

Equalities, Human Rights and Civil Justice Committee

22nd Meeting, 2023 (Session 6), Tuesday 7 November 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.
20. 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.

21. The Committee also agreed to hear from the Scottish Government.

22. The Committee wrote to the invited stakeholders asking them to submit written evidence ahead of the scheduled session and received five responses which are published on its [webpage](#). Key themes highlighted were:

- 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 its meeting on 31 October 2023, the Committee took evidence on the Bill 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, Law Society of Scotland;

and 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. At this meeting, the Committee will conclude its evidence taking and will hear from:

- The Cabinet Secretary for Social Justice, Shirley-Anne Somerville and Scottish Government officials, Liz Levy, Unit Head Children's Rights, UNCRC Bill Lead, Shona Spence, UNCRC Bill team and Rachel Nicholson, Lawyer, Legal Directorate.

25. The Committee will explore in more depth issues such as:

- The delay in bringing the bill back to Parliament and liaison between the Scottish and UK governments;
- The scope of the bill as amended;
- Concerns public bodies have raised in relation to practical implementation of the bill and what work is being done by the Scottish Government to address these;
- Whether the amendments affect the potential for the Children's Commissioner, SHRC and other rights holders to take legal action in relation to children's rights;
- Support that the Scottish Government is able to offer to duty bearers to assist them navigate implementation of the bill;
- The response from the Scottish Government to calls from stakeholders for a legislative audit and what this would involve;
- Whether the difficulties facing the UNCRC bill could apply to incorporation of future treaties for example in the proposed Human Rights Bill;
- If the Scottish Government is satisfied that organisations have 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 write to the Scottish Government with its findings and recommendations. The Committee will consider and agree a draft letter at a future meeting.

Clerks to the Committee
November 2023