

SUBMISSION FROM SOCIAL WORK SCOTLAND, TO EQUALITY AND HUMAN RIGHTS and CIVIL JUSTICE COMMITTEE

31st October 2023

Introduction:

Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services. Having previously provided evidence in relation to UNCRC incorporation into Scots Law ¹ we welcome this additional opportunity to provide a written briefing for the Equalities and Human Rights and Civil Justice Committee.

The reflections within this response are drawn from consultation and discussion with our membership which covers senior leaders, including Chief Social Work Officers, and service and team manager involved in delivery of services to children and adults from across the country in both local authorities and third sector. This has taken place over the extended period of time within which moves to incorporate UNCRC into Scots law have been underway and most recently following the decision to amend the UNCRC (Incorporation) (Scotland) Bill, as set out in the Cabinet Secretary's recent parliamentary [statement](#), limiting incorporation to legislation passed by the Scottish Parliament. This paper is also informed by ongoing discussion with partners such as Cosla, UNICEF, and CYPCS.

Our work in Social Work Scotland to support policy and legislative developments such as current work linked to care and justice, children's hearing reform and meeting the needs of unaccompanied asylum-seeking children, is underpinned by an active commitment to improving the rights of children and hearing their voice as a central aspect of this. As the leadership organisation for social work in Scotland, improving understanding of the needs and rights of children and how best those needs and rights are met is fundamental to the development of our profession as we seek to support children in their growth and development often in times of particular trauma and difficulty.

¹ [Response to UNCRC - Social Work Scotland](#)

Social Work Scotland as an organisation is wholly supportive of the commitment to UNCRC and incorporation of those rights within Scots law. This human rights position aligns with the foundation of social work and the principles², standards, and codes³ to which our profession adheres. These principles are also at the core of the Promise⁴, and social work is therefore able to offer a particular perspective and context on UNCRC incorporation, and one which is critical to the delivery of quality services which meet children's needs and fulfil their rights.

Comments and Concerns:

Social Work Scotland, in line with the foundations and principles of our profession and leadership noted above, have consistently supported UNCRC incorporation. This is also outworked in responses to wider policy and practice developments such as those within our consultation response to Care and Justice Bill⁵ which, amongst other areas, supports the move to extend the definition of a child to the age of 18; a reflection of child centred and trauma informed approaches to the care of children. This, and all the related aspects which come with such a change, is welcomed as in keeping with both our organisational and professional principles and approach and our support of UNCRC. Other areas of work with similar approaches which evidence how embedded this commitment is to our practice include our responses and work to support the development of Bairnshoose⁶; our ongoing work in developing, delivering and expanding the Scottish Child Interview Model approach to interviewing of children who have experienced abuse, an approach which minimises trauma and enables the interview recording to be used as Evidence in Chief⁷; related support to develop an approach and training around age of criminal responsibility interviews⁸; and development along with Cosla, Scottish Government and third sector partners to appropriately respond to the needs and rights of asylum seeking children.

Social Work Scotland support the leadership of our profession and as part of this we provide support for the role and function of the Chief Social Work Officer, a statutory role

² [Code of Ethics | BASW](#)

³ [SSSC Codes of Practice - Scottish Social Services Council](#)

⁴ <https://thepromise.scot/>

⁵ [Children's Care and Justice Consultation - Social Work Scotland](#)

⁶ [Bairns Hoose Standards - Social Work Scotland](#)

⁷ [Joint Investigative Interviews of Child Witnesses - Social Work Scotland](#)

⁸ [Age of Criminal Responsibility \(Scotland\) Act 2019: Part 4 \(Investigative Interviews\) and Child Interview Rights Practitioners - Social Work Scotland](#)

with specific duties in relation to provision of care, standards of practice, workforce and rights⁹. Along with others in local government, CSWO – and indeed other leaders in social work in Scotland - share the vision of a Scotland where children’s human rights are embedded, protected, and fulfilled across all aspects of society and public services. They are involved in work already underway across local authorities to take forward this commitment, despite the current difficult environment for local government and related provision.

In this context, and from this foundation, we would draw to the Committee’s attention, some concerns expressed by our membership, and also reflected in discussions with partners. These concerns are not about UNCRC incorporation itself, but the practicalities of the proposal that this applies only to legislation passed by the Scottish Parliament. As an organisation supporting practitioners and managers across Scotland we are concerned that the proposed approach to amending the UNCRC (Incorporation) (Scotland) Bill, as set out in the Cabinet Secretary’s recent parliamentary [statement](#), will be unable to achieve our shared aims in relation to the protection and fulfilment of children’s rights.

CSWO and the services they are responsible for across Scottish Local Authorities operate within a legal landscape which is a complex mix of Acts of the Scottish Parliament and Acts of the UK Parliament. Social work duties and provision operate and are delivered in this space, with some areas impacted by duties under legislation passed by both Parliaments.

Under the proposal, key pieces of legislation relevant for children’s rights in critical areas such as Children (Scotland) Act 199 -, the core provision for looked after children - would be out with the scope of the Bill, leaving considerable gaps in rights protection. Whilst such foundation acts would be excluded, other aspects of support for looked-after children is covered within later Scottish legislation, thus creating a complex and unclear position for local authorities in key areas where children and young people would reasonable expect the provisions of UNCRC Incorporation (Scotland) Bill to apply.

We recognise that many aspects of incorporation are about how individuals operating in public services undertake their work, and that ongoing attention will be required to how being UNCRC compliant looks in practice. Children and young people will benefit from changed approaches and attitudes which require no new legislation or approaches.

⁹ [The Role of Chief Social Work Officer - Social Work Scotland](#)

However, in terms of social work legislation and therefore practice, much of our legislation is pre-1999, and many aspects of legislative change since then amends earlier legislation. As such, the majority of the basic framework for children's social work is out with the scope of UNCRC incorporation. As an example, the primary legislative context for children's social work remains the Social Work (Scotland) Act 1968 and Children (Scotland) Act 1995. Legislation such as the Children and Young People (Scotland) Act 2014, the Children's Hearing (Scotland) Act 2011, and the Adoption and Children (Scotland) Act 2007 are largely amendments to earlier provision. Where new provision e.g. the right to continuing care, has been established in law, that would be subject to incorporation, as would processes not founded in legislation such as our national child protection investigation and response processes.

This makes for a complicated and potentially impossible legislative landscape for practitioners, children and those wider professionals supporting them, to navigate, raising the risk of increased conflict which diminishes rather than increases the experiences of children in having their rights upheld and supported. As the context outlined above for social work is true also of other areas such as education - the Education (Scotland) Act 1980 would not be in scope but the Education (Additional Support for Learning) (Scotland) Act 2004 as amended would be in scope - the current proposals create substantial gaps in the coverage of rights, add to the existing legal complexity, and have related complicated implications for practical implementation.

Discussion with partners suggests that this legal complexity would be at best difficult and probably unworkable for practitioners to interpret, implement and apply in practice. Fundamentally it will be equally if not more, difficult for children and young people, their families and advocates to understand their rights and the practical effect of those rights. Clarity and accessibility for both practitioners and children and young people is crucial if the intentions of the Bill are to be achieved.

Potential Options:

Social Work Scotland is aware of calls for a legislative audit and programme of re-legislation in order to inform the potential to bring currently excluded pieces of legislation within scope. Whilst aware that this would be a significantly complicated, time-consuming, and not a straightforward task, a scoping exercise to identify public authority functions

within and out with scope has as yet not been undertaken. We view this as critical to inform whether the current proposal can be implemented in a manner which meets the intent of the bill. As such Social Work Scotland would support such an audit as essential to avoid future challenge and to ensuring a context for UNCRC incorporation which enhances rather than confuses the rights of our children.

As an organisation we continue to offer our support to finding a practical solution, and thereafter developing the necessary guidance and supportive messaging. It is of particular importance to ensure that everyone understands the limitations of coverage within UNCRC incorporation if the current or similar proposals are to be taken forward.

Local authorities are facing substantial pressures with new legislation and demands, which include workforce pressures- particularly relevant for social work and social care - in addition to the challenging financial landscape and increasing need resulting from the cost-of-living crisis and impact on poverty. Additional demands, and particularly additional challenge and potentially complaints from unclear UNCRC legislation would be a further significant demand in terms capacity and resource at a time when those resources and capacity are already stretched. Social Work Scotland consistently underline the importance of managing new demands to ensure that the positive policy intent behind change is able to be realised in practice. One of the most critical elements in this regard is attention to careful implementation and sequencing of change. This is very much the case with the UNCRC (Incorporation) (Scotland) Bill as currently proposed.

Conclusion:

As an organisation with a wide membership and reach, Social Work Scotland recognises the limited options available to Scottish Government following the Supreme Court judgement and remain supportive of attempts to find a workable solution. The solution being proposed, however will not in the view of our members - who work with some of the most disadvantaged groups of children to uphold their rights and improve their lives, and who represent the leadership in social work cross Scotland – provide the necessary framework and context to fulfil the intent of UNCRC incorporation: to improve children’s rights across public bodies in Scotland. This is due to two primary factors – the restriction of the scope of the legislation as proposed to legislation passed by Scottish Parliament, which will result in insufficient coverage of children’s rights; and the complexities of the legislative

landscape and interactions between the various pieces of policy and legislation which make it impractical.

We remain fully committed to working together to find a practical solution which will improve and enhance children's rights and would ask Committee before progressing further to undertake an audit of legislation and map the interfaces highlighted above for social work, and other related areas. It may be that this will demonstrate where non legislative solutions may be an option to reaching the goal we all seek.

For further information, please contact:

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