

**United Nations Convention on the Rights of the Child (Incorporation)
(Scotland) Bill****Report by Fiona Robertson Executive Director Children, Young People
and Partnerships****Report for Decision****1 Recommendations**

Council is recommended to:

- a) Note the content of this report;
- b) Agree that a further report is presented to Council setting out the potential implications for the Council of the incorporation of the United Nations Convention on the Rights of the Child into domestic law; and
- c) To note that Officers intend to work closely with COSLA, SOLACE and SOLAR in considering potential implications for the Council if the United Nations Convention on the Right of the Child (Scotland) Bill is incorporated into domestic law; and
- d) To ensure that the Council's position is relayed to the Scottish Government, either by sending a letter from the Council, or by contributing to a response by COSLA, SOLAR and/or SOLACE.

2 Purpose of Report/Executive Summary

To provide the Council with a summary of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill ("the Bill") as introduced in the Scottish Parliament on 1 September 2020.

To seek agreement that a response is sent to the Scottish Government setting out the Council's position and any potential implications for the Council and seek assurance from the Scottish Government that these will be considered fully and addressed prior to the Bill's provisions coming into effect as a matter of law.

Date 6 October 2020**Report Contact:**

Name Fiona Robertson

Fiona.Robertson@midlothian.gov.uk

3 Background

United Nations Convention on the Rights of the Child (UNCRC)

- 3.1 The UNCRC was adopted by the General Assembly of the United Nations in 1989 and it was ratified by the UK Government in 1991. It is the most widely ratified human rights treaty in the world. The UNCRC was a landmark treaty, recognising the importance of childhood and the unique needs of children across the globe. It sets out the civil, political, economic, social and cultural rights that all children, everywhere, are entitled to. The rights in the UNCRC are guaranteed to every child, whatever their ethnicity, gender, religion, language, abilities or any other status.
- 3.2 The UNCRC consists of 54 articles. Articles 1 to 42 contain the substantive rights and obligations which States Parties must uphold and give effect to. These include the right to life, survival and development; the right to protection from violence, abuse or neglect; the right to an education that enables children to fulfil their potential; the right to be raised by, or have a relationship with, their parents and the right to express their opinions and be listened to. Articles 43 to 52 concern procedural arrangements for the signature, ratification and amendment of the UNCRC and the establishment of the CRC (UN Committee on the Rights of the Child) and the reporting process for States Parties.
- 3.3 The UK Government has ratified the first optional protocol on the involvement of children in armed conflict and the second optional protocol on the sale of children, child prostitution and child pornography. While the UNCRC and the first and second optional protocols apply in the UK as a matter of international law, because they have not been incorporated into domestic law they cannot be enforced directly in the Scottish courts.
- 3.4 The Community Planning Partnership Single Midlothian plan 2020-2021 sets out the Partnership's commitment to realising the children's rights approach to all of our work and making sure that we embed the principles of the UNCRC. It is also important to note that the three year outcomes for 2020-23 and priorities for action in 2020-21 have been directly informed by the views of over 500 children and young people.

Scottish Government's Policy Objectives of the Bill (as set out within the Policy Memorandum)

- 3.5 If enacted into law, Scotland will be the only part of the UK where the UNCRC requirements are directly enforceable in the courts.

The United Nations Convention on the Rights of the Child (UNCRC) is the global "gold standard" for children's rights. By incorporating the UNCRC, the Bill aims to deliver a fundamental shift in the way children's rights are respected, protected and fulfilled in Scotland, ensuring that children's rights are built into the fabric of decision-making in Scotland and that these rights can be enforced in the courts.

- 3.6 The approach which the Bill takes aims to ensure that children's rights are protected, respected and fulfilled in Scotland to the maximum extent of the Scottish Parliament's powers. The Bill seeks to ensure that there is a proactive culture of everyday accountability for children's rights across public services in Scotland. If enacted public authorities will be required to take proactive steps to ensure compliance with children's rights in their decision-making and service delivery. This will mean that the structures within which decisions are made in Scotland must enable children and young people to be heard and take an active role in their own lives and communities.
- 3.7 If passed, the Bill will mean that children, young people and their families will experience public authorities consistently acting to uphold the rights of all children in Scotland. Public authorities, including the Scottish Ministers, will be legally obliged to respect children's rights and rights-holders will be able to challenge public authorities in the courts for breaches of their rights.
- 3.8 Children and young people face additional barriers to realising their rights and accessing justice. In recognition of this some specific measures are provided for which remove barriers and build in greater accountability and transparency in relation to the proactive realisation of children's rights in practice. These provisions include giving power to the Children and Young People's Commissioner in Scotland to raise claims in the public interest and provision requiring the Scottish Ministers to make a Children's Rights Scheme.
- 3.9 The Scottish Government is of the view that the incorporation of the UNCRC will provide a strong platform from which to build stronger rights-based approaches and decision-making structures that will support children and young people recovering from the effects of the Coronavirus pandemic and which will better support children's health, wellbeing and participation into the future.
- 3.10 Incorporating the UNCRC into domestic law in Scotland requires domestic legislation. The overarching intention of the Bill in this respect is to embed the rights in the UNCRC into the law in Scotland. In doing so, the Scottish Government aims to further ensure that children's rights are woven into policy, law and practice in Scotland and enable children to rely on their rights in the domestic courts.
- 3.11 In developing the policy for the Bill, the Scottish Government report that they sought to consult as widely as possible including through a formal consultation, by establishing a working group, supporting the engagement by children and young people and by continued engagement with key stakeholders in the weeks and months towards the Bill's introduction. The Scottish Government published a consultation document on 22 May 2019 which invited views on the best model of incorporating the UNCRC into Scots law. The consultation was undertaken from 22 May 2019 to 28 August 2019.

- 3.12 Through the responses to the consultation, it was evident to the Scottish Government that there was wide support for directly and fully incorporating all the rights that are set out in the UNCRC. Children in Scotland said that they want the same rights that children have all around the world. Although there was some limited support for the approach of having a suite of Scottish rights, the Government heard that such an approach would carry a risk of diluting or changing rights, even if that were unintended. The Scottish Government, therefore, confirmed in November 2019 that the Bill would take a direct approach to the incorporation of the UNCRC.
- 3.13 The Scottish Government have stated that they remain committed to further engagement throughout the Bill's passage through the Parliament and beyond to ensure that an effective and inclusive implementation strategy is developed and implemented in support of the Bill.
- 3.14 Since the consultation closed the Scottish Government has had further discussions with a range of organisations including the Convention of Scottish Local Authorities (COSLA) and local authorities, child protection committees, justice and courts partners, social work bodies, and children's rights stakeholders to explore the implications of the Bill. They report that broadly these organisations have been supportive of the proposals for the Bill. Themes which have arisen out of these discussions were similar to those raised in the consultation itself such as the importance of accessible guidance for duty-bearers to support preparation and planning, as well as training for staff in public authorities. In relation to preparation time, some public authorities considered six months to one year will allow sufficient time to ensure their policies and practices are aligned with the UNCRC requirements. However, others saw this as a two- or three-year programme of work, noting the ongoing impact of Covid-19 and the UK's exit from the European Union on resources.
- 3.15 The Scottish Government have reported that engagement with public authorities has been more complex in the context of the Covid-19 pandemic. However the Scottish Government have stated their commitment to further detailed engagement with public authorities in the coming months in support of the Bill's progress through the Parliament. The Scottish Government have also undertaken to continue this dialogue with public authorities in the development and delivery of an implementation plan in support of the Bill. The Scottish Government states that the recognise that participation and engagement by children and young people is essential to the realisation of all rights in the UNCRC and that there will be a need to continue to build capability and capacity across the public sector within the context of an implementation plan and beyond.

4 Report Implications (Resource, Digital, Risk and Equalities)

4.1 Resource

There are no resource implications arising directly from this report

4.2 Digital

There are no digital implications arising directly from this report.

4.3 Risk

There are no risks arising directly from this report. A further report will be provided to Council setting out any potential reputational and financial risks to the Council on incorporation of the UNCRC Bill into domestic law.

4.4 Ensuring Equalities

An Integrated Impact Assessment is not required at this time as the subject of this report has not been incorporated into law.

4.5 Additional Report Implications (See Appendix A)

Appendices

Appendix A – Additional Report Implications

Appendix B – Background Information/Links

APPENDIX A – Additional Report Implications

A.1 Key Priorities within the Single Midlothian Plan

Reducing the gap in learning outcomes
 Reducing the gap in health outcomes
 Reducing the gap in economic circumstances

A.2 Key Drivers for Change

Key drivers addressed in this report:

- ☐ Holistic Working
- ☐ Hub and Spoke
- ☐ Modern
- ☐ Sustainable
- ☐ Transformational
- x ☐ Preventative
- ☐ Asset-based
- ☐ Continuous Improvement
- ☐ One size fits one
- ☐ None of the above

A.3 Key Delivery Streams

Key delivery streams addressed in this report:

- ☐ One Council Working with you, for you
- x ☐ Preventative and Sustainable
- ☐ Efficient and Modern
- ☐ Innovative and Ambitious

A.4 Delivering Best Value

Not applicable at this stage.

A.5 Involving Communities and Other Stakeholders

The report did not require any involvement of communities and other stakeholders.

A.6 Impact on Performance and Outcomes

The subject of this report does not impact currently on performance and outcomes. The

A.7 Adopting a Preventative Approach

As stated within the Single Midlothian Plan 2020-2021 the Getting it Right for Every Midlothian Child Board is fully committed to realising the children's rights approach to all of our work and making sure that we embed the principles of the United Nations Conventions on the Rights of the Child.

A.8 Supporting Sustainable Development

APPENDIX B

Background Papers/Resource Links

<https://beta.parliament.scot/bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill>

<https://www.gov.scot/policies/human-rights/childrens-rights/>