

Event report



Incorporation of Children's Rights Consultation Event

11 July 2019, Children in Scotland, Edinburgh

Introduction



Image by pupils of Sciennes Primary School, courtesy of Together (Scottish Alliance for Children's Rights)

The Health and Social Care Alliance Scotland (the ALLIANCE) and Together (Scottish Alliance for Children's Rights) partnered to host a session to gather views on the Scottish Government's Incorporation of Children's Rights Consultation on 8 and 11 July 2019.

The ALLIANCE hosted the 11 July 2019 event with Together at Children in Scotland in Edinburgh. This event report outlines the main themes that were raised by speakers and delegates. While this report has been produced by the ALLIANCE, with input from Together, the views expressed are those of the speakers and participants.

Juliet Harris – Director, Together (Scottish Alliance for Children's Rights)

Juliet explained that incorporation makes children's human rights real, by ensuring these are binding, no longer just guiding, on government, parliament and public bodies. She highlighted the long campaign for incorporation, noting it has been almost 30 years since the UK signed up to the Convention and that a solid foundation for incorporation now exists, following legislation such as the Children (Scotland) Act 1995, the Children and Young People (Scotland) Act 2014 and more recently the First Minister's commitment to bring the UNCRC into law by 2021.

Juliet outlined two approaches to incorporation as set out in the consultation paper:

- (1) a "copy and paste" method, whereby the UNCRC is directly incorporated into Scots law without any adjustment; or
- (2) a 'pick and mix' approach whereby certain UNCRC rights are brought into Scots law to form a "Scottish suite of rights".

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Juliet outlined the potential advantages and disadvantages of each approach, drawing on experience from countries which have already incorporated the UNCRC, including Norway, Iceland, Spain, and Belgium. The ‘cut and paste’ method ensures that interpretation of UNCRC rights remains up-to-date and in line with international standards and could also ensure that the model of incorporation would automatically cover any new powers that may be devolved to the Scottish Parliament in the future. Consideration would need to be given to how this works effectively within the current devolution settlement to ensure that the model is within competence of the Scottish Parliament. The ‘pick and mix’ approach would help to ensure the model is shaped around the current devolved powers but would risk rights losing their direct link to the international human rights framework, ultimately making them harder for courts to interpret. It would also mean that the model would need to be updated anytime new powers were devolved to the Scottish Parliament.

Juliet outlined a [draft Bill](#), prepared by an independent advisory group convened by Together and the Children and Young People’s Commissioner Scotland, and referred to in Scottish Government’s consultation paper. The Bill follows the “copy and paste” method and sets out a “carrot and stick” approach for ensuring prevention and redress:

- (1) Prevention (the proactive ‘carrot’): in the first instance, it seeks to prevent rights violations from arising, by ensuring children’s human rights and are considered from the outset of decision-making and are embedded in public services. The Bill sets out a variety of methods through which this could be achieved including an overarching due regard duty, a Children’s Rights Scheme, Child Rights and Wellbeing Impact Assessments (CRWIAs), compliance reports, and scrutiny by rights holders.
- (2) Redress (the reactive ‘stick’): if a child’s human rights are breached, then a reactive “stick” component ensures that incompatible acts or omissions can be challenged before the courts.

Juliet shared with the group that Together was currently working on facilitator briefings for those doing engagement work with children and young people around incorporation. These have since been published on Together’s website and can be accessed [here](#).

Additionally, Juliet will be featured on the Health and Social Care Scotland’s [24 July 2019 edition of ALLIANCE Live](#), where she will further discuss incorporation.

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Helen Fogarty – Head of Children’s Rights Unit, Scottish Government

Helen outlined the principles of incorporation in relation to the UN Convention on the Rights of the Child (UNCRC) and emphasised the Scottish Government’s commitment to incorporation and implementation of children’s rights, Helen discussed three key themes:

- Legal mechanisms for incorporating the UNCRC into domestic law.
- Embedding children’s rights in public services and additional non-legislative activities to progress implementation of the UNCRC.
- Enabling compatibility and redress.

Helen outlined that the First Minister made the commitment to incorporate the UNCRC through new legislation by the end of this parliamentary session in 2021.

Helen outlined that the Scottish Government intention is either to directly incorporate those rights as closely as is achievable in the Scottish context, or to transpose those rights by enacting a suite of Scottish children’s rights. Direct incorporation would mean lifting the wording from the international convention and putting it into domestic law. A Scottish Suite of Children’s Rights would mean that each Article would be considered considering the Scottish context and drafted both to fit that context but also to provide at least the level of protection that the UNCRC does. Each of the different options has different impacts and as the arguments are finely balanced, we do not provide a preferred option.

Helen then made a call for input regarding what types of outcomes should result from incorporation and what those outcomes will look like in real life situations.

Participant Discussion



Image by pupils of Sciennes Primary School, courtesy of Together (Scottish Alliance for Children's Rights)

Around tables, participants were asked to respond to a set of three questions, and to think of ideas that could inform the Scottish Government’s strategies on the Incorporation of Children's Rights.

Question One: To incorporate, should the Scottish Government ‘copy and paste’ the UNCRC into Scots law? Or create a Scottish suite of rights based on the UNCRC?

- Many participants voiced a concern that if incorporation doesn’t happen now, it may not

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- happen at all due to potential changes arising from the next Scottish Parliament elections. Copy and paste would better ensure quick, successful incorporation.
- Full incorporation is important to show that these are rights, rather than gifts
 - While issues surrounding devolution may be a concern, this should not overshadow the discussion about the aims and ambitions behind incorporation. Any concerns should be dealt with as they arise, rather than designing a weaker tool, such as Scottish suite of rights.
 - Participants felt that we need to look at what other countries are doing - learn from their approaches. Aspire to the highest international standard.
 - Some felt that a Scottish suite of rights would be a “halfway house” for children’s rights – it would be better than nothing but would not achieve as much as full incorporation through the copy and paste.

Question Two: What should be included in a statutory children’s rights scheme to support transparency and accountability?

- There is a need for a complaint mechanism and new ways of redress outside the courts.
- There should be accountability requirements, including frequent and meaningful reporting. Reporting should be much more than a tick-box exercise. Children’s Rights and Wellbeing Assessments should be meaningful.
- Participants felt that there is a great need for raised awareness and better understanding around incorporation from the general public and statutory services.
- Children and young people need to be involved in the establishment of incorporation of the UNCRC from the beginning and integrated into the entire process.

Question Three: What more needs to be done by public bodies to prepare for incorporation of the UNCRC into Scots law? How long do you think it will take?

- A suite of real-life situations or case studies would be helpful to show the potential impact of incorporation.
- Training and child-friendly resources should be truly inclusive and accessible (e.g. for those with learning disabilities, low literacy) so that all children understand how they can be helped when they feel that their rights have been violated.
- Children’s rights should be included in the school curriculum, embedded across multiple subjects rather than a single learning unit.
- There should be a balance. We have rights, but we also have responsibilities, and children need to be educated on this too.

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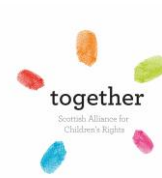


- There is a need for a “positivity campaign” that would tackle misconceptions and fears surrounding incorporation (e.g. fear of litigation, parents’ rights being restricted, and possible reactions such as “Children’s rights? What about parents’ rights?”).
- The Scottish Government should ensure that there are effective and stronger collaborations across public authorities to achieve good incorporation “on the ground” and avoid time and resources being wasted on the same work being repeated.
- Most participants were unclear on how long incorporation will take, but most who were in favour of the “copy and paste” method agreed that it should happen quickly in order to take advantage of cross-party commitment and support.

Organisations that were represented during this event included:

- Children 1st
- Children in Scotland
- Counselling & Psychotherapy in Scotland
- CrossReach
- Getting Better Together Shotts
- The Health and Social Care Alliance Scotland
- Home-Start UK Scotland
- National Third Sector GIRFEC Programme
- Royal College of Speech Language Therapists
- Scottish Government
- Scottish Independent Advocacy Alliance
- Scottish Mentoring Network
- Scottish Refugee Council
- See Me
- Sense Scotland
- Support from the Start
- Together

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Resources

[ALLIANCE – Getting it Right for Every Child](#)

[ALLIANCE Live: Incorporating the UNs Convention on the Rights of the Child \(UNCRC\) into Scots Law](#)

[Incorporating the UN Convention on the Rights of the Child into Scots Law: consultation](#)

[Together, Briefing on UNCRC Incorporation](#)

[Together, Facilitator Guide for Engaging with Children \(8-12 years\)](#)

[Together, Facilitator Guide for Engaging with Young People \(13 years+\)](#)

[Children and Young People's Commissioner Scotland: Position Paper on UNCRC Incorporation](#)

[Sciennes Primary School, P6 UNCRC Art Project with Together \(Scottish Alliance for Children's Rights\)](#)

For more information

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About the ALLIANCE

The national third sector intermediary for a range of health and social care organisations.

The Health and Social Care Alliance Scotland (the ALLIANCE) has over 2,700 members including large, national support providers as well as small, local volunteer-led groups and people who are disabled, living with long term conditions or providing unpaid care.

Many NHS Boards, Health and Social Care Partnerships and Primary/Community Care practices are associate members and many health and social care professionals are Professional Associates. Commercial organisations may also become Corporate Associates.

Our vision is for a Scotland where people of all ages who are disabled or living with long term conditions, and unpaid carers, have a strong voice and enjoy their right to live well, as equal and active citizens, free from discrimination, with support and services that put them at the centre.

The ALLIANCE has three core aims; we seek to:

- Ensure people are at the centre, that their voices, expertise and rights drive policy and sit at the heart of design, delivery and improvement of support and services.
- Support transformational change, towards approaches that work with individual and community assets, helping people to stay well, supporting human rights, self-management, co-production and independent living.
- Champion and support the third sector as a vital strategic and delivery partner and foster better cross-sector understanding and partnership.

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About Together (Scottish Alliance for Children's Rights)

Together is an alliance of Scottish children's charities that works to improve the awareness, understanding and implementation of the United Nations Convention on the Rights of the Child (UNCRC).

We do this by:

- promoting the UN Convention on the Rights of the Child;
- helping children's organisations to integrate the UNCRC into their work;
- monitoring and reporting on the progress made at a Scottish and UK level.

Our growing membership is made up of a range of children's charities, from small local playgroups through to large international charities, alongside individuals, academics and professionals with an interest in children's rights.