

Briefing for Stage 1 report on UNCRC Bill - 19/01/21

From: [redacted]

Sent: 19 January 2021 09:45

To: Deputy First Minister and Cabinet Secretary for Education and Skills
<DFMCSE@gov.scot>

Cc: Minister for Children and Young People <MinisterCYP@gov.scot>; [redacted]

Subject: RE: UNCRC Bill - Stage 1 Briefing Pack Request - 1 PM TOMORROW

Hi [redacted]

As discussed, please see the revised drafts.

Thank you.

[redacted]

Document 1(a) – Extracts of Stage 1 Debate briefing pack 19/01/21

<i>Engagement Title</i>	United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill Stage 1 Debate
<i>Timing</i>	1540 – 1740
<i>Organisation/Venue and full address including postcode</i>	The Chamber, Scottish Parliament
<i>Date and Time of Engagement</i>	Date(s): 19 January 2021 Time(s): 1540 – 1740
<i>Background/Purpose</i>	To debate the general principles of the UNCRC (Incorporation) (Scotland) Bill
<i>Relevance to Core Script</i>	The UNCRC (Incorporation) (Scotland) Bill was introduced to Parliament on 1 September 2020 Opening and closing statements are provided separately.

72	<p>Interpretation of the UNCRC requirements</p> <p>The Committee recommends the Scottish Government amends the Bill so that courts and tribunals ‘must’, rather than ‘may’, take into account the whole of the text of the UNCRC and the two optional protocols, when they are determining a case.</p>	<p>Some interest amongst rights stakeholders in this provision being amended to require courts to consider the whole UNCRC and OP when determining a question of compatibility.</p> <p>They consider this to be necessary as those elements of the UNCRC and OP which we cannot incorporate due to the limits of legislative competence should be considered by courts as part of their determinations.</p> <p>We believe that the current drafting of Section 4 achieves this and consider that is important for courts to be able to retain discretion in relation which sources they should consider in line</p>	<ul style="list-style-type: none"> • I have decided not to bring forward the amendment recommended by the Committee. • Section 4 of the Bill recognises the indivisibility and interdependence of the rights and obligations in the UNCRC and optional protocols • It makes clear the importance of the UNCRC requirements being considered within their context of the whole UNCRC and optional protocols. • The Bill as drafted does not prevent these sources being considered and the courts may have recourse to these
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		<p>with the facts of the case before them.</p> <p>On this basis you have rejected this recommendation from the Committee.</p>	<p>sources as relevant in the circumstances</p>
273	<p>Power to strike down future legislation</p> <p>The Committee recognises that the majority view welcomes the power for courts to ‘strike down’ old incompatible legislation (legislation which predates the Bill), or make a declaration that new legislation is incompatible with the UNCRC (legislation which post-dates the Bill). However, we ask the Scottish Government to respond to the points raised by Dr Boyle, Professor Norrie and Professor McHarg and consider whether the Bill’s approach to future legislation could include ‘strike down’ powers while remaining within the competence of the Parliament.</p>	<p>The Committee heard discussion from academics on whether the Parliament would have the power to include in the Bill a power for courts to strike down future legislation and suggesting that establishing a panel of legal experts to consider this may be helpful. [redacted – 36(1)]</p>	<ul style="list-style-type: none"> • The Scottish Government’s preferred approach would have been to enable the power for courts to make a strike down declarator in section 20 of the Bill to be available in relation to all legislation found to be incompatible with the UNCRC requirements. • It is incumbent upon the Scottish Government to ensure that any Government Bill is within the legislative competence of the Parliament and it is the view of the Scottish Government that giving the courts power to “strike down” future legislation would be beyond the Parliament’s powers.

Briefing pack for Stage 3 of UNCRC Bill - Policy to DFM – 12/03/21

From: [redacted]

Sent: 12 March 2021 21:13

To: Deputy First Minister and Cabinet Secretary for Education and Skills

<DFMCSE@gov.scot>; Minister for Children and Young People

<MinisterCYP@gov.scot>

Cc: Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>;

[redacted]; DG Communities <DGCommunities@gov.scot>; Director for Children and

Families <DirectorforChildrenandFamilies@gov.scot>; [redacted] >

Subject: RE: Briefing pack for Stage 3 of the UNCRC Bill

P/O Deputy First Minister and Cabinet Secretary for Education and Skills

Minister for Children and Young People

Please find the attached briefing pack for Stage 3 of the UNCRC Incorporation (Scotland) Bill scheduled for Tuesday 16 March for Minister's consideration. <https://erdm.scotland.gov.uk:8443/documents/A32322182/details>

Please also find attached the Marshalled List of selected amendments, and the Groupings of amendments for the debate. The opening statement for the debate will be shared separately on Monday 15/03. Officials will continue to work on the purpose and effect notes to the amendments.

Ministers will wish to note that the position on Groups 9 and 10 is as follows:

Group 9 (Amendment 46) is one of two sets of non-SG amendments brought forward by Mary Fee that relate to the Parliament. Amendment 46 places a reporting duty on the Scottish Parliament Corporate Body (SPCB). The other set Group 10 (amendments 47 and 48) extends section 18 to additionally require a statement of compatibility for non-government bills.

The SPCB have been considering their position on these amendments and our understanding, based on discussions with PLU, is that they are not supportive. We understand that they believe that the Parliament is a special case and that the provisions should not apply to it (and their reasoning in this respect would appear to mirror that set out in their letter to the EHR Committee on 27 January). [redacted - section 30(b)(ii) (free and frank provision of advice)]. In the Policy Memorandum we set out the position that whilst the Scottish Government recognised the role of the Parliament in promoting and upholding human rights, further consideration was required by the Parliament itself as to how the requirements of the Bill should be applied to its functions.

Can Minister's please confirm their position on amendments 46, 47 and 48.

Not wishing to pre-empt their decision we have not included speaking notes for Groups 9 and 10. If Ministers are minded to support of these amendments, we would suggest liaising with PLU, but it may be that the next step is a political discussion between the Minister for Parliamentary Business and the Presiding

Officer to say that the SG is unlikely to be able to resist the amendment so that the SPCB are aware of the SG position.

Ministers are asked to confirm they are content with the purpose and effect notes and to confirm their position on amendments 46, 47 and 48.

Thanks,

[redacted]

Document 4(a) - Briefing pack for Stage 3 of UNCRC Bill – 16/03/21

ENGAGEMENT TITLE: Stage 3 – United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill

<i>Date and Time of Engagement</i>	Tuesday 16 March 1550-1800 Session 1 – Debate on amendments (TBC) Session 2 – General Debate (1700-1800)
<i>Where</i>	Main Chamber
<i>Who</i>	Scottish Parliament
<i>Key Purpose / Message</i>	Stage 3
<i>Official Support</i>	(redacted) <i>(Phone numbers have been sent to PO separately)</i>

ANNEX B**PURPOSE AND EFFECT NOTES AND SPEAKING NOTES**

[redacted]

GROUP 11– Alexander Stewart (DFM Handling)

Amendment number(s)	NON-GOVERNMENT AMENDMENTS: 49, 50, 52, 53, 54
Subject	Legislation that sections 19 and 20 apply to
Text of amendment(s)	<p style="text-align: center;">Section 19</p> <p style="text-align: center;">Alexander Stewart</p> <p>49 In section 19, page 15, line 2, leave out <an Act of Parliament,></p> <p style="text-align: center;">Alexander Stewart</p> <p>50 In section 19, page 15, line 10, leave out <or Act of Parliament></p>

	<p style="text-align: center;">Section 20</p> <p>Alexander Stewart</p> <p>52 In section 20, page 16, line 6, leave out from beginning to <force,> in line 7</p> <p>Alexander Stewart</p> <p>53 In section 20, page 16, line 13, leave out <or (as the case may be) an Act of Parliament></p> <p>Alexander Stewart</p> <p>54 In section 20, page 16, line 14, leave out <or (as the case may be) such an Act of Parliament></p>
<p>Government position</p>	<p>Reject</p>
<p>Purpose and Effect</p>	<p>The purpose of amendments 49 and 50 is to remove Acts of Parliament from section 19(2)(a) and 19(4) (Interpretation of legislation).</p> <p>The effect of amendments 49 and 50 is that an enactment that it would be within the legislative competence of the Scottish Parliament to make and which is contained in an Act of Parliament will be excluded from the category of legislation listed in section 19. This would also have the effect of removing subordinate legislation made under such an Act of Parliament from section 19. Legislation which is listed in section 19 must, so far as it is possible to do so, be read and given effect to in a way which is compatible with the UNCRC requirements.</p> <p>The purpose of amendment 52 is to remove Acts of Parliament from the scope of section 20 (Strike down declarators) by removing section 20(10)(a)(ii). The effect of amendment 52 is that a court cannot make a strike down declarator in relation to an enactment that would be within the legislative competence of the Scottish Parliament to make and which is contained in an Act of Parliament the Bill for which received Royal Assent before the day on which section 20 comes into force.</p> <p>Furthermore, any subordinate legislation made under such an Act of Parliament would also be removed from the scope of section 20. The effect of the amendment would be that the Bill would provide no remedy in relation to incompatible provisions in devolved provisions in Acts of Parliament and subordinate legislation made under such Acts which pre-date the commencement of the Bill. Courts would not be entitled to make a strike down declarator because those provisions</p>

	<p>would be removed from section 20 and the courts would also not be able to make an incompatibility declarator because this category of Acts would not be included in section 21.</p> <p>Amendments 53 and 54 make consequential changes removing references to an Act of Parliament as a consequence of amendment 52.</p>
<p>Background notes</p>	<p>[redacted - 30(b)(ii) (free and frank exchange of views)]</p> <p><u>Quotes from the Conservatives at Stage 1</u></p> <p>“We in the Scottish Conservatives fully support the move to ensure protection for children and young people and to enhance their rights. There is no doubt, however, that the bill raises many questions, and we must all acknowledge that much progress will be required to achieve the bill’s aims, through the stage 2 and stage 3 amendments that may well come forward—<u>not least in relation to how the eventual legislation will work alongside the United Kingdom Human Rights Act 1998. We must recognise the various technical challenges that incorporating the UNCRC into domestic law may bring, with the potential for conflict caused by clashes between rights set in the reserved law and those within the UNCRC itself.</u></p> <p>The bill must not result in endless clashes of legislation and long-lasting legal battles. That is not what we want to achieve; what we want to achieve is support. <u>We support the general principles of the bill, and we will lodge amendments at stages 2 and 3.</u>”</p> <p><u>Jamie Greene:</u></p> <p>“The convention contains a number of obligatory and optional protocols to be considered by those who ratify it. They are wide ranging and their introduction is no mean task for a Government. Conservative members stand ready to work with the Government and the other parties to ensure that we enhance children’s rights in Scots law.</p> <p>However, we must make good law. <u>There are outstanding questions about whether and how the bill might conflict with other human rights legislation, as Alexander Stewart said. Will it interact and conflict with the Human Rights Act 1998 or the provisions in the European convention on human rights? If there is a conflict, which provisions will take precedence? Who will decide that? What assessment has been made of any interplay in the bill between devolved and reserved matters? How will such issues be dealt with on the least political basis possible? If there are changes to relevant United Nations conventions after the bill is passed, what effect will they have on Scots law? How will we keep pace? Is keeping pace necessarily a good policy if we do</u></p>

	<p><u>not know what changes will be made? Measures and mechanisms must be put in place to deal with conflicts quickly and easily.</u></p> <p>I am aware of the time constraints, but it would be remiss of us to talk about young people’s rights without reflecting on the views of the Scottish Youth Parliament, which has been engaging with members of all parties. It supports the bill and has made a number of asks that I promised to mention in the debate. I know that at stage 2 the committee will, in good faith, consider the voices of young people.</p> <p>I have talked about our technical issues with the bill, but it is not all doom and gloom; I take the cabinet secretary at his word when he says that he will approach stage 2 constructively, as will we. However, I am nervous, because—and this is my only reservation—we are trying to cram seven long years of hard work into seven short, frantic weeks, ahead of an election and in the middle of a pandemic. The work will progress at pace; it must also do so precisely. <u>I am told by members who have been here much longer than I have that this Parliament has a habit of rushing through bad law in the closing days of a session—</u> [Interruption.]</p> <p>The Deputy Presiding Officer: Mr Greene must close, so he cannot take an intervention.</p> <p>Jamie Greene: <u>Given the genuine cross-party ambition to improve outcomes for all young Scots, let the bill not become one of those bad laws.”</u></p>
RAG rating	Green
Lead official	[redacted]

Speaking note (DFM)

[Alexander Stewart will speak to the amendments first]

Presiding Officer,

Amendments 49 to 50 and 52 to 54 would significantly undermine the protection for children’s rights in Scotland which this Bill seeks to put in place and are at odds with the Scottish Government’s ambition that the Bill should provide for the highest level of protection possible for children’s rights within the powers of this Parliament.

It is of fundamental importance that any incompatibilities in legislation which it would be within the power of the Parliament to make, can be remedied. The amendments proposed by Mr Stewart would remove from the protections afforded by sections 19 and 20 of the Bill all Acts of the UK Parliament which fall within the competence of this Parliament. That would for example include all pre-devolution legislation over which

competence has been transferred. To help members understand the scope of that, this would put Acts like the Education (Scotland) Act 1980, the Children (Scotland) Act 1995 and the National Health Service (Scotland) Act 1978 as they currently stand outwith the scope of these provisions. These amendments would significantly undermine the protection for children's rights which the Bill seeks to put in place.

They would also appear to significantly undermine the powers of this Parliament and devolution. And perhaps, Presiding Officer, we get to the nub of the Tories' true intentions here.

We are continually finding the powers of this parliament under attack from an emboldened Tory Westminster government. Now they are coming after children's rights.

What they want from these amendments is for UK legislation in devolved areas which is not compatible with children's rights to stay in place.

And there we have it, Presiding Officer, the worst motivations of the Tories laid bare – assaulting this Parliament's powers by refusing to protect children's rights to the fullest extent of the Parliament's powers.

It will not surprise anyone in this Chamber to know that when invited by the Scottish Secretary of State to lodge these amendments, I refused.

But even I can be surprised that elected Conservative members of this Parliament – elected to serve and protect the interests of the people of Scotland – are prepared to be willing little helpers for their Westminster colleagues, even when that would mean that the rights of Scotland's children would not be protected to the fullest extent possible within the powers of this Parliament.

So now we know.

I know where this government stands. I know where the SNP stands. I am sure too that I know where the parties who worked together to create this Parliament and helped add to its powers, and have defended those powers previously, stand.

So let us vote to withstand this remarkable assault on its powers today, and stand for children and this Parliament's ability to maximise how Scotland will protect our children.

I oppose amendments 49, 50, 52, 53 and 54. This government opposes these amendments and I hope members from across the parties will join us in sending a strong signal in opposing them too.

[redacted]

GROUP 1 - Opening Speaking note (Ms Todd)

Presiding Officer, section 3 of the Bill sets out the UNCRC requirements, which consist of text from the Convention and the first two optional protocols.

Section 3 also gives the Scottish Ministers the power to modify the schedule in specific ways by regulations. It is important that the Scottish Ministers can modify the schedule in line with any changes to the UNCRC, or its optional protocols, or if an optional protocol is ratified by the United Kingdom. It may also be appropriate to modify the schedule should the powers of the Parliament change in the future, for example by adding articles of the Convention which are not currently included due to reasons of legislative competence. This power is subject to the affirmative procedure so there will be a high degree of scrutiny regarding its use.

At Stage 2 I supported an amendment of Alexander Stewart's requiring consultation in relation to regulations under section 3. Amendments 1 and 2, which I move today, are minor drafting changes to make the effect of the provision clearer.

I support Ruth Maguire's amendment 36, which would place on the Scottish Ministers the same consultation requirements that are included elsewhere in the Bill. This would require Ministers to consult the Commissioner for Children and Young People in Scotland and the Scottish Commission for Human Rights prior to using the section 3 power. This will ensure consistency between the duty to consult in section 3 and similar provision elsewhere in the Bill.

I move amendment 1 and urge members to support it and amendments 2 and 36.

GROUP 1 - Closing Speaking note (Ms Todd)

- It is important that the Scottish Ministers can modify the schedule that sets out the UNCRC requirements.
- This will mean that the schedule can be kept in line with any changes to the UNCRC, or its optional protocols, or if an optional protocol is ratified by the United Kingdom.
- This would also allow the schedule to be updated should the powers of the Parliament change in the future, for example by adding articles of the Convention which are not currently included due to reasons of legislative competence.
- This power is subject to the affirmative procedure so there will be a high degree of scrutiny regarding its use.

Document 5 - Briefing for DFM for EHRIC appearance 01/12/20

From: [redacted]

Sent: 01 December 2020 16:22

To: Deputy First Minister and Cabinet Secretary for Education and Skills
<DFMCSE@gov.scot>; Minister for Children and Young People
<MinisterCYP@gov.scot>

Cc: DG Education, Communities & Justice <DGECJ@gov.scot>; [redacted]; Director
for Children and Families <DirectorforChildrenandFamilies@gov.scot>; [redacted]

Subject: RE: UNCRC Bill - briefing for DFM's appearance at the EHRiC on 3
December

[redacted]

As discussed, please find attached a revised briefing pack which contains the additional material I mentioned yesterday. The speaking note is attached again for ease of reference by has not changed.

Thanks

[redacted]

Document 5(a) - Briefing for DFM for EHRIC appearance 03/12/20**MINISTERIAL ENGAGEMENT BRIEFING: DFM**

Copied to: First Minister, and Minister for Children and Young People

<i>Engagement Title</i>	Equalities and Human Rights Committee (EHRiC) Evidence Session on United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill
<i>Timing</i>	09.00-10.15
<i>Organisation/Venue and full address including postcode</i>	Virtual Session, Microsoft Teams
<i>Date and Time of Engagement</i>	Date(s): 03 December Time(s): 9 to 10.15am
<i>Background/Purpose</i>	EHRiC evidence session on UNCRC (Incorporation)(Scotland) Bill
<i>Relevance to Core Script</i>	The UNCRC (Incorporation) (Scotland) Bill was introduced to Parliament on 1 September 2020
<i>Summary Page (key issues, lines to take if pressed and issues to avoid)</i>	<p>Statement provided separately</p> <p>Annex A: Calls for amendments/ areas of concern – page 3</p> <p>Annex B: Specific points raised by the judiciary – page 16</p> <p>Annex C: UNCRC Bill – page 25</p> <p>Annex D: Age of Criminal Responsibility (Scotland) Act 2019 – page 29</p> <p>Annex E: Summary of evidence from children and young people – page 31</p> <p>Annex F: Supportive quotes – page 32</p> <p>Annex G: Extracts from EHRiC evidence - 34</p> <p>Annex H: Tables showing parts of UNCRC, OP1 and OP2 that cannot be incorporated and reservations which apply – page 75</p>
<i>Official Support</i>	<p>There will be no official support.</p> <p>[redacted] are available to speak via teleconference in the morning if required.</p>

ANNEX A

Requests for the Bill to be strengthened	Policy consideration	Lines to take
[redacted]	[redacted]	[redacted]
<p>Strike down and incompatibility declarators (sections 20 and 21) – there are some stakeholders who question the Scottish Government’s position that extending strike down to future legislation would be outside legislative competence</p>	<ul style="list-style-type: none"> • [redacted- 30(b)(ii) (free and frank exchange of views)] 	<ul style="list-style-type: none"> • My preferred position would have been to ensure the strike down remedy was available in respect of all incompatible legislation • This would however be outwith the powers of the Parliament in respect of future legislation as it would effectively change the power of the Parliament and is, therefore, beyond its current powers • I believe the Bill puts in place a very strong range of measures which will ensure the compatibility of legislation with children’s rights in the future • This includes the strike down and incompatibility declarators, child rights and wellbeing impact assessments, statements of compatibility and the requirement for Ministers to report to the Parliament within 6 months of a strike down or incompatibility declarator by the courts

[redacted]	• [redacted]	• [redacted]
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From: [redacted]
Sent: 30 November 2020 19:16
To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>; Minister for Children and Young People <MinisterCYP@gov.scot>
Cc: DG Education, Communities & Justice <DGECJ@gov.scot>; [redacted] Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; [redacted]
Subject: UNCRC Bill

[redacted]

Please find a briefing pack and draft statement for DFM's appearance at the Equalities and Human Rights Committee on the UNCRC Bill on Thursday.

There are some additional bits which we will send up tomorrow:

1. The official report for last week's session was not available today so we will provide extracts from this tomorrow
2. We will provide a further table on specific points from the written submission by the judiciary
3. We will provide 1 page of the best supportive quotes from the evidence sessions

If there is anything else the DFM requires please let me know.

Also, just to let you know I'm going to double check when DFM is required on Thursday as the previous sessions have been starting at 8.30 but you have sent us a meeting request starting at 9am. I'll double check this in the morning and let you know.

Thanks

[redacted]

Document 7 – Stage 2 Briefing pack – policy to Minister for Children and Young People – 09/02/21

From: [redacted]

Sent: 09 February 2021 18:58

To: Minister for Children and Young People <MinisterCYP@gov.scot>

Cc: [redacted] Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>; DG Education, Communities & Justice <DGECJ@gov.scot>; Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; [redacted] >

Subject: UNCRC Bill - Stage 2 - 11 February 2021 - Briefing Pack

[redacted]

Please find attached the briefing pack for Ms Todd's appearance at the Equalities and Human Rights Committee on Thursday. I'll send a voting sheet on separately tomorrow.

Let me know if there is anything further Ms Todd needs before our meeting at 10am.

Thanks

[redacted]

[redacted]

UNCRC Incorporation Bill Team Leader

Creating Positive Futures Division: Directorate for Children and Families

Scottish Government: Area 2B South: Victoria Quay: Edinburgh: EH6 6QQ

[redacted]

Document 7(a) - Stage 2 Briefing pack – 11/02/21

Stage 2 – United Nations Convention on the Rights of the Child (Incorporation)
(Scotland) Bill

<i>Date and Time of Engagement</i>	Thursday 11 February 9am
<i>Where</i>	Virtual committee session
<i>Who</i>	Equalities and Human Rights Committee
<i>Key Purpose / Message</i>	Stage 2
<i>Official Support</i>	[redacted] (<i>Phone numbers have been sent to PO separately</i>)

GROUP 1 – Led by Alexander Stewart

Amendment number(s)	6 NON-GOVERNMENT AMENDMENT
Subject	Consultation on regulations under section 3
Text of amendment(s)	<p>Alexander Stewart</p> <p>6 In section 3, page 3, line 25, at end insert— <() Before laying draft regulations under subsection (1) before the Scottish Parliament for approval, the Scottish Ministers must consult such persons as they consider appropriate.></p>
Government position	Support
Purpose and Effect	<p>The schedule of the Bill sets out the UNCRC requirements, which consist of text from the Convention and the first two optional protocols. Section 3 of the Bill allows the Scottish Ministers to make regulations which amend that schedule in specific ways. The purpose of amendment 6 is to require that the Scottish Ministers consult prior to laying draft regulations to modify the schedule.</p> <p>The effect of the amendment is that Scottish Ministers will be required to consult “such persons as they consider appropriate” before laying draft regulations under section 3.</p>
Background notes	[redacted- 30(b)(ii) (free and frank exchange of views)]
RAG rating	Green
Lead official	[redacted]

GROUP 1: Speaking note

[Alexander Stewart will speak to amendment 6 first]

Convenor, Section 3 of the Bill sets out the UNCRC requirements, which consist of text from the Convention and the first two optional protocols. Section 3 also gives the Scottish Ministers the power to modify the schedule in specific ways by regulations. It is important that the Scottish Ministers can modify the schedule in line with any changes to the UNCRC, or its optional protocols, or if an optional protocol is ratified by the United Kingdom. It may also be appropriate to modify the schedule should the powers of the Parliament change in the future to, for example, add articles of the Convention which have are not currently included due to reasons of legislative competence.

It was always envisaged that there would be a high degree of scrutiny regarding the use of such a power. As such, the power is subject to the affirmative procedure, which requires that the Parliament must approve any such modifications to the schedule, before they come into effect.

I agree with Alexander Stewart that given the significance of these powers and their potential impact on public authorities, ensuring a transparent and accountable approach is important. As a matter of practice, the Scottish Ministers would seek views prior to use of the power in section 3. Therefore, Convener, I am happy to support Amendment 6 and ask that the Committee also give their support. It may be necessary to make some minor adjustments to the wording of the provision at Stage 3 for the purposes of consistency with the rest of the Bill and I am happy to work with Alexander Stewart on that.

END

Document 11 – Submission to Ministers –SC reference UK Law officers arguments – Policy to Ministers 06/05/21

From: [redacted]

Sent: 06 May 2021 19:38

To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>; Minister for Children and Young People <MinisterCYP@gov.scot>; Cabinet Secretary for Communities and Local Government <CabSecCLG@gov.scot>; Cabinet Secretary for Justice <CabSecJustice@gov.scot>; Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>

Cc: [redacted]

Subject: FW: Supreme Court References - Written Case for the UK Law Officers plus Supporting Material

Private Offices,

Please find attached the written case and supporting material for the UK Law Officers (the Attorney General and the Advocate General for Scotland) which have been lodged this afternoon in the Supreme Court. The written case was intimated to the Lord Advocate and Counsel General for Wales. The case was not intimated to the Attorney General NI as they have not responded to any intimations in this matter.

[redacted – 36(1)] We will provide advice for Ministers in due course. [redacted].

Grateful if Ministers can note at this stage.

Regards,

[redacted]

Document SGLD 8(a) – Advice re Letter from SOSfS – 03/03/21

From: [redacted]
Children and Families
& Local Government and Communities

30 March 2021

Deputy First Minister and Cabinet Secretary for Education and Skills
Cabinet Secretary for Communities and Local Government
Minister for Children and Young People

LETTER FROM SECRETARY OF STATE FOR SCOTLAND

Purpose

1. To provide you with advice on the letter received from the Secretary of State for Scotland about the UNCRC Bill and the European Charter of Local Self-Government Bill.
2. To ask you whether you wish to respond to this letter, or not. If you would prefer to respond, please see the draft attached separately.

Priority

3. Routine – the letter does not seek a response.

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

4. On 4 March, the Secretary of State for Scotland wrote to you expressing his concerns around the legislative competence of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill (the Bill). In particular, he raised concerns with sections 6, 19, 20 and 21 of the Bill and he proposed amendments ahead of Stage 3 to (a) make it clear that section 6 does not apply to Ministers of the Crown when exercising reserved functions in Scotland and (b) remove Westminster legislation from the scope of sections 19-21. Your previous response of 9 March stated that you considered that the Bill takes full and proper account of the respective competencies of the Scottish and UK Parliaments and that the proposed changes would be contrary to the policy intention behind the Bill.

5. Whilst amendments, drafted by the Law Society of Scotland were lodged by the Conservatives at Stage 3 in respect of sections 19 and 20 (but not sections 6 or 21), these amendments were not pressed.

6. On 24 March, the Secretary of State for Scotland wrote to you again regarding these concerns. He also noted that the UK Government will now use the four week period following Stage 3 to make a decision on whether to use the powers under

sections 33 and 35 of the Scotland Act 1998. On the same day, his office released a press notice indicating they had raised concerns around legislative competence ahead of Stage 3 and that the Scottish Government had declined to make changes.

Section 6 (the duty on public authorities not to act incompatibly with the UNCRC requirements)

7. The Secretary of State for Scotland raised concerns around the legal obligations that section 6 could be seen to place on UK Government Ministers in reserved areas. He states that, “the effect of the legislation may not be clear to citizens, stakeholders and those who may seek to use the legislation to test that relevant authorities are meeting their duties”. [redacted- 36(1)] Our position is that section 6 of the Bill is within legislative competence.

8. Further, the Bill places duties on Scottish Ministers to produce statutory guidance on Part 2 of the Bill (Duties on Public Authorities). It is intended that this guidance will help address the concern around legal certainty and clarity, and will ensure the intention and effect of the Bill is better understood by rights-holders as well as duty-bearers.

Sections 19-21 (interpretation of legislation; strike down declarators; incompatibility declarators):

9. The Secretary of State for Scotland also raised concerns with regards to sections 19-21 of the Bill. He is concerned that these sections of the Bill would constrain the UK Parliament’s ability to make laws for Scotland as provided for under section 28(7) of the Scotland Act 1998.

10. It is within legislative competence for the Scottish Parliament to amend or repeal Westminster Acts, insofar as such provision is within legislative competence. We therefore disagree with this position, and believe these changes would mean that crucial provisions in the Bill would not apply to major pieces of legislation that fall within the legislative competence of the Scottish Parliament and which are key in relation to children’s rights. This would include the Children (Scotland) Act 1995, the Education (Scotland) Act 1980 and the Children and Young Persons (Scotland) Act 1937.

11. **(redacted)**

12. We understand that this letter may create some uncertainty among public authorities and children’s rights organisations. We wrote to the Cabinet Secretariat seeking advice on engaging with stakeholders during the pre-election period. They advised that we can point concerned stakeholders to published information about the Bill that outlines the Scottish Government position in relation to competence. However, they recommended that we should not proactively approach stakeholders on this point during the pre-election period. Therefore, we will continue to respond to stakeholders who write to us with assurance that both legislation are within the legislative competence of the Scottish Parliament, and that the Scottish Government will continue to plan for implementation.

European Charter of Local Self-Government (Incorporation) (Scotland) Bill

13. On 15 March, the Scotland Office made contact at official level advising that they had significant concerns with the European Charter of Local Self Government Bill. Similar to the UNCRC Bill, they were of the view that sections 4 and 5 were outwith the legislative competence of the Scottish Parliament and would therefore welcome amendments to state that they don't apply to Acts of Parliament.

14. This was the first time that the UK Government had raised any concerns. A conference call with Scotland Office officials was quickly arranged that day. During the call the Scottish Government officials asked for more detail on their concerns but they weren't able to provide any more detail on the reasons for the Bill being outwith legislative competence and why there was a need for the amendments to exclude Acts of Parliament. The Scotland Office agreed to urgently provide more information in writing.

15. The Director of the Scotland Office subsequently wrote to officials with slightly more details that evening and advised:

“We recognise that sections 4 and 5 of the European Charter Bill could only affect Acts of Parliament insofar as the provisions in question would also have been within the legislative competence of the Scottish Parliament. We are not suggesting that the Acts which might be affected by sections 4 and 5 would relate to reserved matters in terms of Schedule 5 of the Scotland Act. The concern is that these sections put the UK Parliament into a position whereby it is effectively being required to draft its legislation taking into account the requirements of the European Charter, and so constrain its power to make laws for Scotland contrary to section 28(7) of the Scotland Act”.

16. Having considered the points raised by the Scotland Office, it was agreed not to make any amendments on this to the Bill. Officials also replied to the Scotland Office in the following terms:

“Thank you for clarifying your position. The European Charter Bill does not impose any duties on the UK Government or Westminster in relation to legislation. Only the Scottish Ministers have duties imposed on them in the Bill and only in respect of the exercise of their functions. There is no requirement that legislation passed by the UK Parliament in the future in devolved areas must be compatible with the Charter”.

UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (“the Continuity Act”)

17. Cabinet Secretary for Environment, Climate Change and Land Reform is currently considering separate advice regarding the points raised in relation to the Continuity Act. And will be issuing a response separately. You will be copied into this shortly.

Options

- [redacted].

Recommendations

18. [redacted].

[redacted]
Children and Families
& Local Government and Communities

30 March 2021

1. Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Deputy First Minister and Cabinet Secretary for Education and Skills	X				
Minister for Children and Young People			X		
Cabinet Secretary for Communities and Local Government	X				
Cabinet Secretary for Environment, Climate Change and Land Reform			X		
Cabinet Secretary for the Constitution, Europe and External Affairs			X		
[redacted]			X		
			X		

Officials for awareness as per covering email

From: [REDACTED]> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills

Sent: 25 March 2021 13:02

To: [REDACTED]> >; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>

Cc: Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot [REDACTED]>; DG Communities <DGCommunities@gov.scot>; Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; [REDACTED]> >

Subject: RE: STEER: Letter to Secretary of State for Scotland

Hi [REDACTED]>

Can I get advice and a response by 17:00 Tuesday please.

Thanks

[REDACTED]>

From: [REDACTED]

Sent: 25 March 2021 09:04

To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>; Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>; Cabinet Secretary for Communities and Local Government <CabSecCLG@gov.scot>; Cabinet Secretary for the Environment, Climate Change and Land Reform <CabSecECCLR@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>; Solicitor General <SolicitorGeneral@gov.scot>; Minister for Children and Young People <MinisterCYP@gov.scot>; Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>

Cc: Permanent Secretary <PermanentSecretary@gov.scot>; [redacted]; DG Communities <DGCommunities@gov.scot>; [redacted]; Director of Environment & Forestry <director.enfor@gov.scot>; [redacted]

Importance: High

Hi [REDACTED],

Apologies [REDACTED] is on leave. I can confirm we will pick this up.

I will also get in touch with the team supporting/advising on the European Charter of Local Self-Government (Incorporation) (Scotland) Bill.

May I know when DFM would like to send a response by?

Thank you.

[REDACTED]

From: [REDACTED] **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
Sent: 24 March 2021 18:16
To: [REDACTED]
Cc: Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; [REDACTED]; DG Communities <DGCommunities@gov.scot>; Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; [REDACTED] **Subject:** FW: UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION) (SCOTLAND) BILL

Hi [REDACTED]

Please find attached a letter from the Secretary of State for Scotland. Can you please provide advice on this.

Many thanks

[REDACTED]

[REDACTED] | Interim Private Secretary to John Swinney MSP, Deputy First Minister and Cabinet Secretary for Education and Skills | The Scottish Government | Web: www.gov.scot
[REDACTED] Email: DFMCSE@gov.scot

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Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Document 26 - Official to minister - UNCRC Incorporation statement and other events briefing pack - 19/11/19

From: [redacted]

Sent: 19 November 2019 13:56

To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>; Minister for Children and Young People <MinisterCYP@gov.scot>

Cc: First Minister <firstminister@gov.scot>; DG Education, Communities & Justice <DGECJ@gov.scot>; Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; [redacted] Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; Cabinet Secretariat inbox <CabinetSecretariat3@gov.scot>; [redacted]; Cabinet Secretary for Social Security and Older People <CabSecSSOP@gov.scot>; Minister for Older People and Equalities <MinisterOPE@gov.scot>; [redacted]; Permanent Secretary <PermanentSecretary@gov.scot>; [redacted]

Subject: UNCRC Incorporation statement and other events - 20 November - briefing pack

[redacted]

Statement

Please find attached the statement and briefing pack for the DFM's statement tomorrow. [redacted]

I'd like to draw the DFM's attention to the bottom page 6 of the statement where we have included a paragraph making clear that the 'caveat' approach taken in the Together Bill is not within our powers. We considered it was important to make this clear.

I managed to reduce the word count to 1676 by reducing the number of times we refer to the Convention in full.

Letter to stakeholders

We are preparing a letter for DFM to send to key stakeholders when he makes his statement. [REDACTED] will send this up shortly.

News release

Comms are working a news release which will also be sent up shortly.

Other events

Please also find attached briefing for the networking event and the reception. The FM's speaking notes are not finalised so we will send you these on when we get them.

Thanks

[redacted]

[redacted] **UNCRC Incorporation Bill Team Leader**

Creating Positive Futures Division: Directorate for Children and Families

Scottish Government: Area 2B South: Victoria Quay: Edinburgh: EH6 6QQ

[redacted]

My working days are Monday, Tuesday and Friday

DFM statement on 20 November

Presiding Officer, today is the 30th Anniversary of the adoption of the Convention on the Rights of the Child by the UN General Assembly - the most widely ratified human rights treaty in the world. Across the world, events are taking place celebrating the progress that has been made in furthering the rights of children and young people.

I am pleased that this Government stands amongst those nations which are pledging to go further. I believe that commitment is shared right across this Chamber.

The Convention 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 remains, to this day, truly world leading. It is unique in setting out how adults and governments must work together to make sure all children can enjoy all their rights.

For many children across the globe, realisation of even their most basic rights are still blighted by war, famine or political instability. That this is so in the 21st Century, is truly shameful.

Our starting point is that of the United Nations itself, as set out in the preamble to the Convention, that “the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

From that starting point flows a commitment that we each must shoulder to promote, secure and respect children's rights in Scotland and across the world.

This Government is committed to doing all that we can to meet the UN's gold standard on children's rights.

I can, therefore, reaffirm today that, with this Parliament's agreement, we will incorporate the United Nations Convention on the Rights of the Child into Scots law by the end of this parliamentary session.

This commitment builds on a proud tradition of respecting child rights in Scotland which predates even the creation of the Convention in 1989, such as our pioneering and unique Children's Hearings System which became operational in 1971.

As a Government, we have made respect for child rights a priority.

- We have set in statute our ambition to eradicate child poverty in Scotland and published our first Child Poverty Delivery Plan and first year progress report.
- Through the Attainment Scotland Fund, we are investing £750m during the course of this parliament to tackle the poverty related attainment gap.

- We are almost doubling the funded Early Learning and Childcare from 600 to 1,140 hours per year from August 2020 meaning children and parents will benefit from 30 hours a week, high quality early learning.
- And, we are the first national government in the world to introduce access to free period products for up to 395,000 students attending schools, colleges and universities in Scotland.

These are transformational changes which this government is delivering for children and young people and their families today.

And we continue to do more.

This year will also see progress towards the implementation of the changes to the age of criminal responsibility –raising the age of criminal responsibility from 8 to 12 years. And the Children (Equal Protection from Assault) (Scotland) Act 2019 will remove the defence of ‘reasonable chastisement’ making it an offence for anyone to smack a child in Scotland.

In Government we have sought to put our ideals and values into practice. This Government will always speak up, without fear or favour for democracy, human rights and the rule of law.

We have placed Human Rights and the Sustainable Development Goals at the centre of the Government's purpose and our refreshed National Performance Framework. Indeed our national outcome for children and young people - to grow up loved, safe and respected so that we realise our full potential - is aligned with the preamble to the UN Convention on the Rights of the Child.

We have established a National Taskforce for Human Rights Leadership, which coincidentally is holding its second plenary meeting today. Our vision is for a new statutory human rights framework for Scotland that ensures the rights of every member of Scottish society are respected, protected and fulfilled and that we can all live with fundamental human dignity.

Incorporation of the Convention, and ensuring that children's rights are fully embedded in domestic law, is a first step in achieving that larger ambition.

Doing so is a necessary process, and practical action is overdue. While we live in a country that ratified the Convention in 1991, international treaties such as this are not automatically part of the law in Scotland. The rights set out in the Convention only become part of the law enforceable in the Scottish courts if they are implemented by legislation.

Over the summer we held a consultation asking what the people of Scotland thought about the best way to incorporate the Convention

into our domestic law. We set out two approaches to incorporation in the consultation. We said that we planned either to directly incorporate those rights as closely as is achievable in the Scottish context, or to transpose those rights by enacting a suite of Scottish children's rights.

I am today publishing the analysis of the consultation responses. I am delighted that over 160 individuals and organisations responded to the consultation and that many children and young people took part, including through 7 events which included over 180 children and young people.

To complement the public consultation we convened a short life Working Group made up of stakeholders from across public authorities, the third sector including Scottish Youth Parliament, as well as academia and the legal profession. Their work has assisted policy considerations to date and will continue to do so, and I look forward to receiving their report in due course.

It is clear through the consultation that there is wide recognition that incorporating the Convention will significantly advance the protection and realisation of children's rights in Scotland.

Let me be clear, our children deserve no less.

Through the responses to the consultation, it is evident that there is wide support for directly and fully incorporating all of the rights set

out in the Convention. Children have said that they want to have the same rights here in Scotland as all children around the world.

Whilst there was some limited support for a 'suite of Scottish Rights approach', we have clearly heard that this approach carries a risk that rights are diluted or changed, even if this were to be unintended.

We will, therefore, not take this path.

The Bill which I will introduce next year will instead take a maximalist approach.

We will seek to incorporate in full and directly – using the language of the Convention – in every case possible.

Our only limitation will be the limit of the powers of this Parliament – limits to which many of us obviously object.

As a result, sadly, some parts of the Convention – for example, the provision on military recruitment – are reserved and cannot be incorporated by this Parliament.

The Children's Commissioner and Together have proposed a model that would see the whole Convention included in the Bill, subject to a restriction that the Bill only operates within devolved powers. While we support the ambition, it is clear to this government that this

approach would not reflect the inability of this Parliament to make provision in relation to reserved matters.

Nevertheless, my expectation is that a vast majority of the Convention's provisions can be incorporated by this Parliament.

That will ensure that the rights contained in the Convention are afforded the highest protection and respect possible within our constitutional settlement.

And for those areas currently beyond our powers, I would offer these two points. First, I hope the example of Scotland incorporating the Convention will spur the UK – and other states – to follow suit.

And second, in the expectation that we are on a clear journey to independence, the Bill will also make provision to allow incorporation of those provisions of the Convention currently beyond our powers into our domestic law if – and when - the powers of the Scottish Parliament change in the future.

This approach will for the first time mean that the Convention is directly built into Scots law. This represents a huge step forward for the protection of child rights in Scotland.

Every devolved body, every health board, every council – and the Scottish Government itself – will be legally obliged to respect children's rights.

And, if they don't, children and young people will be able to use the courts to enforce their rights.

The Bill will aim to ensure that there is a proactive culture of everyday accountability for children's rights across public services in Scotland. This will mean that children, young people and their families will experience public bodies consistently acting to uphold the rights of all children in Scotland.

But that is not all we are doing. I am today also publishing an annual update on the progress we have made in taking forward our "Progressing the Human Rights of Children in Scotland: An Action Plan 2018-2021", which was published in December 2018. The Plan sets out our aims for taking forward children's rights until 2021.

In addition to making children's rights enforceable through the Bill we know that we need to do more to support children's participation in policy making and in the decisions that affect them. We need to raise awareness and understanding of children's rights including how authorities can make children's rights real in practice. That is why we are developing a strategic approach to participation and progressing through co-production a 3-year programme to raise awareness of children's rights across all sectors of Scottish society, including children and young people themselves.

Children and young people are our future. They are Scotland's future and the future of the world. On the 30th anniversary of the Convention we can all be proud of the progress that Scotland has made in furthering child rights. This Government will continue to do everything within its powers to promote, secure and respect those rights now and for the future.

END

1676 words

Ministerial Engagement Briefing: 20th Nov – Universal Children’s Day and 30th anniversary of UNCRC

Copied to: First Minister, and Minister for Children and Young People

<i>Engagement Title</i>	20 th Nov – Universal Children’s Day and 30 th anniversary of UNCRC Statement to Parliament
<i>Timing</i>	1.30 pm
<i>Organisation/Venue and full address including postcode</i>	Chamber, Scottish Parliament
<i>Date and Time of Engagement</i>	Date(s): 20 Nov Time(s): 1:30 pm
<i>Background/Purpose</i>	<input type="checkbox"/> MCS Diary Request Letter date: <input type="checkbox"/> MCS Letter reference: Purpose/Invitation History: to mark the 30 th anniversary of the UNCRC
<i>Relevance to Core Script</i>	The First Minister’s 2019/2020 PfG committed to incorporating the UNCRC into domestic law within this parliamentary session. This Bill will be introduced in year 5.

Annex A**Q&A****Q. Why does the Government not simply use the draft Bill from the Commissioner for Children and Young People in Scotland and Together?**

We welcome the proposed model for incorporation received from the UNCRC Incorporation External Advisory Group. This model would see the whole Convention being included in the Bill, subject to a restriction that the Bill only operates within devolved powers. While we support the ambition, it is clear to this government that this approach would not reflect the inability of this Parliament to make provision in relation to reserved matters.

There is, however, a lot contained within the proposed model which is very helpful and we will continue to work closely with stakeholders, including the Children’s Commissioner and Together throughout the development of the Bill.

Q: Will incorporation of the UNCRC be “full and direct” or not?

A: The Bill which I will introduce next year will take a maximalist approach. We will seek to incorporate in full and directly – using the language of the Convention – wherever possible. My expectation is that a vast majority of the Convention's provisions can be included in this way. It will ensure that the rights contained in the Convention are afforded the highest protection and respect possible within our constitutional settlement.

Q: What does it mean “full and directly wherever possible”- when will it not be possible?

A: We know that some of aspects of the Convention are reserved – for example in relation to military recruitment, international relations and immigration. As is the case for all legislation in the Parliament, it will not be possible for the Bill to make provision in reserved areas.

The commitment from this Government to child rights is, however, unwavering. As such, the Bill will also make provision to allow incorporation of reserved provisions of the Convention into our domestic law if the powers of the Scottish Parliament change in the future.

Q: Why don't you seek a section 30 Order so that you can incorporate the full UNCRC?

We are on a clear journey to independence. The Referendums (Scotland) Bill passed stage 1 on the 7th of November and this Government will continue to do everything that it can to ensure that the people of Scotland have the right to choose their future through a referendum next year.

The Bill will make provision to allow incorporation of those provisions of the convention currently beyond our powers into our domestic law if – and when - the powers of the Scottish Parliament change in the future, whether as a result of that process or otherwise

Q: What will happen with the rights within the reserved articles if Scotland becomes independent?

A: The Bill will make provision to allow incorporation of reserved provisions of the Convention into our domestic law if the powers of the Scottish Parliament change in the future.

Q: The draft Bill proposed by Together suggests using a ‘caveat’ to make clear that the Convention only applies within devolved competence, are you saying that this is not possible?

A: It will not be possible for the Bill to include provisions which relate to reserved matters. As such the model proposed - that would see the whole Convention being included in the Bill, subject to a restriction that the Bill only operates within devolved powers – would not be within the legislative competence of this Parliament

My expectation is that a vast majority of the Convention's provisions can, however, be included. The Bill will also make provision to allow incorporation of reserved

provisions of the Convention into our domestic law if the powers of the Scottish Parliament change in the future.

Q. Why did the Government reject a transposition or “Scottish suite” approach to incorporation?

A: Through the responses to the consultation, it is evident that there is wide support for directly and fully incorporating all of the rights set out in the Convention. Whilst there was some support for a ‘suite of Scottish Rights approach’, we have clearly heard that this approach carries a risk that rights are diluted or changed, even if this were to be unintended. A majority of our consultation respondents identified direct incorporation as their preferred model.

Q. Will the Bill also incorporate the Optional Protocols to the UNCRC?

A. The United Kingdom has also ratified the 1st and 2nd Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict.

We will take the same approach to these as we take to the Convention and will seek to incorporate directly using the language of Optional Protocols wherever possible within our powers. It will not be possible, however, for the Bill to make provision in reserved areas which is particularly relevant in the case of the 2nd Optional Protocol.

The United Kingdom has not yet ratified the 3rd Optional Protocol on a communications procedure.

Q. Will the Bill enable the Courts to “strike down” legislation, including legislation of the Scottish Parliament?

A. The Bill will ensure that the rights contained in the Convention are afforded the highest protection and respect which is possible within our constitutional settlement.

It will not be possible to give the Courts the power to “strike down” future legislation of the Scottish Parliament – that would not be consistent with the continuing democratic mandate which this Parliament has to exercise the powers which it has under the Scotland Act. But we are looking closely at the mechanisms which can be built into the Bill so as to ensure that children and young people will be able to use the courts to enforce their rights or to ensure that those rights are recognised, even if the courts cannot “strike down” legislation.

Q: The draft Bill proposed by Together suggests using a ‘caveat’ to make clear that the Convention only applies within devolved competence, are you saying that this is not possible?

A: It will not be possible for the Bill to include provisions which relate to reserved matters. As such the model proposed - that would see the whole Convention being included in the Bill, subject to a restriction that the Bill only operates within devolved powers – would not be within the legislative competence of this Parliament

My expectation is that a vast majority of the Convention’s provisions can, however, be included. The Bill will also make provision to allow incorporation of reserved provisions of the Convention into our domestic law

ANNEX B

ISSUE: The Deputy First Minister made a statement to Parliament on the 20th of November marking the 30th anniversary of the adoption of the UNCRC by the UN General Assembly.

Top Lines

- We are absolutely committed to the incorporation of the UN Convention on the Rights of the Child.
- The Bill which we will introduce next year will take a maximalist approach.
- It will seek to incorporate in full and directly – using the language of the Convention – in every case possible.
- My expectation is that a vast majority of the Convention’s provisions can be incorporated by this Parliament.
- This approach will mean that the Convention on the Rights of the Child is directly built into Scots law and children and young people will be able to use the courts to enforce their rights.
- This represents a huge step forward for the protection of children’s rights in Scotland.

Our only limitation will be the limit of the powers of this Parliament – limits to which many of us obviously object.

- Sadly, some parts of the Convention – for example, the provision on military recruitment – are reserved and cannot be incorporated by this Parliament.
- The Children’s Commissioner and Together have proposed a model that would see the whole Convention included in the Bill, with an explanation that it only operates within devolved powers.
- While we support this ambition, it is clear to this Government that this approach would be beyond our powers.

I hope the example of Scotland incorporating the Convention will spur the UK – and other states – to follow suit.

- In the expectation that we are on a clear journey to independence, the Bill will also make provision to allow incorporation of those provisions of the Convention currently beyond our powers into our domestic law if – and when - the powers of the Scottish Parliament change in the future.

Official to Minister – Clearance of UN rights of child legal costs – Telegraph query

From: [redacted] **On Behalf Of** Deputy First Minister and Cabinet Secretary for Covid Recovery

Sent: 03 November 2021 16:49

To: [redacted] Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>; [redacted] **Cc:** [redacted]

Subject: RE: FOR DFM / LA CLEARANCE: UN rights of child legal costs - Telegraph

Hi [redacted]

DFM is content.

Thanks

[redacted]

[redacted]

Deputy Private Secretary

DFM and Cabinet Secretary for Covid Recovery, John Swinney MSP

[redacted]

From: [redacted]

Sent: 03 November 2021 16:10

To: Deputy First Minister and Cabinet Secretary for Covid Recovery

<DFMCSCR@gov.scot>; [redacted]

Cc: [redacted] **Subject:** FOR DFM / LA CLEARANCE: UN rights of child legal costs - Telegraph

DFM PO:

[redacted]:

I'd be very grateful of the following response agreed by SPAD, policy and comms colleagues to meet a media query from The Telegraph. It asked for a comment on the attached FOI, showing our legal costs for the UN rights of the child supreme court case are over £97k.

They specifically asked for a line to address claims this would be 'an unnecessary waste of taxpayers' money given SG was warned about issues with the bill but pushed on anyway'. The Telegraph has also provided an FOI attached showing UKG legal costs.

Grateful if DFM [redacted] can indicate their views of the handling and whether they are content.

A Scottish Government spokesperson said:

"We make absolutely no apology for taking every step we can to promote the rights of children in Scotland, and for seeking to incorporate the UNCRC into domestic law – something which the UK Government has failed to do almost thirty years after it ratified the UNCRC.

"Under the Scotland Act it is for the Lord Advocate to decide whether to respond to a Bill referred to the Supreme Court. It is entirely right for the Lord Advocate to defend the Bills which the Lord Advocate, and indeed the Presiding Officer of the Scottish Parliament, believe to be within the legislative competence of the Scottish Parliament.

"Whilst the judgment means that the UNCRC (Incorporation) (Scotland) Bill cannot receive Royal Assent in its current form, the majority of work in relation to implementation of the UNCRC can and is continuing."

[redacted]

News release Tweet - UNCRC Bill and EU Charter Bill - Supreme Court Reference

From: [redacted] **On Behalf Of** Deputy First Minister and Cabinet Secretary for Covid Recovery

Sent: 06 October 2021 14:18

To: [redacted] Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>

Cc: First Minister <firstminister@gov.scot>; Cabinet Secretary for Education and Skills <CabSecES@gov.scot>; Cabinet Secretary for Social Justice, Housing & Local Government <CabSecSJHLG@gov.scot>; Cabinet Secretary for Constitution, External Affairs and Culture <CabSecCEAC@gov.scot>; Minister for Children & Young People <MinisterCYP@gov.scot>; Minister for Social Security and Local Government <MinisterSSLG@gov.scot>; [redacted]; Minister for Parliamentary Business <MinisterPB@gov.scot>; [redacted]; Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; <[redacted]>; Director for Equality, Inclusion and Human Rights <directorEIHR@gov.scot>; [redacted]; DG Education & Justice <dgej@gov.scot>; DG Communities <DGCommunities@gov.scot>; DG Constitution and External Affairs <dgcea@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; Communications Education & Skills <CommunicationsEducation&Skills@gov.scot>; [redacted]; Communications Social Justice, Housing & Local Government <CommunicationsSocialJusticeHousing&LocalGovt@gov.scot>; [redacted]

Subject: RE: FOR CLEARANCE: Draft news release, Tweet - UNCRC Bill & EU Charter Bill – Supreme Court Reference

[redacted]

DFM is content to clear.

Many thanks

[redacted]

[redacted]

Private Secretary to the Deputy First Minister and Cabinet Secretary for Covid Recovery – John Swinney MSP

The Scottish Government

St Andrew's House | Regent Road | Edinburgh | EH1 3DG

[redacted] | **Email:** DFMCSCR@gov.scot

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From: [redacted] **Sent:** 06 October 2021 14:07

To: Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>

Cc: First Minister <firstminister@gov.scot>; Cabinet Secretary for Education and Skills <CabSecES@gov.scot>; Cabinet Secretary for Social Justice, Housing & Local Government <CabSecSJHLG@gov.scot>; Cabinet Secretary for Constitution,

External Affairs and Culture <CabSecCEAC@gov.scot>; Minister for Children & Young People <MinisterCYP@gov.scot>; Minister for Social Security and Local Government <MinisterSSLG@gov.scot>; [redacted]; Minister for Parliamentary Business <MinisterPB@gov.scot>; [redacted]; Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; <[redacted]>; Director for Equality, Inclusion and Human Rights <directorEIHR@gov.scot>; [redacted]; DG Education & Justice <dgej@gov.scot>; DG Communities <DGCommunities@gov.scot>; DG Constitution and External Affairs <dgcea@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; Communications Education & Skills <CommunicationsEducation&Skills@gov.scot>; [redacted]; Communications Social Justice, Housing & Local Government <CommunicationsSocialJusticeHousing&LocalGovt@gov.scot>; [redacted]
Subject: FOR CLEARANCE: Draft news release, Tweet - UNCRC Bill & EU Charter Bill – Supreme Court Reference

PO/Deputy First Minister and Minister for Covid recovery

Please see below a draft news release and Tweet for issue following this afternoon's statement. Grateful for clearance.

Many thanks

[redacted]

Pledge on children's rights

Work on landmark legislation will continue.

Landmark children's rights legislation will go ahead, Ministers have pledged as they highlighted the limitations of the devolution settlement.

Deputy First Minister John Swinney said the Scottish Government remained committed to incorporating the United Nations Convention of the Rights of the Child (UNCRC) into domestic law to the maximum extent legally possible.

The UNCRC (Incorporation) (Scotland) Bill was backed unanimously by the Scottish Parliament in March, but could not be implemented because of a legal challenge brought by UK Government law officers.

The Supreme Court has now ruled that certain parts of the Bill fall outwith the competence of the Scottish Parliament.

Mr Swinney said the ruling exposes the limitations in the devolution settlement, but he pledged that protections in the Bill will go ahead.

The Deputy First Minister added:

“While we fully respect the court’s judgment and will abide by the ruling, we cannot help but be bitterly disappointed. It makes plain that we are constitutionally prohibited from enacting legislation that the Scottish Parliament unanimously decided was necessary to enshrine and fully protect the rights of our children.

“The judgment exposes the devolution settlement as even more limited than we all - indeed the Scottish Parliament itself - had understood. It sets out new constraints on the ability of our elected Scottish Parliament to legislate to protect children’s rights in the way it determines.

“There is no doubt that the implications of this judgment are significant from a children’s rights perspective. This Bill will not now become law in the form which our Parliament agreed, but we remain committed to the incorporation of the UNCRC to the maximum extent legally possible as soon as practicable. Whilst the judgment means that the Bill cannot receive Royal Assent in its current form, the majority of work in relation to implementation of the UNCRC can and is continuing.

“The UNCRC is the most widely ratified international treaty, but very few countries have committed to take the journey that Scotland so clearly wants to take. To everyone who has walked with us this far on that journey, encouraging us along the way, I want to reassure you that we will reach our destination. This Government remains committed to the incorporation of the UNCRC to the maximum extent possible.

“There is no doubt that we may not yet wholly comprehend all the implications from this judgement – it will require careful consideration and I will keep Parliament updated.”

Children and Young People’s Commissioner Scotland Bruce Adamson said:

“Scotland is committed to protecting the rights of children and young people. The Scottish Parliament was unanimous in its support for this law which would ensure that decisions are taken in children’s best interest; that children have a say in decision making; and that all available resources are used to the maximum extent possible to fulfil rights like education, health, and an adequate standard of living – and that there is accountability when things go wrong.

“The last 18 months have shown just how urgent it is to strengthen rights protections for children. We will work with the Scottish Government and the Scottish Parliament in its role as a Human Rights Guarantor to get this done as soon as possible.”

The Supreme Court also ruled that certain provisions in the European Charter of Local Self-Government (Incorporation) (Scotland) Bill are outwith the competence of the Scottish Parliament. The Bill, which is intended to further strengthen the relationship between the Scottish Government and local government, started as a Member’s Bill and was passed unanimously by the Scottish Parliament in March 2021.

Background

The UNCRC Bill would make Scotland the first country in the UK, and the first devolved nation in the world, to directly incorporate the UN Convention on the Rights of the Child (UNCRC) into domestic law.

It would make it unlawful for public authorities to act incompatibly with the incorporated UNCRC requirements, giving children, young people and their representatives the power to go to court to enforce their rights.

The UNCRC is the most widely ratified human rights treaty in the world and sets out the specific rights that all children have to help fulfil their potential, including rights relating to health and education, leisure and play, fair and equal treatment, protection from exploitation and the right to be heard.

The European Charter of Local Self-Government (Incorporation) (Scotland) Bill was intended to develop and further strengthen the relationship between the Scottish Government and local government in Scotland, and so ensuring that priorities and policies are developed and delivered in partnership. Again, this Bill could not be implemented because of a legal challenge brought by UK Government law officers.

Tweet

Landmark legislation to protect children’s rights will go ahead, says @JohnSwinney.

Speaking after a Supreme Court ruling, the Deputy First Minister pledged to continue work to incorporate the UN Convention on the Rights of the Child into domestic law.

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