

**MATERIAL MARKED UP WITH REDACTIONS- FOI reference number:
202300353281**

Request: All of the briefings received by any Minister relating to the UNCRC bill and the Incorporation of human rights into Scot's Law. From the date of the appointment of the new ministerial team on 29 March 2023 until the date of the FOI request 24 April 2023.

**DOCUMENT 1 - BRIEFING FOR FIRST MINISTERS QUESTIONS – 29 MARCH
2023**

ISSUES:

17 March- Fury over delay to kids' law - quotes Children's Commissioner 'every day of delay from the SG is another broken promise to children' (The Sun)

16 March – On 2 year anniversary of the Bill being passed the Children's Commissioner tweets that children are still waiting – “every day of delay from the Scottish Government is another broken promise to children” and The Scottish Youth Parliament and Together tweet that the “the time is now”.

12 March – Children's Commissioner tweets that 'we can't afford any more prevarication and delay' to the Bill and urges the new FM to prioritise the Bill and commit to immediate commencement.

9 March – Martin Whitfield lodges another motion requesting a timeline for Reconsideration.

7 February – Member's Debate Motion Martin Whitfield - noting that 16 March 2023 marks 2 years since the UNCRC Bill was passed, and requesting a timetable for reconsideration.

TOP LINES

We remain committed to the incorporation into Scots law of the United Nations Convention on the Rights of the Child as far as possible within devolved competence and to doing that as soon as practicable.

- Our intention is to address the Supreme Court's judgment by returning the Bill to Parliament via the Parliamentary 'reconsideration stage'.
- Preparation for Reconsideration Stage is well underway.
- On the 2 year anniversary of the Bill being passed, the Minister for Children and Young People wrote to the convener of the Equalities and Human Rights Committee to provide an update on how we are refining the amendments to the Bill and planning for the parliamentary Reconsideration Stage.
- Over the last few months there has been engagement with UKG lawyers on the amendments. Following feedback from UKG lawyers, a

revised set of amendments was shared with them on 9 March with a request for any new and material concerns. They have been informed that advice to Ministers will be prepared immediately after the Easter recess and it would assist to have views from UKG lawyers to inform that.

Legal issues around the Bill are complex and consideration of these issues has taken longer than hoped. It is however important to get the Bill right for children now and for generations of children to come.

- Discussions with UK Government officials on amendments have been focused on what the Supreme Court judgment means for the duty of a public authority to act compatibly with the UNCRC when that authority is acting under powers conferred by UK legislation in devolved areas.
- There may be cases where UK legislation in a devolved area gives a public authority discretion about whether or not to act in a way that is compatible. Our hope has been that in those circumstances, the Bill could require a public authority to act compatibly. The discussions with the UK Government are focused on whether the Supreme Court Judgment does indeed enable us to do this.

It is not yet possible to confirm an exact timetable for bringing the Bill back to Parliament but we hope to make progress ahead of summer recess

- We have made clear to the UK Government that we intend to move towards reconsideration of the Bill soon.
- Depending on the response from the UK Government, we hope to be able to lodge a motion ahead of summer recess asking Parliament to agree to the Bill moving to reconsideration stage.
- Should Parliament agree to move to reconsideration of the Bill, the exact process for and the length of Reconsideration Stage will depend on whether the lead Committee (the Equalities, Human Rights and Civil Justice Committee) wish to schedule time to scrutinise the amendments.

We are considering whether any of the provisions in the Bill can be commenced early.

- The provisions in the Bill would automatically commence 6 months from Royal Assent. To commence the public authority compatibility duty any earlier than that would be extremely challenging because we cannot consult on the statutory guidance until the Bill receives Royal Assent.

While the Supreme Court judgment means that the UNCRC (Incorporation) (Scotland) Bill could not receive Royal Assent in its current form, the majority of work in relation to implementation of the UNCRC is continuing at pace.

- We are building the capacity for public authorities to take a child rights-based approach in the design and delivery of services by, for example: developing a Skills and Knowledge Framework; providing a fund to test innovative approaches to embedding children's rights; developing tools to assist public bodies to evaluate their approach to children's rights; funding for the Scottish Public Services Ombudsman to develop a child-friendly complaints process for public authorities under their jurisdiction; and funding the Improvement Service to assist local authorities and their partners to successfully implement the UNCRC at a local level.
- We are raising awareness of children's rights among children young people and their families by providing national funding for Rights Respecting Schools, information on the Parent Club website and grant funding and working in partnership with Children's Parliament, the Scottish Youth Parliament and Young Scot.

The delay to the Bill is not preventing us from enhancing protection for children's rights.

- Last week the Education Committee began taking Stage 1 witness evidence on the Children (Care and Justice) Bill which includes provision to prevent under 18s from being detained in young offenders institutions.
- To celebrate World Children's Day on 20 November, we published a report that sets out the many ways in which we are already delivering children's rights across a wide range of policy areas in Scotland by, for example, supporting children's right to nutrition, adequate housing and extra financial support if their family needs it.

UNCRC BILL AMBITIONS

The intent behind the UNCRC Bill is to deliver a proactive culture of everyday accountability for children's rights across public services in Scotland.

- It would require all Scotland's public authorities to take proactive steps to ensure the protection of children's rights in their decision-making and service delivery and make it unlawful for public authorities, including the Scottish Government, to act incompatibly with the UNCRC requirements as set out in the Bill.

- Children, young people and their representatives would have a new ability to use the courts to enforce their rights.
- The intent is that the Bill would apply to all public functions within legislative competence of the Scottish Parliament, including certain functions which are 'contracted out' to other providers.
- It requires that, so far as possible, legislation is interpreted and given effect to in a way compatible with UNCRC requirements.
- The Bill also includes powers to allow the courts to make strike down or incompatibility declarators in respect of incompatible legislation and powers to allow the Children and Young People's Commissioner in Scotland and the Scottish Human Rights Commission to raise claims in the public interest.
- The Bill would give Scottish Ministers power to take action to ensure that legislation in Scotland is UNCRC compliant. In any area we need to take action we will.
- Ministers would be required to publish a Children's Rights Scheme, setting out the arrangements the Scottish Government is putting in place to fulfil its duties under the UNCRC and to secure or further strengthen children's rights.
- The Scottish Government and listed authorities would also be required to report on steps they have taken to ensure compatibility with the incorporated UNCRC rights and obligations and to secure better or further effect of children's rights.

EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT (INCORPORATION) (SCOTLAND) BILL

For the European Charter Bill, which was also impacted by the Supreme Court judgment, we are working collaboratively with Mark Ruskell to explain the changes we think are necessary and to support him taking this Bill forward.

DOCUMENT 2 – BRIEFING FOR NEW MINISTERS FOR THE CHILDREN AND FAMILIES DIRECTORATE

○ **United Nations Convention on the Rights of the Child**

Key existing programmes or areas of policy delivery (including from manifestos)

The **United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill** (the Bill) was passed unanimously by the Scottish Parliament on 16 March 2021. 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 by 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. The Bill will require public authorities including the Scottish Government to put children's rights, needs and interests at the heart of how we fund, design and deliver services and public policy – in every aspect of public life covered by the Convention's articles (within the powers of the parliament). The Bill will also 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 its duty, as a public body, to act compatibly with the incorporated UNCRC rights and obligations.

In its 2021 election manifesto, the Scottish National Party committed to implement the UN Convention on the Rights of the Child within the first six months of the new parliament. This commitment builds upon commitments given by the previous administration. The referral of the UNCRC Bill to the Supreme Court and subsequent remedial action required to take the Bill back to the Parliament have meant that the Bill could not receive Royal Assent in its current form. Work is advanced to bring the Bill back to Parliament. (See details below.) In the meantime, the majority of work in relation to implementation of the UNCRC is continuing at pace.

Planning and preparation to deliver the 3 year implementation programme for the Bill is underway. £3.926 million has been allocated to implementation of children's rights in the 2023/24 budget (in line with the 2021 PfG commitment to invest £4m per year until March 2024 to support public services to consistently uphold children's rights).

The 4 strands of the implementation programme are:

- Scottish Government leadership in children's rights
- empowered children and young people
- embedding children's rights in public services
- children's rights reporting and monitoring

Work on all 4 strands is underway and is overseen by the UNCRC Strategic Implementation Board. The work includes:-

- building support for the participation by children and young people in Scottish Government policy making
- development of draft statutory guidance for consultation to support the fulfilment of children's rights in practice
- development of a draft Children's Rights Scheme for consultation to enable Ministers to fulfil their new statutory duties
- scoping and development of support materials including a knowledge and skills framework for public services,
- procedures to ensure that Child's Rights and Wellbeing Impact Assessments are undertaken in relation to legislation and strategic decisions
- working with the children's rights sector to identify situations where children's rights are (or are at significant risk of) not being fulfilled.

Significant issues that the First Minister needs to be aware of between Ministerial appointment and the beginning of summer recess:

On 12 April 2021, a reference of certain provisions of the Bill was made by UK Law Officers to the UK Supreme Court. The provisions referred to the Supreme Court were: section 6 (duty on public authorities) and sections 19 to 21 (the interpretation duty and judicial powers of 'strike down' and 'incompatibility declarator').

On 6 October 2021, the UK Supreme Court judgment on the Bill found each of the provisions referred by the UK Law Officers to be outwith the legislative competence of the Scottish Parliament.

Our intention is to address the Supreme Court's judgment by returning the Bill to Parliament via the Parliamentary 'reconsideration stage.' Preparation for this is well underway

On 16 March, the second anniversary of the Bill being passed by the Scottish Parliament, the Minister for Children and Young People wrote to the convener of the Equalities and Human Rights Committee to confirm the Government's continuing commitment to the Bill and to provide an update on our engagement with the UK Government lawyers on the amendments. A link to that letter can be found [here](#). It makes clear that we hope to be able to bring the Bill back to Parliament ahead of summer recess.

On 18 and 19 May, Scotland's commitment to children's rights will be scrutinised by the UN Committee on the Rights of the Child in a 'constructive dialogue' session in Geneva. Senior officials from Children and Families Directorate and Education Directorate will represent Scotland as part of a wider UK delegation. As the UK is the signatory to the UNCRC, the overall planning and contribution are being co-ordinated by the UK Government. The last time the UK was scrutinised by the Committee was in 2016. While we have made good progress in embedding children's rights we expect that Scotland will be challenged on:

- Age of criminal responsibility

- Child poverty
- Access to food and welfare
- Community mental health support
- Climate change
- Inequalities in education
- Bullying in schools
- Children's rights training for teachers
- Religious observance in schools
- Age of marriage
- The use of restraint and seclusion in criminal justice settings
- Access to education and digital connectivity for Gypsy Travellers and public attitude to their culture
- Delay to bringing the UNCRC Bill back to Parliament

Ministerial responsibilities on appointment (policy/delivery areas plus any other key responsibilities)

The delay to bringing the Bill back to Parliament for Reconsideration has caused uncertainty among public authorities and children's rights organisations. Incoming Ministers will need to provide assurance to stakeholders about their continued commitment to the Bill and the implementation planning that is already well underway. Ministers will be responsible for bringing the Bill back to Parliament via Reconsideration Stage. Depending on whether the Committee wish to scrutinise the amended Bill, this may include giving evidence to the Equalities, Human Rights and Civil Justice Committee.

Once the Bill is passed, Ministers will be responsible for fulfilling their statutory duties under the Bill and their obligations under international law, and for the successful implementation of the UNCRC Bill. Ministers in this portfolio will want to promote child rights respecting decision-making and the fulfilment of children's rights with Ministerial colleagues across Cabinet. This will include ensuring that any legislative incompatibilities that are identified are addressed.

Contact(s): [redacted - 38(1)]

DOCUMENT 3: CONTRIBUTION ON THE BILL FOR A MEETING BETWEEN FM AND MS GILRUTH ON 12 APRIL

Make Scotland the first UK nation to incorporate the UN Convention on the Rights of the Child into domestic law, ensuring we are a country that respects, protects and fulfils children's rights.

Ministers have stated their commitment to bring a revised UNCRC (Incorporation) (Scotland) Bill back the Scottish Parliament for reconsideration as soon as practicable, after it has been amended to address the Supreme Court judgment that certain provisions were outwith the legislative competence of the Scottish Parliament. Over the last few months there has been engagement with UKG lawyers on the amendments. Following earlier feedback from UKG lawyers, a revised set of amendments was shared with them on 9 March with a request for any new and material concerns to be shared with us by 7 April. **[redacted – 28(1)]**

DOCUMENT 3: BRIEFING FOR NEW MINISTER – HUMAN RIGHTS BILL - 4 APRIL

Human Rights Strategy and Legislation Unit
Directorate for Equality, Inclusion and Human Rights
4 April 2023

Cabinet Secretary for Social Justice

HUMAN RIGHTS BILL

Priority and Purpose

1. To provide advice on the development of a Human Rights Bill for Scotland, including its current status and recommended next steps.
2. Priority is routine, albeit early engagement would be helpful to allow the consultation to proceed to Cabinet in a timely fashion. This will allow us to meet the commitment to publish it within the first half of 2023.
3. Once you have had an opportunity to consider the material, we suggest a meeting with officials to talk you through it and answer any questions you may have.

Recommendation

4. [Redacted - s.30(b)(i)]

Context

5. During the SNP election campaign, the new First Minister committed to pushing forward with a Human Rights Bill that would incorporate international human rights treaties, including those related to women, disabled people and ethnic minorities. The Scottish Government had already committed to introducing a new Human Rights Bill during the current parliamentary session (2021-26), and to bring forward a consultation in the first half of 2023. The 2022/23 Programme for Government included a commitment to continue development of the Bill and to consult on proposals.
6. This Bill has its origins in the recommendations of the National Taskforce for Human Rights Leadership (2021) and the former First Minister's Advisory Group on Human Rights (2018) before that. It builds on the existence of strong protections in relation to civil and political rights (through rights in the European Convention on Human Rights being embedded in the Scotland Act 1998, and the Human Rights Act 1998 bringing those rights into domestic law) as well as the incorporation of the UN Convention on the Rights of the Child into Scots law (which remains ongoing). The purpose of the Bill is to continue to build a human rights culture in Scotland across our public services by making economic, social, cultural and environmental rights justiciable within Scot law. Consulting on and

then introducing the Bill will be a significant milestone in Scotland's human rights journey. There are a significant range of engaged stakeholders from academia, advocacy groups and the public sector – as well as everyone in Scotland, who has the potential to further enjoy their rights under this Bill.

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

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

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

10. [Redacted - s.30c]

11. [Redacted - s.30c]

Issues

12. [Redacted - s.30(b)(i)]

13. [Redacted - s.30(b)(i)]

14. [Redacted - s.30(b)(i)]

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

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

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

Bute House Agreement Implications

18. The Bute House Agreement states that the Scottish Government will “*introduce world-leading human rights legislation within this parliamentary session to incorporate, so far as possible within devolved competence, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of Persons with Disabilities. This legislation will also include the right to a healthy environment, a right for older people to ensure equal access to their human rights so that they can live a life of dignity and independence, and an equality clause which provides equal access for everyone, including LGBTI people, to the rights contained within the Bill*”. [Redacted - s.30(b)(i)]

Financial and Legal Considerations

19. [Redacted - s.30(b)(i)]

20. [Redacted - s.30(b)(i)]

Sensitivities

21. [Redacted - s.30(b)(i)]

22. [Redacted - s.29(1)(a) and s.30(b)(i)]

23. [Redacted - s.30(b)(i)]

Quality Assurance

24. This Submission has been approved by Kavita Chetty, the Deputy Director for Human Rights.

Conclusions and next Steps

25. You are invited to: [Redacted - s.30(b)(i)]

HUMAN RIGHTS STRATEGY AND LEGISLATION UNIT

Directorate for Equality, Inclusion and Human Rights

4 April 2023

Cabinet Secretaries and Ministers Copy List	For Action	For Information Portfolio interest	For Information Constituency interest	For Information General awareness
Minister for Equalities, Migration and Refugees		X		
Lord Advocate Solicitor General				X X

Officials Copy List
DG Communities Director for Equality, Inclusion and Human Rights Kavita Chetty [Redacted - s.38(1)(b) - Personal data relating to third party] Special Advisor Admin Box