

Equalities, Human Rights and Civil Justice Committee

21st Meeting, 2023 (Session 6), Tuesday 31
October 2023

UNCRC Bill - Note by the Clerk

Introduction

1. The [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Bill](#) (UNCRC Bill) was passed unanimously on 16 March 2021.
2. The purpose of the Bill is to incorporate the [UN Convention on the Rights of the Child](#) (UNCRC) and two optional protocols into Scots law.
3. The UNCRC is an international treaty setting out the rights that children and young people are entitled to.
4. As it is an international treaty, the UNCRC doesn't give individuals legal rights in UK courts. The Bill changes this by incorporating these rights into Scots law. This means that public authorities, including Scottish Ministers, will be legally obliged to respect children's rights, and that individuals will be able to challenge public authorities in the courts for breaches of their rights.
5. However, the Bill did not receive Royal Assent because the UK Government referred the Bill to the Supreme Court over its legislative competence. The hearing took place on 28 and 29 June 2021.
6. The [Supreme Court judgment](#) was issued on 6 October 2021.
7. There was no dispute about the Scottish Parliament's decision to incorporate the UNCRC into Scots law. The Court unanimously agreed that four provisions of the Bill would be outside the legislative competence of the Scottish Parliament. This meant the Bill could not receive Royal Assent in its current form. The Scottish Government could propose that the Bill be reconsidered in amended form, which would need the agreement of the Scottish Parliament.

The Scottish Government's Response

8. The Scottish Government [confirmed](#) on 6 October 2021 that it was committed to incorporating the UNCRC into Scots law.
9. On 24 May 2022, the former Deputy First Minister and Cabinet Secretary for Covid Recovery, John Swinney, made a [statement to the parliament](#) on the UNCRC Bill.

10. On [27 June 2023](#), and following a change in government leadership, the Cabinet Secretary for Social Justice, Shirley-Anne Somerville, said that changes to the Bill would be brought forward after the parliamentary recess. The changes will mean public authorities will only be required to comply with the UNCRC requirements when delivering duties under powers in an Act of the Scottish Parliament.
11. As outlined in a letter to the Equalities, Human Rights and Civil Justice Committee ([4 July 2023](#)), the Cabinet Secretary said that the next steps would be to commence with a Parliamentary motion allowing a vote on whether to go ahead with the reconsideration process.

Reconsideration Stage

12. This is the first time a Bill has been reintroduced after it has been passed. [Rule 9.9 of the Standing Orders](#) covers reconsideration of bills passed. For further information see [SPICe Briefing on the Reconsideration Stage](#) (27 January 2023).

Correspondence

13. The Cabinet Secretary for Social Justice, Shirley-Anne Somerville wrote to the Equalities, Human Rights and Civil Justice Committee, and [shared correspondence](#) (8 September 2023) between herself and the Secretary of State for Scotland, Alister Jack MP.
14. The Cabinet Secretary [wrote](#) to the Committee with draft amendments on 13 September 2023.

Debate on UNCRC reconsideration

15. A motion for UNCRC reconsideration was [debated on 14 September 2023](#). The motion sought Parliament's agreement to the UNCRC Bill proceeding to the reconsideration stage.
16. The Parliament agreed to reconsider the UNCRC Bill.
17. The amendments were [lodged on 18 September 2023](#).
18. Explanatory material was submitted with the draft amendments on [13 September 2023](#) to help clarify the amendments.

Approach by the Committee to reconsideration

19. The Committee considered its approach to reconsideration of the Bill at its meeting on [19 September 2023](#) as part of a work programme discussion. Following consideration, the Committee agreed to invite two panels of witnesses comprising firstly, rights holders and secondly, duty bearers. It also agreed it would be helpful to hear from an independent commentator on the implementation of the amendments.
20. The Committee also agreed to hear from the Scottish Government.

21. Following discussions, the Committee wrote to invited stakeholders asking them to submit written evidence ahead of the scheduled session.

22. The Committee received five responses. Key themes highlighted are:

- Concerns that the exclusion of UK legislation will add additional legal complexity for local authorities in implementing the bill as amended;
- That gaps may be left in the legal coverage of children's UNCRC rights;
- Whether there are implications for practical implementation for public bodies;
- Whether the bill, as amended, will create additional complexities for children, young people, families and their representatives to navigate the system.
- Calls from some stakeholders for both a legislative audit and a scoping exercise to be carried out by the Scottish Government to address concerns and ensure public bodies have clarity on where their obligations lie.

Oral evidence

23. At this meeting, the Committee will take oral evidence on the Bill from two panels. It will hear from:

- Nicola Killean, Children and Young People's Commissioner Scotland and Gina Wilson, Head of Strategy, Children and Young People's Commissioner Scotland;
- Juliet Harris, Director, Together (Scottish Alliance for Children's Rights);
- Jan Savage, Executive Director, Scottish Human Rights Commission;
- Fiona Menzies, Policy Manager, External Relations, Law Society of Scotland;

and then from

- Councillor Tony Buchanan, Children and Young People Board Spokesperson, COSLA;
- Derek Frew, Temporary Chief Superintendent, Head of Partnerships, Prevention and Community Wellbeing, Police Scotland; and
- Dr Andrew Tickell, Senior Lecturer in Law, Glasgow Caledonian University.

24. Submissions from the organisations represented can be accessed on Citizen Space, with links provided in the Annexe to this paper.

25. At this session, the Committee is likely to explore in more depth issues such as:

- The impact on duty bearers and rights holders to prepare for the amended approach;
- Views on legal complexities if any have arisen from the amendments;

- Whether stakeholders have concerns about practical implementation of the bill following the amendments and what work is being done by the Scottish Government to address any concerns;
- Whether the amendments affect the potential for the Children's Commissioner and SHRC to take legal action in relation to children's rights;
- Views on calls from stakeholders for a legislative audit and what this would involve;
- Whether the difficulties facing the UNCRC bill may apply to incorporation of future treaties for example in the proposed Human Rights Bill;
- Whether organisations have had sufficient time to prepare for the amended approach before the bill comes into force.

Next steps

26. The Committee will consider the evidence heard and what next steps if any it wishes to take. The Committee will also hear from the Cabinet Secretary for Social Justice at a later date.

27. On conclusion of its evidence taking, the Committee will write to the Scottish Government with its findings and recommendations.

Clerks to the Committee
October 2023

Annexe: written submissions provided by organisations in response to the Committee's request can be accessed online.

- [Law Society of Scotland](#) (Panel 1)
- [COSLA](#) (Panel 2)
- [Police Scotland](#) (Panel 2)
- [Social Work Scotland](#)
- [Dr Andrew Tickell](#) (Panel 2)

Published statements on the reconsideration approach:

- [Children and Young People's Commissioner for Scotland](#) (27 June 2023) (Panel 1)
- [Together Scotland](#) (28 June 2023) (Panel 1)
- [Scottish Human Rights Commission](#) (13 September 2023) (Panel 1)