

# Response to the Scottish Government's Consultation on Children's Rights: Consultation on incorporating the United Nations Convention on the Rights of the Child into our domestic law in Scotland

Submission from the Scottish Youth Parliament  
July 2019



## Introduction

The Scottish Youth Parliament (SYP) represents Scotland's young people. Our vision for Scotland is of a nation that actively listens to and values the meaningful participation of its children and young people. Our goal is to make this vision a reality, in order to ensure Scotland is the best place in the world to grow up.

We are a fundamentally rights-based organisation, and our mission, vision and values are grounded in the United Nations Convention on the Rights of the Child (UNCRC). In particular, our purpose embodies Article 12: that young people have the right to express their views freely and have their opinions listened to in all matters affecting them. As a completely youth-led organisation, the words and sentiment of Article 12 have a profound importance for our work.

Our democratically elected members listen to and recognise the issues that are most important to young people, ensuring that their voices are heard by decision-makers. We exist to provide a national platform for young people to discuss the issues that are important to them, and campaign to effect the change they wish to see.

SYP's values are:

**Democracy** - We are youth-led and accountable to young people aged 12 to 25. Our democratic structure, and the scale of our engagement across Scotland, gives us a mandate that sets us apart from other organisations.

**Rights** - We are a fundamentally rights-based organisation. We are passionate about making young people aware of their rights, and ensuring that local and national government deliver policies that allow those rights to be upheld.

**Inclusion** - We are committed to being truly inclusive and work tirelessly to ensure the voices of every young person from every community and background in Scotland are heard. Please see how diverse our membership is in our census for 2017-19 [here](#).

**Political Impartiality** - We are independent from all political parties. By working with all stakeholders, groups, and individuals who share our values, we can deliver the policies that are most important to young people.

## Summary of SYP's recommendations

- 1) We believe that the **direct incorporation model** for incorporating the UNCRC into Scots law will put young people's rights on the strongest footing possible. The UNCRC framework should be similar to the Human Rights Act and inspired by the Independent Advisory Group's draft Bill - the Human Rights Act+.
- 2) We believe that the Bill should make UNCRC rights legally binding on all public authorities, should ensure they do not violate the UNCRC and take steps to prevent any violations.

Public authorities should protect UNCRC rights with an **'act compatibly' requirement and a 'due regard' duty** - public authorities should action UNCRC rights and prove that they have thought about them. Anything less than an 'act compatibly' duty would fall short of the FM's commitment to incorporate, and could result in children falling through the cracks.

- 3) We reiterate our view that **now is the right time to incorporate**. The UNCRC must be incorporated into Scots law within this current parliamentary term, **by 2021**.
- 4) **We do not agree with the idea of creating a 'Suite of Scottish Children's Rights'** as it undermines the principle of universality of children's rights, which should be the same wherever we live in the world. Scotland can be a world leader in rights protection by **not** cherry-picking or re-writing rights which would set a dangerous precedent, but by building on the existing solid foundations of the UNCRC. This will also future-proof the legislation for national and international developments.
- 5) We believe that **the Scottish Government should work with the UK Government to make the UK UNCRC rights-compliant** on reserved issues and the best place in the world to grow up.

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On Twitter: @OfficialSYP

## Our approach

### Incorporation, Right Here, Right Now

SYP welcomes the opportunity to respond to the Scottish Government's Consultation on incorporating the United Nations Convention on the Rights of the Child into our domestic law in Scotland (incorporation of the UNCRC).



SYP wishes to respond with the experience of our *Right Here, Right Now* national campaign on young people's rights, which took place from October 2017 until October 2018, after MSYPs voted to focus on this topic at the 63rd National Sitting in West Dunbartonshire in June 2017. This was following consultation with over 5,000 young people across Scotland.

*Right Here, Right Now* worked to ensure that Scotland's young people are aware of and understand their own rights, and are empowered to take action to defend their own rights and those of others. Furthermore, we called on Scotland's decision-makers to take a human rights-based approach to all policy-making, service provision and planning, ensuring young people's voices are at the heart of decisions affecting them.

One of the objectives of this campaign was to influence law, policy, and practice in order to strengthen the protection of young people's rights. A key policy ask was for the UNCRC to be incorporated into Scots law to make children's rights *binding and not guiding* to Scottish decision-makers; as per our *Lead the Way* Manifesto Commitment passed on 12th March 2016 with 79% agreement of 72,744 responses. This ask has been raised at both the [first](#) and [second](#) annual Cabinet Meeting with Children and Young People.

MSYPs and young people across Scotland were grateful for the announcement of the First Minister's intent to incorporate the UNCRC into Scots law in the Programme for Government 2018-19, and for the commitment that followed in April 2019 that incorporation will be delivered within this current parliamentary term, by 2021.



*Heading out to Geneva with the youth parliament to talk to international decision-makers and asking them about their experiences with incorporation - that was really useful because we can bring back that knowledge to Scotland.*

*Suki Wan former MSYP for Glasgow Shettleston and Chair, June 2019*

*Speaking at the [Young People's Rights Review](#) was a key moment for me for speaking up about care experienced young people's experiences but also hearing about constituents of other MSYP bringing up rights issues from different lenses. When I spoke on Human Rights Day 2018 at the Scottish Parliament, I definitely felt something within me, as soon as I'd engaged with people in the room I knew that they wanted incorporation as soon as possible.*

*Ryan McShane former MSYP for Who Cares? Scotland and Convener of the Sports and Leisure Committee, June 2019.*

## Youth-led response

This youth-led response has been reviewed, amended and approved by SYP's Conveners Group (a group of ten democratically elected young people who lead on policy and campaigning at SYP) 2018-19 and the new Conveners Group of 2019-20 (ie. 20 young people), as well as by key members of the SYP former and present Board of democratically elected young Trustees. Our membership represents young people aged 12-25, SYP's response is not representative of children below the age of 12, or of adults over 26.



SYP's Conveners and Deputy Conveners



2019-20 (left) and 2018-19 (right)

The content of this consultation is technical in nature. Our members have told us that what matters most to them is how rights are exercised in real life, i.e. the outcomes the model will deliver, rather than the technical nature of the model itself.

For example, at the Discussion Day (more info below), young people responded that a perfect rights respecting Scotland would have the following:

- No discrimination.
- Children and young people feeling free to be able to express yourself (this was in the context of school and teachers being prejudiced around LGBT discussions).
- Children and young people knowing about rights and be able to stand up for them
- Children and young people being able to challenge situations.

Therefore, our response focusses on our support for a model of incorporation which they think will provide the best outcomes for children and young people in Scotland. We have also taken account of advice from leading children's rights experts and our partners at Together (Scotland's Alliance for Children's Rights) and the Children and Young People's Commissioner Scotland (CYPCS).





## Capacity-building for MSYPs and UNCRC Discussion Day

Given the technical nature of UNCRC incorporation, we recognised that MSYPs needed capacity building on young people's rights and incorporation in order to meaningfully participate in the consultation.

- On Sunday 30<sup>th</sup> June at SYP's 69<sup>th</sup> National Sitting and AGM, new MSYPs received a 'Right Time' training session on young people's rights in the plenary.
- The previous membership received interactive, empowering training on the UNCRC, Human Rights Act, European Convention on Human Rights and other rights treaties - as well as being trained to deliver rights workshops across the country. Around 40 were trained to take part in the [Young People's Rights Review](#) event in April 2018.
- This meant that the new membership required training to work with the previous membership on the topic of UNCRC incorporation. The interactive session at SYP69 aimed to increase understanding and awareness of young peoples' rights and empower individuals to defend their rights and those of others.



MSYPs at SYP69 (above) and at UNCRC Discussion Day (below)

On Tuesday 16<sup>th</sup> July 2019, SYP held a Discussion Day at Dovecot Studios in Edinburgh which was attended by **43 MSYPs from 23 local authorities** including representatives from Orkney and Shetland Islands, and 9 of our 11 National Voluntary Organisations. These included LGBT Youth Scotland, Haggeye, Carers Trust and Who Cares? Scotland. The majority of attendees were 14-18 years-old (84%) and the remaining 16% were aged 19-23.



There were slightly more female MSYPs (around 58%) than male MSYPs (around 42%) present. While most attendees were still at school (around 56%), the young people present were also at College, University, in part-time or full-time work and apprenticeships/training, with a few unemployed.

Due to the complexity of the consultation, the first part of the Day was dedicated to further capacity-building of MSYPs, with an interactive and participative briefing and training session led by SYP's Policy and Public Affairs Manager to equip the young people with knowledge about:

- The journey to UNCRC incorporation.
- What this means legally and in practice.
- What it would mean for children and young people.
- Which models the Scottish Government are asking for your views on.



MSYPs at UNCRC Discussion Day capacity-building

The session was designed to empower MSYPs to speak confidently about UNCRC incorporation with their constituents, families, youth workers, teachers and local and national-decision makers.

MSYPs at UNCRC Discussion Day doing image theatre

SYP's Projects and Participation and Advocacy and Campaigns staff teams spent some time breaking down the questions into a format that young people could understand and designed the session so that it would be interactive and engaging. [These questions are marked in blue in this response respectively.](#) [Our response uses the language used at the Discussion Day.](#) SYP's Project Manager met with members of SYP Board to get some feedback and suggestions on the content and style of delivery.





## SYP'S RESPONSE TO THEME 1: LEGAL MECHANISMS FOR INCORPORATION

1. Are there particular elements of the framework based on the HRA as described here, that should be included in the model for incorporation of the UNCRC in domestic law? Please explain your views.

Which parts of the Human Rights Act (HRA) should we adopt to protect UNCRC rights in Scotland?

We want to see the legislation putting young people's rights on the **strongest footing possible**. We agree with the Scottish Government and the Advisory Group convened by Together and CYPCS that a UNCRC framework **similar to the HRA** is required in Scotland by 2021.



Like the HRA framework, we believe that the model for incorporation must

ensure that **children and young people's rights are fully respected, protected and fulfilled in Scotland. They MUST be legally binding, not guiding, in courts and tribunals across Scotland.**<sup>1</sup> All public authorities including Councils and quangos etc. should be legally obliged to act in a way which is compliant with the UNCRC and the Optional Protocols (OP) which the UK has signed up to.

These rights will impose both negative and positive obligations on both the Scottish Government and public authorities - they must not violate UNCRC or OP rights and must also take steps to prevent any violations and protect these rights by implementing the UNCRC and OPs into law, policy and practice. This will ensure the **early protection of UNCRC rights in policy-making - preventing rights abuses in the first place.**

*Human rights and civil liberties should be strongly protected by law.*

(Lead the Way Manifesto commitment, 72,744 responses, March 2016-21 - 82% agreement).

*“Could make it that all policy affecting children and young people is cross examined and checked through the lens of the UNCRC to ensure that it is being upheld.”*

*“Have a court hearing if young people are not given their rights or their rights are abused.”*

(Responses from young people from an SYP online survey for [‘Human Rights and the Scottish Parliament’ Inquiry](#) by the Equalities and Human Rights Committee at the Scottish Parliament, Submission from the Scottish Youth Parliament, March 2018).

<sup>1</sup> Including, but not restricted to, the Children's Hearings System, to avoid patchy training of judges.

We believe the following tried and tested elements from the HRA will provide real protection for and practical benefits to children and young people's rights. Our UNCRC and OP rights will no longer be simply guiding or optional, but legally binding and enforceable by duty-bearers. This will enhance duty-bearers' accountability and enhance children and young people's participation, equality and empowerment, improving their outcomes.

- **Public bodies must comply with the UNCRC.**

(Like 'Act compatibly' duty, Section 6 HRA, Section 7 of draft Bill.) (See answer to Question 3).

- **Public bodies must prove (to a Court) that they've thought about UNCRC rights.**

(A 'due regard' duty like in Wales and Section 12 of draft Bill.) (See answer to Question 3).

- **Ministers must declare whether or not new laws respect UNCRC rights.**



*“Without the ‘act compatibly’ duty, there might be no incentive to ‘think about’ UNCRC rights.”*

*“They need to think about UNCRC rights to make children’s rights a reality.”*

*“Public bodies must understand UNCRC rights to be able to do this.”*

*“This should only have to happen in actions that affect children and young people.”*

*Anonymous notes from the Discussion Day.*

(Like statement of compatibility, Section 19 HRA, Section 8 of the draft Bill - with a Child Rights and Wellbeing Impact Assessment).

*“This will need to be evidenced to show that they have thought about UNCRC rights properly. For example, by a CRWIA, international evidence or an expert opinion, and include steps to make it more compatible.”*

*“It should be done in the same way as the ‘Point, Explain, Example’ method in modern studies essays. This will help them be more transparent about their decision-making, including in the consultation stages.”*

*“This should be routine and shouldn’t make the process last extra time. It shouldn’t be just a tick-box exercise.”*

*Anonymous notes from the Discussion Day.*

- The UNCRC must trump any law or policy in Scotland which has less children’s rights protection.  
(Like interpretation duty, Section 3 HRA)

“As we have ratified the convention, it should trump lesser laws - international gold standard.”

*Anonymous notes from the Discussion Day.*

- Judges must apply law and policy in a way which protects UNCRC rights.  
(Like interpretation duty, Section 3 HRA)
- Judges have the power declare that a law, policy or practice does not respect UNCRC rights.  
(Like declaration of incompatibility, Section 4 HRA)

“Because this has been tried and tested with the Human Rights Act.”

“This must be followed up by action to change things. It signals commitment and that they are taking rights seriously.”

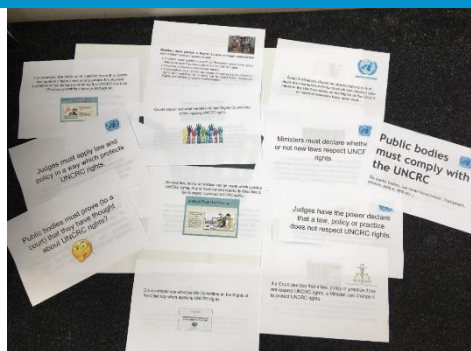
“Judges need to be able to do this, this is their responsibility in society. The judiciary should have that role of protecting rights. But they need to be properly trained in the UNCRC.”

*Anonymous notes from the Discussion Day.*

- If a Court decides that a law, policy or practice does not respect UNCRC rights, a Minister can change it to protect UNCRC rights.  
(Like power to take remedial action, Section 10 HRA, otherwise this decision would have had to go through Parliament).

“This will mean rights won’t get lost. It will need a lot of scrutiny and consultation with experts, so Ministers don’t have too much power. Decisions should be accessible so people can understand.”

*Anonymous notes from the Discussion Day.*



2. Are there any other aspects that should be included in the framework?  
Please explain your views.

**What else should be included?**

- No new law, policy or practice can be made which violates UNCRC rights. Any current law which already does has to be changed to protect UNCRC rights.  
(Scotland Act 'strike down power' in Section 29, draft Bill Section 17-18.)



*“Simplicity is not an excuse for not allowing it (a strike down power).”*

*“There is no point in incorporating if we don’t have this.”*

*“Rights are not divisible and it should not be up to decision makers to tamper with them.”*

*Anonymous notes from the Discussion Day.*

- UNCRC rights obligations should only apply when the government is using devolved powers or acting in devolved areas.  
(Draft Bill, Section 32.) However, many young people at the Discussion Day wanted this duty to go further...

*“In an ideal scenario, all children in Scotland should have all UNCRC rights. We want the UNCRC to apply to all areas in Scotland, not just devolved ones. Scotland wants to be a world leader.”*

*“Our Government and Parliament should also lobby / hold the UK Government accountable / work in partnership with the UNCRC on reserved issues.”*

*“MPs in Scotland might use the UNCRC more than their peers as elected representatives of Scotland.”*

*Anonymous notes from the Discussion Day.*

- Courts should use what the UN Committee on the Rights of the Child say when applying UNCRC rights. (Draft Bill, Section 14, a wee bit like Section 2 of the HRA, see Question 4).



*“They know what they are talking about - they are the experts. They specialise in this area and outline realistic actions. For example, on LGBT rights, they will have more authority, and these issues need better understood and protected in Scotland.”*

*“This is a good opportunity to learn from and have strong ties to many other countries and look at different possible solutions - the more opinions and less bias, the better.*

*If the Committee is changing, it’s important to be kept up-to-date.”*

*Anonymous notes from the Discussion Day.*

- Court should use what the UN’s Human Rights Council say when applying UNCRC rights.

*“Because they are experts, they know what they are talking about, and an objective stance is needed.”*

*“It’s important to keep issues up to date.”*

*“This will complement views from the UN Committee.”*

*Anonymous notes from the Discussion Day.*

- Scottish Ministers should be able to sign up to and apply the International Protocol which lets children take cases to the UN Committee on the Rights of the Child if all national remedies have been tried.

(Draft Bill, Section 1c). We feel that it is essential that we have international oversight through an international complaints procedure for



child rights violations. This will ensure that our Government stands by its promises made on rights and that we have access to our rights to appeal to the CRC embedded in Scots law to give full effect to Article 12 UNCRC. This will properly empower us as human rights defenders.





*“Should be able to but shouldn’t have to as rights should be respected in the first place - important to relation to Article 12 - if you incorporate Article 12 you need to incorporate this too - we should be able to exercise that right to the fullest extent.”*

*“The UN is better placed to handle rights issues.”*

*“Is there a way for Scotland to make the Committee’s recommendations binding, for example, through a vote in Parliament?”*

*Anonymous notes from the Discussion Day.*

- **Ministers must publish a Rights Scheme through consultation with children and young people. Ministers must publish a report to Parliament every three years setting out what they have done to further UNCRC rights. They must produce a child-friendly version. Policy-makers must check the impact of new policy on children’s rights and wellbeing by carrying out an assessment (Children’s Rights and Wellbeing Impact Assessments). (Draft Bill, Sections 22-26, see Question 13).**



*“This will bring about accountability.”*

*“We like the idea of a child-friendly version of CRWIAs, but the original should be easy to understand too. There should be other accessible formats of these.”*

*“An MSYP who lives in South Ayrshire noted that they’ve seen their local authority give legal documents to a young carer that they just don’t understand so this is really important.”*

*“The scheme will get children engaged in rights.”*

*“We like that this would happen every three years as it will keep it up to date.”*

*Anonymous notes from the Discussion Day.*

**3. Do you agree that the framework for incorporation should include a “duty to comply” with the UNCRC rights? Please explain your views.**

**How do you think that public authorities should protect UNCRC rights?**

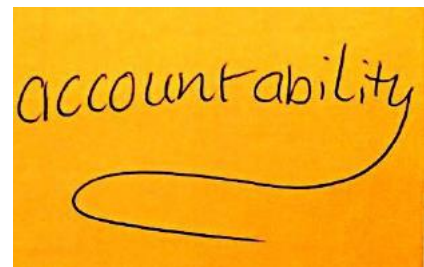
The majority of all six tables at our Discussion Day agreed that public authorities should protect UNCRC rights with an **‘act compatibly’ requirement and a ‘due regard’ duty.**

We believe that **public authorities should action UNCRC rights and prove that they have thought about them.** Along with Together (and the wider children’s and young people’s sector), while we think these are both important, anything without the ‘act compatibly’ requirement would not be full incorporation. This ‘gives stronger protection’ and young people said this was an ‘obvious’ and ‘absolute’ necessity.

Lessons from Wales have shown us that a ‘due regard’ duty will mean that Government and public authorities will have to think about possible rights breaches in advance, and should try to reduce the chances of them occurring. If they do not think about children’s rights when making decisions, the decision can be reviewed by a judge.

Then, if they do not take steps to prevent rights breaches and rights breaches do occur, the duty to ‘act compatibly’ will mean young people (and their representatives) can defend them in court, and the judge will have to take children’s rights seriously. This is the **Human Rights Act+**, best suited to the nature of the rights in the UNCRC. ‘The Government should take both duties seriously.’

This model ensures accountability, transparency and evidences public bodies’ thinking, explaining their decisions. This ensures that the UNCRC is embedded ‘before and after, checking the whole way through.’ Nevertheless, some MSYPs were keen to avoid unnecessary bureaucracy.



A 'duty to consider' would certainly be too weak, as it is no different to what we currently have under the CYP(S)A 2014, which fell short of the 'act compatibly' duty. It is not subject to review in courts. It could be a subjective decision, which could result in children falling through the cracks.

*"Actions speak louder than words."*

One MSYP noted that they themselves have had to fight to get the right equipment to deal with their ASN in school. They thought that by public bodies having to show that they've thought about their rights, it could stop rights breaches in the first place - but then you'd have the added protection of action having to be taken.

Being able to prove that they've thought about our rights is 'crucial' for holding public authorities to account and so they "*have our rights & interests at heart e.g care system... and do something about it*".

*"Just thinking is not enough, it is also difficult to hold them to account if they are only thinking."*

*"They should act and use it (UNCRC rights) alongside the thought process."*

*"Due regard (thinking) is like an SYP 'Opinion Motion' - this is not enough. Due regard (thinking) and act compatibly (doing) is like an SYP 'Action Motion' - like in music where you make notes at stages of decision-making, this duty will show public bodies' thinking, such as Parliament's at stages of Bill development."*

*"Statements from Bruce Adamson or by those affected should also be included as evidence to the Courts."*

One MSYP noted that they don't think human rights should be up for debate - shouldn't be tampered with by politicians. To only have to show that you have thought about it suggests that they are up for debate.

*Anonymous notes from the Discussion Day.*

**"If I had had the ability to stand up for myself in school without any recourse and without getting myself into trouble, I think I would have had a much stronger voice in school and in the education system. I would have felt disempowered, disengaged and demeaned by teachers less often, and we would have had more respect for one another."**

*Suki Wan, June 2019.*



*“The care system creates inequalities for children and young people and there’s very rarely a case that’s positive. I’ve been one of those cases - which has helped me champion people’s rights. We know we are a person within our society, but we often feel isolated. If there’s a family environment with loving, lasting relationships; that’s the end of the tough part, the trauma, the neglect and abuse. We should always be at the forefront of decisions being made which affect our lives. UNCRC incorporation will be an added bonus to the HRA for care experienced children and young people.”*

*It will mean that more people can grow up with a positive experience of the care system, like me, and I will no longer be the exception to the rule. If I was born today when the UNCRC is incorporated, I’d know I’d be happy with a future of equal opportunity ahead of me.*

*Incorporation will ensure children and young people feel a part of society with HRA rights and additional UNCRC rights. It will empower them to be able to stand up for their rights as well as champion those of other young people too. There will be an increased opportunity for Article 12 to be realised. The State has an extra duty to protect its children and young people - the future workforce. It will help us know our place in society, be able to contribute to it and be able to influence legislation.*

*Incorporation will help me as a rights defender of others upholding Article 12, and it will let me see my impact on policy in Scotland and that our campaigning has been taken seriously.”*

*Ryan McShane MSYP, June 2019.*

*“If incorporation had happened when I was born, I would feel more protected today. With the recent gender recognition consultation, it’s certainly a dangerous time to be a trans young person in the media. I try and keep out of things as I’ve seen what’s happened to friends whose names have been published in newspapers. **The right to private life being made binding would protect LGBT young people’s privacy massively.**”*

*Imogen Maskell, June 2019.*

**4. What status, if any, do you think General Comments by the UN Committee on the Rights of the Child and Observations of the Committee on reports made by States which are party to the UNCRC should be given in our domestic law?**

**How important should the things that the UN Committee say be when using or making laws in Scotland?**



MSYPs stood in spectrums of agreement to decide on the status of UN Committee views (see photo of this activity to the left):

- Very important (must be used)
- Important (should be used)**
- A wee bit important (no obligation to use)
- Not important (should not be used)

The majority of young people at the discussion day felt that **the UN Committee’s views are important and should be used**, with some also feeling that they are very important and must be used. These should be guiding for duty-bearers to consider them. They provide respected

guidance which will help duty-bearers and rights-holders to better understand UNCRC rights. The Scottish Government could be guided by our National Human Rights Institutions on the guidance applicable in the Scottish context. Duty-bearers and rights-holders need to understand them through rights education and training, such as through the Strategic Action of ‘Raising Awareness’ in the *Progressing the Human Rights of Children in Scotland: An Action Plan 2018-2021*.

“We like the idea of international scrutiny and a higher body should be reviewing how we are doing.”

“They are rights experts and international communication is important. We are sure what they’re saying will fit in Scotland.”

“They are really important but must not be used if not practical and they will sometimes make mistakes. We are experts in Scotland too.”

“The UN Committee should be listened to but that Scotland should have overall autonomy.”

“While optimistically Scotland should be moving towards the goals set by the UNCRC, to be realistic, Scotland should have some wiggle room. This will give flexibility and keep things relevant to Scotland.”

*Anonymous notes from the Discussion Day.*



**5. To what extent do you think other possible aids would provide assistance to the courts in interpreting the UNCRC in domestic law**

- A duty to take into account CRC Communications under OP3 (some participants thought that Parliament should vote on these). For example, the [Communication No. CRC/C/79/D/11/2017 \(18<sup>th</sup> February 2019\)](#) could help public bodies interpret Articles 3 and 12, as the Committee found Spain to be contravention of these due as it failed to develop and apply a UNCRC-compliant age-determination process young asylum-seekers. This could be useful in Scotland as there is a disparity across the UK in how age assessments are carried out, and they are often carried out by social workers in Scotland's local authorities.<sup>2</sup>
- Court decisions from other countries who have incorporated the UNCRC into domestic law.
- Decisions made under other international treaty regimes such as the ECHR, and principles of these such as the 'margin of appreciation' - discretion to the will of Scotland.



**6. Do you agree that it is best to push forward now with incorporation of the UNCRC before the development of a Statutory Human Rights Framework for Scotland? Please explain your views.**

Yes, we strongly agree with the Scottish Government's and FMAGHRL on this.

Why?

**Political majority:** We need to take advantage of the current political majority support for UNCRC incorporation in the Scottish Parliament - this is of crucial importance.

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<sup>2</sup> See blog series on this topic by Niamh Grahame, JustRight Scotland: [www.justrightscotland.org.uk](http://www.justrightscotland.org.uk).

**YOYP legacy:** The legacy of the Year of Young People 2018 provides an ideal platform for UNCRC incorporation. We need to capitalise on the momentum and traction around this, our campaign and most significantly the First Minister’s commitment to children and young people to do this by 2021.

**FM accountability:** Pushing forward now will ensure that this Government is accountable to the young people of Scotland and can put its ambitious legacy in motion.

*“SYP’s national campaign Right Here, Right Now has been massive in the process for incorporation and MSYPs and young people got involved from across the country. Delivering on this commitment will help the Scottish Government deliver their mandate, as well as help us deliver our mandate to the young people we represent across Scotland.”*

*Ryan McShane, June 2019.*

**Shield to Brexit:** With increasing uncertainty over rights protections for children and young people in light of Brexit, especially the planned withdrawal from the European Charter of Fundamental Rights, we believe that UNCRC incorporation now is an urgent priority to shield the negative impacts on young people’s rights of Brexit.

**Public and political will:** The conversation around incorporation of the UNCRC is further on than that around the development of a Statutory Human Rights Framework for Scotland, (as Together say) with consistent calls, extensive research and consultation having been carried out over the past decade. There is a clearer picture of the final product in sight and the public and political will around UNCRC incorporation is ahead of the curve.

**Platform for ESCR incorporation:** Nevertheless, we hope that the success of UNCRC incorporation now can catalyse the incorporation of economic, social and cultural rights for young people aged 18-25 and beyond (e.g. incorporation of the International Covenant on Economic, Social and Cultural Rights and the European Social Charter).



**“...we have ...broken down barriers within society, so it’s right time to showcase this progress.”**

Claire Forde, MSYP for RNIB Haggeye, June 2019.

***The Scottish Youth Parliament believes that the UK and Scottish Governments need to ensure children and young people’s equalities and rights protection is prioritised, enhanced and not weakened throughout the Brexit process. We call for the full incorporation of the UNCRC into Scots law and the strengthening of social and economic rights during Brexit.***

***Rights Outright: SYP’s Brexit Manifesto.*** 15<sup>th</sup> January 2018, extended by Conveners Group 20<sup>th</sup> January 2019. This statement resulted from consultation with 495 young people across Scotland, aged 12-25, between December 2017 and January 2018. Of the respondents, 90% were aged 17 or under, and therefore did not have the right to vote in the EU Referendum.

***“With increasing instability and uncertainty across the world and in Europe...it’s definitely the right time to better protect rights including those specifically for children.”***

Charlie McKenzie, Member of the Bridge the Gap Transition Care Plan team and Commissioner for Children and Young People’s Advisory Group, June 2019.

***“With all our progress on human rights based approaches and inclusion, now is definitely the right time, and to be honest, it would have helped to have happened earlier.”***

Imogen Maskell, June 2019.

***“Young people are being heard in decision-making in Scotland now more than ever. That’s why now is the right time, because we can shape the process of incorporation.”***

Ryan McShane, June 2019.

***“Now, more than ever, we’re at this key, pinnacle, watershed moment.”***

Suki Wan MSYP and former Chair, June 2019.

7. We would welcome your views on the model presented by the advisory group convened by the Commissioner for Children and Young People in Scotland and Together (the Scottish Alliance for Children’s Rights).



**What do you think about the Independent Incorporation Advisory Group’s draft Bill for incorporation?**

We fully support this model and feel that it will accurately ensure that children and young people’s rights are fully respected, protected and fulfilled in Scotland. It includes our calls referred to in responses to other questions.

Many felt the ‘act compatibly’ duty was the most important part. Many liked the statutory duty to carry out CRWIAs so ‘policy makers can see what they need to change in the future.’ Others highlighted duties which make the UNCRC ‘trump worse laws’ and ‘Ministers change laws to respect rights’. A participant pointed out that the Bill does not rely on ‘support of post 2021 Scottish Government’ as a benefit.

We liked the idea that the Bill is future-proofed in the event of further devolution or Scottish Independence. However, many preferred the idea of the UNCRC being incorporated in the UK, and wanted the Bill to go further in Section 32:

*“Blanket UK UNCRC would be ideal, but this is not certain, so we can’t rely on it happening.”*

*“Can we find a way to give more power in holding UK Government to account / offering guidance on reserved stuff?”*

*“Ministers should be obligated to uphold the UNCRC when making recommendations to the UK Government on reserved issues.”*



*Anonymous notes from the Discussion Day.*

Some felt the draft Bill could have gone further in Section 1c, that it should be ‘compulsory’ to sign up to and ratify OP3 (the International Protocol which lets children take cases to the UN Committee on the Rights of the Child if all national remedies have been tried). Others felt that decisions/communications of the Committee should be voted on in Parliament to make them ‘binding’.

MSYPs want SYP to support Ministers in ensuring young people's voices are heard with their progress reports under the rights scheme, and want mid-term reports to be issued. In terms of standing, some thought 'the list in the draft Bill should include more people, and not be an exclusive list. Please see our response to Question 23 for more information.

## **8. How should the issue of whether particular UNCRC rights are self-executing be dealt with?**

We believe that the Bill must not differentiate between self-executing and non-self-executing rights to avoid creating a hierarchy of UNCRC rights, which are unconditional and interdependent.

With the example of Article 19, public budgeting should be accountable to human rights standards, the rule of law and judicial review.

We should keep in mind Article 4: 'States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.' As with the HRA, the proportionality test can be applied by judges to aid their decision-making.

## **9. How could clarity be provided to rights holders and duty bearers under a direct incorporation approach, given the interaction with the Scotland Act 1998?**

**How can we help children and those responsible for upholding their rights understand how UNCRC rights should be protected in Scotland now and in the future?**

### **Raise awareness and empower**

- **Rights as part of the Curriculum for Excellence** - not just in primary schools. In Broad General Education, PSE and other subjects too. *Educate children on their rights, most don't know how their rights could be breached.*
- Rights Respecting Schools Award should be 'set as Government standard for schools'.
- Tailored support and advocacy.
- Compulsory tailored education and training for people working in public bodies, with ongoing support and training modules. **This should involve peer education.** (E.g. 'like the training Who Cares Scotland gave to corporate parents to help clear up confusion over their roles.')
- **Simplified guidance, easy-read versions.**



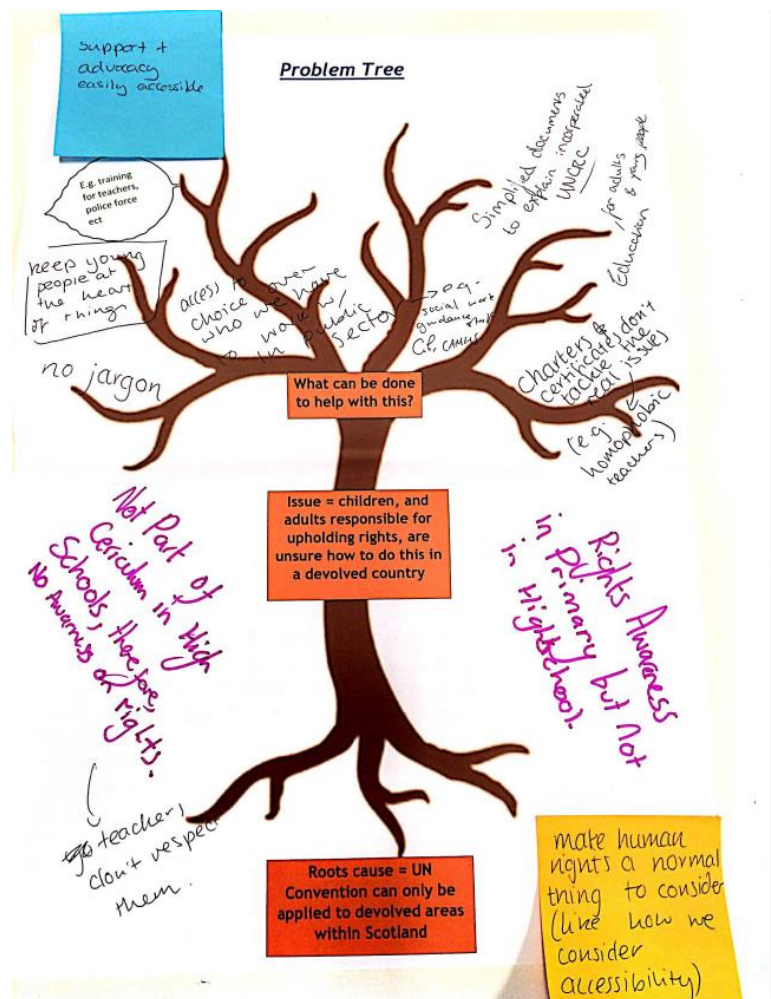
- Toolkits for teachers - a 'UNCRC education box' to be used by public services to raise awareness, and fund this process in Scotland.
- An App with help and live chats.
- Face-to-face and online surveys and on social media to make people more aware and answer questions.
- Public information campaigns - put child friendly versions of the UNCRC in public places.
- Take young people and adults on field trips to help them understand.
- 'Have a website or person people can rely on for info & advice about UNCRC.'
- 'Young people friendly resources such as CRWIAs distributed and used to aid in understanding.'

### Proactive rights defenders in Scotland

- Consider UNCRC General Comments regularly.
- Make MPs and other leaders in Scotland more involved.
- 'Empower the Scottish Government with more ways to hold the UK Government to account.'
- Collaborate with SYP and the Children's Parliament to promote UNCRC.

### Keep young people at the heart of awareness raising

- 'Keep young people at the heart of things'.
- Use accessible language - no jargon.
- 'Youth-designed', youth and peer-led 'training for anyone who comes into contact with children and young people so they know what the warning signs look like.'



However, we ask the Scottish Government to refrain from using the term ‘rights and responsibilities’ in relation to rights-holders (see page 19 of consultation paper). Rights are not dependent on any responsibility, they are unconditional and inalienable. This type of language can result in misunderstandings and misuse of human rights, particularly with children and young people in the educational or care settings where human rights can be used as a kind of behaviour modification control.

*“When I was taught about rights, it always felt like ‘these rights aren’t a given thing, its contingent on you doing what is expected of you’, and sometimes it’s used to control behaviour in class. We should steer away from this because while there should be an expectation that you are not disruptive in class and that if you are you will lose your rights, you do have your rights to begin with without any expectation or condition.”*

*Imogen Maskell, former MSYP or LGBT Youth Scotland, June 2019.*

**10. Do you think we are right to reject incorporating the UNCRC solely by making specific changes to domestic legislation? Please explain your views.**

Yes. In light of austerity, Brexit and other circumstances; children and young people’s rights are at risk of being breached in Scotland. Direct incorporation is the best way to address this and ensure that Scotland can really be the best place to grow up. Incorporation by way of making specific changes to domestic legislation is the status quo which is currently not providing the best outcomes for children and young people. Some provision remains guiding, not binding. Making changes would be up to decision-makers, when human rights exist to keep people free from the arbitrary use of power by decision-makers.

Detailed legislation and review will fall short of improving these, as rights protection becomes patchy, reactive and unharmonised. Direct incorporation of these interdependent rights is the best way to universally prevent rights abuses taking place in the first place, and ensure these rights are properly respected, protected and fulfilled through a rights-based approach to decision-making, service provision and planning. The UNCRC provides a minimum set of standards under which not to fall, setting a solid foundation for the Scottish Government to keep enhancing children and young people’s rights. Scotland can set a leading example to the world not to ‘cherry-pick’ which UNCRC rights should



apply in their own countries, keeping in-tact the principle of universality of human rights.

*“It will also specifically help those children who have [had their rights] abused to speak out, now that [their rights] are stated clearly in writing rather than ambiguously. I also hope it will help adult services and statutory bodies to start defending children and young people’s rights before it gets really bad.”*

*Charlie McKenzie, June 2019.*

*“If you look at case studies around the world of countries who have tried to incorporate through a softer or non-legislative approach, a lot of the time it never fully delivers in making children’s rights a reality.*

*Even in Wales, with only a ‘due regard’ duty on Ministers, children’s rights are still not a reality. On the ground, children’s rights are still not being upheld in everyday situations. Whereas in South Africa, where the UNCRC has been directly incorporated into the law, we see massive success.*

*The UNCRC was made to be a legislative instrument - it was created to be directly implemented into domestic legal systems. UNCRC-lite won’t have the effect of upholding children and young people’s rights.”*

*Suki Wan, June 2019.*

*“Incorporation will mean protections that need to be guaranteed and safety for children and young people. It is easier to look at a written document that says that these are the things I should have, rather than kind of guessing what you think you should have. This is empowering for me as a young person.”*

*Imogen Maskell, June 2019*

## **11. If the transposition model was followed here, how would we best enable people to participate in the time available?**

We do not support this model, and our understanding of transposition differs from the way the term was used in the consultation paper (it does not permit modifying rights - transposition supports direct incorporation). Please see our response to Question 12 for more information.

We also believe that it would not be possible for meaningful, informed participation as per Article 12 UNCRC to take place within the required timescale.

*“There is a risk that ... (we) ... stall any legislation progressing... (Direct incorporation) will be quicker and offer real time protection.”*

*Anonymous notes from the Discussion Day.*

Through consultation with MSYPs and other young people, we know that many young people are not aware of their rights, or how to defend their own rights and those of others. Some feel that current methods of educating young people about their rights do not equip young people to claim their rights in their everyday lives. Many adults also don't know enough about children's rights

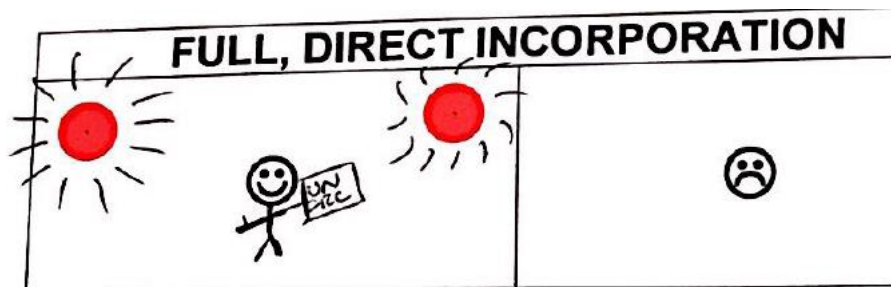
A rushed effort could result in un-empowered people with insufficient knowledge about rights, being made to 'cherry-pick' or 're-write' rights, or 're-invent the wheel' on rights. It also runs the risk of creating a power or knowledge imbalance if, in the place of children and young people in the timescale, adults were to develop a suite of children's rights for children and young people, who themselves are left without a say. A similar imbalance in capacity could occur between young people and children.

**12. What is your preferred model for incorporating the UNCRC into domestic law? Please explain your views.**

**What is your preferred way of protecting UNCRC rights in our law?**

With a majority agreement at our Discussion Day, SYP's preferred model for UNCRC incorporation is for the direct incorporation of:

- Articles 1-42 of the UNCRC in full.
- Articles 1-16 of the Optional Protocol on the sale of children, child prostitution and child pornography.
- Articles 1-12 of the Optional Protocol on the involvement of children in armed conflict.



*“Scotland can lead the world in this.”*

*“We see that full incorporation is the best way as the cons of it can be fixed and the benefits heavily outweigh any potential harms. We also see that the benefits of a Suite of Scottish Children’s Rights can be added on top of direct incorporation.”*

*“We already have the foundations and shouldn’t be rebuilding them.”*

*“Three countries have already directly incorporated which proves it works. There is no evidence to suggest a ‘Suite’ works.”*

*“If you are going to go to all this effort, you might as well choose all of them.”*

*“Rights are indivisible.”*

*“In a way, it is discrimination if Scottish Government cherry-picks as they will not include everyone. I also don’t trust the government to pick it fairly.”*

*“Incorporating fully is a clearer, simple way for everyone to know exactly what their rights are.”*

*“A Suite of Scottish Children’s Rights sounds much better so perhaps think about the branding of it? This would help when educating young people on what incorporation means.”*

*“Full incorporation allows for furthering rights.”*

*Anonymous notes from the Discussion Day.*



Despite a couple of dissenting opinions, the bulk of our membership strongly reject the idea of creating a suite of Scottish Children’s Rights for the following reasons:

- 1) Re-writing rights is not full incorporation and UNCRC rights are universal.** While they can be interpreted and applied according to the domestic context, the rights themselves must be kept universal. Scotland can set a leading example to the world not to ‘cherry-pick’ which UNCRC rights should apply in their own countries, keeping intact the principles of universality, indivisibility and interdependence of human rights. The basic rights of children should be the same wherever they live in the world. Norway, Iceland and Sweden have all incorporated the UNCRC without difficulties in interpretation.



“One of them most fundamental things about human rights is that they are universal.”

*Suki Wan, June 2019*

“It would be difficult to call out other countries if we were to cherry pick.”

“Just make things understandable - don’t need to cut out rights to do so.”

“You can’t pick and choose what rights to protect as they’re ALL important. To do so could result in discrimination.”

*Anonymous notes from the Discussion Day.*

- 2) **Article 41 lets you go further than UNCRC:** ‘Going further than the UNCRC can still happen with full incorporation.’ The consultation paper states that ‘this approach would also allow for protection to go above and beyond the rights provided in the UNCRC’. However, Article 41 of the UNCRC specifically sets out that Governments can go beyond the UNCRC, so any higher rights protections would prevail i.e. direct incorporation will not hinder the Scottish Government from going further.

“We can go beyond UNCRC with full incorporation.”

*Anonymous notes from the Discussion Day.*

- 3) **Specify implementation, not incorporation:** We are concerned at the idea of Parliament ‘specifying’ UNCRC rights, ‘as surely all are important’. The FMAGHRL’s recommendation was that a statutory framework would not dilute, omit or reduce any international rights protection in Scotland. Specification was for implementation, not incorporation. Rights exist to hold Parliament and Government to account - and **it would be dangerous to permit duty-bearers to reduce international convention rights which will bind them.**

A participative process and ownership of rights can follow direct incorporation in terms of implementation. This can include continuing the Young People’s Rights Review as a kind of citizen’s assembly/jury as recommended by the FMAGHRL, as well as taking forward the Strategic Action of ‘Raising Awareness’ in the *Progressing the Human Rights of Children in Scotland: An Action Plan 2018-2021*.

If adults working for public bodies have difficulties understanding how to apply UNCRC rights in the context of devolution, see the answers to Q9:

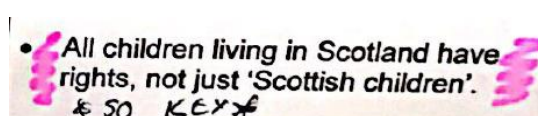
*“The issue of it being difficult for adults working for public bodies should be combatted through more training rather than not fully incorporating.”*

*“It’s their job, we should teach them if we care about (children and young people and) the UNCRC.”*

*Anonymous notes from the Discussion Day.*

#### 4) All children living in Scotland have rights, not just ‘Scottish children’:

By developing ‘Scottish’ rights, this could exclude those children (including child immigrants, asylum seekers and refugees in already vulnerable situations as regards their rights) who live here but may not have Scottish nationality.



*“The reference to ‘Scottish children’ is not inclusive - this limits who has rights.”*

*“We detect a trend in National Bills of rights recently being announced in countries such as the UK (e.g. ‘British Bill of Rights’) and the USA as a way of reducing rights for some rights-holders.”*

*“This sets a dangerous example, a ‘slippery slope’ deciding what rights are and are not. Scotland has the potential to set a good example internationally.”*

*“(We) want children across the world to have the same rights.”*

*“International rights: if you are brought up in Scotland, but without British citizenship, these people need rights the most.”*

*“This is the status quo. SYP has been campaigning for full incorporation - this is the floor.”*

*Anonymous notes from the Discussion Day.*

‘If an English child moved up to Scotland, would they have to wait until they are a Scottish citizen before they are able to have their rights? Having the word ‘Scottish’ places a condition on rights, and rights should be unconditional. It also assumes that all children and young people in Scotland identify as Scottish and not British, and that shouldn’t be assumed in order for them to be able to claim their rights.’

Suki Wan, June 2019.

- 5) **Keep pace internationally:** Direct incorporation also means that domestic law will keep pace with international developments ‘& we can look at general comments from the UN’ (e.g. as has happened in recent years on digital rights).

*“We want to listen to external advisers.”*

*“How can we continue to set an example if we avoid protecting certain rights?”*

*“Limits power that the UN has to protect rights in Scotland.”*

*“UN Committee can keep rights updated.”*

- 6) **Bill updates itself in the event of further devolution:** Direct incorporation will also ‘future proof’ the legislation in terms of new powers being granted to the Scottish Parliament, or even political independence. Like the Welsh approach, Together and CYPCS’ draft bill contains a provision in Section 2 that the duties will only apply when the Government exercising devolved powers or acting in devolved areas.

*“Incorporation offers that minimum line under which the standard of living for children young people should not fall below.*

*It’s not just about making sure that children and young people have the best lives possible, but also making sure that they get that bare minimum standard of what a decent life should be.*

*Incorporation will help protection of rights and it will help children and young people know what their rights are and what they are entitled to.*

*Personally, growing up in the east end of Glasgow, I’ve seen so many cases of children and young people who have grown up in poverty, with massively reduced life chances and opportunities just because of where they grew up and the families they were brought up in. Incorporation would equalise that opportunity, level out the playing field and make sure that every child or young person has the same chance to have a good life.*

*It will mean the world to the children and young people in my area.”*

*Suki Wan, June 2019*

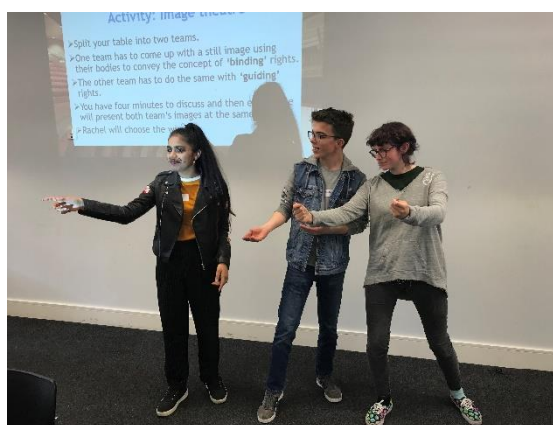


## SYP'S RESPONSE TO THEME 2: EMBEDDING CHILDREN'S RIGHTS IN PUBLIC SERVICES

**13. Do you think that a requirement for the Scottish Government to produce a Children's Rights Scheme, similar to the Welsh example, should be included in this legislation? Please explain your views.**

Yes. We called for and welcomed the *Progressing the Human Rights of Children in Scotland: An Action Plan 2018-2021*, published in line with the CYP(S)A 2014. We want this to set a precedent for future forward-looking reporting, and believe a requirement to do so would ensure this happens regardless of the implications of parliamentary elections.

We agree with a statutory requirement for CRWIAs to be carried out, for participation and consultation with children and young people and CYPCS and for regular reporting to Parliament. We agree with partners that this should be the responsibility of a Parliamentary Committee to scrutinise and monitor Government actions. For more views, please see pages 14 and 22.



**14. Do you think there should be a “sunrise clause” within legislation? Please explain your views.**

We want the legislation to come into effect as soon as possible, especially as we anticipate many public authorities are already prepared due the impact of CYP(S)A 2014.

16. Do you think additional non-legislative activities, not included in the Scottish Government's Action Plan and described above, are required to further implement children's rights in Scotland? Please explain your views. **Other than making law(s), what do you think the Scottish Government should be doing to make children's rights a reality in Scotland?**

Yes, however, as time is of the essence and many of these were considered in the Action Plan, we believe that further discussions around these should take place after legislation is in place. Thereafter, the Government could consider our responses to Question 9 and:<sup>3</sup>



- Resource participation sustainably.

- Youth work funding - see recommendations from SYP's 'Youth Work and Me' report [here](#).
- Properly funding young people's participation.
- Giving young people more opportunities to have their voices heard.
- More #RightsRoadtrips!
- Supporting charities.
- Make consultations child friendly, accessible and understandable.
- Listen to us and don't be tokenistic - action young people's views, don't just listen!
- Follow through with young people's wishes.

*Anonymous notes from the Discussion Day.*

- Coordination between local and national government.

*Help Members of the UK Youth Parliament call for UNCRC incorporation in the UK.*

*Have local MSPs talk to constituents about their rights.*

*Anonymous notes from the Discussion Day.*

- Private sector and children's rights.

<sup>3</sup> Based on [General Comment 5 \(2003\) - General Measures of Implementation](#).



- CRWIAs should be made accessible to children and young people to enhance accountability and equality.
- Children’s rights indicators.<sup>4</sup>
- Children’s rights public budgeting.
- Educating young people on their rights and empowering them to promote and defend them

Although we have the ‘raising awareness’ Strategic Action of the Action Plan and some schools can access the UNICEF ‘Rights Respecting Schools’ programme, SYP believes that:

- The ‘rights awareness’ programme for children and young people in Scotland must be framed around the Article 2(2) of the UN Declaration on Human Rights Education and Training (UNDHRET), to ensure that the education is holistic and meaningful, with Article 2 in mind as a useful framework for assessing the provision of human rights education ‘about’, ‘through’ and ‘for’ human rights.
- The strategic action for a 3 year children’s rights awareness programme needs to include young people and young people’s rights as well as children’s rights.
- The programme should include ‘empowerment’ in its name and its delivery - as it should achieve far more than ‘awareness-raising’.
- Crucially, the programme should be part of a wider, long-term, progressive movement towards a national action plan for human rights education and training in Scotland for everyone in society, based on the World Programme for Human Rights Education and Training.

*“Incorporate children and young people’s rights into the Curriculum for Excellence.*

*Educating teachers etc. and public bodies about rights.*

*Training social workers and police officers to spot human rights abuses.*

*Improve relationships between police and young people.*

*Campaigns and rallies.”*

*Anonymous notes from the Discussion Day.*

*“Knowing you have rights is really important. I think the earlier (children and young people) learn about it, the better.”*

*Claire Forde, MSYP for RNIB Haggeye*



<sup>4</sup> OHCHR, [Human Rights Indicators: A Guide to Measurement and Implementation](#)

- More youth-led monitoring such as a staple Young People’s Rights Review by SYP.

*“Highlight young rights defenders and make their work more obvious to the general public so it will be appreciated more.*

*More youth representation in Government and at Parliamentary Committees.”*

*Anonymous notes from the Discussion Day.*

- International cooperation - look at international role models and better partnerships.

## **SYP’S RESPONSE TO THEME 3: ENABLING COMPATABILITY AND REDRESS**

**17. Do you agree that any legislation to be introduced in the Parliament should be accompanied by a statement of compatibility with children’s rights? Please explain your views.**

Yes, see answer to Question 1.

**18. Do you agree that the Bill should contain a regime which allows right holders to challenge acts of public authorities on the ground that they are incompatible with the rights provided for in the Bill? Please explain your views.**

Yes, see answer to Question 1. This will make rights binding for children and young people.

*“This is something that I was denied at about age 15 when my mental health deteriorated and meant I couldn’t be in school. But rather than just taking me out of school, they cut me out of education completely. I still wanted to learn but just couldn’t do it in the school environment. This would have helped me receive the education I deserved.”*

*Charlie McKenzie, discussing how having article 28 of UNCRC (right to education) legally binding could have helped them growing up, June 2019.*

19. Do you agree that the approach to awards of financial compensation should broadly follow the approach taken to just satisfaction damages under the HRA? Please explain your views.

**Do you think that you should be financially compensated if your rights have been violated? Why?**

Young people at our discussion day were split on this issue. 2 of the 6 tables answered 'yes', 3 answered 'don't know' or were split between 'yes' and 'no' and 1 said 'no'.

Participants generally liked the concept of compensation to give 'just satisfaction' for financial and non-financial loss (including pain and suffering) to 'solve the issue', however, felt that *this should be considered on a case-by-case basis. It should be at the discretion of the judge as rights violations happen in different ways - it is not a 'one size fits all' approach.*

- *If compensation will help fix the violation e.g. money for an ASN child who missed months of education.'*
- *Because your life has been adversely impacted.*
- *Money doesn't solve everything but it can be a good start.*
- *The money could help the victim rebuild the damage done by the rights being violated.*
- *It could come with guidance on how to spend it.*
- *Victims should describe how they spend it.*
- *This might persuade the Government to 'keep rights upheld.'*
- *To hold people and organisations responsible.*
- *Need to avoid creating a hierarchy of rights when awarding compensation.*

*Anonymous notes from the Discussion Day.*

Those who disagreed with compensation were *worried that people could abuse the system, and that rights would become all about money.*

- *Robbing Peter, to pay Paul?*
- *No judicial precedent so could be hard to award damages.*
- *Struggle to see how money can be equated to any type of pain - are all rights not equally important?*

*Anonymous notes from the Discussion Day.*

**In addition, do you think that the law should be changed so that someone else's rights will not be violated in the same way?**

All tables at the Discussion Day agreed with this statement. There should be a provision for Courts to award 'general measures' to achieve compatibility like the European Court of Human Rights does.

- *To stop rights being violated again and protect the rights of everyone.*
- *Because the law was at fault.*
- *To learn from mistakes.*
- *To prevent things which are preventable.*
- *To reduce the likelihood of repeat violations of rights.*
- *Will get problems fixed.*
- *Protection should always be the priority, but how specific do you go?*

*Anonymous notes from the Discussion Day.*

**20. Do you agree that the UNCRC rights should take precedence over provisions in secondary legislation as is the case under the HRA for ECHR rights? Are there any potential difficulties with this that you can see?**

Yes, see answer on page 11, unless a higher protection exists as per Article 41 UNCRC.

**21. Do you agree that the Bill should contain strong provisions requiring an ASP to be interpreted and applied so far as possible in a manner which is compatible with the rights provided for in the Bill? Please explain your views.**

Yes, see page 11. We understand from partners that the Courts are ready and fully capable of doing this. Many of them already do, although this is still optional and we want it to be compulsory.

**23. Do you consider any special test for standing to bring a case under the Bill should be required? Please explain your views.**

**At the moment, a child or young person, or an adult or group representing them, can usually be able to bring a case to a court or tribunal in Scotland if European Convention on Human Rights (ECHR) rights are breached.**

For example, if a school says that they can no longer support a young person due to their additional support needs - this is a violation of Article 28, the Right to Education no matter who they are and regardless of disability. Discussion around who and why.

We agree that the ordinary ‘sufficient interest in the issues raised’ test of standing is required. The model Bill prepared by the Independent Incorporation Advisory Group provides more detail, to ensure that vulnerable children and young people can be represented.

At our Discussion Day, we also received the following ideas to be considered:

- ‘A child or young person should be able to take a case to Court, but should be provided with adequate support/representation.’ This depends on their age as per Article 12.
- The Children and Young People’s Commissioner Scotland.
- The Scottish Human Rights Commission.
- The Equality and Human Rights Commission.
- An independent advocate, solicitor or an advocacy worker.
- A ‘named person’.
- A trusted adult representing them, for example: parent, guardian, caregiver, relatives. There was some confusion with young people mentioning duty-bearers too, such as teachers, support or youth workers, social workers, healthcare professionals, elected representatives etc. However, one table said that impartial duty-bearers should be able to have standing.
- Representative organisations or charities that work with children and young people and have the ‘means, drive and skills.’ for example, Together and SYP were mentioned, as were ‘Juliet Harris’ and ‘Bruce Adamson’ specifically. ‘Are the experts in the sector & can act in the best interests of the child’. Citizen’s Advice were also mentioned.
- ‘We like the Children’s Hearing Panel model.’
- ‘Set up an alternative dispute resolution system that’s friendlier than the Courts system if we truly want children to feel empowered.



*“Adults should be doing this because they believe it is right and they want to - not because they have to. There should continue to be independent bodies that support this like the children’s commissioner. Also has to be someone who can really listen to the young person and not bring in their own biases.”*

*Anonymous notes from the Discussion Day.*