

Incorporating the United Nations Convention on the Rights of the Child into Domestic Law in Scotland: Working Group, 1st Meeting

Minutes of Meeting Held in Victoria Quay, Edinburgh at 2pm on Tuesday, 25 June 2019

Present: Mairi Macpherson, Creating Positive Futures, Scottish Government (SG) (Chair)
Chief Inspector Lex Baillie, Police Scotland
Dr. Katie Boyle, University of Stirling
Michael Clancy OBE, The Law Society of Scotland
Nicola Dickie, COSLA
Hannah Ross, COSLA
Juliet Harris, Together Scotland
Dragan Nastic, UNICEF
Lucinda Rivers, UNICEF
Prof. Aoife Nolan, University of Nottingham
Laura Pasternak, Scottish Youth Parliament
Suki Wan MSYP, Scottish Youth Parliament
Douglas Ross QC, Ampersand Advocates
Norma Shippin, NHS
Clare Simpson, Parenting Across Scotland

In Attendance: Liz Blair, SG Legal Directorate
Alex Devoy, SG Children's Rights
Nicola Guild, SG Legal Directorate
Duncan Isles, SG Human Rights
Gita Sharkey, SG Children's Rights
Sarah Douglas, SG Children's Rights (Secretariat)
Agnes Rennick, SG Children's Rights (Secretariat)

Apologies: Lynda Brabender QC, Westwater Advocates
Chief Superintendent David Duncan, Police Scotland
(represented by Chief Inspector Lex Baillie)
Dr. Kenneth Meechan, SOLAR

Welcome and Introductions

1. The Chair welcomed Members to the meeting and thanked them for agreeing to participate on the Working Group.
2. Attendees discussed the membership of the Group. It was raised that representation from ethnic minority and disability groups should be explored. It was

also suggested that representation from the Scottish Human Rights Commission, the Equality and Human Rights Commission, and the judiciary might be considered.

3. The Chair agreed that further consideration should be given to the membership of the Group, taking account of separate engagement activity being organised with specific stakeholders and groups as part of the [Consultation](#) exercise. The Secretariat agreed to forward a summary of this separate engagement activity to Group Members.

Action – The SG agreed to:

- **consider possible additional Members of the Group.**
- **update the Group on the separate engagement being undertaken as part of the consultation.**

Scene Setting and Aims for the Working Group

4. The Chair provided brief background on progress made in relation to children's rights in Scotland, including the duties in Part 1 of the Children and Young People (Scotland) Act 2014 and culminating in the First Minister's commitment to incorporate the UNCRC into domestic law within the current Parliamentary session.

5. The Chair noted that the aim for the Working Group was to support Ministers in obtaining a richer understanding of the issues and implications of the policy options set out in the consultation document.

6. The Chair further commented that the Minister for Children and Young People was keen to hear Members' views and was planning to attend the meeting on 27 August, diary permitting.

Consideration of 'Ground Rules' for Meetings

7. The Group considered possible 'ground rules' for Members. In discussion, the following points were agreed:

(a) Summary minutes would be produced to reflect the Group's discussions. These would not attribute specific comments to individuals but would seek to capture the specific expertise and insights of Group Members.

(b) Members would adhere to the Chatham House Rule.

(c) Where Members were unable to attend a meeting, and where possible, they would arrange for a representative to attend on their behalf. Where this was not possible or appropriate, Members would be able to feed-in their views directly to the Secretariat, for example, by e-mail.

(d) Being part of the Group would not limit individuals or organisations from submitting their own responses to the formal consultation.

Terms of Reference / Timeline for the Group's Work

8. In relation to the Terms of Reference, the Chair noted that the consultation document would form the basis of the discussions of the Working Group and further noted that the timetabling of, and indicative agendas for, meetings were dictated by the timescales for delivering legislation by 2021. The following points were raised in discussion:

(a) Amendments were suggested to the phrasing of specified sentences in the draft Terms of Reference in relation to the purpose of the Group.

(b) It was proposed that the list of Members of the Group should confirm the roles and perspectives of Members and whether they are contributing as an individual or as a representative of an organisation or body.

(c) Whilst the primary function of the Working Group would be to discuss the options with regard to the possible models for incorporation of the UNCRC into Scots law, it was accepted that the Group may not be able to reach a consensus view in this regard. It was, therefore, agreed that the summary minutes would capture the range of views and different perspectives expressed by individual Members.

d) Further consideration should be given by the Secretariat to the format of the output of the Group. For example, it was suggested that it might be appropriate to organise the Group's observations under specific themes from the consultation.

(e) Once agreed with Members, the Terms of Reference, membership of the Group and summary minutes of meetings would be published on the SG website.

Action: The SG agreed to circulate to Members:

- **revised membership of the Group, confirming the roles and perspectives of Members as set out in paragraph 8(b) above.**
- **revised draft Terms of Reference**

Consultation: Group Members' Perspectives

9. Group Members provided their initial impressions of the consultation document. Members expressed a wide range of views in discussion as follows:

(a) The Group were reminded that the Scottish Youth Parliament's *Right Here, Right Now* campaign had advocated for children's rights to be 'binding not guiding'.

(b) There was a need to consider how legislation to incorporate the UNCRC into domestic law would interact with existing legislation. Ideally, the new provisions should not make the law overly complicated for practitioners to interpret and apply. The potential challenges of this should not be underestimated.

(c) The Group's attention was drawn to the following lines in the consultation:

"The ultimate goal of incorporating the UNCRC into domestic law is to improve outcomes for children and young people in Scotland. That goal will not be met simply by an increase in the amount of litigation relating to children's rights." (p.28).

It was suggested that this goal may not be achieved, if what was introduced was a further layer of law that interacts in an unclear way with existing case law.

(d) Some Members considered that the Convention as a whole should be incorporated directly into domestic law. It was further suggested that, whilst not a panacea, incorporation could provide a clear impetus for improved understanding and better implementation of the UNCRC.

(e) It was suggested that appropriate consideration should be given to the legislative competence of the Scottish Parliament. It was noted that the consultation paper (p.18-19) discussed the issue of devolved and reserved matters in further detail.

(f) The need for consideration of how incorporation would impact on the delivery of front-line services was noted.

10. Members drew the Group's attention to the following resources, for awareness:

- the draft [Bill](#) developed by an external advisory group convened by the Commissioner for Children and Young People in Scotland and Together Scotland.
- Together Scotland's State of Children's Rights in Scotland [Report](#) 2017.
- Together Scotland's [Blog](#) series on incorporation (May 2019).
- UNICEF Report: [The UN Child Rights Convention: A Report on Implementation in 12 Countries](#).

It was noted that other resources were also available.

11. Attendees also requested information on Scottish Government officials' recent fact finding trip to Iceland to learn about the Icelandic experience of incorporation of the UNCRC into domestic law.

Action: The SG agreed to provide a note of information to the Group about officials' recent fact finding visit to Iceland. This will be made available at the next meeting of the Working Group on 10 July.

Communication Arrangements around the Consultation

12. The Chair noted that the SG was keen for duty bearers and rights holders to have their views heard through the consultation process and would be grateful if Members, where appropriate, could assist in ensuring wide awareness of the consultation. The Chair asked Members to contact the secretariat if they needed further information or resources.

Next Meeting: Wednesday 10 July, Victoria Quay, 09:30-12:30