

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

Stage 2 MSP Briefing

10th February 2021



Who Cares? Scotland is a rights-based influencing organisation working with people who have experience of the care system through individual and collective independent advocacy. We aim to provide Care Experienced people with knowledge of their rights and the support needed to empower them to positively participate in the formal structures and processes they are often subject to solely because of their care experience.

We are appreciative of the constructive dialogue that has shaped the UNCRC (Incorporation) (Scotland) Bill so far and believe this has been crucial in shaping legislation that Scotland can be proud of. As members of Together (Scottish Alliance for Children's Rights) we strongly support the messages contained in their Stage 2 Briefing, however this briefing focuses on key amendments where Who Cares? Scotland can bring additional evidence. The following amendments have largely been supported by the existing recommendations in the EHRC's Stage 1 Report<sup>1</sup>, and we believe the Committee has heard high quality evidence to support each of them. Equally, we would refer the Committee members to our original written<sup>2</sup> and oral evidence<sup>3</sup> which explains further our points for supporting these changes to the Bill.

## **Part 3, Children's Rights Scheme, Sections 11-13: we urge the Committee to support amendments 54, 56 and 58**

*Amendment 54, inclusion of the statement: 'ensure that children have access to independent advocacy services, so as to enable them to participate in the making of decisions that affect them.'*

The Committee has heard about the importance of children being able to access an array of preventative and reactive measures in challenging infringements of their human rights. By ensuring the Bill explicitly states the role of independent advocacy, we can be sure that Scottish Ministers take account of this crucial rights-protecting mechanism.

The Committee may benefit from considering the recent briefing paper produced by the Scottish Independent Advocacy Alliance and the Scottish Human Rights Consortium<sup>4</sup>, which evidences clearly that independent advocacy is crucial to protecting human rights by empowering rights holders, enabling participation in decision making and facilitating routes to remedy:

*'Independent advocates provide all of the information and support that someone needs to take each step towards remedy, whether through meeting with duty bearers, writing letters, expressing problems*

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<sup>1</sup> EHRC. 2022. UNCRC (Incorporation)(Scotland) Bill Stage 1 Report. Available at: [Stage 1 Report on United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Bill | Scottish Parliament](#)

<sup>2</sup> WC?S. 2020. Evidence for EHRC call for views on UNCRC (Incorporation) (Scotland) Bill. Available at: <https://www.whocarescotland.org/wp-content/uploads/2020/10/WCS-Response-to-the-Call-for-Views-on-the-UNCRC-Incorporation-Bill-Oct-2020.pdf>

<sup>3</sup> EHRC Stage 1 evidence session. 26<sup>th</sup> November 2020. Available at: <https://www.scottishparliament.tv/meeting/equalities-and-human-rights-committee-november-26-2020>

<sup>4</sup> SIAA and HRCS. 2021. *Incorporating International Human Rights: Putting independent advocacy at the heart of the new human rights statutory framework in Scotland*. Available at: [Layout 1 \(hrcscotland.org\)](#)

*in rights-based terms, pursuing complaints, or navigating the processes around non-court or court-based remedy*.<sup>5</sup>

We ask the Committee to ensure that reference to independent advocacy is named on the face of the Bill to ensure that interpretations of providing ‘access to justice’ do not exclude the important, preventative and child-friendly measure of access to independent advocacy.

*Amendments 56 and 58, inclusion of the statement: ‘that children who have one or more protected characteristics or are in a situation of vulnerability have their rights respected, protected and fulfilled.’*

As mentioned in our written evidence, whilst we recognise the strength of protecting the rights of all children in domestic law, we believe the Bill could be strengthened by recognising that some children will require additional consideration to ensure their rights can be accessed and fulfilled.

While the Deputy First Minister identified the function of Article 2 of the UNCRC, we do not believe that an intention to avoid discrimination in the realisation of UNCRC rights addresses the systematic barriers that some children currently face. Instead, an explicit statement acknowledging such groups would create a powerful combination of both negative and positive rights. Article 20 of the UNCRC states that children who are not able to live with their family should be protected, looked after, and afforded additional measures to ensure their rights are upheld. The UN Committee on the Rights of the Child has repeatedly focused on the needs of this group of children, recognising the importance of creating specialist measures for protecting their rights. By identifying on the face of the Bill that such groups of children may require special consideration, we can be sure that Scotland is better placed to consider the specialist measures which may be required to realise their rights.

The framing of this amendment is important as it acknowledges that care experience is not a listed characteristic under the Equality Act 2010. We believe the wording of ‘in a situation of vulnerability’ is crucial and mimics that of UNCRC General Comment Number 14.<sup>6</sup>

### **Part 3, Reporting duty on listed authorities, Section 15: we urge the Committee to support amendments no. 59 and 60**

*Amendment 59, inclusion of the statement: ‘ensuring that children who have one or more protected characteristics or are in a situation of vulnerability have their rights respected, protected and fulfilled.’*

By strengthening the reporting duty on public authorities, the Bill will help to create the culture shift necessary to ensure children’s rights are thoughtfully considered in all decision making. It would be remiss of Scotland to overlook the very particular barriers that Care Experienced children face, whose lives are governed by adults and complex legal processes. As mentioned in our oral evidence session, important decisions about Care Experienced children’s lives are too often driven by resource implications, such as the limiting or prevention of family contact.<sup>7</sup> Such examples evidence the heightened risk of fundamental rights, such as the right to family life, not being met for this group of children.

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<sup>5</sup> SIAA and HRCS. 2021. *Incorporating International Human Rights: Putting independent advocacy at the heart of the new human rights statutory framework in Scotland*. Available at: [Layout 1 \(hrcscotland.org\)](https://www.hrcscotland.org/). Pg 3.

<sup>6</sup> CRC. 2013. General comment No. 14 (art. 3, para. 1). CRC /C/GC/14. Available at: <https://www.refworld.org/docid/51a84b5e4.html>

<sup>7</sup> See also our written evidence for the Children (Scotland) Act 2020. Available at: <https://www.whocarescotland.org/wp-content/uploads/2019/11/Children-Scotland-Bill-Written-Evidence-Submission-15th-November-2019.pdf>

*Amendment 60, inclusion of the statement which includes: 'ensure that children have access to independent advocacy services.'*

Inclusion of the types of mechanisms that children will require in ensuring their rights are fulfilled will mean that the Bill will provide enough constructive direction, so that public authorities understand where their attention and resourcing should lie.

This hope was expressed by many of our Care Experienced members in our recent Navigating a World of Rights report where independent advocacy was described as providing accessible information on human rights and ensuring there is an alternative method of protection and accountability, without the need to step into the legal sphere.<sup>8</sup>

The inclusion of both amendments 59 and 60 will help public authorities to take a proactive and considered approach in ensuring children experience a respect for their rights with long-lasting consequences:

*'I think it would be a fairer and equal society if rights were being upheld, more children and young people would be a lot happier and be a lot more willing to share when something has gone wrong.'*<sup>9</sup>

### **Part 7, Commencement, Section 40: we urge the Committee to support amendment no. 1**

Along with Together (Scottish Alliance for Children's Rights) and the Children and Young People's Commissioner Scotland, we welcome the inclusion of a commencement date as proposed by the Scottish Government but support the amendment for commencement at 6 months post Royal Assent. As stated in our oral evidence, this Bill is timely in its arrival because of the adverse impacts of Covid-19 which is evident for many Care Experienced children. We believe that the Bill, whilst creating duties for public authorities, will also create clarity:

*'The bill offers the opportunity to provide clarity not only to children and young people with regard to what their rights are, but to local authorities, which are currently trying to navigate and understand complicated guidelines. Commencement needs to happen incredibly soon, because we are at a point in time when children's rights need to be protected in law.'*<sup>10</sup>

We are confident that the focus and expectation set by the Bill will be complemented by a robust implementation programme, which will only benefit children and those around them, especially at a time when they need most. The ability to support children to understand their rights, and public authorities to understand the associated responsibilities, should take place as soon as possible to ensure that we provide effective rights-based support to children as we emerge from the pandemic.

### **Part 2, Proceedings for unlawful acts, Section 7: we urge the Committee to oppose amendments no. 12-13**

The Committee has heard evidence throughout Stage 1 on the need to ensure that adult-designed barriers do not negatively impact on children and the fulfilment of their rights. It would feel at odds with the intention of the Bill to impose an arbitrary time limit on when a case can be taken forward, which requires all children to lodge a claim within one year of the alleged violation. Instead, we support the previous provision put forward in the Bill that the one-year time limit is applicable only

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<sup>8</sup> WC?S. 2020. *Navigating the World of Rights*. Available at: <https://www.whocaresscotland.org/wp-content/uploads/2020/12/Navigating-The-World-of-Rights-Full-Report-Dec-2020-2.pdf>

<sup>9</sup> Ibid. Pg 41.

<sup>10</sup> WC?S. 2020. UNCRC (Incorporation) (Scotland) Bill oral evidence session. Available at: <https://www.scottishparliament.tv/meeting/equalities-and-human-rights-committee-november-26-2020>

when a child turns 18, with the courts having flexibility to choose if it is appropriate to extend that time limit at their discretion. We know children experience significant challenges in understanding their rights and seeking opportunity for remedy and in our Navigating the World of Rights report, members of Who Cares? Scotland spoke about the impact of arbitrary time and age-limits when they are dealing with trauma, a lack of rights knowledge and information on how to challenge rights infringements. We know it can take time and work for an individual to feel able to understand which rights may fail to have been upheld, especially during their childhood, and then understand how to seek redress for those experiences.

*'I went through an incident that happened in my home, I was in a bit in denial of exactly how bad it was, I never shared it with anyone... my first port of call was to my aftercare worker, but when I went there, they told I was too old, and I felt so lonely. I didn't know what my rights are, who I take this up with, who will support me through the process.'*<sup>11</sup>

It is imperative that the Bill does everything possible to create meaningful and accessible opportunities for children to challenge rights abuses they experience, to remove the sense of hopelessness which can come from experiencing a disregard for their rights.

**If you have any questions about the content of this briefing, please contact:**

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<sup>11</sup> WC?S. 2020. *Navigating the World of Rights*. Available at: <https://www.whocaresscotland.org/wp-content/uploads/2020/12/Navigating-The-World-of-Rights-Full-Report-Dec-2020-2.pdf>. Pg 25.