

APPENDIX 2 -Report

Report to:	Education Resources Committee
Date:	21 May 2024
Report by:	Executive Director (Education Resources)

Subject:	Consultation on Parts 2 and 3 of the UNCRC (Incorporation) (Scotland) Act 2024
----------	---

1. Purpose of Report

1.1. The purpose of the report is to:-

- ♦ update Committee on South Lanarkshire Council's response to the consultation on parts 2 and 3 of the UNCRC (Incorporation) (Scotland) Act 2024.

2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s):-

- (1) that the attached response to the consultation be noted.

3. Background

- 3.1. The UNCRC (Incorporation)(Scotland) Act 2024 passed its final stage in the Scottish Parliament on 16 January 2024.
- 3.2. The Act builds on existing approaches which enable children and young people to be heard and take an active role in their own lives and communities.
- 3.3. The Act requires that Ministers publish a Children's Rights Scheme setting out the arrangements the Government has in place, or intends to put in place, to fulfil the duty to act compatibly with the incorporated UNCRC rights and obligations and to secure better or further effect of children's rights.
- 3.4. In addition, the Government and listed public bodies will be required to report on steps they have taken to be compatible with the incorporated UNCRC rights and obligations and to secure better or further effect of children's rights.
- 3.5. The relevant duties contained within the act will commence 16th July 2024, i.e. six months from the date of the Act being passed. These duties are:
- Act in a manner that is compatible with the UNCRC in delivering the functions of the public body (draft guidance from the Scottish Government for the relevant part of the act (Part 2) provides a helpful context on what this means for the Council). And:
 - Public bodies are required to report every three years on what they are doing, and plan to do, to meet the UNCRC requirements (Part 3).

- 3.6. The Scottish Government are consulting on guidance to support implementation of Part 2 and Part 3 of the act (articulated at 3.5 above). The draft guidance documents can be found below:

[Statutory guidance on Part 2 of the UNCRC \(Incorporation\) \(Scotland\) Act 2024 \(www.gov.scot\)](https://www.gov.scot/statutory-guidance-part-3-uncrc-incorporation-scotland-act-2024.pdf)

[statutory-guidance-part-3-uncrc-incorporation-scotland-act-2024.pdf \(www.gov.scot\)](https://www.gov.scot/statutory-guidance-part-3-uncrc-incorporation-scotland-act-2024.pdf)

4. The Consultation

- 4.1. The Act requires Scottish Ministers to publish guidance (“statutory” guidance) on Part 2 and Part 3, section 18. It also requires them to consult on that guidance. This consultation fulfils that requirement and was launched by Scottish Ministers in accordance with sections 13(3) and 20(2) of the Act.
- 4.2. The Part 2 guidance includes, an introduction to human rights, children’s rights and the UNCRC Act; an introduction to Part 2 of UNCRC Act including frequently used terms and remedies now available to children and their representatives to seek redress through the courts if their rights have been (or a proposed action would mean that they would be) infringed; definitions of key terms in the Act; and an explanation of the section 6 duty on public authorities.
- 4.3. Part 2, section 6 of the Act provides that it is unlawful for a public authority to act in a way which is incompatible with the UNCRC requirements as set out in the Act. The section 6 duty also applies to those carrying out functions of a public nature.
- 4.4. Part 3, section 18 of the Act places a duty on public authorities listed in section 19 to report on the actions taken and planned to comply with the Part 2, section 6 duty, and the actions taken and planned to give further effect to children’s rights.
- 4.5. The consultation is open for 12 weeks and written responses to this consultation are required before or by 16 May 2024. Responses are invited from organisations and individuals, where the response is not in relation to an organisation. Relevant organisations and networks may wish to respond jointly.
- Consultation questions 1 – 14 relate to draft Statutory guidance on Part 2 of the UNCRC (Incorporation) (Scotland) Act 2024.
 - Consultation questions 15 – 22 relate to draft Statutory guidance on Part 3 of the UNCRC (Incorporation) (Scotland) Act 2024.
- 4.6. A task group (consisting of representation from Education, Social Work, NHS Lanarkshire, Legal Services and the third sector) has been scoping out responses to the questions and a draft copy of the responses is attached below.

5. Employee Implications

- 5.1. There are no employee implications associated with this report.

6. Financial Implications

- 6.1. There are no financial implications associated with this report.

7. Climate Change, Sustainability and Environmental Implications

- 7.1. There are no implications for climate change, sustainability or the environment in terms of the information contained in this report.

8. Other Implications

8.1. There are no issues in terms of risk associated with this report.

9. Equality Impact Assessment and Consultation Arrangements

9.1. An Equality Impact Assessment is not required as a result of this activity.

Carole McKenzie

Executive Director (Education Resources)

1 May 2024

Link(s) to Council Values/Priorities/Outcomes

- ◆ Education and learning: inspiring learners, transforming learning, strengthening partnerships

Previous References

None

List of Background Papers

None

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

Anne Donaldson, Head of Education (Inclusion)

Ext: 4452 (Tel: 01698 454452)

Email: anne.donaldson@southlanarkshire.gov.uk

Consultation on the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024: Statutory Guidance on Part 2 and 3 (section 18)

Introduction

The [United Nations Convention on the Rights of the Child](#) (UNCRC) is an international treaty which sets out the civil, political, economic, social and cultural rights which all children up to the age of 18 years have, regardless of their circumstances. The UNCRC must be seen as a whole: all the rights are linked and no right is more important than another. The UNCRC includes the following general principles:

- for rights to be applied without discrimination (Article 2);
- for the best interests of the child to be a primary consideration (Article 3);
- the right to life, survival and development (Article 6); and
- the right for the child to express a view in matters that affect them and to have that view taken into account in accordance with the child's age and maturity (Article 12).

The Scottish Government is committed to ensuring that children's rights are respected, protected and fulfilled. The UNCRC (Incorporation) (Scotland) Act 2024 ("the Act") was approved by the Scottish Parliament on 7 December 2023 and received Royal Assent on 16 January 2024. The Act is a landmark piece of legislation that incorporated the UNCRC into Scots law to the maximum extent of the Scottish Parliament's powers – signalling a revolution in children's rights in Scotland.

The intent behind the Act is to deliver a proactive culture of everyday accountability for children's rights across public services in Scotland. The Act also seeks to empower our children and young people to claim their rights and help to make Scotland the best place in the world to grow up.

Overview

In accordance with section 47(2)(a) of the Act, Part 2 (duties on public authorities) and Part 3, section 18 (reporting duties of listed public authorities) of the Act will come into force 6 months after Royal Assent. As Royal Assent was obtained on 16 January 2024, this will be on 16 July 2024.

The Act requires Scottish Ministers to publish guidance ("statutory" guidance) on Part 2 and Part 3, section 18. It also requires them to consult on that guidance. This consultation fulfils that requirement and is launched by Scottish Ministers in accordance with sections 13(3) and 20(2) of the Act.

The draft guidance attached to this consultation was developed with support from stakeholders. A [Guidance Subgroup](#) comprising of members from the [Embedding in Public Services](#) group was established to assist and support with this process.

This consultation seeks your views on the draft statutory guidance.

Part 2: Compatibility with the UNCRC requirements, and child rights-respecting practice

Part 2, section 6 of the Act provides that it is unlawful for a public authority to act in a way which is incompatible with the UNCRC requirements as set out in the Act. The section 6 duty also applies to those carrying out functions of a public nature.

The meaning of “public authority” has been drawn intentionally wide so as to ensure that the duty applies to all public authorities in respect of which it is within the power of the Scottish Parliament to apply the duty. The Act makes it clear that this includes the Scottish Ministers and Scottish courts and tribunals.

Public functions are generally understood to be functions performed for the collective benefit of the general public (although in the event of a claim of unlawfulness being raised, the courts will determine whether a function is public on a case-by-case basis). Therefore, the Act will not apply to private businesses, except in relation to any instance where they carry out functions of a public nature.

The guidance is intended to provide accessible information which supports public authorities to understand and fulfil their duties under section 6, and to secure better or further effect of children’s rights.

Part 3: Reporting duty of listed authorities

Part 3, section 18 of the Act places a duty on public authorities listed in section 19 to report on the actions taken and planned to comply with the Part 2, section 6 duty, and the actions taken and planned to give further effect to children’s rights. This is an important mechanism for respecting, protecting and fulfilling children’s rights.

This guidance includes an explanation of the duty in the Act and annexes with suggested reporting formats, information on inclusive communication and on producing child friendly reports. It is aimed at those with responsibilities within listed public authorities for implementing and delivering on the provisions of the Act.

CONSULTATION PROCESS

Responding to the Consultation

The consultation will run for 12 weeks. We are inviting written responses to this consultation before or by 16 May 2024. Responses are invited from organisations and individuals, where the response is not in relation to an organisation. Relevant organisations and networks may wish to respond jointly.

There are a number of consultation questions on which the Scottish Government would welcome views. Please do not feel obliged to answer all questions. Equally, if you would like to comment on any other aspects of the draft statutory guidance the Scottish Government would welcome your views.

We would be grateful for responses to be completed electronically via Citizen Space, where possible. This will aid handling and analysis of all responses.

If this is not possible, we would be grateful if you could use the separate consultation questionnaire (Annex A) provided and submit your answers via email. Please send your responses with the completed Respondent Information Form to:
uncrcstatutoryguidanceconsultation@gov.scot

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at:
<https://consult.gov.scot/>

CONSULTATION QUESTIONS

Part 2 Guidance

The following consultation questions 1-14, relate to the draft statutory guidance on Part 2 of the UNCRC Act. This is particularly relevant to public authorities.

1. I have read the draft statutory guidance on Part 2 of the UNCRC Act

☒ Yes

☐ No

2. Section 3, '**Background and introduction to the UNCRC Act**', provides sufficient information on the UNCRC and the background to incorporation.

☒ Strongly agree

- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

Comments box

The guidance is clear and reflects how we have arrived at this point in our UNCRC incorporation journey.

3. Section 3.4, '**Meaning of UNCRC requirements**', clearly articulates what is meant by this in relation to the section 6 duty.

☐ Strongly agree

☒ Agree

- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

Comments box

We find the wording a bit clumsy e.g. references throughout this guidance to the 'UNCRC requirements' re 'incorporated by the Act rather than the full requirements in the Convention'. This may need clarification, also the phrase 'carved out' might lead to misinterpretation.

References to reserved matters references/examples are helpful in this context.

4. Section 4.2, '**Remedies for unlawful acts (sections 7 to 10)**' is useful.

☐ Strongly agree

☒ Agree

- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

Comments box

A greater emphasis on resolution before formal complaint would be welcome as part of the guidance narrative.

The narrative 'litigation can play an important role in realising child rights and also has the potential more broadly to positively influence practice, policy and the law' – provides a negative take on our shared aspiration to realise children's rights and develop best practice.

5. Section 4.2.3 '**Definition of a public authority**' is clear.

- ☒ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

Comments box

We agree this is clear.

6. Section 4.3.1 '**Definition of functions of a public nature**' is clear.

- ☒ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

Comments box

We agree this is clear.

7. Section 4.4, '**Explanation of the duties on public authorities in Part 2, section 6**' clearly explains the nature of the section 6 duty on public authorities, including clearly articulating that the section 6 duty applies only when a public authority is carrying out devolved functions conferred under Acts of the Scottish Parliament or common law powers.

- ☐ Strongly agree
- ☐ Agree
- ☒ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

Comments box

Some examples may be helpful here.

Double negative – not to act incompatibly is an unhelpful phrase.

There is still a degree of vagueness about what the duties are other than being compatible or not acting incompatibly.

8. Annexes A.1 – A.5, '**Clarification of conceptual aspects of the UNCRC**' are clear.

- ☐ Strongly agree
- ☐ Agree
- ☒ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

Regarding the section – *'To comply with effective implementation of children's rights, States must show that the rights have been progressed using the "maximum extent of available resources". In international law this is understood to mean generating, allocating and spending resources in a way that is effective and efficient for the realisation of children's rights'* – While there is commitment to ensure that children and young people's views are taken into account across planning and decision-making structures, there is a huge challenge with pressure on public sector budgets and resources to ensure this is carried out effectively.

9. Annexes B.1 – B.4 '**Sources to guide interpretation**' are useful.

- ☐ Strongly agree
- ☒ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

The context is helpful, however what would be more helpful is clarity on how implementation of the requirements of the act will support Scotland's contribution to 'state party (UK)' monitoring by UN?

10. Annex C, '**Framework for Reviewing Compatibility (s.6 duty)**' is presented in an accessible manner, e.g. the content, style, and length make this a user-friendly and practical resource.

- ☐ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

Comments box

Regarding document^[42], which presents a framework that public authorities may choose to use to review compatibility with the '**UNCRC requirements**' as defined by the **UNCRC Act**. –

While the flow chart is helpful, it could do with an example template (over and above the checklist).

The 'who should' bit is helpful regarding responsible organisations, as is the section on 'purpose, however, further clarity is required in relation to commissioned services especially in relation to a commissioned organisation's failure to act compatibly.

C.2.3 Assessing impact on children and their rights maybe should be more prominent within the document.

11. I clearly understand how to use the Compatibility Review Framework.

- ☐ Strongly agree
- ☐ Agree
- ☒ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

Comments box

We think use of the framework is open to interpretation rather providing a consistent model for all public sector organisations to use.

12. Overall, the guidance is presented in an accessible manner, e.g. the content, style, and length make this a user-friendly and practical resource.

- ☐ Strongly agree
- ☐ Agree
- ☒ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

Some parts of the guidance aren't user friendly and require a degree of specialist knowledge and understanding, or time to digest the intended meaning.

13. Overall, the guidance supports an improved understanding and ability to fulfil the duties under Part 2 of the Act.

- ☐ Strongly agree
- ☒ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

While the guidance will support improved understanding of the relevant duties, some parts are difficult to interpret.

14. Are there any areas where you think the Part 2 guidance could be improved? Please cite specific parts of the guidance if relevant.

Comments box

Some of the guidance for Part 2 is unnecessarily heavy and jargonised and takes time to digest and make sense of the key aspects e.g. annex a – conceptual aspects, or 3.3 UNCRC requirements.

Part 3 Guidance

The following consultation questions 14-20, relate to the draft statutory guidance on Part 3 (section 18) of the UNCRC Act. This is particularly relevant to public authorities listed in section 19 of the Act.

15. I have read the draft statutory guidance on Part 3 (section 18) of the UNCRC Act

☒ Yes

☐ No

16. Section 4, '**Reporting duties of listed authorities**' is sufficiently clear on the reporting requirements under Part 3 of the Act.

☒ Strongly agree

☐ Agree

☐ Neither agree nor disagree

☐ Disagree

☐ Strongly disagree

Yes, we agree this is clear.

Comments box

17. Section 5, '**Publication requirements of reports**' is sufficiently clear on the publication requirements under Part 3 of the Act.

☒ Strongly agree

☐ Agree

☐ Neither agree nor disagree

☐ Disagree

☐ Strongly disagree

Comments box

We agree this is clear.

18. Section 6, '**Policy intention of children's rights reports under section 18 of the Act**', clearly explains how the reporting process contributes to progressing children's rights.

☒ Strongly agree

☐ Agree

☐ Neither agree nor disagree

☐ Disagree

☐ Strongly disagree

We agree this is clear in terms of how children's rights reporting can support the implementation of best practice as widely as possible and fully support this.

19. Annexes B.1 – B.4 **Frameworks for children's rights reporting** are helpful.

- ☒ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

Comments box

This Frameworks for children's rights reporting is particularly helpful when considering how to set out a Children's Rights Report, especially references to the Clusters and Wellbeing Indicators as possible organisers.

20. Annex C, '**Scottish Government use of children's right's reports**', is clear.

- ☒ Strongly agree
 - ☐ Agree
 - ☐ Neither agree nor disagree
 - ☐ Disagree
 - ☐ Strongly disagree
- We agree this is clear.

21. The guidance is presented in an accessible manner, e.g. the style, length and content are useful in aiding implementation of duties in respect of the Act.

- ☒ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

The guidance is helpful for the production of a children's rights report and will no doubt support a more consistent approach nationally.

22. Are there any areas where you think the Part 3 guidance could be improved? Please cite specific parts of the guidance if relevant.

Comments box

No suggested areas of the Part 3 guidance that need improved from our perspective, the narrative is straightforward and helpful.

