which public bodies are trialling approaches to UNCRC implementation. It has allowed some brilliant work by the Scottish Youth Parliament on the "Right Here, Right Now" resource, and the dignity in school hub of the Children's Parliament. None of that would have been in place if commencement had been back when the bill was passed. At this point, we are more than capable and more than prepared to cope with commencement after six months.

**The Convener:** As no one else wants to comment on that, I go back to Fulton MacGregor.

I do not think that he can hear me.

**Fulton MacGregor:** Sorry, convener—I was waiting to be unmuted.

Thank you for that, Juliet. I think that you probably answered the question. I saw everybody else on the panel nodding, so I think that there is general agreement on the matter.

My second question builds on that. It is about what duty bearers should be doing anyway, which we have talked about a wee bit. It has been suggested, as we have heard today, that duty bearers should be acting compatibly with the UNCRC requirements regardless of amendments to the bill. Will that make the amended bill easier for duty bearers to navigate or is there a danger that public authorities might now focus more on areas that could be litigated on? Do you have any thoughts on that?

**Jan Savage:** It would be really disappointing if that was to be the case. That is quite a concerning prism through which to look at the bill. In many respects, as you have heard from witnesses across the panel, the point of the bill is to reaffirm what should be happening anyway. The UK state, through the duty bearers in Scotland, ratified the

UNCRC here many years ago. Duty bearers should already be, and in many cases are, designing and delivering services that promote compliance with the treaty. There is a question to be asked as to why duty bearers might feel that that is not the case. We will have to explore the reason for that and what supporting resources will be needed to remedy it.

If the bill results in increased routes for strategic litigation, which will occur only in the most severe and systemic cases of human rights violations that will be tested in the courts, that has to be a good thing, because it will guide duty bearers on what they need to do to make things better. The point of strategic litigation is that it does not apply only to the child or in the local authority or the town or community where the violation has been experienced. The learning from test cases can be applied across the country through the court system.

The bill is not about people going to court every five minutes. We will talk about that as we progress through the human rights bill process, too. It is about creating a context in which there is an opportunity for those systemic and strategic risks to be tested through the court system.

We have talked a lot about capacity building and the different approach—a supportive approach—that the bill and its supporting guidance can bring to bear in informing how public services are designed and delivered. At the commission, we do a lot of work on capacity building in a human rights-based approach to budgeting and service design. We see that, where public services get that right and duty bearers ensure that everything coalesces around the human rights of individuals, outcomes for those individuals improve and reliance on public services decreases. There is an opportunity here to redistribute the areas of focus. What you describe would be a disappointing prism, or lens, for duty bearers to look at the bill through.

10:30

**Juliet Harris:** It is important to reiterate that many of Together's members will be duty bearers under the new bill. We specifically fought for an amendment at stage 2 of the UNCRC bill to ensure that those who deliver public services on behalf of Government would be included in the legislation's scope. We are not going into this blind; we know that we, as organisations and Together, will have obligations under the new bill. However, we are also mindful of the need to address children's rights across the board, so we are not focusing on possible litigation. Instead, we are making sure that we will get things right from the outset. In that spirit, Together members hope that we will see the same approach across public

bodies. We want to act compatibly across the board and get things right from the outset, but we also want to be covered by the section 6 duty to ensure that there is accountability and scrutiny where we do not get things right.

**The Convener:** The Scottish Government has committed to a three-year implementation plan. Is that reasonable and realistic, bearing in mind what you have just said about the need to get things right from the beginning to avoid litigation?

**Juliet Harris:** The three-year implementation plan has already started—it is the UNCRC implementation programme with the Improvement Service that I mentioned—so we have had plenty of time to prepare. At the same time, though, it is important that we get a continued commitment to that programme for the next three years so that, when the duties are live, we will continue to build our capacity, to develop and to learn.

**The Convener:** That is great—thank you.

I take it that Fulton MacGregor has no further supplementary questions, so I will bring in Maggie Chapman.

**Maggie Chapman (North East Scotland) (Green):** Good morning, panel. Thank you for being here and for your written contributions and your contributions today. I want to pick up on a couple of the legal complexity issues that Paul O'Kane and Meghan Gallacher have highlighted.

Juliet, you said that children and young people do not need to know which laws are being breached where things are going wrong, but that they need to know what their rights are. Because of the partial coverage that we will have with the proposed amendments, there will be gaps. Are you or any of your members concerned that those gaps will lead to a mismatch of expectation and reality with regard to how we tackle issues when there is a breach and something goes wrong?

**Juliet Harris:** Definitely, although it is not so much about a mismatch of expectation and reality. It is more to do with the practicalities and making sure that there is full coverage of protections for children's rights across the board. Indeed, three of our asks to the cabinet secretary address that point and the concerns that have been raised by COSLA and Social Work Scotland. First, we know that the cabinet secretary has committed to conducting a legislative review to see what is covered by the bill and what is not, but we want a timescale for that. We want to know when that legislative review will happen, and we also want a commitment to actions. What we really want is a commitment that we will bring as much into scope as possible.

Our second ask is about continuing to use legislative opportunities to bring things within the

bill's scope. We have forthcoming opportunities with the Promise bill and the education bill to include provisions that one of our members has described as mothership provisions—in other words, provisions that you always come back to when you bring a legal case. Bringing in such provisions through the Promise bill and the education bill will help to address that point, too.

The final ask, which is particularly relevant to the question, is a commitment to minimise the use of amendments to UK acts in future legislation. We do not have time to address this example, but I note that the Children (Care and Justice) (Scotland) Bill makes amendments to five significant UK acts. They will, therefore, fall outwith the scope of the UNCRC bill, which means that, as the Scottish Parliament continues to legislate, we will end up with a more complex legal landscape.

The issue is really important as we prepare for the human rights bill for Scotland, too. We want to ensure that as much as possible is included in acts of the Scottish Parliament, as that will make the legislative landscape clearer. We are asking for a commitment from the cabinet secretary to minimise amendments to UK acts and, instead, to make those amendments on the face of acts of the Scottish Parliament, so that we have that clarity in law. That will be useful for children and young people, for duty bearers and for lawyers.

**Maggie Chapman:** Thanks, Juliet. That is really clear.

It is clear that this is a journey, as you have said, and that we are not stopping here. Are there approaches or things that you and your members would like to see done either by the Scottish Government or by other duty bearers? I recognise that many of your members are duty bearers, too. Even if things are not completely covered—although we hope that coverage will increase over time—what approaches can we take and what guidance are you looking for to ensure that we have that overview?

**Juliet Harris:** The holistic approach that has been taken to drafting the bill—we have reporting duties and the children's rights scheme—provides a mechanism by which ministers can be held to account on the steps that they are taking to ensure that legislation is drafted within acts of the Scottish Parliament as much as possible, and that steps are taken to address the findings of the legislative review. Ministers can report every year, through the reporting scheme, on what they have been doing. It can be included as an action in the children's rights scheme.

Members of the Scottish Youth Parliament have stressed to me that they need to be involved in the decision. When the Scottish Government has

done its legislative review and looked to see what is outwith the bill's scope, we will need to balance the legislative opportunities that we have with the priorities that children and young people have identified in order to make sure that the continual law reform is really informed by children and young people's experiences of their rights.

**Maggie Chapman:** My next question is for Jan Savage and Nicola Killean. I ask Jan to comment first. As commissioners, you will be given additional responsibilities and powers through the bill. This issue will be important as we look ahead to the human rights legislation, too. How will the amended bill affect your current work? What additional resources, expertise and skills will you and your organisations need to make sure that, when you are required to take legal action, you can do so in a meaningful way?

**Jan Savage:** We very much welcome the new powers that have been proposed for the SHRC via the UNCRC bill. As committee members will be aware, they would give the Scottish Human Rights Commission and the Children and Young People's Commissioner the power to raise own-name proceedings—the strategic litigation that we have spoken about—and to intervene in proceedings where a public authority has acted in a way that is made unlawful by the bill. Over time, that will increase, so that might be the first challenge. As the framework increases and the web gets smaller, the requirements on each commission to do that will change. We do not currently have the power to raise proceedings in our own name to challenge any systemic human rights violations in Scotland. That is a clear gap compared with how human rights are enjoyed in other countries of the United Kingdom, so we see the opening of that door for the Scottish Human Rights Commission as a really important first step. We can explore that further in relation to the human rights bill in due course.

We have had early discussions across both offices. As I said earlier, it is specifically stated in our legislation that we must not duplicate the efforts of other public bodies, so it will be incumbent on us to continue to communicate closely on how and when each organisation sees it as appropriate to use the powers. That feels appropriate, because children's rights are everyone's rights; all human rights have an impact on children and young people.

Each organisation will have its own strategic plan and strategic priorities and there will be issues that will be of more strategic concern to one or other organisation at any given time. Having the powers across both organisations will also help us to manage the potential workloads that will arise. We have started those early considerations, which

will be important in order not to duplicate effort, but we very much welcome the powers.

**Nicola Killean:** To echo some of Jan Savage's points, we very much welcome the additional powers and the office has spent time preparing for them. That was happening even before I was in post. Earlier in the year, we published a strategic litigation toolkit, which was developed with international experts and children and young people. It is available publicly so that people can understand the powers and how the office may use them in the future. We want to ensure that that is as transparent as possible and that people understand that their use will be based on strategic priorities and the best interests of children and young people. The office has been in preparations for that for a number of years.

One of the very first things that I had to do was to propose how we would use our budget for the next financial year. We have already made preparations and plans for how we will allocate resources effectively for the use of those powers.

**Maggie Chapman:** Fiona, do you want to comment, given the statutory obligations that the Law Society has? Do you see any need for thinking differently in your work?

**Fiona Menzies:** We have not looked at the matter specifically through that lens. It is probably a matter for the two organisations that have spoken.

On your previous question, I note what has been said about the complexities and gaps. We would echo the point that the Government could provide detailed guidance. We would support a legislative review, and also post-legislative scrutiny in the form of a legislative audit.

**Maggie Chapman:** I am sure that the conversations about exactly what needs to be in the guidance will carry on. I will leave it there for now.

**Annie Wells (Glasgow) (Con):** Good morning, panel. While we are on the legislative audit—Nicola Killean mentioned that a couple of times as well—I am wondering what you think should be included in it, who should be involved with it, how long it might take and whether there could be unintended consequences to it.

**Juliet Harris:** We have been asking for the legislative audit for quite a time. It is something that happens in most countries that incorporate the UNCRC. It does not always happen before the bill commences; it often happens afterwards, and there are examples of that in Sweden and Norway.

On what is involved, we want the Scottish Government to set out the timescale. We want it to concentrate, first of all, on the legislative review: what is in and what is out of scope of the bill. After

that, we want it to look at the legislative opportunities that we have—we have mentioned the Promise bill and education reform as examples—and see what we can bring in. We want the Government to speak to children and young people to look for other opportunities to bring in other bits of legislation that are particularly important to them.

At that stage, it will be very much for the Scottish Government, children and young people, our members and the commissioner and the SHRC to work together. The Government could also work with the Scottish Law Commission on it.

The UNCRC's concluding observations are a good starting point for the subsequent legislative audits. The review is looking at what is in and out of the bill, and the legislative audit afterwards is a compatibility review. Are all the laws that protect children's rights in Scotland compliant with the UNCRC? We would say that that can be done further down the road. The most important thing at the moment is the review of what is in and out. The audit should involve stakeholders from all across Scotland, children and young people, commissioners et cetera, as we have said.

We know already of examples of legislation that our members have highlighted as not being compatible with the UNCRC. We know that there are provisions in criminal justice for 16 and 17-year-olds that are not compatible with it. We know that the fact that children up to the age of 18 cannot opt out of religious observance under the Education (Scotland) Act 1980 is not compatible with it. The Marriage (Scotland) Act 1977 is not compatible with it.

We think that the priority should be the legislative review. Find out what is in and out. Look for opportunities to bring things into the scope of the bill. Over time, we can do that compatibility review, which in countries such as Norway took place 11 years after the UNCRC was incorporated. That is an on-going piece of work to check compatibility with legislation.

**Annie Wells:** The other question that I was going to ask was answered earlier on, so, for the sake of time, I will leave it there.

**The Convener:** Thanks very much. We will move to questions from Karen Adam.

**Karen Adam (Banffshire and Buchan Coast) (SNP):** Good morning to the witnesses. As you are all probably aware, the Scottish Government has plans to introduce a Scottish human rights bill, which will incorporate four international human rights treaties into law. Dr Andrew Tickell, who will join us as part of the second panel today, has said that

“the difficulties facing this Bill”

apply

“just as powerfully”

to further incorporation. With that in mind, what do you think the Scottish Government, the Parliament, duty bearers and rights holders can learn from the UNCRC bill amendments, and how will that apply to our Scottish human rights bill? I am probably looking to Fiona Menzies and Jan Savage to answer that.

10:45

**Fiona Menzies:** There are undoubtedly lessons to be learned for the human rights bill. Some people have picked up on the potential for a new approach to be taken to drafting, in which existing legislation is not amended but instead a decision is taken to relegislate with a new Scottish act. We would need to look at that approach in more detail.

Having free-standing provisions, rather than an amendment of previous UK legislation, could have the benefit of being within the scope of UNCRC compliance duties. It is possible that that approach would make it easier for legislators and others to understand when bills are being enacted. However, we have also heard a concern about the usability of legislation. The benefit of a textual amendment is that all relevant statutory provisions can be found in one place and people operating the relevant schemes only need to know about the main statute, rather than having to take account of a range of provisions. That is potentially why the preference now is for a textual amendment. We would have to look at that in more detail if there were to be such a change in order to form a view on that.

We responded to the recent human rights consultation. When we talked about the proposed models, we noted that

“in order to ensure that”

the bill

“is within the competence of the Scottish Parliament, the text of the Treaties would need to be amended to remove anything which could relate to any of the reserved matters in the Scotland Act 1998”.

That is an initial example of where you would need to have regard to the problems that are faced in that process. Obviously, we have only seen the consultation at this stage, so we would need to see more on the approach that ends up being taken towards a future bill.

**Karen Adam:** That is great—I appreciate that.

**Jan Savage:** To take first things first, we really need the UNCRC bill process to conclude successfully. It is really important that this bill is progressed without further delay, so that we can

fully learn all the lessons from this process before we can apply them to the human rights bill.

Your job as the Scottish Parliament is to be the guarantors of human rights legislation, realisation and fulfilment for the people of Scotland. It is our job at the Scottish Human Rights Commission to be alongside you every step of that journey and to support you with that role.

We know now, as a result of the first lesson learned from the UNCRC bill process, that there is a big curtailment on the Scottish Parliament’s ability to progressively legislate in all areas of human rights in the way that it thought it could. The positive element of the Supreme Court ruling is that it is possible for the Scottish Parliament to incorporate human rights treaties into Scots law. That is a very important first principle, which we sometimes forget when we look at the complexities of how we can do that. It is the “how” that has changed, but the “why” has not changed. You will be legislating the enhancement of protections for individuals and communities directly into Scots law. That must always be the guiding principle through this work, as we have explored today around the children’s rights bill.

Clearly, this process will have significant implications for the design of the human rights bill. It is difficult to say more than that, as we have explained, because we have not yet seen a proposed draft bill from the Scottish Government. There has been a consultation that all the organisations that are represented here have participated in, but at this stage we have not seen the legal advice from the Scottish Government on what is informing its current considerations.

The commission has published a statement about the proposed human rights bill and a legal opinion from senior counsel on the incorporation approach, which deals with a lot of the complexities that Fiona Menzies, from the Law Society, has helpfully outlined. We have shared both of those in writing with the committee. At an appropriate time, if you wish, we will be very happy as a team to come back and engage further with the committee on that.

Our present view is that, with the proposed approach, all the lessons from this process have not yet been fully learned. That might be understandable, given that the process has not yet concluded, but it is very important that we signpost that to you.

It is definitely possible to look at alternative models of incorporation; again, the legal opinion that we have sought and shared with you encourages that. At this stage, we are not in a position to specify which particular approach might be the best, but we need to signal that there are alternative approaches to incorporation that could

better achieve the human rights bill's policy intent, which, I should say, is excellent.

All that any of us is concerned with now is moving forward from this process and ensuring that we have the most justiciable foreseeable bill that will provide clarity for everyone. We have already talked about clarity of scope; on the legislative audit process—which, again, Juliet Harris has outlined eloquently for the purposes of the UNCRC bill—we did not know that that process was going to have to be undertaken when the bill was drafted. We now know that it will have to be undertaken ahead of the human rights bill, so we have to be ready for that. That would be one of our asks: yes, we can have a progressive process, but it is now possible to have an earlier consideration of priorities and to shine a spotlight on the areas of human rights legislation that Parliament might wish to look at sooner rather than later.

We are also clear that we have to be in this for the long term; in other words, the human rights bill will not be a quick fix, and the opportunity that we have now is to open a door for longer-term development. We will absolutely come back in due course to consider that more fully with the committee.

**Nicola Killean:** I just have one thing to add, which is that what I hope children and young people will learn from this in the future is that we will not give up and that the Scottish Parliament will continue to ensure that it will do everything that it can to promote and safeguard their rights.

**The Convener:** Thank you. Karen, did you want to ask anything further on that?

**Karen Adam:** I have nothing more on that, convener. It was really helpful.

I do have another question, though. Given that this is our only evidence-taking session on the UNCRC bill, I just want to ask you—I will ask the second panel this, too—whether you feel that that is enough for us as a committee to be doing. If not, is there anyone else from whom we should be hearing?

**Juliet Harris:** I do think that somebody else needs to be in the room. Again, the process demonstrates to me the importance of listening to people who have lived experience and to duty bearers. I have to hold my hands up and say that I thought that this matter was too complicated for children and young people. I thought, “Don’t consult children and young people on the specifics of what is in and out, and don’t speak to children and young people about whether this or that law is important.”

However, over the past six weeks, I have learned that children and young people have

plenty to say—and, indeed, plenty to say about the practicalities. That is why I have underpinned all my evidence with children and young people. The children and young people to whom I have spoken have also spoken to their peers, and I think that we have managed to get across a lot of what they have told me. Indeed, they have taught me a lot just in preparing for this session. I think that we always need to have people with lived experience in the room, even if the issue seems tough and complex.

As for some specific examples in that respect, I would just highlight my assumption that children and young people would not want to be involved and the kinds of assumptions that COSLA and Social Work Scotland have made about children and young people being worried about which laws should protect their rights and when. I have learned about all these things from children and young people. Some of our concerns are not concerns for children and young people, and sometimes they have concerns that we have not even thought about, but I hope that the children and young people to whom I have spoken feel that I have properly represented them today.

**Karen Adam:** I think that you did a wonderful job—thank you.

**The Convener:** If no one else wants to come in, I just want to say on behalf of the committee that we have found this to be a very useful session. I think that we have managed to get under the skin of some of the areas of contention to ensure that we move on at pace while also providing a very thorough scrutiny process.

We all appreciated the way in which Juliet Harris brought alive the children’s voices in such a practical way through the image of the spider’s web. From our point of view, we want to ensure that that web is robust so that in the future, when we add on all the bits that will strengthen children’s rights, we have a framework—a web—that is robust enough to carry them.

I agree that children are well able to understand complicated concepts regarding their own needs, wants and rights. When I was a teacher prior to being elected and we were doing rights-respecting schools, the articles in the UNCRC and so on, I could see that children were well able to express—not only orally but through pictures and multisensory play—their knowledge of all the different articles. In one sense, it appears that they were well ahead of us adults and that the legislative process is just catching up with them.

In that spirit, then, I thank you very much for your contributions this morning. Your evidence will certainly add to our scrutiny.

I suspend the meeting very briefly to allow for a change of panels.

10:55

*Meeting suspended.*

11:00

*On resuming—*

**The Convener:** We resume with our next panel of witnesses. I welcome Councillor Tony Buchanan, who is the children and young people board spokesperson from COSLA. I also welcome Derek Frew, who is the temporary chief superintendent, head of partnerships, prevention and community wellbeing from Police Scotland, and Dr Andrew Tickell, who is a senior lecturer in law at Glasgow Caledonian University. I welcome all three of them and thank them for joining us.

I will invite each witness to make some brief opening remarks, should they wish to do so, before we move to questions from me and from other committee members. I invite Councillor Buchanan to speak first.

**Councillor Tony Buchanan (Convention of Scottish Local Authorities):** Thank you, convener. I am happy to make an opening statement. Good morning to everyone—it is still morning. Thank you for the opportunity to give evidence today. We have already responded in writing.

It is important to be clear that local government is fully supportive of the intentions of the UNCRC incorporation bill. We share the vision for a Scotland where children's human rights are embedded and fulfilled across all public services, and extensive work is already under way in all councils to take that ambition forward.

Any local government concerns are not about incorporation in itself, but about the practical implications for councils of the proposed amendment to the UNCRC compatibility duty, which would apply only where a local authority is acting under an act made by the Scottish Parliament, rather than under UK legislation. Those concerns have been raised by our professional advisers representing social work, education and local authority solicitors.

We are concerned that the approach will leave considerable gaps in the legal protection of children's rights. Key areas of council services and functions will be excluded from the scope of the UNCRC legislation, including some key and relevant areas such as education and care and protection.

There is also a key concern about the significant legal complexity that the bill will cause. Councils' powers and functions are based on a complex mix of both Scottish and UK acts, which means that the nature of the compatibility duty on local authorities might, in many situations, be

complicated and unclear. That complexity will pose difficulties for operability and accessibility, both for practitioners applying the legislation and for the children and young people—and their advocates—who seek to understand and claim their rights.

In line with the Verity house agreement, local government is committed to working in close partnership with the Scottish Government and other partners to resolve those concerns. There are several things that the Scottish Government could do to address the issues. It could undertake an exercise to identify which public authority functions will be either in or out of scope; it could provide detailed sector-specific guidance for public authorities; and it could ensure that there is clear public messaging about the limited coverage and about the amended legislation itself.

**The Convener:** I invite Dr Andrew Tickell to speak.

**Dr Andrew Tickell (Glasgow Caledonian University):** Thank you. It is nice to be here again. I begin by saying that I am not a children's rights specialist. My interest in the topic is fundamentally about how devolution functions and about the practicalities of what that means regarding the enforceability of the rights in the bill. That is my starting point.

Although I enjoyed your discussion about children's perspectives on this, I am cynical about that and am unsure whether I entirely agree with you, convener, about this being an issue that children can understand. I have given evidence to the Parliament, in writing or in person, about 10 times. I cannot think of an occasion when it has been more difficult to do what I tried to do in preparation for today, which was to draft a short, simple, clear and understandable written statement about what the bill—or even amendments to part of the bill—would do.

It is very difficult to get your head around the amendments and the consequences of those. Therefore, the committee might find my evidence to be somewhat negative. The first panel of witnesses accentuated the positive, and understandably so, but I suppose that I will be accentuating the negative. I will do that not least in order to make it clear what the bill can and cannot do, because that is what legislation is about. It is about setting down law that will be usable or unusable in practice.

There are lots of positive things about the bill and colleagues have identified a range of practical things that could be done to address some of the problems that we are going to talk about.

However, I do not want us to skip past the fact that the UK Supreme Court judgment—which surprised many academic lawyers due to the

breadth of its approach to this Parliament's legislative competence—has significantly impacted on your capacity to introduce significant human rights protection, not just in that area but, as we might develop later, on a range of other forms of human rights that members will contemplate in due course.

I say that not as a counsel of despair or woe but as realism about what the bill can and cannot achieve. It is interesting to be here with the committee again, and I hope that I can help you in your deliberations.

**Chief Superintendent Derek Frew (Police Scotland):** Good morning, and thank you for the invitation to attend the committee and the opportunity to provide you with Police Scotland's views on the amended bill.

Police Scotland is a rights-based organisation and has our values of fairness, integrity and respect and a commitment to upholding human rights at the heart of everything that we do. Therefore, upholding the rights of children and young people as set out in the UNCRC is aligned to our existing approaches and aspirations, which will be further underpinned by embedding the UNCRC into our policies and procedures.

As has been highlighted today, the application of this specific legislation involves complexities, some of which have been addressed through the amendments, and we are committed to continuing to work collaboratively to resolve the challenges that require to be addressed from a policing perspective.

The committee will be aware that the current financial challenges that Police Scotland and other public bodies face are resulting in hard choices being made to deliver services. We are no exception. We are making those hard choices to deliver effective policing within our funding parameters and, as the public would expect, we are prioritising our resources in those areas of greatest demand and risk to ensure our overall commitment to keep people safe.

Such legislative changes ultimately bring with them a human resource commitment with a potential recurring impact on our revenue budget. It is recognised that the scope of the bill might also have wider implications for our capital budget, so it is essential that we fully understand the Scottish Government's and key partners' expectations of the police, balanced against the mandatory legislative requirements of the bill, to ensure compliance at the date of enactment.

Therefore, it is important that we collectively understand what Police Scotland can and will deliver in the resourcing and legislative landscape that we are operating in and will be operating in when the bill is enacted.

I would like to conclude, as I started, by reaffirming Police Scotland's commitment to working with the Scottish Government and key partners to comply with the requirements of the amended bill and make a real and tangible difference to upholding the rights of children and young people.

**The Convener:** Thank you very much.

Andrew Tickell, let us come back to your opening statement. The committee welcomes your perspective on the bill. It is our job to scrutinise it in the widest possible sense, so we are on the same page.

What is your view of the Scottish Government's approach to responding to the Supreme Court judgment and its proposed amendments? The general view of the previous panel of witnesses was that there is no alternative. Do you have a perspective on that?

**Dr Tickell:** When the bill was first passed, two primary ambitions were articulated: to take a maximalist approach to application within devolution and to minimise complexity, both of which are very admirable goals.

However, my view is that the Supreme Court judgment and the decision that Westminster legal sources—if we can call them that—cannot be subject to any of the restrictions mean that you can just decide which kind of complexity and fragmentation you want to deal with, because the legislative picture is now inherently fragmented. Therefore, all that the Scottish Government can do, and all that the committee can do, in deciding which approach is best is to pick the best option. Given the alternatives, it seems to me that the Cabinet Secretary for Social Justice's proposals are the ones that reduce complexity to the minimum possible level at this stage.

As committee members will know, it is very commonplace for people to come before the Parliament with problems and critiques and say, basically, "You should fix it, or the Scottish Government should fix it", vaguely implying that there is some wonderful solution out there. I do not think that there is any solution to the UK Supreme Court's judgment, above and beyond what the Scottish Government has proposed. However, it does have all the consequences that Councillor Buchanan has outlined, so there is no perfect solution or significant alternative approach to incorporation in front of us at this stage.

I suppose that the single issue to which you could take a different approach is on amendments. As you know, the Scottish Government has proposed that only acts of the Scottish Parliament should be subject to the interpretive duties. Therefore, any amendments that you have made to other legislation passed by Westminster should

not be subject to that. You could, in principle, extend your amendments to cover the UNCRC, but I think that that would produce even more complexity than we already see in the legislation that is in front of us.

I think that the cabinet secretary recognises that, as the Government sought to extend coverage, it also extended complexity. That suggests to me that those noble ambitions, at the beginning, of maximalism and lack of complexity are not aspirations for the bill that we can really pursue at this stage. For me, given all the compromises, the cabinet secretary's compromise seems to be the most rational and the most workable, but it still presents a range of really profound challenges for public authorities, in particular, as well as for rights holders who might try to vindicate their rights through the courts.

**The Convener:** The word that I was thinking of was "pragmatic". It is a pragmatic way forward but we realise the complexities of it. Can you give an example of any unintended consequences of the process? You alluded to possible legal challenge. Could you go into that a little bit more?

**Dr Tickell:** In terms of unintended consequences of the Scottish Government's proposals—or of the alternative approach?

**The Convener:** The Scottish Government's proposals.

**Dr Tickell:** What the Scottish Government has proposed is that only acts of the Scottish Parliament will be subject to this legislation, while amendments passed by the Parliament will not be. Imagine that you are a child, or, more probably, an advocate for a child, who thinks that you have a legal issue with an act of the Scottish Parliament. You find the act and you think, "Oh good, it's in this legislation", but then you discover that it is an amendment to a Westminster bill and is therefore outwith the scope of the UNCRC.

It is undoubtedly the case that, whether it is about the Education (Scotland) Act 1980 or the Criminal Procedure (Scotland) Act 1995, children will look at that and think, "These are big issues of children's rights." The Children (Scotland) Act 1995 is probably the best example, covering issues of adoption and so forth. It will strike people as difficult to understand why something as fundamental to the rights of children as adoption falls outside the scope of the rights that are protected by the UNCRC, which is the net effect of what the Scottish Government is proposing.

That is probably the perversity or potential gap in the law—you can put it more or less strongly—that you were alluding to before, which really has the biggest implications for the enforceability of this legislation at the moment. Perhaps I can say more positive things later on. The complexity will

decrease over time, but it begins in a very complex place.

**The Convener:** Thank you. Do any of the other panel members want to come in on that area? It was very specific, I suppose.

I move to questions from Maggie Chapman.

**Maggie Chapman:** Good morning to the three of you. Thank you for joining us today. I want to drill down into some of the legal complexities and their impacts, primarily, for local government—Tony Buchanan—and for Police Scotland, Derek Frew. In your opening statement, Tony, you talked about the close partnership working that you have had, which you hope will continue, in working out some of the concerns around identifying for you, for the public and for everybody which functions are in and which are out.

This question perhaps echoes some of the points that we heard earlier. We know that the legal redress side of things is only one component of the legislation. There is a whole host of other bits in the UNCRC, and in other legislation, that are about rights protections for children and young people. Given that duty bearers are encouraged and asked to act in compliance anyway, can you unpick a little bit more the exact complexities and tensions that you have identified and whether there are things that we can consider, given the overall point that we should be complying anyway?

**Councillor Buchanan:** Yes. It is very difficult because, as Andrew Tickell has touched on, there are things that might have consequences that happen after the event, if you like. That makes it a very difficult place to begin with.

11:15

We are trying to flag up many of the concerns. For example, we envisage an amended bill being significantly more difficult to navigate because of the narrowed compatibility duty and the need for legal obligations to be clear and practically applicable. That goes for authorities and all our partners. There is a huge gap there in what we can potentially set aside and potentially do.

Our professional advisers, which include the Society of Local Authority Chief Executives and Senior Managers, the Society of Local Authority Lawyers and Administrators in Scotland, the Association of Directors of Education in Scotland and Social Work Scotland, have advised that they envisage there being significant practical challenges with implementation in relation to the need for staff to interpret and apply the legal duties, which will now involve some significant additional complexity. That could result in capacity issues for legal and other departments in local

authorities, due to the work that might be required in dealing with the legislative aspects of that, and that strain on capacity is likely to have related financial implications, as has been mentioned.

We are clear that local authorities need to have sufficient time to prepare to implement the amended duties and that that will require the timely provision of detailed guidance. I come back to the importance of ensuring that we have such guidance so that we can narrow the parameters of what we will be required to do.

**Maggie Chapman:** That is helpful. In the conversations that you, COSLA and others have had, do you get the sense that there is a shared understanding across different partners of what that guidance needs to say?

**Councillor Buchanan:** I think that there is a shared understanding that we all want children's rights to be upheld and protected, but we are clear that, as I mentioned earlier, there needs to be some very good public messaging in relation to that. We also need to have detailed sector-specific guidance to enable our front-line staff to do their job. Without that, we would all start to struggle. We need that to be provided up front so that we know what the parameters are and can set that out from day 1.

**Maggie Chapman:** Thank you—that is helpful. I suppose that that links to the point that you made earlier. If we—by “we”, I mean us collectively, not us in Parliament or you separately—do not get the guidance and the resource allocation right, do you think that there is a danger that, because we are worried about litigation, duty bearers might focus exclusively on the legal elements rather than the bits that are not included in incorporation because they involve UK acts rather than Scottish Parliament acts, to the detriment of the excluded areas when it comes to providing the service?

**Councillor Buchanan:** It is a potential issue. Our front-line staff set out to do the best for the children and young people and the families with whom they work, and the last thing that we want is for them to come up against a barrier that does not enable them to take that action.

**Maggie Chapman:** I have a similar question for Derek Frew. On the capacity issues that you highlighted, will you provide some detail on how you envisage dealing with some of those complexities to do with the gaps arising from the mismatch between reality and expectation that your colleagues might face, as well as the people whom you are looking to support?

**Chief Superintendent Frew:** I will start with a positive. We have talked about acting in line with the UNCRC. From a policing perspective, we have been working with the GIRFEC principles for a long time. We have done work around the age of

criminal responsibility, and we continue to do work around trauma-informed practice. There is also our work on how we conduct interviews with children. There is a whole landscape of good work that is being done in a policing context, at the absolute centre of which are the rights of the child.

The litigation question is complex. I do not think that we will focus on litigation because of the good work that is done but, ultimately, that is a huge fear factor for public bodies. We absolutely want to embed this, but not having a clear legislative review or clear guidance will probably have the unintended consequence of putting us in a position of wanting to protect the organisation versus delivering the UNCRC principles. Delivering those principles is an absolute—we are not saying that the will is not there—but that can be the natural default position for a duty bearer.

Any legislative review or guidance that we could get would be really helpful. Policing is complex: there are cross-border investigations, there is UK legislation and the definition of the age of a child differs across different pieces of legislation. There are huge complexities that probably need to be worked through, never mind embedding all this in the corporate memory. We will probably get to the issue of what the child rights impact assessment process looks like versus the provision in a custody environment, and the additional costs if we were to keep children and adults separately. What is the utopian vision versus the reality of our police estate?

That is just a small overview, if that is helpful.

**Maggie Chapman:** It is helpful. You make a clear ask for clear and detailed guidance. Given the conversations that have happened to date, do you have concerns at the moment that that guidance will be fuzzy or absent? Are there things that you would like us, as the scrutinising committee, to make very clear recommendations about? It is all very well to say that we want clear guidance, but it is important to understand what we mean by clear guidance.

**Chief Superintendent Frew:** Absolutely. In the policing context, we probably have slightly narrower parameters than COSLA, because of the range of services that local authorities deliver. From a policing perspective, it would be useful, as Andrew Tickell said, to know the expectations of the Scottish Government and of the partners that we heard from on the first panel. What do they expect us to deliver and can we meet those expectations? It is not just about the mandatory or legislative requirement. We could very quickly pick out details from the legislation and say that we are doing no more than that, but I do not think that any of the public bodies or duty bearers should do that: we should be trying to do something more holistic, without the fear of litigation.

I am probably not giving you a definitive answer, but we want to do this more broadly, as the witnesses on the first panel alluded to. That is the utopian vision, but the reality is that we lack the legislative review and the bespoke sectoral guidance that would be informed by the partners that we heard from earlier. It would be really helpful to have that.

**Maggie Chapman:** That is helpful; thank you.

Andrew Tickell, my last question is for you. I would like to hear your thoughts on how to ensure that we offer guidance and support to duty bearers and other service providers without that leading to a focus on the litigation elements, for organisational protection or for a range of other reasons that we have already discussed. What are your thoughts and comments on how we can best avoid that?

**Dr Tickell:** That is interesting, because the aspiration for a generic mainstreaming approach would say, “Forget the technicalities and get the lawyers out of the room—they distract us and focus on the wrong things,” whereas the demand for clarity is the exact opposite, in fact. You probably cannot service those two things in the same way.

If you look at empirical studies of the impact that rights and law have on decision making by public authorities, it is often the case that the impact is through non-legal sources and through understandings of the law that are shared through professional practice and of what best practice looks like. It upsets lawyers, but there is lots of evidence that the law has relatively little impact on what public authorities actually do on the ground. That might upset parliamentarians as well—I am not sure—but that is the situation that we are in.

Certainly, it is the case that, as in other sectors of society, you can get what you might call defensive medicine. You can get the situation where you have the judge on your shoulder and the anxiety that the legal department is going to get involved. It is absolutely right to perceive that as a discernible risk, which is probably not avoidable because, if the Scottish Government is to produce a long laundry list of areas where public authorities are definitely subject to litigation, it is unavoidable that those things will be approached differently compared to broad aspirational principles that are less articulated.

**Maggie Chapman:** Is there a danger that that might undermine the culture of compliance that we want to support and encourage and that we want to see going beyond the letter of the law?

**Dr Tickell:** Yes—there could be what we might call a tick-box approach. Interestingly, there are empirical studies to suggest that your own Parliament does that with the ECHR, in the sense

that you do not think about the deep and profound principles of the European convention—you ask, “Has it been signed off by the lawyers?” then think, “Oh well, tickety-boo.” A range of institutions that are subject to rights face that situation. It is quite easy to call for the mainstreaming of rights. The experience of mainstreaming them, or of mainstreaming equality considerations, is not great thus far. That is simply another challenge that the bill faces, but it is not unusual in that respect.

**Maggie Chapman:** Okay. I will leave it there for now, convener.

**The Convener:** I will bring in Meghan Gallacher shortly, but first I will ask you all a quick question. What, if any, involvement did you have in the development of the amendments to the UNCRC bill?

I see that all our witnesses are shaking their heads, so the answer is none. I just wanted to know about that.

**Meghan Gallacher:** Good morning, panel. There has been a lot to unpick already, just in the answers to the first couple of questions. Your evidence has painted a different landscape to that of the previous panel. That is good, because it means that we are getting into the nitty-gritty of the legislation. My questions will stray a little from what I had planned to ask, because of how our discussions so far have gone.

I will start with a question for Derek Frew. It concerns the age of a child, which is an important concept when we consider legislation that impacts children and young people directly. In Scotland, we have an anomaly whereby people can legally do different things at different ages, because they either are, or are not, considered a child at certain points in their lives. We already have the UNCRC bill, but the Children (Care and Justice) (Scotland) Bill is now going through Parliament as well. Does the Government need to be stricter on age or to define when a person goes from being a child to an adult? I am certainly wrestling with that and I know that other members are, too, in the context of legislation, because it just seems to be a minefield. In the justice system, someone can be of an age at some point, but in another context the age will be completely different.

What are your thoughts on that? I invite Dr Tickell to come in on that, too.

**Chief Superintendent Frew:** From a policing perspective, I suppose that we would really like things to be black and white, because—let us be honest—it would make decision making far easier. In a perfect world, it would be lovely if we were to use the age of 18 in defining who is a child. However, given the evidence of the witnesses on the first panel, I am quite sure that children could

be quite peeved if they did not get certain rights of an adult when they hit the age of 16. From a policing perspective, it is certainly not for me to comment on the legislative framework. In principle, I agree with the desire for simplicity. However, the complex legal landscape on people attaining the rights of an adult versus those of a child probably makes that an issue for lawyers to go into a room and sort out; it is not one for me to comment on.

**Meghan Gallacher:** I wonder whether Dr Tickell would like to add to that.

**Dr Tickell:** The legal concept of a child is complex, because the social concept of a child is complex, and the two push in different directions. We can see a protective approach being taken in the Children (Care and Justice) (Scotland) Bill, on the one hand, but then we also have the demands of autonomy, and those are oftentimes in conflict.

That is not entirely new to our own time. Last week, I was reading a colleague's PhD thesis on fluctuations in the historical concept of childhood, which has changed a lot in a range of areas. We now have more protection extended to some behaviours, but also greater recognition of child autonomy. There is certainly complexity there. If we sit down with our students and ask, "What can I do and not do at any given point?" we can sometimes search for coherence in vain.

We can argue about that, which is a good thing, because it is not a settled category—it is not a given. It is something that we construct and the law then supports the constructions around it. I do not know whether it adds complexity in this area, but it is fundamentally quite a complex question.

**Meghan Gallacher:** Thank you. I will move on to other parts of our discussion.

Dr Tickell, in your opening remarks you touched on young people understanding the rights that they will have once the bill gets over the line, if the amendments are accepted. How should we ensure that young people understand their rights? We had an excellent example of that earlier when a witness on our first panel gave us a demonstration. Do the Scottish Government and the Scottish Parliament need to get better at that, to ensure that we reach people across a span of ages? We are really good at talking to ourselves, but we are not necessarily good at talking to people who are outside the room.

**Dr Tickell:** I am sorry that I did not bring any visual aids. I feel as though I have let you all down on that. *[Laughter.]*

As a matter of international law, children already have those rights: the UK has signed up to them. Convener, I am sure that the children you were talking to in your class understood very well those fundamental concepts as applied to them.

Where it gets complex is not on the rights themselves or the broad principles that they articulate; it is on enforceability—who it is enforceable against and when. In that sense, telling the children of Scotland that they have these rights is absolutely fine—we can do so now—but enforceability is a challenge.

11:30

You can see that from the perspective of rights holders and their advocates, but also of duty bearers and public authorities. Both those parties have an interest in accessibility and simplicity, but my message in general would be that those are not available to you. Therefore, all that we can do is try to minimise complexity in a way that makes it possible for those cases that can be articulated and where legal advice is available to reach the courts, and for that to be an appropriate thing to happen.

Fundamentally, it is extremely challenging, although that will diminish over time. I do not want just to be a herald of woe on this score. When you pass the legislation, as I expect is quite likely, that is the point of greatest complexity. Why do I say that? Because, at that stage, you will have the most devolved law still set out in Westminster legislation. As time goes by—very little time, perhaps, for some panellists who want you to immediately audit every area of Scots law that affects children and legislate for it, whether that is viable or not—more and more law will fall within the parameters of the UNCRC legislation, as you pass more acts of Parliament.

That is why I say that it is at its most complex right now. In terms of messaging around that, I do not know how you explain a simple version for the wider public. I do not think that that is a failure on you; it is a failure of the situation in which we find ourselves. In my view, and it is just my view, the extent of the UK Supreme Court judgment is fundamentally impractical in terms of the kind of legislative proposal you are looking at, and it did not consider a range of the challenges that we are trying to talk through right now.

**Meghan Gallacher:** Is there a risk of overpromising and underdelivering for young people? I think that the issue is huge for young people. They have been calling for it—goodness!—since I was at school. That is how long it has been going on so, once it is over the line, we need to make sure that we are careful that we do not overpromise and underdeliver, because at the end of the day it is our young people who it will directly impact.

**Dr Tickell:** Exactly. So often, something is enshrined. Enshrining is a thing that Parliaments like doing. Enshrining is easy and cheap, and it is

unenforceable. Very often, people want the reality and do not care about the bold big principle being articulated in legislation or, if they care about that, what matters in the end is what they can do with it.

That is always a risk, not just for this bill but for the human rights bill as well, because if we tell people, "I'll see you in court," or, "We can challenge this in court if you don't uphold my rights," we are not being entirely candid about what the bill will actually achieve.

**Meghan Gallacher:** Thank you.

**Paul O'Kane:** In the previous answer from Dr Tickell, we started to touch on the audits and the difficult debate that exists in that space. Earlier, a number of witnesses, including the children's commissioner, spoke about the approach that they would like to see, not least looking together at the sort of audit approach that they would like. Obviously, COSLA had a different view, to some extent. Dr Tickell, will you comment on the principle of audits and on what, in your view, might happen in that space? Then I will come to Councillor Buchanan on the COSLA point.

**Dr Tickell:** For starters, I think that it is absolutely right and proper to identify specific areas where you think that the UNCRC is not being observed in Scots law, whether that is about religious observance in school or what the Criminal Procedure (Scotland) Act 1995 says about the sentencing of children to life imprisonment. That makes sense to me. That is the kind of thing that you do all the time in the Parliament—you say, "Here is an issue, here is an amendment; let us fix it."

On legislative audit, if you begin to look at the legislation in question, if it is legislative audit towards the idea of a bumper bill—a massive education bill or a massive keeping the Promise bill—I am not sure how rooted in reality that is. If you dig up the Education (Scotland) Act 1980, you will see that it has more than 100 provisions; the Social Work (Scotland) Act 1968 has more than 100 provisions; an act in another key area will have more than 100 provisions. There is, I think, an argument being made from some quarters that all you have to do is bundle up all the existing law into one or more mega bills and just pass those, but that is not what legislation is for.

That is not an appropriate approach to revisiting the past and the proposals set out in legislation. The committee will know that the law sits in the books, untouched for years, and it is used by the people who use it and the rest of us do not think about what it says. However, if I came forward as a Scottish Government minister and said to you, "Let's re-enact an entire piece of legislation and let's not talk about what is in it," you would regard

me with profound suspicion and think that I was squirreling in things that we should look at again.

If we are looking again at legislation, let us use that time to do so. If we are talking about an audit as a way of moving towards some kind of comprehensive consolidation of all these areas of law, that will be a huge demand on the Parliament's time, simply for the purposes of making it subject to the UNCRC. I imagine that you would struggle with that; indeed, to be honest, I would find the opportunity costs associated with it difficult to defend.

To that extent, then, such an approach would be unrealistic to me. However, any specific issues that arise should by all means be addressed.

**Paul O'Kane:** I would like to hear COSLA's position, as it differs slightly from what we heard earlier this morning.

**Councillor Buchanan:** It might well do so, although I did not hear all of this morning's discussion.

Some of this issue has already been touched on. For example, as far as children's social work services are concerned, not all the key legislative aspects are included in the UNCRC. Again, with regard to education, some aspects would be in scope and some not. For example, the Education (Scotland) Act 1980 would not be in scope, while the Education (Additional Support for Learning) (Scotland) Act 2004, as amended, would be. We recognise that a legislative audit would be a hugely complicated and no doubt time-consuming task, and as a result, it cannot be seen as a straightforward solution.

Other aspects from a local government perspective are that councils are already struggling with the capacity to manage the level of legislative and policy change both under way already and on the horizon, and further demands in this area would represent a huge undertaking just in terms of the additional capacity and resource required to implement any further extensive cross-sector legislative change. We are therefore of the strong view that the Scottish Government should undertake a scoping exercise to determine which public authority functions will be in and out of scope. I think that that will be key to supporting public authorities in understanding their obligations, given how much is, as Andrew Tickell has already touched on, potentially adrift and does not tie up. It will be a long and time-consuming process.

**Paul O'Kane:** I want to get a sense of what might be a way forward. Dr Tickell, at the time of the outcome of the Supreme Court case, you commented on the opportunity that the ruling might present to look at Scottish acts in terms of some of the things that we are talking about. I

appreciate what you said in your previous answer about the complications surrounding all this, but do you have a view of what would be the most appropriate way forward?

**Dr Tickell:** It would be sensible to proceed with the bill as proposed. Duty bearers will have specific demands on what should be in and what should be out—that raises the risk that Maggie Chapman described—and what would be practically helpful to them. All that I am saying about consolidation or scrutiny of areas of social work or education is that, if Parliament wanted to do that and there were reasons to change the law, that would be an appropriate thing to do. I just think that the idea that Parliament should simply relegislate for the purposes of UNCRC compliance is not, in my perception, rooted in the burdens of work that you have in front of you. In any case, if that actually happened and the Government tried to present it in that way, that would not be acceptable to parliamentarians.

However, the fact is that, over time, the more pieces of legislation that you pass on social work and education, the more that you will consolidate the law in single places. It is something that lawyers like, service users like and, indeed, public authorities like. When you talk to people who work in social work, they will say that they really struggle with how diffuse the legal sources are that they are dealing with.

If we are accentuating the positive in that way, I would suggest that the view taken too often, perhaps, by the Parliament has been to say, “We’ve already got this long-standing big piece of legislation that was passed before devolution. Let’s just add a line here, delete a few words there, sneak in a couple of extra sections and job done.” Maybe at this stage, particularly given the aspirations for the human rights bill more generally, the Scottish Government—or you—might think, “Maybe we should have more consolidating acts and really look seriously at specific areas, as that sort of approach would have all these collateral benefits in addition to extending the UNCRC to them.”

**Paul O’Kane:** Thank you.

**The Convener:** I will just jump back in for a moment. The bill’s provisions will commence six months after the bill receives royal assent. Is that sufficient time for duty bearers and rights holders to prepare for the amended approach before the legislation comes into force? I will ask Councillor Buchanan and then Derek Frew to respond to that.

**Councillor Buchanan:** The bill will be what it is; it is not for us to comment on that. Our issue is with the practical implications of delivery. From that point of view, messaging will be critical. Once the bill progresses to that stage, there must be

clear messaging to outline what the UNCRC legislation is and the impact that it will have on public authority functions—in other words, what it will mean in practice. That is the difficulty.

**The Convener:** I get that, but there is a legitimate criticism that people are happy to say what they want but will not say by when they want it. This is an opportunity to hear your views, so I will push you on that. You might not want the timescale to be as narrow as six months, but that is what is in front of us. Have a go at giving us a timescale.

**Councillor Buchanan:** That is difficult because, at the moment, we do not know what will be included. Once we know what is about to become legislation and what will become our practice, we will be able to determine the timescale that will be needed to enable individuals to understand that.

**The Convener:** I understand that there needs to be a balance between doing things quickly and doing them correctly and that the two are not necessarily the same thing, but I am mindful that we are taking evidence from duty bearers and rights holders about their views on implementation so that we can get an idea of what a realistic timescale might be. The committee can then take a view on that.

Derek Frew, do you have anything to add?

**Chief Superintendent Frew:** Certainly. I am not an experienced legislator, so I do not know whether what I am about to say is feasible. I speak from a policing context.

As Councillor Buchanan said, it is not within our gift to decide on a date, but, in principle, the bill is to be enacted six months after it receives royal assent. As I said when I answered Maggie Chapman’s question, in relation to whether anything in the bill can give duty bearers reassurance about litigation, the police—and, I think, all public bodies—are absolutely committed to delivering the UNCRC principles.

On the basis that we are already doing that, might there be a period of time before the bill is enacted that allows us to provide clarity, to do child rights impact assessments and to work through any other process that is relevant for us to adopt? Would there be time to allow us to look at our custody provision without the risk of litigation? Can we enact a bill that would give all duty bearers a huge amount of reassurance that we still have time for implementation and do not have to be in a state of absolute readiness on day 1? That is what is making us nervous.

I cannot speak on behalf of Councillor Buchanan, but I say, in the nicest possible way, that we would probably like that period after royal assent to be extended beyond six months,

because there is nervousness about our ability to be compliant from day 1. However, I am not a legislator, so I do not know whether that suggestion is even possible. Dr Tickell might know whether it would be.

**The Convener:** Thank you.

**Karen Adam:** I asked the first panel a specific question about the Scottish Government's plans to introduce new human rights law based on four international human rights treaties. I mentioned you, Dr Tickell, as you have flagged up a concern that that might cause difficulties similar to those that we have seen with the UNCRC bill. I will ask you what I asked the previous witnesses: what warnings or advice can you give the Scottish Government, the Parliament and duty bearers as we move forward with the legislation?

**Dr Tickell:** That is a really interesting question. We are discussing which laws human rights should apply to. If it is envisaged that the proposed human rights bill will have teeth and enforceability, that raises questions. Can I go to court? Can I test the compatibility of legislation or even strike down legislation in court?

11:45

The Scottish Government's approaches to the enforceability of some of the rights that are proposed to be incorporated are unclear. Some people have been critical and demanded that the rights should be more enforceable—that people should be able to bring cases to court. If they succeed in persuading the Scottish Government of that, everything that we have said about the UNCRC bill will apply to all the other rights that are arguable in court. That will mean that any law that emanates from Westminster cannot be touched by the proposed human rights bill, which will apply only to acts of the Scottish Parliament and will apply to none of the amendments that have been made from 1998 to the present day. That will be the net effect.

When talking to colleagues about the practical impact of that, I have heard a telling point. In relation to the UNCRC bill, there have been demands for audits of work and clear lists that show what duties are in or out. Imagine undertaking the same task for every right that might be proposed to be incorporated under a human rights bill. That is exactly what will be asked for under the approach that the UK Supreme Court's judgment, along with the cabinet secretary's response to it, has set in train.

I flag right now that, if you want any rights to be enforceable in court, everything that we are talking about now will echo profoundly for all the other types of rights that might be set out in a human rights bill. Given the technicality and the difficulty

of explaining such distinctions, I am not sure whether campaigners, third sector groups and the wider public have fully anticipated or appreciated how dramatic the consequences of such a proposal are.

**Karen Adam:** I will follow that up. Is there a solution—or several solutions? What can we look at in order to make this workable?

**Dr Tickell:** Do you want solutions that are rooted in political reality or abstract ones that are not?

**Karen Adam:** I leave that to you to decide.

**Dr Tickell:** There is a range of ways in which this could work. The UNCRC could be easily incorporated into UK law. If that echoed the structures of the Human Rights Act 1998, it would be straightforward. However, as a matter of policy, that is not the UK Government's position and is not likely to be for the foreseeable future.

If the UK Government decided that the Scotland Act 1998 could be amended to make the process easier, that would be a potential solution. Unsurprisingly, it has not decided to do that; Alister Jack pursued the reference procedure and rejected the approach that the UNCRC bill articulated at stage 3 of applying to Westminster legislation. It is not surprising that that is not really a practical solution. However, if Westminster amended the Scotland Act 1998 to say that the Scottish Parliament had legislative competence to introduce human rights provisions that could apply to UK legislation in devolved areas, that would be the neatest solution, from a legalistic point of view, for a range of the issues that the Parliament faces and would face with a human rights bill.

Neither of those solutions is likely to materialise or be practically possible, so we are left with what is proposed, which is not an insignificant achievement—the incorporation of the international rights into Scots law is not a negligible achievement. Many campaigners and colleagues, from children onwards, feel deeply committed to that. I do not minimise that significant impact, but there is a reluctance among human rights campaigners to own the difficulties of this. No one really wants to talk about that, because that agenda suits no one politically.

**Karen Adam:** That is helpful. Thank you.

**The Convener:** I bring in Fulton MacGregor, who is online.

**Fulton MacGregor:** In the previous panel—I do not know whether this panel managed to see that session—and in this panel, we have had a wee bit of discussion relating to the question that I will ask. COSLA and Social Work Scotland have indicated that the amendments to the UNCRC bill will create legal complexities, and Social Work Scotland has

talked about a “potentially impossible legislative landscape”—my colleague Paul O’Kane quoted that to the previous panel.

If the bill is passed, what will be the impact on duty bearers? We all want this to work so, more important, how can those impacts and difficulties be addressed? As with the previous panel, I am happy for the convener to say who should respond.

**The Convener:** I will go to Derek Frew first, to be followed by Andrew Tickell and Tony Buchanan.

**Chief Superintendent Frew:** Police Scotland will take this forward through the child rights impact assessment process. After all, we will need to be able to audit what we do under what, I believe, will be a three-yearly reporting requirement. For us to address the legislative challenges, we will first have to interpret the audit and the sector-specific guidance through our legal representatives in Police Scotland, and we will then need to look at the parameters of the impact in that respect.

If the issue is, as I have said, our custody environments—if, say, we are expected to create a separate custody suite for children aged between 12 and 18—that will be a significant ask. Our current estate would certainly not facilitate that. I am just hypothesising here, but we might find that we have to close our custody suite any time a child between 12 and 18 comes in so that they see no adults other than the police officers who do the necessary processing, and then we might have to ensure that there is a room that can be allocated to them—not a cell but, in reality, it will probably be an existing custody suite. Will that meet the expectations of the Government and partners? Will it meet the legislative threshold? I am just giving that as an example of the sort of thing that we would need to work through.

As for other policies and practices, we could do a bespoke child rights impact assessment or incorporate it into our current equality and human rights impact assessment, which has age as a protected characteristic, and we could make sure that there was sufficient guidance to staff that covered the UNCRC requirements. However, the decision would still be whether we had a bespoke assessment or whether we built it into our current process.

Again, what does that tell us? If we apply that sort of thing to a process in practice, it might shine a light on certain legal complexities that we might not have picked up on before. That is why requiring Police Scotland as a public body to be compliant on day 1 of the legislation’s enactment gives me a sense of nervousness, and it is why it is so difficult for me to give an opinion on what the

go-live day should be. It is hard for us to do that, and it will be the same for COSLA. Indeed, I think that its landscape is even more complex than the policing landscape.

I hope that that has answered the question.

**Dr Tickell:** One of the interesting things here is that, even if we had not had the complexity that the Supreme Court judgment has introduced into this discussion, public authorities might still have been having a similar debate about what these rights mean. After all, if you read the language of the UNCRC or the European convention on human rights, you will see that these are not rules but big, bold and unspecified principles. What they mean in practice for the public sector and beyond is something that we very often only have a dawning realisation of—there is not a set of strict rules that can be straightforwardly applied.

That adds to the sense of complexity. Public authorities are probably looking at this, thinking, “It was already difficult for us to know precisely what a right to privacy, a right to autonomy or whatever it might be meant for us in our practical day-to-day work—now we’re being told that half the stuff we do is subject to these rights and the other half isn’t.” I wonder whether that combination is partly what is driving some of the anxieties.

It is probably worth saying, though, that the rights are articulated as broad principles. You cannot simply create a long list of rules out of them, because if you do, you lose the substance of what the right is about. That brings us back to what Maggie Chapman said about pressures in two different directions. In a sense, you are being asked for a long list of simple rules that we can follow and which will be all right. That is understandable from a defensive point of view, but it is fundamentally not what the UNCRC actually says. Therefore, there is that combination of complexity on two different fronts, both of which are, again, unavoidable.

**The Convener:** Thank you.

**Councillor Buchanan:** I come back to the first point that I made in my opening remarks: we need to undertake an exercise to identify which public authority functions will be in and out of scope. That has to be a priority, and then we have to provide the detailed sector-specific guidance for public authorities that Derek Frew touched on. Without that, when we all look at this on day 1, we will be saying, “What can we do? What can’t we do? What are we allowed to do? What are we not allowed to do?” If we do not have that guidance, we envisage significant problems arising.

**The Convener:** Does Fulton MacGregor have any supplementary questions, or is he satisfied with those answers? I see a thumbs up.

Before we close, I point out that this will be the main evidence-taking session on this subject. We had the earlier panel, and we will also be hearing from the cabinet secretary. Do you think that that represents sufficient scrutiny of the amendments? If not, what advice would you give us and what thoughts would you share with us in that respect? Should we hear from any other witnesses? Any comments on that would be really helpful to the committee.

**Chief Superintendent Frew:** What you have laid out sounds great from my perspective—a policing perspective. That said, I know that we have heard the voices of children today, but, speaking from experience, which probably comes from working on a community planning partnership and at local authority level, I highlight the youth pledge that we signed and which I previously worked on: “Nothing about us without us”. I do not know whether we are hearing a youth voice—perhaps it could come from a member of the Scottish Youth Parliament. Given that there are youth cabinets in local authorities right across Scotland, I thought that that might be a valuable suggestion.

**Dr Tickell:** When you look at the compass of the amendments, you will see that they are, in fact, quite limited—indeed, I think that what the cabinet secretary has proposed runs to five pages. On the earlier point about the provisions commencing after six months, I suspect that that fundamentally reflects the sector’s impatience and its feeling that this legislation, which seems to have been around for ever, needs to get on the statute book and come into force rapidly.

From a legal point of view, the choices that the cabinet secretary has presented to you are fairly tightly limited, and I hope that their implications are perhaps a little clearer to all of you now that you have taken more evidence. Given that the Scottish Government has relatively little room for manoeuvre on how it complies with the Supreme Court judgment, I do not think that there are legislative solutions to the problems that have been presented—unless people have thought of something that I have not, and there is every possibility that that is the case. There might be practical solutions and other things that the Scottish Government can do, but, in my view, there are no other legislative solutions to these problems, so I am not sure what you would gain from engaging in further scrutiny of that.

**Councillor Buchanan:** I tend to agree. Everyone has made their submissions, you have heard the evidence and we have highlighted the potential pitfalls. However, because we are working within a very limited framework, we are, ultimately, limited in what more we can do. This will be extremely tight and very limiting, given that

we will have to hold back a lot of what we probably would all want to be included in the scope of the bill. We all want children’s rights to be upheld and enabled, but there are clearly some barriers in that respect.

**The Convener:** On that note, I thank all the witnesses for appearing.

That concludes the formal part of our business, and I wish everyone well for the rest of their day.

11:57

*Meeting continued in private until 12:16.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

---

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

---

All documents are available on  
the Scottish Parliament website at:

[www.parliament.scot](http://www.parliament.scot)

Information on non-endorsed print suppliers  
is available here:

[www.parliament.scot/documents](http://www.parliament.scot/documents)

For information on the Scottish Parliament contact  
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: [sp.info@parliament.scot](mailto:sp.info@parliament.scot)

---



The Scottish Parliament  
Pàrlamaid na h-Alba