

**United Nations Convention on the Rights of the Child (“UNCRC”)  
(Incorporation) (Scotland) Act 2024****Report by Fiona Robertson, Executive Director, Children, Young People  
and Partnerships****Report for Information****1 Recommendations**

Council are recommended to note the contents of this report as set out below.

**2 Purpose of Report/Executive Summary**

The purpose of this report is to:

- (i) **update elected members on the incorporation of UNCRC into Scots law;**
- (ii) inform elected members of the actions required to be taken by the Council in response to the incorporation of the UNCRC into Scottish law; and
- (iii) the current plan for the delivery of those actions.

**Date** Thursday 8 August 2024

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### **3 UNCRC legislation**

- 3.1** The UNCRC was adopted by the General Assembly of the United Nations in 1989 and 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 can be broadly broken down into 3 areas:
- i. Protection (from harm and exploitation)
  - ii. Participation (an active participant in own lives and society)
  - iii. Provision (education, health care, shelter and nutrition)
- 3.3** Since 1991, the UK has been obliged to give effect to the UNCRC as part of its international treaty obligations. As a result of this, much of our legislation is already compatible with UNCRC. In particular, the focus in most legislation impacting children on the best interests of the child as paramount consideration is a well settled feature of our law and is a cornerstone of UNCRC. While the UNCRC and the first and second optional protocols apply in the UK as a matter of international law, because they had not been incorporated into domestic law they could not be enforced directly in the Scottish courts. The UNCRC Act now directly incorporates the UNCRC into domestic law to the maximum extent possible within the powers of the Scottish Parliament. The UNCRC Act places legal duties on public authorities to act compatibly with UNCRC requirements and provides legal remedies where they fail to do so.
- 3.4** The Community Planning Partnership Single Midlothian Plan 2023-27 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.
- 3.5** The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill was passed on 16 March 2021. It was to have received Royal Assent in mid-April and was due to come into force 6 months after Royal Assent (October 2021). The UK government announced on 13 April 2021 that it was referring the legislation to the Supreme Court, on the basis that they considered the legislation exceeded the Scottish Parliament's devolved powers. In October 2021 the Supreme Court issued their decision which held that certain aspects of the Bill were out with the legislative competence of the Scottish Parliament. In June 2023 the Cabinet Secretary for Justice and Home Affairs set out the Government's intention to amend the Bill to ensure that the compatibility duty in the Bill would only apply when public authorities are exercising their functions/carrying out duties under powers in an Act of the Scottish Parliament. The Bill passed the Reconsideration Stage in Parliament on 7 December 2023, and

subsequently became an Act on 16 January 2024. The Act came into force on 16 July 2024.

### **Compatibility duty on public authorities Part 2 Section 6**

- 3.6** Section 6 of the Act places a duty on public authorities not to act incompatibly with the UNCRC requirements. The ‘UNCRC requirements’ are defined within the Schedule 1 of the Act, which incorporates the direct text of the UNCRC to the maximum extent possible. Following the Supreme Court decision, some aspects of the UNCRC text have required to be ‘carved out’ (for example articles which relate to reserved matters including abduction of children (international relations), war and armed conflicts (defence), or wording within articles including the right to acquire a nationality (immigration)).
- 3.7** The compatibility duty (also being referred to as the “section 6 duty”) will therefore apply when a public authority is delivering devolved functions conferred under: Acts of the Scottish Parliament, a provision of secondary legislation made under such Acts (unless made under a power inserted by an Act of the UK Parliament), or common law powers. It will not apply when functions are delivered under Acts of the UK Parliament, even in devolved areas, including where text is inserted by Acts of the Scottish Parliament (or subordinate legislation made under powers in Acts of the Scottish Parliament) into other enactments (such as UK Acts or subordinate legislation made under powers in a UK Act).
- 3.8** Only those duties which fall within the compatibility duty can be challenged under the UNCRC Act in court. This means for example that the compatibility duty does not apply to services being delivered under the Education (Scotland) Act 1980, nor the Children (Scotland) Act 1995. The Education (Additional Support for Learning) (Scotland) Act 2004 will be within the compatibility duty. In order to determine whether the duty applies, the local authority will need to identify whether the statutory function in question was enacted by the Scottish Parliament or UK Parliament.
- 3.9** The section 6 incompatibility duty applies to those who meet the definition of a public authority and includes those delivering “functions of a public nature” and accordingly can extend to private, voluntary and independent organisations. It applies to both actions and failures to act.

### **Child rights reporting duty on listed authorities in Part 3, section 18**

- 3.10** Section 22 of the Act has repealed Part 1 of The Children and Young People (Scotland) Act 2014, including the section 2 reporting duty on public authorities.

**3.11** Section 18 of the UNCRC Act now requires public authorities listed at section 19 (which includes local authorities) to produce a children's rights report every three years which addresses the following four areas:

1. Action taken in the previous reporting period to ensure compatibility with UNCRC requirements
2. Action taken to secure better or further effect of children's rights
3. Actions that will be taken in the next year reporting period to ensure continuing compatibility with UNCRC requirements
4. Actions planned in that period to secure better or further effect of children's rights.

The Act includes a new duty to submit such reports to Scottish Ministers. Both the standard report and a child friendly version must be published and submitted. The first children's rights reports will be due as soon as practicable from the 31 March 2026.

### **Support for public authorities**

**3.12** The Scottish Government has published non statutory guidance in implementing a children's human rights approach and have committed to publishing statutory guidance to support public authorities in the implementation and operation of their duties. Other resources in development include a Children's Rights Skills and Knowledge Framework and a child friendly model complaints process.

### **Actions required by the Council**

**3.13** This is a high-profile piece of legislation and significant work is being undertaken by Council officers to ensure that the Council proactively considered its readiness for implementation and that appropriate systems are established to assess the impact of both current and new policies and practices for compatibility with UNCRC, in the same way that it already does for equality, fairness and human rights.

**3.14** It is important that UNCRC is not viewed solely as a piece of legislation that affects Education and Children's Services. The Council will have to exercise all of its powers and duties in line with the UNCRC compatibility duty. In addition to services which are delivered specifically for children and young people, there are areas where more specific assessment of the impact on children and young people will likely be required.

For example:

- i. Housing and Estates
- ii. Sport and Leisure
- iii. Libraries and Communications
- iv. Environmental Health and Trading Standards
- v. Land and Countryside
- vi. Planning
- vii. Transport
- viii. Culture
- ix. Events
- x. Climate Change

**3.15** The Children and Young People’s Commissioner Scotland (“CYPCS”) has a particular interest in monitoring how public authorities will implement UNCRC. Children and their families will be able to take civil action and seek remedies (including damages) where a public authority has acted, or was proposing to act, incompatibly with the UNCRC. Third party organisations carrying out functions on behalf of a local authority under a contract will also be required to act compatibly.

**3.16** There are two main areas where work is needed to ensure compatibility. These are relevant to all of the Council’s functions.

- i. Participation and engagement of children and young people. This will impact on a wide range of the Council’s functions – from processes where the views of individual children are sought (e.g. a pupil in relation to their additional support needs), to public consultation and engagement exercises involving the whole community. A child-friendly complaints process will be required, as well as ensuring the information is published in child-friendly formats.
- ii. Ensuring that the best interests of children are considered when making decisions. This is relevant both for decisions affecting individual children but also for decisions which affect or are relevant to the whole population of children and young people in Midlothian. The Act now requires us to separately consider the impact on children and young people, including in situations where decisions are being made which affect the whole population. This is likely to require a form of Children’s Rights and Wellbeing Impact Assessment. The policies and procedures of the Council will require to be reviewed to ensure that they implement a children’s human rights approach and that they reflect the duties under the Act.

### **Next steps**

**3.17** In order to be prepared for implementation the following actions are being taken forward:

- (i) Nominated lead officers from relevant services sit on the UNCRC Working Group
- (ii) Awareness raising and training for staff with the following aims:

- (a) Assessing how complaint current policies and practices are;
- (b) Equipping staff with information about UNCRC and what it means in practice for the Council;
- (c) Bringing about any necessary changes in practice and culture relating to participation/engagement with children and young people;
- (d) Developing and implementing a children's rights and wellbeing assessment framework;
- (e) Developing appropriate models to ensure active participation and engagement with children and young people across all of the Council's functions; and
- (f) Developing an appropriate reporting format, to comply with the reporting requirements set out in the Act.

## **4 Report Implications (Resource, Digital and Risk)**

### **4.1 Resource**

No additional funding is available to undertake the significant amount of professional learning and development required for all Council staff and our partners or the review and updating of current policies. Resources have been made available by national bodies, but this will require to be delivered by officers from within the council.

### **4.2 Digital**

There are no direct digital implications arising from this report.

### **4.3 Risk**

The Council will update its risk register to take account of potential liability if any court actions are raised.

### **4.4 Ensuring Equalities (if required a separate IIA must be completed)**

There are no equality issues arising directly from this report. The Council is currently developing a revised integrated equality impact assessment framework to take cognisance of the duties placed on it.

### **4.4 Additional Report Implications (See Appendix A)**

See Appendix A

## **Appendices**

### **Appendix A – Additional Report Implications**

## APPENDIX A – 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
- 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
- Preventative and Sustainable
- Efficient and Modern
- Innovative and Ambitious
- None of the above

### A.4 Delivering Best Value

Not applicable at this stage.

### A.5 Involving Communities and Other Stakeholders

No requirement at this stage

### A.6 Impact on Performance and Outcomes

No impact

### A.7 Adopting a Preventative Approach

As stated within the Single Midlothian Plan 2023-27 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

No impact