
To: Education and Children's Services Policy Board

On: 18 March 2021

Report by: Director of Children's Services

Heading: United Nations Convention on the Rights of the Child
(Incorporation) (Scotland) Bill

1. Summary

- 1.1. The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill was introduced in the Scottish Parliament on 1 September 2020. The Bill is now at stage 3 where the Scottish Parliament considers any amendments to the Bill, debates these and votes on whether it should become law.
- 1.2. The Bill will make the UNCRC part of Scottish law. This would mean the Scottish Government and other public bodies including local authorities would be required to respect the UNCRC as law, and that courts could be asked to decide if the government or other public bodies have respected or broken its terms.
- 1.3. The UNCRC is an international agreement by countries which have promised to protect the rights of children. By embedding the UNCRC in Scottish Law the rights of children will be legally protected. The UNCRC contains 54 articles and defines a child as those under the age of 18. As such the incorporation of the UNCRC into Scottish Law means that those up to the age of 18 will have their rights under the convention legally protected.

2. Recommendations

- 2.1. The education and children's services policy board is asked to:
 - i. note the progress to date in relation to the United Nations on the Rights of the Child (Incorporation) (Scotland) Bill in the Scottish Parliament; and
 - ii. note the implications for Renfrewshire when the Bill becomes law.
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3. Background

- 3.1. The UNCRC is an international agreement signed by countries which have agreed to protect the rights of children. The UNCRC has been in place for over 30 years coming into force in September 1990 and is the most widely ratified human rights agreement in the history of the United Nations.
- 3.2. The UNCRC contains 54 articles, 42 defining the rights of the child and the remainder outlining how the convention works. The UNCRC defines who children are, details the rights that the child has and outlines the responsibilities of governments to protect the rights of the child.
- 3.3. The UNCRC defines a child as any person under the age of 18. The articles of the UNCRC are extensive. A summary of the rights covered by the UNCRC prepared by the United Nations UK operations is attached at appendix 1. Some examples of the rights of a child covered by the convention are:
 - best interest of the child (article 3);
 - respect for the views of the child (article 12);
 - protection from violence, abuse and neglect (article 19);
 - children with a disability (article 23);
 - right to an education (article 28); and
 - juvenile justice (article 40).
- 3.4. In addition to embedding the UNCRC in Scottish Law the Bill as drafted aims to:
 - make sure all children and young people under 18 have their rights respected;
 - make public authorities (organisations like councils, the police and health) respect UNCRC in their work;
 - let children, young people, and people supporting them ask the courts to ensure their UNCRC rights are “enforced” (this means if children don’t think their rights have been respected and the courts agree, courts can tell public authorities to change what they do, or make any other order they think is necessary to achieve a just outcome for the child);
 - require Scottish ministers publish a report (a Children’s Rights Scheme) that shows what work they are doing for children’s rights;
 - require Scottish ministers review the Children’s Rights Scheme every year to see how it’s working;
 - require other public authorities to publish reports every 3 years to say how they are respecting the UNCRC (this is already part of the “Children and Young People (Scotland) Act 2014”);
 - give the courts powers to decide if new and old laws are compatible with the UNCRC;
 - allow the Scottish Government to change Scottish laws to make sure they are compatible with the UNCRC; and
 - allow the Children and Young People's Commissioner Scotland to take cases to court on behalf of children, and provide advice to courts about the UNCRC.

35. As the rights of children will become part of Scottish Law any public body will require to ensure that any policy takes cognisance of the rights of the child as it is developed and agreed. In Renfrewshire the approach to date in relation to how children's services operates would be compliant with the UNCRC. In future as the Bill becomes law any new policy or development across the local authority will require to ensure that the rights of the child are considered and addressed before approval. The duty to provide a three yearly report on how the local authority is promoting and respecting children's rights already in law will continue.
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Implications of this report

1. Financial

No significant financial implications at this time.

2. HR and Organisational Development

Staff training and development will require to ensure that the UNCRC is covered to ensure staff are aware of their responsibility to promote and protect the rights of children.

3. Community/Council Planning

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| Our Renfrewshire is thriving | - Ensuring the best start in life for children and young people. |
| Our Renfrewshire is well | - Promoting the rights will lead to healthier outcomes for children and young people. |
| Our Renfrewshire is safe | - The UNCRC promotes the protection of children. |
| Tackling inequality, ensuring opportunities for all | - The UNCRC promotes equality for children/. |

4. Legal

The Bill when enacted will place duties on local authorities to promote and protect the rights of children. The possibility that the Council may be challenged specifically to defend the compatibility of its decisions with the UNCRC in court should be noted.

5. Property/Assets

None.

6. Information Technology

None.

7. Equality and Human Rights

The Bill is aimed at embedding the protection of the rights of the child in law.

8. Health and Safety

None.

- 9. **Procurement**
None.
- 10. **Risk**
None.
- 11. **Privacy Impact**
None.
- 12. **Cosla Policy Position**
None.
- 13. **Climate Risk**
None.

**List of Background
Papers**
None.

Children's Services JT/KO
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a summary of the un convention on the rights of the child



UNITED KINGDOM

article 1 (definition of the child)
Everyone under the age of 18 has all the rights in the Convention.

article 2 (non-discrimination)
The Convention applies to every child without discrimination, whatever their ethnicity, sex, religion, language, abilities or any other status, whatever they think or say, whatever their family background.

Article 3 (best interests of the child) The best interests of the child must be a top priority in all decisions and actions that affect children.

article 4 (implementation of the Convention)
Governments must do all they can to make sure every child can enjoy their rights by creating systems and passing laws that promote and protect children's rights.

article 5 (parental guidance and a child's evolving capacities) Governments must respect the rights and responsibilities of parents and carers to provide guidance and direction to their child as they grow up, so that they fully enjoy their rights. This must be done in a way that recognises the child's increasing capacity to make their own choices.

article 6 (life, survival and development)
Every child has the right to life. Governments must do all they can to ensure that children survive and develop to their full potential.

article 7 (birth registration, name, nationality, care)
Every child has the right to be registered at birth, to have a name and nationality, and, as far as possible, to know and be cared for by their parents.

article 8 (protection and preservation of identity)
Every child has the right to an identity. Governments must respect and protect that right, and prevent the child's name, nationality or family relationships from being changed unlawfully.

article 9 (separation from parents)
Children must not be separated from their parents against their will unless it is in their best interests (for example, if a parent is hurting or neglecting a child). Children whose parents have separated have the right to stay in contact with both parents, unless this could cause them harm.

article 10 (family reunification)
Governments must respond quickly and sympathetically if a child or their parents apply to live together in the same country. If a child's parents live apart in different countries, the child has the right to visit and keep in contact with both of them.

article 11 (abduction and non-return of children)
Governments must do everything they can to stop children being taken out of their own country illegally by their parents or other relatives, or being prevented from returning home.

article 12 (respect for the views of the child)
Every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously. This right applies at all times, for example during immigration proceedings, housing decisions or the child's day-to-day home life.

article 13 (freedom of expression)
Every child must be free to express their thoughts and opinions and to access all kinds of information, as long as it is within the law.

article 14 (freedom of thought, belief and religion)
Every child has the right to think and believe what they choose and also to practise their religion, as long as they are not stopping other people from enjoying their rights. Governments must respect the rights and responsibilities of parents to guide their child as they grow up.

article 15 (freedom of association)
Every child has the right to meet with other children and to join groups and organisations, as long as this does not stop other people from enjoying their rights.

article 16 (right to privacy)
Every child has the right to privacy. The law should protect the child's private, family and home life, including protecting children from unlawful attacks that harm their reputation.

article 17 (access to information from the media)
Every child has the right to reliable information from a variety of sources, and governments should encourage the media to provide information that children can understand. Governments must help protect children from materials that could harm them.

article 18 (parental responsibilities and state assistance)
Both parents share responsibility for bringing up their child and should always consider what is best for the child. Governments must support parents by creating support services for children and giving parents the help they need to raise their children.

article 19 (protection from violence, abuse and neglect)
Governments must do all they can to ensure that children are protected from all forms of violence, abuse, neglect and bad treatment by their parents or anyone else who looks after them.

article 20 (children unable to live with their family)
If a child cannot be looked after by their immediate family, the government must give them special protection and assistance. This includes making sure the child is provided with alternative care that is continuous and respects the child's culture, language and religion.

article 21 (adoption)
Governments must oversee the process of adoption to make sure it is safe, lawful and that it prioritises children's best interests. Children should only be adopted outside of their country if they cannot be placed with a family in their own country.

article 22 (refugee children)
If a child is seeking refuge or has refugee status, governments must provide them with appropriate protection and assistance to help them enjoy all the rights in the Convention. Governments must help refugee children who are separated from their parents to be reunited with them.

article 23 (children with a disability)
A child with a disability has the right to live a full and decent life with dignity and, as far as possible, independence and to play an active part in the community. Governments must do all they can to support disabled children and their families.

article 24 (health and health services)
Every child has the right to the best possible health. Governments must provide good quality health care, clean water, nutritious food, and a clean environment and education on health and well-being so that children can stay healthy. Richer countries must help poorer countries achieve this.

article 25 (review of treatment in care)
If a child has been placed away from home for the purpose of care or protection (for example, with a foster family or in hospital), they have the right to a regular review of their treatment, the way they are cared for and their wider circumstances.

article 26 (social security)
Every child has the right to benefit from social security. Governments must provide social security, including financial support and other benefits, to families in need of assistance.

article 27 (adequate standard of living)
Every child has the right to a standard of living that is good enough to meet their physical and social needs and support their development. Governments must help families who cannot afford to provide this.

article 28 (right to education)
Every child has the right to an education. Primary education must be free and different forms of secondary education must be available to every child. Discipline in schools must respect children's dignity and their rights. Richer countries must help poorer countries achieve this.

article 29 (goals of education)
Education must develop every child's personality, talents and abilities to the full. It must encourage the child's respect for human rights, as well as respect for their parents, their own and other cultures, and the environment.

article 30 (children from minority or indigenous groups)
Every child has the right to learn and use the language, customs and religion of their family, whether or not these are shared by the majority of the people in the country where they live.

article 31 (leisure, play and culture)
Every child has the right to relax, play and take part in a wide range of cultural and artistic activities.

article 32 (child labour)
Governments must protect children from economic exploitation and work that is dangerous or might harm their health, development or education. Governments must set a minimum age for children to work and ensure that work conditions are safe and appropriate.

article 33 (drug abuse)
Governments must protect children from the illegal use of drugs and from being involved in the production or distribution of drugs.

article 34 (sexual exploitation)
Governments must protect children from all forms of sexual abuse and exploitation.

article 35 (abduction, sale and trafficking)
Governments must protect children from being abducted, sold or moved illegally to a different place in or outside their country for the purpose of exploitation.

article 36 (other forms of exploitation)
Governments must protect children from all other forms of exploitation, for example the exploitation of children for political activities, by the media or for medical research.

article 37 (inhumane treatment and detention)
Children must not be tortured, sentenced to the death penalty or suffer other cruel or degrading treatment or punishment. Children should be arrested, detained or imprisoned only as a last resort and for the shortest time possible. They must be treated with respect and care, and be able to keep in contact with their family. Children must not be put in prison with adults.

article 38 (war and armed conflicts)
Governments must not allow children under the age of 15 to take part in war or join the armed forces. Governments must do everything they can to protect and care for children affected by war and armed conflicts.

article 39 (recovery from trauma and reintegration)
Children who have experienced neglect, abuse, exploitation, torture or who are victims of war must receive special support to help them recover their health, dignity, self-respect and social life.

article 40 (juvenile justice)
A child accused or guilty of breaking the law must be treated with dignity and respect. They have the right to legal assistance and a fair trial that takes account of their age. Governments must set a minimum age for children to be tried in a criminal court and manage a justice system that enables children who have been in conflict with the law to reintegrate into society.

article 41 (respect for higher national standards)
If a country has laws and standards that go further than the present Convention, then the country must keep these laws.

article 42 (knowledge of rights)
Governments must actively work to make sure children and adults know about the Convention.

The Convention has 54 articles in total. Articles 43–54 are about how adults and governments must work together to make sure all children can enjoy all their rights, including:

article 45
Unicef can provide expert advice and assistance on children's rights.

optional protocols

There are three agreements, called Optional Protocols, that strengthen the Convention and add further unique rights for children. They are optional because governments that ratify the Convention can decide whether or not to sign up to these Optional Protocols. They are: the Optional Protocol on the sale of children, child prostitution and child pornography, the Optional Protocol on the involvement of children in armed conflict and the Optional Protocol on a complaints mechanism for children (called Communications Procedure).

For more information go to [unicef.org.uk/crc/op](https://www.unicef.org/uk/crc/op)