

RESPONSE FROM SOCIAL WORK SCOTLAND TO CONSULTATION ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION) (SCOTLAND) ACT 2024: STATUTORY GUIDANCE ON PART 2 AND 3 (SECTION 18)

May 2024

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 Law¹ and written submission to Equality, Human Rights and Civil Justice Committee, we welcome this opportunity to comment on the statutory guidance for Parts 2 and 3 of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024

The principles on which the social work profession is built are those of human rights, and as such as a profession we align to the principles of the Act. As an organisation Social Work Scotland also operate in a space where we seek to ensure that legislation and good practice are able to be put in place on the ground through clarity, positive culture and leadership. As such we are alert to the importance of implementation in achieving the policy intent within legislation and highlight aspects of this within this response.

This response is gathered from the views and reflections of our membership which spans local authority and third sector organisations across the range of social work provision. As an organisation we work closely with our partners to shape policy and practice and improve the quality and experience of social services. We are committed to the UNCRC and its incorporation in Scots Law noting the significance of the definition of a public authority and

¹¹ [Response to UNCRC - Social Work Scotland](#)

its functions, and the proposed reporting duties and therefore the importance of clarity in those areas within statutory guidance.

CONSULTATION QUESTIONS

Part 2 Guidance

The following consultation questions 1-14, relate to the draft statutory guidance on Part 2 of the UNCRC Act. This is particularly relevant to public authorities.

1. I have read the draft statutory guidance on Part 2 of the UNCRC Act

Yes

No

2. Section 3, '**Background and introduction to the UNCRC Act**', provides sufficient information on the UNCRC and the background to incorporation.
 - Strongly agree
 - Agree**
 - Neither agree nor disagree
 - Disagree
 - Strongly disagree

Comments box

The introduction is a clear and comprehensive description of the UNCRC and therefore the objective of the Act. The language is, out of necessity, not always simple and the introduction explains most aspects clearly. We suggest that some additional context for the section on optional protocols may make clearer what this refers to for those not familiar with the layout of UNCRC.

Social Work Scotland are pleased to see reference to existing legislative context which already embeds UNCRC principles and rights.

Finally, we note that while comprehensive, the introduction as a whole (section 3) is lengthy. This may be unavoidable, but for ease of reference, a succinct introduction is easier for practitioners and those implementing the legislation to refer to and access.

3. Section 3.4, '**Meaning of UNCRC requirements**', clearly articulates what is meant by this in relation to the section 6 duty.
 - Strongly agree
 - **Agree**
 - Neither agree nor disagree
 - Disagree
 - Strongly disagree

Comments box

This is Section 3.3 in the guidance accessed via the consultation link.

Understanding the aspects devolved and those which are reserved is not easy and explaining this in guidance is therefore critical.

We wonder if referring each time to 'UNCRC requirements as incorporated by the Act' rather than the shortened version of 'UNCRC requirements' might make clearer that it is the requirement of the Act which are being referred to rather than those of the full convention. For those accessing the guidance this distinguishes more clearly the basis of what is being asked of them.

We agree that utilising as far as possible the text of UNCRC is helpful. The description of the 'carved out' aspect though is not always easy to follow. We suggest that the second part of paragraph two could be more simply described e.g. 'where the text in UNCRC refers to reserved matters, this has been removed or 'carved out' leaving only those aspects within the devolved powers of Scottish Parliament'.

For guidance to be effective it should be easily accessible. While it is useful to have the references for the definition of public authority, describing those in the guidance or providing the link would make this more accessible to those putting the guidance into practice.

4. Section 4.2, '**Remedies for unlawful acts (sections 7 to 10)**' is useful.

- Strongly agree
- Agree
- **Neither agree nor disagree**
- Disagree
- Strongly disagree

Comments box

Children and young people should have recourse to statutory proceedings where breaches have taken place. Social Work Scotland are however concerned that the emphasis on legal proceedings may result in this becoming a 'default position' with greater attention focused on legal rather than informal and reconciliation processes – which research would indicate result in more effective outcomes.

The Scottish Public Ombudsman Child Friendly Complaints Process outlines a gold standard in relation to complaints. It involves children and young people, takes their views into account in matters affecting them, and sets out timescales for action. Social Work Scotland is however, extremely concerned that wider factors, not least the pressures on public services and staffing crisis, mean that it is unlikely to be able to be implemented in practice resulting in greater use of legal routes, and a blame culture.

Attention to implementation in relation to UNCRC Act is critical to avoid a similar scenario. If the intent of the legislation is to be achieved, it must be able to be happen on the ground. Social Work Scotland as a representative of the leadership of social work across the country, is concerned that if care is not taken in this area, expectations of children and young people will be raised in a way that is not achievable causing greater distress, and more conflict, and reducing the effectiveness of the legislation.

Additionally, there is a risk that public bodies will spend increasing amounts of time in legal challenges, diminishing the time available for enhancing and meeting children's rights in practice situations. There are additional issues related to recording and audit trails, and consideration of what may be required. Time to implement any new processes is likely to be appreciated by our members who work primarily with children and families who have experienced trauma, and where serious and critical decisions are often made to protect a child's interests.

An emphasis on conciliatory approaches and examples of application of those before moving to legal remedies would enhance the guidance and perhaps increase the likelihood of achieving the intended outcome for children and young people.

5. Section 4.2.3 '**Definition of a public authority**' is clear.

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree**
- Strongly disagree

Comments box

It is helpful to define public authority and to highlight the distinction between a core public authority and those that are hybrid.

We would also note that it would be helpful to include social work in the examples of functions that are clearly of a public nature. Social work is distinct from social care and while social care is often provided by a local authority as a result of a social work assessment, much social care is also provided privately without the intervention of the local authority. Social care would not therefore always be publicly funded.

In previous correspondence Social Work Scotland has noted the potential for confusion resulting from the functions referred to only relating to legislation originating from the

Scottish Parliament. While fully aligned to the importance of practice being as compatible as is possible with UNCRC, many of the functions provided by social work services across Scotland are provided on the basis of legislation which was passed by the UK Parliament before the year 2000. Additionally, a significant part of post devolution legislation relevant to social work provisions, amends that earlier legislation.

This means there is a complex legal landscape for social work – and potentially other areas of public services – to navigate. Clarity of this in guidance is essential to avoid confusion for public authorities, staff seeking to implement UNCRC Act and the children and families it is intended to support.

We welcome the explicit statement that the public duty lies with the state and not an individual, and that functions carried out by the private, voluntary and independent sector on behalf of a public authority are included as public functions. The suggestion that this be included in contracts is helpful.

6. Section 4.3.1 '**Definition of functions of a public nature**' is clear.

- Strongly agree
- Agree**
- Neither agree nor disagree
- Disagree
- Strongly disagree

Comments box

No comments.

7. Section 4.4, '**Explanation of the duties on public authorities in Part 2, section 6**' clearly explains the nature of the section 6 duty on public authorities, including clearly articulating that the section 6 duty applies only when a public authority is carrying out devolved functions conferred under Acts of the Scottish Parliament or common law powers.

- Strongly agree
- Agree
- Neither agree nor disagree
- **Disagree**
- Strongly disagree

Comments box

This is a complex area and will not be easy for managers and practitioners seeking to implement the legislation to follow, given the necessarily legalistic nature of aspects of this section.

Please also see comments in our response to Q4 about the complexities arising from the Act applying to post 2000 legislation. Social Work Scotland members are totally committed to acting in a manner compliant with UNCRC and the UNCRC Act but are also acutely aware of the confusion which may result, given the amount of social work legislation which predates the Scottish Parliament, and that legislation thereafter contains much which, rather than being new legislation, amends previous legislation. While the duty to act in a compatible manner remains, certain core aspects of the Act, such as the child's right to seek remedy, may not be available for a range of critical core social work functions.

8. Annexes A.1 – A.5, '**Clarification of conceptual aspects of the UNCRC**' are clear.

- Strongly agree
- **Agree**
- Neither agree nor disagree
- Disagree
- Strongly disagree

9. Annexes B.1 – B.4 '**Sources to guide interpretation**' are useful.

- Strongly agree
- Agree**
- Neither agree nor disagree
- Disagree
- Strongly disagree

10. Annex C, '**Framework for Reviewing Compatibility (s.6 duty)**' is presented in an accessible manner, e.g. the content, style, and length make this a user-friendly and practical resource.

- Strongly agree
- Agree**
- Neither agree nor disagree
- Disagree
- Strongly disagree

Comments box

Inserting some practice examples into Annex A would be useful – examples of what implementation looks like in practice/how those rights have been realised in Scotland or other countries.

11. I clearly understand how to use the Compatibility Review Framework.

- Strongly agree
- Agree**
- Neither agree nor disagree
- Disagree
- Strongly disagree

Comments box

Social Work Scotland would note that this is a helpful and logical framework and follows similar assessment process in other areas such as Island Communities Impact Assessments. However, as in many cases, application in specific situations and services in a context of public sector pressures and staffing crisis will be a challenge, not least because it is an additional highly detailed piece of work, which will take a significant amount of time and effort to complete, however useful in nature.

12. Overall, the guidance is presented in an accessible manner, e.g. the content, style, and length make this a user-friendly and practical resource.

- Strongly agree
- Agree
- Neither agree nor disagree**
- Disagree
- Strongly disagree

13. Overall, the guidance supports an improved understanding and ability to fulfil the duties under Part 2 of the Act.

- Strongly agree
- Agree**
- Neither agree nor disagree
- Disagree
- Strongly disagree

14. Are there any areas where you think the Part 2 guidance could be improved? Please cite specific parts of the guidance if relevant.

Comments box

The guidance is lengthy and seeks to assist understanding of a complex legal and rights position. It therefore includes a lot of information, much of which is legal in nature. We appreciate that putting this into plain language would present its own challenges but would

suggest that doing so will be helpful to those implementing the Act, who will often be managers and practitioners on the ground.

We would also appreciate shorter guidance to make it as accessible as possible but equally appreciate that the nature of the material may not make this feasible.

Part 3 Guidance

The following consultation questions 14-20, relate to the draft statutory guidance on Part 3 (section 18) of the UNCRC Act. This is particularly relevant to public authorities listed in section 19 of the Act.

15. I have read the draft statutory guidance on Part 3 (section 18) of the UNCRC Act

Yes

No

16. Section 4, '**Reporting duties of listed authorities**' is sufficiently clear on the reporting requirements under Part 3 of the Act.

- Strongly agree
- Agree**
- Neither agree nor disagree
- Disagree
- Strongly disagree

Comments box

Local Authorities are already familiar with their reporting duties in terms of the current Children and Young People (Scotland) Act 2014, which will provide experience on which to build. Inclusion of a child friendly version is a useful addition though children are not a homogenous group, and this may require a range of versions of the material to be produced.

The three-year cycle of reporting is reasonable and aligns to other reporting timescales e.g. Integrated Children's Services Plans. The option of combining reports is welcome.

17. Section 5, '**Publication requirements of reports**' is sufficiently clear on the publication requirements under Part 3 of the Act.

- Strongly agree
- Agree**
- Neither agree nor disagree
- Disagree
- Strongly disagree

Comments box

Existing Children's Rights reports are published and it is appropriate that the new reports are also in the public domain.

18. Section 6, '**Policy intention of children's rights reports under section 18 of the Act**' clearly explains how the reporting process contributes to progressing children's rights.

- Strongly agree
- Agree**
- Neither agree nor disagree
- Disagree
- Strongly disagree

19. Annexes B.1 – B.4 **Frameworks for children's rights reporting** are helpful.

- Strongly agree
- Agree**
- Neither agree nor disagree
- Disagree

- Strongly disagree

Comments box

The framework for rights reporting is helpful and clear. Examples of reflective statements is a useful inclusion. We suggest that the section on GIRFEC is included earlier in the framework and before the reflective statements as Scotland's national practice model which embeds UNCRC principles and against which local authorities and other public bodies have been reporting for some time.

Practitioners have worked hard over recent years to refer to the Wellbeing Indicators rather than using the acronym SHANARRI. Listening to the voice of young people they make a plea, also reflected in the Promise, for plain language and avoiding the use of abbreviations. We therefore suggest that this is reflected as much as possible in the UNCRC Act guidance and that the term 'wellbeing indicators' is used without the addition of SHANARRI.

We note again the reference in section B2 to the term social care. This is not a phrase commonly used or understood in the children's sector and is open to misunderstanding given the wider context of adult social work and social care and the emerging National Care Service. We suggest that it is removed from the guidance and that reference is instead made to 'social work and education'. Further reference to the Scottish Government GIRFEC and rights training material would also enhance this section.

<https://www.gov.scot/publications/childrens-rights-wellbeing-impact-assessments-crwia-training-tool/>.

It should also be noted however that it is an additional and significant additional task on public bodies.

20. Annex C, '**Scottish Government use of children's right's reports**', is clear.

- Strongly agree
- **Agree**
- Neither agree nor disagree
- Disagree

- Strongly disagree

21. The guidance is presented in an accessible manner, e.g. the style, length and content are useful in aiding implementation of duties in respect of the Act.

- Strongly agree
- **Agree**
- Neither agree nor disagree
- Disagree
- Strongly disagree

22. Are there any areas where you think the Part 3 guidance could be improved? Please cite specific parts of the guidance if relevant.

Comments box

Again Part 3 is lengthy but does contain relevant information. The inclusion of examples will be helpful to those required to report and implement, as is the inclusion of a glossary.

For further information, please contact:

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