



Human Rights Bill for Scotland

Response from Together (Scottish Alliance for Children's Rights)

About Together (Scottish Alliance for Children's Rights)

Together (Scottish Alliance for Children's Rights) is an alliance that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) and other international human rights treaties across Scotland. We have over 550 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs and interested professionals. The views expressed in this guide are based on wide consultation with our members but may not necessarily reflect the specific views of every one of our member organisations. Members' individual responses should also be taken into account.

Introduction

Together welcomes the opportunity to respond to the consultation on a new Human Rights Bill for Scotland. The Bill offers a significant opportunity to further embed human rights into Scots law, including for children and young people.

Our response offers a children's human rights perspective. It draws on key articles of the UN Convention on the Rights of the Child (UNCRC), evidence from children and young people - including the [Rights Detectives](#) – as well as from Together's members. Our response reflects on recommendations and guidance from the UN Committee on the Rights of the Child ('UN Committee') in the form of [Concluding Observations](#) and [General Comments](#).

It is crucial that Scottish Government reflects on the widespread learning from the [UNCRC \(Incorporation\) \(Scotland\) Bill](#) ('UNCRC Bill') across all levels of government as well as more broadly across civil society, children and young people and the Children and Young People's Commissioner Scotland (CYPCS). The UNCRC Bill, which will incorporate the UNCRC into Scots law once technical issues are resolved, acts as an important pathfinder for the Human Rights Bill.

Part 4: Incorporating the treaty rights

Interpretation

Question 1: What are your views on our proposal to allow for dignity to be considered by courts in interpreting the rights in the Bill?

The Human Rights Bill should *require* courts to consider 'dignity' when interpreting the rights in the Bill.

Human dignity is a foundational concept of the Universal Declaration of Human Rights 1948¹ and is referenced in all four of the treaties that the Human Rights Bill seeks to incorporate, as well as the UNCRC.² Including it on the face of the Bill would echo the treaties and signal the status of human dignity as underpinning the range of rights in the Bill.

Although dignity is not explicitly referenced in the European Convention on Human Rights (ECHR) or Human Rights Act 1998, the European Court of Human Rights (ECtHR) has referred to it in over 2000 judgments,³

¹ Article 1, *Universal Declaration of Human Rights*: "All human beings are born free and equal in dignity and rights".

² See: preamble and Article 13 of ICESCR; preamble of CEDAW; preamble of CERD; preamble, Articles 1, 3, 8, 16, 24, 25 of CRPD; preamble, Articles 23, 28, 37, 39 and 40 of UNCRC.

³ Fikfak, V., Izvorova, L. (2022). *Language and Persuasion: Human Dignity at the European Court of Human Rights. Human Rights Law Review, Volume 22, Issue 3, September 2022.* <https://doi.org/10.1093/hrlr/nqac018> [Date accessed: 18.09.23].

finding it to be a helpful tool in developing the scope of convention rights and encouraging duty bearers towards better compliance.⁴ The ECtHR has said that dignity is “the very essence of the ECHR”.⁵ Scottish judges should therefore already be familiar with applying the concept as a result Section 2 HRA which requires them to take account of ECtHR case law.⁶

The majority of European written constitutions include a commitment to human dignity.⁷ Scottish Government should include similar reference in legislation of constitutional significance such as the Human Rights Bill. The concept of human dignity has already been included in several recent pieces of Scottish legislation and is recognised at common law.⁸

Evidence shows that ‘human dignity’ is an accessible concept that is useful for both rights holders and duty bearers. It is well understood by children even before they are introduced to the language of human rights.⁹ Children, young people and Together members have emphasised the importance of dignity as a guiding principle to ensure rights-based practice. At the 2023 Cabinet Takeover, Members of Children’s Parliament urged Ministers to ensure dignity in schools,¹⁰ while Members of the Scottish Youth Parliament identified dignity as one of four key principles that decision makers must follow in upholding children’s right to food.¹¹ Research has also suggested that engagement with dignity language can contribute positively to the development of human rights culture.¹²

In addition to dignity, courts should also be encouraged to consider wider human rights principles such as universality, intersectionality, indivisibility and inter-dependence. We support the calls made by the Human Rights Consortium Scotland (HRCS) – and echoed by the ALLIANCE, CEMVO, Engender and others – that these should be included in a purpose clause. This purpose clause should be *additional* to the provision that requires judges to consider dignity when interpreting rights.

⁴ Fikfak, V., Izvorova, L.. (2022). *Language and Persuasion: Human Dignity at the European Court of Human Rights*. *Human Rights Law Review*, Volume 22, Issue 3, September 2022. <https://doi.org/10.1093/hrlr/nqac018> [Date accessed: 18.09.23].

⁵ *SW v UK* 1995 (Application no. 87/18).

⁶ Section 2, Human Rights Act 1998. <https://www.legislation.gov.uk/ukpga/1998/42/section/2> [Date accessed: 22.09.23].

⁷ Dupré, C. (2013). *Human Dignity in Europe: A Foundational Constitutional Principle*.

<https://kluwerlawonline.com/journalarticle/European+Public+Law/19.2/EURO2013020> [Date accessed: 22.09.23].

⁸ Webster, E.. (2020). *The Underpinning Concept of ‘Human Dignity’*, pp2, 13-14.

https://pure.strath.ac.uk/ws/portalfiles/portal/124832871/Webster_AAP_2021_The_Underpinning_Concept_of_Human.pdf [Date accessed: 22.09.23].

⁹ Children’s Parliament (no date). *Children’s Parliament Investigates...Human Dignity*. <https://www.childrensparliament.org.uk/childrens-parliament-investigates-human-dignity/> [Date accessed: 15.08.23].

¹⁰ Children’s Parliament (2023). *Children’s Parliament meets the Scottish Cabinet 2023*. https://www.childrensparliament.org.uk/wp-content/uploads/Cabinet_Booklet_2023_Online.pdf [Date accessed: 22.09.23].

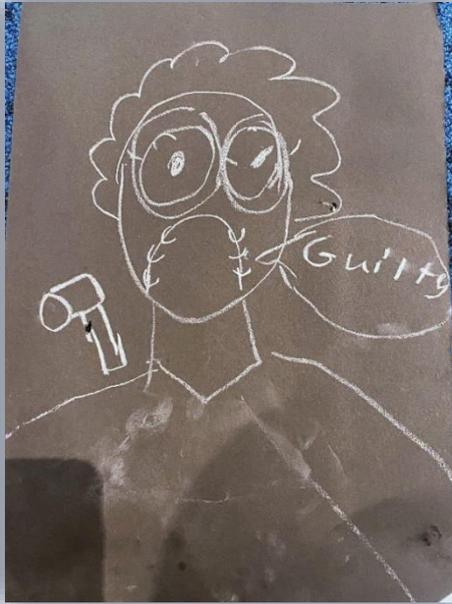
¹¹ Scottish Youth Parliament (2023). *Right to Food*. <https://syp.org.uk/campaign/right-to-food/> [Date accessed: 22.09.23].

¹² Webster, E. (2022). “I Know it When I See it”: Can talking about ‘dignity’ support the growth of human rights culture.

https://pure.strath.ac.uk/ws/portalfiles/portal/138933044/Webster_2022_Can_talking_about_dignity_support_the_growth_of_a_hum-an_rights_culture.pdf [Date accessed: 15.08.23].

The Rights Detectives:

An extract from Safiyah's response (Age 12):



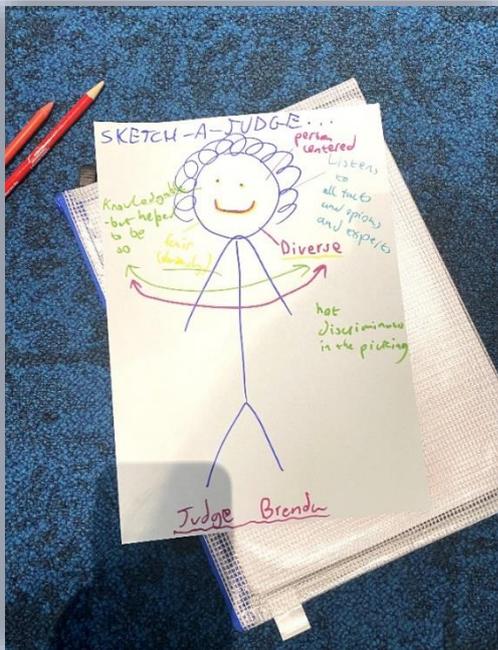
"A good judge should **NOT** be like Judge B. Guilty (see picture)

- They are not nice
- Everyone hates them
- They make wrongful decisions and imprisonments
- Thinks that everyone in prison has no dignity

BUT, what should happen is....

Human Dignity – yes "it should be considered by judges when making decisions" "

An extract from Oscar's response (Age 13):



"A good judge should be like Judge Brenda (see picture)

- Person-centred
- Listen to all facts and opinions and the experts
- Diverse
- Fair
- Knowledgeable = but helped to be so

Human Dignity – yes "human dignity should matter when they [judges] make decisions"

Question 2: What are your views on our proposal to allow for dignity to be a key threshold for defining content of minimum core obligations?

As already mentioned, ‘human dignity’ is an accessible concept for children and young people. A key example is Children’s Parliament’s use of ‘dignometers’ - a tool that helps children learn and talk about human dignity. Children first look at thermometers and barometers and discuss how they are used. They then design their own dignometers, a gauge to measure children’s experiences of dignity. Children have designed their dignometers to show actions or events that might increase their dignity (such as playing, receiving a hug or helping others) or decrease it (such as being bullied or losing a loved one). Their dignometers have also shown how children might feel at each point of the scale as their dignity increases or decreases. Creative approaches like this will be invaluable in supporting children and young people to engage in the participatory process to define the content of minimum core obligations.

See further our response to Question 39 on the proposals for a participatory process.

Question 3: What are your views on the types of international law, materials and mechanisms to be included within the proposed interpretative provision?

“[T]hey should definitely listen to the experts. This would change practice and judges decisions for the better and would increase their knowledge.” (Oscar, Rights Detective, Age 13)

Provisions of the new Bill should be interpreted in light of the rich and valuable guidance provided through the UN system (such as General Comments, Concluding Observations, decisions and days of general discussion), the Council of Europe, comparative law and others. This guidance serves an important role in clarifying the content of rights, outlining potential violations and offering advice to governments on how best to comply with their obligations (including in the context of intersectionality). UN General Comments cover a broad range of topics from land use,¹³ reproductive health,¹⁴ and supporting disabled people’s participation¹⁵ to preventing racial profiling by the police.¹⁶ In addition, the Council of Europe has issued guidelines on child-friendly justice,¹⁷ and recommendations on upholding the rights of Care Experienced children¹⁸ and children affected by parental imprisonment.¹⁹ It is crucial that duty bearers refer to guidance from across the *range* of UN and non-UN sources in recognition of the interrelated and indivisible nature of human rights.

The proposed approach aligns with what children called for in relation to UNCRC incorporation and would ensure coherence with the subsequent approach taken in that Bill.^{20 21} It will help to ensure that Scotland keeps

¹³ [E/C.12/GC/26](https://rm.coe.int/16804b2cf3)

¹⁴ [E/C.12/GC/22](https://rm.coe.int/16804b2cf3)

¹⁵ [CRPD/C/GC/7](https://rm.coe.int/16804b2cf3)

¹⁶ [CERD/C/GC/36](https://rm.coe.int/16804b2cf3)

¹⁷ Council of Europe (2010). *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*. <https://rm.coe.int/16804b2cf3> [Date accessed: 21.09.23].

¹⁸ Council of Europe (2005). *Committee of Ministers Recommendation Rec(2005)5 on the rights of children living in residential institutions*. <https://www.refworld.org/docid/43f5c53d4.html> [Date accessed: 22.09.23];; Council of Europe (2010). *Recommendation CM/Rec(2010)2 of the Committee of Ministers to member states on deinstitutionalisation and community living of children with disabilities*, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cfa92 [Date accessed: 22.09.23]; Council of Europe (2011), ‘*Recommendation CM/Rec(2011)12 on children’s rights and social services friendly to children and families*’, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046ccea> [Date accessed: 22.09.23].

¹⁹ Council of Europe (2018). *Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents*. <https://rm.coe.int/cm-recommendation-2018-5-concerning-children-with-imprisoned-parents-e/16807b3438> [Date accessed: 22.09.23].

²⁰ Scottish Government (2019). *UNCRC: consultation analysis*, see Question 4. <https://www.gov.scot/publications/uncrc-consultation-analysis-report/pages/5/> [Date accessed: 15.08.23].

²¹ Section 4. *UNCRC (Incorporation) (Scotland) Bill*. <https://www.parliament.scot/-/media/files/legislation/bills/current-bills/uncrc-convention-on-the-rights-of-the-child-incorporation-scotland-bill/stage-3/bill-as-passed.pdf> [Date accessed: 15.08.23].

pace with developments in international human rights law and practice, whilst being able to apply learning in a way that can be adapted to fit the Scottish context.

Learning from the UNCRC Bill, we support this provision being drafted as broadly as possible. It should not seek to define an exhaustive list of interpretative materials but instead remain open to other sources arising over time. The provision should also be careful to avoid any perceived “ranking” of sources. Scottish Government should consult with experts on how to approach situations where two bodies offer a slightly differing interpretation of the same right in order to ensure the strongest possible protection.

The model of incorporation

Question 4: What are your views on the proposed model of incorporation?

Together supports some – but not all – of the elements of the proposed model of incorporation.

Copy & paste: Together echoes HRCS’s support for a ‘copy and paste’ model insofar as possible. Together members favour this approach for its clarity and consistency with the UNCRC Bill.²² We acknowledge that some changes may be necessary for clarity and to ensure the Bill fits within devolved competence.²³ Scottish Government should follow a maximalist approach when considering these issues. It should include as many rights as possible within the Bill, including aspects of rights that fall within devolved competence even if other parts of the right do not. We support HRCS’s calls that Scottish Government should publish a paper before the Human Rights Bill is introduced to parliament that outlines which rights it considers fall within and outwith devolved competence to allow for scrutiny by rights-holders.

Procedural duty: Scottish Government does not give details about what the procedural duty would look like. We believe this should follow a “due regard” model as this would enable the possibility of judicial review if decision makers fall short of what is expected of them. A weaker duty to simply “have regard”, “take steps” or “keep under consideration” would not give rise to the same accountability (see for example the duties in the *Children and Young People (Scotland) Act 2014*). Our support for a “due regard” model draws from experience in Wales, where a ‘due regard’ duty in the *Rights of Children and Young Persons (Wales) Measure 2011* has played a significant role in embedding children’s human rights as part of the framework for policy development and placing them at the forefront of all Ministerial decisions.²⁴ This duty has enabled parliamentarians and civil society to hold Welsh Ministers to account.²⁵ While Scottish Government has proposed an ‘initial’ procedural duty for ICESCR and the right to a healthy environment, we believe this duty should continue so that it exists alongside the later duty to comply.

Duty to comply: Scottish Government only proposes a duty to comply for ICESCR rights and the right to a healthy environment. By contrast, rights under CEDAW, CRPD and CERD will be subject to a procedural duty alone. Together members have raised concerns that this differential approach could result in weaker protection for certain rights. They are clear that a duty to comply is necessary for *all substantive rights*, regardless of which treaty they are set out in. Many of the rights set out in 1966 in ICESCR have since been given stronger expression in subsequent treaties – particularly CRPD. We support calls from SCLD that there

²² Together (2019). Response to Scottish Government consultation on the incorporation of the United Nations Convention on the Rights of the Child into Scots law. https://www.togetherscotland.org.uk/media/1342/uncrc_incorporation_response_final.pdf [Date accessed: 21.08.23].

²³ See [redacted version](#) of UNCRC prepared for UNCRC (Incorporation)(Scotland) Bill.

²⁴ *Rights of Children and Young Persons (Wales) Measure 2011*. Section 1 requires Welsh Ministers, when exercising any of their functions, to have due regard to: Part 1 of the UNCRC; articles 1 to 7 of the Optional Protocol to the CRC on the involvement of children in armed conflict, except article 6(2); and, articles 1 to 10 of the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography.

²⁵ Together (2019). Response to Scottish Government consultation on the incorporation of the United Nations Convention on the Rights of the Child into Scots law, p3. https://www.togetherscotland.org.uk/media/1342/uncrc_incorporation_response_final.pdf [Date accessed: 21.08.23].

should be further consideration of a duty to comply for all substantive CRPD rights to the maximum extent permitted by devolution.

Children and young people called for a duty to comply during the passage of the UNCRC Bill.²⁶ The Rights Detectives also recognised the importance of a duty to comply. Conclusions from their investigations included the importance of binding duties around mental health, promoting inclusion and addressing the root causes of poverty.²⁷

“I think there should be a duty to “think about” AND “to follow” human rights for all of them [international treaties] because it’s not going to make any changes if you only have think about them!” (Safiyah, Rights Detective, Age 12).

The need for an audit: Experience from the UNCRC Bill shows the importance of conducting a legislative audit at an early stage. This would identify where acts of the Scottish and UK Parliament (that fall within devolved competence) fall short of human rights standards and enable amendments to be passed before incorporation takes effect. We urge Scottish Government to take a three-step approach to this work across each of the treaties that it seeks to incorporate:

1. Identify Acts of the UK Parliament (and amendments to Acts of the UK Parliament) that are within devolved powers and impact on human rights. Make necessary amendments to bring them into the scope of the Human Rights Bill.
2. Commission a comprehensive audit of the extent to which all devolved legislation complies with the relevant treaties/rights (to include Acts of both the UK and Scottish Parliament). This could look like a similar audit that took place in Jersey;²⁸
3. Make amendments identified through the audit. Review and update the audit on an ongoing basis through the Bill’s “Human Rights Scheme” taking into account evolving international standards, guidance and recommendations.

In doing this, Scottish Government can live up to its commitment to become a leader in human rights and ensure that all matters devolved to Scotland are covered by the protections of the Human Rights Bill.

Question 5: Are there any rights in the equality treaties which you think should be treated differently? If so, please identify these, explain why and how this could be achieved.

We echo HRCS’s concerns that “equalities treaties” is not a helpful term to refer to CERD, CEDAW and CRPD. The term “special protection treaties” should be used instead.

If Scotland is to become a ‘leader’ in human rights then the starting point should be a presumption in favour of maximum protection. Accordingly, Scottish Government should start from an assumption that all rights should have a duty to comply *except* where this is not possible within devolved powers. Scottish Government should therefore be asking if there are any rights in the special protection treaties which should *not* have a duty to comply, rather than the other way round. This is a technical, legal question which should be explored by Scottish Government lawyers. It is crucial that this analysis is transparent and allows for public scrutiny of what has been omitted. Similar considerations for the UNCRC Bill involved in-depth discussion between Scottish Government, civil society and the Children and Young People’s Commissioner Scotland.

²⁶ Together (2019). UNCRC (Incorporation)(Scotland) Bill: Engagement session with 12-18-year-olds.

https://archive2021.parliament.scot/S5_Equal_Opps/General%20Documents/12-18s_SummarNotes_FINAL.pdf [Date accessed: 21.08.23].

²⁷ Together (2023). The Rights Detectives: Mission Update #002, pp22-23. <https://www.togetherscotland.org.uk/media/3368/detect-1.pdf> [Date accessed: 21.08.23].

²⁸ Children’s Commissioner for Jersey (2020). Legislative Gap Analysis. <https://www.childcomjersey.org.je/media/1389/legislative-gap-analysis-oct-2020.pdf> [Date accessed: 21.08.23].

As has already been noted at Question 4, Together members are clear that a duty to comply is necessary for *all substantive rights*, regardless of which treaty they are set out in. The Rights Detectives were clear on the need for strong protections for rights under the special protection treaties. Equality and tackling discrimination were key themes arising from their investigations, with a particular focus on CEDAW.^{29 30}

Part 5: Recognising the right to a healthy environment

Question 6: Do you agree or disagree with our proposed basis for defining the environment?

Together broadly supports the Scottish Government's proposal to use the Aarhus Convention's definition of the environment. However, we disagree with Scottish Government's position that the right to food need not be included (see Question 9, below).

Question 7: If you disagree please explain why.

See Question 9, below.

Question 8: What are your views on the proposed formulation of the substantive and procedural aspects of the right to a healthy environment?

Together supports [ERCS's position](#). Scottish Government's proposed formulation of substantive and procedural aspects broadly aligns with guidance from the UN Special Rapporteur.³¹ However, we question the exclusion of adequate sanitation under safe and sufficient water and disagree with the exclusion of the right to healthy and sustainably produced food (see Question 9). The UN Committee on the Rights of the Child recently launched General Comment 26 on children's rights and the environment which outlines the substantive and procedural aspects of the right. It is essential that the Human Rights Bill's approach aligns with this guidance.³² For example, we note that the General Comment recognises *child-friendly* access to justice as a procedural element of the right, while this not specifically referenced in the consultation document.³³

Question 9: Do you agree or disagree with our proposed approach to the protection of healthy and sustainable food as part of the incorporation of the right to adequate food in ICESCR, rather than inclusion as a substantive aspect of the right to a healthy environment? Please give reasons for your answer.

We disagree with Scottish Government's position that the right to food need not be included as a substantive aspect of the right to a healthy environment. Scottish Government's position is that the right will be protected through incorporation of Article 11 ICESCR. We echo [ERCS's concern](#) that this approach could result in insufficient attention to the environmental aspects of healthy and sustainable food production. There are clear and ongoing calls from children and young people to ensure stronger protection for the right to food at the same time as respecting the environment. The Rights Detectives called for more sustainable food practices and access to healthy food, particularly in light of the cost-of-living crisis.³⁴ Meanwhile, Members of the Scottish Youth Parliament raised sustainable food production as a priority issue at their 2023 meeting with the Scottish Cabinet, drawing on evidence gathered for their 'Young People's Right to Food' report.^{35 36}

²⁹ Together (2023). *The Rights Detectives: Mission update #001*. https://www.togetherscotland.org.uk/media/3319/final_rights-detectives-mission-update_feb-2023_stylesheet.pdf [Date accessed: 21.08.23].

³⁰ Together (2023). *The Rights Detectives: Mission Update #002*, p23. <https://www.togetherscotland.org.uk/media/3368/detect-1.pdf> [Date accessed: 21.08.23].

³¹ OHCHR (no date). *Special Rapporteur on human rights and the environment*. <https://www.ohchr.org/en/special-procedures/sr-environment> [Date accessed: 25.08.23].

³² [CRC/C/GC/26](#).

³³ [CRC/C/GC/26](#); Para: 66.

³⁴ Together (2023). *The Rights Detectives: Mission Update #002*, p17. <https://www.togetherscotland.org.uk/media/3368/detect-1.pdf> [Date accessed: 21.08.23].

³⁵ Together (2023). *Annual cabinet meeting with children and young people*. <https://www.togetherscotland.org.uk/news-and-events/news/2023/06/annual-cabinet-meeting-with-children-and-young-people/> [Date accessed: 21.08.23].

³⁶ Scottish Youth Parliament (2023). *Right to Food*. <https://syp.org.uk/campaign/right-to-food/> [Date accessed: 21.08.23].

The UN Committee’s recent General Comment 26 is clear that healthy and sustainable food is a substantive element of the right to a healthy environment.³⁷ In the UN Committee’s latest Concluding Observations, it called on the UK and Scotland to strengthen protection for environmental rights, with specific reference to children’s right to food.³⁸ It urged them to “immediately” take action to “transform industrial agriculture and fisheries to produce healthy and sustainable food aimed at preventing malnutrition and promoting children’s growth and development”.³⁹ Further, the Committee on Economic, Social and Cultural Rights clearly recognised the link between unsustainable land use, food insecurity and environmental degradation in its recent General Comment No.26.⁴⁰

Question 10: Do you agree or disagree with our proposed approach to including safe and sufficient water as a substantive aspect of the right to a healthy environment? Please give reasons for your answer.

We agree with the proposed approach, and echo [ERCS’s calls](#) to extend the definition to recognise adequate sanitation. In its recent General Comment 26, the UN Committee makes repeated reference to adequate sanitation as necessary to uphold children’s environmental rights. It calls on States to “immediately” take action to “ensure access to safe and sufficient water and sanitation and healthy aquatic ecosystems to prevent the spread of waterborne illnesses among children”.⁴¹ We note that Scottish Government recognises the merit in defining the right to water under *both* ICESCR and the right to healthy environment, we believe a similar approach should be taken for the right to healthy and sustainable food.

Question 11: Are there any other substantive or procedural elements you think should be understood as aspects of the right?

Together supports [ERCS’s position](#). The Rights Detectives have also emphasised the importance of sustainable travel as an aspect of the right to a healthy environment. The Detectives called on Scottish Government to ensure that when implementing the right to a healthy environment that it: ensures that sustainable travel options are accessible to all; acts to address the affordability of electric cars; and encourages environmentally friendly practices.⁴² The UN Committee has also urged action on sustainable travel in its recent General Comment 26.⁴³ Scottish Government should consider how these calls could best be secured.



Artwork by The Rights Detectives exploring what they thought the right to a healthy environment should include, such as sustainable travel.

³⁷ [CRC/C/GC/26](#): Para: 64.

³⁸ [CRC/C/GBR/CO/6-7](#): Para: 45(d).

³⁹ [CRC/C/GBR/CO/6-7](#): Para: 65(c).

⁴⁰ [E/C.12/GC/26](#)

⁴¹ [CRC/C/GBR/CO/6-7](#): Para: 65(b).

⁴² Together (2023). *The Rights Detectives: Mission Update #002*. <https://www.togetherscotland.org.uk/media/3368/detect-1.pdf> [Date accessed: 21.08.23].

⁴³ [CRC/C/GC/26](#): Paras: 55 and 61.

Part 6: Incorporating further rights and embedding equality

Human Rights Act 1998

Question 12: Given that the Human Rights Act 1998 is protected from modification under the Scotland Act 1998, how do you think we can best signal that the Human Rights Act (and civil and political rights) form a core pillar of human rights law in Scotland?

The Human Rights Act has proved a powerful and essential mechanism in upholding children’s human rights - we support efforts to strengthen its impact through the Human Rights Bill.⁴⁴ We acknowledge Scottish Government’s caution around the potential competence impact of restating the HRA in the Bill. This is a technical, legal question which should be explored by constitutional lawyers. It is crucial that Scottish Government’s analysis is transparent and allows for public scrutiny. In any event, the Human Rights Act’s duties and rights should be fully integrated across implementation of the Human Rights Bill and UNCRC Incorporation Bill – such as guidance, training, capacity-building, information and awareness-raising.

Participation

Question 13: How can we best embed participation in the framework of the Bill?

Together supports explicit reference to participation throughout the Human Rights Bill. The UNCRC Bill provides a helpful framework for how participation could be embedded – for example, Scottish Government could include a corresponding requirement to consult with rights-holders in the development of the Human Rights Scheme⁴⁵ and place a duty on courts to give a child the opportunity to express their views as to what would be an appropriate remedy in their case.⁴⁶ Scottish Government should take account of children’s concern that they are often asked the same questions with little feedback on how their views have shaped outcomes.⁴⁷ As such, consideration should be given to whether the Human Rights Scheme should require a mapping exercise to establish what rights-holders have already said on a particular topic, and how this has been taken into account, with subsequent engagement focusing on gaps identified by the mapping.

The Rights Detectives were clear that: “[i]n developing and implementing the new Human Rights Bill for Scotland, Scottish Government should prioritise community-rooted development work to ensure that the voices of children and their families are actively included and considered throughout the process.”⁴⁸ They have also made a range of recommendations for the implementation of participation rights including:⁴⁹

- Employ someone whose specific role is to collate children and young people’s views through further mapping of consultation responses and participation projects across Scotland;
- Take action on what children and young people have already said about their experiences of rights;
- Offer a wide range of ways for children and young people to share their views – including voice messages, drawings, interactive games for younger children, surveys, easy access forms (both online and in paper format) and age-appropriate social media campaigns and platforms.

⁴⁴ Together (2022). Human Rights Act Reform. https://www.togetherscotland.org.uk/media/2234/hra_response_v2_jh.pdf [Date accessed: 21.08.23].

⁴⁵ Section 12. UNCRC (Incorporation) (Scotland) Bill, as passed March 2021. <https://www.parliament.scot/-/media/files/legislation/bills/current-bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/stage-3/bill-as-passed.pdf> [Date accessed: 22.09.23].

⁴⁶ Section 8A(1). UNCRC (Incorporation) (Scotland) Bill, as passed March 2021. <https://www.parliament.scot/-/media/files/legislation/bills/current-bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/stage-3/bill-as-passed.pdf> [Date accessed: 22.09.23].

⁴⁷ Together (2022). The Rights Detectives: Phase 1: mapping recent engagement with children and young people. https://www.togetherscotland.org.uk/media/3320/report_rightsdetectives_mapping-2.pdf [Date accessed: 21.08.23].

⁴⁸ Together (2023). The Rights Detectives: Mission Update #002, p22 <https://www.togetherscotland.org.uk/media/3368/detect-1.pdf> [Date accessed: 21.08.23].

⁴⁹ Together (2023). The Rights Detectives: Mission Update #002, p25 <https://www.togetherscotland.org.uk/media/3368/detect-1.pdf> [Date accessed: 21.08.23].

- Engage directly with children and young people across a wide range of settings - including through schools, community groups, colleges, universities, uniformed organisations, local youth and community groups, Scottish Youth Parliament, Children’s Parliament, local authorities, focus groups and civil society organisations.
- Raise awareness to make sure that all babies, children, young people and adults know about the new Human Rights Bill and what it means.

Together supports the calls made in a number of our members’ responses around the need to avoid tokenistic approaches, the importance of strong feedback loops and the need to ensure that those whose rights are most at risk are fully included in participation opportunities (including proactive steps to dismantle barriers to participation). Together would like to highlight and support calls from CEMVO Scotland on the need for Scottish Government to ensure safe spaces for participation and to recognise power imbalances, including when discussing racism.⁵⁰

Equality provision, protection of rights of LGBTI and older people

Question 14: What are your views on the proposed approach to including an equality provision to ensure everyone is able to access rights, in the Bill?

Together supports the inclusion of an equality provision in the Bill. Scottish Government should give further consideration to how this can best secure the rights of children and young people – including those with Care Experience (see question 15, below).

“an octopus has eight legs that can go all the way round things, encompass them, and that’s what our human rights should do for everyone... the new Human Rights Bill should bring radical change to everyone, but especially to certain groups who can sometimes find it difficult to get all of their rights all of the time.” (Safiyah, Rights Detective, Age 12)

Question 15: How do you think we should define the groups to be protected by the equality provision?

Together supports calls made by Who Cares? Scotland that Care Experienced people of all ages should be named in and explicitly protected by the equality provision.

In doing so, Scottish Government would show human rights leadership by making the Human Rights Bill the first piece of human rights legislation nationally and internationally to explicitly recognise Care Experience as a lifelong characteristic. It would also build upon progress at the local level, whereby some local authorities have voted to recognise Care Experience as a protected characteristic.⁵¹ We know from the Independent Care Review and other evidence that people of all ages who grew up in care can experience greater barriers in realising their rights to family life, health, housing, education and financial support. This has been echoed internationally through recommendations from the 2022 UN Day of General Discussion,⁵² UN Guidelines on

⁵⁰ CEMVO Scotland (2023). *Consultation Response: A New Human Rights Bill for Scotland*, p9.

⁵¹ Falkirk Council (2023). *Falkirk Council votes to recognise care experience as protected characteristic*. <https://www.falkirk.gov.uk/news/article.aspx?aid=7519#:~:text=The%20term%20care%20experienced%20refers,life%2C%20no%20matter%20how%20short> [Date accessed: 22.09.23].

⁵² DGD Taskforce (2021). *2021 Day of General Discussion – Children’s Rights and Alternative Care: Outcome Report*. <https://www.ohchr.org/sites/default/files/2022-06/13Jun2022-DGD-Outcome-report-and-Recommendations.pdf> [Date accessed: 21.08.23].

Children in Alternative Care^{53 54} and Council of Europe resolutions.⁵⁵ Care Experienced people currently do not have the same life outcomes as their non-Care Experienced peers. For example, they are almost twice as likely to have poor health, and over one and a half times more likely to have financial difficulties and to experience severe multiple disadvantage (homelessness, substance use, mental health, offending).⁵⁶

Rights protection for Care Experienced people should be lifelong.⁵⁷ Who Cares? Scotland's members say that "when you leave care, it doesn't leave you" – growing up in the state's protection has a lifelong impact, and Care Experience can be a lifelong identity. In order to reduce the inequalities this group face, Who Cares? Scotland is calling for Care Experienced people of all ages to be recognised as a group of rights holders and given extra support and protection throughout their lifetime. This includes access to independent, relationship-based, lifelong advocacy for every Care Experienced person in Scotland who needs it.

Question 16: Do you agree or disagree that the use of 'other status' in the equality provision would sufficiently protect the rights of LGBTI and older people?

We disagree that "other status" is sufficient to protect the rights of LGBTI, older people and Care Experienced People. We support a non-exhaustive listing approach whereby LGBTI, older people and Care Experience are specifically named, with the addition of "other status". The latter criteria would help to ensure protection for children and young people who do not currently benefit from equality protections, yet who share a particular identity or experience that can impact on their experiences of their rights (for example, young carers or children affected by parental imprisonment). We echo calls from HRCS that there must be clear guidance on interpreting "other status".

Question 17: If you disagree, please provide comments to support your answer.

We echo calls from Together members that LGBTI, older people and Care Experienced people should be specifically named on the face of the Bill. There is significant benefit in these groups being visible given the particular consideration needed to address barriers to their rights. A naming approach would also help to overcome the fact that Care Experienced people have historically not been recognised by the broad category of "other status".⁵⁸

Part 7: The duties

Question 19: What is your view on who the duties in the Bill should apply to?

To achieve maximum rights protection, the duties in the Bill should apply as widely as possible within devolution and extend to private bodies that are delivering public services.

Private and third sector bodies play an increasing role in the delivery of children's services – for example in the provision of funded childcare hours, school transport and secure accommodation services. At the same time, our members remain concerned that there is a risk of creating a two-tier system as certain entities that provide key services for children are neither contracted nor funded by Scottish Government/public authority.

⁵³ [A/RES/64/142](#)

⁵⁴ SOS Children's Villages International (2019). *The Guidelines for the Alternative Care of Children in Child and Youth Friendly Language*. https://www.celcis.org/application/files/3216/2185/5356/You_Have_the_Right_to_Care_and_Protection_-_The_Guidelines_for_the_Alternative_Care_of_Children_in_Child_and_Youth_Friendly_Language.pdf [Date accessed: 21.08.23]. <https://www.celcis.org/knowledge-bank/search-bank/guidelines-alternative-care-children-child-and-youth-friendly-language>

⁵⁵ Council of Europe (no date). *Alternative Care*. <https://www.coe.int/en/web/children/alternative-care> [Date accessed: 21.08.23].

⁵⁶ Independent Care Review (2020). *The Money Report*, p10. <https://www.carereview.scot/wp-content/uploads/2020/02/The-Money.pdf> [Date accessed: 21.08.23].

⁵⁷ Who Cares? Scotland (2020). *Navigating the World of Rights*. <https://www.whocaresScotland.org/wp-content/uploads/2020/12/Navigating-The-World-of-Rights-Full-Report-Dec-2020-2.pdf>

⁵⁸ Insert reference from WC?S response - David Scott at 16, *Expert report on the Protection of Care Experienced People's Rights in the Scottish Human Rights Bill' (2023) (to be published at event next week).*

This includes private schools, private care homes, private healthcare and private transport providers. It is essential that all children across Scotland have their rights upheld and have equal access to redress, regardless of whether the service they receive is provided by the local authority, 'contracted out' or accessed privately. When the UNCRC Bill was progressing through the Scottish Parliament, we successfully called for an amendment to clarify that public funding was indicative, but not determinative – i.e. so that services provided for children that are *not* funded by Scottish Government or public authorities could still fall within the scope of the Bill based on other circumstances. It is vital that Scottish Government considers how to avoid a two-tier system in its drafting of this section and in its implementation.

Question 20: What is your view on the proposed initial procedural duty intended to embed rights in decision making?

Together supports a procedural duty across all of the treaties that the Bill will incorporate. This duty should follow a 'due regard' model as this would enable the possibility of judicial review if decision makers fall short of what is expected of them. A due regard duty would support positive culture change by requiring decision-makers to consider human rights from an early stage. The duty will help ensure consistency and coherence across public sector decision-making whilst simultaneously being flexible enough to allow for rights compliance to be reached in different ways. The duty to have due regard is already an established principle in the Public Sector Equality Duty (PSED) and the Fairer Scotland Duty. Development of the duty should therefore take account of learning from the PSED review.⁵⁹

We echo calls from our members and partners - including HRCS, The ALLIANCE, Engender and CEMVO - that the Bill should clearly state when the relevant duties begin to apply. We believe the procedural duty should continue to exist even after the duty to comply becomes active. This is because the procedural duty will help public authorities achieve what is required by the duty to comply. See further our response to Question 4, above.

Question 21: What is your view on the proposed duty to comply?

Together supports and amplifies children's calls for a strong duty to comply. See further our response to Question 4, above.

Reporting requirements

Question 22: Do you think certain public authorities should be required to report on what actions they are planning to take, and what actions they have taken, to meet the duties set out in the Bill?

Yes. Scottish Government should seek to ensure consistency with – and build on - the reporting duties in the UNCRC Bill. For example, as in the UNCRC Bill, the Human Rights Bill should require that reports are 'forward-looking' as well as reflecting on past actions to support the desired proactive culture shift anticipated by the Bill. Similarly, the Human Rights Bill should also require reports to be accompanied by a child-friendly version as a way of supporting children's participation in holding decision-makers to account.

In terms of building upon the existing reporting duties in the UNCRC Bill, the reporting duty in the Human Rights Bill could also specify topics upon which listed authorities must report – such as accessible and child-friendly complaints procedures, access to independent advocacy services, access to legal aid, specific actions to uphold the rights of children whose rights are most at risk. Specifying these issues would support listed authorities in taking a comprehensive approach to reporting and planning future steps. The Rights Detectives have recognised a clear role for children and young people in shaping these reports. They called for government departments to be informed of issues raised by children during the consultation and passage of

⁵⁹ Scottish Government (2022). *Public Sector Equality Duty – operation review: consultation analysis*, <https://www.gov.scot/publications/review-operation-public-sector-equality-duty-scotland-consultation-analysis-report/pages/17/> [Date accessed: 05.10.23].

the Bill and the development of robust mechanisms through which they can hold duty bearers to account for rights breaches. The Rights Detectives have also made clear that Scottish Government and public authorities should be open to direct communications from children and young people through letters and emails, as well as through representatives such as child/youth ambassadors.⁶⁰ Scottish Government should consider a duty to consult with children and young people in the preparation of reports.

We call on Scottish Government to place a reporting duty on the Scottish Parliament, mirroring the provision in the UNCRC Bill.⁶¹ Children do not have the same political or economic power as adults. It is essential that in its role as a human rights guarantor, the Scottish Parliament pays particular attention to children's rights and ensures that children and young people are fully involved in decision making on all matters that affect them. Children and young people have been at the heart of the passage of the UNCRC Bill. The Human Rights Bill already places a range of duties on the Scottish Government and public authorities. It is only right that the Scottish Parliament should agree to accept duties itself. In requiring the Scottish Parliament to set out what it has done to secure better or further effect of the rights of children – and what more it plans to do – this amendment will help to secure the culture change in the Scottish Parliament that we are seeking to achieve across Scotland.

Question 23: How could the proposed duty to report best align with existing reporting obligations on public authorities?

Scottish Government may wish to explore the possibility of aligning reporting requirements under the Human Rights Bill with those under the UNCRC Incorporation Bill. However, this approach should only be followed if it will not lead to any lowering of accountability or scrutiny from a children's human rights perspective.

Minimum core obligations and progressive realisation

Question 24: What are your views on the need to demonstrate compliance with economic, social and cultural rights, as well as the right to a healthy environment, via MCOs and progressive realisation?

The UNCRC is clear that governments should commit their 'maximum available resources' to progressively realise children's economic, social and cultural rights.⁶² Accordingly, Scottish Government should promote the use of human rights-based budgeting as a way of securing (and also evidencing) rights compliance. We would welcome further consideration of how human rights-based budgeting could be reflected on the face of the Bill. In implementing the duties, Scottish Government should ensure public bodies understand that minimum core obligations must always be secured regardless of the extent of available resources.⁶³ There is considerable guidance within General Comments from the International Committee on Economic, Social and Cultural Rights which are relevant to establishing and demonstrating compliance with the minimum core of rights such as the right to education,⁶⁴ health⁶⁵ and social security.⁶⁶

Question 25: What are your views on the right to a healthy environment falling under the same duties as economic, social and cultural rights?

Together supports the same duties applying. We note from the Rights Detectives that children and young people rarely distinguish between economic, social and cultural rights ('ESC rights'), and environmental rights. Their investigations show that children view a healthy environment as being an integral part of the right to

⁶⁰ Together (2023). *The Rights Detectives: Mission update #001*, p25. https://www.togetherscotland.org.uk/media/3319/final_rights-detectives-mission-update_feb-2023_stylesheet.pdf [Date accessed: 21.08.23].

⁶¹ Section 16B, UNCRC (Incorporation) (Scotland) Bill. <https://www.parliament.scot/-/media/files/legislation/bills/current-bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/stage-3/bill-as-passed.pdf> [Date accessed: 15.08.23].

⁶² Article 4, UNCRC.

⁶³ [CRC/C/GC/19](#): Para 31.

⁶⁴ [E/C.12/1999/10](#).

⁶⁵ [E/C.12/2000/4](#).

⁶⁶ [E/C.12/GC/19](#).

play, the right to an adequate standard of living, right to food, freedom of association and the right to housing.⁶⁷ We believe this supports the same duties applying across both sets of rights.

Human Rights Scheme

Question 26: What is your view on the proposed duty to publish a Human Rights Scheme?

Together supports the proposed duty to publish a Human Rights Scheme. The Human Rights Scheme provisions should be modelled on those for the Children’s Rights Scheme. We are already seeing the positive impact of the prospective Children’s Rights Scheme – even before the UNCRC Bill has entered into force. For example, Scottish Government has made a 3-year commitment to the UNCRC Implementation Programme with a focus on areas outlined in the Children’s Rights Scheme.⁶⁸ We have also witnessed increased efforts to embed certain practices which the UNCRC Bill stipulates *must* be included as part of the Children’s Rights Scheme,⁶⁹ for example:

- **Child rights impact assessments (CRIA):** we have seen an increase in the number of child rights impact assessments (CRIA) being conducted and an increase in Scottish Government investment in CRIA training and resource development;⁷⁰
- **Inclusive communications:** there has been increased recognition of the importance of inclusive communications, including Scottish Government supporting the publication of child-friendly and easy read versions of minutes for the UNCRC Strategic Implementation Board;
- **Child-friendly complaints:** Scottish Government has funded work by the Improvement Service to build public sector capacity around children’s rights⁷¹ and has funded work by the Scottish Public Services Ombudsman (SPSO) to develop guidance and model procedures for child-friendly complaints.⁷²

Part 8: Ensuring access to justice for rights-holders

Advocacy

Question 27: What are your views on the most effective ways of supporting advocacy and/or advice services to help rights holders realise their rights under the Bill?

The Human Rights Bill should strengthen access to independent advocacy, with specific attention given to children whose rights are most at risk. We echo calls from HRCS and the Scottish Independent Advocacy Alliance (SIAA) that a right to independent advocacy should be placed on the face of the Bill. This commitment should be reinforced by including access to independent advocacy within the Human Rights Scheme. We support calls from Who Cares? Scotland that Care Experienced people should be specified as a group whose rights are most at risk and to whom special attention should be paid in implementing this provision. Scottish

⁶⁷ Together (2023). *The Rights Detectives: Mission Update #002*, p16 (right to play and healthy environment); p18 (adequate standard of living, right to food and healthy environment); p18 (freedom of association, travel and healthy environment); p20 (right to housing and healthy environment). <https://www.togetherscotland.org.uk/media/3368/detect-1.pdf> [Date accessed: 21.08.23].

⁶⁸ Scottish Government (2021). *Children Rights and the UNCRC in Scotland: and Introduction*. <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2021/11/implementing-united-nations-convention-rights-child-introductory-guidance/documents/childrens-rights-uncrc-scotland-introduction/childrens-rights-uncrc-scotland-introduction/govscot%3Adocument/childrens-rights-uncrc-scotland-introduction.pdf> [Date accessed: 21.08.23].

⁶⁹ Section 11 . UNCRC (Incorporation) (Scotland) Bill. <https://www.parliament.scot/-/media/files/legislation/bills/current-bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/stage-3/bill-as-passed.pdf> [Date accessed: 15.08.23].

⁷⁰ Scottish Government (2021). *Children’s Rights and Wellbeing Impact Assessment Guidance*. <https://www.gov.scot/publications/childrens-rights-wellbeing-impact-assessment-guidance/> [Date accessed: 21.08.23].

⁷¹ Improvement Service (2022). *Getting Ready for UNCRC Framework*. <https://www.improvementservice.org.uk/products-and-services/consultancy-and-support/uncrc-implementation-project/resources> [Date accessed: 21.08.23].

⁷² SPSO (2023). *Child Friendly Complaints*. <https://www.spsos.org.uk/news-and-media/child-friendly-complaints> [Date accessed: 21.08.23].

Government should ensure that adequate and sustainable resources are committed to the provision of independent advocacy services, recognising that current demand far outstrips supply.⁷³

The Rights Detectives recognised the importance of children knowing their rights as a necessary precursor to knowing when they have been breached and being able to seek support.⁷⁴ The Rights Detectives recognised a range of people – including but not limited to advocates – who should help if their rights were breached. They recognised that a range of options was important.⁷⁵

SIAA has highlighted the importance of ensuring a clear definition of “independent advocacy” within the Bill that aligns with the Independent Advocacy Principles, Standards and Code of Best Practice.⁷⁶

Complaints and scrutiny

Question 28: What are your views on our proposals in relation to front-line complaints handling mechanisms of public bodies?

Question 29: What are your views in relation to our proposed changes to the Scottish Public Services Ombudsman’s remit?

Together supports HRCS’s position – complaints handling by public authorities and those delivering public services needs to be significantly enhanced if it is to be effective in ensuring access to justice for everyone, including children and young people. We know that children often find formal complaints mechanisms daunting and want issues resolved close to the source of the alleged breach.⁷⁷ The Rights Detectives called on Scottish Government to give priority to developing and promoting both formal and informal child-friendly and accessible complaints procedures to enable children and young people to voice their concerns and seek redress in a safe and supportive manner.⁷⁸ The Human Rights Bill should align with the UNCRC Bill, which requires that promotion of child-friendly complaints processes is included in the Children’s Rights Scheme. It will be important to take learning from initial implementation of the UNCRC Bill and to build on and expand complaints mechanisms for children that also cover breaches under the Human Rights Bill.

Together welcomes the proposals to allow SPSO to consider oral complaints. We also welcome ongoing work by the SPSO in developing guidance and procedures on child-friendly complaints.⁷⁹ However, certain bodies are not covered by SPSO’s remit – such as courts and the police. Children’s rights must be upheld in these contexts too. We note concerns raised by HRCS, Amnesty and The Alliance around the interaction of proposed investigatory powers for SPSO and investigatory powers held by the Children and Young People’s Commissioner Scotland (CYPCS) and Scottish Human Rights Commission (SHRC). Any changes to SPSO’s remit in this area should take care not to impede the functions of the commissioners.

We support HRCS’s calls that improvements to complaints handling should be co-produced in collaboration with those whose rights are most at risk, including children. Improvements should also draw from the Council of

⁷³ SIAA (2023). ‘Advocacy Map: Sustainability of Independent Advocacy in Scotland’, <https://www.siaa.org.uk/member-news/siaa-launch-sustainability-of-independent-advocacy-in-scotland-report/> [Date accessed: 04.10.23].

⁷⁴ Together (2023). *The Rights Detectives: Mission Update #002*, p23 https://www.togetherscotland.org.uk/media/3319/final_rights-detectives-mission-update_feb-2023_stylesheet.pdf [Date accessed: 21.08.23].

⁷⁵ Together (2023). *The Rights Detectives: Mission Update #002*, https://www.togetherscotland.org.uk/media/3319/final_rights-detectives-mission-update_feb-2023_stylesheet.pdf [Date accessed: 21.08.23].

⁷⁶ SIAA (2019). *Independent Advocacy: Principles, Standards and Best Practice*. <https://www.siaa.org.uk/wp-content/uploads/2021/02/SIAA-Principles-Final-2nd-print-run-with-ISBN.pdf> [Date accessed: 21.08.23].

⁷⁷ Together (2023). *The Rights Detectives: Mission Update #002*, p15. https://www.togetherscotland.org.uk/media/3319/final_rights-detectives-mission-update_feb-2023_stylesheet.pdf [Date accessed: 21.08.23].

⁷⁸ Together (2023). *The Rights Detectives: Mission Update #002*, p24. https://www.togetherscotland.org.uk/media/3319/final_rights-detectives-mission-update_feb-2023_stylesheet.pdf [Date accessed: 21.08.23].

⁷⁹ SPSO (2023). *Child Friendly Complaints*. <https://www.spsos.org.uk/news-and-media/child-friendly-complaints> [Date accessed: 21.08.23].

Europe Guidelines on Child-friendly Justice.⁸⁰ We echo HRCS's call that people should not have to raise a complaint with SPSO before taking a human rights claim to court.⁸¹

Question 30: What are your views on our proposals in relation to scrutiny bodies?

Together supports [HRCS's position](#) that scrutiny bodies should have human rights added to their remits. This expansion will provide an additional layer of accountability by assessing public bodies' compliance with the provisions of the Bill. It is a positive step towards ensuring that human rights principles are actively integrated into the delivery of public services. We recognise the existing role that scrutiny bodies play but note that additional skills, expertise and resources might be needed to properly fulfil this role. Scottish Government should work closely with scrutiny bodies to give further consideration to what capacity-building and additional resourcing is required.

[National human rights institutions](#)

Question 31: What are your views on additional powers for the Scottish Human Rights Commission?

Together supports HRCS's position. The Scottish Human Rights Commission's (SHRC) current powers and resources are not sufficient for it to play its full role in advancing human rights in Scotland. We encourage Scottish Government to consider the additional powers that HRCS has proposed in relation to SHRC and the resource requirements of these. We support calls from SCLD that the powers of SHRC should be extended to ensure that the right to an effective remedy is equally available across Scotland, with particular attention to the needs of people with learning disabilities.⁸²

Question 32: What are your views on potentially mirroring these powers for the Children and Young People's Commissioner Scotland where needed?

Together supports HRCS's position. Ensuring equivalent powers and additional resourcing for the SHRC and Children and Young People's Commissioner Scotland (CYPCS) will help secure maximum protection for children's rights. MSPs endorsed this position by passing an amendment to the UNCRC Bill to give equivalent powers to SHRC as were to be granted to CYPCS.⁸³

[Standing to raise proceedings](#)

Question 33: What are your views on our proposed approach to 'standing' under the Human Rights Bill? Please explain.

Together supports Scottish Government's proposal to adopt the 'sufficient interest' test for standing. This would ensure the Human Rights Bill is in line with the UNCRC Bill and broader civil law. Our response to the 2019 UNCRC consultation highlighted that special consideration needs to be given to the approach to legal standing in children's cases, given the particular barriers they face in accessing justice.⁸⁴ While children should be able to access support and raise proceedings in their own name, collective action can be a particularly effective way of challenging widespread or systemic rights breaches while reducing the burden on any one child. We support the ability of organisations, such as SHRC, CYPCS and others with sufficient interest, to raise cases with and on behalf of children, as well as raising cases in the public interest.

⁸⁰ Council of Europe (2010). *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*. <https://rm.coe.int/16804b2cf3> [Date accessed: 21.09.23].

⁸¹ Human Rights Consortium (2023). *Scotland's Guide to responding to the Human Rights Bill for Scotland Consultation*, <https://hrcscotland.org/wp-content/uploads/2023/08/Final-HRCS-Guide-to-responding-to-Human-Rights-Bill-for-Scotland-consultation-August-2023-1.pdf> [Date accessed: 21.09.23].

⁸² SCLD (2023). *The State of Our Rights, recommendation 5*. <https://www.sclد.org.uk/wp-content/uploads/2023/08/1-The-State-of-our-rights.pdf>. [Date accessed: 22.09.23].

⁸³ Scottish Parliament (2021). *Stage 2 – Changes to detail, amendments 16-17; 19; 27-28*. <https://www.parliament.scot/bills-and-laws/bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/stage-2> [Date accessed: 21.08.23].

⁸⁴ Together (2019). *Response to Scottish Government consultation on the incorporation of the United Nations Convention on the Rights of the Child into Scots law*. https://www.togetherscotland.org.uk/media/1342/uncrc_incorporation_response_final.pdf [Date accessed: 21.08.23].

Together believes the Human Rights Bill should echo the UNCRC Bill's approach to time limits. The UNCRC Bill provides that proceedings should generally be raised within one year of the alleged breach (modelled on Human Rights Act), but ensures additional flexibility for children by stating that this one year "clock" will only start to run once they turn 18.⁸⁵ The courts have equitable discretion thereafter. Adopting this approach in the Human Rights Bill would ensure consistency with the UNCRC Bill and help to address barriers in access to information, advice and support which may prevent younger children from raising proceedings within a year from the breach.

Question 34: What should the approach be to assessing 'reasonableness' under the Human Rights Bill?

Together supports [HRCS's position](#).

Remedies

Question 35: Do you agree or disagree that existing judicial remedies are sufficient in delivering effective remedy for rights-holders?

Together disagrees that existing judicial remedies are sufficient in delivering effective remedy for rights-holders. We agree with HRCS's position that while current remedies may address some rights violations, they do not cover the full range of human rights abuses, particularly systematic or structural issues. There is a need for more comprehensive and flexible remedies that meet the needs of children and young people.

Question 36: If you do not agree that existing judicial remedies are sufficient in delivering effective remedy for rights-holders, what additional remedies would help to do this?

The Human Rights Bill should align with the UNCRC Bill which specifies that courts may grant a remedy that it considers "effective, just and appropriate". Further, the UNCRC Bill requires that a child involved in proceedings must be given the opportunity to express their views as to what would be an appropriate remedy in their case. It specifies that children should be able to express their views in the manner they prefer and that the court must have regard to the child's views.⁸⁶

The UN Committee on the Rights of the Child recognises that remedies other than compensation may be required - such as measures to promote physical and psychological recovery, rehabilitation and integration.⁸⁷ The Council of Europe Guidelines on Child Friendly Justice also highlight the importance of appropriate social and therapeutic programmes which should be available, accessible and provided free of charge.⁸⁸ This guidance should be taken into account in drafting the Human Rights Bill.

Question 37: What are your views on the most appropriate remedy in the event a court finds legislation is incompatible with the rights in the Bill?

Together supports [HRCS's position](#). Courts should be able to 'strike down' laws or issue declarators of incompatibility where Acts of the Scottish Parliament are not compatible with rights in the Bill. This approach upholds the non-negotiable foundation of human rights in law and reinforces the principle that no legislation should ignore or violate these fundamental rights. Children consulted in relation to the UNCRC Bill were clear

⁸⁵ Section 7(9). UNCRC (Incorporation) (Scotland) Bill. <https://www.parliament.scot/-/media/files/legislation/bills/current-bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/stage-3/bill-as-passed.pdf> [Date accessed: 15.08.23].

⁸⁶ Sections 8-8A, UNCRC (Incorporation) (Scotland) Bill. <https://www.parliament.scot/-/media/files/legislation/bills/current-bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/stage-3/bill-as-passed.pdf> [Date accessed: 15.08.23].

⁸⁷ UN Committee on the Rights of the Child (2003). General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child, paragraph 24.

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f5&Lang=en [Date accessed: 15.08.23].

⁸⁸ Council of Europe (2010). Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Guideline 80. <https://rm.coe.int/16804b2cf3> [Date accessed: 15.08.23].

that it should have strong powers of enforcement – including strike down powers.⁸⁹ They said this was a bold step Scotland should take to demonstrate its respect for children’s rights and set a good example for other countries.⁹⁰

Part 9: Implementing the new Scottish Human Rights Act

Question 38: What are your views on our proposals for bringing the legislation into force?

The timescale for commencement should be specified on the face of the Bill. Together supports [HRCS’s position](#) that a six month commencement period following Royal Assent would be reasonable, with the additional duty to comply coming into force no more than two years later. This timeline would allow for the development of guidance, establishment of Minimum Core Obligations through a participatory process and capacity-building.

Question 39: What are your views on our proposals to establish Minimum Core Obligations through a participatory process?

It is essential that minimum core obligations are developed through a participatory process. We note that Scottish Government already made this commitment when it agreed to the National Taskforce’s recommendations. General Comments from the International Committee on Economic, Social and Cultural Rights offer valuable guidance on establishing minimum core obligations for a range of rights that are of particular relevance to children – for example on the right to education, health and social security. This guidance offers a helpful starting point that should be taken into account when shaping the participatory process. Account should also be taken of our responses to questions 2 and 13 – a mapping exercise should be conducted to understand what children have already been asked and said about their rights, in order to prioritise gaps and frame creative forms of engagement to ascertain further information.

Question 40: What are your views on our proposals for a Human Rights Scheme?

Together supports the proposal to establish a Human Rights Scheme, as it serves as a crucial tool for accountability on the Scottish Government’s commitment to advance human rights. The Human Rights Scheme should be modelled on the Children’s Rights Scheme as set out in the UNCRC Bill. As already mentioned, we are already seeing the benefits of this model – even before the relevant legal provisions have entered into force (see question 26). We know from experience in Wales that a similar model has helped hold decision makers to account and created opportunities for children, young people and wider stakeholders to inform how the relevant treaty is implemented.⁹¹

Further details of our support can be found in our response to the 2019 consultation on UNCRC incorporation.⁹² During the passage of the UNCRC Bill we called for certain mandatory requirements to be included within the scheme – including impact assessments, child-friendly complaints processes, regular reports on progress, actions to identify and address situations where children’s rights are at risk, rights-based budgeting and processes to involve children and other key stakeholders in the development and review of the scheme. Similar mandatory requirements should be reflected in the Human Rights Scheme. Together also

⁸⁹ Together (2019). *UNCRC (Incorporation)(Scotland) Bill: Engagement session with 12-18-year-olds*, see question 5 https://archive2021.parliament.scot/S5_Equal_Opps/General%20Documents/12-18s_SummarNotes_FINAL.pdf [Date accessed: 21.08.23].

⁹⁰ Together (2019). *UNCRC (Incorporation)(Scotland) Bill: Engagement session with 12-18-year-olds*. https://archive2021.parliament.scot/S5_Equal_Opps/General%20Documents/12-18s_SummarNotes_FINAL.pdf [Date accessed: 21.08.23].

⁹¹ See: Together (2019). *Response to Scottish Government consultation on the incorporation of the United Nations Convention on the Rights of the Child into Scots law*, question 2. https://www.togetherscotland.org.uk/media/1342/uncrc_incorporation_response_final.pdf [Date accessed: 21.08.23].

⁹² Together (2019). *Response to Scottish Government consultation on the incorporation of the United Nations Convention on the Rights of the Child into Scots law*. https://www.togetherscotland.org.uk/media/1342/uncrc_incorporation_response_final.pdf [Date accessed: 21.08.23].

supports the inclusion of the additional requirements set out in HRCS's response such as data collection and publication, human rights budgeting and inclusive communications. We further support calls from SIAA, Who Cares? Scotland and The ALLIANCE around including access to independent advocacy within the Scheme. By requiring certain features, we can help ensure that in future years – regardless of the level of political commitment to human rights – there continues to be adequate consideration of these in policy development.

Progress reports on the Human Rights Scheme should be forward looking as well as reflecting on past actions; be accompanied by an accessible version that rights holders (including children) can understand; should only be published following consultation with key stakeholders (including children, SHRC, CYPCS); and be laid before the Scottish Parliament as soon as possible after publication. This approach will ensure consistency with the UNCRC Bill.

Question 41: What are your views on enhancing the assessment and scrutiny of legislation introduced to the Scottish Parliament in relation to the rights in the Human Rights Bill?

Together supports [HRCS's position](#). We support Scottish Government's proposal to enhance assessment and scrutiny of legislation introduced to the Scottish Parliament through a statement of compatibility with the rights set out in the Bill. This reflects Section 19 HRA which, although it has its limitations, has been shown to have resulted in the development of many positive practices relating to the preparation of legislation by central government and its scrutiny by parliament.⁹³

Together also supports the inclusion of a requirement to complete a human rights impact assessment for decisions that are likely to impact on human rights. This would strengthen the foundations already established by Section 14 of the UNCRC Bill which requires a child rights impact assessment to be completed for new Bills, statutory instruments and for "decisions of a strategic nature relating to the rights and wellbeing of children".⁹⁴

Question 42: How can the Scottish Government and partners effectively build capacity across the public sector to ensure the rights in the Bill are delivered?

Together supports [HRCS's position](#). Scottish Government should draw learning from preparations for implementing the UNCRC Incorporation Bill, including engagement with stakeholders on draft statutory and non-statutory guidance, work with rights-holders and work led by the Improvement Service to raise awareness and understanding of children's rights across the public sector, and work led by SPSO in developing accessible child-friendly complaints mechanisms. Early capacity building will help ensure that Scottish Government and other public authorities are prepared to implement the Bill effectively from the outset. Sufficient resources must also be dedicated towards capacity building if it is to deliver the culture shift in decision-making and participation that full implementation of the Bill requires. It is essential that guidance and capacity-building frameworks are developed in partnership with rights holders to ensure that they reflect the lived experiences of those whose rights are most at risk.

Question 43: How can the Scottish Government and partners provide effective information and raise awareness of the rights for rights-holders?

Together supports [HRCS's position](#). There is considerable learning from the UNCRC Bill that is applicable here. Children and young people have already shared considerable information on how they wish to access information about their rights, the format that this should be available in and where it should be accessible.⁹⁵

⁹³ Weston, E. (2013). *Section 19 of the Human Rights Act 1998: importance, impact and reform*.

<https://kclpure.kcl.ac.uk/portal/en/studentTheses/section-19-of-the-human-rights-act-1998> [Date accessed: 21.09.23].

⁹⁴ Section 14. UNCRC (Incorporation) (Scotland) Bill. <https://www.parliament.scot/-/media/files/legislation/bills/current-bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/stage-3/bill-as-passed.pdf> [Date accessed: 15.08.23].

⁹⁵ Together (2022). *The Rights Detectives: Phase 1: mapping recent engagement with children and young people*.

https://www.togetherscotland.org.uk/media/3320/report_rightsdetectives_mapping-2.pdf [Date accessed: 21.08.23].

The current Bill provides an opportunity strengthen existing approaches, in a way that builds upon what children have already told us and ensures that inclusive communication is used.

Question 44: What are your views on monitoring and reporting?

Together supports [HRCS's position](#). We also support calls from Who Cares? Scotland and SCLD around the need for improved data collection, monitoring and publication to better understand the needs of particular groups of children and the extent to which their rights are being upheld.⁹⁶

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⁹⁶ SCLD (2023). *The State of Our Rights, Recommendation 14*. <https://www.sclد.org.uk/wp-content/uploads/2023/08/1-The-State-of-our-rights.pdf> [Date accessed: 22.09.23].