

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

PART ONE

1. Will the Bill make it easier for children to access their rights?

Victim Support Scotland considers it to be essential that there are effective, child-sensitive guidelines and practices available to children and their representatives to challenge breaches of their rights. These should include the provision of child-friendly information, advice, advocacy, dedicated victim support services, access to complaints procedures and, ultimately, access to the courts with necessary legal and other assistance. It should be noted that Victim Support Scotland already works closely with the Scottish Children's Reporter Administration (SCRA) to improve the literature which child victims and witnesses of crime receive, to ensure it is both accessible and accurate. This work could be extended to include the additional provisions available through the incorporation of UNCRC.

Making guidance, training and embarking on an awareness-raising campaign would ensure that there is a universal level of understanding of the Rights of the Child across relevant sectors and bodies in Scotland who have a responsibility to make sure children can access their rights.

2. What do you think about the ability to take public authorities to court to enforce children's rights in Scotland?

Incorporation of the framework would ensure that the UN Committee's jurisprudence is given consideration by public authorities and the courts. Including General Comments, Concluding Observations and opinions made by the Committee in relation to Optional Protocol 3. Victim Support Scotland is aware that this would ensure Scotland to keep pace with developments in international human rights law and practice, whilst being able to apply learning in a way that can be adapted to fit to the Scottish context as a result of guidance from the UN Committee being seen as 'guiding' rather than 'binding'.

3. What more could the Bill do to make children's rights stronger in Scotland?

In previous consultation responses on the UNCRC, Victim Support Scotland had stated its preference for a 'Scottish suite' option rather than full transposition of the existing UNCRC guidelines. This option would allow for additional rights and protections to be afforded to child victims which are currently absent in Scots law and the UNCRC.

Full incorporation of the UNCRC may be viewed as the 'gold standard' model for children internationally, but should be complemented with a Scottish suite if child victims are to have adequate rights and protections upheld.

4. If you work for an organisation or public authority, what resources do you need to help children and young people access their rights? Will you require additional resources or training to implement the Bill, for example to make or respond to challenges in court?

VSS would like to see the removal of the gap in support and information that is available to child victims, compared to adults, and would like to see legislation put in place to formalise equality between these groups.

Victim Support Scotland considers it to be essential that there are effective, child-sensitive procedures available to children and their representatives to challenge breaches of their rights. These should include the provision of child-friendly information, advice, advocacy, dedicated victim support services, access to complaints procedures and, ultimately, access to the courts with necessary legal and other assistance.

These measures should include advocacy services, systematic training for those who work with children, child victims and witnesses, child rights education for children and their parents and child rights budgeting.

Victim Support Scotland, in partnership with Children 1st, Children England and the University of Edinburgh, were awarded £1.5million from the People's Postcode Lottery Dream Fund to build a bespoke house for child victims and witnesses of crime - the Child's House for Healing in Edinburgh, based on the Icelandic Barnahus model.

This 'all under one roof' concept involves the creation of a child-friendly, interdisciplinary and multi-agency centre for child victims and witnesses. Children can be interviewed and medically examined for forensic purposes, comprehensively assessed and receive all relevant therapeutic services from appropriate professionals in a non-clinical setting they can feel comfortable in.

The project has the potential to transform the justice, health, care and protection systems to better keep child victims and witnesses safe from further harm and to ensure they receive justice and are supported to heal. Once the initial Child's House for Healing is established, provision can be made for the expansion of the project across each local authority in Scotland to provide all necessary support and resources to child victims and witnesses of crime.

PART TWO

1. Are there any relevant equalities and human rights issues related to this Bill, or potential barriers to rights, that you think we should look at?

The UNCRC in its current form does not provide parity between child accused and child victims in terms of protections, nor does it consider the rights and protections required for child victims in cases where the accused is an adult.

There is a risk that this would result in a two-tier justice system developing between the adult justice system vs the children and young people system which would lead to a failure in sentencing to recognise the impact and severity of the impact of serious criminal offences such as rape, sexual assault and murder on victims, regardless of the age of the perpetrator if they are not treated with the appropriate level of severity. VSS fully understand and appreciate the safeguarding concerns for children and the need to account for the impact of ACEs (Adverse Childhood Experiences) that may potentially have driven some of their harmful behaviour, but this should not negate the need to place the protection of victims at the forefront of all of the justice system.

An example of a measure Victim Support Scotland want to see put in place is the extension of the Victim Notification Scheme to include child victims of crime so that they can be

included in the entitlement to receive updates on the whereabouts of the offender. VSS would also wish that child victims be given the option to receive notifications on their accused directly upon being determined an adult, rather than these updates continuing to be issued to their parent or guardian.

The Scottish suite model proposed allows for consultation amongst expert bodies, such as the Children and Young People's Commissioner Scotland, to address this imbalance.

2. What are your views on the provisions in the Bill that allow the courts to strike down legislation judged to be incompatible with the UNCRC?

Courts in Scotland and across the UK are already well versed in drawing from the UNCRC when considering cases under existing legislation, including the Human Rights Act and wider EU law. There is developing jurisprudence through caselaw from a number of other countries that have already incorporated the UNCRC, such as Norway and Iceland. In addition, courts will be able to draw from wider jurisprudence from countries that have incorporated wider international human rights protections into law, such as South Africa.

3. What are your views on the Children's Rights Scheme and the requirement on public authorities to report?

The UNCRC (Incorporation) (Scotland) Bill must make children's human rights binding and not just a guiding principle. A duty to comply would ensure that binding duties are placed on public authorities to respect and protect children's rights and allows children to challenge breaches of their rights in domestic courts should the need arise.

'Proactive' duties and measures to promote rights-based decision making should also be included to complement the 'reactive' duties and measures from the Human Rights Act framework. Victim Support Scotland is of the view that the framework should include duty on public authorities to pay 'due regard' to the UNCRC and Optional Protocols. This would allow for duties and measures to promote measures which further children's rights and potentially prevent breaches occurring.

The production of a Children's Rights Scheme, that operates in the context of Scots Law, would allow for provisions to be made to extend relevant rights and entitlements to information and support to child victims that would put them on an equal standing with the provisions the UNCRC currently only affords to the child accused.

4. Is there anything else you want to tell us about the Bill?

Further work is required to establish a balance in the protections, information and support offered by the UNCRC (Incorporation) (Scotland) Bill between child perpetrators and their victims, both when that victim is also a child and when they are an adult. The age of the perpetrator has little to no bearing on the impact of a crime experienced by the victim. Consideration should be given to whether secondary legislation will be required to achieve this balance.

Victim Support Scotland is supportive of the general principles of the Bill and do not believe that this work to support victims of child perpetrators should preclude from the Bill as written to proceed.