



Human Rights Bill for Scotland

Scottish Government Consultation - September 2023

Introduction

At Children 1st our ambition is for every child in Scotland to be safe, loved and well, together with their family. As a charity we offer emotional, practical, and financial support to help families to put children first and campaign to uphold the rights of every child.

We support the whole family when they need it, for as long as they need it. We offer help to prevent families reaching crisis point, to keep children safe and to support children and families to recover from trauma and harm.

We are clear that the creation of legally binding human rights frameworks can make a real difference to the day to day lives of children and their families. When children and their families have legally binding rights, can raise issues when their rights are not being upheld, have accessible mechanisms for their voices to be heard and—as a very last resort—can seek legal redress in the Courts, they can no longer be ignored. Ensuring that children and families have binding rights means that there will be a strong accountability framework to hold public authorities and the Scottish Government to account for realising these rights.

We would urge the Scottish Government to ensure consistency with the UNCRC Bill at all possible opportunities, but particularly in terms of the remedies and routes through which rights can be raised. To help public understanding, it's important that human rights, including the UNCRC, are seen as a suite of compatible and supporting standards. Consistency in how rights can be used, understood and respected will help people understand what they mean and how they can use them – as well as making the most of resources that are already being used to upskill the public and public services about the UNCRC Bill.

Children 1st is a member of Together (Scottish Alliance for Children's Rights) and we encourage the Committee to consider our response alongside the response from Together.

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?

We strongly support the proposal for dignity to be used by courts in understanding and interpreting rights.

In 2022/23 Children 1st supported 10,300 children and young people to stay safe from harm and to recover from trauma and abuse. In our experience, too many children and young people in Scotland experience a standard of living that falls short of basic human rights standards, including the ability to live with the dignity and love we would expect.

This is borne out in the Scottish Government's own data.

- The Children, Young People and Families Outcomes Framework: Core Wellbeing Indicators published in September 2023 shows 59% of children and young people in P5 to S6 met recommended physical activity levels and just 22% said they eat both fruit and vegetables every day.

- Gaps in consistent and reliable support, and the effect of poverty are also clear. Around a third of children in P5 to S6 said that they did not have a trusted adult in their life. Too many children live in poverty – the rate in Scotland sits stubbornly around a quarter of all children, despite interventions such as the Scottish Child Payment.
- The impacts of relational and practical challenges are so much more acute for children, particularly when they are in their very early years. Almost a fifth of children had one or more developmental concerns at their 27-30 month review.

Rights need to be understood to be upheld, and it is therefore essential that the language used to communicate rights is not overly technical or legalistic. The concept of dignity helps children and families themselves to understand challenges they face in relation to human rights.

It is also a test which we unfortunately often see failed. Through our work supporting children and families in communities across Scotland, we continue to see examples where clear basic needs are not met in relation to housing, education and health. In justice, through our work to open Scotland's first Bairns Hoose, we have witnessed too many cases where a sense of dignity is lost as a result of systems of protection themselves.

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

We welcome the move towards a more comprehensive incorporation of international human rights into Scots law. While it is clear that domestic incorporation of international human rights provisions through a Human Rights Bill will not offer a 'quick fix' for the human rights breaches children and families continue to experience across Scotland, we are hopeful – and encouraged by evidence from other countries – that building greater respect for human rights into our legislation and our decision-making processes will help to ensure that children and families have their rights respected protected and fulfilled.

While we are still eagerly waiting to see the UNCRC Bill brought into force, there are many rights contained across the other international instruments referenced in this consultation that would strengthen the position of children and families.

A Human Rights Bill for Scotland will also help ensure that human rights are at the centre of decisions made and policies, practice and laws that are developed going forward. At a time where there is significant pressure on public budgets, public services and third sector support, the importance of legal protection for children and young people's human rights is more significant than ever. Children and families we work alongside tell us stories of how decisions made within processes and systems that are set up to protect them in fact lead to the denial of basic human rights.

Our experience supporting children and families through holistic, whole family support services across Scotland shows that rights breaches often snowball. Rights overlap and inter-relate. For example, Scotland faces particular challenges in relation to housing. The number of children living in temporary

accommodation in Scotland has increased drastically over the last 10 years, with figures from March 2023 showing the highest number on record, with 9.595 children living in temporary accommodation.¹

The challenges this creates for families can often create or exacerbate other challenges. The lack of a safe and healthy environment can quickly impact physical and mental health. Temporary accommodation may not include facilities to cook, leading to food insecurity through the higher cost of eating away from home. Temporary accommodation may last for years, leading to problems accessing education in their community. All of this may take a real toll on children and families physical and mental health.

In our view, Scotland suffers from siloed service provision that fails to recognise that human rights overlap in this way. It is therefore critically important that Scotland has a comprehensive set of human rights protections, that match and complement each other, whether the relevant right is contained in the UNCRC, or any of the instruments under the umbrella of this Human Rights Bill.

We would strongly support the call made by Together (Scottish Alliance for Children's Rights) in relation to the need to complete a legislative audit at as early a stage as possible. It is important that a Human Rights Bill does not amount to a false assurance about the state of human rights in Scotland. Where legislation does not match the human rights aspirations set out in this proposal, action must be taken to bring legislation in line. That can only be done if the Scottish Government commit to undertake work as soon as possible to identify legislation that currently falls short of human rights standards. If this Bill is left to pass without that understanding, then it runs a real risk of becoming warm words that fail to make a difference to children and families lives.

While we recognise that a key focus of the Human Rights Bill will be about making sure rights are enforceable, and that remedy or redress is available where rights are violated, there should also be a real focus on creating a culture of proactive right respecting behaviour. Decision makers and agencies should build practice around ensuring that core human rights obligations are understood and fulfilled. Thinking about rights should be part of the muscle memory at all levels of government.

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?

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

"Participation is all about making big changes, it's a big deal." – Children 1st Young Leader

Listening to the voices of children, young people and families ensures that families are at the heart of everything we do. As one of the General Principles of the UNCRC, children and young people have the

¹ [Homelessness in Scotland 2022-23 \(www.gov.scot\)](https://www.gov.scot)

right to participation, which is outlined in Article 12. Article 12 states that every child has a human right to participate in all matters affecting them. However, we know this often does not happen and children and young people are ignored or side-lined – even where they are going to be impacted by decisions that will be taken. The Children, Young People and Families Outcomes Framework: Core Wellbeing Indicators published in September 2023 showed that only 57% of children and young people in P5 to S6 thought that adults were good at taking what they said into account.

We understand that meaningful participation is how we achieve the best possible outcomes for children, young people and families with whom we work. Through actively involving children, young people and their families in the creation, design, development, evaluation, and review of our work, we ensure we are able to support families effectively and make the difference they need in their lives. Participation enables families to be active co-creators of their own stories, to feel respected and empowered, and to be active decision makers.



A participatory approach needs to be embedded from the very start of decision-making processes. Those who will be affected by decisions should have the opportunity to shape and influence how those decisions are made. Often this will improve the end result, with services that are more in tune with reality. We have recent experience of the benefits of embedding participation from the start through our work to open Scotland's first Bairns Hoose. This work has been influenced by the thoughts and experiences of children and young people throughout, through our Changemakers group, and as a result the Hoose is closely connected with their actual needs. This is both empowering in terms of those who we consulted with, and efficient in terms of actual service delivery.

We recently asked 3 Young Advisors to explain what the purpose of participation was and why it felt important to them they shared the following:

- *“It empowers you to feel strong.”* Participation let’s children and young people’s voices be heard by people in positions of power, including people such as Scottish Government officials, the Children 1st leadership team. This means young people are able to make a change and a difference.
- *“They need us to keep up with everything.”* People in power don’t always know what’s actually going on for children and young people, but they are the ones that have the power to make change, so they should be listening closely to what children and young people have to say.
- This is all about creating opportunities for people to be listened to and respected. As part of this, there should be a chance to choose where, when and how people are involved. It needs to be accessible, including for children and young people with extra support needs, and needs to support diversity so that children and young people from different backgrounds are included.

We would direct the Scottish Government to the Council of Europe’s Principles of Participation. These principles outline a standard of practice which ensures a consistent and rights-based approach to participation. In addition, the Lundy Model of Children’s Participation offers a clear and helpful example of the core components that are needed for effective participation; that is the connection of space; voice; audience and influence. These internationally recognised models of participation offer clear and helpful guides to ensure that participation is meaningful and respectful.

In particular, we know that efforts to increase participation are counterproductive where they do not connect to audience and influence. This can create a situation where affected groups are asked to feedback repeatedly but see no response or change. This can be avoided by embedding participation in line with the Lundy Model.

In terms of how this is reflected in legislation, we would support specific reference to participation on the face of the Bill.

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

We support the call by WhoCares? In relation to specifically naming care experience as a group that should be protected by the equality provision. At this point in time, Scotland has an abundance of evidence showing the impact that care can have on children and families, and the way in which this impact is lifelong. The Independent Care Review, the continued work to Keep the Promise and the [research](#) conducted by WhoCares? Scotland and the Human Rights Consortium Scotland on this specific issue provides lots of evidence to show the lifelong impact care experience can have.

As with many of the proposals for this Bill, this would not directly address the many practical challenges those with care experience face, and it is worthwhile remembering recalling the Corporate Parenting duties set out in the Children and Young People (Scotland) Act 2014, that requires public bodies to work together to prioritise the needs of ‘looked after’ children and recognise responsibility for them. This should result in proactive decision taking by responsible bodies to support this group.

However, further recognition in this Bill could mean that the real-life impact of care could be recognised more fully, including the lifelong nature of some of the challenges.

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?

This Bill should replicate the reporting duties contained within the UNCRC Bill, so as to ensure consistency in the range of bodies who are required to report. The need for reports to be reflective (thinking about the way in which rights have or haven't been upheld) as well as prospective (thinking about plans to take forward rights-respecting work in future planning) is also important, so that rights become a normal part of the way that public authorities think and plan. As we said in response to Question 4, this will help make sure that human rights become like muscle memory.

The focus of reporting would be helped by the audit recommended by Together (Scotland's Alliance for Children's Rights), as this would help identify particular areas of risk based on legislation currently in force in Scotland. It is essential that the Scottish Government plan appropriately for what implementation means in practice, so that public authorities can properly plan for the changes that may be required as this Bill comes into force.

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?

In 2022/23, Children 1st supported 20,200 children, young people and family members in 5,500 families supported to stay safe, loved and well. Through Children 1st's Parentline service, 5,540 people were supported with emotional and practical help in 2022/23. Advocacy and advice play a key part in this work.

In our experience, when children and families are helped to understand their experiences through the lens of their human rights, they feel empowered and more able to speak about the challenges they faced and what they have a right to expect from those around them.

Advocacy and advice services are essential to making the policy ambitions for this Bill a reality. People (and systems) need to know and understand their rights in order to ensure they are realised. Our experience of supporting children and families shows that too often, people fall through gaps in services and standards that they are entitled to.

However, people often find it difficult to access advocacy and advice as well, even when they are entitled to this type of support. Often advocacy and advice services are often based on sub-sets of the population, or particular spaces like children's hearings or court. Some groups of children and young people, such as very young children and non-verbal children, often miss out entirely. While we recognise that it is often appropriate for advocacy providers to develop particular expertise to help them in their role, and that advocacy and advice can and should be available through different avenues and agencies, we would support work to make these services more accessible – possibly through a national database helping to connect people to the support that is available to them. This would also be well supported by

the provision of widespread holistic, whole family support in line with the 10 principles set out in the whole family support routemap.

Question 36: If you do not agree that existing judicial remedies are sufficient in delivering effective remedy for rightsholders, what additional remedies would help to do this?

In our view, the Human Rights Bill should match the UNCRC Bill to ensure that Scotland offers a comprehensive suite of human rights protections for children and families, and that there are not needless discrepancies in their standing or the potential remedies that are available in cases of breaches.

Children who may be involved in those cases should be offered the opportunity to properly participate in proceedings – away from court through prior statement or pre-recorded evidence should that be their preference. Choice and control are essential elements of a trauma-informed response, and this should be at the core of the idea of remedy. It should also link directly to recovery for children and young people who may have been let down and have not had their human rights upheld. Too often, we find the idea of recovery and support to move on from difficult experiences is left out of legal processes.