

Children and Young People's Rights

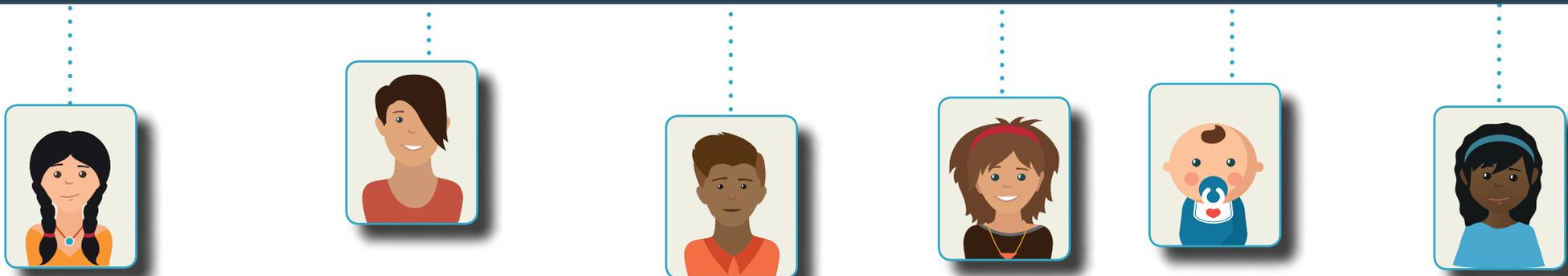


Scottish Government
Riaghaltas na h-Alba
gov.scot



A report on the Scottish Government's consultation about making the United Nations Convention on the Rights of the Child (UNCRC) law in Scotland

November 2019



Hello

We are the Scottish Government. We want all children and young people in Scotland **'to grow up loved, safe and respected so they can reach their full potential'**.

We work hard to make sure all children and young people are treated fairly, are listened to, and enjoy their rights.

Rights

The **United Nations Convention on the Rights of the Child (UNCRC)** is a human rights treaty with a list of rights for all children and young people.

i **"treaty"** means a formally signed agreement.

Parts **1-41** of the UNCRC are the rights. These rights make sure children and young people:

- are not discriminated against (Article 2)
- have their best interests protected (Article 3)
- have the things they need to survive and develop (Article 6)
- have a say in decisions that affect their lives. (Article 12)

Parts **42- 54** explain how governments and international organisations must work together to make sure all children can enjoy all their rights.

Next steps

To make Scotland the best place in the world to grow up we want to make the **UNCRC** law in Scotland. This will mean children's and young people's rights are legally protected.

This is a big change, so we asked people across Scotland what they think.

This summary report tells you:



what we asked



some of what people said.

You can read the full consultation report here:



[gov.scot/policies/human-rights/childrens-rights](https://www.gov.scot/policies/human-rights/childrens-rights)



The facts

This new law is for Scottish public authorities. That's things like schools, the police, health services, and other services.

162 people from all different areas and backgrounds answered questions.



This includes:

- **120** people from services, organisations and charities
- **7** people from education
- **3** people from law
- **32** other people too.



Some of the people who responded also included the view of children and young people from:

- Children 1st
- Children at Harmeny School
- Children in Scotland
- Children's Parliament
- East Ayrshire Children and Young People's Cabinet
- Glenrothes Youth Forum
- Highland Children and Young People's Forum
- LGBT Youth Scotland
- Our Hearings Our Voice
- Scottish Youth Parliament
- Scottish Learning and Disability Commission
- Young Scot
- Youth Link Scotland.



We asked questions about:

1. **Making the UNCRC law.**
2. **Putting children's rights into everything we do.**
3. **Helping things fit with the UNCRC and sorting it out when this doesn't happen.**



1: Making the UNCRC law

There are different ways we can make the UNCRC law in Scotland.

We wanted to know what people think is the best way to make the UNCRC law in Scotland.

About question 1

Whatever way we put the UNCRC into law we will need a framework so public authorities and the courts know what they have to do.

The Human Rights Act 1998 has a framework that public authorities and the courts use.

? **We asked:** Are there parts of the framework in the Human Rights Act that should be included in the new UNCRC law?

✓ **Yes 102**

✗ **No 7**

↶ **Don't know 15** **Didn't answer 21** **Didn't specify 17**

Most people said:

The part of the framework that stops public authorities acting in ways that don't fit with Human Rights should be copied into this law.

The part of the framework that makes sure rights can be enforced by the courts when they are breached should be included.

There must be legal powers if children's rights are to be fully protected.

Some people said:

The framework based on the Human Rights Act 1998 (HRA) is the right one to follow:

- it works
- it's a successful way to put international conventions into law
- it's tried and tested at a UK level
- it would make sure children's rights are centre to new laws in Scotland.

A few people said:

Whatever framework is used the UNCRC should be fully incorporated into law.

How will a new UNCRC law fit with the human rights laws we already have?

Any framework must make sure the rights of particular target groups are protected, such as disabled children.



About question 2

? We asked: Are there any other parts we should include in the framework?

✓ Yes **91**

✗ No **13**

↻ Don't know **15** Didn't answer **25** Didn't specify **18**

Most people said:

Along with the duty to comply, public authorities should also have to show 'due regard' for children's rights.

i **"Due regard"** means to consider something carefully.

Showing due regard would make sure:

- children's rights are central to decision-making, policy and working practice
- duty bearers put children's rights into their day-to-day work
- there are positive actions so children get their rights.

i **"Duty bearer"** means the people who have a responsibility in law.

Some people said:

Children should have clear information, support and advocacy services so they can deal with issues and take legal action if they need to.

There should be guidance so duty bearers know their responsibilities, can train staff and prepare for the new law.

A few people said:

A reporting framework is needed.

The rights of disabled children and looked after children need more focus in this UNCRC law.

Public authorities should consult with and involve children and young people more.



About question 3

? We asked: Do you agree the new law should have a 'duty to comply' with the new UNCRC law? A "Duty to comply" means you MUST do (or not do) something or you're breaking the law.

✓ **Yes** 125

✗ **No** 7

↻ **Don't know** 3 **Didn't answer** 13 **Didn't specify** 14

Most people said:

The new law should have a duty to comply.

A duty to comply will make sure public authorities:

- fully understand their legal responsibility
- take the actions they need to follow the UNCRC law
- have to answer for the actions they take and the decisions they make.

Having a duty to comply is the only way to make sure the UNCRC has a legal force.

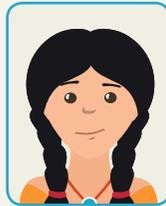
Due regard can be brushed aside, a duty to comply can't.

Some people said:

The framework should have both a duty to comply and a duty to give due regard to the UNCRC.

A duty to comply will make sure there are positive outcomes for children.

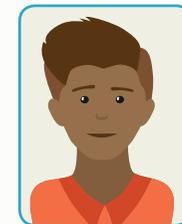
It will protect children's rights in Scotland by bringing real change.



A few people said:

Time and resources are needed for public authorities to make sure they're following the law.

A duty to comply is a stronger way to secure children's rights but it's likely to be more complicated. A duty to give due regard gives more balance.



About question 4

The UNCRC law can be interpreted in different ways. This might cause problems when someone legally challenges a decision.

There isn't an international court that makes the final decision on the UNCRC that Scottish courts could go to for advice on this.

But there are the General Comments of the UN Committee on the Rights of the Child.

We could also learn from the Concluding Observations of the Committee through their reports.



We asked: What position do you think General Comments and Concluding Observations by the UN Committee on the Rights of the Child should have in our domestic law?

121 people answered this question.



Most people said:

The General Comments should be used to advise and inform court decisions around children's rights.

The UN Committee's General Comments should be used as guidance to interpret the UNCRC.

These both should be used to help and advise on putting the UNCRC into Scottish law.



Some people said:

These are both ways of learning from experts but allow Scottish courts to stay independent.

The General Comments would help make sure children's rights are supported and protected.

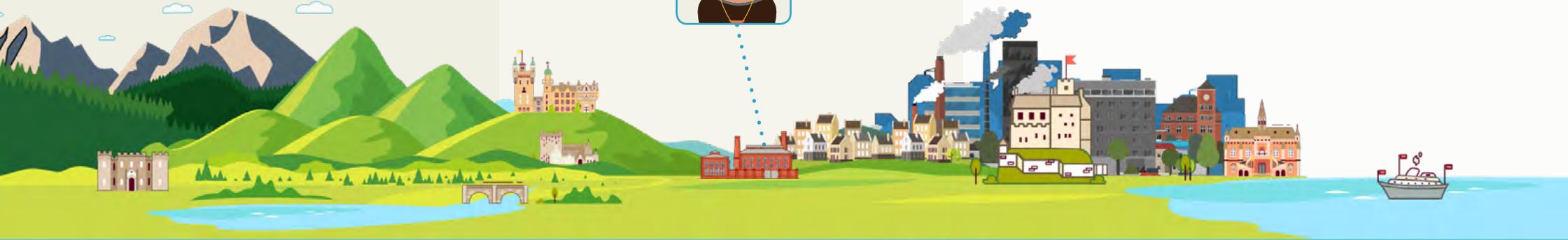


A few people said:

The UN Committee's General Comments and Concluding Observations aren't legally binding. They shouldn't be given any position under domestic law, other than guidance.

Scottish courts should be free to interpret the wording of the UNCRC.

The General Comments and Concluding Observations should be given a high position or the 'highest status'.



About question 5

Scottish courts could also get help by looking at decisions other courts have made in other countries. This includes countries where the UNCRC is already law – like Norway, Spain, Belgium and Iceland. There might be other things that could help too.

 **We asked:** What else would help courts interpret the UNCRC?

106 people answered this question.

Most people said:

Courts could learn from countries where the UNCRC is already in law.

Complaints that have been upheld by the UN Committee on the Rights of the Child could also help Scottish courts decide.



Some people said:

Courts could get help and learn from international judgements.

They could get advice and learn from the European Court of Human Rights.

The courts have experience of interpreting human rights so they can use this in UNCRC cases.



A few people said:

There needs to be more support for children during legal cases.

There should be training programmes for legal professionals on the UNCRC.

The courts don't need additional aids – there's confidence in their ability to apply the law on rights.



About question 6

We are writing a new law that will provide a Human Rights Framework for our public services. But we also want to push forward with this UNCRC law for children's rights.

 **We asked:** Do you agree we should push forward with making the UNCRC law before we finish the Human Rights Framework?

 **Yes** 113

 **No** 12

 **Don't know** 11 **Didn't answer** 17 **Didn't specify** 9

Most people said:

You should push forward with making the UNCRC law as soon as possible.

Introduce it this year and give Parliament enough time to check and examine it.

The First Minister has committed to this during this parliamentary session.

Some people said:

Putting treaties like the UNCRC into law is difficult and takes a long time so it shouldn't be held up.

Putting it in place first could improve practice and standards that could help inform the Human Rights Framework.



A few people said:

Putting the UNCRC into law is a separate process and should be completely independent.

Push forward with this while people agree it should happen across the political parties. There's a commitment to make it happen.

It would be better to include making the UNCRC law as part of the Human Rights Framework for Scotland.



About question 7

An advisory group (set up by the Commissioner for Children and Young People in Scotland and Together, the Scottish Alliance for Children's Rights) presented a model on how to make the UNCRC law.

It included:

- putting all the UNCRC rights into law
- having a duty to comply
- a duty to give due regard.

 **We asked:** What are your views on this model?

123 people answered this question.

Most people said:

This sets out children's rights clearly and comprehensively.

This makes the law fit for the future.

This covers all articles and is a clear, simple way forward.

This will make sure children's rights are promoted and protected.

Some people said:

This will put a legal system in place to protect children's rights.

This will mean that duty bearers will have to act in the best interests of the child.

There are concerns this model could leave the articles in the UNCRC open to interpretation.

A few people said:

Clear information and wording on the UNCRC is needed as some articles are rights, others are rules (instructions) to countries.



About question 8

In some other countries, the courts have to decide if they can enforce rights in the UNCRC without extra detailed law to explain what they mean. In Belgium, the courts have said that some of the UNCRC rights need extra, detailed law and this means that they are not “self-executing”.

i “Self-executing” means the courts can enforce the rights of the UNCRC without the need for extra, detailed laws.

? We asked: How should we deal with this issue?

101 people answered this question.

Most people said:

This issue isn't a concern if the UNCRC is fully made into law.

This isn't an issue as making the UNCRC into law gives the UNCRC practical effect.

Some people said:

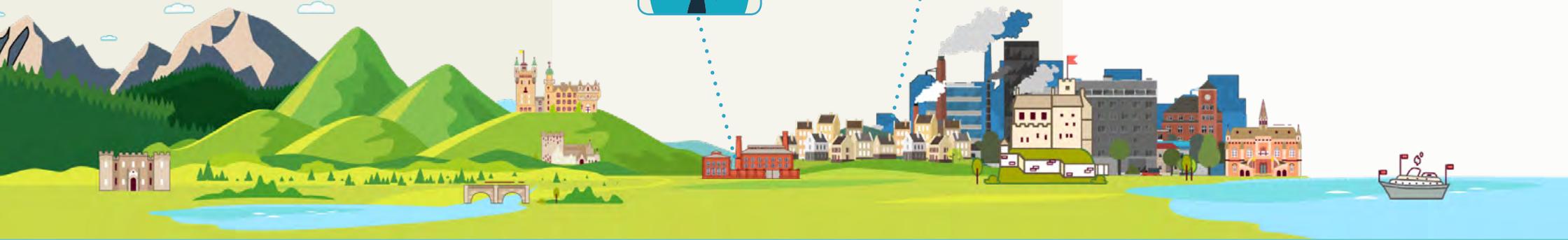
The courts should deal with this issue.

Courts should develop rules to deal with this issue on a case-by-case basis.

A few people said:

There needs to be clear information for public authorities.

Each right should be looked at to see if it needs better interpretation so everyone understands it legally.



About question 9

The Scotland Act sets out that the Scottish Parliament does not have powers over certain topics (such as defence and foreign affairs) and certain laws (such as the Human Rights Act). Some parts of the UNCRC cover topics that the Scottish Parliament does not have the power to make laws on.



We asked: How can clarity be given to rights holders and duty bearers if we fully incorporate the UNCRC into law given what is set out in the Scotland Act ?



Right holders are children and young people.

Duty bearers are the people who have to comply with children's rights.

117 people commented on this question.



Most people said:

Guidance should be:

- available for everyone
- easy to read (plain language)
- in formats including Braille.

We need activities to raise awareness including:

- a national campaign
- learning materials for children
- online resources
- social media.



Some people said:

It's important to give training for staff. The training should explain to duty bearers their responsibilities under the UNCRC.



A few people said:

An independent children's support service could help promote rights.

Public authorities are already duty bearers and are already well equipped.

Involve everyone, including children and young people, in designing information and resources.



About question 10

 **We asked:** Do you think we are right not to make the UNCRC law by only changing some parts of Scottish law?

 **Yes** 105

 **No** 6

 **Don't know** 14 **Didn't answer** 25 **Didn't specify** 12

Most people said:

Making the UNCRC law by changing other laws could cause problems.

It wouldn't make the full UNCRC law.

It wouldn't protect children's rights.

It wouldn't be the best way; it would mean pieces of the UNCRC were law and not all of it.

Some people said:

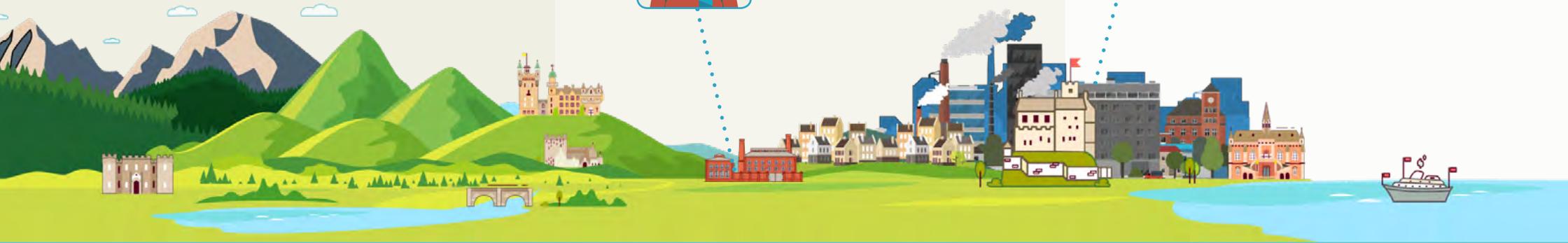
Children's rights wouldn't be given the respect they deserve.

Changing laws could leave gaps with some children's rights being left out.

A few people said:

This would make the law unclear.

People might not understand children's rights and their responsibility.



About question 11

Another way to put the UNCRC into law is to transpose it into law.

i “Transpose” means to transfer into a new version

We could enact the UNCRC by developing a new set of Scottish children’s rights

? **We asked:** If we used this model, how should we best involve people in the time available?

106 people answered this question.

Most people said:

They disagreed with the transposition model.

They preferred putting the full UNCRC into law.

Some people said:

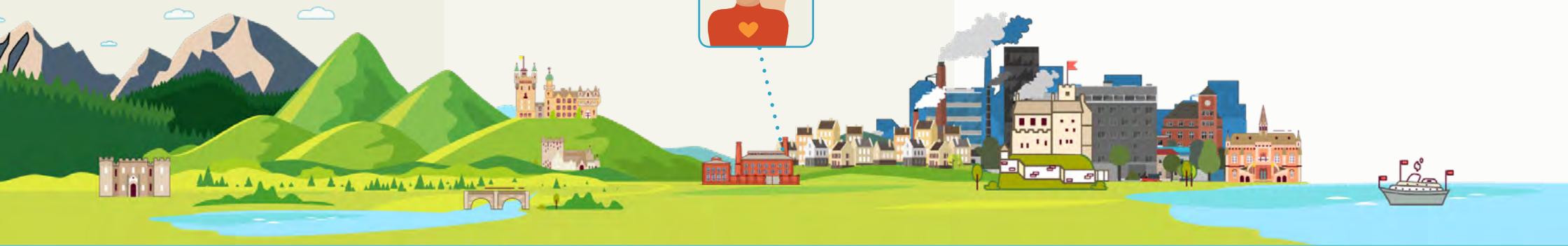
This consultation means people are involved.
Information should be available and easy to understand.

A few people said:

For people to be involved in writing and developing the law there needs to be time and notice to take part.

It’s important there’s help for people to take part including vulnerable groups.

We need to speak to children and young people in their schools and communities.



About question 12



We asked: What do you think is the best way to put the UNCRC into law?

134 people answered this question.



Most people said:

For it to be clear, the full UNCRC should be in law. The model from the external advisory group is the best way forward. It isn't possible to separate the rights, it needs to include them all. Putting the full UNCRC into law will mean that there are no gaps in the law.



Some people said:

Putting all the UNCRC into law will have a more positive impact on children's lives. Transposing the UNCRC through a suite of Scottish children's rights could be a way forward. There are examples from other countries that put the full UNCRC into law that can help and guide the Scottish Government.



A few people said:

Transposing the UNCRC through a suite of Scottish children's rights or change changing domestic law could be clearer. It could also work better with the new Human Rights Framework. The full UNCRC doesn't need to be made into law.



2: Putting children's rights into everything we do

Making the UNCRC law will make sure children's rights are at the centre of all our policies, laws and decisions. It will help make sure children and young people:

- know and understand their rights
- can take legal action if they need to.

This is about how we put children's rights at the heart of our work.

About question 13

The Welsh Government developed a Children's Rights Scheme. It sets out that Welsh Ministers have to say what they are doing to give due regard to the UNCRC.

? **We asked:** Do you think this law should include a need for the Scottish Government to have a Children's Rights Scheme too?

✓ Yes 116

✗ No 14

↻ Don't know 0 Didn't answer 18 Didn't specify 14

Most people said:

The Scottish Government should produce a Children's Rights Scheme.

A Children's Rights Scheme will help the Scottish Government show they're following the UNCRC.

Children and young people could be involved in developing and checking the scheme.

It would set out clearly how and why decisions are made.

Child impact assessments should be part of the system like Sweden.

A Children's Rights Scheme would strengthen children's rights.

Some people said:

A Children's Rights Scheme would help to make sure everyone was clear about children's rights.

The Children's Rights Scheme could make a clear complaints procedure.

A few people said:

A Children's Rights Scheme should not be included in this law.

A Children's Rights Scheme could be confusing.



About question 14

? We asked: Do you think there should be a “sunrise clause” as part of this law?

i A “**sunrise clause**” means the law has two stages. The first stage gives public authorities time to make sure their policies and practice fit with the UNCRC. At the end of this stage, public authorities would automatically be under a duty to comply on a date set out in the law.

✓ **Yes 50**

✗ **No 53**

↶ **Don't know 20** **Didn't answer 22** **Didn't specify 17**

About question 15

? We asked: If yes, how long should a “sunrise clause” be?

Less than a year 2

1 year 10

1-2 years 22

2-3 years 3

4 years 1

Most people said:

There should be a sunrise clause.

This law will affect children and young people’s lives. It’s important that public authorities have time to make changes.

Duty bearers should already know the expectations on them described in the new law.

There is ongoing work on the UNCRC. Parts are already embedded into legislation, policy and practice in Scotland.

Some people said:

The UNCRC should be incorporated into law as soon as possible without a sunrise clause.

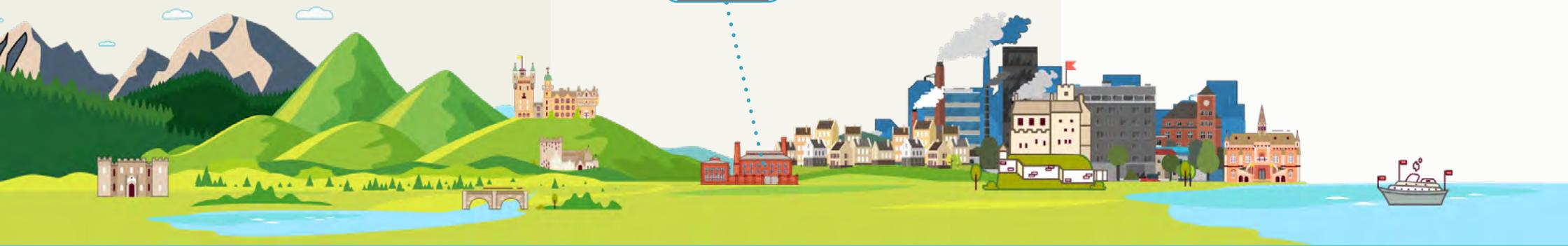


A few people said:

It would help duty bearers make long-term changes in their organisations.

If a law is brought in too quickly, it could have a negative effect on children’s rights.

If we rush this it will make the new law messy and full of gaps.



About question 16

? We asked: Do you think other activities, as well as the new law, need to happen to deliver children's rights in Scotland?

✓ **Yes** 118

✗ **No** 6

↻ **Don't know** 12 **Didn't answer** 18 **Didn't specify** 8

Most people said:

There needs to be more awareness of children's rights.

People need to be told about children's rights using:

- social media
- information and resources
- schools and the Curriculum for Excellence
- training.

How we collect information on children's rights and how we measure the difference they make needs to improve.

Some people said:

UNCRC rights training is important for all duty bearers, including people working with children and young people.



A few people said:

Advocacy services for children and young people are important. They make sure children are heard. There are some areas of Scotland that don't have advocacy services. This needs to change to support the new UNCRC law.

There must be resources and funding available by having children's rights-based budgeting.



3: Helping things fit with the UNCRC and sorting it out when this doesn't happen.

Making the UNCRC law isn't just to set out what children's rights are. It's about getting laws, policies and systems to work together and deliver the UNCRC.

We wanted to know what people think is the best way to do this.

About question 17

We want to make sure that any new law also fits with this UNCRC law. One way of doing this would be that new laws would have to have a statement of compatibility with the UNCRC.

A statement of compatibility is a note that says a new law fits with the UNCRC.

? **We asked:** Do you agree that new laws must have a statement of compatibility with the UNCRC?

✓ **Yes 120**

✗ **No 5**

↻ **Don't know 6 Didn't answer 17 Didn't specify 14**

Most people said:

There should be a statement of compatibility.

A statement of compatibility would make sure:

- new laws are checked better and can show they're following the UNCRC
- new laws focus on children's rights from the beginning
- people spot issues earlier.

A statement of compatibility should link to the Child Rights and Wellbeing Impact Assessments.

Some people said:

A statement of compatibility would mean laws and decisions could be examined better.

It would also help pick up issues and save parliament time.

A few people said:

It will help make sure that children's rights are considered as part of wider policies like transport policy.



About question 18

? **We asked:** Do you agree that this law should include ways for people to challenge actions by public services that they think breach children’s rights as set out in the new UNCRC law?

✓ **Yes** 131

✗ **No** 5

↶ **Don’t know** 6 **Didn’t answer** 13 **Didn’t specify** 7

Most people said:

It’s important to have ways to challenge public authorities.

Everyone must be able to use the legal system when they need.

Public authorities and services need to know they can be challenged.

This will help make sure this law is obeyed.

There must be clear, child friendly ways for children to challenge decisions.

Some people said:

Everyone should have confidence in the legal system to protect children’s rights.

There must be resources and funding to make sure children can challenge decisions.



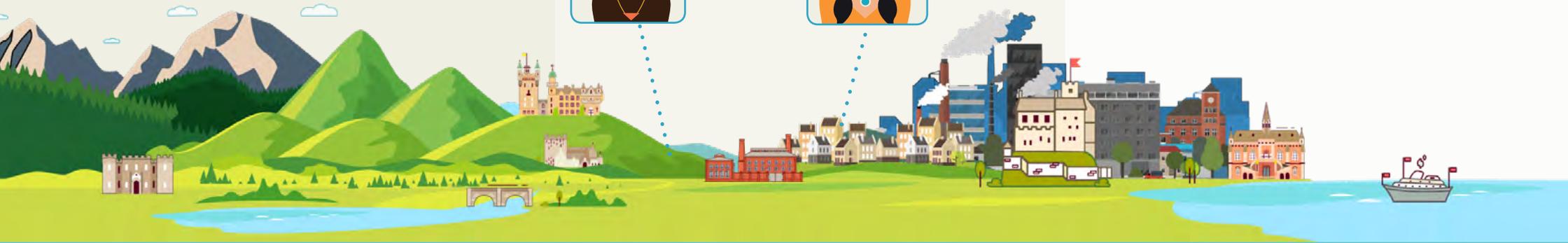
A few people said:

There needs to be clear a complaints system as well as legal systems.

There must be support for the most vulnerable children including looked after children.

They did not agree with having ways to challenge public authorities.

This could lead to more legal cases.



About question 19

Under the Human Rights Act when someone's human rights are breached the court can order a public body to pay money to someone as compensation.

? We asked: Do you agree that the approach to compensation payments for the UNCRC law should follow the same framework as the Human Rights Act?

✓ **Yes** 73

✗ **No** 5

↻ **Don't know** 31 **Didn't answer** 32 **Didn't specify** 21

Most people said:

Use the approach in the Human Rights Act. It already works well in the Scottish legal system.

This is a good way of acknowledging when someone's rights have been breached.

Some people said:

There should be measures to promote physical and psychological support as well as financial payments.

Make sure there's a child-centred approach and the interests of the child are protected.

There must be consequences for duty bearers that fail to uphold rights not just financial payments.

A few people said:

We need to avoid the development of 'no win, no fee' actions as this won't protect rights.

There needs to be more detail to answer this question properly.



About question 20

The new law for UNCRC rights could conflict with secondary laws, such as rules or orders made by Scottish Ministers or local authorities.

When this has happened with some human rights that are already in law under, the Human Rights Act, they take priority. This could be the same for the new UNCRC law.

? **We asked:** Do you agree that the rights in the UNCRC law should take priority over secondary legislation, like the rights in the Human Rights Act do? Are there any potential problems with this?

✓ **Yes 89**

✗ **No 6**

↻ **Don't know 18** **Didn't answer 30** **Didn't specify 19**

Most people said:

UNCRC rights should take priority.

The UNCRC needs to have the same legal status as the ECHR.

All laws should be compatible with the UNCRC then it wouldn't be an issue. But that is a big task.



Some people said:

This would set out clearly the commitment to children's rights.

Other countries have evidence that giving the UNCRC rights a high position in law is the best way to protect children's rights – like Norway.

Rights by the nature should take priority over other laws and be a foundation for everything.



A few people said:

Children's best interests should always be prioritised.

If the other law or order protect children's rights better than the UNCRC then it should have priority.

Guidance is needed, public authorities shouldn't be left to judge for themselves.



About question 21

? We asked: Do you agree that the UNCRC law should set out that other Acts of the Scottish Parliament should work in a way that fits as best as possible with the new UNCRC law?

✓ **Yes 82**

✗ **No 3**

↻ **Don't know 20 Didn't answer 34 Didn't specify 23**

Most people said:

UNCRC rights should have the same legal status as EU law, the Human Rights Act and the Scotland Act.

Courts already make sure that laws and the Scottish Parliament act in ways that protect children's rights.

Some people said:

This would give the best outcomes for children and the strongest defence of their rights.

Children will have more opportunities if Acts of Scottish Parliament have to line up with children's rights from the beginning.

A few people said:

This is necessary to make the law meaningful.



About question 22

There are already ways to deal with Acts of Parliament that breach rights.

1. Under the Scotland Act 1998 an Act of Scottish Parliament is “not law” if it doesn’t fit with the rules in the Scotland Act 1998. We don’t think we have the powers to do this for the UNCRC law because this would mean changing the rules in the Scotland Act 1998. The Scottish Parliament is not able to do this. It would have to be done by the UK Parliament in London.
2. The Human Rights Act also allows courts to examine Acts of Scottish Parliament and the UK Parliament. The courts can make formal statements if a new law doesn’t fit with the Human Rights Act.



We asked: Should the UNCRC law give courts the power to decide that an Act of Scottish Parliament is not compatible with the new UNCRC law?

✓ **Yes** 91

✗ **No** 9

↻ **Don't know** 0 **Didn't answer** 43 **Didn't specify** 19



Most people said:

This law should have systems to help rulings.

There should be powers so any law passed by the Scottish Parliament would no longer be a law if a court decided that it breached the UNCRC.



Some people said:

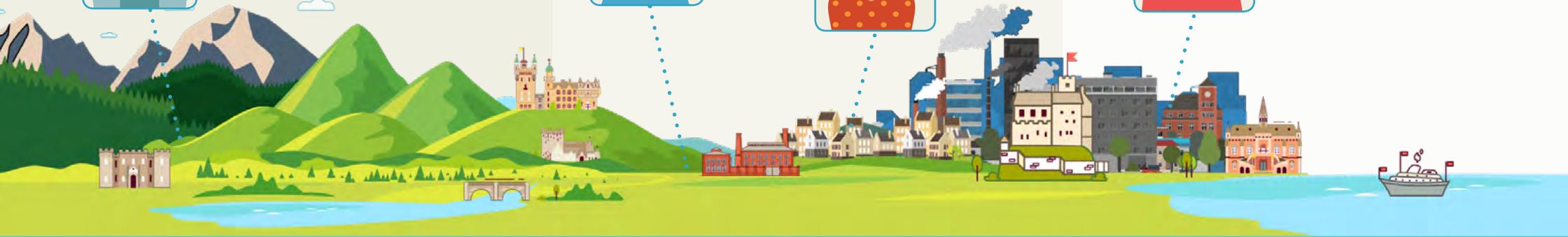
The courts should be able to issue statements of incompatibility.

Courts should have the power to deliver rulings.



A few people said:

Any system should include checks, but decisions must be made by the courts.



About question 23

Under the Human Rights Act, to bring a case to court, the person must be a victim of their rights being breached. The UNCRC law could use the ordinary test in Scottish law so more people could bring a case to court and say that the UNCRC law had not been complied with. This test is called the 'sufficient interest' test.

? **We asked:** Do you think the new UNCRC law should allow some people to bring a case to court where they are not the victim whose rights were breached?

✓ **Yes 24**

✗ **No 64**

↻ **Don't know 23 Didn't answer 37 Didn't specify 14**

Most people said:

The 'sufficient interest' test should be applied for people wanting to bring a legal case.

There needs to be a broader definition than "victim of a violation of rights".

There should be room for organisations and advocates to bring cases relating to children's rights.

Some people said:

Commissioners should be able to take legal action without tests.

There should be no special test. Children and young people should be able to bring a case through the courts if they need.

A few people said:

There should be support and guidance for children to help them bring a case or take action.



Thanks for reading this report

If you want to know more about our plans or if you want to read the full report, go to our webpage:

 [gov.scot/policies/human-rights/childrens-rights](https://www.gov.scot/policies/human-rights/childrens-rights)

If you want to find out more about your rights, explore the Children's Commissioner for Scotland's website:

 [cypcs.org.uk/rights](https://www.cypcs.org.uk/rights)

