



UNCRC (Incorporation) (Scotland) Bill

Joint Briefing for MSPs – February 2023

Summary

This briefing has been produced to support MSPs considering the [UNCRC \(Incorporation\) \(Scotland\) Bill](#). It covers the purpose and history of the Bill, its challenge in the UK Supreme Court, the next steps as set out in the [Deputy First Minister's statement of 24th May 2022](#), and addresses repeated attempts by MSPs to challenge the Scottish Government on delays in bringing an amended bill back for reconsideration.

This briefing will help MSPs prepare for a debate on the [motion UNCRC \(Incorporation\) \(Scotland\) Bill](#) on 7 February 2023.¹

We urge MSPs to come together in the same sense of unity which saw the Bill pass unanimously close to two years ago.

What is incorporation?

"I think you should make children's rights law because it will keep a lot more children safe."²

Incorporation means making children's human rights part of the law. Children's rights are set out in the UN Convention on the Rights of the Child (UNCRC). The UK ratified the UNCRC in 1991 but it has not yet been made part of domestic law. The result is that many of the protections contained within it are not accessible to children.

[More information about incorporation can be accessed here.](#)

The UNCRC (Incorporation) (Scotland) Bill

"I think incorporation will definitely make it easier to access my rights as they are protected by the law and this will also be really important for young people who currently aren't able to access their rights."³

The UNCRC (Incorporation) (Scotland) Bill was passed unanimously on 16th March 2021.

¹ Motion ref. S6M-07485

² Children's Parliament (2019). <https://www.childrensparliament.org.uk/our-work/uncrc-incorporation-consultation/>

³ CYPSC Young Adviser

The Bill will incorporate children’s human rights into Scots law. This includes things like the right to education, the right to health and children’s right to have a say in decisions that affect their lives.

The Bill is a milestone on Scotland’s journey towards making rights real for every child. It marks the culmination of over 10 years of campaigning by children, young people and wider civil society, and represents the increasing support for children’s rights across the Scottish Parliament, Scottish Government and public services.

Support for the Bill continues to be widespread, reaching across all political parties and sectors.

What will the UNCRC Incorporation Bill do?

“We’ve seen in other countries, one of the main impacts of putting the UNCRC more into domestic laws is that it creates a culture of respect for children’s rights. I think more than the legal aspect, it’ll start more discussions about children’s rights. People will be more aware; it will be more ingrained into day-to-day society.”⁴

The Bill will introduce a range of duties and powers to protect and progress children’s rights. The Bill says that:

- Public authorities must not act in a way that is incompatible with children’s rights;
- Children will be able to challenge breaches of their rights – including before a court in the most serious cases;
- Courts will have powers to decide if laws are incompatible with children’s rights;
- The Scottish Government must present a Children’s Rights Scheme to the Scottish Parliament and review this annually. They will set out Scottish Government’s past actions and future plans to progress children’s rights;
- The Scottish Parliament must report every year on what it is doing to progress children’s rights; and
- Listed organisations will need to report every three years on what they are doing to progress children’s rights.

The UK Supreme Court ruling

The Bill was referred to the UK Supreme Court shortly after it was passed. The judges found that four sections of the Bill went beyond the powers of the Scottish Parliament. The Supreme Court’s decision focused solely on technical matters. It did not object to the intention behind the Bill or the Scottish Parliament’s ability to incorporate the UNCRC – as long as it stayed within the limits of its powers.

On [26 January 2022](#), the Cabinet Secretary for Education and Skills stated that “Discussions with UK Government officials currently focus on what the Supreme

⁴ CYPSC Young Adviser

Court judgment means for the application of the [UNCRC] compatibility duty when a public authority is acting under powers conferred by UK acts in devolved areas”.

In relation to section 6 (compatibility duty), the Court said it was “*plainly outside competence on its face*”. It contained no qualifying provisions, which would have set limitations on its scope. The Court identified ways in which these issues had been successfully overcome elsewhere.

[More details on the Supreme Court ruling can be found here.](#)

Deputy First Minister’s statement

On 24th May 2022, the Deputy First Minister gave a [statement](#) setting out the changes that need to be made to the Bill to address the Supreme Court judgement. These changes will be brought as amendments so that the Bill can go through a ‘reconsideration stage’ before the Scottish Parliament. In particular:

- To address the judgment in relation to section 6 of the UNCRC Bill there is a need to expressly limit the compatibility duty to devolved functions and devolved bodies.
- A provision equivalent to section 6(2) of the Human Rights Act 1998 needs to be included in the Bill, so that public authorities cannot be found to have acted incompatibly where the underlying primary legislation cannot be read in a compatible way.
- To address the judgment on the judicial remedies, need to remove UK Acts from the application of the interpretative obligation, the strike down power and incompatibility declarator power.

[More details on the proposed changes can be found here.](#)

Delay

Under Section 36(4A) of the Scotland Act 1998, the Scottish Government is required to provide the Scottish Parliament with an opportunity to reconsider the Bill following the decision of the Supreme Court. MSPs have made repeated requests, on the following dates, to the Scottish Government for information on when the Bill will be returned to the Scottish Parliament for reconsideration.

- 10 March 2022
- 25 October 2022
- 01 November 2022
- 07 December 2022
- 08 December 2022
- 26 January 2023

Conclusions and calls for action

It has never been more pressing to ensure children’s rights are granted stronger protection. Children cannot wait any longer for their rights to be made law, nor for the culture change needed to make their rights real.

As we approach the two-year anniversary of the passage of the UNCRC Incorporation Bill, we urge the Scottish Government to commit to bring the Bill back to Parliament before the 16 March 2023 and commit to urgent commencement once it is passed.

When MSPs passed the Bill, they made a promise to children that their rights would become law. MSPs must ensure this promise is kept. Addressing the Supreme Court's concerns is the most important thing the Scottish Government and Scottish Parliament can do to take forward our vision of all children in Scotland having their rights realised all of the time.

“As we count down each day, children are still waiting for what’s been promised to them. Every day of delay is a day when children don’t have their rights protected.”

Bruce Adamson, Children and Young People Commissioner Scotland

Further information

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