Legal Aid Reform
Scottish Government Consultation
Children and Young People's Commissioner Scotland

October 2026

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights.

The Commissioner is fully independent of the Scottish Government.

The Ministerial Foreword to this consultation makes a clear link between Civil Legal Aid and realising human rights.

"Access to justice is a fundamental principle of a fair and democratic society. Legal aid makes that principle real, ensuring people can understand and exercise their rights and navigate the justice system when it matters most."[1]

However, almost three years after incorporation of the UNCRC into Scots law, these proposals do not give children the same access to justice as adults.

The intention to develop a simpler, more flexible and effective Civil Legal Aid system is well-founded. We support those principles. But as we highlighted in our evidence to the Equality, Human Rights and Civil Justice Committee's enquiry into Civil Legal Aid,[2] children face a significant financial barrier to accessing their right to justice.

The Advice and Assistance (Scotland) Amendment Regulations 2010[3] increased the extent to which parental resources are taken into account when children apply for Civil Legal Aid. It draws this in very broad terms and may include step-parents, kinship carers or other adults where *"the child has been accepted by him as a child of his family".*[4] There is no mechanism to ensure that parents provide any support and parental income can be taken into account for young people up to the age of 25 who are still in education.

This denies children and young people access to Civil Legal Aid on the basis of resources they may have no access to. It effectively means their parents control their access to justice. This is particularly concerning where a child has experience of domestic abuse, is living independently, is estranged from their parent(s), or is care experienced.

Whilst exceptions apply, a significant burden of proof is placed on the child who must provide evidence to prove, for example, that their parents have contrary interests or

[1] Scottish Government, 2026. *Legal Aid Reform.* https://consult.gov.scot/justice/reforming-legal-aid-in-scotland/ p2
[2] CYPCS, 2025. *Civil Legal Aid*. https://www.cypcs.org.uk/resources/civil-legal-aid/
[3] https://www.legislation.gov.uk/ssi/2010/462/regulation/5/made s5
[4] Family Law (Scotland) Act 1995. https://www.legislation.gov.uk/ukpga/1985/37/section/1 s1

that not only are they estranged from a parent but that they do not know how to contact them.[5]

Despite the fact that children in Scotland are presumed to have the capacity to instruct a solicitor from the age of 12, their right to do so is severely restricted by the resulting reliance on parents who may not be willing to support them. There is effectively a strong presumption that children will not be eligible for Civil Legal Aid.

Whilst Children's Legal Aid provides legal advice and assistance and legal representation in the Children's Hearings (though still not in all cases) its scope is otherwise limited to a limited range of proceedings under the Children (Scotland) Act 1995. Children must also have equal access to Civil Legal Aid.

Should a child or young person wish to bring any other civil proceedings, for example where a child in their own tenancy is raising an action against their landlord, they do not have the same right to legal advice and assistance as an adult. This would also be the case were they to bring a case under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.

Law centres, such as the Scottish Child Law Centre, Clan Childlaw, Just Rights and Govan Law Centre do an excellent job to support children and young people accessing their right to justice. Grant funding provided to these centres is one important means of realising children's right to remedy. We note that similar law centres exist to support other groups, such as women experiencing domestic abuse and ethnic minority groups, access justice. Adult members of these groups have the choice of accessing advice and assistance through these law centres or from a solicitor of their choice via Legal Aid.

Children must have the same choice.

UNCRC position

In their 2023 Concluding Observations on the UK's progress implementing the UNCRC, the UN Committee on the Rights of the Child recommended that children have access to *"Legal support and representation in addition to remedies, including by removing barriers faced by children in disadvantaged situations and expanding the types of support provided under the legal aid budget."*[6]

The UN Committee has recently adopted a new General Comment No. 27 on children's right to access to justice and to an effective remedy. General Comments are authoritative guidance on interpreting the Convention, issued by the UN Committee following extensive international consultation. The final text will be released in the next few weeks. In the draft General Comment, the Committee states:

"…in order for children's rights to have meaning, it is essential for access to justice and an effective remedy to be available to redress violations of the full range of

[5] Scottish Legal Aid Board. *Financial eligibility of children for advice and assistance (non-criminal matters).* https://www.slab.org.uk/guidance/financial-eligibility-of-children-for-advice-and-assistance-non-criminal-matters/

[6] UN Committee on the Rights of the Child, 2023. *Concluding observations on the combined sixth and seventh periodic reports of the United Kingdom of Great Britain and Northern Ireland.* https://digitallibrary.un.org/record/4013807?ln=en&v=pdf

economic, social, cultural, civil and political rights as set forth in the Convention and its Optional Protocols."[7]

They go on to state that "*availability of free legal aid and free paralegal and social support to all children* ***without discrimination"*** and that any eligibility criteria should be limited.[8]

Conclusion

The new proposals are intended to make Civil Legal Aid simpler, more flexible and more effective for all service users. In order to ensure children and young people benefit from these changes on an equal basis, the Scottish Government should take the opportunity to include the repeal of the changes made by the 2010 regulation when drafting the new bill.

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[7] UN Committee on the Rights of the Child, 2025. *Call for submissions on the draft of general comment No. 27 on children's right to access to justice and to an effective remedy.* https://www.ohchr.org/en/calls-for-input/2025/call-submissions-draft-general-comment-no-27-childrens-right-access-justice para 5

[8] Ibid para 31