

Business and Regulatory Impact Assessment

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

September 2020

Business and Regulatory Impact Assessment

Title of Proposal

United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill

1 Purpose and intended effect of the Bill

Objective

- 1.1 The primary policy objective for the Bill is to incorporate into the law in Scotland the United Nations Convention on the Rights of the Child (UNCRC), and its first and second optional protocols, as far as is possible within the powers of the Scottish Parliament. The Bill will ensure that there is a proactive culture of everyday accountability for children's rights across public services in Scotland. It will ensure that public authorities should 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.
- 1.2 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 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.

Background

- 1.3 The Scottish Government is committed to fully realising the human rights of all people in Scotland. It is committed to building a Scotland where respect for human rights forms the bedrock of society and the institutions which govern and deliver public services for the people of Scotland. By delivering this commitment, Scotland will also act as leader in human rights internationally and provide encouragement to others to meet their human rights obligations. The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill ("the UNCRC Bill") represents a significant step on the road to fully realising that future for Scotland: a future based on tolerance, equality, shared values and respect for the worth and human dignity of all people.

The United Nations Convention on the Rights of the Child and Optional Protocols

- 1.4 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 and it remains, to this day, truly world leading. The rights in the UNCRC are guaranteed to every child, whatever their ethnicity, gender, religion, language, abilities or any other status.

- 1.5 The UK has also signed 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 on 7 September 2000. A third optional protocol which allows complaints to be made to the Convention on the Rights of the Child (CRC) has not yet been ratified by the UK. While the UK is bound by the UNCRC and the first and second optional protocols in international law, because these have not been incorporated into domestic law, they are not part of the law which can be enforced directly in Scottish courts.

Rationale for Government intervention

- 1.6 The Scottish Government wants a Scotland where policy, law and decision-making takes account of children's rights and where all children have a voice and are empowered not just to know and understand their rights, but also to assert and defend those rights and the rights of others. Fully realising the fundamental human rights of children and young people is essential to building the more prosperous, equal future which the Scottish Government wants for Scotland. Only by respecting and fully realising the rights of all children and young people can all of Scotland flourish.
- 1.7 Incorporation of the UNCRC into Scots law will contribute to all of the National Outcomes. In particular it will further progress on these 4 National Outcomes:
- Children and Young People - We grow up loved, safe and respected so that we realise our full potential,
 - Communities - We live in communities that are inclusive, empowered, resilient and safe.
 - Human Rights - We respect, protect and fulfil human rights and live free from discrimination; and
 - International - We are open, connected and make a positive contribution internationally.
- 1.8 The Bill will contribute to the delivery of these National Outcomes by ensuring our children grow up in an atmosphere of happiness, love and understanding and that children's rights are proactively built into policy, law and practice so all children can benefit from and exercise these rights in their daily lives. In addition, incorporating the UNCRC into our domestic law in Scotland will also enable children, and those acting on their behalf, to advance their rights in the Scottish courts.
- 1.9 The Scottish Government is committed to ensuring that a rights-respecting approach is at the heart of Scotland's recovery from the current Covid-19 pandemic . The UNCRC Bill will ensure that the services and support which

are put in place build on previous successes but are renewed and improved to support better and more equal outcomes for the people of Scotland. 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 pandemic and which will better support children's health, wellbeing and participation into the future.

2 Consultation

The First Minister's Advisory Group on Human Rights Leadership

- 2.1 The principal recommendation of the First Minister's Advisory Group on Human Rights Leadership which [reported](#) on 10 December 2018 was the creation of a new statutory human rights framework for Scotland. This would involve a new Act of the Scottish Parliament (ASP) which incorporates rights from UN and other human rights treaties, including the UNCRC, into Scots law. The Advisory Group proposed that such an ASP should set out for the first time, and in one place, the rights belonging to everyone in Scotland. The group proposed that the ASP could be legislated for at the commencement of the next session of the Parliament in 2021.
- 2.2 Rather than delivering a Bill to incorporate the UNCRC in this parliamentary session, it would be possible to achieve this as part of such a comprehensive human rights framework. This would allow all rights to be brought together in one place, including those of children and young people under other human rights treaties.
- 2.3 It would not, however, be possible to pass this legislation before the next Scottish Parliament election in 2021. As a result, the Scottish Government has confirmed its intention to push ahead with the UNCRC incorporation now. The Advisory Group explicitly recognised in its report that longer term ambitions to incorporate all human rights treaties should not cause any delay to UNCRC incorporation.

Within Government

- 2.4 The UNCRC Bill Team, which sits within the Creating Positive Futures Division of the Children and Families Directorate, has engaged across policy directorates within the Scottish Government and more widely to develop the policy for the Bill. In particular the following areas and bodies were engaged with:
 - Child Protection
 - Children and Families Directorate
 - Constitution Policy
 - Criminal Law Division
 - Crown Office and Procurator Fiscal Service
 - Equalities Unit

- Family Law Unit
- Health and Social Care Directorate
- Human Rights Team
- Justice Analytical Services
- Parliament and Legislation Unit
- Scottish Legal Aid Board
- Scottish Parliament
- Scottish Courts and Tribunals Service
- Youth Justice and Children's Hearings Unit

Public Consultation

2.5 The Scottish Government published a [consultation](#) 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. 162 responses were received from individuals, public bodies, third sector, legal organisations, academics and others.

2.6 To complement the public consultation, a range of bilateral official and Ministerial meetings were held over the summer, with 47 organisations representing a number of different sectors. The Scottish Government recognises the right of children to be involved in decisions that affect them and to that end, funded seven events which engaged over 180 children and young people to support their engagement in the consultation.

2.7 The [responses](#) to the consultation have been published, where the Scottish Government has permission to do so.

2.8 In addition, the Scottish Government has published an analysis [report](#).

UNCRC Working Group

2.9 In addition to the public consultation, the Scottish Government also convened a short-life UNCRC Working Group that included representatives from UNICEF, Together (Scottish Alliance for Children's Rights), academics, parenting organisations, the Scottish Youth Parliament, NHS, Police Scotland, COSLA, the Law Society of Scotland and the Faculty of Advocates. The Group met eight times from 25 June 2019 to 24 February 2020. The final [report](#), minutes and summaries of the workshop discussions from the meetings of the Group have informed the development of the Bill, and are available on the Scottish Government [website](#).

Business

2.10 During the consultation period the Scottish Government met with the following organisations:

- Children and Young People's Commissioner Scotland
- Children in Scotland

- Highland Council
- NHS Greater Glasgow & Clyde
- NHS Ayrshire & Arran
- NHS Dumfries and Galloway
- NHS Fife
- NHS Grampian
- NHS Highland
- NHS Lanarkshire
- NHS Lothian
- Scottish Youth Parliament
- Together Scotland
- Youth Justice Improvement Board
- YouthLink Scotland
- UNICEF.

2.11 The seven events held with children and young people were supported by the Scottish Government and hosted by the following organisations:

- Children 1st
- Children in Scotland
- Children's Parliament
- Scottish Learning and Disability Commission
- Scottish Youth Parliament
- Young Scot
- YouthLink Scotland
- A join event between Health and Social Care Alliance and Together Scotland.

2.12 The Scottish Government has continued to engage with a range of stakeholders since the consultation closed including:

- Aberdeen City Council
- Aberdeenshire Council
- Association of Directors of Education in Scotland
- Care Inspectorate
- Child Protection Committees Scotland
- Children and Young People's Commissioner
- Children's Hearings Scotland
- Community Justice Scotland
- Disclosure Scotland
- Fife Council
- Judicial Institute for Scotland
- Mental Health Welfare Commission
- NHS Highland
- Police Scotland
- Public Health Scotland
- Scottish Children's Reporter Association
- Scottish Courts and Tribunals Service
- Scottish Enterprise

- Scottish Legal Aid Board
- Scottish Parliament
- Scottish Prison Service
- Scottish Public Services Ombudsman
- Shetland Council
- Social Work Scotland
- South Lanarkshire Council
- Sports Scotland
- Together Scotland
- The Convention of Scottish Local Authorities (COSLA)
- The Scottish Social Services Council
- UNICEF

2.13 The views expressed through the consultation, the working group and through meetings with organisations, both during the consultation process and after the consultation, have helped to inform the policy of the Bill. The Scottish Government recognises the need for continuous and effective engagement and will continue to engage with a range of stakeholders as the Bill progresses through the Parliament and beyond to ensure the widest range of voices support the development of an implementation plan for the Bill that supports public authorities to fully realise children's rights in practice.

3. Options & Impact on Scottish Business

3.1 The Policy Memorandum for the Bill provides further information on the options considered during development of the Bill and the policy rationale for specific provisions.

Incorporation of the UNCRC

3.2 As described above the policy intention is incorporate children's rights into the domestic law in Scotland so that these rights are embedded into all decision making within public life and so that children and young people experience public bodies acting consistently in the implementation of their rights. The policy intention is to make these rights justiciable. Three options were considered during the policy development of the Bill:

- Do nothing
- A 'Maximalist approach': Incorporate in full and directly as far as is possible within legislative competence (preferred option)
- Incorporation by transposing the UNCRC for the Scottish context.

Option 1: Do Nothing

3.3 There is the option of not amending the law. This would not deliver the policy intention and would be contrary to the views of the majority of those who responded to the consultation. This is not, therefore, considered a suitable alternative to the Bill.

3.4 This option would have no cost implications or impact on businesses, public bodies or Scottish Government as it would be maintaining the status quo.

Option 2: A 'Maximalist approach': Incorporate in full and directly as far as is possible within legislative competence (preferred option)

- 3.5 Direct incorporation is the shorthand for a method of incorporation which lifts the wording from an international convention and gives it effect in domestic law.
- 3.6 The majority of those who responded to the consultation identified direct incorporation as their preferred model of incorporating the UNCRC into domestic law (82 out of 134 responses). This model was favoured by over three quarters of third sector organisations (63 out of 134 respondents). A direct incorporation model was also supported by all but one organisation which included the views of children and young people in their response (12 of 13 responses from children and young people organisations).
- 3.7 Further, the Incorporation Advisory Group convened by Together Scotland and the Children and Young People Commissioner Scotland independently proposed a full and direct model of incorporation in the draft Children's Rights (Scotland) Bill.
- 3.8 In developing the approach for the Bill, the Scottish Government has been mindful of the need for the Bill to take account of the Scottish context and, in particular, the constitutional constraints of devolution. Regrettably, it is not possible for the Bill to include those elements of the UNCRC, and the first and second optional protocols, which relate to reserved matters. It is also not possible to incorporate the third optional protocol on a communications procedure because it has not been ratified by the UK.
- 3.9 In this context, the Scottish Government consider that a 'maximalist approach' is appropriate. Under this option the rights and obligations in the UNCRC and optional protocols would be incorporated to the maximum extent possible within the powers of the Scottish Parliament. **This is the option that is included in the Bill.** The Bill takes a full and direct approach to incorporation of the UNCRC and the first and second optional protocol as far as is possible within legislative competence, meaning that all of the rights and obligations which are within legislative competence will be incorporated by the Bill. This approach is in line with what the Convention on the Rights of the Child stated as its preferred [approach](#) to incorporation.
- 3.10 It is intended that the Bill will have the effect of building children's rights considerations into day to day decision making and policies across the public sector in Scotland and to make breaches of children's rights by public authorities justiciable. One of the key mechanisms for achieving this will be placing duties on public authorities with regard to the UNCRC requirements in the Bill.
- 3.11 The Bill will, therefore, make it unlawful for public authorities to act in a way that is incompatible with the UNCRC requirements in the Bill. The Bill will mean that a claim may be raised in legal proceedings brought against the public authority in question or may be relied on in any legal proceedings. It is intended that the ordinary rules of standing and title and interest would apply to claims brought under the Bill. Further detail about the policy intention for the

specific provisions in the Bill is provided in paragraphs 127 to 174 of the Policy Memorandum.

3.12 The Scottish Government consider that implementation of the Bill will cost £2,085,000 over three year period. Further detail is provided in the Financial Memorandum and at section 12 below on costs.

Option 3: Incorporation by transposing the UNCRC for the Scottish context

3.13 Alternatively, an international convention may be incorporated into Scots law by the rights enshrined in the convention being “transposed” into Scots law.

3.14 The Scottish Government considered two options as to how transposition of the UNCRC could be achieved:

- Option 3a – a suite of Scottish children’s rights could be developed
- Option 3b – specific changes could be made to domestic legislation on an issue by issue basis. This is the current approach to the implementation of the UNCRC in Scotland.

3.15 The majority of those who responded to the consultation expressed disagreement with the transposition model. Only one in ten respondents expressed a preference for transposing the UNCRC through a suite of Scottish children’s rights (15 out of 134 responses). Only four out of 134 respondents expressed a preference for transposing the UNCRC through changes to domestic legislation.

3.16 Through the responses to the consultation, it is evident that there is wide support for directly and fully incorporating all the rights that are set out in the UNCRC. Children 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, it was considered 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.

Sectors and groups affected by the Bill

Public authorities

3.17 The policy intention is to ensure that children’s rights are built into the fabric of public life in Scotland. The meaning of ‘public authority’ (i.e. the bodies to which the compatibility duty applies) has been drawn intentionally wide so as to ensure that the duty is applied to all public authorities within the powers of the Scottish Parliament. The duty not to act incompatibly with the UNCRC requirements will apply to all public authorities, and to those authorities’ exercise of their functions, to the fullest extent possible within legislative competence of the Scottish Parliament. The Bill makes it clear that this includes Scottish Ministers and Scottish courts and tribunals.

- 3.18 Similar to the Human Rights Act 1998 (“the HRA”), the public authority definition will not only include core public authorities such as local authorities and health boards, but also other bodies such as private companies when they are exercising functions of a public nature.
- 3.19 Under the Bill children’s rights will require to be considered in all day to day decision making within public authorities and meaning that children’s rights will require to be at the centre of service planning and future budgetary decisions.
- 3.20 Any action by a public authority which is incompatible with the UNCRC requirements will be unlawful. The Bill will also enable legislation which is incompatible to be struck down or declared incompatible (as appropriate in the circumstances). It will enable just satisfaction, in the form of damages, to be awarded where this is just and appropriate and the court or tribunal has power to award damages in civil proceedings.
- 3.21 In addition to the requirements of the compatibility duty, there are specific provisions of the Bill which have additional impacts on certain public authorities and the Scottish Government.

Courts and tribunals

- 3.22 The Bill makes it clear that the compatibility duty applies to courts and tribunals. This is similar to the HRA. The Bill will also enable cases to be brought before the courts which relate to breaches of the UNCRC requirements in the Bill.
- 3.23 Whilst making children’s rights justiciable is a key policy aim, it is not intended that children and young people should have to have recourse to the courts to enforce their rights. Scotland has a strong record in relation to the implementation of children’s rights in practice and the Bill builds upon this. The effect of the Bill should be to further embed children’s rights into day to day decision making policy and practice in public authorities. In line with international experience it is not expected that the Bill should result in significant additional litigation.

Listed public authorities

- 3.24 Section 1 of the Children and Young People (Scotland) Act 2014, which commenced in June 2015 places specific duties on Scottish Ministers to keep under consideration whether there are any steps which they could take to give consider what better or further effect to the UNCRC requirements in their areas of responsibility. Section 2 of the Children and Young People (Scotland) Act 2014, places duties on public authorities to publish a report of what steps it has taken in that period to secure better or further effect within its areas of responsibility of the UNCRC requirements. The reporting requirement in the UNCRC Bill replaces the reporting requirement in the 2014 Act so that listed public authorities must report on the steps taken to fulfil the compatibility duty under the Bill. It is not considered that this provision should result in additional costs to listed public authorities.

Children's Commissioner

3.25 The Scottish Ministers recognise the important role that the Commissioner for Children and Young People plays in ensuring the highest standards for children's rights in Scotland. As such the Bill makes provision supplementing the current powers of the Commissioner and enabling the Commissioner to raise proceedings. It is not anticipated that these powers will result in a material cost and where it does create costs, the Commissioner has indicated that this can be provided for through re-prioritisation of existing resources. Further information about this is included in the policy memorandum.

Scottish Ministers

3.26 The Scottish Government recognises the central responsibility it has to ensure that children's rights are fully respected, protected, and fulfilled in Scotland. The Bill makes it clear that the compatibility duty in the Bill applies to Scottish Ministers. In addition specific provision is made to ensure that how the Scottish Government complies with the compatibility duty under the Bill is transparent and effective. These include provisions requiring that Scottish Ministers must:

- prepare and publish a report, and lay it before the Scottish Parliament, following a strike down declarator or incompatibility declarator made by the courts
- undertake children's rights and wellbeing impact assessments in relation to government legislation
- publish statements of compatibility in relation to Scottish Government legislation
- publish a Children's Rights Scheme and report annually on the steps taken and that are proposed to be taken in complying with the compatibility duty under the Bill.

3.27 These requirements build on existing good practice in the Scottish Government and are not expected to have significant financial impacts.

Benefits of the Bill

3.28 The Scottish Government believes now is the right time to incorporate the UNCRC into domestic law so that the rights of children and young people must always be built into policy, legislation and decision making in practice, and that children can enforce their rights directly in the Scottish courts should the need arise.

3.29 The Bill will represent a significant step forward for the protection of children's rights in Scotland. It will mean that all legislation and decision-making must be compatible with the UNCRC requirements and where that is not the case children and young people and their representatives can use the courts to enforce their rights.

3.30 The Scottish Government is committed to ensuring that children's rights are respected, protected and fulfilled and that recourse to the courts should be a last resort. The Bill will ensure that all practical steps are taken to ensure that

children and young people are heard and that their rights are built into day-to-day policy and decision-making across Scotland. Further details about the benefits of the Bill are provided in the Policy Memorandum.

Costs

3.31 In the Financial Memorandum which accompanies the Bill the Scottish Government have estimated that implementation of the Bill will cost just over £2 million over a three year period. The Financial memorandum sets out how this will support an implementation programme to ensure that the Bill's duties are fulfilled with children's rights being embedded in decision-making at all levels in public services. The implementation programme will support the development of increased capacity for leadership, empowering children to claim their rights and embedding children's rights in public services.

Costs on the Scottish administration

3.32 The costs to deliver the implementation programme will be borne by the Scottish Government. In addition, the Scottish Government will refocus existing resources to provide for the costs of staffing a central implementation team, operation of the Children's Rights Scheme, and delivery of Child Rights and Wellbeing Impact Assessments as required by the Bill.

3.33 Based on published research about the impact of UNCRC incorporation [internationally](#) and the use of human rights legislation in [Scotland](#), a small increase in the amount of litigation faced by public bodies is anticipated; however, the Scottish Government will keep this under review.

3.34 Complying with the duties in the Bill may result in one-off costs for other authorities in the Scottish Administration relating to updating training materials, reporting procedures and guidance. These minimal costs should be accommodated within regular review and update processes.

3.35 As noted in the Financial Memorandum, a fund will be provided to support public services to embed children's rights in their decisions, policies and practices to ensure their duties under the Bill can be fulfilled. If a public authority identifies an issue of compliance in respect of a particular policy or practice with the Bill's compatibility duty, the central implementation team will offer support and policy advice as appropriate.

Costs on local authorities

3.36 Complying with the duties in the Bill may result in one-off costs for local authorities relating to updating training materials, reporting procedures and guidance. These minimal costs should be accommodated within regular review and update processes.

3.37 As noted in the Financial Memorandum, a fund will be provided to support local authorities and other public services to embed children's rights in their decisions, policies and practices to ensure their duties under the Bill can be fulfilled. If a local authority identifies an issue of compliance in respect of a particular policy or practice with the Bill's compatibility duty, the central

implementation team will offer support and policy advice as appropriate.

Costs on other bodies, individuals and businesses

3.38 The Commissioner for Children and Young People in Scotland intends to use the power to raise proceedings as a measure of last resort, and so the volume of cases generated by such public interest litigation is expected to be small. It is not anticipated that these powers will result in a material cost and where it does create costs, the Commissioner has indicated that this can be provided for through re-prioritisation of existing resources.

3.39 Complying with the duties in the Bill may result in one-off costs for health boards and other bodies relating to updating training materials, reporting procedures and guidance. These minimal costs should be accommodated within regular review and update processes.

3.40 As noted in the Financial Memorandum, a fund will be provided to support health boards and other public services to embed children's rights in their decisions, policies and practices to ensure their duties under the Bill can be fulfilled. If a public authority identifies an issue of compliance in respect of a particular policy or practice with the Bill's compatibility duty, the central implementation team will offer support and policy advice as appropriate.

4. Scottish Firms Impact Test

4.1 Views in relation to the impact of the policy for the Bill on public authorities were gathered through the consultation and through engagement with a range of stakeholders and public bodies since the consultation closed as described above.

4.2 In particular, 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 themselves, child protection committees, justice and courts partners, social work bodies, and children's rights stakeholders to explore the implications of the policy for the Bill.

4.3 All the organisations were asked questions on each of relevant areas of the Bill.

- How long do you think public bodies should be given to make preparations before the new legislation comes into full effect?
- How would your organisation assure themselves before commencement that your policies and practices are compatible with the rights and requirements to be incorporated?
- What actions would be required by your organisation to prepare for the new duties?
- What would the expected cost be to your organisation for preparing for the new duties, and will there be expected ongoing costs?
- What ongoing actions would be required by your organisation to fulfil the new duties?

- How can Scottish Government help support your organisation?

4.4 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 Brexit on resources.

4.5 This engagement with public authorities has also highlighted that participation of children and young people is an area of particular challenge as it was considered that it can be difficult to build and/or access a network of youth voices. Some noted the need for inter-SG coordination given the cross cutting nature of children's rights, others highlighted the need for support/reporting mechanisms linking Scottish Government, local government and community planning partnerships to drive accountability and assurance. Further, organisations felt that awareness-raising activities should be undertaken to ensure a good level of knowledge and understanding amongst both right holders and duty bearers.

4.6 During our engagement we also heard a lot of potential benefits of the proposals. These include the view that the Scottish Government is not only accountable for its actions in relation to the compatibility duty under the Bill, but that they are accountable for planning and reporting how they will fulfil the rights and obligations under the Bill in practice. The proposals will result in more people respecting children's rights and taking them seriously. By directly incorporating the UNCRC, Scotland will act as leader in human rights internationally and provide encouragement to others to meet their human rights obligations.

4.7 Engagement with public authorities has been more complex in the context of the Covid-19 pandemic and the Scottish Government is committed to further detailed engagement with public authorities in the coming months in support of the Bill's progress through the Parliament. The Scottish Government will also continue this dialogue with public authorities in the development and delivery of an implementation plan in support of the Bill. The Scottish Government recognises 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.

5. Competition Assessment

5.1 The Bill will have no competitive impacts; therefore the Scottish Government does not expect the proposals to have an impact on competition as they will not:

- Limit the number or range of suppliers
- Limit the ability of supplier to compete
- Limit supplier's incentives to compete vigorously

- Limit the choice and information available to consumers

6. Consumer Assessment

6.1 The Bill will have no direct impact on the price of goods and services.

6.2 The Consumer and Competition Policy Unit were contacted about our assessment and are content that the Bill will have no direct impact on the price of goods and services.

7. Test run of business forms

7.1 The Scottish Government does not envisage that any new form will be introduced as a result of the Bill.

8. Digital Impact Test

8.1 The Bill will not have any direct digital impact. The Bill does not make provision related to either off-line or on-line businesses and is not concerned with regulating commercial activity.

9. Legal Aid Impact Test

9.1 The Bill will make a breach of the duty to comply with the UNCRC requirements by public authorities justiciable in the courts. As is the case under the HRA, the Bill will mean that a claim may be raised in legal proceedings brought against the public authority in question or may be relied on in any legal proceedings. It is intended that the ordinary rules of standing and title and interest would apply to claims brought under the Bill. The Bill does not change the rules for access to legal aid.

9.2 Scotland has a strong record in relation to the implementation of children's rights in practice and the Bill builds upon this. The Bill will further embed children's rights into day to day decision making policy and practice in public authorities. 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. As described above, whilst making children's rights justiciable is a key policy aim, in line with international experience it is not expected that the Bill should result in significant additional litigation. The Scottish Government does not, therefore, anticipate major consequences for the legal aid fund. The Scottish Government recognises the importance of effective access to justice for children and young people. Following a period of public consultation there is support for developing a new statutory framework for a modern, forward-looking and user-centered legal aid service for Scotland.

9.3 This section has been discussed with colleagues in the Access to Justice Team and Scottish Legal Aid Board, who noted the above assumptions. This assessment will be kept under review.

10. Enforcement, sanctions and monitoring

Enforcement and sanctions

- 10.1 The Bill will make a breach of the duty not to act incompatibly with the UNCRC requirements, by public authorities, justiciable in the courts. As is the case under the HRA, the Bill will mean that a claim may be raised in legal proceedings brought against the public authority in question or may be relied on in any legal proceedings. It is intended that the ordinary rules of standing and title and interest would apply to claims brought under the Bill.
- 10.2 Any action by a public authority which is incompatible with the UNCRC requirements will be unlawful. The Bill will also enable legislation which is incompatible to be struck down or be declared incompatible (as appropriate in the circumstances). Further detail about these provision is provided in the policy memorandum.
- 10.3 The Bill also enables the courts to award damages where public authorities have acted incompatibly with the UNCRC requirements. The Scottish Government recognises that it is important that damages are available for breaches of human rights and that these may be appropriate in the circumstances to ensure children and young people have access to effective remedies under the Bill. The Scottish Government believes that the principle of just satisfaction, which applies in relation to the European Convention on Human Rights (“ECHR”), is a helpful framework which can be utilised by the courts when considering what remedies should be awarded in respect of breaches of children’s rights under the Bill. This provision of the Bill will require courts, when considering whether to award damages or the amount of damages, to consider whether awarding damages and the amount of damages is just and appropriate to provide just satisfaction.

Monitoring

- 10.4 The Bill will require Scottish Ministers to publish a Children’s Rights Scheme setting out what arrangements Ministers have made or propose to make to fulfil the compatibility duty. The Scottish Government considers that this requirement builds upon the steps taken in the Children and Young People (Scotland) Act 2014 to ensure that there are clear planning and reporting duties on Ministers and will ensure that children’s rights are considered proactively and fully implemented in practice. The Children’s Rights Scheme will also aid transparency and scrutiny of how Scottish Ministers fulfil their obligations under the Bill. The Bill builds on the model of the Welsh Children’s Scheme provided for in the Rights of Children and Young Persons (Wales) Measure 2011 (the Welsh Measure) and includes reporting.
- 10.5 The Children’s Rights Scheme is envisaged as a means of requiring the Scottish Ministers to set out the arrangements they have made, or propose to make, in order to fulfil their obligation under the Bill to act compatibly with the UNCRC requirements. In particular, the Bill provides that a the Scheme published by the Scottish Ministers may include arrangements of the Scottish Ministers to:

- ensure that children are able to participate in the making of decisions that affect them,
- raise awareness of and promote the rights of children,
- consider the rights of children in the Scottish Government's budget process,
- ensure that their actions contribute to any national outcome for children determined by them under Part 1 of the Community Empowerment (Scotland) Act 2015, and
- prepare child rights and wellbeing impact assessments,

10.6 The Bill will require that the Scheme is laid before by the Scottish Parliament. The Bill requires consultation in relation to making the Scheme and requires that an updated scheme is published and laid annually alongside the Scottish Government's report on the previous year and plans for the year ahead. The provisions in relation to the Scheme will ensure that the Scottish Ministers are not only accountable for their actions in relation to the compatibility duty under the Bill, but that they are accountable for planning and reporting how they will fulfil the rights and obligations under the Bill in practice.

10.7 Section 1 of the Children and Young People (Scotland) Act 2014, which commenced in June 2015 places specific duties on Scottish Ministers to keep under consideration whether there are any steps which they could take to give consider what better or further effect to the UNCRC requirements in their areas of responsibility. Section 2 of the Children and Young People (Scotland) Act 2014, places duties on public authorities to publish a report of what steps it has taken in that period to secure better or further effect within its areas of responsibility of the UNCRC requirements. The reporting requirement in the UNCRC Bill replaces the reporting requirement in the 2014 Act so that listed public authorities must report on the steps taken to fulfil the compatibility duty under the Bill.

10.8 The Scottish Government considers that all listed public authorities should also, as a matter of good practice, publish Children's Rights Schemes. This would make the processes and procedures within the public authorities, which support fulfilment of children's rights, publicly available. This could include their policy and practice on how and when they undertakes a Children's Rights and Wellbeing Impact Assessment.

11. Implementation and delivery plan

11.1 The Scottish Government will develop an implementation programme covering three years to ensure that the Bill's duties are fulfilled with children's rights being embedded in decision-making at all levels in public services.

11.2 **Leadership** – The Scottish Government is fully committed to ensuring that accessible guidance and training is developed as part of an implementation programme in support of the Bill and for public authorities to support preparation and planning in advance of commencement of the Bill. This will be supported by a central implementation team within the Scottish Government who will be dedicated to coproducing and delivering effective guidance and training with public authorities and the third sector so that it best meets the needs of practitioners, and the rights of the children and young people they

serve. The Scottish Government will ensure that an appropriate governance structure provides collective leadership to the implementation programme. The central implementation team will also be responsible for delivery of the Scottish Government's Children's Rights Scheme. The Scottish Government will continue to make its Child Rights and Wellbeing Impact Assessment guidance and templates public, so that partners in the public sector and the third sector can assess how their policy and practice impacts on children's rights and wellbeing.

11.3 Empowering children to claim their rights – Ensuring that children, young people and their families can claim their rights is central to delivering a Scotland where human rights are made real. As set out in the Progressing Children's Human Rights Action Plan 2018-2021, children's rights awareness-raising and children and young people's participation are two of the strategic priorities to which the Scottish Government is already committed. The Scottish Government will make a fund of £250,000 available for awareness-raising in each of the three years of the implementation programme, with a commitment to increase funding to enable the participation of children and young people in decision-making in public services by £100,000 in each year for the same period. The awareness-raising activities aim to support children and young people across Scotland to be human rights defenders and challenge perceived breaches of their and others' rights. The fund for participation will look to provide a sustainable approach to the strategic participation of children and young people in decision-making, and to enable the voices of those children and young people who are seldom heard to be listened to. A social marketing campaign, at a cost of £200,000, will also be developed in the second year of the programme and delivered in the third year. This campaign aims to raise the profile and support for children's rights across Scottish society.

11.4 Embedding children's rights in public services – the Scottish Government recognises the vital role that public services play in supporting for children, young people and their communities. To ensure that public services are appropriately supported in delivering the step-change in respecting, protecting and fulfilling children's rights that this Bill seeks to deliver, the Scottish Government will create a fund of £835,000 over two years (£335,000 in Year 1 and £500,000 in Year 2) to support the delivery of this implementation.

11.5 The fund will provide flexibility for an innovative implementation programme that gives the public sector access to the expertise of the third sector and the central implementation team. This fund will include a design phase to listen to children, young people and their families on what will make a difference in experiencing rights-respecting public services. Similarly, as part of the design phase, public bodies will also be engaged on their priorities for fulfilling their duties. This approach will enable public authorities to tailor implementation activities to best meet the rights of the children and communities they serve. The fund will deliver capacity-building and awareness-raising activities to practitioners in public services in Scotland. The fund will also be used to provide intensive support to senior leaders in public services to take proactive steps to embed children's rights in their organisations and communities. The fund will also support public services to consider how to progressively realise the rights of children by utilising their available resources to maximum extent.

11.6 In addition to the fund to embed children's rights, the Scottish Government is committed to refreshing the Getting it right for every child (GIRFEC) policy and practice guidance. The UNCRC is the foundation of GIRFEC. Accordingly, the upcoming practice guidance will reflect the incorporation of the UNCRC and will continue to promote children's rights, including as a core element of good practice. This refreshed guidance will provide organisations and practitioners with confidence, clarity and practical support to deliver GIRFEC, underpinned by children's rights at every level. This guidance is being developed in partnership with delivery partners and stakeholders including children, young people and parents. Engagement with key practitioners and stakeholder networks is already underway including health, education, social work, and leadership forums.

11.7 A table below in section 12 provides costs over the three year implementation period.

12. Summary and recommendation

12.1 The policy intention can only be delivered by the introduction of primary legislation. The recommended policy option is as described above, that the Bill should pursue a 'maximalist approach' to incorporation meaning that the Bill will incorporate, fully and directly, the UNCRC and first and second optional protocols into the domestic law in Scotland, as far as is possible within the powers of the Scottish Parliament.

12.2 The Bill will achieve the Scottish Government's aims to:

- ensure that all public authorities and bodies carrying out public functions within the scope of the Bill don't act incompatibly with the UNCRC requirements
- ensure that there is a proactive culture of everyday accountability for children's rights across public services in Scotland
- ensure structures within which decisions are made in Scotland enable children and young people to be heard and take an active role in their own lives and communities
- enable children's rights and rights holders to challenge public authorities in the courts for breaches of their right
- further improve outcomes for children and young people and help make Scotland the best place in the world to grow up.

12.3 For a full list of the Bill's provisions, please see the Policy Memorandum published on the Scottish Parliament website.

12.4 The UNCRC Incorporation (Scotland) Bill will be introduced to the Scottish Parliament on 1 September 2020.

Summary costs

12.5 The Scottish Government has estimated the Bill will have costs in Year 1 of £0.685m, in Year 2 of £0.900m and in Year 3 of £0.500m. This is described in

more detail in the Financial Memorandum which accompanies the Bill. A summary of the estimated costs is provided below.

12.6 This will be reviewed ahead of delivery to ensure that the programme provides value for money. Given that the duties will be commenced by regulations, the nomenclature of “Year X” has been used rather than specific financial years. There will be an inflationary impact on these figures depending on the date of commencement.

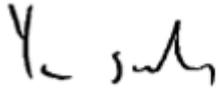
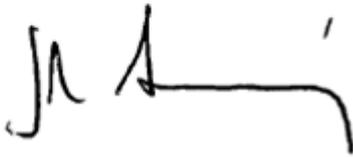
Table 1
Summary of Implementation Programme Costs
Years 1-3

Empowering children to claim their rights	Year 1	Year 2	Year 3	Subtotal
Children’s rights awareness-raising with children, young people and their families	£250,000	£250,000	£250,000	£750,000
Increased funding to enable the participation of children and young people in decision-making in public services	£100,000	£100,000	£100,000	£300,000
Social marketing campaign to raising awareness and support for children’s rights	£0	£50,000	£150,000	£200,000
Embedding children’s rights in public services	Year 1	Year 2	Year 3	Subtotal
Co-design of an innovative implementation programme based on the experiences of children and families, and the priorities of and public bodies	£85,000	£0	£0	£85,000
Delivery of capacity-building and awareness-raising for practitioners and senior leaders in public services	£250,000	£500,000	£0	£750,000
Totals	£685,000	£900,000	£500,000	£2,085,000

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

John Swinney
Deputy First Minister and Cabinet Secretary for Education and Skills

Date: 02/09/2020

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