

Advice on alternative models for consultation for UNCRC incorporation – March 2019

From: [redacted s.38(1)(b)]

Sent: 06 March 2019 17:00

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>; [redacted s.38(1)(b)] ; Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; DG Education, Communities & Justice <DGECJ@gov.scot>; Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; [redacted s.38(1)(b)]

Subject: URGENT: INCORPORATION OF THE PRINCIPLES OF THE UNCRC– ADVICE ON ALTERNATIVE OPTIONS FOR CONSULTATION - 6 March 2019

PS/Deputy First Minister and Cabinet Secretary for Education and Skills
PS/Minister for Children and Early Years

INCORPORATION OF THE PRINCIPLES OF THE UNCRC– ADVICE ON ALTERNATIVE OPTIONS FOR CONSULTATION

Please find attached a submission providing advice on:

- the consultation;
- the EAG Model and alternative mechanisms which will form the basis of the consultation;
- the possible stakeholder response to these; and
- a refreshed timetable.

This submission is marked as urgent given the tight timescales for delivery, an early response would be appreciated.

Best wishes,

[redacted s.38(1)(b)] **Team Leader - UNCRC Audit and Incorporation Team**
DCAF: Creating Positive Futures Division

Attachment

[Redacted s.29(1)(a)]

ANNEX A

Examples of how Article 12 of the UNCRC has been transposed into other pieces of domestic law at present

Children's Hearings (Scotland) Act 2011

Section 27 – Views of the child

(1) This section applies where by virtue of this Act a children's hearing or the sheriff is coming to a decision about a matter relating to a child.

- (2) This section does not apply where the sheriff is deciding whether to make a child protection order in relation to a child.
- (3) The children's hearing or the sheriff must, so far as practicable and taking account of the age and maturity of the child—
- (a) give the child an opportunity to indicate whether the child wishes to express the child's views,
 - (b) if the child wishes to do so, give the child an opportunity to express them, and
 - (c) have regard to any views expressed by the child.
- (4) Without prejudice to the generality of subsection (3), a child who is aged 12 or over is presumed to be of sufficient age and maturity to form a view for the purposes of that subsection.
- (5) In this section “coming to a decision about a matter relating to a child”, in relation to a children's hearing includes—
- (a) providing advice by virtue of section 50,
 - (b) preparing a report under section 141(2).

Children (Scotland) Act 1995

Section 6 – Views of children

- (1) A person shall, in reaching any major decision which involves—
- (a) his fulfilling a parental responsibility or the responsibility mentioned in section 5(1) of this Act; or
 - (b) his exercising a parental right or giving consent by virtue of that section,
- have regard so far as practicable to the views (if he wishes to express them) of the child concerned, taking account of the child's age and maturity, and to those of any other person who has parental responsibilities or parental rights in relation to the child (and wishes to express those views); and without prejudice to the generality of this subsection a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view.
- (2) A transaction entered into in good faith by a third party and a person acting as legal representative of a child shall not be challengeable on the ground only that the child, or a person with parental responsibilities or parental rights in relation to the child, was not consulted or that due regard was not given to his views before the transaction was entered into

First Minister Questions on Children's Rights - May 2019

ISSUE: 7-8 May - the UK is being reviewed as part of the regular cycle of monitoring in relation to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)

- This review takes place in Geneva. Members of the Committee set out the issues they are concerned with which the UK delegation then responds to.
- As part of the review, the Children and Young People's Commissioner Scotland has submitted a report as part of the process around human rights treaty monitoring.
- The report highlights a number of concerns including mental health support for children who are detained, the use of strip search on children, the use of restraint and seclusion, mosquito devices and incorporation of the UNCRC.
- In advance of the review, the Scottish Government contributed to the UK state party report (submitted in November 2017) and published a separate position statement on 28 February 2019, which provides an account of activity in Scotland across a range of policy areas to give effect to UNCAT.
- Scottish Ministers announced in September 2018 - through the PfG 2018-2019 - their commitment to incorporating the principles of the UNCRC into domestic law.

ISSUE: 28 April - You announced the Scottish Government's plan to incorporate the UNCRC into domestic law through a Bill in this Parliamentary session.

Top Lines

- We will deliver new legislation in this parliamentary session to incorporate the UN Convention on the Rights of the Child into domestic law.
- A 12 week period of consultation and engagement on the best way to incorporate the Convention will begin in May 2019.
- We also want to consider, where possible, where our legislation should go further than the Convention requires.
- We will convene a short-life working group that will deliver a detailed policy specification for a draft Bill to incorporate the Convention into domestic law.
- In December, we published a Report on progress in taking forward the Convention since June 2015. Key achievements include:
 - £750 million during the course of this Parliament to tackle the attainment gap
 - 250 million additional funding focused on mental health support for young people
 - The first Government in the world to introduce free sanitary products for up to 395,000 students attending schools colleges and universities
 - We have delivered 86,992 baby boxes to date
- We also published an Action Plan of commitments for the next 3 years.
- This included 4 strategic actions to secure children's rights, specifically to:
 - Incorporate the principles of the Convention into Scots law;
 - Co-produce with children, young people and stakeholders an ambitious 3-year programme which is currently underway to raise awareness and understanding of children's rights through 5 Rights Café events engaging with 180 people;
 - develop a strategic approach to children and young people's participation to help make meaningful engagement with children and young people the norm as part of the YOYP legacy; and
 - evaluate the Child Rights and Wellbeing Impact Assessment (CRWIA) process and further support and promote its use .
- We have passed a Bill which raises the age of criminal responsibility to 12.
- This reform will mean that children under 12 will no longer be treated as offenders.
- However where children have engaged in serious harmful behaviour, this will be investigated appropriately, to keep victims and communities safe.

UN REVIEW

The Scottish Government actively engages with UN and other international human rights monitoring mechanisms. We welcome scrutiny of our record as part of our own assurance processes.

- The Minister for Older People and Equalities wrote to the Parliament's Equalities and Human Rights Committee on 25 April to provide information about the SG's international human rights treaty reporting activity.
- The SG contributes to UKG reporting on implementation of human rights treaty obligations, ensuring that Scotland's distinctive approach is incorporated.
- This covers the 7 core UN human rights treaties ratified by the UK, as well as the Universal Periodic Review and Council of Europe treaties.
- A UK delegation, including a senior Scottish Government official, gave evidence to the UN Committee Against Torture (UNCAT) in Geneva this week.
- Performance under the UN Convention for the Elimination of Discrimination against Women (CEDAW) was examined in February. The UN Committee noted positive developments in;
 - Human Trafficking and Exploitation (Scotland) Act 2015
 - Limitation (Childhood Abuse) (Scotland) Act 2017, which removes the three-year limitation period for personal injury actions arising out of childhood abuse
 - Gender Representation on Public Boards (Scotland) Act 2018
 - Equally safe, the SG strategy aimed at preventing and eradicating violence against women and girls, which was published in June 2014 and updated in March 2016

- In 2018, three UN Special Rapporteurs (on contemporary racism, privacy, and extreme poverty) visited Scotland as part of visits to the UK.

UNCRC

We believe it is now time to incorporate the UN Convention on the Rights of the Child into domestic law

- This year marks the 30th Anniversary of the UN Convention on the Rights of the Child.
- The Convention is the most widely ratified human rights treaty in history.
- We want a Scotland where policy, law and decision making takes account of children's rights.
- We will deliver new legislation in this parliament to incorporate the Convention.

[redacted s.38(1)(b)]

DEPUTY FIRST MINISTER AND CABINET SECRETARY FOR EDUCATION AND SKILLS – BRIEFING FOR VISIT TO THE ROYAL HIGH PRIMARY SCHOOL

[redacted s.38(1)(b)]

Annex E

UNCRC Incorporation - background briefing

Top Lines

- Scottish Ministers announced through the Programme for Government 2018-2019, their commitment to incorporating the principles of the UN Convention on the Rights of the Child (UNCRC) into domestic law.
- The First Minister announced in April 2019 her plan to incorporate the UNCRC into domestic law in this Parliamentary session.
- We plan to carry out a period of consultation and engagement to ensure that we develop a model of incorporation that will deliver the best outcomes for children, young people and families in Scotland.
- The consultation which will allow us to address the legal and practical issues ahead of incorporation will be published in May 2019.
- The report on the audit on the most effective and practical way to further embed the principles of the UNCRC, announced in the Programme for Government 2017 – 2018, will also be published that day.

Lines to take

- The rights of children and young people are a key priority for the Scottish Government.
- We are working hard to create an inclusive Scotland that protects, respects, promotes and fulfils these rights.
- In September 2017, Scottish Ministers made a commitment, through the Programme for Government, to undertake a comprehensive audit on the most effective and practical way to further embed the principles of the UN Convention on the Rights of the Child into legislation, policy and practice, including the option of full incorporation into domestic law.
- To further strengthen children's rights in Scotland, Scottish Ministers announced, in the Programme for Government 2018-2019, a commitment to incorporating the principles of the UNCRC into domestic law.
- In April 2019, the First Minister announced her plan to incorporate the UNCRC into domestic law within this Parliamentary session.
- Evidence shows that there are different ways to achieve incorporation and that there are some particular complexities in relation to the UNCRC and Scotland's devolution settlement which require to be worked through.
- It is important to develop a model of incorporation that will deliver the best outcomes for children, young people and families in Scotland.
- To ensure that we get that model right, we will publish a public consultation in May 2019.
- To complement the public consultation we will carry out a programme of engagement to ensure we receive a wide range of views, including those of children, young people and families, local authorities and other public bodies across Scotland, as well as third sector partners.
- We will also convene a short-life group, with representatives from the children's rights sector, public authorities, parenting organisations and other stakeholders, to deliver a detailed policy specification for a draft Bill on incorporation.

[redacted s.38(1)(b)]

**BRIEFING FOR THE DEPUTY FIRST MINISTER AND CABINET SECRETARY FOR
EDUCATION AND SKILLS: SCIENNES PRIMARY SCHOOL, EDINBURGH WEDNESDAY 22
MAY 2019**

[redacted s.38(1)(b)]

Annex D

UNCRC background

Top Lines

- The UNCRC is recognised internationally as the “gold standard” on children’s rights.
- I am delighted that today we have begun a 12-week period of consultation and engagement on the best way to incorporate the UNCRC into our domestic law. This is a significant milestone on our journey to incorporate the UNCRC within this Parliamentary session.
- The Convention sets out the civil, political, economic, social, health and cultural rights of children and young people. Incorporation of the Convention will ensure that children’s rights are woven into policy, law and decision-making. It will ensure that children will be empowered to know and understand their rights and, if necessary, defend those rights in Scottish courts.

Lines to take

- We believe it is now time to incorporate the UNCRC into domestic law.
- This year marks the 30th Anniversary of the UNCRC.
- The Convention is a legally-binding international agreement setting out the civil, political, economic, social and cultural rights of every child, regardless of their race, religion or abilities.
- It is the most widely ratified human rights treaty in history.
- We are keen to hear the views of experts in the field, children, young people, families and public authorities on the best way to incorporate the UNCRC.
- The consultation also seeks views on the best mechanism to provide redress where children and young people’s rights are not upheld.
- To complement the public consultation we will carry out a programme of engagement to ensure we receive a wide range of views, including those of children, young people and families, local authorities and other public bodies across Scotland, as well as third sector partners.
- We will convene a short-life working group that will deliver a detailed policy specification for a draft Bill to incorporate the Convention into domestic law.
- The rights of children and young people are a key priority for the Scottish Government.
- We are working hard to create an inclusive Scotland that protects, respects, promotes and fulfils these rights.
- In September 2017, Scottish Ministers made a commitment, through the Programme for Government, to undertake a comprehensive audit on the most effective and practical way to further embed the principles of the UNCRC into legislation, policy and practice, including the option of full incorporation into domestic law.
- To further strengthen children’s rights in Scotland, Scottish Ministers announced, in the Programme for Government 2018-2019, a commitment to incorporating the principles of the UNCRC into domestic law.
- In April 2019, the First Minister announced her plan to incorporate the UNCRC into domestic law within this Parliamentary session.
- Evidence shows that there are different ways to achieve incorporation and that there are some particular complexities in relation to the UNCRC and Scotland’s devolution settlement which require to be worked through.

[redacted s.38(1)(b)]

FMQ Briefing launching consultation for UNCRC Incorporation – May 2019

ISSUE: Consultation launch- On 22 May the Deputy First Minister launched a consultation on how to incorporate the UN Convention on the Rights of the Child (UNCRC) into domestic law.

Top Lines

- The UNCRC is recognised internationally as the “gold standard” on children’s rights.
- I am delighted that today we have begun a 12 week period of consultation and engagement on the best way to incorporate the UNCRC into our domestic law. This is a significant milestone on our journey to incorporate the UNCRC within this Parliamentary session.
- The Convention sets out the civil, political, economic, social, health and cultural rights of children and young people. Incorporation of the Convention will ensure that children’s rights are woven into policy, law and decision-making. It will ensure that children will be empowered to know and understand their rights and, if necessary, defend those rights in Scottish courts.

UNCRC

We believe it is now time to incorporate the UN Convention on the Rights of the Child into domestic law.

- This year marks the 30th Anniversary of the UN Convention on the Rights of the Child.
- The Convention is a legally-binding international agreement setting out the civil, political, economic, social and cultural rights of every child, regardless of their race, religion or abilities.
- It is the most widely ratified human rights treaty in history.
- We are keen to hear the views of experts in the field, children, young people, families and public authorities on the best way to incorporate the UNCRC.
- The consultation also seeks views on the best mechanism to provide redress where children and young people’s rights are not upheld.
- We will convene a short-life working group that will deliver a detailed policy specification for a draft Bill to incorporate the Convention into domestic law.

CHILDREN ARE ALREADY ENJOYING EXTENSIVE RIGHTS

In December, we published a report on progress in taking forward the Convention since June 2015.

- Key achievements from the report include:
 - £750 million during the course of this Parliament to tackle the attainment gap.
 - £250 million additional funding for mental health support for young people.
 - We were the first government in the world to introduce free sanitary products for up to 395,000 students attending schools colleges and universities.
 - We have delivered 86,992 baby boxes to date.
- We want to go further by incorporating these rights into our law.

We also published an Action Plan of commitments on children’s rights for the next 3 years.

Key commitments are:

- Incorporating the principles of the Convention into Scots law.
- Produce with children, young people and stakeholders a 3-year programme to raise understanding of children’s rights through 5 Rights Café events.

- Improve children and young people’s participation to help make meaningful engagement with children and young people the norm.
- Evaluate the Child Rights and Wellbeing Impact Assessment process and further support and promote its use.

ENGAGEMENT THROUGH CHILDREN’S ORGANISATIONS

We will continue to work with children’s organisations to engage with children and young people to ensure their rights are enshrined in Scots law.

- We support organisations, including Young Scot, Scottish Youth Parliament and the Children’s Parliament
- They help us engage with children and young people on topics which affect their lives to inform policy development and decision making.
- Our annual Cabinet meeting with Children and Young People demonstrates our strong commitment to engage meaningfully on issues that matter to them.
- We look forward to hearing from children and young people, as well as public authorities, legal experts and others, to help us find the best way to incorporate the UNCRC in a way which fits for Scotland.
- I would invite colleagues to spread the word about this consultation process and encourage as many people and organisations as possible to engage with it and provide their views.

Briefing for NHS Chief Executives business meeting – May 2019

UNCRC Briefing

The Scottish Government launched a consultation on how to incorporate the UN Convention on the Rights of the Child (UNCRC) on 22 May. The consultation invites views on could the best way to incorporate the UNCRC into domestic law in Scotland this Parliamentary session.

Alongside the consultation, the Scottish Government will convene a short-life working group to garner relevant expertise from our legal system, children's rights sector, public authorities, parenting organisations and academia. The working group will convene during the consultation and into autumn to support the development of a Bill. Incorporating the UNCRC has a number of implications for NHS service delivery and we would strongly encourage NHS Boards to engage with the consultation. We have also invited a representative from NHS Central Legal Office to join the UNCRC Working Group.

The consultation will run to 14 August.

Briefing for DG – meeting with Scottish Youth Parliament – June 2019

BRIEFING NOTE FOR DG ECJ AND DIRECTOR FOR CHILDREN AND FAMILIES

MEETING WITH REPRESENTATIVES OF THE SCOTTISH YOUTH PARLIAMENT

Meeting details

Date: 11 June 2019

Time: 0930 - 1100

Location: GE.05, SAH

Attendees:

- DG ECJ
- Director for Children and Families

[redacted s.38(1)(b)]

[redacted s.38(1)(b)] is in attendance to support SYP's discussions around the role of a rights-based approach to tackling ACEs. Together is an alliance of Scottish children's charities that works to improve the awareness, understanding and implementation of the United Nations Convention on the Rights of the Child (UNCRC).

They do this by:

- promoting the UNCRC;
- helping children's organisations to integrate the UNCRC into their work; and
- monitoring and reporting on the progress made at a Scottish and UK level.

Their membership is made up of a range of children's charities, from small local playgroups through to large international charities, alongside individuals, academics and professionals with an interest in children's rights.

Purpose of the meeting

[redacted s.29(1)(a)]

SYP's position

Strategic Insights Unit has been engaging with SYP prior to this meeting to establish what they would like to discuss.

Their position is that the UNCRC is critical in managing the effects of and preventing ACEs as this would embed a rights-based approach. Their view is that full incorporation of the UNCRC is essential to achieving this.

They are also of the view that full incorporation of the UNCRC would embed systemic change which can also facilitate a strategic approach to young people's participation in the work of SG.

They are delighted that the First Minister has recently committed to full incorporation of the UNCRC into Scots Law in this Parliament and have views on the best model for incorporation in the context of the recent SG consultation.

Agenda

The following agenda has been developed based on areas which DG ECJ previously identified as requiring further discussion. It has also been developed in collaboration with SYP, who have a copy of it.

Briefing for SG officials on each topic covered in the agenda can be found under the "Policy briefing" section of this document. Director for Children and Families will also meet with officials from each area in advance of the session with SYP to discuss this in detail.

1. A rights-based approach to tackling ACEs

SYP would like to share their perspective on the role of a rights-based approach (facilitated by incorporation of the UNCRC) in preventing and mitigating the impacts of ACEs. They would like to discuss their views on a holistic rights-based approach which recognises the complexities of the depth, frequency and impact of trauma and how this interacts with socio-economic factors, gender, ethnicity and other factors.

See "Policy briefing" section for more information on SG's approach to tackling ACEs.

2. Models of incorporation of the UNCRC

SYP believes that the ability of the UNCRC to tackle ACEs depends on the specific model of incorporation applied. They would like to discuss their views on the proposals set out in the recent consultation. For example, SYP and Together Scotland feel it is important to directly translate the Convention and the Optional Protocols into Scots Law, rather than "rewrite rights".

See "Policy briefing" section for more information on the UNCRC and the consultation.

3. The role of UNCRC incorporation in supporting a strategic approach to young people's participation

SYP would like to discuss their views on how incorporation can support progression towards a more strategic approach to participation.

One key area SYP flagged when they last met Executive Team was their view that sufficient resourcing is needed to support meaningful participation. Officials are currently conducting internal meetings to consider staffing and capacity of the Participation team and resourcing/funding for participation. This will be discussed with Director for Children and Families and DG ECJ on 13 June (shortly after the meeting with SYP).

See “Policy briefing” section for more information on SG’s approach to participation.

Policy briefing

This section provides briefing material on each topic of discussion: **[redacted s.29(1)(a)]**, UNCRC and **[redacted s.30(b)(ii)]**.

[redacted s.30(b)(ii)]

United Nation Convention on the Rights of the Child – **[redacted s.38(1)(b)]**

A model of direct incorporation has been suggested for Scotland by an advisory group convened by the Commissioner for Children and Young People in Scotland and Together (the Scottish Alliance for Children’s Rights). This model, developed in November 2019, would incorporate the UNCRC into Scots law directly and without any adjustment.

SYP representatives would like to discuss their views on the proposals set out in the recent consultation. SYP and Together Scotland feel it is important to “directly translate” the Convention and the Optional Protocols into Scots Law, rather than “rewrite rights”.

Suggestion: It would be helpful to get an early understanding in the meeting of what SYP representatives mean by “directly translate” as this appears to mean both direct incorporation and incorporation by transposition. It would also be useful to understand whether SYP representatives still favour the direct incorporation approach as proposed by the advisory group last year, or if that has changed.

Legal mechanisms for incorporating the UNCRC into domestic law

- **SG position** - To give greater assurance that UNCRC rights will be respected in all circumstances, we plan 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.

Incorporating the UNCRC directly into domestic law

- **Clarity**- Direct incorporation means that rights holders can simply refer to the text of the international convention to identify the rights which form part of domestic law. Under this approach, the legislation would (so far as permissible in relation to devolved matters) set out a framework of duties and requirements which would apply to the rights as set out in the UNCRC and optional protocols and would introduce remedies in the domestic courts for enforcement of those rights.
- **Uncertainty** - The rights set out in the UNCRC are framed in general terms, and there is no body of jurisprudence by courts which explain the detailed meaning of the UNCRC rights. This could make interpretation of the law less certain for rights holders and duty bearers, and could, paradoxically, mean that the rights would be considered to be less substantive or enforceable than if they had been framed explicitly for application in our legal system.
- In countries which, unlike Scotland, automatically regard treaty rights as part of their law, the courts are used to considering whether treaty rights are “self-executing” (i.e. can be enforced directly without any further legislation) or, on the other hand, require detailed legislation to give them practical effect. For example, in Belgium, the courts have held that Articles 2(1), 7

and 26(1)¹ of the UNCRC do not have direct effect in Belgian law, but would require further legislation to give them practical effect (though such rights may be used as an interpretive tool).

- **Democratic accountability** - Because application of the rights in question may require a balancing of competing policy objectives and resources, there may be cases where Parliament, which is democratically accountable, would be better placed than the courts to give these rights concrete expression.
- **Devolution settlement** - Some aspects of the UNCRC and the two optional protocols relate to matters which are reserved to the UK Parliament, such as nationality, asylum and immigration. The Scottish Parliament would only be able to legislate in relation to reserved areas, if an order under section 30 of the Scotland Act 1998 were to be passed to devolve those areas to the Scottish Parliament.
- **Views of FM advisory group on human rights** - While they do not directly consider the approach to the UNCRC, the First Minister's Advisory Group on Human Rights Leadership rejects a simple "cut-and-paste" approach to incorporation of UN Treaties and recognises the need to ensure legislation works in a Scottish context.

Incorporation by transposing the UNCRC for the Scottish context

- **Clarity** - This approach would provide greater legal clarity for rights holders and duty bearers about the UNCRC rights which have been incorporated into domestic law and what duty bearers are required to do with regard to those rights.
- **Devolution settlement** - Where a specific Article of the UNCRC relates to a reserved matter it would be carved out from the Bill. Similarly, where Articles span both reserved and devolved areas, provision could be made with a view to limiting the application of the Bill to devolved areas.
- **Democratic accountability** - Implementation in this way gives effect to the international rights in the Scottish context are given clear effect at the domestic level after due consideration by the democratically accountable government and parliament.
- **Views of FM advisory group on human rights** - The Group's recommendations also noted that in some circumstances, it may be preferable to go above and beyond the rights set out in the UN treaties and provide additional protection that better serves the public interest. These recommendations point to an approach which develops a bespoke set of domestic rights rooted in the UNCRC.
- **Timescale** – This approach would mean that each Article would need to be considered in light of the Scottish context and drafted both to fit that context but also to provide at least the level of protection that the UNCRC does. If this method were to be widely supported, we would welcome views on what would be the best way to engage people in that process while meeting our ambition to pass the Bill before the end of this parliamentary session.

Statutory Human Rights Framework for Scotland

- **Alignment** - The principal recommendation of the First Minister's Advisory Group on Human Rights Leadership 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, setting out for the first time and in one place the rights belonging to everyone in Scotland. The group proposed that the Act could be legislated for at the commencement of the next term of the Parliament in 2021.

¹ Article 2(1) - All children have the rights laid out in the Convention, and that individual children and young people shouldn't be discriminated against when these rights are realised. Areas of discrimination covered are race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Article 7 - All children and young people have the right to a name and a nationality, which should be granted at birth. Article 26 (1) - Children and young people should get financial support from the State when their parents or guardians are unable to provide them with a good enough standard of living by themselves.

- **Timescale** - It would not, however, be possible to pass this legislation before the next Parliament elections in 2021. As a result we are minded to push ahead with the UNCRC incorporation now, even though we will have to ensure that the approach taken here is able to dovetail with the First Minister's Advisory Group on Human Rights Leadership wider approach.

Wider lines to take

- This year marks the 30th Anniversary of the UN Convention on the Rights of the Child. We believe it is now time to incorporate the UN Convention on the Rights of the Child into domestic law.
- Incorporation of the Convention will ensure that children's rights are woven into policy, law and decision-making. It will ensure that children will be empowered to know and understand their rights and, if necessary, defend those rights in Scottish courts.
- We have begun a 12 week period of consultation and engagement on the best way to incorporate the UNCRC into our domestic law. This is a significant milestone on our journey to incorporate the UNCRC within this Parliamentary session.
- We are keen to hear the views of experts in the field, children, young people, families and public authorities on the best way to incorporate the UNCRC.
- We will convene a short-life working group to complement the consultation.

[redacted s.38(1)(b)]

ANNEX 1

BRIEFING NOTE FOR EXECUTIVE TEAM FOR MEETING ON 12 MARCH 2019

FOLLOW ON ACTION FROM THE YOUTH TAKEOVER OF THE ADVERSE CHILDHOOD EXPERIENCES STRATEGIC LEADERSHIP SESSION

Purpose

This briefing paper has been produced by SG officials from the Strategic Insights Unit with input from the **[redacted s.38(1)(b)]** and UNCRC Audit Team.

It is intended to support ET's discussion with the Scottish Youth Parliament (SYP).

Format of the meeting

The Permanent Secretary will chair the item and SYP will present their proposals.

[redacted s.29(1)(a)]

[redacted s.29(1)(a)]

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

While not the subject of this meeting, SYP have a strong position on the UNCRC and its links with tackling ACEs. They advocate for a rights-based approach to policy-making and believe that the UNCRC should be incorporated into Scots law to make children's rights binding and not guiding to Scottish decision-makers. Their view is also that this would also go a long way to fully tackling ACEs in Scotland.

Senior officials, including DG ECJ, have not yet had the chance to fully explore this position with SYP. As a result, discussions prior to this ET meeting have resulted in an offer from DG ECJ to

meet with SYP to discuss their position in greater detail. This offer has been gratefully received by SYP and the meeting is being arranged for later in March/early April.

Next steps

Following the meeting with SYP on 12th March, the ACEs and Resilience Team (led by [redacted s.38(1)(b)]) will be able to provide advice as DGs consider the actions they may wish to take in their areas.

The SG ACEs and Resilience team have also already committed to continuing to engage with SYP on ACEs in 2019. This includes supporting them to create materials to raise awareness of ACEs amongst MSYPs; enabling a session to explore how to get young people more involved as SG's work on ACEs progresses; and hosting a screening of Resilience for the SYP Convenors Group in April.

The Strategic Insights Unit will work with ET SGO to coordinate the reporting process.

Strategic Insights Unit is also working on a feedback process to assess the impact of this engagement. ET members will be invited to contribute to this process in due course.

Support available

Should ET have any queries about the content of this note, please contact [redacted s.38(1)(b)] in Strategic Insights Unit [redacted s.38(1)(b)]

The following officials are also available should any member of ET wish to discuss a particular policy area in more detail:

[redacted s.29(1)(a)]

[redacted s.38(1)(b)]

Strategic Insights Unit

[redacted s.38(1)(b)]

Briefing for Minister for C&YP for meeting with Bruce Adamson – June 2019

Minister for Children and Young People, meeting with Bruce Adamson 12 June UNCRC Incorporation Brief

Key Lines

- I am grateful for your offer of assistance in delivering this important work.
- Your contribution thus far through the Incorporation Advisory Group has been important and I wish for that to continue
- We have begun a 12 week period of consultation and engagement on the best way to incorporate the UNCRC into our domestic law. The consultation runs until 14 August
- As you will be aware, we are convening a short-life working group to garner relevant expertise from our legal system, children's rights sector, public authorities, parenting organisations and academia.

When will the Scottish Government introduce legislation?

- We are committed to incorporating the UNCRC into domestic law through a Bill in this Parliamentary session
- Development of the Scottish Government's next legislative programme is well underway and, following Cabinet agreement, will be published as part of our Programme for Government announcement in September.

Key proposals in the consultation

Legal Mechanisms for incorporating UNCRC

- To give greater assurance that UNCRC rights will be respected in all circumstances, we plan 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.
- In relation to direct incorporation, we have stated our position is that in the absence of a section 30 Order or similar provision extending competence, it will not be possible to include certain Articles or aspects of certain Articles of the UNCRC and the optional protocols in the Bill. This is because the Bill would have to be within the legislative competence of the Parliament,
- Direct incorporation is the shorthand for a method of incorporation that takes the content of an international convention and gives it effect in domestic law - essentially by lifting the wording from the international convention and putting it into domestic law. Broadly this is the approach taken by the Human Rights Act (HRA) with regards to the ECHR. We propose a framework similar to that set out in the HRA including a duty for public authorities to comply with the UNCRC rights.
- We are minded to push ahead with the UNCRC incorporation now, even though we will have to ensure that the approach taken here is able to dovetail with the First Minister's Advisory Group on Human Rights Leadership wider approach to the creation of a new statutory human rights framework for Scotland. The First Minister's Advisory Group on Human Rights Leadership explicitly recognised in its report that longer term ambitions to incorporate all human rights treaties should not hold up action to incorporate the UNCRC

Embedding children's rights into public services

- A children's rights scheme is discussed, building on the provisions set out in Part 1 and Part 2 of the Children and Young People (Scotland) Act 2014. A Children's Rights Scheme in Scotland could bring together and build on these measures.

Enabling compatibility and redress

- At present as part of their compliance with the CYP Act 2014 Scottish Ministers carry out a Children's Rights and Wellbeing Impact Assessment (CRWIA) when they develop new legislation. One suggested addition to this process would be to require a statement of compliance relating to any Bill introduced in the Parliament.
- The Bill should contain a regime which allows right holders to challenge acts of public authorities on the ground that they are incompatible with the rights provided for in the Bill.
- The approach to awards of financial compensation should broadly follow the approach taken to just satisfaction damages under the HRA.
- The UNCRC rights should take precedence over provisions in secondary legislation as is the case under the HRA for ECHR rights
- The Bill should contain strong provisions requiring an Act of the Scottish Parliament to be interpreted and applied so far as possible in a manner which is compatible with the rights provided for in the Bill.
- We consider the ordinary test of standing in Scots law which applies to challenges on judicial review can apply and we envisage that provisions should be included in the Bill, similar to those in the Scotland Act 1998, to enable Law Officers to participate in and to initiate proceedings.

Issues to consider in incorporating the UNCRC

There are some complexities associated with incorporation into domestic law and the consultation will help us work through those. These include:

Rights

- How to deal with the issue of whether particular UNCRC rights are self-executing i.e. can be enforced directly by the courts without the need for detailed legislation
- Some of the articles of the UNCRC are out with legislative competence insofar as they relate to reserved matters. The framework of duties and requirements to be provided in the Bill will require to be within legislative competence.

Clarity for rights holders and duty bearers

- How can clarity be given to rights holders and duty bearers as to how to navigate the interaction between the rights in the UNCRC and existing legislation. Consideration will need to be given to how clarity can be given to rights holders and duty bearers as to the wider legal context, i.e. the Scotland Act framework.
- What status the General Comments by the UN Committee on the Rights of the Child and Observations of the Committee will be in our domestic law
- Preparation for public authorities
- It would be possible to include a provision to enable public authorities to prepare for a new Bill incorporating the UNCRC, whichever approach was taken to incorporation

Non-legislative measures to support incorporation

- What additional non-legislative activities, not included in the Scottish Government's Action Plan and described above, are required to further implement children's rights in Scotland

Working Group

- The Working Group will meet for the first time in Edinburgh on 25 June
- The Working Group will include representatives from the Expert Advisory Group, including Together, UNICEF and academics, alongside Scottish Youth Parliament, NHS, police, COSLA, the Law Society and the Faculty of Advocates.
- The group will consider the three themes set out in the consultation, namely mechanisms for incorporation, embedding children's rights into public services and ensuring compatibility and redress.
- Its findings will inform advice to Ministers on policy decisions going forward.
- We would be keen to keep you updated on the work of the group and my officials would be happy to meet regularly

Planned consultation events

We intend to engage broadly and have issued the consultation paper to over 200 stakeholders. A range of bilateral official and Ministerial meetings are being set up over the summer. Events already in the diary include:

- Scottish Youth Parliament (SYP) meeting with DG Education, Communities and Justice – 11 June 2019
- Scottish Parliament Cross Party Working Group – SG officials presenting - 12 June 2019
- Iceland trip – SG officials meeting with UNICEF and Iceland officials to share UNCRC experiences 18 – 21 June 2019.
- Scottish Government Improving Outcomes for Children and Young People strategic leads networking event – 24 June 2019
- Northern Alliance conference – Children and Young people discussion - 24 June 2019. The Northern Alliance is a collaboration between eight local authorities across the North and West of Scotland who hold a shared vision to make a difference to the lives of children and young people. Young people from across these local authority areas will come together at the event to discuss youth participation in their areas and how this can be improved. The Scottish Government has offered support to 6 national organisations to run events to enable children and young people to engage with the consultation these organisations include:
 - Scottish Youth Parliament - Day of discussion for 35 – 45 MSYP's to be held in Edinburgh on Tuesday 16 July 2019.
 - Children in Scotland - Day session for children and young people will be held in Edinburgh in July.
 - Youthlink – Afternoon session with Children and young people 18 July 2019.
 - Children 1st, Young Scot and the Children's Parliament have also been invited to host an event.

In addition to this we will work with disability organisations to provide a bespoke event for disabled children and young people.

Implications for religious observance – response by DFM PO to briefing - June 2019

From: [redacted s.38(1)(b)] **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills

Sent: 11 June 2019 13:19

To: [redacted s.38(1)(b)]; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>

Cc: DG Education, Communities & Justice <DGECJ@gov.scot>; Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; Minister for Children and Young People <MinisterCYP@gov.scot>; [redacted s.38(1)(b)] **[redacted s.38(1)(b)]****Subject:** RE: INCORPORATION OF UNCRC PRINCIPLES INTO SCOTS LAW: IMPLICATIONS FOR RELIGIOUS OBSERVANCE IN SCHOOL - NEXT STEPS

[redacted s.38(1)(b)]

Thank you for your submission – **[redacted s.29(1)(a)]**

Kind Regards

[redacted s.38(1)(b)]

From: **[redacted s.38(1)(b)]**>

Sent: 05 June 2019 18:30

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

Cc: DG Education, Communities & Justice <DGECJ@gov.scot>; Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; Minister for Children and Young People <MinisterCYP@gov.scot>; [redacted s.38(1)(b)] **Subject:** INCORPORATION OF UNCRC PRINCIPLES INTO SCOTS LAW: IMPLICATIONS FOR RELIGIOUS OBSERVANCE IN SCHOOL - NEXT STEPS

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

INCORPORATION OF UNCRC PRINCIPLES INTO SCOTS LAW: IMPLICATIONS FOR RELIGIOUS OBSERVANCE IN SCHOOL - NEXT STEPS

Priority: Routine

Please find attached a 10 page submission on the legislation relating to religious observance in schools.

*** Note to Private Office:**

The submission includes three annexes.

Annex A is included in the submission itself.

Annex B and Annex C are attached separately.

Annexes B and C provide a letter from the Humanist Society and proposed response. In addition to the main submission we are seeking DFM's approval to issue the attached draft response letter to the HSS. The HSS letter is now beyond its response deadline, however we have send a holding response to the HSS reassuring that a response will be sent imminently.

[redacted s.38(1)(b)]

Incorporation of UNCRC into Domestic Law: Implications for Religious Observance in Schools

Deputy First Minister, SG policy and [redacted s.38(1)(b)]

Thursday 25th July, 3.15pm – 4pm, 5th Floor, St Andrew's House

Note of Meeting

Points discussed

- [REDACTED s.29(1)(a)]
- To date, Ministers have not made a specific commitment on the form of any potential amendment to legislation. Press lines have stated that Ministers are aware and are considering the issues.
- [REDACTED s.29(1)(a)]
- Officials and DFM discussed the pros and cons relating to the potential amendments to Section 9 that could be made.
- Officials and DFM discussed the various options available if Ministers were minded to bring forward proposed amendments to the legislation, and as set out in the prior submission to DFM. [REDACTED s.29(1)(a)]
- DFM asked officials to submit further, detailed advice to him in the coming weeks and to engage in initial discussions with key stakeholders (a priority, this should include the Association of Directors of Education and Scottish Catholic Education Service).

Actions

- Officials to provide DFM with further advice on the pros and cons of the options discussed during the meeting. (Curriculum Policy Team will co-ordinate with contributions from [redacted s.29(1)(a)], UNCRC Policy and other relevant colleagues).
- Curriculum officials to approach the Scottish Catholic Education Service (SCES) and ADES to seek their initial views on the issue. [** Additional note: In addition, Curriculum Policy will finalise a broader list of stakeholders likely to take an interest in the issue. This will be included in the next submission to DFM.*]
- Curriculum officials to seek the view of Special Advisers regarding the potential position of MSPs on the issue.

From: [redacted s.38(1)(b)]

Sent: 01 August 2019 11:43

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

Cc: [redacted s.38(1)(b)] Bruce A (Andrew) <Andrew.Bruce@gov.scot>; [redacted s.38(1)(b)]

Subject: RE: DFM meeting with officials - Incorporation of UNCRC into Domestic Law and Implications for Religious Observance in Schools

PS/DFM

Please see attached a short note of the meeting with DFM last week regarding the incorporation of UNCRC into Domestic Law and Implications for Religious Observance in Schools.

A full submission regarding this will follow in due course.

Many thanks

[redacted s.38(1)(b)]

[redacted s.38(1)(b)]

From: [redacted s.38(1)(b)]

Sent: 24 July 2019 15:26

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

Cc: [redacted s.38(1)(b)]; [Bruce A (Andrew) <Andrew.Bruce@gov.scot>]; [redacted s.38(1)(b)]

Subject: DFM meeting with officials - Incorporation of UNCRC into Domestic Law and Implications for Religious Observance in Schools

Dear PO

In [redacted s.38(1)(b)] and [redacted s.38(1)(b)] absence please find attached an agenda and submission (which DFM originally responded to on 11 June 2019) ahead of tomorrow's meeting on the Incorporation of UNCRC into Domestic Law and Implications for Religious Observance in Schools.

The agenda also includes a list of officials who will be in attendance at the meeting, please let me know if there are any issues with space and we can review the list further.

Kind regards

[redacted s.38(1)(b)]

[redacted s.38(1)(b)]

APRIL 2018

UNCRC GIRFEC meeting speaking notes – May 2019

From: [redacted s.38(1)(b)]

Sent: 23 May 2019 13:59

To: [redacted s.38(1)(b)]

Cc: [redacted s.38(1)(b)]

Subject: UNCRC Incorporation - Briefing, speaking notes, information pack and slides - GIRFEC stakeholder meeting - Tuesday 28 May 2019

Hi [redacted s.38(1)(b)]

Please find attached briefing and a short bullet point speaking note, together with our explainer video slides and information pack issued to stakeholders yesterday for your stakeholder meeting in Glasgow next week.

[redacted s.38(1)(b)]

Bullet point speaking note

- This year marks the 30th Anniversary of United Nations Convention on the Rights of the Child. The UNCRC is recognised internationally as the “gold standard” on children’s rights and sets out the civil, political, economic, social, health and cultural rights of children and young people. It is the most widely ratified human rights treaty in history.
- The rights of children and young people are a key priority for the Scottish Government and we are working hard to create an inclusive Scotland that protects, respects, promotes these rights. That is why Scottish Ministers set out, through the Programme for Government 2018-2019, their commitment to incorporating the UNCRC into domestic law. To further strengthen this commitment, in April the First Minister set out her plans to incorporate the UNCRC into domestic law in this Parliamentary session.
- It is important that we develop a model of incorporation that will deliver the best outcomes for children, young people and families in Scotland and we recognise that there are some particular complexities in relation to incorporating the UNCRC into domestic law and Scotland’s devolution settlement, which require to be worked through. We believe that an inclusive and consultative approach is the best foundation to ensure we get that model right.
- For that reason, we are carrying out a 12 week period of consultation and engagement on the best way to incorporate the UNCRC into our domestic law. The Consultation, which opened on 22 May, is a huge milestone on our journey to incorporate the UNCRC within this Parliamentary session. We are keen to hear the views of experts in the field, children, young people, families and public authorities on the best way to incorporate the UNCRC. Please have a look at the Consultation document, which is live on the Scottish Government website and let us know your views by 14 August.

Briefing note

- This year marks the 30th Anniversary of the UN Convention on the Rights of the Child (UNCRC).
- The Convention sets out civil, political, economic, social, health and cultural rights of children and young people.

- The UNCRC is recognised internationally as the “gold standard” on children’s rights.
- The rights of children and young people are a key priority for the Scottish Government.
- We are working hard to create an inclusive Scotland that protects, respects and promotes these rights.
- Scottish Ministers announced in September - through the Programme for Government 2018-2019 - their commitment to incorporating the principles of the UN Convention on the Rights of the Child (UNCRC) into domestic law.
- Further to this, the First Minister announced in April 2019 her plan to incorporate the UNCRC into domestic law in this Parliamentary session.
- The commitment to incorporate the UNCRC is a significant extension to work that we are already doing to realise children’s rights in Scotland.
- Incorporation of the Convention into Scots Law would support and complement parents and carers rights, and reinforce the importance of family life.
- It is important that we develop a model of incorporation that will deliver the best outcomes for children, young people and families in Scotland.
- We recognise that there are some particular complexities in relation to incorporating the UNCRC into domestic law and Scotland’s devolution settlement, which require to be worked through. We believe that an inclusive and consultative approach is the best foundation to ensure we get that model right.
- We are carrying out a 12 week period of consultation and engagement on the best way to incorporate the UNCRC into our domestic law. The consultation also seeks views on the best mechanism to provide redress where children and young people’s rights are not upheld.
- The Consultation, which opened on 22 May, is a huge milestone on our journey to incorporate the UNCRC within this Parliamentary session.
- We are keen to hear the views of experts in the field, children, young people, families and public authorities on the best way to incorporate the UNCRC.
- In the meantime, we will consider where it may be possible for Scots law to go further than the Convention requires, where that is demonstrably beneficial for children and young people.
- We will also continue to consider ways in which rights under the UNCRC can be given better or further effect across individual policy areas.
- To support these commitments, we are working with children, young people and stakeholders to co-design and co-deliver a three-year children’s rights awareness raising programme
- The audit on the most effective and practical way to further embed the principles of the UN Convention on the Rights of the Child as set out in the Programme for Government 2017

Briefing on extending consultation period – July 2019

From: [redacted s.38(1)(b)]
DCAF: Creating Positive Futures
Xx July 2019

DEPUTY FIRST MINISTER AND CABINET SECRETARY FOR EDUCATION AND SKILLS

EXTENDING THE DEADLINE OF THE CONSULTATION: CHILDREN'S RIGHTS: CONSULTATION ON INCORPORATING THE UNCRC INTO OUR DOMESTIC LAW IN SCOTLAND

Purpose

1. To provide advice to Ministers on the option to extend the deadline of the consultation by two weeks to maximise participation.

Priority

2. Routine

Background

3. Following the First Minister's commitment in April to incorporate the UNCRC into domestic law and deliver a Bill within this parliament, you launched a consultation on the 22 May to seek views on the best way to achieve this.

4. Officials have been engaging widely, including with children, young people and families, local authorities and other public bodies across Scotland, as well as third sector partners through one to one meetings, group meetings and planned consultation events which are ran by stakeholders. Please see Annex A for a list of individuals and organisations who have been invited to meetings to discuss incorporation as well as consultation events that are taking place.

5. The Scottish Government is convening a short-life Working Group, chaired by Mairi Macpherson, Deputy Director of Creating Positive Futures, Scottish Government, to garner relevant expertise on incorporation of the UNCRC in Scotland. The Working Group includes representatives from the external Advisory Group, including Together Scotland, UNICEF and academics, alongside the Scottish Youth Parliament, NHS, Police Scotland, COSLA, the Law Society and the Faculty of Advocates. The Working Group is considering the three themes set out in the consultation, namely mechanisms for incorporation, embedding children's rights into public services and ensuring compatibility and redress. You will receive a report of the output of the Working Group in autumn. Two meetings for the Working Group have taken place on 24 June and 10 July, they are due to meet next on the 31 July.

Stakeholder feedback to engagement

6. As set out in the consultation, it is the Scottish Government's intention to engage as widely as possible with children and young people to ensure the voices of children are heard. Stakeholders have highlighted to officials that they have been faced with the barrier of including as many children and young people as possible in their engagement activities due to the absence of children because of summer holidays. In light of this feedback from stakeholders, a two week deadline extension of the consultation is proposed.

Impact on Bill timetable

7. If Ministers are introducing a Bill to Parliament in July 2020, giving a two week extension to the consultation has negligible impact on the ability of Ministers to do this. This assessment takes into account that officials are already in the process of discussing policy positions and into the early drafting of policy instructions. Officials are able to do this due to the findings gathered from stakeholder events, one to one and group meetings between officials and stakeholders and through the output of the Working Group. The consultation initial findings would be delivered on 4 September and a report would be finalised by 25 September. This still gives officials until the end of December 2019 for finalising policy instructions. The full draft of the Bill will then be ready by the end of March 2020.

Impact on Working Group

8. A two week extension of the consultation suits the dates of the Working Group meetings better than the original consultation period as the fourth scheduled meeting on 27 August then falls within the consultation period. This could be considered as more impactful by the membership of the Working Group. The meeting of the 25 September then coincides with the consultation analysis report. This would still enable a final report to be agreed by the Working Group at the final Working Group meeting in October (the exact date is still to be confirmed due to school holidays).

Stakeholder response to extension

9. The responses to an extension that we might expect from stakeholders include those who support the extension due to children being unavailable due to school holidays and Councillors of local authorities who are reconvening after recess; and those who do not support an extension as they perceive that legislation could be at risk to delay. If Ministers were to agree an extension it is proposed that we could fairly and robustly defend this action using the following points:

- The First Minister committed to delivering a Bill within this Parliament and the extension of the consultation has no impact on the parliamentary timetabling;
- This extension supports the greater involvement, engagement and participation of children and young people which is to be welcomed;
- Officials have listened to children, young people and their representatives who have petitioned for this extension and have been able to accommodate their wish.

Communication and engagement

10. The consultation's launch achieved strong social media engagement. Building on this, we have continued to encourage consultation responses through @GIRFEC tweets. These have highlighted the YouthLink Scotland and Scottish Youth Parliament's workshops, the ALLIANCE's online engagement session, background information from Together Scotland plus the availability of an audio version of the consultation. The commitment to incorporation was also included in the ministerial quote for the Scottish Youth Parliament's news release about the BBC's My Life documentary.

11. If Ministers agree the extension, our next steps are to write to all UNCRC stakeholders to highlight the extended deadline, tweet it along with the infographic attached (tweet below), promote Ms Todd's attendance at the Children 1st workshop on 5 August, the Working Group's meeting on 27 August and the YouthLink event on 28 August (proposed extension close date). We will also tweet deadline reminders a fortnight and a week before the consultation closes. Communication colleagues are preparing further edits of the consultation launch video to include. Officials will look for further engagement opportunities including alerting stakeholders to the publication of Working Group minutes on the Scottish Government's website.

Recommendations

12. Officials would be grateful if Ministers could indicate whether they are content with the following:

- **Ministers are invited to agree to the extension of the consultation by two weeks until the 28 August.**
- **That a senior official writes out to UNCRC stakeholders to highlight the extended deadline.**

[redacted s.38(1)(b)]

DCAF: Creating Positive Futures

[redacted s.38(1)(b)]

UNCRC – extending the deadline of the consultation – July 2019

Email

From: [redacted s.38(1)(b)]

Sent: 26 July 2019 11:48

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

Cc: [redacted s.38(1)(b)] Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; DG Education, Communities & Justice <DGECJ@gov.scot>; Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; [redacted s.38(1)(b)]

Subject: UNCRC Incorporation - submission - extending the deadline of the consultation - 26 July 2019

PS/Deputy First Minister and Cabinet Secretary for Education and Skills

PS/Minister for Children and Early Years

**EXTENDING THE DEADLINE OF THE CONSULTATION: CHILDREN'S RIGHTS:
CONSULTATION ON INCORPORATING THE UNCRC INTO OUR DOMESTIC LAW IN
SCOTLAND**

Please find attached a submission which seeks the DFM's approval:

- To agree to the extension of the consultation by two weeks until the 28 August.
- That a senior official writes out to UNCRC stakeholders to highlight the extended deadline.

Further, it provides an update on the progress of communications and engagement in support of the consultation and the progress of the Working Group.

Thanks

[redacted s.38(1)(b)]

Team Leader - UNCRC Audit and Incorporation Team

DCAF: Creating Positive Futures Division

Attachment

From: [redacted s.38(1)(b)]
DCAF: Creating Positive Futures
26 July 2019

DEPUTY FIRST MINISTER AND CABINET SECRETARY FOR EDUCATION AND SKILLS

**EXTENDING THE DEADLINE OF THE CONSULTATION: CHILDREN'S RIGHTS:
CONSULTATION ON INCORPORATING THE UNCRC INTO OUR DOMESTIC LAW IN
SCOTLAND**

Purpose

13. To provide an update on progress with the consultation and advice on the option to extend the deadline of the consultation by two weeks to maximise participation.

Priority

14. Routine

Background

15. Following the First Minister's commitment in April to incorporate the UNCRC into domestic law and deliver a Bill within this parliament, you launched a consultation on the 22 May to seek views on the best way to achieve this.

Engagement progress

16. Officials have been engaging widely, including with children, young people and families, local authorities and other public bodies across Scotland, as well as third sector partners through one to one meetings, group meetings and planned consultation events organised by stakeholders. Please see Annex A for a list of individuals and organisations who have been invited to meetings to discuss incorporation as well as consultation events that are taking place. The Minister for Children and Young People will be attending a consultation event hosted by Children 1st in August, where approximately 50 children and young people are expected to attend. The proposal to incorporate has been almost universally positively received. The consultation document has been positively received by legal and academic experts, however a large number of stakeholders have expressed concern about the accessibility of the consultation due to its technical and legal nature. A range of views on the options has been surfaced so far, and we will provide further advice once the consultation is complete.

Working Group progress

17. As set out in my submission of 15 April, a short-life Working Group has been convened, chaired by the Deputy Director, Creating Positive Futures, to garner relevant expertise on incorporation of the UNCRC in Scotland. The Group includes representatives from Together Scotland, UNICEF, academics, Scottish Youth Parliament, NHS, Police Scotland, COSLA, the Law Society and the Faculty of Advocates. Two of the six scheduled Working Group meetings have taken place, on 24 June and 10 July. The Working Group is considering the three themes set out in the consultation, namely mechanisms for incorporation, embedding children's rights into public services and ensuring compatibility and redress. Summary minutes and papers for the Working Group will be published on SG website and Ministers will receive a report of the output of the Working Group in autumn.

Timescales

18. The consultation paper set out the Scottish Government's intention to engage as widely as possible with children and young people to ensure the voices of children are heard. However, the 12 week consultation period ends on 14 August, before schools return after summer period. Stakeholders have understandably fed back that this makes it challenging to engage children and young people over the summer holidays.

19. The original consultation timetable was driven by the expectation that a Bill would be introduced in March 2020. However, we understand that the Bill is scheduled to be presented to the Presiding Officer in July 2020, with introduction to Parliament on 1 September. In light of this, we propose that Ministers consider extending the consultation deadline by two weeks to close instead on 28 August. This would expand opportunities for children and young people to engage with the consultation in the new school year, enhancing participation. Given the later introduction date, a two week consultation extension will not adversely affect Bill policy development activity.

Stakeholder response to extension

20. While most stakeholders might be expected to welcome a short extension to enable more participation from children and young people, we will want to reassure those who could perceive

that legislation could be at risk of delay. If Ministers were to agree an extension it is proposed that we could fairly and robustly defend this action using the following points:

- The First Minister committed to delivering a Bill within this Parliament and the extension of the consultation has no impact on the parliamentary timetabling;
- This extension supports the greater involvement, engagement and participation of children and young people which is to be welcomed;
- Officials have listened to children, young people and their representatives who have requested this extension and have been able to accommodate their wish.

21. If the Deputy First Minister thinks that it would be useful, stakeholders could be also reassured that further information on the timing of the Bill will be announced in the Programme for Government, even if it is decided that the Bill is to be introduced in Year 5.

Communication and engagement

22. The consultation's launch achieved strong social media engagement. Building on this, we have continued to encourage consultation responses through @GIRFEC tweets. These have highlighted the YouthLink Scotland and Scottish Youth Parliament's workshops, the ALLIANCE's online engagement session, background information from Together Scotland plus the availability of an audio version of the consultation. The commitment to incorporation was also included in the ministerial quote for the Scottish Youth Parliament's news release about the BBC's My Life documentary.

23. If Ministers agree the extension, we propose to write to all UNCRC stakeholders to highlight the extended deadline, tweet it along with the infographic attached (tweet below), promote Ms Todd's attendance at the Children 1st workshop on 5 August, the Working Group's meeting on 27 August and the YouthLink event on 28 August . We will also tweet deadline reminders a fortnight and a week before the consultation closes. Communication colleagues are preparing further edits of the consultation launch video to include. Officials will look for further engagement opportunities including alerting stakeholders to the publication of Working Group minutes on the Scottish Government's website.

Recommendations

24. Officials would be grateful if Ministers could indicate whether they are content with the following:

- **Ministers are invited to agree to the extension of the consultation by two weeks until the 28 August.**
- **That a senior official writes out to UNCRC stakeholders to highlight the extended deadline.**

[redacted s.38(1)(b)]
DCAF: Creating Positive Futures
[redacted s.38(1)(b)]

26 July 2019

UNCRC background briefing and lines to take – August 2019

UNCRC

Background

- This year marks the 30th anniversary of the UN Convention on the Rights of the Child (UNCRC).
- The Convention sets out civil, political, economic, social, health and cultural rights of children and young people and is recognised internationally as the “gold standard” on children’s rights.
- The First Minister announced in April 2019 that the Scottish Government will incorporate the UNCRC into domestic law in Scotland in this Parliamentary session.
- A 12 week period of consultation and engagement on options for incorporation began on 22 May. The consultation is due to close on 14 August, though Ministers are currently considering extending the consultation period to end August to enable more participation of children and young people.
- We have also convened a short life UNCRC Working Group which includes representatives from the UNCRC Incorporation External Advisory Group, (made up of representatives from Together (Scottish Alliance for Children’s Rights) , UNICEF and academics), parenting organisations, the Scottish Youth Parliament, the NHS, Police Scotland, COSLA, the Law Society of Scotland and the Faculty of Advocates.
- The group have met on 3 occasions with a further 3 meetings scheduled to take place before the end of October. Their findings will inform advice to Ministers on policy decisions going forward.

Lines to take

- The Scottish Government is committed to incorporating the UNCRC into domestic law in Scotland in this Parliamentary session.
- Incorporation will ensure that children’s rights are woven into policy, law and decision-making as well as ensuring that children and young people are empowered to know and understand their rights and, if necessary, defend those rights in Scottish courts.
- To deliver this commitment, we are consulting widely, including with children, young people and families, public authorities and the third sector on the best way to incorporate..
- We have convened a short-life working group to garner relevant expertise from our legal system, children’s rights sector, public authorities, parenting organisations and academia.
- The Working Group’s findings, together with the responses from the public consultation, will inform advice to Ministers on a draft Bill.

Speaking note for Youthlink Policy Seminar – August 2019

Email

From: [redacted s.38(1)(b)]

Sent: 22 August 2019 10:50

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

Cc: Director for Children and Families <DirectorforChildrenandFamilies@gov.scot[redacted s.38(1)(b)]**Subject:** Youthlink Policy Seminar - 28 August 2019 - Speaking note for Pre-recorded video

PS/Minister for Children and Young people

The Minister was due to speak at the Youthlink Policy Seminar on UNCRC Incorporation on 28 August but is no longer able to attend due to a prior engagement in Shetland. She has however indicated that she would like to pre-record a speech to be played in her absence. Speaking note attached.

[Redacted s.38(1)(b)] Attachment

Speaking note

- I'm sorry I'm unable to be with you in person at today's event however, I want to assure you that children and young people are at the heart of Scottish Ministers' ambitions for the future and their rights are a key priority.
- Our Vision is to have a Scotland where children and young people are recognised as citizens in their own right and where their human rights are embedded in all aspects of society. A Scotland where they have a voice and are empowered to defend their rights and those of others.
- We believe that embedding the rights of children and young people as enshrined in UN Convention on the Rights of the Child is fundamental to achieving this.
- That's why the First Minister announced in April this year that the Scottish Government will incorporate the UNCRC into domestic law in Scotland in this Parliamentary session.
- A fitting promise in this, the 30th anniversary year of the UNCRC, a treaty that is recognised internationally as the "gold standard" on children's rights.
- Incorporation of the treaty into our law will ensure that children's rights are woven into policy, law and decision-making as well as ensuring that children and young people are empowered to know and understand their rights and, if necessary, defend those rights in Scottish courts.
- Evidence shows that there are different ways to achieve incorporation and that there are some particular complexities in relation to the UNCRC and Scotland's devolution settlement which require to be worked through.
- We are keen to hear the views of experts in the field, children, young people, families, third sector partners and public authorities on the best way to incorporate the UNCRC.

- So, in May we launched a public consultation seeking views on the model of incorporation that will deliver the best outcomes for children, young people and families in Scotland.
- The consultation document makes clear Ministers' intend to incorporate the UNCRC either directly, or through a Scottish suite of children's rights.
- Full and direct incorporation would mean lifting the wording from the whole international convention and putting it into domestic law as closely as is achievable in the Scottish context.
- A Scottish suite of children's rights would mean that each Article of the UNCRC would need to be considered in light of the Scottish context and drafted both to fit that context and provide at least the level of protection that the UNCRC does.
- Each of the different options has different impacts and as the arguments are finely balanced, we do not have a preferred option at this point.
- The consultation also seeks views on the best mechanism to provide redress where children and young people's rights are not upheld.
- The consultation was due to close on 14 August but because of the school summer holidays, has been extended by two weeks until today, to enable greater participation by children and young people.
- You still have time to have your say if you haven't already participated.
- Alongside the public consultation, we have convened a short-life UNCRC Working Group which includes representation from public bodies, third sector partners, academics, parenting organisations and of course children and young people's organisations.
- The Working Group's findings, together with the responses from the public consultation, will inform advice on a draft Bill.
- I understand that [redacted s.38(1)(b)] who is running today's event, will write a report of today's conversations and share that with the Scottish Government.
- As regards timings for the introduction of the Bill into the Scottish Parliament, the development of the Scottish Government's next legislative programme is well underway and a further update will be provided in September this year.
- In the meantime, we will continue to consider ways in which rights under the UNCRC can be given better or further effect across individual policy areas.
- We will also consider where it may be possible for Scots law to go further than the Convention requires, where that is demonstrably beneficial for children and young people.
- For the time being I wish you all the best for what I'm sure will be an interesting and productive day.

680 words (estimated delivery time 4.5 – 5 minutes))

25. UNCRC Incorporation Bill

ISSUE: The Commissioner for Children and Young People has repeatedly called for a Bill to incorporate the UNCRC to be introduced in 2019, as it is the 30th anniversary of the UNCRC. It is expected that many children’s rights stakeholders will regard the Bill not being included in Year 4 with disappointment and concern- in relation to Ministers’ commitment to the delivery of the Bill and the time available for parliamentary scrutiny before parliament dissolves.

ISSUE: A number of consultation respondents have called for “full and direct” incorporation and asked why the Scottish Government has not adopted this approach

Ministers remain absolutely committed to legislating within this parliamentary session

- Introducing the Bill to Parliament in Year 5 would still enable the Bill to complete its Parliamentary stages within this parliamentary session and will provide more time to work through the issues identified in the consultation and by the Working Group to ensure we draft the best Bill for children’s rights ahead of introduction
- We have carried out a 14 week period of consultation and engagement on the best way to incorporate the UNCRC into our domestic law. This is a significant milestone on our journey to incorporate the UNCRC within this Parliamentary session

Our intention is either to directly incorporate UNCRC rights as closely as is achievable in the Scottish context, or to transpose those rights by enacting a suite of Scottish children’s rights.

- Each of the different options has different impacts and as the arguments are finely balanced, we do not have a preferred option at this point.
- Some aspects of the UNCRC and the two optional protocols relate to matters which are reserved to the UK Parliament
- In the absence of a section 30 Order or similar provision extending competence, it will not be possible to include certain Articles or aspects of certain Articles of the UNCRC and the optional protocols in the Bill.

Stakeholders have told us that are additional complexities and we need time to address these issues in the Bill

- Consideration will need to be given to how clarity can be given to rights holders and duty bearers as to how to navigate the interaction between the rights in the UNCRC and existing legislation and duties.
- There are also clearly different views on the preparation time required by public authorities ahead of the commencement of new duties

We have engaged broadly during the 14 week consultation period and received over 160 consultation responses (128 Organisations and 33 individuals).

- International experience shows that consultation and engagement with children and young people and the full range of stakeholders is a key determinant of successful change in relation to incorporating children’s rights into any domestic legal system.
- The consultation began on 22 May and closed on 28 August. A range of bilateral official and Ministerial meetings were held over the summer, engaging over 180 children and young people across 7 Scottish Government-funded events.

The Scottish Government have convened a short-life Working Group to inform advice to Ministers on policy decisions going forward.

- Together, UNICEF and academics, alongside Scottish Youth Parliament, NHS, Police Scotland, COSLA, the Law Society and the Faculty of Advocates are all members of the working group.

- The group are considering the themes set out in the consultation, namely mechanisms for incorporation, embedding children's rights into public services and ensuring compatibility and redress.
- The group's findings, together with the results of the consultation, will inform advice to Ministers.

Briefing for UNICEF Think Tank meeting – August 2019

ENGAGEMENT TITLE: UNICEF Think Tank

Date and Time of Engagement	Wednesday 4 September 2019 6 pm – 6:30 pm
Where	Bayes Centre, University of Edinburgh, 47 Potterrow, Edinburgh EH8 9BT
Who	[redacted s.38(1)(b)]
Why	In recognition of the good things the Scottish Government are doing for children and young people, the UNICEF Think Tank have requested that UNICEF UK in Scotland host their next meeting in Edinburgh.
Key Purpose / Message	<ul style="list-style-type: none"> • To highlight the work the Scottish Government is doing to improve outcomes for children, young people and families in Scotland. • Provide an update on incorporating the UNCRC into domestic law in Scotland.
Media Handling	There will be no media presence at the event.
Official Support	[redacted s.38(1)(b)]
Greeting Party and meeting point on arrival	[redacted s.38(1)(b)]
Entrance for Ministerial car/parking arrangements	[redacted s.38(1)(b)]
Annex A	<i>Agenda</i>
Annex B	<i>Briefing: UNCRC incorporation</i>
Annex C	[redacted s.38(1)(b)]
Annex D	<i>Speaking Note</i>

Agenda

18:00 - Minister arrives – introduced to [redacted s.38(1)(b)]

18:10 – speeches - welcome Lucinda Rivers

18:12 – MSYP

18:17 – Children’s Parliament

18:22 – Minister of Children and Young people

18:27 – Vote of thanks – [redacted s.38(1)(b)]

18:30 – Minister Departs

Briefing – UNCRC Incorporation

Top Lines

- The Scottish Government is committed to incorporating the UNCRC into domestic law in Scotland in this Parliamentary session.
- Incorporation will ensure that children’s rights are woven into policy, law and decision-making as well as ensuring that children and young people are empowered to know and understand their rights and, if necessary, defend those rights in Scottish courts.
- To deliver this commitment, we have consulted widely, including with children, young people and families, public authorities and the third sector to develop the model of incorporation that will deliver the best outcomes for children, young people and families in Scotland.
- Our intention is either to directly incorporate UNCRC rights as closely as is achievable in the Scottish context, or to transpose those rights by enacting a suite of Scottish children’s rights. Each of the different options has different impacts and as the arguments are finely balanced, we do not have a preferred option at this point.
- The Scottish Government are committed to delivering legislation to incorporate the UNCRC into domestic law within this Parliamentary session. Development of the Scottish Government’s next legislative programme is well underway and a further update will be provided shortly.
- The public consultation closed on 28 August and 125 responses were received.
- A range of bilateral official and Ministerial meetings were held over the summer, engaging over 180 children and young people across 7 Scottish Government-funded events and meeting 47 organisations representing a number of different sectors.

Background/Lines to take

- This year marks the 30th anniversary of the UN Convention on the Rights of the Child (UNCRC).
- The Convention sets out civil, political, economic, social, health and cultural rights of children and young people and is recognised internationally as the “gold standard” on children’s rights.
- The rights of children and young people are a key priority for the Scottish Government.
- We are working hard to create an inclusive Scotland that protects, respects, promotes and fulfils these rights.
- The First Minister announced in April 2019 that the Scottish Government will incorporate the UNCRC into domestic law in Scotland in this Parliamentary session.
- Incorporation of the Convention will ensure that children’s rights are woven into policy, law and decision-making.
- It will ensure that children and young people will be empowered to know and understand their rights and, if necessary, defend those rights in Scottish Courts.
- Incorporation will also support and complement parents and carers’ rights, and reinforce the importance of family life.
- Evidence shows that there are different ways to achieve incorporation and that there are some particular complexities in relation to the UNCRC and Scotland’s devolution settlement which require to be worked through.
- We are keen to hear the views of experts in the field, children, young people, families and public authorities on the best way to incorporate the UNCRC.
- A public consultation seeking views on the model of incorporation that will deliver the best outcomes for children, young people and families in Scotland opened on 22 May 2019.
- The consultation document made clear Ministers’ intention to incorporate the UNCRC either directly, or through a Scottish suite of children’s rights.
- Full and direct incorporation would mean lifting the wording from the whole international convention and putting it into domestic law
- The consultation notes that, “in the absence of a section 30 Order or similar provision extending competence, because the Bill would have to be within the legislative

competence of the Parliament, it will not be possible to include certain Articles or aspects of certain Articles of the UNCRC and the optional protocols in the Bill”.

- A Scottish suite of children's rights would mean that each Article of the UNCRC would need to be considered in light of the Scottish context and drafted both to fit that context and provide at least the level of protection that the UNCRC does.
- The consultation also sought views on the best mechanism to provide redress where children and young people's rights are not upheld
- A proposed model for incorporation received from the UNCRC Incorporation External Advisory Group, (made up of representatives from Together (Scottish Alliance for Children's Rights), UNICEF and academics) is included as one of the models in the public consultation.
- The consultation was due to close on 14 August but was extended by two weeks until 28 August to enable greater participation by children and young people. 125 consultation responses were received.
- To complement the public consultation a range of bilateral official and Ministerial meetings were held over the summer, engaging over 180 children and young people across 7 Scottish Government-funded events and meeting 47 organisations representing a number of different sectors.
- Alongside the public consultation and the bilateral official and Ministerial meetings, we have convened a short-life UNCRC Working Group that includes 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 Working Group's findings, together with the responses from the public consultation and the views gathered during the bilateral meetings will inform advice to Ministers on a draft Bill.
- In the meantime, we will continue to consider ways in which rights under the UNCRC can be given better or further effect across individual policy areas.
- We will also consider where it may be possible for Scots law to go further than the Convention requires, where that is demonstrably beneficial for children and young people.

Key Issue

- While supportive of Scottish Ministers commitment to incorporate the principles of the UNCRC into domestic law, the Commissioner for Children and Young People, Together (Scottish Alliance for Children's Rights), UNICEF and other stakeholders have expressed concern at the Scottish Government's ability to deliver legislation to incorporate the UNCRC into Scots law in this Parliamentary session.
- Their view is that the matter is straightforward and full and direct incorporation best achieves Ministers' commitment to delivering the “gold standard” in children's rights.
- To prevent delay in taking this work forward the UNCRC Incorporation External Advisory Group, (made up of representatives from Together (Scottish Alliance for Children's Rights), UNICEF and academics) have drafted a proposed model of incorporation.
- This proposed model was presented to the Deputy First Minister and the Minister for Children and Young People at a meeting held in Parliament on Tuesday 20 November 2018 and was included as one of the models in the public consultation.

Speaking note

- Thank you for inviting me along to this evenings meeting, I was delighted to hear about the UNICEF Think Tank's request to hold this meeting in Scotland.
- I know that the First Minister was also delighted to meet with UNICEF's Executive Director, Henrietta Fore, here in Edinburgh last month.
- It's good to see you all and be able to share some of the work the Scottish Government is doing to improve outcomes for children, young people and families in Scotland.
- Children and young people are at the heart of Scottish Ministers' ambitions for the future and upholding their rights and improving their outcomes is a key priority.
- We are working hard to reduce child poverty by introducing a Scottish Child Payment, worth £10 per week per child to low income families by the end of 2022.
- We will increase free childcare from 600 hours to 1,140 hours per year by 2020.
- Last month we celebrated the 2 year anniversary of Scotland's Baby Boxes and delivered the 100,000th Baby Box.
- Our vision is to have a Scotland where children and young people are recognised as citizens in their own right and where their human rights are embedded in all aspects of society. A Scotland where they have a voice and are empowered to defend their rights and those of others.
- We believe that embedding the rights of children and young people as enshrined in UN Convention on the Rights of the Child is fundamental to achieving this.
- That's why The First Minister announced in April this year that the Scottish Government will incorporate the UNCRC into domestic law in Scotland in this Parliamentary session.
- A fitting promise in this, the 30th anniversary year of the UNCRC, a treaty that is recognised internationally as the "gold standard" on children's rights.
- I look forward to the celebrations for the 30th anniversary of the UNCRC in November.
- Incorporation of the treaty into our law will ensure that children's rights are woven into policy, law and decision-making as well as ensuring that children and young people are empowered to know and understand their rights and, if necessary, defend those rights in Scottish courts.
- Evidence shows that there are different ways to achieve incorporation and that there are some particular complexities in relation to the UNCRC and Scotland's devolution settlement which require to be worked through.
- So, in May we launched a public consultation seeking views on the model of incorporation that will deliver the best outcomes for children, young people and families in Scotland.
- The consultation document made clear Ministers' intention to incorporate the UNCRC either directly, or through a Scottish suite of children's rights.
- The consultation which closed last week, also sought views on the best mechanism to provide redress where children and young people's rights are not upheld.

- We received 125 responses to the consultation and I'm very much looking forward to seeing what those responses say.
- Alongside the public consultation, we have convened a short-life UNCRC Working Group which includes representation from public bodies, third sector partners, academics, parenting organisations and of course children and young people's organisations.
- The Working Group's findings, together with the responses from the public consultation, will inform advice on a draft Bill.
- In the meantime, we will continue to consider ways in which rights under the UNCRC can be given better or further effect across individual policy areas.
- We will also consider where it may be possible for Scots law to go further than the Convention requires, where that is demonstrably beneficial for children and young people.
- In addition to incorporating the UNCRC, we are also committed to addressing all types of childhood adversity, and this is anchored in our long-standing, national approach of [Getting it right for every child](#).
- Getting it right for every child – GIRFEC - is Scotland's approach to promoting and improving wellbeing of every child. It helps families and service providers support children by encouraging collaboration to prevent and reduce the negative impact of adverse childhood experiences, bullying, illness, disability or financial pressures.
- Founded on the UNCRC, the approach ensures children and families are valued and respected and they have the right to have their voices sought, heard and acted upon by all those who support them and who provide services to help them.
- The GIRFEC approach is now well-established and encourages collaborative working and common terminology, enabling partners to work better together to support and improve the wellbeing of children and young people.
- When a child or young person's wellbeing is affected they or their parents can ask for help from a clear-point of contact who can offer direct support or access to relevant services. This service is available for every child and young person in Scotland up to the age of eighteen.
- I hope that this gives you a flavour of what the Scottish Government is doing.

(Word count 798 - approx. speaking time 5 minutes)

Speaking note - UNCRC Incorporation

- Children and young people are at the heart of the Scottish Government's ambitions for the future and their rights are a key priority.
- Our vision is to have a Scotland where children and young people are recognised as citizens in their own right and where their human rights are embedded in all aspects of society.
- A Scotland where they have a voice and are empowered to defend their rights and those of others.
- We believe that embedding the rights of children and young people as enshrined in UN Convention on the Rights of the Child is fundamental to achieving this.
- That's why the First Minister announced in April this year that the Scottish Government will incorporate the UNCRC into domestic law in Scotland in this Parliamentary session.
- A fitting promise in this, the 30th anniversary year of the UNCRC, a treaty that is recognised internationally as the "gold standard" on children's rights.
- Incorporation of the treaty into our law will ensure that children's rights are woven into policy, law and decision-making as well as ensuring that children and young people are empowered to know and understand their rights and, if necessary, defend those rights in Scottish courts.
- Evidence shows that there are different ways to achieve incorporation and that there are some particular complexities in relation to the UNCRC and Scotland's devolution settlement which require to be worked through.
- We wanted to hear the views of experts in the field, children, young people, families, third sector partners and public authorities on the best way to incorporate the UNCRC.
- So, in May we launched a public consultation seeking views on the model of incorporation that will deliver the best outcomes for children, young people and families in Scotland.
- The consultation document made clear Ministers' intention to incorporate the UNCRC either directly, or through a Scottish suite of children's rights.
- Full and direct incorporation would mean lifting the wording from the whole international convention and putting it into domestic law as closely as is achievable in the Scottish context.
- A Scottish suite of children's rights would mean that each Article of the UNCRC would need to be considered in light of the Scottish context and drafted both to fit that context and provide at least the level of protection that the UNCRC does.
- Each of the different options has different impacts and as the arguments are finely balanced, we do not have a preferred option at this point.

- The consultation which closed last week, also sought views on the best mechanism to provide redress where children and young people's rights are not upheld.
- We received 125 responses and are looking forward to seeing what those responses say.
- Alongside the public consultation, we have convened a short-life UNCRC Working Group which includes representation from public bodies, third sector partners, academics, parenting organisations and of course children and young people's organisations.
- The Working Group's findings, together with the responses from the public consultation, will inform advice on a draft Bill.
- In the meantime, we will continue to consider ways in which rights under the UNCRC can be given better or further effect across individual policy areas.
- We will also consider where it may be possible for Scots law to go further than the Convention requires, where that is demonstrably beneficial for children and young people.

Briefing – UNCRC Incorporation

Top Lines

- The Scottish Government is committed to incorporating the UNCRC into domestic law in Scotland in this Parliamentary session.
- Incorporation will ensure that children's rights are woven into policy, law and decision-making.
- It will also ensure that children and young people are empowered to know and understand their rights and, if necessary, defend those rights in Scottish courts.
- To deliver this commitment, we have consulted widely, including with children, young people and families, public authorities and the third sector to develop the model of incorporation that will deliver the best outcomes for children, young people and families in Scotland.
- Our intention is either to directly incorporate UNCRC rights as closely as is achievable in the Scottish context, or to transpose those rights by enacting a suite of Scottish children's rights.
- Each of the different options has different impacts and as the arguments are finely balanced, we do not have a preferred option at this point.

Background/Lines to take

- This year marks the 30th anniversary of the UN Convention on the Rights of the Child (UNCRC).
- The Convention sets out civil, political, economic, social, health and cultural rights of children and young people and is recognised internationally as the "gold standard" on children's rights.
- The rights of children and young people are a key priority for the Scottish Government.
- We are working hard to create an inclusive Scotland that protects, respects, promotes and fulfils these rights.
- The First Minister announced in April this year that the Scottish Government will incorporate the UNCRC into domestic law in Scotland in this Parliamentary session.
- Incorporation of the Convention will ensure that children's rights are woven into policy, law and decision-making.
- It will ensure that children and young people will be empowered to know and understand their rights and, if necessary, defend those rights in Scottish Courts.
- Incorporation will also support and complement parents and carers' rights, and reinforce the importance of family life.
- Evidence shows that there are different ways to achieve incorporation and that there are some particular complexities in relation to the UNCRC and Scotland's devolution settlement which require to be worked through.
- We are keen to hear the views of experts in the field, children, young people, families and public authorities on the best way to incorporate the UNCRC.
- A public consultation seeking views on the model of incorporation that will deliver the best outcomes for children, young people and families in Scotland opened on 22 May 2019.
- The consultation document made clear Ministers' intention to incorporate the UNCRC either directly, or through a Scottish suite of children's rights.
- Full and direct incorporation would mean lifting the wording from the whole international convention and putting it into domestic law
- A Scottish suite of children's rights would mean that each Article of the UNCRC would need to be considered in light of the Scottish context and drafted both to fit that context and provide at least the level of protection that the UNCRC does.
- The consultation also sought views on the best mechanism to provide redress where children and young people's rights are not upheld
- A proposed model for incorporation received from the UNCRC Incorporation External Advisory Group, (made up of representatives from Together (Scottish Alliance for

Children's Rights), UNICEF and academics) is included as one of the models in the public consultation.

- The consultation was due to close on 14 August but was extended by two weeks until 28 August to enable greater participation by children and young people. 125 consultation responses were received.
- To compliment the public consultation a range of bilateral official and Ministerial meetings were held over the summer, engaging over 180 children and young people across 7 Scottish Government-funded events and meeting 47 organisations representing a number of different sectors.
- Alongside the public consultation and the bilateral official and Ministerial meetings, we have convened a short-life UNCRC Working Group that includes 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 Working Group's findings, together with the responses from the public consultation and the views gathered during the bilateral meetings will inform advice to Ministers on a draft Bill.
- In the meantime, we will continue to consider ways in which rights under the UNCRC can be given better or further effect across individual policy areas.
- We will also consider where it may be possible for Scots law to go further than the Convention requires, where that is demonstrably beneficial for children and young people.

Key Issue

- While supportive of Scottish Ministers commitment to incorporate the principles of the UNCRC into domestic law, the Commissioner for Children and Young People, Together (Scottish Alliance for Children's Rights), UNICEF and other stakeholders have expressed concern at the Scottish Government's ability to deliver legislation to incorporate the UNCRC into Scots law in this Parliamentary session.
- Their view is that the matter is straightforward and full and direct incorporation best achieves Ministers' commitment to delivering the "gold standard" in children's rights.
- To prevent delay in taking this work forward the UNCRC Incorporation External Advisory Group, (made up of representatives from Together (Scottish Alliance for Children's Rights), UNICEF and academics) have drafted a proposed model of incorporation.
- This proposed model was presented to the Deputy First Minister and the Minister for Children and Young People at a meeting held in Parliament on Tuesday 20 November 2018 and was included as one of the models in the public consultation.

26. UNCRC Incorporation Bill

ISSUE: The Commissioner for Children and Young People has repeatedly called for a Bill to incorporate the UNCRC to be introduced in 2019, as it is the 30th anniversary of the UNCRC. It is expected that many children’s rights stakeholders will regard the Bill not being included in Year 4 with disappointment and concern- in relation to Ministers’ commitment to the delivery of the Bill and the time available for parliamentary scrutiny before parliament dissolves.

Ministers remain absolutely committed to legislating within this parliamentary session

- Introducing the Bill to Parliament in Year 5 would still enable the Bill to complete its Parliamentary stages within this parliamentary session.
- We have carried out a 14 week period of consultation and engagement on the best way to incorporate the UNCRC into our domestic law. This is a significant milestone on our journey to incorporate the UNCRC within this Parliamentary session.
- Introducing the Bill to Parliament in Year 5 provides more time to work through the issues identified in the consultation and by the Working Group to ensure we draft the best Bill for children’s rights ahead of introduction

Stakeholders have told us that are additional complexities and we need time to address these issues in the Bill

- Consideration will need to be given to how clarity can be given to rights holders and duty bearers as to how to navigate the interaction between the rights in the UNCRC and existing legislation and duties.
- There are also clearly different views on the preparation time required by public authorities ahead of the commencement of new duties

We have engaged broadly during the 14 week consultation period and received over 160 consultation responses (128 Organisations and 33 individuals).

- International experience shows that consultation and engagement with children and young people and the full range of stakeholders is a key determinant of successful change in relation to incorporating children’s rights into any domestic legal system.
- The consultation began on 22 May and closed on 28 August. A range of bilateral official and Ministerial meetings were held over the summer, engaging over 180 children and young people across 7 Scottish Government-funded events.

The Scottish Government have convened a short-life Working Group to inform advice to Ministers on policy decisions going forward.

- Together, UNICEF and academics, alongside Scottish Youth Parliament, NHS, Police Scotland, COSLA, the Law Society and the Faculty of Advocates are all members of the working group.
- The group are considering the themes set out in the consultation, namely mechanisms for incorporation, embedding children’s rights into public services and ensuring compatibility and redress.
- The group’s findings, together with the results of the consultation, will inform advice to Ministers.

[redacted s.38(1)(b)]

To: Deputy First Minister
Minister for Children and Young People
September 2019
(cc as per covering email)

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PROGRESS UPDATE: UNCRC Incorporation Bill

1. Purpose

This note provides an update on progress in relation to the development of the UNCRC Incorporation Bill. Going forward, the Bill Team will provide you with these updates on a fortnightly basis.

2. Consultation

As you are aware, a consultation ‘Incorporating the UN Convention on the Rights of the Child into Scots Law’ was held from 22 May to 28 August. Around 160 responses were received to the consultation. We commissioned Arad Research, who undertook the analysis of the consultation on the Welsh Children’s Rights Scheme, to analyse and report on the responses. They are due to provide their final draft report to officials by the end of the week. Officials are exploring the option of them producing a child friendly version of their analysis also. We are still to agree a timeframe with them for this work but expect to receive this in October.

Early findings

There was wide engagement with the consultation from child rights stakeholders, the legal profession and public service providers with over 100 responses coming from organisations.

There is wide support for a ‘direct’ incorporation approach, that is incorporation that would see the text of the UNCRC incorporated into Scots law. There is also wide support for an approach akin to the Human Rights Act including elements such as a ‘duty to comply’, for substantive and legal remedies when a violation occurs and that legislation should be read and given effect in a way which is compatible with the UNCRC.

There is also wide recognition of the need to ensure that work continues proactively to embed a child rights approach. Some key respondents including Together and the Children’s Commissioner advocate including a duty to have due regard in addition to a duty to comply. They view this as a mechanism to ensure a proactive approach.

As we would expect, Child Rights organisations in particular have also made submissions supportive of a broader Children’s Rights Scheme. That being said, there is also wide support for ensuring legislation can be delivered within this parliament and that incorporation of the UNCRC should not be delayed.

Next Steps

As is normal, the consultation responses are being moderated by officials and will be published on the Scottish Government website by midnight on Thursday 26 September (to meet the standard 20 working day deadline). Lines to take will be prepared as normal.

We will receive the consultation report from ARAD by the end of this week and will share this with you in due course. Once we have confirmed when they may be able to produce a child friendly version, we will return to you with advice on publication.

3. Working Group

The UNCRC Working Group meets again on Wednesday the 25th of September. This is the 5th of 6 meetings as set out in the Terms of Reference. As expected, the working group have shown a real interest in the questions posed in the consultation paper and have had insightful and useful conversations in relation to such things as scope of the articles and what this could mean for our approach (recognising issues such as devolved competence) and redress. In line with the terms of reference, officials will provide an oral summary of the initial headlines from consultation's responses at the meeting on Wednesday (tomorrow).

The final meeting of the working group (as set out in the terms of reference) is due to take place on the 21st of October. As such, a priority for the meeting on Wednesday will be how the working group wish to bring together a report of their considerations to date. Officials will work closely with the working group to support this work.

We will provide further advice to you in due course about how we continue to ensure effective engagement with stakeholders beyond the life of the working group.

[redacted s.38(1)(b)]

5. Recommendation/ action

You are invited to note this progress update.

[redacted s.38(1)(b)]

ISSUE: The Children and Young People’s Commissioner has expressed concern that introducing a Bill in Year 5 does not leave enough time for proper parliamentary scrutiny. We understand that this concern is shared by some other children’s rights stakeholders. The Commissioner is keen to see introduction this year as 2019 is the 30th anniversary of the adoption of the UNCRC.

ISSUE: Alex Cole-Hamilton MSP advocates for full incorporation of the UNCRC as soon as possible.

QUOTE: “I’ve campaigned for #UNCRC all my career- 15 yrs in children’s sector, as convener of the Scottish Alliance for Children’s Rights and as MSP. FM commitment to incorporate principles welcome but we need full incorporation of all 42 articles. (Alex Cole-Hamilton MSP, Tweet, 4 sept 2018)

Top Lines

- We are absolutely committed to the incorporation of the UN Convention on the Rights of the Child
- We will introduce a bill to incorporate the UNCRC as the key Bill of year 5 of the legislative programme.
- It will be introduced with more than enough time to pass before the election.
- Our aim is to provide a world leading framework of children’s rights in Scotland and we look forward to working with anyone within Parliament in passing this important legislation.

We owe it to children and young people to get this right

- It is right that we take the time to fully consider the complexities involved in making these international rights effective in our legal system in Scotland
- We continue to work closely with stakeholders on the best way to do this.

QUOTE: “Scotland has made particularly positive progress around embedding the spirit of the UNCRC in legislation and practice in the country, further incorporation of the UNCRC and interpretation of its articles will be building on positive foundations.” Scottish Refugee Council, UNCRC Incorporation Bill Consultation Response

QUOTE: “Children 1st welcomes the commitment made by the Scottish Government to incorporate the UN Convention of the Rights of the Child (UNCRC) into Scots law in the 2017-2021 session of the Scottish Parliament. We congratulated the First Minister for the bold and decisive step she took in pledging that “we must make sure we are meeting the UN’s gold standard on children’s rights”. Children 1st, UNCRC Incorporation Bill Consultation Response

I am pleased at the significant level of engagement with the consultation for the Bill

- We received over 160 consultation responses (128 Organisations and 33 individuals).
- A range of bilateral official and Ministerial meetings were held over the summer, engaging over 180 children and young people across 7 Scottish Government-funded events.
- It is right that we give these responses careful consideration in finalising our approach

We will continue to work closely with key stakeholders to make sure the Bill delivers for children and young people

- A short-life Working Group has been convened to inform our approach
- Membership includes Together, UNICEF and academics, alongside Scottish Youth Parliament, NHS, Police Scotland, COSLA, the Law Society and the Faculty of Advocates
- The group’s findings, together with the results of the consultation, will inform the development of our policy for the Bill
- The group will have its sixth meeting in October and will later report to Ministers

We continue to deliver a range of other work to make children’s rights real in Scotland

- We are working to implement the Age of Criminal Responsibility (Scotland) Act 2019. From the end of November this year, children under 12 will no longer be treated as an offender in the children’s hearings system.

- We introduced the Children (Scotland) Bill into the Scottish Parliament on 2 September, which aims to ensure that the voice of the child is heard in contact and residence cases.
- We have invested £1.35 million in the National Trauma Training Programme, over 3,000 people across our public services, including police officers, nurses and social workers, have been trained to date, with training for a further 2,000 workers planned.
- In spring 2020, we will introduce a national children's hearings advocacy scheme, backed by £1.5 million, to further reinforce children's rights and make sure the interests of each child is at the very heart of their hearing.
- In March 2018, we published 'Every Child Every Chance', the first Tackling Child Poverty Delivery Plan due under the Child Poverty (Scotland) Act and our first annual progress report in June 2019. The Children's Parliament played a key part in ensuring the voices of children were heard.
- In line with duties in the 2014 Act, in December we laid before Parliament a report on progress in taking forward the UNCRC since June 2015.
- We will provide an annual update on the progress being made in taking forward the actions in the Action Plan before the end of 2019.

Briefing for FM for Save the Children centenary reception – October 2019

BRIEFING FOR THE FIRST MINISTER

Save the Children's Centenary Reception

22 October 2019

Key message	<i>Save the Children is marking 100 years since it was founded and the 30th anniversary of the UN Convention on the Rights of the Child (UNCRC). This event is celebrating those milestones and the progress made in realising children's rights in Scotland.</i>
What	<i>Speech</i>
Why	<i>To make a short speech on the incorporation of the UNCRC into domestic law and the impact this will have for children and young people across Scotland.</i>
Who	[redacted s.38(1)(b)]
Where	<i>Scottish Poetry Library, 5 Crichton's Close, Edinburgh EH8 8DT</i>
When	<i>22 October 2019, 18:50 – 19:10</i>
Likely themes	<i>Incorporation of the UNCRC UNCRC Incorporation Bill Children's Rights</i>
Media	<i>FM Communications to provide separately.</i>
Supporting official	[redacted s.38(1)(b)]
Attached documents	[redacted s.38(1)(b)] <i>Annex D – UNCRC Incorporation Bill & Children's Rights</i> [redacted s.29(1)(b)]

Agenda and Summary

Agenda

- Guests arrive (**18.00 onwards**)
- The Minister arrives and meets children and families and photos taken (**18.20 – 18.30**)
- Head of Save the Children in Scotland Claire Telfer formally opens event and introduces the Minister (**18.30 - 18.35**)
- Speech by the Minister (**18.35 – 18.45**)
- Speech by Children and Young People’s Commissioner Bruce Adamson (**18.45 – 18.55**)
- Speech by Head of Save the Children in Scotland Claire Telfer (**18.55 – 19.00**)
- Speech by [redacted s.38(1)(b)] (**19.00 – 19.10**)
- Networking (**19.10 – 20.00**)
- Close (**20.00**)

[redacted s.29(1)(b)]

- [redacted s.38(1)(b)]

UNCRC Incorporation Bill & Children’s Rights

ISSUE: The Children and Young People’s Commissioner is keen to see introduction this year as 2019 is the 30th anniversary of the adoption of the UNCRC. The Commissioner has expressed concern that introducing a Bill in Year 5 does not leave enough time for proper parliamentary scrutiny. We understand that this concern is shared by some other children’s rights stakeholders.

QUOTE: *“There is a significant risk that the Scottish Government might propose a suite of rights –essentially cherry-picking which it wants to include – or worse, rewriting the articles, thus breaking way from the international commitments made. This could be presented as an improvement of the rights, but in reality, it will not offer the full protection of the Convention to children in Scotland and will lose the connection to the rich understanding of rights built up by the international community. The legislation must make rights justiciable and it must fully and directly incorporate the UNCRC. It should be produced urgently to allow for proper scrutiny by parliament before the session ends in early 2021. Further delay will set the bill up to fail as parliamentary time runs out. We’re calling for a bill to be laid before the Scottish Parliament on the 30th anniversary of the UNCRC.”* (Commissioner, Children in Scotland Magazine, October to November 2019 Issue)

Top Lines

- We are absolutely committed to the incorporation of the UN Convention on the Rights of the Child.
- We will introduce a bill to incorporate the UNCRC as the key Bill of year 5 of the legislative programme.
- It will be introduced with more than enough time to pass before the election.
- Our aim is to provide a world leading framework of children’s rights in Scotland and we look forward to working with anyone within Parliament in passing this important legislation.

We owe it to children and young people to get this right

- It is right that we take the time to fully consider the complexities involved in making these international rights effective in our legal system in Scotland.
- We continue to work closely with stakeholders on the best way to do this.

QUOTE: *“Scotland has made particularly positive progress around embedding the spirit of the UNCRC in legislation and practice in the country, further incorporation of the UNCRC and interpretation of its articles will be building on positive foundations.”* Scottish Refugee Council, UNCRC Incorporation Bill Consultation Response

QUOTE: *“Children 1st welcomes the commitment made by the Scottish Government to incorporate the UN Convention of the Rights of the Child (UNCRC) into Scots law in the 2017-2021 session of the Scottish Parliament. We congratulated the First Minister for the bold and decisive step she took in pledging that “we must make sure we are meeting the UN’s gold standard on children’s rights”.* Children 1st, UNCRC Incorporation Bill Consultation Response

I am pleased at the significant level of engagement with the consultation for the Bill

- We received over 160 consultation responses (128 Organisations and 33 individuals).
- A range of bilateral official and Ministerial meetings were held over the summer, engaging over 180 children and young people across 7 Scottish Government-funded events.
- It is right that we give these responses careful consideration in finalising our approach.

We will continue to work closely with key stakeholders to make sure the Bill delivers for children and young people

- A short-life Working Group has been convened to inform our approach.
- Membership includes Together, UNICEF and academics, alongside Scottish Youth Parliament, NHS, Police Scotland, COSLA, the Law Society and the Faculty of Advocates.

- The group's findings, together with the results of the consultation, will inform the development of our policy for the Bill.
- The group had its seventh meeting yesterday and will later report to Ministers.

We continue to deliver a range of other work to make children's rights real in Scotland

- In line with duties in the 2014 Act, in December we laid before Parliament a report on progress in taking forward the UNCRC since June 2015.
- We will provide an annual update on the progress being made in taking forward the actions in the Action Plan before the end of 2019.

**The Children and Young People’s Commissioner Scotland UNCRC Incorporation Bill
consultation response – Highlights**

Key comments from response:

“We welcomed the First Minister’s announcement in April 2019 that the Scottish Government would seek to pass legislation to incorporate the UNCRC within this session of the Scottish Parliament.

1. The entire UNCRC must not be changed or rewritten. It should be incorporated in full in order to ensure the indivisible and interdependent character of human rights protections, agreed 30 years ago. Incorporation will give power to children and their parents to advance their interests and enhance accountability in Scotland.

2. The UNCRC is both clear and comprehensive. It was intended to be directly incorporated into national law when drafted. The protections contained in the UNCRC are wide-ranging and include civil, cultural, economic, political, and social rights. Scottish courts have a long history of interpreting international law and dealing with these rights. There is abundant guidance from the United Nations and national jurisprudence to help interpret the UNCRC.

3. Urgency is required to ensure the UNCRC can be incorporated within this session of the Scottish Parliament. To allow enough time for proper legislative scrutiny a bill should be introduced this year marking the 30th Anniversary of the UNCRC. We have developed a draft bill for this purpose, which is explained below. Following a different approach or rewriting the UNCRC Articles risks undermining and delaying the protection of the rights of children.

4. Incorporating the UNCRC will help to support children and their families to claim their rights and build upon the existing human rights framework. This process supports and complements wider work to create new human rights legislation for Scotland as recommended by the First Minister’s Advisory Group on Human Rights Leadership, whose final report was unequivocal in its support for incorporation of the UNCRC”

First Minister Questions – Briefing for FMQ – UNCRC Incorporation Bill & Childrens Rights combined – Oct 2019

ISSUE: The Children and Young People’s Commissioner has expressed concern that introducing a Bill in Year 5 does not leave enough time for proper parliamentary scrutiny. We understand that this concern is shared by some other children’s rights stakeholders. The Commissioner is keen to see introduction this year as 2019 is the 30th anniversary of the adoption of the UNCRC.

QUOTE: *“There is a significant risk that the Scottish Government might propose a suite of rights –essentially cherry-picking which it wants to include – or worse, rewriting the articles, thus breaking way from the international commitments made. This could be presented as an improvement of the rights, but in reality, it will not offer the full protection of the Convention to children in Scotland and will lose the connection to the rich understanding of rights built up by the international community. The legislation must make rights justiciable and it must fully and directly incorporate the UNCRC. It should be produced urgently to allow for proper scrutiny by parliament before the session ends in early 2021. Further delay will set the bill up to fail as parliamentary time runs out. We’re calling for a bill to be laid before the Scottish Parliament on the 30th anniversary of the UNCRC.”* (Commissioner, Children in Scotland Magazine, October to November 2019 Issue)

ISSUE: Alex Cole-Hamilton MSP advocates for full incorporation of the UNCRC as soon as possible.

QUOTE: *“I’ve campaigned for #UNCRC all my career- 15 yrs in children’s sector, as convener of the Scottish Alliance for Children’s Rights and as MSP. FM commitment to incorporate principles welcome but we need full incorporation of all 42 articles.* (Alex Cole-Hamilton MSP, Tweet, 4 sept 2018)

Top Lines

- We are absolutely committed to the incorporation of the UN Convention on the Rights of the Child
- We will introduce a bill to incorporate the UNCRC as the key Bill of year 5 of the legislative programme.
- It will be introduced with more than enough time to pass before the election.
- Our aim is to provide a world leading framework of children’s rights in Scotland and we look forward to working with anyone within Parliament in passing this important legislation.

We owe it to children and young people to get this right

- It is right that we take the time to fully consider the complexities involved in making these international rights effective in our legal system in Scotland
- We continue to work closely with stakeholders on the best way to do this.

QUOTE: *“Scotland has made particularly positive progress around embedding the spirit of the UNCRC in legislation and practice in the country, further incorporation of the UNCRC and interpretation of its articles will be building on positive foundations.”* Scottish Refugee Council, UNCRC Incorporation Bill Consultation Response

QUOTE: *“Children 1st welcomes the commitment made by the Scottish Government to incorporate the UN Convention of the Rights of the Child (UNCRC) into Scots law in the 2017-2021 session of the Scottish Parliament. We congratulated the First Minister for the bold and decisive step she took in pledging that “we must make sure we are meeting the UN’s gold standard on children’s rights”.* Children 1st, UNCRC Incorporation Bill Consultation Response

I am pleased at the significant level of engagement with the consultation for the Bill

- We received over 160 consultation responses (128 Organisations and 33 individuals).
- A range of bilateral official and Ministerial meetings were held over the summer, engaging over 180 children and young people across 7 Scottish Government-funded events.
- It is right that we give these responses careful consideration in finalising our approach

We will continue to work closely with key stakeholders to make sure the Bill delivers for children and young people

- A short-life Working Group has been convened to inform our approach
- Membership includes Together, UNICEF and academics, alongside Scottish Youth Parliament, NHS, Police Scotland, COSLA, the Law Society and the Faculty of Advocates
- The group's findings, together with the results of the consultation, will inform the development of our policy for the Bill
- The group will have its seventh meeting in October and will later report to Ministers

We continue to deliver a range of other work to make children's rights real in Scotland

- We are working to implement the Age of Criminal Responsibility (Scotland) Act 2019. From the end of November this year, children under 12 will no longer be treated as an offender in the children's hearings system.
- We introduced the Children (Scotland) Bill into the Scottish Parliament on 2 September, which aims to ensure that the voice of the child is heard in contact and residence cases.
- We have invested £1.35 million in the National Trauma Training Programme, over 3,000 people across our public services, including police officers, nurses and social workers, have been trained to date, with training for a further 2,000 workers planned.
- In spring 2020, we will introduce a national children's hearings advocacy scheme, backed by £1.5 million, to further reinforce children's rights and make sure the interests of each child is at the very heart of their hearing.
- In March 2018, we published 'Every Child Every Chance', the first Tackling Child Poverty Delivery Plan due under the Child Poverty (Scotland) Act and our first annual progress report in June 2019. The Children's Parliament played a key part in ensuring the voices of children were heard.
- In line with duties in the 2014 Act, in December we laid before Parliament a report on progress in taking forward the UNCRC since June 2015.
- We will provide an annual update on the progress being made in taking forward the actions in the Action Plan before the end of 2019.

Briefing for FM Convenors Group for Equalities and Human Rights Committee - October 2019

COMMITTEE: Equalities and Human Rights Committee

ISSUE: The Commissioner for Children and Young People has repeatedly called for a Bill to incorporate the UNCRC to be introduced in 2019

ISSUE: The majority of consultation responses call for “full and direct” incorporation

ISSUE: The public consultation on incorporating the UNCRC closed on 28 August and a Scottish Government response is awaited by stakeholders

ISSUE: The Commissioner for Children and Young People has repeatedly called for a Bill to incorporate the UNCRC to be introduced in 2019

Background: The Commissioner has called for the Bill to be introduced on 20 Nov- “It should be produced urgently to allow for proper scrutiny by parliament before the session ends in early 2021. Further delay will set the bill up to fail as parliamentary time runs out. We’re calling for a bill to be laid before the Scottish Parliament on the 30th anniversary of the UNCRC.” (Commissioner, Children in Scotland Magazine, October to November 2019 Issue)

Top lines:

- We are absolutely committed to the incorporation of the UN Convention on the Rights of the Child.
- We will introduce a bill to incorporate the UNCRC as the key Bill of year 5 of the legislative programme.
- It will be introduced with more than enough time to pass before the election.
- Our aim is to provide a world leading framework of children’s rights in Scotland and we look forward to working with anyone within Parliament in passing this important legislation.

ISSUE: The majority of consultation responses call for “full and direct” incorporation

Background: The majority of consultation responses call for “full and direct” incorporation- i.e. copy and paste the full text of the UNCRC. [redacted s.30(b)(i)] Our intention stated in the consultation document is either to directly incorporate UNCRC rights as closely as is achievable in the Scottish context, or to transpose those rights by enacting a suite of Scottish children’s rights.

Top lines:

- We owe it to children and young people to get this right
- It is right that we take the time to fully consider the complexities involved in making these international rights effective in our legal system in Scotland
- Each of the different options has different impacts and as the arguments are finely balanced, we do not have a preferred option at this point.
- Some aspects of the UNCRC and the two optional protocols relate to matters which are reserved to the UK Parliament.
- In the absence of a section 30 Order or similar provision extending competence, it will not be possible to include certain Articles or aspects of certain Articles of the UNCRC and the optional protocols in the Bill.
- We continue to work closely with stakeholders on the best way to do this.
 - QUOTE: "Scotland has made particularly positive progress around embedding the spirit of the UNCRC in legislation and practice in the country, further incorporation of the UNCRC and interpretation of its articles will be building on positive foundations." Scottish Refugee Council, UNCRC Incorporation Bill Consultation Response

- QUOTE: "Children 1st welcomes the commitment made by the Scottish Government to incorporate the UN Convention of the Rights of the Child (UNCRC) into Scots law in the 2017-2021 session of the Scottish Parliament. We congratulated the First Minister for the bold and decisive step she took in pledging that "we must make sure we are meeting the UN's gold standard on children's rights". Children 1st, UNCRC Incorporation Bill Consultation Response

ISSUE: The public consultation on incorporating the UNCRC closed on 28 August and a Scottish Government response is awaited by stakeholders

Background: It is planned that the DFM will mark the 30th anniversary of the UNCRC on 20 Nov by making a statement of intent to Parliament on incorporation of the UNCRC into domestic law. [redacted s.30(b)(i)]

Top lines:

- I am pleased at the significant level of engagement with the consultation for the Bill
- We received over 160 consultation responses with 128 Organisations and 33 individuals responding.
- 146 consultation responses were published ,where respondents gave their permission, on 26 September.
- It is right that we take the time to fully consider the views of children, young people and families, as well as academics, public bodies across Scotland, and third sector partners.
- A range of bilateral official and Ministerial meetings were also held over the summer, engaging over 180 children and young people across 7 Scottish Government-funded events.
- A short-life Working Group has been convened to inform our approach. Membership includes Together, UNICEF and academics, alongside Scottish Youth Parliament, NHS, Police Scotland, COSLA, the Law Society and the Faculty of Advocates.
- The group's findings, together with the results of the consultation, will inform the development of our policy for the Bill. The group will have its seventh meeting in October and will later report to Ministers.

ISSUE: The Children and Young People’s Commissioner has expressed concern that introducing a Bill in Year 5 does not leave enough time for proper parliamentary scrutiny. We understand that this concern is shared by some other children’s rights stakeholders. The Commissioner is keen to see introduction this year as 2019 is the 30th anniversary of the adoption of the UNCRC.

QUOTE: *“The legislation must make rights justiciable and it must fully and directly incorporate the UNCRC. It should be produced urgently to allow for proper scrutiny by parliament before the session ends in early 2021. Further delay will set the bill up to fail as parliamentary time runs out. We’re calling for a bill to be laid before the Scottish Parliament on the 30th anniversary of the UNCRC.”* (Commissioner, Children in Scotland Magazine, October to November 2019 Issue)

Top Lines

- We are absolutely committed to the incorporation of the UN Convention on the Rights of the Child.
- We will introduce a bill to incorporate the UNCRC as the key Bill of year 5 of the legislative programme.
- It will be introduced with more than enough time to pass before the election.
- Our aim is to provide a world leading framework of children’s rights in Scotland.
- We look forward to working with Members across Parliament to pass this important legislation.

We owe it to children and young people to get this right

- This Bill seeks to ensure that there is proactive culture of everyday accountability for children’s rights across all of public service in Scotland. This will mean children, young people and their families will experience public bodies consistently acting in the best interests of all children in Scotland.
- It is right that we take the time to fully consider the complexities involved in making these international rights effective in our legal system in Scotland.
- We continue to work closely with stakeholders on the best way to do this.
- **QUOTE:** *“Scotland has made particularly positive progress around embedding the spirit of the UNCRC in legislation and practice in the country, further incorporation of the UNCRC and interpretation of its articles will be building on positive foundations.”* Scottish Refugee Council, UNCRC Incorporation Bill Consultation Response.
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- We received over 160 consultation responses (128 organisations and 33 individuals).
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- The group’s findings, together with the results of the consultation, will inform the development of our policy for the Bill.
- The group will have its eighth meeting in November and will later report to Ministers.

We continue to deliver a range of other work to make children's rights real in Scotland

- We are working to implement the Age of Criminal Responsibility (Scotland) Act 2019. From the end of November this year, children under 12 will no longer be treated as an offender in the children's hearings system.
- We introduced the Children (Scotland) Bill into the Scottish Parliament on 2 September, which aims to ensure that the voice of the child is heard in contact and residence cases.
- We have invested £1.35 million in the National Trauma Training Programme, over 3,000 people across our public services, including police officers, nurses and social workers, have been trained to date, with training for a further 2,000 workers planned.
- In spring 2020, we will introduce a national children's hearings advocacy scheme, backed by £1.5 million, to further reinforce children's rights and make sure the interests of each child is at the very heart of their hearing.
- In March 2018, we published 'Every Child Every Chance', the first Tackling Child Poverty Delivery Plan due under the Child Poverty (Scotland) Act and our first annual progress report in June 2019. The Children's Parliament played a key part in ensuring the voices of children were heard.
- In line with duties in the 2014 Act, in December 2018 we laid before Parliament a report on progress in taking forward the UNCRC since June 2015.
- We will also provide an annual update on the progress being made in taking forward the actions in the Action Plan before the end of 2019.

Minister for Children and Young People and Minister for Older People and Equalities, meeting with Kate Gilmore, UN Deputy Commissioner for Human Rights

Date and Time of Engagement	06 November 2019 15:45 – 16:45
Where	T4.06
Who	Kate Gilmore, UN Deputy Commissioner for Human Rights & Ms McKelvie, Minister for Older People and Equalities
Key Purpose / Message	<p>This meeting will be primarily based around UNCRC incorporation into Scots Law.</p> <p>The Scottish Government is fully committed to incorporating the UNCRC and will introduce a Bill as the key Bill of year 5 of the legislative programme. Incorporation of the UNCRC will ensure that children’s rights are woven into policy, law and decision-making.</p>
Stakeholder Support	<ul style="list-style-type: none"> • QUOTE: “Scotland has made particularly positive progress around embedding the spirit of the UNCRC in legislation and practice in the country, further incorporation of the UNCRC and interpretation of its articles will be building on positive foundations.” Scottish Refugee Council, UNCRC Incorporation Bill Consultation Response. • QUOTE: “Children 1st welcomes the commitment made by the Scottish Government to incorporate the UN Convention of the Rights of the Child (UNCRC) into Scots law in the 2017-2021 session of the Scottish Parliament. We congratulated the First Minister for the bold and decisive step she took in pledging that “we must make sure we are meeting the UN’s gold standard on children’s rights”. Children 1st, UNCRC Incorporation Bill Consultation Response.
Official Support	–[redacted s.38(1)(b)]

Briefing Contents

Annex A	<i>UNCRC Incorporation Bill</i>
[redacted s.29(1)(a)]	[redacted s.29(1)(a)]

UNCRC Incorporation Bill

Key Issue

- The Children and Young People’s Commissioner has expressed concern that introducing a Bill in Year 5 does not leave enough time for proper parliamentary scrutiny. We understand that this concern is shared by some other children’s rights stakeholders. The Commissioner is keen to see introduction this year as 2019 is the 30th anniversary of the adoption of the UNCRC.
- **QUOTE:** *“The legislation must make rights justiciable and it must fully and directly incorporate the UNCRC. It should be produced urgently to allow for proper scrutiny by parliament before the session ends in early 2021. Further delay will set the bill up to fail as parliamentary time runs out. We’re calling for a bill to be laid before the Scottish Parliament on the 30th anniversary of the UNCRC.”* (Commissioner, Children in Scotland Magazine, October to November 2019 Issue)

Top Lines

- We are absolutely committed to the incorporation of the UN Convention on the Rights of the Child.
- We will introduce a bill to incorporate the UNCRC as the key Bill of year 5 of the legislative programme.
- It will be introduced with more than enough time to pass before the election.
- To deliver this commitment, we have consulted widely, including with children, young people and families, public authorities and the third sector to develop the model of incorporation that will deliver the best outcomes for children, young people and families in Scotland.
- A total of 161 consultation responses were received (128 Organisations and 33 individuals).
- The independent analysis of the consultation responses will be published in due course.
- Our intention is either to directly incorporate UNCRC rights as closely as is achievable in the Scottish context, or to transpose those rights by enacting a suite of Scottish children’s rights
- Our aim is to provide a world leading framework of children’s rights in Scotland.

Lines to take

- This year marks the 30th anniversary of the UN Convention on the Rights of the Child (UNCRC).
- The Convention sets out civil, political, economic, social, health and cultural rights of children and young people and is recognised internationally as the “gold standard” on children’s rights.
- The First Minister announced in April this year that the Scottish Government will incorporate the UNCRC into domestic law in Scotland in this Parliamentary session.
- A public consultation seeking views on the model of incorporation that will deliver the best outcomes for children, young people and families in Scotland opened on 22 May 2019.
- The consultation document made clear Ministers’ intention to incorporate the UNCRC either directly, or through a Scottish suite of children’s rights.
- Full and direct incorporation would mean lifting the wording from the whole international convention and putting it into domestic law
- A Scottish suite of children’s rights would mean that each Article of the UNCRC would need to be considered in light of the Scottish context and drafted both to fit that context and provide at least the level of protection that the UNCRC does.
- The consultation also sought views on the best mechanism to provide redress where children and young people’s rights are not upheld.
- A proposed model for incorporation received from the UNCRC Incorporation External Advisory Group, (made up of representatives from Together (Scottish Alliance for Children’s Rights), UNICEF and academics) is included as one of the models in the public consultation.

- The consultation was due to close on 14 August but was extended by two weeks until 28 August to enable greater participation by children and young people.
- It is right that we take the time to fully consider the complexities involved in making these international rights effective in our legal system in Scotland.
- We continue to work closely with stakeholders on the best way to do this.
- To complement the public consultation a range of bilateral official and Ministerial meetings were held over the summer, engaging over 180 children and young people across 7 Scottish Government-funded events and meeting 47 organisations representing a number of different sectors.
- We have also convened a short-life UNCRC Working Group that includes 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 Working Group's findings, together with the responses from the public consultation and the views gathered during the bilateral meetings will inform advice to Ministers on a draft Bill.
- The group will have its eighth meeting in November and will later report to Ministers.
- In the meantime, we will continue to consider ways in which rights under the UNCRC can be given better or further effect across individual policy areas.
- We will also consider where it may be possible for Scots law to go further than the Convention requires, where that is demonstrably beneficial for children and young people

Briefing for DFM and MCYP – Universal Children’s Day and 30th anniversary of UNCRRC Statement to Parliament Nov 2019

MINISTERIAL ENGAGEMENT BRIEFING: DFM

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

<p><i>Engagement Title</i></p> <p><i>Timing</i></p> <p><i>Organisation/Venue and full address including postcode</i></p> <p><i>Date and Time of Engagement</i></p> <p><i>Background/Purpose</i></p> <p><i>Relevance to Core Script</i></p> <p><i>Summary Page (key issues, lines to take if pressed and issues to avoid)</i></p> <p><i>Official Support</i></p>	<p>20th Nov – Universal Children’s Day and 30th anniversary of UNCRRC Statement to Parliament 1.30 pm</p> <p>Chamber, Scottish Parliament</p> <p>Date(s): 20 Nov Time(s): 1:30 pm</p> <p><input type="checkbox"/> MCS Diary Request Letter date:</p> <p><input type="checkbox"/> MCS Letter reference:</p> <p>Purpose/Invitation History: to mark the 30th anniversary of the UNCRRC</p> <p>The First Minister’s 2019/2020 PfG committed to incorporating the UNCRRC into domestic law within this parliamentary session. This Bill will be introduced in year 5.</p> <p>Annex A: Q&A Annex B: UNCRRC, Rights & Participation [redacted s.38(1)(b)]</p> <p>Official</p> <p>Names: [redacted s.38(1)(b)]</p>
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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. How will the Government address concerns that the UNCRC rights as drafted lack clarity and do not impose clearly defined rights and duties?

A: Children's rights are not new to Scotland. Since its ratification in 1991, the UK has been under an obligation to comply with the UNCRC, but its provisions have not been directly enforceable in our courts. The obligations in the UNCRC have been implemented through more detailed legislative provisions. That will continue, generally, to be the position, but the incorporation of the UNCRC will provide an overarching legal framework. In addition to legislation giving effect to the UNCRC, the UNCRC has provided the foundation for Getting it Right For Every Child, our national approach to improving outcomes and supporting the wellbeing of our children and young people. Public authorities will also be familiar with UNCRC rights through their duties under the Children and Young People (Scotland) Act 2014. We will continue to give consideration as to how to make the rights contained in the UNCRC accessible to all.

Q. Will the Bill include a strong proactive element to ensure that children's rights are considered at the front end of law and policy making and delivery?

A: This Bill will aim to ensure that there is 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.

Q. The UNCRC does not include protection of rights relating to sexual orientation. How will incorporation ensure the inclusion of LGBT+ issues?

Article 2 of the Convention ensures that all children have the rights of the Convention and protects them against discrimination when their UNCRC rights are realised.

I am proud that Scotland is considered to be one of the most progressive countries in Europe regarding LGBT+ equality and the Scottish Government remains committed to building on our strong record in this area. We will continue to work with stakeholders including those from the LGBT+ community to ensure that the Bill creates a proactive culture of everyday accountability for the rights of all children across all of public service in Scotland.

Q: How will incorporating the UNCRC support parents and families more broadly?

A: The Bill will aim to ensure that there is 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.

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 ensure that their rights are recognised.

Q: Why are we incorporating the UNCRC when we are already signed up to the Treaty through the UK Government?

A: International treaties are not automatically justiciable in 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 given effect by legislation. This Bill will mean that the Convention is directly built into Scots law. Every devolved body, every health board, every council – and the Scottish Government itself – will be legally obliged to respect children's rights as set out in the UNCRC. And, if they don't, children and young people will be able to use the courts to enforce their rights or to ensure that they are recognised.

Q: How is incorporation different to what was achieved through the Children and Young People (Scotland) Act 2014?

A: The Children and Young People (Scotland) Act 2014 requires Ministers to keep under consideration, whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements and if they consider it appropriate to do so, to take any of the steps identified.

Ministers are also required to provide an update on progress every three years.

Ministers are also required to promote public awareness and understanding of children's rights.

Public authorities are required to report every 3 years on what steps they have taken to secure better or further effect within their areas of responsibility of the UNCRC requirements.

This Bill will mean that the Convention is directly built into Scots law. 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 or to ensure that those rights are recognised.

The Bill will aim to ensure that there is 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.

Q: Stakeholders have repeatedly called for a Bill to incorporate the UNCRC to be introduced now in 2019, the 30th anniversary of the UNCRC- why aren't you doing this now?

A: We are absolutely committed to the incorporation of the UN Convention on the Rights of the Child. We will introduce a bill to incorporate the UNCRC as the key Bill of year 5 of the legislative programme. It will be introduced with more than enough time to pass before the election. We owe it to children and young people to get this right and we will take the time to fully consider the complexities involved in making these international rights effective in our legal system in Scotland. We will continue to work closely with stakeholders on the best way to do this.

Q: How long before the Bill commences? Will the Bill include a sunrise clause? How much time will public authorities get to prepare?

A: It is clear through the consultation process that stakeholders want to see progress quickly whilst recognising that both rights holders and duty bearers will need time to prepare for implementation. I share this ambition and we and we will give this issue close consideration as we continue work to advance the Bill.

Q. Will the Bill include a Children’s Rights Scheme?

A. It is clear through the consultation process that stakeholders broadly favour inclusion of a Children’s Rights Scheme to ensure greater accountability for children’s rights across public services in Scotland. I share this ambition and we will give this issue close consideration as we continue work to advance the Bill.

Q. Will UNCRC rights take precedence over provisions in secondary legislation as is the case under the Human Rights Act for ECHR rights. Will the Bill include a “strike down” provision?

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 is clear through the consultation process that stakeholders wish to maintain consistency with the approach to wider human rights set out in the Human Rights Act. I share this ambition and we will give this issue close consideration as we continue work to advance the Bill.

Q. Will the Bill include a requirement for future legislation introduced in the Scottish Parliament to be accompanied by a statement of compatibility with children’s rights?

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 is clear through the consultation process that stakeholders wish to ensure of consideration of children’s rights is included from the outset of the legislative process. I share this ambition and we will give this issue close consideration as we continue work to advance the Bill.

Q. Will the Bill include a duty to comply? Will the Bill include both a duty to comply and a proactive duty, such as a duty to give due regard?

A. There is wide support through the consultation for both a duty to comply and a duty to have due regard. I am supportive of the ambition to ensure proactive and reactive realisation of children’s rights and we will continue to this this suggestion careful consideration.

The Bill will aim to ensure that there is 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.

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 or to ensure that those rights are recognised.

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: Within the UNCRC Bill do you plan to introduce a separate child's right to withdraw from religious observance, as requested by the Humanist Society?

A. Religious observance complements other aspects of a pupil's learning. It can be an important contribution to pupils' development and it can play a key role in promoting the ethos of a school by bringing pupils together and creating a sense of community. It is right that parents have a right to withdraw their children from Religious Observance. In considering how we incorporate the UNCRC, we are working to strengthen the voice of young people in relation to a wide range of areas, and this includes religious observance.

Q. What legal status will be given to the General Comments by the UN Committee on the Rights of the Child?

A. The value of the General Comments in providing interpretive guidance and as an aid to interpret and ensure effective implementation of the UNCRC has been recognised widely through the consultation. We will give this careful consideration as we work to advance the Bill.

Q: Who did the Scottish Government consult with in preparation for this new legislation.

A: We held a 14 week public consultation over the summer and received 162 responses. To complement the public consultation, we held a range of bilateral official and Ministerial meetings, engaging with over 180 children and young people across 7 events and meeting 47 organisations representing a number of different sectors.

Q:How are you making the consultation responses accessible to children, young people and others?

A: Today, I have published an accessible version of the analysis for the consultation responses.

Q: What else have the Scottish Government done to gather the views of experts in the field, children, young people, families and public authorities on the best way to incorporate the UNCRC.

A: 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. I am very grateful for the work they have done since June. Their work has assisted policy considerations to date and will continue to do so. I look forward to receiving their report in due course.

Q: What will the working group achieve? Why has the DFM not waited for his Working Group to report before making his decision about this approach?

A: The Working Group are helping my officials consider how we can best deliver on our ambitions to incorporate the UNCRC and deliver for children and young people and their parents. I am very grateful for the work they have done since June. Their work has assisted policy considerations to date and will continue to do so. I look forward to receiving their report in due course.

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.

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- **QUOTE:** “*Children 1st welcomes the commitment made by the Scottish Government to incorporate the UN Convention of the Rights of the Child (UNCRC) into Scots law in the 2017-2021 session of the Scottish Parliament. We congratulated the First Minister for the bold and decisive step she took in pledging that “we must make sure we are meeting the UN’s gold standard on children’s rights”.* Children 1st, UNCRC Incorporation Bill Consultation Response.

We will continue to work closely with key stakeholders to make sure the Bill delivers for children and young people

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- Their work has assisted policy considerations to date and will continue to do so.

We continue to deliver a range of other work to make children's rights real in Scotland

- From the end of November this year, children under 12 will no longer be treated as an offender in the children's hearings system.
- We introduced the Children (Scotland) Bill into the Scottish Parliament on 2 September, which aims to ensure that the voice of the child is heard in contact and residence cases.
- We have invested £1.35 million in the National Trauma Training Programme, over 3,000 people across our public services, including police officers, nurses and social workers, have been trained to date, with training for a further 2,000 workers planned.
- In spring 2020, we will introduce a national children's hearings advocacy scheme, backed by £1.5 million, to further reinforce children's rights and make sure the interests of each child is at the very heart of their hearing.
- In March 2018, we published 'Every Child Every Chance', the first Tackling Child Poverty Delivery Plan due under the Child Poverty (Scotland) Act and our first annual progress report in June 2019.
- On 20 November we published 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". The Plan sets out our aims for taking forward children's rights until 2021.

Briefing for First Minister for reception to mark 30th anniversary of the UNCRC being passed by United Nations General Assembly – Nov 2019

BRIEFING FOR THE FIRST MINISTER

RECEPTION MARKING 30TH ANNIVERSARY OF UNCRC

20 NOVEMBER 2019

Key message	Reception to mark the 30 th anniversary of the UNCRC being passed by the United Nations General Assembly. DFM made a statement to parliament today outlining how the SG will incorporate the UNCRC into domestic law within this parliamentary session.
What	Speech and mingle with guests (no Q&A)
Why	The First Minister is attending to mark this important occasion and reiterate the position of the SG
Who	Nick Roseveare MBE, Interim Executive Director, UNICEF UK Andrew O'Hagan, UNICEF UK Ambassador Lucinda Rivers, UNICEF Scotland Bruce Adamson, Children and Young People's Commissioner (S)
Where	Burns Room
When	6-6:30 pm (reception closes at 7, DFM will stay until 7)
Likely themes	UNCRC incorporation Upholding children's rights in Scotland
Media	This is being finalised by FM Comms
Supporting official	[redacted s.38(1)(b)]
Attached documents	Annex A: Event briefing [redacted s.29(1)(b)] Annex E: UNCRC, Rights & Participation [redacted s.29(1)(b)]

ANNEX A

EVENT BRIEFING

Purpose of meeting:

- This reception is an opportunity for the First Minister and other guests to mark and celebrate the occasion of the 30th anniversary of the UNCRC. It is an information reception which will be opened by UNICEF and the First Minister who will each give a speech, following by an opportunity to mingle with guests from across the children's rights sector, including children and young people.

Key Issues:

- The Children's Commissioner is critical of Scottish Government not introducing the UNCRC Bill in 2019 and was part of an External Advisory Group who drafted a Bill to incorporate the UNCRC (The "Together Bill").

Lines to Take:

- We are absolutely committed to the incorporation of the UN Convention on the Rights of the Child.
- We will introduce a Bill to incorporate the UNCRC as the key Bill of year 5 of the legislative programme. DFM's statement today makes clear that:
 - Ministers will seek as far as possible to incorporate the UNCRC fully and directly.
 - It will not be possible to make provision in reserved areas, and the 'caveat' approach adopted in the Together Bill is not within powers.
 - The Bill will include provision so that affected articles can be incorporated if the powers of the Scottish Parliament are changed in the future.
 - It will be introduced with more than enough time to pass before the election.
 - Our aim is to provide a world leading framework of children's rights in Scotland.
- We look forward to working with Members across Parliament to pass this important legislation.
- Pleased today to publish the independent analysis of the UNCRC consultation process.
- Pleased to also publish today a progress update on action taken since "Human Rights for Children: An Action Plan: 2018-2021"

Attendees

- Deputy First Minister, John Swinney MSP
Confirmed
- Interim Executive Director of Unicef UK, Nick Roseveare MBE
Confirmed
- Leader of Scottish Conservatives, Jackson Carlaw MSP
TBC
- Children's Commissioner for Scotland, Bruce Adamson
Confirmed
- Leader of Scottish Labour, Richard Leonard MSP
TBC
- Deputy Presiding Officer, Linda Fabiani MSP
TBC
- Social Entrepreneur, Activist, Unicef in Scotland Board, David Duke
TBC
- Liam McArthur MSP – representing the Scottish Liberal Democrats
Confirmed
- Head of Scotland, Unicef UK, Lucinda Rivers
Confirmed
- Unicef UK Ambassador, Andrew O'Hagan
Confirmed
- Co-Leader of Scottish Green Party, Patrick Harvie MSP
TBC
- Deputy Presiding Officer, Christine Grahame MSP
TBC
- Michael Chalmers, Director, Children and Families Directorate
Confirmed

[redacted s.38(1)(b)]

There will be children and young people present too but we cannot provide further information because of GDPR and consent issues. The children and young people will be wearing name badges and will introduce themselves to the guests at the table.

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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.

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.
- We will, therefore, not take this path.
- 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.
- **QUOTE:** “*Children 1st welcomes the commitment made by the Scottish Government to incorporate the UN Convention of the Rights of the Child (UNCRC) into Scots law in the 2017-2021 session of the Scottish Parliament. We congratulated the First Minister for the bold and decisive step she took in pledging that “we must make sure we are meeting the UN’s gold standard on children’s rights”.* Children 1st, UNCRC Incorporation Bill Consultation Response.

We will continue to work closely with key stakeholders to make sure the Bill delivers for 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.

We continue to deliver a range of other work to make children’s rights real in Scotland

- From the end of November this year, children under 12 will no longer be treated as an offender in the children’s hearings system.
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- On 20 November we published 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”. The Plan sets out our aims for taking forward children’s rights until 2021.

[redacted s.38(1)(b)]

Briefing for Mc McKelvie for Human Rights debate on 10 Dec 2019

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. In response, concerns were raised over the issues of cost of implementation and the potential incompatibility of previous legislation.

Top Lines

- We are absolutely committed to the incorporation of the UN Convention on the Rights of the Child.
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- 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.
- Incorporation will ensure that children's rights are afforded the highest protection and respect within our constitutional settlement. If that requires amendment of existing legislation that is precisely what parliament will have to do.
- The financial implications of compatibility for public authorities will be considered as part of the financial memorandum when the Bill is laid before parliament

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.

- 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.

Incorporation of the UNCRC into Scots law will ensure that children's rights can be enforced.

- As part of their compliance with the Children and Young People (Scotland) Act 2014, Scottish Ministers carry out a Children's Rights and Wellbeing Impact Assessment (CRWIA) when they develop new legislation.
- Consideration is being given to whether the Bill should include a regime to enable rulings to be obtained from the courts as to whether current legislation is incompatible with the children's rights included in the Bill.
- We are also investigating whether it would be possible to provide for a remedial order procedure, so that we could remedy the incompatibility, as under the Convention Rights Compliance (Scotland) Act 2001.

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 - Incorporate the UNCRC into scots law;
 - Develop through co-production, an ambitious programme to raise awareness and understanding of children’s rights;
 - Develop a strategic approach to children and young people’s participation; and
 - Evaluate the Child Rights and Wellbeing Impact Assessment (CRWIA).

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- We will, therefore, not take this path.
- 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.

- **QUOTE:** “*Children 1st welcomes the commitment made by the Scottish Government to incorporate the UN Convention of the Rights of the Child (UNCRC) into Scots law in the 2017-2021 session of the Scottish Parliament. We congratulated the First Minister for the bold and decisive step she took in pledging that “we must make sure we are meeting the UN’s gold standard on children’s rights”.* Children 1st, UNCRC Incorporation Bill Consultation Response.

We will continue to work closely with key stakeholders to make sure the Bill delivers for 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.

We continue to deliver a range of other work to make children’s rights real in Scotland

- From the end of November this year, children under 12 will no longer be treated as an offender in the children’s hearings system.
- We introduced the Children (Scotland) Bill into the Scottish Parliament on 2 September, which aims to ensure that the voice of the child is heard in contact and residence cases.
- We have invested £1.35 million in the National Trauma Training Programme, over 3,000 people across our public services, including police officers, nurses and social workers, have been trained to date, with training for a further 2,000 workers planned.
- In spring 2020, we will introduce a national children’s hearings advocacy scheme, backed by £1.5 million, to further reinforce children’s rights and make sure the interests of each child is at the very heart of their hearing.
- In March 2018, we published ‘Every Child Every Chance’, the first Tackling Child Poverty Delivery Plan due under the Child Poverty (Scotland) Act and our first annual progress report in June 2019.
- On 20 November we published 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”. The Plan, which sets out our aims for taking forward children’s rights until 2021, includes the following actions.
 - Incorporate the UNCRC into scots law;
 - Develop through co-production, an ambitious programme to raise awareness and understanding of children’s rights;
 - Develop a strategic approach to children and young people’s participation; and
 - Evaluate the Child Rights and Wellbeing Impact Assessment (CRWIA).

Meeting between Ms Todd and Bruce Adamson to discuss incorporation and CRIA – Feb 2020

ENGAGEMENT TITLE: Meeting with Bruce Adamson, Children's Commissioner to discuss incorporation and CRIA

Date and Time of Engagement	Thursday 6 February 2020 16:30 – 17:20
Where	T4.06, Parliament
Who	Bruce Adamson, Children's Commissioner [redacted s.38(1)(b)]
Key Purpose / Message	The purpose of this meeting is to discuss the UNCRC Incorporation Bill, and Children's Rights Impact Assessments ahead of the next European Network of Ombudspersons for Children (ENOC) conference in September 2020.
Top Facts / Figures	<ul style="list-style-type: none"> • The Deputy First Minister made a statement to Parliament on 20 November 2019 announcing we will introduce a Bill this year that will take a maximalist approach to incorporation of the UNCRC • It will seek to incorporate in full and directly – using the language of the Convention – in every case possible • The Deputy First Minister sent a letter of intent to the Secretary of State for Education on 4th February seeking a Section 30 Order under the Scotland Act 1998 to enable the Scottish Parliament to incorporate in full those parts of the UNCRC which are currently reserved into domestic law
Sensitivities	<ul style="list-style-type: none"> • The Commissioner may ask to see a draft of the Bill as soon as possible, ahead of introduction.
Official Support	[redacted s.38(1)(b)]

Briefing Contents

Annex A	<i>Summary Page (key issues, lines to take if pressed and issues to avoid)</i>
Annex B	<i>UNCRC Bill</i>
Annex C	[redacted s.29(1)(b)]
Annex D	[redacted s.30(b)(i)]
Annex E	[redacted s.38(1)(b)]

Agenda:

No formal agenda has been set for this meeting, however the Commissioner's office have confirmed that discussion will focus on the UNCRC incorporation Bill and Child Rights and Wellbeing Impact Assessments (CRWIA).

Purpose of the meeting:

This meeting follows on from a letter by the Commissioner dated 8 November 2019, in which he proposed to hold a session(s) at the European Network of Ombudspersons for Children (ENOC) annual conference in September on the UNCRC Incorporation Bill, and/or Children's Rights Impact Assessments. To support the delivery of such session(s), he would welcome further discussion about what role the Scottish Government might play.

UNCRC incorporation:

- The Deputy First Minister made a statement to Parliament on 20 November 2019 announcing that the Bill will take a maximalist approach and will seek to incorporate in full and directly – using the language of the Convention – in every case possible.
- On 20 November we also published an analysis of the 162 responses to our public consultation on the best model of incorporation. We also published an annual update on taking forward our "Progressing the Human Rights of Children in Scotland: An Action Plan 2018-2021".
- Officials from the UNCRC Incorporation Bill Team meet fortnightly with Maria Galli, Head of Legal in CYPSCS, and Juliet Harris, Director of Together to promote an open dialogue on the bill development process.

Child Rights and Wellbeing Impact Assessments (CRWIA):

- We encourage the use of the CRWIA materials by Public Authorities and children and young people's organisations. The consideration of wellbeing is an important part of the GIRFEC approach and aligns with the National Performance Framework outcomes. Public authorities are familiar with the current CRWIA and the removal of a wellbeing component may raise concerns that rights and wellbeing are not mutually reinforcing.
- We have recently reviewed the CRWIA process to remove elements of duplication with Lisa Payne, Child Policy and Research Consultant.
- We plan to evaluate the CRWIA process again next year and officials will work with the Commissioner's office regarding his concerns going forward.

Top Lines

- We are absolutely committed to the incorporation of the UN Convention on the Rights of the Child (UNCRC).
- DFM made a statement to Parliament on 20 November 2019 marking the 30th anniversary of the adoption of the UNCRC by the UN General Assembly.
- The Bill which we will introduce this 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.
- Our expectation is that a vast majority of the Convention’s provisions can be incorporated by Parliament. 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.
- Incorporation will ensure that children’s rights are afforded the highest protection and respect within our constitutional settlement. This approach will mean that the Convention 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.
- 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.
- The financial implications of compatibility for public authorities will be considered as part of the financial memorandum when the Bill is laid before parliament.
- Scottish Government also published on 20 November an annual update on taking forward our “Progressing the Human Rights of Children in Scotland: An Action Plan 2018-2021”. 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.

[redacted s.38(1)(b)]

Meeting between Ms Todd and the Children's Commissioner
Thursday 6th February 2020 - 16:30 – 17:20
T4.06 Parliament

In attendance:

Minister for Children and Young People, Maree Todd MSP
[redacted]

Bruce Adamson, Children's Commissioner
[redacted s.38(1)(b)]

UNCRC Bill

The Commissioner raised concerns around timings for Bill, getting legislative agenda through within this term, timings for members bills will be tight. Minister assured she has no concern over timings of UNCRC bill.

Commissioner in agreement to keep UNCRC Bill simple - enabling lots of changes to come after it rather than during. Minister agreed that promoting that simplicity across parties would be good

Commissioner not sure about how useful some of the international support will help. International community excited to see how a devolved nation incorporates the UNCRC.

[redacted s.38(1)(b)] agreed that keeping colleagues across 4 nations informed would be helpful

Review of CRC list of issues due to take place in November 2020

[redacted s.38(1)(b)]

[redacted s.38(1)(b)]

National Taskforce for Human Rights Leadership meeting briefing – Feb 2020

ENGAGEMENT TITLE: National Taskforce for Human Rights Leadership Meeting

Date and Time of Engagement	Wednesday 26 February 2020 9:45 – 12:30 Ms Todd is scheduled to speak from 10:20 – 10:50
Where	COSLA Conference Centre, 19 Haymarket Yards, Edinburgh, EH12 5BH
Who	Full list of taskforce members in Annex E. They will be sat round a boardroom style table and the meetings are meant to feel relatively informal and relaxed.
Key Purpose / Message	This will be the third meeting of the National Taskforce for Human Rights Leadership. The Taskforce have a keen interest in the UNCRC Bill and have been asking for updates on its progress. This will be a good opportunity to make links with the Taskforce and establish early support for the UNCRC Bill.
Top Facts / Figures	<ul style="list-style-type: none"> • The Deputy First Minister made a statement to Parliament on 20 November 2019 announcing we will introduce a Bill this year that will take a maximalist approach to incorporation of the UNCRC • It will seek to incorporate in full and directly – using the language of the Convention – in every case possible
Sensitivities	Taskforce members may press you on exactly what the UNCRC Bill will include and when it will be introduced to Parliament.
Official Support	[redacted s.38(1)(b)]

Briefing Contents

Annex A	Event programme
Annex B	<i>Speaking Note</i>
Annex C	<i>Potential follow-up questions from the Taskforce – Q&A</i>
Annex D	<i>UNCRC Bill Top lines</i>
Annex E	<i>UNCRC Bill Q&A</i>
Annex F	[redacted s.38(1)(b)]
Annex G	[redacted s.29(1)(b)]

Event Programme

Agenda

Time	Activity	Lead
09:45 – 10:00	Arrival and Tea/ Coffee	
10:00 – 10:05	Welcome and Introductions	Cabinet Secretary
10:05 – 10:10	Papers for agreement: Minutes (from 20 November Taskforce meeting) and updated action log	Cabinet Secretary
10:10 – 10:20	Reflections on 20 February stakeholder event	Professor Miller
10:20 – 10:50	Update on progress with the UNCRC Bill	Minister for Children and Young People
10:50 – 11:00	Brief update on work programme / roundtables / Academic Advisory Panel	Professor Miller
11:00 – 11:30	Bill drafting process	[redacted s.38(1)(b)]
11:30 – 12:00	Taskforce work product	Cabinet Secretary/ Professor Miller
12:00 – 12:20	Communications and engagement strategy	Cabinet Secretary
12:20 – 12:30	AOB	

Speech

Good morning and thank you for inviting me to the third meeting of the National Taskforce for Human Rights Leadership. That we are joined together in a joint endeavor to progress human rights in Scotland and deliver meaningful and lasting improvement in the lives of all people in Scotland is hugely exciting.

Your work could not be more important.

It deeply concerns me that children and young people are expressing concern and anxiety about the erosion of their rights and the impact of Brexit on their future opportunities. Sadly, we know too well that the erosion of rights disproportionately affects the most vulnerable in society, including children and young people. That is something we must not allow to happen in Scotland.

Your work to develop a human rights framework presents the opportunity to ensure children and young people, indeed all of the citizens of Scotland, live in communities which put their rights and needs at the center.

The Bill which we will introduce later this year, to incorporate the United Nations Convention on the Rights of the Child, is a significant step on our journey towards building a rights based society.

The Bill provides a pathfinder for your work to establish a broader human rights framework and as such I'm keen to share the experience so far in developing this piece of legislation and to ensure regular engagement by the Taskforce with this work.

The lessons we are learning now, through our considerations of how to give effect to the rights and requirements contained in the UNCRC within our domestic legal system will be of significant interest to your work, as will the consideration and scrutiny of the Bill during its parliamentary stages.

Whilst there are other nations who have taken, or who are taking, steps to incorporate the UNCRC our devolution settlement presents issues which are novel and complex. These include issues such as dealing with reserved matters, the interaction between the Scotland Act, Human Rights Act and the Bill and how to afford protection to rights in a way that, as far as possible, can endure changes to, or indeed sadly the erosion of, protections at a UK level.

As the Deputy First Minister announced to Parliament in November last year, the UNCRC Bill, will take a maximalist approach. It will seek to incorporate in full and directly – using the language of the Convention, in every case possible – within the powers of the Scottish Parliament.

The Bill will require all public bodies acting in devolved areas to ensure that what they do is compatible with the UNCRC. Every devolved body, health board, council – and the Scottish Government itself - will be legally obliged to respect children’s human rights. And if they don’t, the Bill will ensure that rights holders, including children and young people and parents, will have access to effective remedies through the courts.

This represents a huge and positive step forward for the protection of children’s rights in Scotland.

Sadly, it will not be possible to incorporate those parts of the Convention which relate to reserved matters. We continue to give this detailed consideration and our expectation is that a vast majority of the Convention’s provisions can be incorporated.

Our commitment to full incorporation is, however, unwavering and the Bill will, therefore, make provision to allow incorporation of the articles of the Convention that are currently beyond the Parliament’s powers into Scotland’s domestic law if and when the powers of the Scottish Parliament change in the future.

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 acting consistently to uphold the rights of all children in Scotland. This will be supported in the Bill through provision in relation to general measures of implementation, including children’s rights schemes.

The steps we are taking to incorporate the UNCRC, and your work to develop a wider human rights framework for all in Scotland, are progressing against a backdrop of the frustration and erosion of human rights by the UK Government. We are still to see when and how the UK Government intend to deliver on their manifesto commitment to update the Human Rights Act. Our intention is that the Bill to incorporate the UNCRC can, as far as possible, stand alone.

That is, that the provisions in the Bill should work alongside the framework of the Scotland Act and Human Rights Act now and remain enforceable into the future.

Incorporation of UNCRC, whilst hugely significant, is not the only step needed to fully realise the rights of children and young people. It is incumbent upon us all to continue to engage with them about the issues that affect their lives and the enjoyment – or barriers to the enjoyment - of their rights.

Through the consultation for the Bill we heard clearly that it is important to children and young people that at a minimum they have the same rights here in Scotland as all children around the world. They were concerned that the development of a Scottish Suite of Rights risked unintended consequences or the

erosion of their rights. That is why our approach through the Bill is to directly incorporate the UNCRC as far as possible within our powers. It was also clear through the responses that there remains a significant interest in how Scotland can go further to support the enjoyment of rights by all children and young people.

Children's human rights are not only contained in the UNCRC; human rights are children's rights. The wider human rights of children and young people will require ongoing, but also distinct consideration in your work as a Taskforce.

It is essential that children and young people continue to be heard in the development of a human rights framework for all.

Through our consultation, it is clear that children and young people have a significant contribution to make to your considerations of what a human rights framework in Scotland should include. Some of the issues raised by children and young people and representative organisations include issues relating to LGBTQ rights, disability rights, and issues relating to the environment and climate change. It is clear that there is a need therefore for the rights of children and young people to continue to be debated as part of the public participatory process in the development of a human rights framework for all.

Further, Children are often at the heart of the intersection between different rights regimes. The vulnerability and particular needs of children and young people means that fully realising their rights rests directly on the protection and realisation of the rights of adults in our society. Failing to ensure adequate protection for all human rights disproportionately impacts on the life chances, outcomes and safety of children and young people. We know that violence against women has lasting and deep impacts on the lifelong outcomes of children and young people.

Ensuring full protection and recognition for the rights of women and girls in particular was seen as directly relevant to the enjoyment of children's rights by some respondents to UNCRC Bill consultation.

Delivering the Bill to incorporate the UNCRC in this parliamentary session is the first chapter in our shared vision to ensure that Scotland is an international leader in building a rights-based society.

It will provide direct and enforceable protection for the rights of children and young people and deliver real improvements in the experiences of children and young people in accessing the services that affect their lives.

The work of the taskforce is the next chapter, and I look forward to continuing to engage with you regarding the role that children and young people have to play in developing a human rights framework for all and in relation to the lessons that can be learned from the development and passage of the UNCRC Bill.

END.

Potential follow-up questions from the Taskforce – Q&A

The Taskforce have a keen interest in the UNCRC Bill and have been asking for updates on its progress. They are particularly keen on any lessons learned from development of the UNCRC Bill that could be applied to the development of the human rights legislation which they have been asked to develop proposals for.

Expected questions include:

Q: When will the UNCRC Bill be introduced to parliament?

A: The UNCRC Bill will be introduced later this year in the final year of this session of the parliament.

Q: What will the Bill include exactly? Are you planning on full incorporation?

A: The Bill 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.

The Bill will aim to ensure that there is 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.

Q: What challenges have you and the Bill team faced that might also apply to our human rights bill?

A: Devolution presents issues which are novel and complex. These include issues such as:

- dealing with reserved matters,
- the interaction between the Scotland Act, Human Rights Act and the Bill
- how to deal with rights in the ECHR and UNCRC which are broadly similar
- how the Bill relates to other legislation
- and how to afford protection to rights in a way that, as far as possible, can endure changes to, or indeed sadly the erosion of, protections at a UK level.

Other significant issues which the Bill Team are considering are the general nature of some of the articles contained in the Convention.

We are continuing to give detailed consideration – working closely with key stakeholders such as the Children's Commissioner and Together - to all of these issues in developing the final approach to be taken by the Bill which will be of relevance to your work in due course. The Bill Team would be happy to provide further input in to the work of the taskforce in the coming months.

Q: Have you come across any particularly tricky constitutional issues as you have been drafting the bill?

A: Whilst the experiences of other nations in incorporating or seeking to incorporate the UNCRC, such as in Iceland and Sweden, provide some helpful guidance, our devolution settlement is particular to Scotland and means that incorporation is not as straight forward as it might be if we had the full powers of an independent nation. Particular issues which we are continuing to consider include

- dealing with reserved matters,
- the interaction between the Scotland Act, Human Rights Act and the Bill
- how to deal with rights in the ECHR and UNCRC which are broadly similar
- how the Bill relates to other legislation
- and how to afford protection to rights in a way that, as far as possible, can endure changes to, or indeed sadly the erosion of, protections at a UK level.

We are continuing to give detailed consideration – working closely with key stakeholders such as the Children’s Commissioner and Together - to all of these issues in developing the final approach to be taken by the Bill which will be of relevance to your work in due course. The Bill Team would be happy to provide further input in to the work of the taskforce in the coming months.

Q: Did anything come out of the consultation that you weren’t expecting?

A: We were delighted with the level of response received to our public consultation. In total we received 162 responses from individuals, public bodies, third sector, legal organisations, academia and others.

The responses highlighted the widespread support for progressing with incorporation of the UNCRC and that this was viewed as representing a step forward in Scottish leadership for children’s rights. There is also wide support for directly and fully incorporating all of the rights set out in the UNCRC to ensure that the rights of children in Scotland are the same as for all children around the world.

It was also clear from the responses that whilst incorporation of UNCRC was viewed as providing significant protection for children’s rights, children and young people expect that the Bill will be a catalyst for further action to ensure that Scotland remains a world leader in children’s rights. This includes ensuring that the rights of children and young people continue to be considered in the context of the wider framework for human rights for all.

Q: What lessons have you learned from drafting this UNCRC incorporation bill that may apply to future incorporation of other treaties?

A: The complexity of incorporating an international rights treaty within our devolved constitutional settlement should not be underestimated. We have found that consultation and engagement with children and young people as well as the full range of duty bearers and stakeholders is key to both awareness raising and expectation management. Throughout the Bill process we have continually engaged with key stakeholders such as the Children’s Commissioner and Together and we continue to do so. Such processes take time, but such an inclusive and consultative approach is essential.

Q: How have you dealt with stakeholder expectations?

A: Throughout the Bill process we have continually engaged with key stakeholders. We held a 14 week public consultation over the summer and received 162 responses. To complement the public consultation, we held a range of bilateral official and Ministerial meetings, engaging with over 180 children and young people across 7 events and meeting 47 organisations representing a number of different sectors.

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. They had their final meeting on Monday and we look forward to receiving their report.

The Bill Team will continue to engage widely in in the coming months to ensure they continue to hear the views of stakeholder and to raise awareness of the impact of the Bill.

Q: What are you expecting when the bill goes through parliament (in terms of likely stage 2 amendments)?

A: It is too early to know precisely what may arise at stage 2, however, we will continue to work with key stakeholders to ensure that the Bill is understood and supported. It is clear that there will be significant interest in how the Bill relates to your work, including the place of children and young people within the wider human rights framework.

ANNEX D

UNCRC Bill top lines

- We are absolutely committed to the incorporation of the UN Convention on the Rights of the Child (UNCRC) into our domestic law.

- The Bill which we will introduce this 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.
- Our expectation is that a vast majority of the Convention’s provisions can be incorporated by Parliament.
- 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.
- Incorporation will ensure that children’s rights are afforded the highest protection and respect within our constitutional settlement.
- 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.
- The Scottish Government also published on 20 November an annual update on taking forward our “Progressing the Human Rights of Children in Scotland: An Action Plan 2018-2021”. 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.

ANNEX E

UNCRC Bill General 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?

A: 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 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: Will you seek a section 30 Order so that you can incorporate the full UNCRC?

A: 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. We wrote to the Secretary of State for Education on the 4th of February notifying him of our intention to seek a section 30 order to enable the Scottish Parliament to incorporate the Convention in full and include in the legislation those areas of the Convention which are currently reserved.

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: How will the Government address concerns that the UNCRC rights as drafted lack clarity and do not impose clearly defined rights and duties?

A: Children’s rights are not new to Scotland. Since its ratification in 1991, the UK has been under an obligation to comply with the UNCRC, but its provisions have not been directly enforceable in our courts. The obligations in the UNCRC have been implemented through more detailed legislative provisions. That will continue, generally, to be the position, but the incorporation of the UNCRC will provide an overarching legal framework. In addition to legislation giving effect to the UNCRC, the UNCRC has provided the foundation for Getting it Right For Every Child, our national approach to improving outcomes and supporting the wellbeing of our children and young people. Public authorities will also be familiar with UNCRC rights through their duties under the Children and Young People (Scotland) Act 2014. We will continue to give consideration as to how to make the rights contained in the UNCRC accessible to all.

Q: Will the Bill include a strong proactive element to ensure that children’s rights are considered at the front end of law and policy making and delivery?

A: This Bill will aim to ensure that there is 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.

Q: The UNCRC does not include protection of rights relating to sexual orientation. How will incorporation ensure the inclusion of LGBT+ issues?

A: Article 2 of the Convention ensures that all children have the rights of the Convention and protects them against discrimination when their UNCRC rights are realised.

I am proud that Scotland is considered to be one of the most progressive countries in Europe regarding LGBT+ equality and the Scottish Government remains committed to building on our strong record in this area. We will continue to work with stakeholders including those from the LGBT+ community to ensure that the Bill creates a proactive culture of everyday accountability for the rights of all children across all of public service in Scotland.

Q: How will incorporating the UNCRC support parents and families more broadly?

A: The Bill will aim to ensure that there is 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.

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 ensure that their rights are recognised.

Q: How long before the Bill commences? Will the Bill include a sunrise clause? How much time will public authorities get to prepare?

A: It is clear through the consultation process that stakeholders want to see progress quickly whilst recognising that both rights holders and duty bearers will need time to prepare for implementation. I share this ambition and we will give this issue close consideration as we continue work to advance the Bill.

Q: Will the Bill include a Children's Rights Scheme?

A: It is clear through the consultation process that stakeholders broadly favour inclusion of a Children's Rights Scheme to ensure greater accountability for children's rights across public services in Scotland. I share this ambition and we will give this issue close consideration as we continue work to advance the Bill.

Q: Will UNCRC rights take precedence over provisions in secondary legislation as is the case under the Human Rights Act for ECHR rights. Will the Bill include a "strike down" provision?

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 is clear through the consultation process that stakeholders wish to maintain consistency with the approach to wider human rights set out in the Human Rights Act. I share this ambition and we will give this issue close consideration as we continue work to advance the Bill.

Q: Will the Bill include a requirement for future legislation introduced in the Scottish Parliament to be accompanied by a statement of compatibility with children's rights?

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 is clear through the consultation process that stakeholders wish to ensure of consideration of children's rights is included from the outset of the legislative process. I share this ambition and we will give this issue close consideration as we continue work to advance the Bill.

Q: Will the Bill include a duty to comply? Will the Bill include both a duty to comply and a proactive duty, such as a duty to give due regard?

A: There is wide support through the consultation for both a duty to comply and a duty to have due regard. I am supportive of the ambition to ensure proactive and reactive realisation of children's rights and we will continue to give this suggestion careful consideration.

The Bill will aim to ensure that there is 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.

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 or to ensure that those rights are recognised.

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: Within the UNCRC Bill do you plan to introduce a separate child’s right to withdraw from religious observance, as requested by the Humanist Society?

A: Religious observance complements other aspects of a pupil's learning. It can be an important contribution to pupils' development and it can play a key role in promoting the ethos of a school by bringing pupils together and creating a sense of community. It is right that parents have a right to withdraw their children from Religious Observance. In considering how we incorporate the UNCRC, we are working to strengthen the voice of young people in relation to a wide range of areas, and this includes religious observance.

Q: What legal status will be given to the General Comments by the UN Committee on the Rights of the Child?

A: The value of the General Comments in providing interpretive guidance and as an aid to interpret and ensure effective implementation of the UNCRC has been recognised widely through the consultation. We will give this careful consideration as we work to advance the Bill.

Q: Who did the Scottish Government consult with in preparation for this new legislation.

A: We held a 14 week public consultation over the summer and received 162 responses. To complement the public consultation, we held a range of bilateral official and Ministerial meetings, engaging with over 180 children and young people across 7 events and meeting 47 organisations representing a number of different sectors.

Q: How are you making the consultation responses accessible to children, young people and others?

A: Today, I have published an accessible version of the analysis for the consultation responses.

Q: What else have the Scottish Government done to gather the views of experts in the field, children, young people, families and public authorities on the best way to incorporate the UNCRC.

A: 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. I am very grateful for the work they have done since June. Their work has assisted policy considerations to date and will continue to do so. I look forward to receiving their report in due course.

Q: What will the working group achieve? Why has the DFM not waited for his Working Group to report before making his decision about this approach?

A: The Working Group are helping my officials consider how we can best deliver on our ambitions to incorporate the UNCRC and deliver for children and young people and their parents. I am very grateful for the work they have done since June. Their work has assisted policy considerations to date and will continue to do so. I look forward to receiving their report in due course.

[redacted s.38(1)(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. In response, concerns were raised over the issues of cost of implementation, potential incompatibility of previous legislation and the Age of Criminal Responsibility (Scotland) Act 2019

Top Lines

- We remain absolutely committed to the incorporation of the UN Convention on the Rights of the Child.
- The commitment set out in the Programme for Government remains unchanged, it is our intention that legislation will be introduced later this year to incorporate the Convention.
- 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.
- The Bill will take a maximalist approach. It will seek to incorporate in full and directly – using the language of the Convention – in every case possible.
- 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.
- Incorporation will ensure that children's rights are afforded the highest protection and respect within our constitutional settlement.
- The financial implications of the Bill for public authorities will be considered as part of the financial memorandum in the normal way

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.

- 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.

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.
- We will, therefore, not take this path.
- 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.
- **QUOTE:** "*Children 1st welcomes the commitment made by the Scottish Government to incorporate the UN Convention of the Rights of the Child (UNCRC) into Scots law in the 2017-2021 session of the Scottish Parliament. We congratulated the First Minister for the bold and decisive step she took in pledging that "we must make sure we are meeting the UN's gold standard on children's rights". Children 1st, UNCRC Incorporation Bill Consultation Response.*

We will continue to work closely with key stakeholders to make sure the Bill delivers for 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.

We continue to deliver a range of other work to make children's rights real in Scotland

- From the end of November this year, children under 12 will no longer be treated as an offender in the children's hearings system.
- We introduced the Children (Scotland) Bill into the Scottish Parliament on 2 September, which aims to ensure that the voice of the child is heard in contact and residence cases.
- We have invested £1.35 million in the National Trauma Training Programme, over 3,000 people across our public services, including police officers, nurses and social workers, have been trained to date, with training for a further 2,000 workers planned.
- In spring 2020, we will introduce a national children's hearings advocacy scheme, backed by £1.5 million, to further reinforce children's rights and make sure the interests of each child is at the very heart of their hearing.
- In March 2018, we published 'Every Child Every Chance', the first Tackling Child Poverty Delivery Plan due under the Child Poverty (Scotland) Act and our first annual progress report in June 2019.
- On 20 November we published 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". The Plan sets out our aims for taking forward children's rights until 2021.

Reviewing the age of criminal responsibility remains high on this Government's agenda.

- This Parliament heard the extensive debate on this matter and was persuaded of the Scottish Government's approach.
- We established an Advisory Group, which met for the first time this summer, to consider a future age of criminal responsibility as well as to review the implementation of the legislation.
- We must take the time to fully assess the implications of going to a higher age, including identifying how to ensure that the rights of victims are upheld and community confidence is maintained.
- We cannot put children, communities and victims at risk by rushing changes.

Dual Duties submission – April 2020

Dual Duties

Introduction

27. You will recall that on 20 November 2018, Together (Scottish Alliance for Children's Rights) presented a draft Bill which would place dual requirements on public authorities; a "duty to comply", making it unlawful for a "relevant authority" to act in a manner which is incompatible with children's rights and a duty to have due regard to children's rights on public authorities.

28. A requirement to demonstrate proactivity in the fulfilment of children's rights is a significant priority for our stakeholders. We understand that one of the reasons stakeholders are interested in a due regard duty is that they consider that a duty to comply on its own would only require reactive remedial action for rights violation and would not require proactive realisation of rights in decision making. The addition of a due regard duty, it is argued, would have the effect of ensuring this proactive approach in law. Accordingly, it has been suggested by some stakeholders that the bill should include both a duty not to act incompatibly and a duty to have due regard

Consideration

29. We are not convinced by the arguments put forward in favour of dual duties [redacted s.36(1)] We do not believe that the addition of a due regard duty would not have the positive effects suggested by stakeholder. We consider that a single and clear duty to comply is the best means of achieving Ministers' ambitions for the Bill.

Stakeholder engagement

30. We have discussed our concerns with a dual duty approach with our key stakeholders including Together, the Commissioner's office and UNICEF and they have confirmed they are supportive of a single duty to comply with UNCRC rights and requirements.

Recommendation

31. We recommend that a dual duty to have due regard should not be included in the Bill as:

- [redacted s.36(1)]
- The effects desired by stakeholders of proactive consideration of children's rights can be achieved through the duty to comply and strong enforcement methods within the Bill

11. You are invited to note the contents of this minute and approve the following:

- That of a single duty to comply should be placed on public authorities as part of the Bill.

Moray House lecture briefing – First Minister Questions brief – May 2020

ISSUE: The Moray House Annual Lecture titled ‘Making children’s rights real: The opportunities of incorporating the Convention on the Rights of the Child’ will be held virtually on 27th May from 14:00 to 15:30. This Annual Lecture is given in collaboration with the Observatory of Children's Human Rights Scotland. The Observatory of Children's Human Rights Scotland is a collaboration of organisations working to drive implementation of children's human rights. The lecture will be led by Professor Kirsten Sandberg, and will consider the challenges and opportunities of UNCRC incorporation and, taking the example of Norway, the lessons and recommendations for implementation.

Top Lines

- We are absolutely committed to the incorporation of the UN Convention on the Rights of the Child and will introduce a Bill to incorporate it this year, in line with the original timescale.
- The commitment set out in the Programme for Government remains unchanged, it is our intention that legislation will be introduced later this year to incorporate the Convention.
- 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. It is our intention that the Bill will result in the highest protection for children’s rights possible.
- The Bill will take a maximalist approach. It will seek to incorporate in full and directly – using the language of the Convention – in every case possible.
- 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.
- The financial implications of the Bill for public authorities will be considered as part of the financial memorandum in the normal way

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 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.
- Ministers have written to the Secretary of State for Education seeking a s.30 order from the UK Government to devolve legislative competence for those parts of the UNCRC that cannot presently be incorporated as they relate to reserved matters.
- 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.

Submission to Cabinet Secretary for finance on financial memorandum – July 2020

From: [redacted s.38(1)(b)]
Children and Families
23 July 2020

Cabinet Secretary for Finance

UNCRC BILL – FINANCIAL MEMORANDUM

Purpose

1. To seek your approval of the draft financial memorandum for the UNCRC Bill
2. To note that the Deputy First Minister has accepted an unfunded pressure of £1.125m in his portfolio to be considered as part of the Spending Review.

Timing

3. Immediate - A response by 24 July would enable us to send the financial memorandum to the First Minister as part of the Bill pack on Monday 27 July.

Introduction

4. In a discussion with officials recently, the DFM was clear that the costs for implementing the Bill needed to cover the essential activities given the pressures on the Scottish budget. I have engaged with our Finance Business Partner to develop a pragmatic approach with this in mind. The Deputy First Minister has confirmed that he is content with the draft financial memorandum and has accepted an unfunded pressure of £1.125m in his portfolio to be considered as part of the Spending Review.

5. Senior Finance Business Partner [redacted s.38(1)(b)] and his team will provide advice to you separately.

[redacted s.30(b)(ii)]

Background

6. The Bill Team has had further discussions with a range of public sector organisations to explore the implications of the proposed Bill for them. 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. This engagement also highlighted participation of children and young people as an area of particular challenge as it can be difficult to engage a network of youth voices. Further, organisations reported that awareness-raising activities should be undertaken to ensure a good level of knowledge and understanding amongst both rights holders and duty bearers.

Implementation Programme

7. The financial memorandum sets out a three year programme of implementation that focuses on leadership, empowering children to claim their rights and embedding children's rights in public services. The Bill does not include a specified commencement date so I have intentionally set out a three year programme that would enable commencement after two years, without committing to such a timescale.

8. A suite of activities are included such as developing training materials and guidance, raising awareness, and supporting children and young people's participation, which address many of the concerns expressed by public sector stakeholders. I have also included specific reference to how the Scottish

Government's commitment to refresh the Getting it right for every child (GIRFEC) policy and practice guidance will support embedding children's rights.

9. In estimating these costs I have focussed on essential activities in order to keep costs at a minimum. We are aware of the affordability gap, along with recovery and renewal spending pressures in the coming year. The intention is to deliver on value for money by focusing on activities that will enable the shift to proactive upholding of children's rights. This proactive approach will help realise the benefits for children and young people of incorporating the UNCRC into Scots Law sooner, and has the added benefit of reducing the risks of litigation.

10. It is estimated that the proposed implementation programme for incorporation of the UNCRC into Scots law will cost £2.085m over a three year period, equating to an unfunded pressure over three years of £1.125m in the Educations and Skills portfolio.

Costs not included in the financial memorandum

11. We have explored the costs of a range of activities related to the UNCRC Bill. While some of these costs are included in the financial memorandum, many of these costs are not included in that we would strongly argue are appropriate for public authorities to absorb in the way they would normally do when implementing and complying with new legislation. Below is a summary of the costs that are not included in the financial memorandum:

- **Costs to the courts and to the legal aid budget of handling an increased volume of cases -** Looking at international experience of UNCRC incorporation, and experience in Scotland with the Human Rights Act 1998 and the Scotland Act 1998, there is evidence to suggest that incorporation of rights does not result in a significant increase in the volume of cases, instead it has further strengthened cases which were already likely to have been heard by the courts. As such I have not included costs for this in the financial memorandum but have included a commitment to keeping this under review.
- **Costs to public bodies of complying with the duty-** Support will be made available to public bodies to build capacity for compliance. If a public authority identifies an issue of compliance of its policy or practice with the Bill's compatibility duty, the central implementation team will offer support and advice as appropriate. I also don't believe that the Bill requires new roles or jobs to be created in public services. The ambition of the Bill is to further embed children's rights across all their functions so dedicated posts would undermine the efforts to mainstream children's rights in decision-making at all levels of public services.
- **Costs of public bodies undertaking a compatibility audit on their policies and practices -** I expect that there will be some costs to public services to prepare to implement the Bill's duties, however, I would advise that activities to ensure compliance are covered within their existing resources or budgets, as is normally the case for new legislation. Again support will be provided through the implementation programme for preparation work by public authorities.
- **Costs of public interest litigation by the Children and Young People's Commissioner Scotland -** The Commissioner has confirmed that he will re-prioritise his budget if he needs to use this power as a last resort.
- **Costs of remedying any legislation found to be incompatible with the UNCRC –** it is proposed that such costs will be absorbed by the Scottish Government.

12. I have also not included costs for the following activities which I anticipate children's rights stakeholders may lobby for but which I don't think are essential activities to the implementation of the Bill:

- **Additional funding for advocacy services and legal aid in the Children's Hearing System (CHS) and justice system.** The public consultation on UNCRC incorporation and the majority view of the UNCRC Working Group highlighted that further support for advocacy and access to justice for children are important to support implementation of the Bill. An additional £1.5m funding has been made available for advocacy services in the Children's Hearing System under the Programme for Government 2019-2020 commitment. As noted above, a negligible increase in the volume of litigation under the UNCRC Bill is expected so costs for additional legal aid have not been included. This will be monitored.

- **Mandatory children’s rights education in schools-** While approximately 70% of schools in Scotland already participate in UNICEF’s Rights Respecting Schools, which is paid for by local authorities on a voluntary basis, we anticipate that children’s rights stakeholders may lobby for mandatory children’s rights education to be delivered in schools through a third sector programme. We estimate the cost of providing rights education in all schools in Scotland to be £1.5m to £1.8m per annum.

Conclusion

13. You are asked to:

- note that the Deputy First Minister has accepted an unfunded pressure of £1.125m in his portfolio to be considered as part of the Spending Review.
- approve the draft financial memorandum for submission as part of the Bill pack to be sent to the First Minister on 27 July

[redacted s.38(1)(b)]

UNCRC Bill Team
Children and Families Directorate

Briefing to minister for parliamentary business and veterans – agreement to introduce – Aug 2020

From: Deputy First Minister and
Cabinet Secretary for Education and Skills
24 August 2020

Minister for Parliamentary Business and Veterans

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION) (SCOTLAND) BILL: PROPOSED ARRANGEMENTS FOR INTRODUCTION

Purpose

1. To seek your agreement that the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill be formally introduced to Parliament on 01 September 2020.

Priority

2. **Routine.** Agreement to introduce is required by 28 August 2020 to allow introduction on 01 September 2020.

Policy Approval

3. The Bill is consistent with the policy agreed at Cabinet in June 2020, and as advised at the Ministerial Bill management meeting held on 08 July 2020. The First Minister and I approved versions of the Bill and its Accompanying Documents for introduction.

[redacted s.29(1)(b)]

4. The draft Bill and its Accompanying Documents were submitted to the Parliamentary authorities on 31 July 2020. A note on legislative competence has been sent to Parliament and the Law Officers. [redacted s.30(b)(i)]

Crown Consent

5. Parliamentary Counsel Office has advised that it does not expect Crown consent to be required.

Legislative Competence

[redacted s.36(i)]

GDPR

6. The Bill does not raise any GDPR issues that necessitate consultation with the Information Commissioner's Office.

Super-Majority

7. [redacted s.30(b)(i)] none of the provisions of the Bill fall to be defined as 'protected-subject matter' (under section 31(5) of the Scotland Act 1998 (as amended)) and would not require approval by super-majority.

Financial Resolution

8. The financial implications of the Bill are set out in the Financial Memorandum. On the basis on the information in the Financial Memorandum, it is likely that a financial resolution will be required under rule 9.12 of the Standing Orders.

Amendments

Likely requirements for Government amendments

9. We will be continuing discussions with the Parliamentary authorities after introduction about how to apply the compatibility duty in the Bill to the functions of the Scottish Parliament [redacted s.30(b)(i)]. If these issues are not resolved ahead of introduction, we may need to bring forward amendments on this. Engagement with public authorities has been more complex in the context of the Covid-19 pandemic. Therefore, we anticipate some other amendments may be brought forward at stage 2.

Hostile amendments

10. Broadly public authorities have been supportive of the proposals for the Bill. We do not anticipate there to be any hostile amendments. We anticipate an amendment to attempt to change the provision on commencement date as the Commissioner and others would be keen for the Bill and its provisions to commence soon. Whilst we expect there to be understanding amongst stakeholders in relation to the commencement legislative competence of the Parliament, some might disagree with the Scottish Government's approach to carve out reserved matters from the UNCRC and may seek an amendment to deliver these in full. At present, we are not aware of any stakeholders with this intention.
11. In addition, we expect that there will be calls during the Bill's passage to go further and to make additional provision for new rights or to go further than the provisions of the UNCRC on existing rights. We anticipate that the Parliament's guidance to the Convener would be that amendments that seek to include additional rights should not be admissible, but the Convener has discretion to admit them.

Communications Handling

12. A communications strategy for the introduction of this Bill is being prepared by the communications team and the Bill team.
13. It is considered desirable that the Bill be published by the Parliament on the same day as introduction rather than on 2 September. This is to tie in with the PfG announcement on 1 September. PCO has asked the Parliament's Legislation Team to try to facilitate this.

Recommendation

- 14. That you formally agree to introduction of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill to the Scottish Parliament on 01 September 2020.**

John Swinney

Deputy First Minister and
Cabinet Secretary for Education and Skills

06 August 2020

Deputy First Minister and Cabinet Secretary for Education and Skills

UNCRC INCORPORATION BILL – INTRODUCTION OF THE BILL

Purposes

32. To seek your views on nomination of formal supporters for the Bill, and your agreement to designate an additional member in charge of the Bill.

33. To provide an update on a number of other pieces of work in advance of introduction.

Timing

34. Routine.

Supporters

35. Any Minister can sign the Bill as a formal supporter. However [redacted s.29(1)(a)] us that most Bills do not have supporters, and collective ministerial responsibility operates regardless of whether a Bill has formally designated supporters. The addition of formal supporters would present some logistical challenges in current circumstances as it will require a number of Ministers to sign the same sheet of paper within the Bill.

36. If they are to be supporters, we can let PCO colleagues know so they can include other Ministers in the process of signing the Bill. However, there are other means by which other Ministers can indicate support for the Bill. As part of the communications plan, we can work with communications colleagues to liaise with Ministers across Scottish Government to show their support by tweeting personalised quotes/messages around UNCRC post-introduction of the Bill. We would welcome your confirmation that you are content not to nominate any supporters of the Bill, but note that proposals for cross-Cabinet communications about the UNCRC Bill after its introduction are being developed.

Additional Member in Charge

37. As you know, it is standard practice for the Cabinet Secretary to designate a Minister as an additional member in charge of the Bill. You are invited to confirm that you are content for PCO colleagues to prepare a designation in favour of Minister for Children and Young People as additional member in charge of the Bill. Subject to your agreement, we can let Ms Todd's office know that the designation is being granted.

Other

38. **Cabinet Secretary Statement on Legislative Competence** – The statement on legislative competence forms part of the signing pack. PCO colleagues will prepare this and arrange for it to be signed along with the Bill pack.

39. **Ministerial Clearance** – The agreement of both the Minister for Parliamentary Business and Veterans and the [redacted s.29(1)(a)] to the introduction of the Bill must be obtained. We intend to seek formal agreement from the Minister for Parliamentary Business and Veterans on your behalf, and will seek your comments on this request separately during the week commencing 17 August. The [redacted s.29(1)(a)] agreement is sought by [redacted s.38(1)(b)] following the start of the pre-introduction period.

40. **Financial Resolution** – The financial implications of the Bill are set out in the Financial Memorandum. On the basis on the information in the Financial Memorandum, it is likely that a financial resolution will be required under rule 9.12 of the Standing Orders. We will provide further advice following the request from the Scottish Parliament.

41. **Delegated Powers Memorandum** – We intend to seek your comments and clearance of the Delegated Powers Memorandum on 18 August.

42. **Communications Plan** – We are currently working with communications colleagues to prepare a Communications Plan, and communications colleagues will provide a Communications Plan prior to the introduction of this Bill.

Recommendations

43. You are asked to confirm

- your agreement that there are no formal supporters of the Bill, but cross-Cabinet support forms part of the Communications plan and
- that you are content to assign the Minister for Children and Young People as an additional member in charge of the Bill.

44. You are asked to note the updates provided above.

[redacted s.38(1)(b)]

Creating Positive Futures Division
Children and Families Directorate

06 August 2020

MINISTERIAL ENGAGEMENT BRIEFING: DFM

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

<i>Engagement Title</i>	PFG – United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill Statement to Parliament
<i>Timing</i>	14.30-15.00 pm
<i>Organisation/Venue and full address including postcode</i>	Chamber, Scottish Parliament
<i>Date and Time of Engagement</i>	Date(s): 03 September Time(s): 14:30 pm
<i>Background/Purpose</i>	A statement on the UNCRC Incorporation Bill
<i>Relevance to Core Script</i>	The UNCRC (Incorporation)(Scotland) Bill was introduced to parliament on 1 September
<i>Summary Page (key issues, lines to take if pressed and issues to avoid)</i>	<p>Statement provided separately Annex A: Q&A Annex B: Tables showing parts of UNCRC, OP1 and OP2 that cannot be incorporated and reservations which apply</p> <p>FMQ style briefs:</p> <p>Annex C UNCRC Incorporation Bill [redacted s.29(1)(a)]</p>
<i>Official Support</i>	<p>There will be no official support in the chamber</p> <p>[redacted s.38(1)(b)] are available to speak via teleconference in the morning.</p>

ANNEX A

Q&A

The Q&A is split into the following sections with each section on a new page:

- General
- Impact on children and families
- Questions about Specific Bill provisions
- Reserved articles
- Going further than the UNCRC: Additional Rights
- Engagement and Consultation
- Financial Implications and implementation plan

General

Q: Why do we need the UNCRC Bill?

A: The Scottish Government is committed to a revolution in children's rights. The dual impacts of the Covid-19 pandemic and the United Kingdom's withdrawal from the European Union underline the importance of human rights being built into the fabric of society.

The Bill represents a significant step on the road to fully realising the rights of all children and young people in Scotland. By incorporating the UNCRC we will deliver a fundamental shift in the way children's rights are respected, protected and fulfilled in Scotland, ensuring that children's rights are built into the fabric of decision-making in Scotland and that these rights can be enforced in the courts.

Q: Why is the Scottish Government bringing this Bill now – should you not be focusing efforts to combat the Covid-19 outbreak?

A: Children's rights matter now more than ever. The Covid-19 pandemic has highlighted the essential role of human rights in ensuring the highest standards of health and wellbeing for all. On 8th April 2020, the UN Committee on the Rights of the Child warned of the "grave physical, emotional and psychological effect of the Covid-19 pandemic on children". The Scottish Government is committed to doing everything it can to support children and young people suffering from the effects of the pandemic. The Bill is essential to ensuring that children's rights are at the centre of our recovery and renewal.

Q: Is there legislation that is not compatible with the UNCRC? What is the Scottish Government doing about this?

A: The Bill builds upon a strong record of implementation of children's rights in Scotland. The Scottish Government will continue to review legislation in advance of commencement of the Bill and will listen carefully to all views in relation to the compatibility of existing legislation. The Bill contains remedial powers which would enable any incompatibilities, should they be identified, to be remedied.

Q: Why are we incorporating the UNCRC when we are already signed up to the Treaty through the UK Government?

A: Whilst the UNCRC was ratified by the UK nearly 30 years ago these rights are not enforceable in UK courts. The Bill will mean that Scotland is the only part of the UK where children's rights are directly enforceable in the courts, representing a significant step forward for the protection of children's rights in Scotland.

Impact on children and families

Q: How will incorporating the UNCRC support parents and families more broadly?

A: The important role of the family is specifically recognised in the preamble to the UNCRC and in various of the rights and obligations. 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. 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 and their representatives will be able to use the courts to ensure that their rights are recognised.

The important role of parents is also specifically recognised in articles of the UNCRC such as article 18 which recognises the role of both parents in the upbringing and development of the child and article 9 which recognises the right of the child to maintain personal relations with parents they are separated from.

Specific examples:

The Bill will ensure that children can access rights that will be of particular importance to their situations. For example, LGBT Youth Scotland highlighted in their response to our public consultation that they consider that the right to privacy provided by Article 16 of the UNCRC can help ensure that LGBT young people are not unnecessarily “outed”.

This Government has also often heard that disabled children experience barriers to the realisation of their rights as a result of the environment in which they live, rather than as a result of their impairment. Article 23 of the UNCRC contains specific protections in relation to children with disabilities and provides that they should enjoy a full and decent life in conditions that ensure dignity, promote self-reliance and facilitate the child’s active participation in the community. Incorporation of article 23 means that these protections can be enforced.

Q: Will the UNCRC Bill protect the rights of 16-17 year olds?

A: The Scottish Government believes that all children and young people should benefit from the rights and obligations in the UNCRC. As such, the Bill provides that for the purposes of the incorporated rights and requirements, a child is a person under 18. This is in line with the recommendations of the Committee on the Rights of the Child.

Q: Will the Bill mean that 16 and 17 years are treated the same as younger children?

A: Whilst all children up to the age of 18 will have rights under the Bill, the UNCRC recognises the evolving capacity of children and young people and that children and young people will have increased choices and ability to influence decisions that affect them as they grow older.

Q: How will the Bill impact on children (or their representatives) in practice being able to enforce their rights. Will legal aid be available, is there advocacy support available?

A: The Bill will make a breach of children’s rights by public authorities justiciable in the courts. It is intended that the ordinary rules about who can bring cases in court would apply to claims brought under the Bill. The intention is that legal aid will be available in the normal way.

The Scottish Government recognises that for many children and young people taking action through the courts is challenging and may not be their preferred option. The Bill makes provision supplementing the current powers of the Commissioner and enabling the Commissioner to raise proceedings under the Bill.

If pushed:

Legal aid:

A number of respondents to the Scottish Government's consultation on Legal Aid reform indicated support for the removal of parental means from financial eligibility assessments for child applicants, and for moving to an automatic entitlement for children and the care-experienced. This will be explored as proposals for a Legal Aid Reform Bill are developed, as will more targeted approaches to funding legal assistance required by children, where appropriate.

Advocacy:

The Scottish Government is introducing a national children's hearings advocacy scheme, backed by £1.5 million, this to further reinforce children's rights and make sure the wishes and interests of each child is at the very heart of every hearing.

Questions about Specific Bill provisions

Q: Why does the Bill not enable the Courts to “strike down” future legislation, of the Scottish Parliament?

A: The Scottish Government’s preferred policy approach would be to require all legislation, past and future, to be compatible with the incorporated UNCRC rights and obligations, with the courts having the power to “strike down” incompatible provisions. Provision requiring future legislation to be compatible with UNCRC would effectively change the power of the Parliament and is, therefore, beyond its current powers.

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

A: The approach which the Bill takes is ‘maximalist’, meaning that the rights and obligations in the UNCRC and optional protocols are being incorporated to the maximum extent possible within the powers of the Scottish Parliament. In line with the Committee on the Rights of the Child’s stated preference the Bill takes a full and direct approach to incorporation of the UNCRC and 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) as far as is possible within the powers of the Parliament, meaning that all of the rights and obligations which are within legislative competence are incorporated by the Bill.

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

Q: How will the Government address concerns that the UNCRC rights as drafted lack clarity and do not impose clearly defined rights and duties?

A: Children’s rights are not new to Scotland. Since its ratification in 1991, the UK has been under an obligation to comply with the UNCRC. The UNCRC has been used by public authorities and practitioners extensively during this time and is at the heart of a range of legislative provision with which public authorities are familiar such as the Children (Scotland) Act 1995. The UNCRC also provides the foundation for Getting it Right For Every Child, our national approach to improving outcomes and supporting the wellbeing of our children and young people. Listed public authorities have also been under duties in relation to the UNCRC under the Children and Young People (Scotland) Act 2014.

If pushed:

The Bill will mean that interpretation of the UNCRC requirements is ultimately a matter for the courts. We recognise that it will take time for the Scottish Courts to develop their own case law in relation to the interpretation of the rights and obligations being incorporated by the Bill.

The Bill will enable a lower court to refer a question relating to the incorporated rights and requirements to the Inner House of the Court of Session in a similar way as references in relation to devolution matters can be made under the Scotland Act. This should enable case law to develop more quickly if necessary.

Q: Will litigants have to exhaust other remedies before taking a case to court/tribunal?

A: There is no requirement in the Bill for other remedies to be exhausted before a case can be raised. The ordinary rules about who can bring cases in court would apply to claims brought under the Bill.

Q: How will the time limits set out at section 7 of the Bill help looked after children or children with profound disabilities?

A. It is widely recognised that children and young people face additional barriers in realising their rights and seeking access to justice. By nature of their age and vulnerability, having the understanding, capacity and means to raise legal proceedings is likely to be more difficult for children and young people. This is particularly so for children with additional needs or those experiencing violence, abuse and trauma.

The Bill contains specific provision to ensure that no claim can be time barred before an individual reaches age 18. Once the time limits under the Bill become applicable (when an individual turns 18) the courts will have the discretion to dis-apply a time limit where it considers it equitable to do so in the circumstances.

Q. Will the compatibility duty apply to the Lord Advocate’s prosecutorial functions? Will children be able to rely on the rights in the Bill if they are being prosecuted?

A. The Bill makes clear that the compatibility duty applies to public authorities and to Scottish Ministers when exercising their public functions in every case possible. It will also apply to the courts, as public authorities. The Bill itself provides specifically for what is to happen if an issue of compatibility with the UNCRC arises in the course of criminal proceedings.

Q: Why doesn’t the Bill provide for a due regard duty? What is the difference between having due regard and being obliged not to act incompatibly?

A. There is a qualitative difference between these types of duty and the resulting outcomes. A due regard duty is focused on process not overall outcome. A duty not to act incompatibly requires a particular outcome – that the outcome cannot be incompatible with the UNCRC requirements.

If a public authority was required to have due regard to UNCRC requirements, it is possible, for that public authority to have fulfilled its obligation by having weighed that factor alongside others, even if the ultimate action taken was incompatible with the UNCRC. By contrast, the duty to not act incompatibly in the Bill (as is also provided for in the Human Rights Act) is a duty to provide an outcome which is consistent with the UNCRC requirements.

Q: Why doesn’t the Bill provide for both a duty to have due regard and a duty to comply?

Obligations to have “due regard” have important applications in many areas, but the Scottish Government does not consider that a standalone duty to have due regard to the UNCRC requirements would be the most effective means of delivering improvement in outcomes for children. The Scottish Government is concerned that two duties would cause confusion and considers that one clear compatibility duty is the best way to ensure children’s rights are respected.

Q. Will the Bill allow for people to take retrospective cases against a public authority, or would it only be permissible to bring cases from the date the Bill comes into force?

A. It will not be possible to bring cases against a public authority retrospectively. This is because public authorities would not have been under the duty before it is commenced.

The Bill does allow for rights holders to rely on the UNCRC requirements in any legal proceedings brought by a public authority. This is similar to the Human Rights Act.

Q: How will the remedial power be used? Why does it include provision in relation to criminal offences?

It is important that the Scottish Government can act swiftly to remedy incompatible legislation so that breaches or potential breaches of children's rights can be remedied or prevented from occurring.

The remedial power is intended to be capable of being used to address the wide range of provision which may require to be made in remedial regulations, including making provision in relation to criminal offences. This is similar to powers that exist for remedying ECHR incompatibilities.

Q: How is incorporation different to the Children and Young People (Scotland) Act 2014?

A: The Children and Young People (Scotland) Act was an important step towards further embedding children's rights in Scotland by requiring Scottish Ministers to consider how they could secure better or further effect of the UNCRC requirements and included reporting requirements for Ministers and listed authorities. This Bill, however, provides for full incorporation of the UNCRC requirements to maximum extent of the Parliament's powers, and goes significantly further than the 2014 Act.

Are the duties in the Children and Young People (Scotland) Act 2014 remaining?

A: The Scottish Government believes there should be one clear set of duties and reporting requirements in relation to the UNCRC. The Bill repeals Part 1 of the Children and Young People (Scotland) Act 2014 which places duties on the Scottish Ministers and listed public authorities in relation to the UNCRC and replaces this with one clear set of duties under the Bill.

The duty not to act incompatibly with the UNCRC requirements applies to all public authorities as set out in the Bill. In addition reporting duties are placed on Ministers and listed public authorities.

Q: When will the Bill commence? Will the Bill include a sunrise clause? How much time will public authorities get to prepare?

A: The Scottish Government wants the Bill to take effect as soon as possible. The Scottish Government is mindful of the additional pressures facing public authorities at this time due to the Covid pandemic and will work closely with public authorities and other stakeholders to develop an effective and timely implementation plan.

If pushed:

We have given careful consideration to whether the Bill should include a type of sunrise clause meaning that the date for the commencement of the substantive duty in the Bill should be provided for directly in the Bill. Whilst this would have the benefit of providing certainty as to when the compatibility duty will take effect, the risk with this approach is that it limits flexibility in relation to the implementation period available for public authorities. A reasonable implementation period will be required to ensure that public authorities can

ensure that policy and practice is in alignment with the UNCRC requirements before the duty is commenced.

Q: Can the duty be commenced on Scottish Ministers before other public authorities?

The Scottish Government wants the duty on all public authorities, including Ministers, to take effect as soon as possible. For children's rights to be effective it is imperative that all levels of government and public administration respect and implement children's rights. We will give careful consideration to this and any other suggestions for commencement of the duties during parliamentary consideration of the Bill.

Q: Is the preamble to the UNCRC being incorporated?

A: The Scottish Government recognises the interpretive value and significance of the preambles to the UNCRC and optional protocols. The Bill contains specific provision which indicates the Courts can consider the preambles when interpreting the UNCRC requirements.

Q: Does the Bill also incorporate the Optional Protocols to the UNCRC?

A: The Bill incorporates the first optional protocol on 'the sale of children, child prostitution and child pornography' and the second optional protocol 'on the involvement of children in armed conflict' as far as possible within the powers of the Parliament.

The United Kingdom has not yet ratified the 3rd Optional Protocol on a communications procedure. This procedure can only be used by States which have ratified the third optional protocol and as such it has not been possible to incorporate this optional protocol in the Bill.

The Bill contains powers which would enable the Scottish Government to incorporate the remaining provisions of the first two Optional Protocols, should the powers of the Scottish Parliament change in the future. It also contains a power that would enable the Scottish Government to incorporate Optional Protocol 3 if the United Kingdom ratifies it in the future.

Q: Why doesn't the Bill provide for Statutory Guidance?

A: The Bill does not make provision for statutory guidance. This is similar to the Human Rights Act. The Scottish Government does not consider that it would be appropriate to seek to provide statutory guidance on the interpretation of the rights and requirements being incorporated, as this is properly a matter for the Courts.

Reserved articles

Q: Why can't all articles of the UNCRC be incorporated?

A: The Bill cannot incorporate rights and obligations as set out in the articles of the UNCRC and first and second optional protocols where their inclusion would take the Bill outside the legislative competence of the Parliament. For this reason there are some words or parts of articles which the Bill does not incorporate because they relate to reserved matters. The Scottish Government has published a version of the UNCRC and Optional Protocols showing the excluded provisions which cannot be incorporated. This is on the Scottish Government website.

Q: You said there might be circumstances where the duty can apply to functions of public authorities which are reserved? Is this not outside the powers of the Parliament? Will this not be difficult for public authorities to understand?

The Scottish Government believes that protection for children's rights should be taken to the limits of the devolution settlement and the powers of the parliament. The duty will apply to devolved functions of public authorities. There may, however, be circumstances where applying the duty would not modify the law on reserved matters and would apply. This will require careful consideration by public authorities of the circumstances of the child or young person whose rights are engaged.

Q: What protection is being given to the rights that can't be incorporated?

A: All of the rights and obligations in the UNCRC and optional protocols will still apply in Scotland as a matter of international law. The Bill does not mean that public authorities in Scotland can take no action to support children and young people in relation to the unincorporated rights where they have power to do so. The Scottish Government believes all public authorities should, therefore, do everything they can to give effect to all children's rights.

The Scottish Government recognises the fundamental importance and indivisibility of all the rights and obligations contained in UNCRC. The Scottish Government considers that it is imperative to make clear on the face of the Bill that the rights and obligations being incorporated remain within their context in the whole UNCRC and optional protocols as a matter of international law and that, therefore, the excluded provisions of the UNCRC and optional protocols may still be considered when interpreting the rights and obligations incorporated by the Bill.

The Scottish Government believes that incorporation of the UNCRC requirements will act as a catalyst for all public authorities across Scotland to develop innovative ways to respect, protect and fulfil children's rights to the maximum extent of their powers. The Scottish Government will continue to stand up for all the rights of all children and young people in Scotland and hopes that the example being set by the Bill will encourage the UK Government to take the steps necessary to fully incorporate children's rights across the United Kingdom.

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

A: The Bill makes provision to allow incorporation of reserved provisions of the UNCRC and optional protocols into our domestic law if the powers of the Scottish Parliament change in the future.

Q: What is the progress on the section 30 Order?

A: I wrote to the Secretary of State for Education on 4 February this year notifying him of my intention to seek a section 30 order to transfer power to the Scottish Parliament that would enable the provisions of the UNCRC and Optional Protocols which are currently outside the powers of the Parliament to be incorporated. My officials are continuing to explore this with the Scotland Office.

Progress of the Bill is not dependent on this. The Bill will make provision to allow incorporation of those provisions of the UNCRC currently beyond the Parliament's powers into our domestic law if the powers of the Scottish Parliament change in the future, whether as a result of that process or otherwise.

Going further than the UNCRC: Additional Rights

Q: The UNCRC does not include protection of rights relating to sexual orientation. How will incorporation ensure the inclusion of LGBT+ issues?

A: Article 2 ensures that the rights in the UNCRC apply to all children and protects them against discrimination in the realisation of those rights.

I am proud that Scotland is considered to be one of the most progressive countries in Europe regarding LGBT+ equality and the Scottish Government remains committed to building on our strong record in this area. We will continue to work with stakeholders including those from the LGBT+ community to ensure that the Bill creates a proactive culture of everyday accountability for the rights of all children across public authorities in Scotland.

Q: Will the UNCRC Bill go above and beyond the rights set out in the UN treaties?

A: The Bill goes further than simply incorporating the UNCRC. It puts in place a number of additional requirements which will ensure greater transparency and accountability for children's rights which will ensure practice realisation of children's rights in practice. This includes provisions requiring:

- That Scottish Ministers undertake child rights and wellbeing impact assessments in relation to government legislation and strategic decisions that affect children's rights and wellbeing
- That Scottish Ministers publish statements of compatibility for government legislation
- That Ministers must report to parliament following a strike down or incompatibly declarator by the courts
- The Ministers must publish a Children's Rights Scheme and report annually on children's rights
- That listed public authorities must report every 3 years on steps they have taken to fulfil the UNCRC compatibility duty

Q: How does the Bill impact on the work of the Human Rights Taskforce?

A: The First Minister's Advisory Group on Human Rights Leadership recognised in its report that longer-term ambitions to incorporate all human rights treaties should not cause any delay to UNCRC incorporation. The Scottish Government is committed to fully realising the human rights of all people in Scotland and looks forward to receiving the recommendation of the National Taskforce for Human Rights Leadership for a statutory framework of human rights later this year.

Engagement and Consultation

Q: Who did the Scottish Government consult with in preparation for this new legislation?

A: The Scottish Government held a 14 week public consultation over the summer of 2019 and received 162 responses. To complement the public consultation, we held a range of bilateral official and Ministerial meetings, engaging with over 180 children and young people across 7 events and meeting 47 organisations representing a number of different sectors.

We also 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.

Since the consultation closed the Scottish Government has had further discussions with a range of stakeholders including public authorities, justice and courts partners and children's rights stakeholders to explore the implications of the Bill.

Q. How did the UNCRC working group's recommendations influence the Bill?

The Scottish Government followed the work of the Group carefully and its deliberations informed the development of the policy for the Bill. The final report of the Group which was published on the 27th of July includes majority views expressed by the Working Group which identify a number of areas for consideration by the Scottish Government. The Scottish Government is committed to implementing all of these actions either through the Bill itself, within the context of the implementation programme in support of the Bill, or through other policy and legislation.

Financial Implications and implementation plan

Q: What are the total expected costs around the incorporation of the UNCRC into Scots law?

A: In total, a £2 million implementation programme covering three years will be delivered 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 Scottish Government recognises the vital role that public services play in delivering for children, young people and their communities. Complying with the duties in the Bill may result in one-off costs for public authorities, relating to updating training materials, reporting procedures and guidance. These minimal costs should be accommodated within the regular review and update processes. 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 to support the delivery of this implementation. This will include coproducing relevant guidance, training and awareness raising which will be required in advance of the Bill's commencement.

Q: What are the expected additional increase number of cases as a result of incorporation? Further to this, what work has been done on estimating the likely number of cases – is there international data on this point or comparable data from the HRA 1998?

A: The UNCRC Bill may result in additional people (children, young people and their representatives) seeking legal assistance, consulting a solicitor or being taken through the courts. However, based on published research about the impact of UNCRC incorporation internationally, the use of human rights legislation in Scotland, and policy discussions with Justice colleagues (including SCTS), only a small increase in the amount of litigation faced by public bodies is anticipated.

Q: How long is the implementation programme for the Bill?

A: 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.

Q: How will the Scottish Government empower children to claim their rights? How will you support children and young people's right to inform decisions that have an impact on them?

A: Ensuring that children, young people and their families can enforce their rights is central to delivering a Scotland where human rights are made real. 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.

In addition, 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.

Q: How will the Scottish Government keep track of incorporation of the UNCRC and will it provide updates on the progress of implementation?

A: The Bill requires Ministers to make a Children's Rights Scheme. They must consult on the Scheme, publish and lay it alongside the Scottish Government's report on the previous year's action to fulfil the UNCRC compatibility duty 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.

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

Tables showing parts of UNCRC, OP1 and OP2 that cannot be incorporated and reservations which apply

UNCRC

Article	Fully/Partially Reserved	Discussion
2 (Non – Discrimination)	Partially relates to a reserved matter	Elements of article 2 relate to the reserved matter of equal opportunities under section L2 of Part 2 of schedule 5 of the Scotland Act.
7(1) and (2) (birth registration, name, nationality, care)	Partially relates to a reserved matter	Elements of both article 7(1) and 7(2) relate to the reserved matter of immigration and nationality in section B6 of Part 2 of schedule 5 of the Scotland Act.
8(1) (protection and preservation of identity)	Partially relates to a reserved matter	Elements of article 8(1) relate to the reserved matter of immigration and nationality in section B6 of Part 2 of schedule 5 of the Scotland Act.
9(4) (separation from parents)	Partially relates to a reserved matter	Elements of article 9(4) relate to the reserved matter of immigration and nationality in section B6 of Part 2 of schedule 5 of the Scotland Act.
10(1) (family reunification)	Fully relates to a reserved matter	Article 10(1) relates to the reserved matter of immigration and nationality in section B6 of Part 2 of schedule 5 of the Scotland Act.
10(2) (family reunification)	Partially relates to a reserved matter	Elements of article 10(2) relate to the reserved matter of immigration and nationality in section B6 of Part 2 of schedule 5 of the Scotland Act.
11(2) (abduction and non-return of children)	Fully relates to a reserved matter	Article 11(2) relates to the reserved matter of international relations in paragraph 7(1) of Part 1 of schedule 5 of the Scotland Act.
21(e) (adoption)	Partially relates to a reserved matter	Elements of article 21(e) relate to the reserved matter of international relations in paragraph 7(1) of Part 1 of schedule 5 of the Scotland Act.
26(1) (social security)	Partially relates to a reserved matter	Elements of article 26(1) relate to the reserved matter of national insurance under section F1 of Part 2 of schedule 5 of the Scotland Act.
27(4) (adequate standard of living)	Partially relates to a reserved matter	Elements of article 27(4) relate to the reserved matter of international relations in paragraph 7(1) of Part 1 of schedule 5 of the Scotland Act.
34 (sexual exploitation)	Partially relates to a reserved matter	Elements of article 34 relate to the reserved matter of international relations in paragraph 7(1) of Part 1 of schedule 5 of the Scotland Act.
35 (abduction, sale and trafficking)	Partially relates to a reserved matter	Elements of article 35 relate to the reserved matter of international relations in paragraph 7(1) of Part 1 of schedule 5 of the Scotland Act.
38(3) (war and armed conflicts)	Fully relates to a reserved matter	Article 38(3) relates to the armed forces which is reserved under paragraph 9 of Part 1 of schedule 5 of the Scotland Act.

The First Optional Protocol on the involvement of children in armed conflict

Article	Fully/Partially Reserved	Discussion
1 (measures to ensure under 18s do not take part in hostilities)	Fully relates to a reserved matter	Article 1 relates to the armed forces, which is reserved under paragraph 9 of Part 1 of schedule 5 of the Scotland Act.
2 (compulsory recruitment of under 18s into armed forces)	Fully relates to a reserved matter	Article 2 relates to the armed forces which is reserved under paragraph 9 of Part 1 of schedule 5 of the Scotland Act.
3 (raising the minimum age of voluntary recruitment into armed forces)	Fully relates to a reserved matter	Article 3 relates to the armed forces which is reserved under paragraph 9 of Part 1 of schedule 5 of the Scotland Act.

The Second Optional Protocol on the sale of children, child prostitution and child pornography

Article	Fully/Partially Reserved	Discussion
5 (Extradition treaty between state parties)	Fully relates to a reserved matter	Article 5 relates to the reserved matter of extradition under section B11 of Part 2 of schedule 5 of the Scotland Act.
6(1) (assistance with investigations or criminal or extradition proceedings)	Partially relates to a reserved matter	Elements of article 6(1) relate to the international relations and extradition reservations in, respectively, paragraph 7(1) of Part 1 and section B11 of Part 2 of schedule 5 of the Scotland Act.
10(1), (2) and (3) (international cooperation for prevention, detection, investigation, prosecution and punishment for offences)	Fully relates to a reserved matter	Article 10(1)-(3) relate to the international relations reservation under paragraph 7(1) of schedule 5 of the Scotland Act.

UNCRC INCORPORATION BILL

ISSUE: The United Nations Convention on the Rights of the Child (Incorporation)(Scotland) Bill was introduced to Parliament yesterday and was published this morning.

Top Lines

- I am delighted to announce that today, we have introduced to the Scottish Parliament a Bill incorporating the United Nations Convention on the Rights of the Child into domestic law.
- The UNCRC is the global “gold standard” for children’s rights.
- The Bill will fully and directly incorporate the UNCRC into Scots law, to the maximum extent possible within the Scottish Parliament’s powers.
- Incorporation will ensure that children’s rights are afforded the highest protection and respect within our constitutional settlement.
- The Bill will deliver a revolution in children’s rights, helping to make Scotland the best place in the world to grow up.

The Bill will deliver a fundamental shift in the way children’s rights are respected, protected and fulfilled in Scotland

- The Bill will apply to all children and young people under the age of 18.
- It will be unlawful for public authorities, including the Scottish Ministers, to act incompatibly with the incorporated UNCRC requirements as set out in the Bill.
- If they do, children, young people and their representatives will be able to use the courts to enforce their rights.
- The Bill will require that, so far as possible, legislation is interpreted in a UNCRC compatible way.
- It will include powers to allow the courts to make strike down or incompatibility declarators in respect of incompatible legislation.
- The Bill contains specific measures to remove barriers that children and young people may face in realising their rights under the Bill and accessing justice.
- These provisions include giving the Children and Young People’s Commissioner in Scotland the power to raise claims in the public interest.

The Bill will deliver a proactive culture of everyday accountability for children’s rights across public services in Scotland.

- The Bill will ensure that public authorities take proactive steps to ensure compliance with children’s rights in their decision making and service delivery.
- This will build on existing structures which enable children and young people to be heard and take an active role in their own lives and communities.
- The Bill will require that Ministers publish a Children’s Rights Scheme setting out the arrangements the Government has in place, or intends to put in place, to fulfil the duty to act compatibly with the incorporated UNCRC rights and obligations.
- The Government and public authorities will also be required to report on steps they have taken to be compatible with the incorporated UNCRC rights and obligations.
- A £2 million programme will support the successful implementation of the Bill.

[redacted s.38(1)(b)]