

**UNCRC Incorporation Advisory Group**  
**Meeting Notes 26/10/2018**

Present:

Bruce Adamson (Children and Young People's Commissioner, Scotland) (Chair)  
Juliet Harris (Together, Scottish Alliance for Children's Rights)  
Katie Boyle (Stirling University)  
Dragan Nastic (UNICEF, UK)  
Kasey McCall-Smith (Edinburgh University)  
Simon Hoffman (Swansea University)  
Ursula Kilkelly (University College Cork) (via Skype)  
Máire McCormack (CYPCS)  
Sarah McDermott (CYPCS) (Notes)

Apologies:

Laura Lundy (Queen's University, Belfast)

The meeting was held at the Children and Young People's Commissioner Scotland's offices.

**Purpose of the Meeting**

The UNCRC enshrines obligations in international law, but since ratifying it in 1991, the UK has yet to incorporate the CRC into domestic law. This is despite longstanding calls from UN treaty bodies, civil society, and children and young people to incorporate the CRC.

There is a unique opportunity in Scotland to take action to better protect children's rights, enriched by a decade of debate on how best to do so. The Scottish Parliament has a majority of political support for UNCRC incorporation, but progressing a Bill through this current Parliamentary session<sup>1</sup> will require some focused and intense work. This needs to be done as a matter of urgency.

The Advisory Group has been established to be independent of Government with the aim of producing the best model for Scotland, drawing on international best practice and Scots law expertise.

**Terms of Reference**

Following the welcome and introductions, the group discussed the Terms of Reference. The group was in full agreement that the process should be as transparent as possible, and will publish a note of the meeting online.

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<sup>1</sup> The current Parliamentary terms end in 2021

The group acknowledged the need for urgency, and explored whether a draft Bill was the correct output for the group. It was agreed that a model of incorporation was the key output, to be accompanied by explanatory guidance.

Further discussions on the wider strategy in relation to incorporation was mooted, JH clarified that this strategy has been developed and information will be shared with the group. The group agreed that the development of a Reference Group was necessary to ensure that the model was workable in the Scottish legal context, and should involve litigators to make it as robust as possible. It was agreed that having clarity and consistency in our messaging as a group was important.

The Terms of Reference was agreed, subject to the slight additions discussed,

- **SM to update Terms of Reference to include process of publishing minutes online and role of Reference Group.**
- **SM to recirculate updated ToR to Advisory Group.**
- **Advisory Group to receive regular updates on strategic activities relating to the work of the Advisory Group.**

## **Model of Incorporation**

The Scottish Government commitment to incorporate the principles of the UNCRC into Scots law was welcomed. It was noted that the Scottish Government has been very clear that this means the incorporation of the intent behind all the UNCRC rights rather than solely the General Principles. Discussions on the model benefitted from both international and domestic approaches to protecting rights, and participants were urged to challenge and interrogate provisions. The Children's Rights Bill 2009; the Welsh Measure 2011; the Scotland Act 1998 and the Human Rights Act 1998 all offered useful learning to draw from within the UK.

In Wales, having the political commitment to incorporate the UNCRC provided a helpful touchstone throughout the process of further protecting children's rights. The group discussed the possibility of protecting rights outwith the UNCRC, but agreed that this was already being taken forward by the First Minister's Advisory Group on Human Rights, and that it was important not to delay work to incorporate the UNCRC. Instead, it was agreed that the model of incorporation could include a power that allowed for Ministers to draw down other rights from international human rights treaties that bring additional protections for children.

Incorporating the text as in the UNCRC, rather than rewriting or rewording the Articles was agreed as being the best route to maximise protections and minimise confusion. Compliance with the UNCRC is required through the model of incorporation and the Advisory Group discussed the best way to achieve this. Due regard was described by some as a procedural measure. During consultations on the 'due regard' model in Scotland through the Rights of Children and Young People Bill, the Law Society of Scotland was clear that due regard was a lesser protection<sup>2</sup>.

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<sup>2</sup> <https://www2.gov.scot/Resource/0038/00386652.pdf>

Learning from Norway and Sweden, as well as the 'due regard' duty in Wales, highlights that enshrining duties to consider 'soft law' to interpret UNCRC obligations, such as General Comments and Concluding Observations, supports effective compliance with treaty obligations. This would mirror the approach taken to judgments of the European Court of Human Rights in Section 2, Human Rights Act 1998.

The group agreed on the need to strike a balance between tried and tested models of incorporation with creativity. Child Rights and Wellbeing Impact Assessments (CRWIAs) are an important tool if used early enough in the legislative or policy making process. Statements of compliance are not as effective as CRWIAs although can provide a useful supporting mechanism.

The group agreed that the model of incorporation should only apply to children and young people up until age 18 as per the UNCRC.

Timescales were explored, and while some States have included a 'sunset clause' allowing for a transitional period, the group were in agreement that there was no reason as to why this model could not have an enactment date for a compliance duty on the face of the Bill. The participatory process has been ongoing for over a decade, and so much of the awareness raising work has already been done. The model favoured by the group would be a bespoke model for Scotland, reflected in Appendix A.

- **SM, MM and JH to draft a revised model of incorporation to reflect discussions in full by 02/11/2018 and circulate to Advisory Group.**
- **Advisory Group to give further consideration to remedies and alignment with reporting duties in Children and Young People (Scotland) Act 2014.**
- **Advisory Group to provide initial feedback on revised model by 09/11/2018.**

#### Next steps

Members of the Advisory Group agreed to be involved in other meetings with Scottish Government officials as and when is practicable.

The next meeting will be held on 20<sup>th</sup> November at the Children and Young People's Commissioner Scotland's office.