

Theme 1: Legal mechanisms for incorporating the UNCRC into domestic law

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?

Yes

Please explain your views.:

It is essential that s6 of the HRA is included in the framework – without it, the duties arising from the UNCRC could not be legally enforced. This is largely the position with article 29 of the UNCRC which states that education should be directed towards the development of the child's personality, talents and mental and physical abilities to their fullest potential. Currently, despite being reflected in legislation there does not appear to be any way to turn this aspiration into a legally enforceable right.

2 Are there any other aspects that should be included in the framework?

Yes

Please explain your views.:

The framework should also include 'due regard'. Due regard alone would not be sufficient, but it could be included with the compatibility duty.

3 Do you agree that the framework for incorporation should include a "duty to comply" with the UNCRC rights?

Yes

Please explain why.:

Yes, we agree that a 'duty to comply' is essential.

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 party to the UNCRC should be given in our domestic law

What status, if any, do you think General Comments by the UN Committee on the Rights of the Child should be given in our domestic law?:

General Comments and Observations should inform the development of our domestic law and should be taken into account within the legislative programme as far as is practicable.

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

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

No response offered.

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?

Yes

Please explain your views.:

We should incorporate the UNCRC in line with devolved powers, and not await the development of a Statutory Human Rights Framework for Scotland. Our courts are developing expertise in the implementation of international rights, and we would be concerned about any measures that might result in the dilution or separation of the rights set out fully in the UNCRC.

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).

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

We support this model for the reasons stated above.

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

How should the issue of whether particular UNCRC rights are self-executing be dealt with?:

Courts should be left to develop doctrines to deal with this issue on a case by case basis.

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

Introductory legislation can include direct incorporation while also setting out that the Scottish Government can only act within its devolved competence.

10 Do you think we are right to reject incorporating the UNCRC solely by making specific changes to domestic legislation?

Yes

Please explain why.:

Yes. A piecemeal approach to incorporation is not desirable.

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

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

A range of participatory options would be needed so as to be inclusive of all strands of Scottish society. Local participation meetings and online options would be required. A focus on the participation of children and young people would be desirable, and those with additional support needs should be provided with effective support to ensure they can participate..

12 What is your preferred model for incorporating the UNCRC into domestic law?

Please explain why.:

We prefer that the UNCRC and Optional Protocols should be directly incorporated in Scots law. This would allow us to keep pace with other jurisdictions, such as Norway and Sweden. It would give our courts clarity.

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?

Yes

Please explain why. :

Our understanding is that the Welsh example is viewed as successful and would therefore be a good model to follow. It is desirable that Scottish Ministers have a leading role, on an individual as well as collective basis, in implementation of the UNCRC, and that there continues to be a focus on children's rights in future legislative programmes and policy development.

14 Do you think there should be a "sunrise clause" within legislation?

No

Please explain why. :

No. Legislation can sometimes produce unintended consequences and for that reason it would be preferable to avoid the use of a sunrise clause.

15 If your answer to the question above is yes, how long do you think public bodies should be given to make preparations before the new legislation comes into full effect?

Please explain why. :

N/A

16 Do you think additional non-legislative activities, not included in the Scottish Government's Action Plan, are required to further implement children's rights in Scotland?

Yes

Please explain why.:

Yes. If good practice on children's rights is strengthened through non-legislative activities this will help to ensure that legislation can be smoothly incorporated by professionals and communities. For example, there could be an enhanced programme of public education about children's rights. This could include training on the use of CRIA/CRWIAs across all sectors. Self-evaluation tools, such as HGIOS or HGLDIOC, could be reviewed to strengthen their approach to children's rights.

Theme 3: Enabling compatibility 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?

Yes

Please explain your views.:

Yes, for the reasons set out in the consultation document we agree that any legislation should include a statement of compatibility with children's rights.

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?

Yes

Please explain your views.:

Yes, we agree that there should be the right of challenge. Rights without any form of redress can be ignored by authorities with impunity and render legislation merely as aspirational.

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?

Yes

Please explain your views.:

Yes, we agree that the approach should follow the caselaw of the ECHR. For children who may be financially dependent on their parents proving 'actual loss' would be extremely difficult to quantify.

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

Please explain why.:

We do think that if possible UNCRC rights should take precedence over provisions in secondary legislation. We believe this is the most effective way to give full force to the adoption of the UNCRC into domestic law.

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?

Don't know

Please explain your views.:

22 Should the Bill contain a regime which would enable rulings to be obtained from the courts on the question of whether a provision in an ASP is incompatible with the rights secured in the Bill?

Yes

Please explain your views.:

It will be important for the Bill to ensure that ASPs should always, so far as possible, be compatible with the UNCRC and an appropriate regime to ensure this should be included in the Bill.

Please explain your views.:

23 Do you consider any special test for standing to bring a case under the Bill should be required?

Yes

Please explain your views.:

We believe the test of 'sufficient standing' would be appropriate.