

## United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill

### Summary of Evidence

#### Introduction

The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill was introduced by John Swinney MSP to the Scottish Parliament on 1 September 2020.

The Committee launched its call for views on 7 September 2020. The deadline for responses was 16 October 2020. A separate call for views targeting the views of children and young people is open until 20 November 2020.

The Committee received around 150 written submissions on the Bill, about 100 of which were from a range of organisations in the public and third sector. This paper summarises those submissions the committee received by 20 October 2020.

#### Overall support for the Bill

Nearly all the respondents to the call for views support the objective of the Bill, to incorporate the UNCRC into Scots law. A number of organisations noted that full incorporation, such as the Bill was aiming to do, is an important legislative step.

For example, Unicef UK stated that:

“Evidence from countries that have already incorporated shows that ‘legal incorporation matters’ and that children’s access to their rights is improved. Countries such as Belgium, Norway, Iceland, Sweden and Spain display positive culture change. They are more likely to perceive children as rights-holders and have a broader context of respect for children’s rights. In giving the UNCRC formal status in the domestic legal system, it becomes an ‘influential touchstone’ for all those whose decisions impact on children across legislation, policy and practice. In this sense, incorporation safeguards children’s access to their rights by preventing future breaches.

Scotland is the first country in the UK to fully and directly incorporate the UNCRC into its domestic law. This model of incorporation is very rare in common law countries where the majority tend to amend existing legislation rather than incorporate the UNCRC into the national legal framework. Thus, this Bill acquires an additional significance and provides a strong model of incorporation with the potential to be world-leading if supported by effective implementation.”

There was also strong support amongst respondents for the “maximalist” approach of the Bill.

For example:

“We fully support the ‘maximalist’ approach of the Bill; directly incorporating UNCRC requirements and making it unlawful for public authorities to act incompatibly with the UNCRC will provide a strong footing for embedding a culture of accountability to children’s human rights across Scotland.” (Scottish Women's Aid)

“Unicef UK further welcomes the “maximalist” approach taken by the Scottish Government to incorporate the UNCRC and acknowledge the redaction of some provisions where these fall outside the scope of the competence of the Scottish Parliament. We note that this redaction has been as minimal as possible and we welcome the “future-proofing” of the Bill in providing for the additional on new articles to the “UNCRC requirements” but does not allow the removal of existing articles.”

“We strongly welcome this ground-breaking Bill and the “maximalist” approach (seeking to incorporate the UNCRC fully and directly within the devolved competence of the Scottish Parliament) that has been taken. We know that where full and direct incorporation has taken place in countries such as Belgium, Norway and Spain, cultural shifts in the public support and understanding of children’s rights have been galvanised, and the arguments of politicians, public officials and the third sector when advocating for children’s rights in legislation and policy have been strengthened, resulting in positive changes that enable children to better enjoy their rights.” (CELCIS)

### **Inclusion of General Comments**

There were many comments from respondents suggesting that section 4 of the Bill, on interpretation of the UNCRC requirements, should be amended to include additional sources. The General Comments in particular, were considered by many to be necessary for appropriate interpretation of the convention by the courts.

For example:

“The Bill provides that the courts “may” consider certain material when interpreting the “UNCRC requirements”. While this direction is welcome, it misses the rich and valuable guidance provided in other UN Committee documents such as General Comments, Concluding Observations, opinions made in relation to the third optional protocol and reports resulting from Days of General Discussion. These documents serve an important role in clarifying the content of UNCRC rights, outlining potential violations and offering advice on how best to comply with UNCRC obligations. General Comments have been recognised by the UK Supreme Court as providing “authoritative guidance” and have already been used by the judiciary to inform wider ECHR cases.” (Together (Scottish Alliance for Children's Rights))

“With regard to the UNCRC, it is the General Comments, Concluding Observations and opinions made by the Committee in relation to Optional Protocol 3 which give this direction. If the policy intention is to ensure the

context of the rights in Schedule 1 is properly understood by the courts, then it follows that the courts should be encouraged to take account of these critical sources.” (JustRight Scotland)

### **Duties on Public Authorities**

While the Policy Memorandum accompanying the Bill explains the wording used in section 6, there were a number of comments expressing dissatisfaction with this. While the Bill makes it unlawful for a public authority to “act in a way which is incompatible” with rights in the ECHR, some respondents suggested that this should be changed to public authorities also having “due regard” for the UNCRC.

For example, the Human Rights Consortium Scotland noted that:

“The Bill includes a duty to comply with the UNCRC which is very much welcome. However it does not include a duty on public authorities to have 'due regard' to the UNCRC, a duty which is proposed by the First Minister's Advisory Group. The 'due regard' duty means that public authorities must take into consideration, or take into account, a particular matter as part of the decision making process. It is about process rather than outcome, and it provides the rights holder with a right that a particular process will occur. An example of such a duty is the public sector equality duty that requires public bodies to have due regard to promote equality of opportunity between different disadvantaged groups.”

Some respondents also suggested changes to the definition of public authority used in the Bill. They felt that it may not be sufficiently broad to provide accountability to all relevant bodies:

“We have some concerns as to the practical application of this section which have been echoed by the Scottish Human Rights Commission (SHRC). Scottish Government's intention is that related case law under the Human Rights Act (HRA) may inform decisions on the meaning of “public authority” under the UNCRC Incorporation Bill. This has caused some concern to our members who, particularly following the Serco<sup>1</sup> judgement, are concerned that private bodies may escape liability. SHRC notes this is an area of great uncertainty requiring further clarification and calls for the UNCRC Incorporation Bill to be viewed as an opportunity to provide clarity, guidance and guard against unintended accountability gaps. Our members call for clear reassurance that organisations such as private housing providers, childcare, private foster care and public schools will be included within the scope of this duty.” (Together (Scottish Alliance for Children's Rights))

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<sup>1</sup> The 'Serco Judgment' refers to the Serco 'lock change' evictions of asylum seekers living in Glasgow. Serco is a private company that provided accommodation to asylum seekers on behalf of the Home Office in Glasgow.

## Enforcing Rights in Court

The submissions were generally supportive of the Bill providing a mechanism for public authorities to be taken to court to enforce children's rights in Scotland:

"We welcome the ability to take public authorities to court to enforce children's rights in Scotland. This will not only hold public authorities to account but is also an essential part of incorporation of the UNCRC into Scots law. This helps promote a rights based approach on decision making and crucially ensures transparency across public authorities." (Carers Trust Scotland (on behalf of the National Carer Organisations))

"This is long overdue. When the convention has been cited and it is agreed it has been contravened, for example in an inquiry or investigation, there is currently no route to ensuring restorative justice. This is an important part of ensuring high standards of behaviour and practice." (Ruth Stark, Safeguarder/Independent social worker)

"This is undoubtedly an extremely positive measure. Being able to take public authorities to court to enforce children's rights demonstrates just how seriously the Scottish Government intends them to be taken. The ability to seek remedy and redress via the courts places children's rights on the same footing as human rights overall, which is welcomed." (Early Years Scotland)

There was also a general hope from respondents that these judicial remedies would be used only as a last resort. Some suggested alternative routes for initially seeking redress, highlighting the need for procedures to be local, accessible and child friendly:

"The ability to take public authorities to court should be accompanied by parallel processes enabling children to access systems of redress for rights violations without the necessity of going to court." (Scottish Women's Aid)

"The need to go to court to ensure that children's rights are enforced should be looked upon as a last resort, not a primary mechanism for giving effect to those rights. Children may find legal action and court processes difficult to navigate and, at times, traumatic (...) One possibility would be to introduce a complaints mechanism which would reduce the need to go to court. It is important that any complaints mechanism put in place is simple to access and use and is also child-friendly. The development of local and uniform processes across all Public Authorities in Scotland could enable swift redress and the prevention of further breaches." (CELCIS)

COSLA also highlighted that local authorities will need support and time to prepare for these legal changes before they are implemented:

"A commitment to incorporate the UNCRC should not obscure the reality that systems and practice are managed in a context where the legal obligation is to 'secure better or give further effect' to children's rights, which is very different to a 'duty to comply', particularly when the precise domestic legal interpretation of the UNCRC is unknown. Therefore, there is concern that differences in perspective or interpretation will lead to legal challenges. We believe it is important to build in time prior to incorporation for scenario

planning and mapping, helping organisations to anticipate, and where necessary adapt, to the incoming legal context. We hope that, once that process has concluded, organisations will be well equipped to ensure that legal challenge will not be necessary.”

### Legal Aid

Some submissions highlighted the need for financial and legal support to be made available to young people who choose to take a public authority to court. The need for systems of advocacy was also a common comment found in the responses.

For example:

“While the ability to seek action in this way can act as a powerful incentive for change, (...) this needs to be backed up by support and guidance for families who feel forced to take this measure. This includes access to free independent advisors” (Royal College of Psychiatrists in Scotland)

“Advocacy workers and solicitors instructed by children on these cases must have the skills to enable them to communicate well with children. They must be knowledgeable about children’s rights, including the particular needs of vulnerable children in need of care and protection and training and support should be available to them in these areas.” (CELCIS)

### Time Limits

There were two opposing views raised by respondents in regards to time limits for raising judicial proceedings, included in section 7 of the Bill.

Together (Scottish Alliance for Children's Rights), broadly supported the text of the Bill, stating that:

“We welcome that children are excluded from the requirement that cases must be raised within one year of an alleged violation, instead providing that the one year “clock” only starts to run when they turn 18. We further welcome that the Bill allows cases to be brought after more than a year has passed where considered “equitable”. Together, these provisions should help to address barriers in access to information, advice and support which may have prevented younger children from raising proceedings within a year. However, we have concerns that the provisions as drafted may not realise this policy intention in practice. We particularly seek assurance that the one-year time limit does not prevent children benefitting from more generous time limits provided in other legislation.”

The Faculty of Advocates, however, noted:

“The extension of time limits in section 7, to disregard periods when an applicant is under the age of 18 is likely to be impractical at a number of levels. Proceedings to be brought against a public authority by way of judicial review should generally be raised within 3 months, with an extension allowed by the court if it is equitable to do so in the circumstances of the case. The three-month time limit was introduced by the Courts Reform (Scotland) Act 2014 to avoid delays in challenges being brought.

Extending the period of one year for decisions to be challenged, where that would be other than by resort to judicial review, also runs contrary to the need to avoid delay, particularly when dealing with acts or decisions that affect a child or children. This extended time limit will place an onerous burden on public authorities in terms of record keeping, and ensuring all material evidence required in support of the decisions they make is preserved. The equivalent time limit for claims under section 7 of the Human Rights Act 1998 is one year or such longer period as the court or tribunal considers equitable having regard to all the circumstances. The Supreme Court has refused to extend the one-year time limit for a child in circumstances where any damages awarded were unlikely to be substantial (*A v Essex County Council* [2011] 1 AC 280).

Were the time limits to remain 3 months and 1 year, with discretion to extend, with an express requirement to have regard to the fact that the applicant is under the age of 18 when deciding whether a late claim could be made, that would permit the court to balance all the relevant considerations, with a particular focus on the rights and interests of children.”

### Judicial Remedies

Dr Katie Boyle, Associate Professor of International Human Rights Law at the University of Stirling, highlighted in her submission some concerns regarding section 8 of the Bill on judicial remedies. While the Policy Memorandum states that the Bill includes ‘effective remedies’ for violations of the UNCRC, Dr Boyle points out that:

“The Bill does not provide a definition of what constitutes an ‘effective remedy’ nor does it compel the court to ensure the remedy deployed meets the threshold of an ‘effective remedy’.”

Dr Boyle recommends that:

“Given that the requirement to provide effective remedies is an implicit component of the UNCRC and forms part of the Government’s Policy Memorandum, section 8(1) could be amended to encourage the court to issue remedies it considers to be ‘just, **effective** and appropriate’.

Alternatively, the Bill could contain an explicit ‘right to an effective remedy’ reflecting the examples found in Article 8 UDHR, Article 13 ECHR or the wider definition contained in Article 47 EU Charter of Fundamental Rights. The courts already have been under a duty to meet this threshold in connection with EU law (a right and remedy that has been lost due to Brexit) and so there is an established practice that can be built upon.”

Together also raised similar concerns relating to remedies in the Bill, noting that:

“We encourage the Committee to explore how “just and appropriate” remedies could be determined and consider if amendments are needed to ensure children are able to access an effective remedy.”

## Standing

Together, and others, were also concerned about which organisations would be able to take forward court action on behalf of children:

“Despite not including a victim test, the rules on standing are not entirely clear from the face of the Bill. We appreciate the Policy Memorandum notes “the ordinary rules about who can bring cases in court would apply to claims brought under the Bill” and understand Scottish Government intends to apply the test of “sufficient interest”. Our members call for clarity that the removal of the ‘victim test’ would enable NGOs, parents and carers and youth workers to bring cases on behalf of individual and groups of children if they were deemed to have “sufficient interest”. (Together (Scottish Alliance for Children's Rights))

We recommend that Committee seeks clarity on the provisions relating to “standing” to ensure the Bill achieves its policy objective of removing barriers to children’s access to justice.” (Barnardo's Scotland)

“It is important that the broadest definition of standing should be adopted to facilitate standing for every child and to support public interest litigation where appropriate (where a third party can raise proceedings to challenge an unlawful act of omission). The sufficient interest test should be adopted.” (Dr Katie Boyle, University of Stirling)

## **Children’s Rights Scheme**

There was widespread support for the Children’s Rights Scheme as detailed in the Bill, and the duties on public authorities to report. There was also a strong support for the views of young people being included in reporting. Some respondents suggested a range of vulnerable groups which should be included to ensure a diversity of views, including young carers and disabled young people.

There were suggestions made that the Bill could be clearer on the requirements and criteria for the contents of the Scheme. This was particularly the case in regards to the consultation of young people.

For example:

“The duty to prepare the Scheme does not set requirements for its contents – instead providing that the Scheme “may” include arrangements to ensure children’s participation in decision-making, awareness raising, rights-based budgeting and the preparation of CRWIA. We agree (...) that the Bill would be strengthened by replacing “may” with “shall” in section 11(3) to ensure consistent consideration of children’s rights.” (Scottish Women's Aid)

“There should be a minimum standard for the scheme about what needs to be reported on – essential/optional e.g. consultations carried out with children and young people as part of planning decisions – essential, number/outcome of court cases - optional?” (South Lanarkshire Children's Service Partnership)

“we would recommend stronger phrasing in section 11(3), to require Scottish Ministers to ‘promote public awareness and understanding (including appropriate awareness and understanding among children) of the rights of

children'. This would mirror the duty currently within section 1(3) of the Children and Young Persons (Scotland) Act 2014 that will be repealed through this Bill." (Fiona Morrison, Máire McCormack & Kay Tisdall, University of Stirling)

Some public authorities which responded also felt that the duties on public authorities to report could be made clearer:

"There needs to be greater clarity around what this means and the resources it will require. We already report on a three-yearly basis regarding Children's Rights and Wellbeing (next report due in 2023). Guidance should be provided on what should be contained in the "report on the actions taken" to ensure compliance with Part 2, Section 6 (1). It should also be clear who will review this report once published." (Aberdeen City Council)

"To be effective they need to be supportive rather than burdensome and while the Bill allows public authorities broad discretion around how to report, some support for best practice and to encourage some consistency to allow for benchmarking between similar organisations would be welcome." (Scottish Public Services Ombudsman)

"COSLA remarked that we have counted more than fifty separate reporting requirements that are placed upon local authorities and would argue that there is a clear need for a more strategic and joined up approach across human rights agendas. Any reporting requirements should be proportionate and joined up with existing strategic work, such as children's services planning, to ensure best and most efficient use of public resources."

There was also a suggestion from a couple of respondents that reporting needed to be extended to other bodies that work with young people:

"Some national charities as well as some private companies, provide more services than many individual local authorities and health boards. Making consideration and reporting of the Children's Rights Scheme applicable to these significant stakeholders would support the overall aims of incorporation." (Social Care and Social Work Improvement Scotland)

"(We) would like to see the list of authorities in Section 16 expanded to include the Scottish Prison Service and the Scottish Court and Tribunal Service, given the impact these respective agencies have on children's and young people's lives." (Families Outside)

### Child Rights and Wellbeing Impact Assessment (CRWIA)

Some respondents commented positively on the section introducing a CRWIA, stating that:

"the introduction of the Child's Rights and Wellbeing Impact Assessment is a positive step. Impact Assessments have been introduced in other scenarios – such as Equality Impact Assessments – with some success." (Early Years Scotland)



There were respondents, however, who felt that the section would be more effective if Ministers had less discretion in determining when a CRWIA was required.

For example:

“The duty in Section 14(5) requires Scottish Ministers to publish a CRWIA “in such a manner as the Scottish Ministers consider appropriate”. We believe that the current wording provides a level of ministerial discretion which could result in an inconsistent approach to undertaking CRWIAs.” (Scottish Women's Aid)

“We understand the need for some ministerial discretion as to which decisions of a strategic nature will be subject to these reporting duties in order to enable relevant and high quality assessments. However, we would suggest that the wording ‘as they consider appropriate’ be removed to ensure that this discretion is limited and there is accountability around decision making duties to assess.” (CELCIS)

“Families Outside would welcome further clarity on what would constitute a, "decision of a strategic nature," as set out in Section 14(3). We believe that subsection 4 could be strengthened so that, on an annual basis within the Children's Rights Scheme, Ministers could identify upcoming decisions where an Impact Assessment would be required.”

There were also comments suggesting that the wording in section 14(5), which requires Scottish Ministers to publish a CRWIA “in such a manner as the Scottish Ministers consider appropriate”, did not ensure access for young people. These respondents said that Minister’s should always be required to publish a child-friendly version of a CRWIA, either at the initial point of publication or within three months of this.

Other respondents suggested that the use of a CRWIA be extended to public authorities when making decisions that may impact children:

“The duty to prepare and publish such impact assessments should be extended to public authorities so that children’s rights can be given priority when decisions are taken which affect them. This would help to anticipate the potential impact of proposed policies or budgetary allocations and would complement the reporting duty placed on public authorities under section 15 of the Bill. Public authorities are often undertake equality impact assessments, in order to meet the Public Sector Equality Duty, so this requirement will expand and enhance already existing practices.” (Fiona Morrison, Máire McCormack & Kay Tisdall, University of Stirling)

A couple of respondents asked why a CRWIA had not been produced to accompany this Bill. The Scottish Government has published a CRWIA<sup>2</sup> alongside an Equality Impact Assessment and a Business and Regulatory Impact Assessment.<sup>3</sup>

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<sup>2</sup> <https://www.gov.scot/publications/united-nations-convention-rights-child-incorporation-scotland-bill-child-rights-wellbeing-impact-assessment-crwia/>

<sup>3</sup> <https://www.gov.scot/policies/human-rights/childrens-rights/>

## Legislation Incompatible with UNCRC

Responses to the question on the 'strike down' powers included in the Bill were predominantly positive, with many stating that this was a necessary part of the Bill.

There were however some concerns raised about possible unintended consequences of legislation being struck down, and the need for this to be monitored:

“Care will need to be taken to ensure that there are no unintended consequences. The impact of any changes on local authority resources and responsibilities as a result of any changes will need to be monitored carefully.” (East Renfrewshire Council)

“Theoretically, challenges could be brought to the provisions(s) relied upon by local authorities to safeguard vulnerable children. The exercise of public functions to this end is often a finely balanced judgement, exercised by professionals and within an existing, and interconnected, legal framework. The impact of the 'removal' of any relevant legal authority (if provisions were to be struck down) could be significant. The suspension provisions within proposed Section 20 may safeguard against this but we would highlight the risk of harm that could arise for a child if certain provisions were to be struck down by reason of incompatibility.” (North Ayrshire Council)

A few responses recognised that these powers resemble those already built into the Human Rights Act 1998 and welcomed the parity this gave the Bill to existing legislation. There was however a concern raised:

“We (..)have concerns about working with two sets of provisions, one relating to ECHR and the other to UNCRC, in the event that legislation promotes rights under one Convention but is adverse to rights under the other.” (Faculty of Advocates)

There was also support for the incompatibility declarators included in the Bill, as well as for the reporting mechanism for the Scottish Government that follows these powers being used. Some respondents were concerned by the wording in this section however, stating that:

“We support the duty on Ministers to prepare a report within six months of a strike down or incompatibility declarator being issued setting out the steps that Ministers intend to take – although we note this is just a duty to report and not a duty to take action. We welcome the duty to lay this report before the Scottish Parliament to enable further scrutiny, providing a necessary level of accountability.” (Scottish Women's Aid)

“The reporting procedure (section 23) should include an obligation to take action to remedy the incompatible legislation in addition to the duty to report.” (Dr Katie Boyle, University of Stirling)

## **Children and Young People's Commissioner**

The respondents who mentioned sections of the Bill relating to the Children and Young People's Commissioner were generally positive of the idea that they could participate in proceedings. Comments included:

“We welcome the additional safeguards provided via the Bill, whereby the Commissioner for Children and Young People has the power to both bring in and intervene in court proceedings. The Commissioner’s role ensures that children’s best interests are always at the forefront, therefore enabling them to be involved in proceedings on matters related to the UNCRC provides added protection for children and young people in Scotland.” (Early Years Scotland)

“We also welcome the provision to afford the Lord Advocate and the Commissioner for Children and Young People in Scotland an opportunity to make representations prior to a strike down.” (Fiona Morrison, Máire McCormack & Kay Tisdall, University of Stirling)

There was also the suggestion made that for the Children and Young People's Commissioner to be effective in these tasks, consideration of additional resources to the office would need to be made.

The response from the Children and Young People’s Commissioner also welcomed these aspects of the Bill:

“We are pleased that provisions in the Bill create new powers for the Commissioner to bring proceedings to court where rights have been breached, and to intervene in relevant court actions (s.10). This will strengthen our existing strategic litigation work and ensure that we can take legal action on behalf of all children, rather than requiring individual children and their families to take court action to ensure their rights are respected. This recognises that it is not always in a child’s best interests to bring proceedings in their own name.”

## **Commencement Date**

Some of the responses highlighted the fact that the commencement date for the Bill was for the most part left to the discretion of the Scottish Government and expressed dissatisfaction with this. These respondents felt that ensuring an early commencement was important.

For example:

“The commencement date does not appear on the face of the Bill, instead leaving this to Scottish Government’s discretion. Meanwhile, the Financial Memorandum provides for a three-year implementation period, with the understanding that commencement will occur at some point during that period. While we understand Scottish Government’s position that responding to COVID-19 has placed additional pressures on public bodies, the crisis also highlights the importance of legal protections for children’s human rights. COVID-19 continues to compound existing rights issues of child poverty, inequality, digital exclusion, mental health and negative public attitudes. These are immediate and pressing concerns, requiring the strong framework

that incorporation provides sooner rather than later. Incorporation will guide a rights-based approach to Scotland's response, recovery and future crises preventing violations from occurring." (Amnesty International UK)

"MSYPs believe that this legislation should come into effect as soon as possible. SYP has called for the UNCRC to be incorporated by 2021 and we would like to see the Bill's commencement date realised by the end of that year." (The Scottish Youth Parliament)

COSLA however broadly welcomed the three-year implementation time period currently suggested by the Scottish Government, due to the complexities of local authorities preparing for incorporation. They did also say that having a date for commencement would be helpful to this preparation process:

"Local authorities, and other public bodies, will need time to prepare for the changes incorporation will bring and to adapt systems and practice. Work has already started at the local level, but this substantial piece of legislation will inject pace into this important work. We welcome the inclusion within the Bill's accompanying documents of a 3-year implementation programme that will empower children and young people to claim their rights, as well as embed children's rights within and across public services. However, crucially, local authorities need to know **when** commencement will take place as soon as practicable in order to appropriately plan and adapt existing policies."

### **Potential Costs to Public Authorities and the Third Sector**

The call for views specifically asked respondents about the resources and training that their organisation may require to implement the Bill. The responses suggested a broad range of issues which included: staff training; legal expertise; time; the need for specific guidance; financial impact; and the provision of information resources. Some respondents pointed out that any information resources needed to be made available in a wide range of formats that were child friendly, and accessible to young people with a range of additional needs.

"The legislation must be accompanied by a range of additional measures and resources such as training materials, awareness raising activities, independent advocacy, etc. Financial resources as well as clear guidance should be made available. Additional resources would be required for local training, materials, communication activities, as well as advocacy, new processes and support for children and young people." (North Ayrshire Council)

One concern raised by some respondents was that they were not in agreement with the Bill's Financial Memorandum, especially in regards to the costs associated with litigation:

"The financial consequences are potentially very significant and likely to be underestimated in the Financial Memorandum. We do not consider that the £2 million budget set out in the Financial Memorandum is realistic. The budget does not take into account the cost to public authorities of fulfilling their obligations in terms of children accessing their rights under the Bill. The

budget does not factor in the cost of litigation to public authorities, the Scottish Legal Aid Board and the Children’s Commissioner.” (Faculty of Advocates)

Another concern raised by some organisations was that there was no suggestion in the Bill or accompanying documents that funding would be made available to third sector organisations:

“We note that while the financial memorandum sets out funding for public authorities for implementation, there is no mention of supporting third sector organisations beyond their inclusion in co-designing training and guidance. This will be especially important for third sector organisations contracted or commissioned to deliver services on behalf of a public body. We seek further clarity as to how the third sector will be supported to involve children and young people in implementation programme awareness-raising and participation in decision-making in public services.” (Scottish Women's Aid)

### **Consideration of Relevant Rights and Barriers to Rights**

When asked about any relevant equalities and human rights issues related to the Bill, or potential barriers to rights, that the committee should consider there was a wide range of responses.

Many comments focussed on the need for consultation with, and consideration of, all young people in Scotland regardless of age, disability or personal circumstances. Respondents highlighted a number of vulnerable groups including:

- Young asylum seekers
- Young people from a BAME background
- LGBT young people
- Young people with additional support needs and disabilities
- Care experienced young people
- Young carers
- Young people who do not have English as a first language (including Gaelic-speaking children)
- Young people from lower income families
- Home schooled young people
- Young people with incarcerated parents
- Young people receiving mental health treatment
- Young people in temporary or unsuitable housing
- Those living in rural communities
- Young people in the Gypsy/Traveller community

Poverty was perceived to be one of the biggest barriers to young people accessing their rights, with the current situation with COVID-19 felt to be making the situation worse for many children.

“Poverty is a significant barrier which can prevent children and young people from accessing and enforcing their rights. This is a critical area that should be considered.” (Aberdeen City Council)

Another potential barrier that was highlighted by some respondents was situations where the rights of the convention may conflict with human rights detailed in other

legislation. There was a concern that the Bill did not state how it would interact with existing rights obligations.

For example:

“It would be helpful if guidance on UNCRC implementation could explain the connections between international human rights obligations in place for children and recognise the intersectionality between children’s rights, women’s rights, the rights of ethnic minorities, disabled people, and other protected groups.” (Save the Children)

“There may be challenges between parental rights and upholding children’s rights. Clear guidance must be in place to support agencies and practitioners that recognises the complexities of decision making in these cases.” (Fife Children’s Services Partnership)

“It is important that the Bill recognises the interface between children’s rights and the wider human rights landscape. This is of heightened importance in the current COVID-19 crisis in which children and young people are even more deeply affected by those issues most likely to be experienced by the most marginalized families in our society. In recognizing the complex interrelationships of rights, we need to ensure that children’s care and protection are the primary drivers in any legislative changes.” (East Renfrewshire Council)

## **Education of Young People**

One further concern raised by nearly all respondents in some form, was the need for a strong education campaign in conjunction with the legislation to reach all young people, as well as their parents and other adults.

For example:

“If the Bill passes through Scottish Parliament, it is imperative that the Act is fully resourced and all children, including young carers, should be made aware of these changes and their rights. A key element to children accessing their rights is having knowledge of these; this requires national campaigns, and ensuring there is a plethora of accessible information and resources available to children.” (Carers Trust Scotland)

“There will be a need for wide, varied and continuous advertising / awareness raising campaign to ensure children and young people are aware of the Bill and what it means for them. This would need to be repeated annually to capture pupils coming into education every year – possibly part of a PSE programme.” (Orkney Health and Care)

## **Responses from Young People**

The Committee also received 21 responses from Children and Young People through this call for views. Their comments covered a variety of themes which are outlined below:

- It was felt the courts do not listen to the views or opinions of a child

- Children felt their words are being misrepresented by adults and what they were saying was not being taken in a serious manner.
- Children should be respected, listened to and a greater effort should be made to understand where the child is coming from.
- Schools should provide more education in this subject.

A further call for views, specifically aimed at children and young people is open for comment until 20 November 2020. The committee provided a range of documents to assist children and young people on how to respond. These documents were made available on the committee's [website](#) which also included BSL video and bilingual versions.

**Laura Gilman**  
**SPICe Research**  
**30 October 2020**