
United Nations Convention on the Rights of the Child (UNCRC) Update

Report by Service Director Young People, Engagement and Inclusion

EXECUTIVE COMMITTEE

18 May 2021

1 PURPOSE AND SUMMARY

- 1.1 The purpose of this report is to advise on the potential impact of the Scottish Government's proposed Bill on Children's Rights for Scottish Borders Council and Partners.
- 1.2 Scotland is set to become the first part of the United Kingdom (UK) to directly incorporate the United Nations Convention on the Rights of the Child (UNCRC) into domestic law. The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill was introduced to the Scottish Parliament on 1 September 2020 and places a duty on public bodies to respect and protect children's rights in all the work that they do. The Bill also says that public authorities must not act in a way that is incompatible with the UNCRC requirements. The Bill was passed unanimously by the Scottish Parliament on 16th March 2021.
- 1.3 However, the UK Government has referred the Bill to the Supreme Court under section 33 of the Scotland Act 1998 due to concerns that certain sections of the Bill would affect the UK Parliament's power to make laws for Scotland. The referral to the Supreme Court relates to legislative competence, and not the policy intentions of the Bill. The Supreme Court will decide whether the Scottish Parliament has gone beyond its powers.

2 RECOMMENDATIONS

2.1 I recommend that the Committee:

- (a) Agree that the Council review the potential impact of Incorporation of Children's Rights into Scots Law in relation to the current Parliamentary Bill**
- (b) Agree that the Council review the implications of Incorporation and amend any Council policies appropriately.**

3 BACKGROUND

- 3.1 In April 2019, the First Minister committed to incorporating the UNCRC into law in Scotland and this is set to be implemented 6 months after Royal Assent. The Bill achieving Royal Assent will be delayed while the matter is considered by the Supreme Court.
- 3.2 Under the proposal, Scotland will become the first part of the United Kingdom (UK) to directly incorporate the United Nations Convention on the Rights of the Child (UNCRC) into domestic law. This means children's rights will be legally protected in Scotland and public authorities must take steps to represent children's rights in their decisions and actions.
- 3.3 The UNCRC (Incorporation) (Scotland) Bill will make it unlawful for public authorities to act in conflict with the incorporated UNCRC requirements. It also means that children, young people, and their representatives will be able to use courts in Scotland to enforce their rights.
- 3.4 The key policy aims of the Bill are to:
 1. Ensure that the child's best interests are at the centre of any contact, residence, or Children's Hearing;
 2. Ensure that the views of the child are heard;
 3. Ensure further compliance with the principles of the United Nations Convention on the Rights of the Child (UNCRC);
 4. Further protect victims of domestic abuse and their children
- 3.5 The Scottish Government expects that all aspects of the Bill will affect the way that Local Authorities in Scotland listen to children and young people and take their rights into account. Including UNCRC in Scot's law will enable children and young people to be involved in the decisions that affect their lives, and ensure that children's rights are appreciated, safeguarded and realised by public authorities.
- 3.6 Part 1 of the Children and Young People (Scotland) Act 2014 requires Public Authorities to report, "as soon as practicable" after the end of each 3 year period, on the steps they have taken to secure better or further effect of the requirements of the United Nations Convention on the Rights of the Child (UNCRC). A Children's Rights Report has been prepared for Scottish Borders Council and NHS Borders and is reported separately to Executive Committee.

4 ACTIONS FOR SCOTTISH BORDERS COUNCIL

- 4.1 The Bill is set to be implemented in the near future, dependent on the Supreme Court decision. To meet the requirements of the Bill, Scottish Borders Council will need to plan an approach. The incorporation of Children's Rights into Scot's Law will affect many services within the Council, therefore a review of the implications of incorporation is required to ensure compatibility with the rights of the Child. It is likely that some Council Policies, Strategies and Procedures will need to be amended to ensure that they include Children's Rights where appropriate. An awareness campaign will also be helpful.

5 IMPLICATIONS

- 5.1 **Financial**
There are no specific costs attached to any of the recommendations contained in this report.
- 5.2 **Risks and Mitigations**
In accordance with the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill, Scottish Borders Council must ensure that Children's Rights are upheld in any decision making. Failure to do so would leave the Council at risk of breaching children's rights.
- 5.3 **Integrated Impact Assessment**
An Integrated Impact Assessment (IIA) has been completed for this report. Any other Policies and strategies relating to Children's Rights will also require an IIA as they are developed.
- 5.4 **Acting Sustainably**
There are no economic, social or environmental effects associated with this report.
- 5.5 **Carbon Management**
There are no effects on carbon emissions as a result of this report.
- 5.6 **Changes to Scheme of Administration or Scheme of Delegation**
There are no changes to the Scheme of Administration or the Scheme of Delegation as a result of this report.

6 CONSULTATION

- 6.1 The Executive Director (Finance & Regulatory), the Monitoring Officer/Chief Legal Officer, the Chief Officer Audit and Risk, the Service Director HR & Communications, the Clerk to the Council and Corporate Communications have been consulted and any comments have been incorporated into the Final Report.

Approved by

Lesley Munro

Service Director Young People, Engagement & Inclusion

Signature

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Background Papers: N/A

Previous Minute Reference: N/A

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Janice Robertson can also give information on other language translations as well as providing additional copies.

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