



Scottish Parliament Inquiry: Human Rights and the Scottish Parliament

Summary: Children and young people under the age of 16 cannot vote in Scottish Parliament elections and do not have a voice in the electoral process. Therefore, greater efforts must be taken to engage children and young people in the work of the Scottish Parliament and for MSPs to scrutinise the implementation of children's human rights. This could be achieved by drawing from international experience to develop an online child-friendly portal, enhancing the Scottish Parliament's Education and Outreach programme and involving children and young people in the work of Committees as a matter of routine. Scrutiny of the steps taken by the Scottish Government's to implement international human rights obligations for children could be progressed through regular Parliamentary debates, particularly after the publication of UN Concluding Observations and the Ministerial Report on children's rights in 2018. To develop capacity and expertise to take these activities forward, Parliamentarians and other Parliamentary staff should undertake training in children's rights and how to take a rights-based approach to their work. Furthermore work should be progressed to strengthen networks and relationships between the Scottish Parliament and those working in children's rights, including NGOs and academics, and children and young people themselves, particularly through organisations such as the Scottish Youth Parliament.

About Together (Scottish Alliance for Children's Rights)

Together (Scottish Alliance for Children's Rights) is an alliance of children's charities that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) in Scotland. We have over 380 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs. Our activities include collating an annual State of Children's Rights report to set out the progress made to implement the UNCRC in Scotland. The views expressed in this submission are based on the UNCRC and other international human rights treaties and do not necessarily reflect the specific views of every one of our member organisations.

Background and context

There is an increasing recognition of the important role Parliament should play as a human rights guarantor, with international consensus that more needs to be done by Parliaments to protect and further human rights.¹ As a key institution of Government, Parliament has a duty to protect human rights alongside the executive and the judiciary.² Several UN institutions, including the UN Committee on the Rights of the Child (UN Committee), have echoed this view and emphasise the importance of the work of Parliaments in furthering human rights. In General Comment No. 5 on General Measures of Implementation, the UN Committee states that it has:

“identified a wide range of measures that are needed for effective implementation [of the UNCRC], including the development of special structures and monitoring, training and other activities in Government, parliament and the judiciary at all levels.”

¹ SPiCE (2017). What do other parliaments in the UK do on human rights?

http://www.parliament.scot/S5_Equal_Opps/Inquiries/HR_committees_other_parl_Jan_2017.pdf [Date accessed: 2.3.18].

² Brian Chang (2015). Global development in the role of parliaments in the protection and promotion of human rights and the rule of law: An Emerging Consensus. https://www.law.ox.ac.uk/sites/files/oxlaw/brian_chang_-_an_emerging_consensus.pdf [Date accessed: 9.3.18].

Parliaments are in a unique position to act as human rights guarantors as they are able to:

- Monitor and scrutinise Governments in their progress of fulfilling international human rights obligations;
- Help shape the views of constituents regarding human rights;
- Pass legislation and budgets which take human rights into account;
- Ratify international human rights treaties.³

When Parliaments effectively take forward this role to further human rights, it enables States to move from ‘*a pattern of reaction to a culture of prevention of violations of human rights*’ and ensures human rights are consistently prioritised throughout all policy-making.⁴ Whilst the power to ratify international human rights treaties has not been devolved to the Scottish Parliament, it does have a duty (and the powers) to monitor the extent to which these treaties are effectively implemented in Scotland. The UN Committee emphasises the importance of Parliamentary scrutiny of UN Concluding Observations in General Comment No. 5, stating that ‘*...the Committee’s concluding observations should be disseminated to the public including children and should be the subject of detailed debate in parliament.*’

It is essential that steps are taken to address the unique nature of children’s rights when Parliament develops strategies to further human rights. Children and young people under the age of 16 cannot vote in Scottish Parliament elections, and this age is raised to 18 for UK elections. They therefore do not form part of the electorate and Parliamentarians are not directly electorally accountable to children and young people. The impact of this is significant and wide ranging. For example, issues important to children and young people are less likely to be taken into account when MSPs are looking for votes and, when children’s issues are addressed, it is often in a paternalistic way so as to appease parents – as voters – rather than children themselves.⁵

As children and young people do not have a voice through the electoral process, it is of even more importance that Parliamentarians take steps to seek out their views and take them into account in decisions made in Parliament.⁶ Parliamentarians have a responsibility to promote the rights of children and young people throughout all stages of decision-making processes and ensure children and young people are actively involved in monitoring and scrutinising Parliamentary activity.

Below we lay out evidence on how the Scottish Parliament can work to further children’s human rights in the three areas outlined in the Inquiry: participation and engagement, parliamentary procedure and process, and accountability. We have gathered evidence from the jurisprudence of the UN Committee, including General Comments, alongside previous research undertaken by Together including in our State of Children’s Rights reports, evidence provided by our members, and case studies gathered from other countries.

³ Brian Chang (2015). Global development in the role of parliaments in the protection and promotion of human rights and the rule of law: An Emerging Consensus, p.6. https://www.law.ox.ac.uk/sites/files/oxlaw/brian_chang_-_an_emerging_consensus.pdf [Date accessed: 9.3.18].

⁴ Ibid.

⁵ Aoife Nolan (2010). The child as ‘democratic citizen’: challenging the ‘participation gap’, p.2. Public Law, 2010 (Winter). pp. 767-782.

⁶ Ibid.

1. Participation and engagement

As democratically elected members, MSPs are in a strong position to raise awareness of human rights and draw from the human rights framework to represent the concerns of the electorate.⁷ Children under the age of 16 do not form part of the electorate for the Scottish Parliament and this can often result in children's rights issues not being prioritised, or in children being represented through the views of their parents rather than being recognised as rights holders themselves. Article 12 of the UNCRC encompasses every child's right to have their voice heard and taken into account in decisions that affect them. The UN Committee states in General Comment No.5 that '*... article 12 requires consistent and ongoing arrangements. Involvement of and consultation with children must also avoid being tokenistic and aim to ascertain representative views.*' Extra effort must be taken by MSPs to ensure the rights of children and young people, particularly their right to have their views heard in matters that affect them as outlined in the UNCRC, are fulfilled. Any engagement with children and young people must strive to comply with the standards outlined in the UN Committee's General Comment No.12 on the right of the child to be heard. The General Comment articulates nine principles that ensure meaningful participation: that processes are transparent and informative; voluntary; respectful; relevant; child-friendly; inclusive; supported by training (for adults and children); safe and sensitive to risk and accountable.⁸

Steps already in place in Scotland

The Scottish Parliament undertakes a range of work to engage with children and young people and raise awareness of parliamentary work. This includes an Outreach Programme for primary and secondary schools⁹, alongside lesson plans and education resources for teachers and pupils and resources to support MSP visits to schools. Within the Scottish Parliament, there is a schools visits programme as well as specialist visits which provide specific learning relating to art and design tours, law making, the history of the Scottish Parliament and pupil councils.¹⁰

Examples from elsewhere in the UK – Wales

The Welsh Assembly has a Children and Young People Engagement Charter which pledges to involve children and young people in the work of the Assembly and sets out a series of commitments that Assembly Members will take forward.¹¹ To help meet the pledge, the Welsh Assembly set up a website for children and young people to learn about the National Assembly for Wales – what it does and how it affects young people living in Wales.¹² This includes a range of resources for different ages (under 11 years-old, 11-14 years-old and 14-18 years-old) including guides to the Assembly, lesson plans and resources for children and young people to organise their own debates.

The Welsh Assembly also has a dedicated Engagement and Youth Engagement service which works to involve children and young people in the work of Parliament and encourage them to get involved in the democratic process. The service provides free tailored education programmes for schools, colleges and youth groups and delivers outreach workshops and training as well as running Parliamentary visits. Children and young people

⁷ Brian Chang (2015). Global development in the role of parliaments in the protection and promotion of human rights and the rule of law: An Emerging Consensus. https://www.law.ox.ac.uk/sites/files/oxlaw/brian_chang_-_an_emerging_consensus.pdf [Date accessed: 9.3.18].

⁸ CRC/C/GC/12: Para 134.

⁹ Scottish Parliament (2018). Outreach@YourSchool Programme. <http://www.parliament.scot/visitandlearn/Education/21150.aspx> [Date accessed: 9.3.18].

¹⁰ Scottish Parliament (2018). Workshops and Specialist Tours for Schools. <http://www.parliament.scot/visitandlearn/Education/97594.aspx> [Date accessed: 9.3.18].

¹¹ Welsh Assmebly (2018). Children and Young People Engagement Charter. <http://www.yourassembly.org/wp-content/uploads/2015/09/Charter-Long-version-A5.pdf> [Date accessed: 9.3.18].

¹² Your Assembly (2018). <http://www.yourassembly.org/> [Date accessed: 9.3.18].

are encouraged to become Assembly Ambassadors which involves them learning about the Assembly and then passing on this learning to other children through a workshop.¹³ There is also a School Council Ambassador scheme which aims to get school councils more directly involved with the work of the Assembly. Through this, certified schools have an outreach visit to learn about the Assembly, submit a blog to the Your Assembly website and agree to take part in future consultations on things that affect children and young people.¹⁴

International examples – Germany

The German Bundestag has developed an online portal for children, named the KuppelKucker, which aims to inform them about politics and the Bundestag as an institution.¹⁵ Information is presented in a child-friendly way and children are able to ask questions directly to the Children’s Committee, which is a sub-committee of the Bundestag Committee on Family, Seniors, Women and Youth.

Participation and engagement: opportunities to strengthen current work

To address the fact that children do not have a voice through the electoral process, the Scottish Parliament should empower children and raise awareness of their right to have their voices heard – both among MSPs and among children and young people themselves. This can be achieved by putting in place consistent and ongoing arrangements to ensure children and young people are involved and informed in the work of the Parliament, and MSPs are aware of, and consider, their views and experiences.

Particular steps need to be taken to support children and young people to get involved aspects of decision-making that are not traditionally seen as ‘children’s issues’, such as housing, health, transport, and planning. More needs to be done to ensure the systematic inclusion of those children that are less likely to be able to have their voices heard, such as children who do not attend mainstream education, younger children, children with a disability and children from minority ethnic groups.

As such, Together would like to make the following recommendations:

- **The Scottish Parliament should undertake an evaluation of its existing Education and Outreach Programme to ensure it effectively reaches out to children across Scotland from all backgrounds in line with UNCRC Article 2.¹⁶ It should also take steps to ensure that the Education and Outreach Programme is available to children and young people who are not in mainstream education. The Education and Outreach Programme should aim to raise awareness and understanding of children and young people’s right to participate in the Parliamentary process and provide clear guidance and resources to support children from all backgrounds to get involved.**
- **The Scottish Parliament should draw from international experience to develop an online portal for children and young people, through which they can learn more about the Scottish Parliament and how to get involved. Children and young people should be included in the planning and implementation of this work to ensure it addresses their identified needs and is developed in a way they find accessible, useful and of interest.**

¹³ Your Assembly (2018). Blogs – Assembly Ambassadors. <http://www.yourassembly.org/?s=assembly+ambassador&submit=> [Date accessed: 7.3.18].

¹⁴ Your Assembly (2018). Your Assembly Ambassadors: Newtown High School. <http://www.yourassembly.org/assembly-school-council-ambassadors-newtown-high-school/> [Date accessed: 9.3.18].

¹⁵ KuppelKucker. <https://www.kuppelkucker.de/start/> [Date accessed: 2.3.18].

¹⁶ United Nations Convention on the Rights of the Child: Article 2. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> [Date accessed: 9.3.18].

2. Parliamentary procedure and process

The Scottish Parliament has a duty to ensure children's rights are considered and embedded in Scottish legislation. MSPs should use a human rights-based approach '*within the various stages of the law-making process*' to '*visibly reaffirm human rights values and principles*', including children and young people's rights.¹⁷ By applying the principles and standards of international human rights treaties and other instruments to the processes within Scottish Parliament, '*legislators can be guided to identify rights holders within a proposed law and ensure that participatory and inclusive procedures are utilised to prioritise excluded members of society*.'¹⁸ This should include often marginalised groups of children and young people such as younger children, refugee and asylum seeking children, Gypsy/Traveller children, those who identify as LGBT, and ethnic minority children.

Steps already in place in Scotland

The Commission on Parliamentary Reform addressed the role of the Scottish Youth Parliament and highlighted the benefits of strengthening the relationship between the Scottish Parliament and the Youth Parliament.¹⁹ It highlighted that work produced through the engagement that the Scottish Youth Parliament undertakes with young people should be better utilised by Parliament in Parliamentary scrutiny processes.²⁰ Some Committees have taken steps to involve children and young people in specific inquiries, for example, the Education and Culture Committee spoke to young people from Who Cares? Scotland and spoke to care leavers as part of the 'Inquiry into decision making on whether to take children into care'.²¹ Together welcomes efforts by the Scottish Parliament's Equalities and Human Rights Committee to engage directly with children and young people, for example during the inquiry into prejudice-based bullying in schools.²² Despite such progress, many Committees do not involve children and young people, and of those that do, the vast majority are only in relation to issues specific to children.

In 2016, over 30 MSPs signed up to a Child's Rights Manifesto²³ which was created by a sub-group of the Cross-Party Group on Children and Young People with support from children and young people.²⁴ MSPs who have signed up to the manifesto are encouraged to champion children and young people's rights throughout the Scottish Parliament.

Examples from elsewhere in the UK – Wales

Many of Welsh Assembly Committees invite children and young people to give evidence on particular inquiries²⁵ or make visits to services²⁶ delivered for children and young people as part of their evidence

¹⁷ UNDP (2008). Parliaments & Human Rights: A Primer http://hrbaportal.org/wp-content/files/HR_Pub_ParltsHR.pdf [Date accessed: 4.3.18].

¹⁸ Ibid.

¹⁹ Commission on Parliamentary Reform (2017). Your Parliament, Your Voice.

<https://test123582.files.wordpress.com/2016/10/commissiononparliamentaryreformreport-june20171.pdf> [Date accessed: 4.3.18].

²⁰ Ibid.

²¹ Scottish Parliament (2012). Inquiry into decision making on whether to take children into care.

<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/52590.aspx> [Date accessed: 7.3.18].

²² Equalities and Human Rights Committee (2017). It is not Cool to be Cruel: Prejudice-based bullying and harassment of children and young people in schools. http://www.parliament.scot/S5_Equal_Opps/Inquiries/EHRiC_5th_Report_2017_SP_Paper_185.pdf [Date accessed: 6.3.18].

²³ Together (2017). Child Rights Manifesto. http://www.togetherscotland.org.uk/pdfs/ChildRights_Manifesto_Final.pdf [Accessed: 4.3.18].

²⁴ Together (2017). MSPs: Sign up to be a #ChildRightsChamp here! <http://www.togetherscotland.org.uk/news-and-events/news/detail/?news=977> [Date accessed: 4.3.18].

²⁵ Social Care Wales (2018). Proposed Rights of Children and Young Persons (Wales) Measure: stage 1 committee report.

<https://socialcare.wales/research-and-data/research-on-care-finder/proposed-rights-of-children-and-young-persons-wales-measure-stage-1-committee-report?record-language-choice=en-cy> [Date accessed: 9.3.18].

²⁶ Welsh Assembly (2013). Calendar Event. <http://senedd.assembly.wales/mgCalendarEvent.aspx?id=1484&RPID=1011039502> [Date accessed: 9.3.18].

gathering process. In the past, there have also been events held in the Assembly on children's rights in the week leading up to Universal Children's Day in November which help raise awareness and understanding of children's rights among Welsh Assembly Members.

International examples – Ireland, Germany and Europe

Children and young people have recently presented to the Joint Oireachtas Committee in Ireland on Children and Youth Affairs in relation to cyber security in order to highlight issues that particularly affect children and young people.²⁷ This allowed children and young people to directly influence the Parliamentary process and encouraged Parliamentarians to focus on children's rights.

In the German Bundestag, there is a Children's Committee which is a subcommittee of the Bundestag Committee on Family, Seniors, Women and Youth. The role of the Children's Committee is to advocate for children and young people and represent their interests in the work of the larger committee.²⁸

The European Parliament has an Intergroup on Children's Rights which works across key European Parliament committees to promote children's rights.²⁹ The Intergroup has nominated child rights focal points in each Parliamentary committee who highlight to the Intergroup enquiries that have a specific impact on children's rights. The Intergroup was formed following the launch of a Child's Rights Manifesto by a coalition of children's organisations.³⁰ Over 100 MEPs have signed the manifesto to commit to mainstreaming children's rights through the work of the European Parliament.

Parliamentary procedure and process: opportunities to strengthen current work

Together would like to make the following recommendations:

- **The Scottish Parliament should ensure that Committees take steps to involve children and young people in inquiries and evidence gathering. This should include creating child friendly calls for evidence for inquiries, inviting children and young people to give evidence (and allowing this to be given in creative ways, such as by video, through artwork, visiting children and young people outside Parliament or by inviting children and young people to meet with a Committee for lunch) and ensuring all participation with children and young people is in line with the principles of participation outlined in General Comment 12.**
- **The Equalities and Human Rights Committee should work with the Cross-Party Group on Children and Young People to form an Intergroup on Children's Rights. Drawing from experience of the equivalent group in the European Parliament, the Intergroup should be established with membership from across Parliamentary committees to ensure children and young people's rights are championed in all areas of decision-making.**
- **The Scottish Parliament should formalise procedures that involve the Scottish Youth Parliament in relevant inquiries. Procedures should allow for learning between Parliaments and encourage joint working between Scottish Parliament and SYP committees.**

²⁷ House of the Oireachtas (2018). Students to discuss cyber bullying with Children and Youth Affairs Committee. <http://www.oireachtas.ie/parliament/mediazone/pressreleases/2018/name-45893-en.html> [Date accessed: 4.3.18].

²⁸ Deutscher Bundestag (2018). Committees of the 18th Electoral Term. <http://www.bundestag.de/kiko> [Date accessed: 4.3.18].

²⁹ Child Rights Intergroup in the European Parliament (2018). About. <http://www.childrightsmanifesto.eu/organizations> [Date accessed: 4.3.18].

³⁰ Child Rights Intergroup in the European Parliament (2018). Manifesto. <http://www.childrightsmanifesto.eu/manifesto> [Date accessed: 4.3.18].

3. Accountability

Scottish Parliament should play a leading role in supporting and holding the Scottish Government to account in meeting its international human rights obligations.

Steps already in place in Scotland

The Children and Young People (Scotland) Act 2014 (the 2014 Act) places a duty on Ministers to consider the impact their decisions have on children's rights and to raise awareness and understanding of the UNCRC.³¹ To further these duties, the Scottish Government undertakes Child Rights and Wellbeing Impact Assessments (CRWIA) to assess the extent to which policies, legislation and other measures protect and promote the rights of children and young people.³² CRWIA should provide a useful tool to support MSPs in scrutinising legislation and policy, raising awareness and understanding of rights implications of Scottish Government proposals and highlighting the views and experiences of children, young people and other stakeholders.

The 2014 Act also places a duty on Ministers to publish a Children's Rights Report every three years, the first of which is due on 2018.³³ The report should set out what progress has been made over the past three years to implement children's rights and what further actions the Scottish Government will take. The report should set out specific commitments from the Scottish Government to address the UN Committee's 2016 Concluding Observations.³⁴

In 2017, the Human Rights Council made 227 recommendations to the UK through the Universal Periodic Review (UPR). Many of these recommendations relate specifically to children and young people's rights, addressing issues such as the incorporation of the UNCRC into law, protecting children from violence, supporting children affected by imprisonment and more.³⁵ The Equalities and Human Rights is progressing work to examine the role of Parliament in scrutinising the UPR process.³⁶

Examples from elsewhere in the UK – Wales

The Rights of Children and Young Person (Wales) Measure 2011 requires the Welsh Government to pay due regard to the UNCRC when making decisions and creating legislation.³⁷ To scrutinise Government's implementation of the Measure, the Welsh Government is required to publish a compliance report and lay this before the Welsh Assembly.³⁸ The last report was subject to debate in the main plenary session and it is anticipated that the next report will be scrutinised by the Children's Committee. The First Minister has also been scrutinised on the Welsh Government's approach to protecting and promoting children's rights by the Welsh Assembly's Scrutiny of the First Minister Committee.³⁹ Before the meeting, the Committee met with youth groups and school councils to hear their concerns about rights and issues affecting children and young people in Wales.

³¹ Children and Young People (Scotland) Act 2014: Part1. http://www.legislation.gov.uk/asp/2014/8/pdfs/asp_20140008_en.pdf.

³² Scottish Government (2018). Human Rights: Children's rights. <https://beta.gov.scot/policies/human-rights/childrens-rights/> [Date accessed: 9.3.18].

³³ Children and Young People (Scotland) Act 2014: Part1. http://www.legislation.gov.uk/asp/2014/8/pdfs/asp_20140008_en.pdf.

³⁴ CRC/C/GBR/CO/5

³⁵ Scottish Government (2017). Universal Periodic Review: Response to Recommendations. <http://www.gov.scot/Resource/0052/00528654.pdf> [Date accessed: 9.3.18].

³⁶ Scottish Parliament (2018). Equalities and Human Rights Committee, Session 5 Agenda. http://www.parliament.scot/S5_Equal_Opps/Meeting%20Papers/EHRiC_Agenda_and_Public_Papers_20180118.pdf [Date accessed: 6.3.18].

³⁷ Rights of Children and Young Person (Wales) Measure 2011. <http://www.legislation.gov.uk/mwa/2011/2/contents> [Date accessed: 2.3.18].

³⁸ Welsh Government (2018). Compliance report on the children's rights measure <http://gov.wales/topics/people-and-communities/people/children-and-young-people/rights/report-childrens-rights-measure/?lang=en> [Date accessed: 2.3.18].

³⁹ Welsh Assembly (2018). Children's rights on the agenda as Assembly committee quizzes First Minister in Torfaen. <http://www.assembly.wales/en/newhome/pages/newsitem.aspx?itemid=1778> [Date accessed: 9.3.18].

International examples – South Africa

South Africa's Parliament provides scrutiny on human rights issues by approving the Government's submission to the Universal Periodic Review before it is submitted to the Human Rights Council during the UPR reporting cycle.⁴⁰

Accountability: opportunities to strengthen current work

In 2018, MSPs have a significant opportunity to scrutinise progress that has been made by Scottish Government in furthering children's rights. The Children's Rights report to be tabled in Parliament will provide MSPs with the opportunity to examine and scrutinise the steps taken by Scottish Ministers to further the UNCRC, particularly in relation to the implementation of the 2016 Concluding Observations from the UN Committee. All seven UN human rights treaties to which the UK is party⁴¹ are of great importance to fulfilling children and young people's rights. Efforts made to strengthen Parliamentary scrutiny of these treaties will also help to progress children and young people's rights.

In order to scrutinise developments from a children's rights perspective, it is essential that MSPs have sufficient awareness and understanding of children's human rights. Efforts should be made to build networks between MSPs, Parliamentary and Research Assistants, NGOs, academics, and children and young people themselves so that MSPs have access to expert information and analysis on children's human rights.

As such, Together would like to make the following recommendations:

- **The Scottish Parliament should hold an annual debate on children and young people's rights. The 2018 debate should focus on the Children's Rights report to be tabled in the Scottish Parliament. MSPs and Committees should seek to develop relationships with children and young people and children's rights experts to inform and influence this debate.**
- **The Scottish Parliament should debate all Concluding Observations made in relation to UN human rights treaties, as well as recommendations made by the Human Rights Council through the UPR.**
- **MSPs, Parliamentary Researchers and Committee Clerks should seek to undergo training on children's rights and how to take a child-rights based approach to their Parliamentary work.**

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⁴⁰ Brian Chang (2015). Global development in the role of parliaments in the protection and promotion of human rights and the rule of law: An Emerging Consensus. https://www.law.ox.ac.uk/sites/files/oxlaw/brian_chang_-_an_emerging_consensus.pdf [Date accessed: 9.3.18].

⁴¹ United Nations treaties ratified by the UK: [International Covenant on Economic, Social and Cultural Rights](#); [International Covenant on Civil and Political Rights](#); [Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#); [International Convention on the Elimination of All Forms of Racial Discrimination](#); [Convention on the Elimination of all forms of Discrimination Against Women](#); [Convention on the Rights of the Child](#); [International Convention on the Rights of Persons with Disabilities](#).