

# Human Rights Bill for Scotland

## A guide 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 500 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.

## Introduction

### About the Human Rights Bill for Scotland

Scottish Government has committed to introduce a new Human Rights Bill during the current parliamentary session (by May 2026). The Bill will incorporate four international treaties into Scots law insofar as possible under devolution. The four treaties are:

- The International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Elimination of Racial Discrimination (CERD)
- Convention on the Elimination of Discrimination Against Women (CEDAW)
- Convention on the Rights of Persons with Disabilities (CRPD)

Scottish Government has said the Bill will also recognise the right to a **healthy environment** and protect rights for **LGBTI** and **older people**.

Scottish Government is consulting on its policy proposals for the Bill. The consultation closes on **5<sup>th</sup> October 2023**.

- [Access the consultation here.](#)
- [Access resources to help children share their views here.](#)

### About this guide

This guide has been produced by Together (Scottish Alliance for Children's Rights) to support our members to respond to the consultation. It is intended to complement [this guide from the Human Rights Consortium Scotland](#) (HRCS).

Our guide refers to the HRCS resource throughout, highlighting additional points from a children's human rights perspective. Our guide draws upon evidence from children and young people, [Together's Rights Detectives](#) and our members.

The guide also draws upon our learning from the [UNCRC \(Incorporation\) \(Scotland\) Bill](#) ('UNCRC Bill'). This Bill will incorporate the UNCRC into Scots law once technical issues are addressed. It acts as an important pathfinder for the Human Rights Bill.

### Help shape Together's response!

Together is keen to reflect the views of children, young people and our members in our full response. You can share your views by:

- Attending our [consultation event](#) with HRCS on 6<sup>th</sup> September 2023
- Sending them to [maria@togetherscotland.org.uk](mailto:maria@togetherscotland.org.uk)

We intend to publish our response approximately two weeks before the deadline on 5<sup>th</sup> October 2023.

## Part 4: Incorporating the treaty rights

### Interpretation

Questions 1 to 3 are about what rights mean. Scottish Government notes that the treaties sometimes contain the same right but expressed in a slightly different way. It suggests that the concept of ‘human dignity’ and referring to international guidance could be helpful here.

*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?*

*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?*

Together supports [HRCS’s position](#) that ‘human dignity’ is a valuable principle when interpreting rights. Evidence shows ‘human dignity’ is an accessible concept that is well understood by children even before they are introduced to the language of human rights.<sup>1</sup> Research has also shown that engagement with dignity language could contribute positively to the development of human rights culture.<sup>2</sup>

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

Together supports [HRCS’s position](#) - provisions of the new Bill should be interpreted in light of the rich and valuable guidance provided through UN General Comments, Concluding Observations, decisions and other resources. This approach aligns with what children called for in relation to UNCRC incorporation and would ensure coherence with the subsequent approach taken in that Bill.<sup>3 4</sup> It is crucial that duty bearers refer to guidance from across the *range* of UN treaty bodies as this will help clarify the content of rights and ensure recognition of the interrelated and indivisible nature of human rights.

### The model of incorporation

Questions 4 and 5 are about *how* rights should be brought into Scots law: what will the rights look like? What will duty bearers have to do? Scottish Government has proposed ‘copying and pasting’ the exact text of the treaties into the Human Rights Bill, minus any parts that are reserved to Westminster.<sup>5</sup> Scottish Government has proposed different duties for different rights as follows:

An initial <b>procedural duty</b> followed by a <b>duty to comply</b> for:	<b>Procedural duty only</b> for:
Economic, social and cultural rights under ICESCR	Rights of women and girls under CEDAW
Right to a healthy environment	Rights of disabled people under CRPD
	Rights of Black, Brown and minority ethnic people under CERD

<sup>1</sup> 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].

<sup>2</sup> 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\\_human\\_rights\\_culture.pdf](https://pure.strath.ac.uk/ws/portalfiles/portal/138933044/Webster_2022_Can_talking_about_dignity_support_the_growth_of_a_human_rights_culture.pdf) [Date accessed: 15.08.23].

<sup>3</sup> Scottish Government (2019). UNCRC: consultation analysis. <https://www.gov.scot/publications/uncrc-consultation-analysis-report/pages/5/> [Date accessed: 15.08.23], see Question 4.

<sup>4</sup> Section 4. 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].

<sup>5</sup> Note the UNCRC Bill takes a similar approach of redacting those parts of the treaty which are seen as falling within reserved matters – see [redacted version](#).

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

**Copy & paste:** Together echoes [HRCS's support](#) for a copy and paste model. Together members favour this approach for its clarity and consistency with the UNCRC Bill.<sup>6</sup>

**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” or “take steps” would not give rise to the same accountability. 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.<sup>7</sup> This duty has enabled parliamentarians and civil society to hold Welsh Ministers to account.<sup>8</sup> 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 would like to see further consideration of a duty to comply for all 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.<sup>9</sup> 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.<sup>10</sup>

**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.

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<sup>6</sup> 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](https://www.togetherscotland.org.uk/media/1342/uncrc_incorporation_response_final.pdf) [Date accessed: 21.08.23].

<sup>7</sup> *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.

<sup>8</sup> 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](https://www.togetherscotland.org.uk/media/1342/uncrc_incorporation_response_final.pdf) [Date accessed: 21.08.23].

<sup>9</sup> 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](https://archive2021.parliament.scot/S5_Equal_Opps/General%20Documents/12-18s_SummarNotes_FINAL.pdf) [Date accessed: 21.08.23].

<sup>10</sup> 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].

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;<sup>11</sup>
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. 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.

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.<sup>12 13</sup>

## Part 5: Recognising the right to a healthy environment

Questions 6-11 are about how the right to a healthy environment should be set out in the Bill.

*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.<sup>14</sup> 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 will

<sup>11</sup> 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].

<sup>12</sup> Together (2023). The Rights Detectives: Mission update #001. [https://www.togetherscotland.org.uk/media/3319/final\\_rights-detectives-mission-update\\_feb-2023\\_stylesheet.pdf](https://www.togetherscotland.org.uk/media/3319/final_rights-detectives-mission-update_feb-2023_stylesheet.pdf) [Date accessed: 21.08.23].

<sup>13</sup> Together (2023). The Rights Detectives: Mission Update #002, p23. <https://www.togetherscotland.org.uk/media/3368/detect-1.pdf> [Date accessed: 21.08.23].

<sup>14</sup> 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].

shortly launch General Comment 26 on children’s rights and the environment – it is essential that the Human Rights Bill’s approach aligns with this guidance.<sup>15</sup>

*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 as it 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.<sup>16</sup> 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.<sup>17 18</sup>

*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. 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.<sup>19</sup> Scottish Government should consider how this could best be secured.

## 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?*

Together supports [HRCS’s position](#). The Human Rights Act has proved a powerful and essential mechanism in upholding children’s human rights<sup>20</sup> yet restating it in this Bill could raise competence issues. Instead, 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.

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<sup>15</sup> General Comment (2023). *Save the Date: Launch of General Comment No.26 on children’s rights and the environment with a special focus on climate change*. <https://childrightsenvironment.org/gc26launch/> [Date accessed: 21.08.23].

<sup>16</sup> Together (2023). *The Rights Detectives: Mission Update #002, p17*. <https://www.togetherscotland.org.uk/media/3368/detect-1.pdf> [Date accessed: 21.08.23].

<sup>17</sup> 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].

<sup>18</sup> Scottish Youth Parliament (2023). *Right to Food*. <https://syp.org.uk/campaign/right-to-food/> [Date accessed: 21.08.23].

<sup>19</sup> Together (2023). *The Rights Detectives: Mission Update #002*. <https://www.togetherscotland.org.uk/media/3368/detect-1.pdf> [Date accessed: 21.08.23].

<sup>20</sup> Together (2022). *Human Rights Act Reform*. [https://www.togetherscotland.org.uk/media/2234/hra\\_response\\_v2\\_jh.pdf](https://www.togetherscotland.org.uk/media/2234/hra_response_v2_jh.pdf) [Date accessed: 21.08.23].



## Participation

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

Together supports [HRCS's position](#). The UNCRC Bill provides a helpful framework for how participation could be embedded in the Human Rights Bill – for example Scottish Government could include a corresponding requirement to consult with rights-holders in the development of the Human Rights Scheme. Scottish Government should take account of children's concerns that they are often asked the same questions with little feedback on how their views have shaped outcomes.<sup>21</sup> As such, consideration should be given to whether the Human Rights Scheme should require a mapping exercise to establish what is already known from rights-holders on a particular topic, with subsequent engagement focusing on addressing any gaps identified by this 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.”<sup>22</sup> They have also made a range of recommendations for the implementation of participation rights including:<sup>23</sup>

- 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.
- 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.

## Equality provision, protection of rights of LGBTI and older people

Questions 14 to 18 are about what the Bill will require public authorities to do to ensure everyone has equal access to their human rights. These questions focus specifically on the 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?*

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

*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?*

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

*Question 18: Do you think the Bill framework needs to do anything additionally for LGBTI or older people?*

Together supports [HRCS's position](#) on questions 14-18.

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<sup>21</sup> 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](https://www.togetherscotland.org.uk/media/3320/report_rightsdetectives_mapping-2.pdf) [Date accessed: 21.08.23].

<sup>22</sup> Together (2023). *The Rights Detectives: Mission Update #002, p22* <https://www.togetherscotland.org.uk/media/3368/detect-1.pdf> [Date accessed: 21.08.23].

<sup>23</sup> Together (2023). *The Rights Detectives: Mission Update #002, p25* <https://www.togetherscotland.org.uk/media/3368/detect-1.pdf> [Date accessed: 21.08.23].

Scottish Government should show human rights leadership by making the Human Rights Bill in Scotland the first piece of human rights legislation nationally and internationally to explicitly mention Care Experience as a lifelong characteristic. 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,<sup>24</sup> UN Guidelines on Children in Alternative Care<sup>25 26</sup> and Council of Europe resolutions.<sup>27</sup> 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).<sup>28</sup>

Who Cares? Scotland's members feel that rights protection for Care Experienced people should be lifelong.<sup>29</sup> They 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 as part of a human rights-based approach, 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.

## Part 7: The duties

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

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

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<sup>24</sup> 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].

<sup>25</sup> [A/RES/64/142](#)

<sup>26</sup> SOS Children's Villages International. The Guidelines for the Alternative Care of Children in Child and Young 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](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].

<sup>27</sup> Council of Europe (no date). Alternative Care. <https://www.coe.int/en/web/children/alternative-care> [Date accessed: 21.08.23].

<sup>28</sup> 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].

<sup>29</sup> Who Cares? Scotland (2020). Navigating the World of Rights. <https://www.whocarescotland.org/wp-content/uploads/2020/12/Navigating-The-World-of-Rights-Full-Report-Dec-2020-2.pdf>

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

See response to Question 4, above. Together supports a procedural duty across all of the treaties that the Bill will incorporate. This duty should follow a ‘due regard’ model and should continue to exist alongside the duty to comply once that stronger duty becomes active. This is because the procedural duty will help public authorities achieve what is required by the duty to comply.

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

See response to Question 4, above. Together wishes to support and amplify children’s calls for a strong duty to comply.

### 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?*

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

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. 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.

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 have called for government departments to be informed of issues raised by children during the consultation and passage of the Bill and the development of robust mechanisms through which they can hold duty bearers to account for rights breaches. The 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.<sup>30</sup> Scottish Government should consider a duty to consult with children and young people in the preparation of reports.

### 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?*

*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 [HRCS’s position](#). 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 play, the

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<sup>30</sup> 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](https://www.togetherscotland.org.uk/media/3319/final_rights-detectives-mission-update_feb-2023_stylesheet.pdf) [Date accessed: 21.08.23].



right to an adequate standard of living, right to food, freedom of association and the right to housing.<sup>31</sup> 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 [HRCS's position](#). 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.<sup>32</sup> 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,<sup>33</sup> 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,<sup>34</sup>
- **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 rights budgeting:** Scottish Government has funded work by the Improvement Service to build public sector capacity around children's rights<sup>35</sup> and has funded work by the Scottish Public Services Ombudsman (SPSO) to develop guidance and model procedures for child-friendly complaints.<sup>36</sup>

## 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?*

Together supports [HRCS's position](#). 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.<sup>37</sup> 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.<sup>38</sup>

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

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<sup>31</sup> 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].

<sup>32</sup> 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-uk-childrens-rights-uncrc-scotland-introduction/govscot%3Adocument/childrens-rights-uncrc-scotland-introduction.pdf> [Date accessed: 21.08.23].

<sup>33</sup> Section 11 . UNCRC (Incorporation) (Scotland) Bill. <https://www.parliament.scot/-/media/files/legislation/bills/current-bills/uk-childrens-rights-uncrc-scotland-introduction/govscot%3Adocument/childrens-rights-uncrc-scotland-introduction.pdf> [Date accessed: 15.08.23].

<sup>34</sup> 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].

<sup>35</sup> 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].

<sup>36</sup> SPSO (2023). *Child Friendly Complaints*. <https://www.spsos.org.uk/news-and-media/child-friendly-complaints> [Date accessed: 21.08.23].

<sup>37</sup> 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](https://www.togetherscotland.org.uk/media/3319/final_rights-detectives-mission-update_feb-2023_stylesheet.pdf) [Date accessed: 21.08.23].

<sup>38</sup> Together (2023). *The Rights Detectives: Mission Update #002*, [https://www.togetherscotland.org.uk/media/3319/final\\_rights-detectives-mission-update\\_feb-2023\\_stylesheet.pdf](https://www.togetherscotland.org.uk/media/3319/final_rights-detectives-mission-update_feb-2023_stylesheet.pdf) [Date accessed: 21.08.23].

start to run once they 18.<sup>39</sup> 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.

### 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](#). We know that children often find formal complaints mechanisms daunting and want issues resolved close to the source of the alleged breach.<sup>40</sup> 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.<sup>41</sup> 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. We welcome 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.<sup>42</sup> 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, with children being consulted on any proposed changes.

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

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

### National human rights institutions

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

*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 for the Scottish Human Rights Commission (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.<sup>43</sup>

### 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 [HRCS's position](#) – the test for standing should be 'sufficient interest' 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, given the particular barriers children face in accessing

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<sup>39</sup> 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].

<sup>40</sup> 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](https://www.togetherscotland.org.uk/media/3319/final_rights-detectives-mission-update_feb-2023_stylesheet.pdf) [Date accessed: 21.08.23].

<sup>41</sup> 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](https://www.togetherscotland.org.uk/media/3319/final_rights-detectives-mission-update_feb-2023_stylesheet.pdf) [Date accessed: 21.08.23].

<sup>42</sup> SPSO (2023). Child Friendly Complaints. <https://www.spsos.org.uk/news-and-media/child-friendly-complaints> [Date accessed: 21.08.23].

<sup>43</sup> 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].

justice.<sup>44</sup> 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 and CYPCS, to raise cases with and on behalf of children, as well as raising cases in the public interest.

*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?*

*Question 36: If you do not agree that existing judicial remedies are sufficient in delivering effective remedy for rights[1]holders, what additional remedies would help to do this?*

Together supports [HRCS’s position](#). 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.<sup>45</sup>

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.<sup>46</sup> 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.<sup>47</sup>

*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. Children consulted in relation to the UNCRC Bill were clear that it should have strong powers of enforcement – including strike down powers.<sup>48</sup> 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.<sup>49</sup>

## **Part 9: Implementing the new Scottish Human Rights Act**

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

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

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<sup>44</sup> 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](https://www.togetherscotland.org.uk/media/1342/uncrc_incorporation_response_final.pdf) [Date accessed: 21.08.23].

<sup>45</sup> 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].

<sup>46</sup> 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](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f5&Lang=en) [Date accessed: 15.08.23].

<sup>47</sup> 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].

<sup>48</sup> 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](https://archive2021.parliament.scot/S5_Equal_Opps/General%20Documents/12-18s_SummarNotes_FINAL.pdf) [Date accessed: 21.08.23].

<sup>49</sup> 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](https://archive2021.parliament.scot/S5_Equal_Opps/General%20Documents/12-18s_SummarNotes_FINAL.pdf) [Date accessed: 21.08.23].

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

Together supports [HRCS's position](#) - it is essential that minimum core obligations are developed through a participatory process. Account should be taken of our response to question 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 the questions that will be asked.

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

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.<sup>50</sup>

Further details of our support can be found in our response to the 2019 consultation on UNCRC incorporation.<sup>51</sup> 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 supports the inclusion of the additional requirements set out by [HRCS in its guide](#) (see page 66). 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.

The UNCRC Bill requires annual progress reports on implementation of the Children's Rights Scheme. The consultation paper says there should be periodic reports under the Human Rights Scheme but is silent on how often these should be. We propose that an annual approach is adopted, coherent with the approach in the UNCRC Bill. Similarly, 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](#).

*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 implementation of the UNCRC Incorporation Bill, including engagement with stakeholders on draft statutory and non-statutory guidance, and work led by the Improvement Service to raise awareness and understanding of children's rights across the public sector.

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<sup>50</sup> 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](https://www.togetherscotland.org.uk/media/1342/uncrc_incorporation_response_final.pdf) [Date accessed: 21.08.23].

<sup>51</sup> 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](https://www.togetherscotland.org.uk/media/1342/uncrc_incorporation_response_final.pdf) [Date accessed: 21.08.23].

*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.<sup>52</sup> The current Bill provides an opportunity strengthen existing approaches, in a way that builds upon what children have already told us.

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

Together supports [HRCS's position](#). We call on Scottish Government to place a reporting duty on the Scottish Parliament, mirroring the provision in the UNCRC Bill.<sup>53</sup> 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.

**August 2023**

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<sup>52</sup> 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](https://www.togetherscotland.org.uk/media/3320/report_rightsdetectives_mapping-2.pdf) [Date accessed: 21.08.23].

<sup>53</sup> 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].