



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

October 2020



Scottish
**Independent
Advocacy**
Alliance

Introduction

The Scottish Independent Advocacy Alliance (SIAA) is a membership organisation that has the overall aim of ensuring that independent advocacy is available to any vulnerable person in Scotland. Independent advocacy safeguards people who are marginalised and discriminated against or whom services find difficult to serve, empowering people who need a stronger voice by enabling them to express their own needs and make their own decisions.

This response draws on the experiences of our members and their expertise in supporting vulnerable people – both children and adults - to have their voices heard in a range of situations relating to, for instance, justice, health, education and social security.

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

Yes, the Bill will make it easier for children in Scotland to access their rights. It encompasses a range of preventative and curative measures – as SIAA has noted previously (e.g. in our response to ‘Children’s Rights: Consultation on incorporating the United Nations Convention on the Rights of the Child into our domestic law in Scotland’, 2019), this is a powerful combination that has the potential to ensure that all children living in Scotland have their civil, cultural, economic, political and social rights protected, realised and defended.

- Preventative measures: The Bill includes a Children’s Rights Scheme (sections 11-13) and Child Rights and Wellbeing Impact Assessments (section 14) which we highlighted in our previous response as being necessary to create a culture in which rights-based decision-making is effectively embedded, thus minimising the risk of children’s rights being breached.
- Curative measures: The Bill provides for children/their representatives to challenge breaches of their rights (section 7), as well as including a requirement for a statement to be made when future Bills are laid that

they are compatible with the UNCRC (section 18) and the power for the court to strike down incompatible legislation (section 20). SIAA welcomes all of these measures, which we noted in our previous response as necessary to ensure access to redress if and when children's rights are breached.

However, although there is much in the Bill that will make it significantly easier for children in Scotland to access their rights, SIAA contends that it would have been significantly strengthened through the inclusion of a provision for all children and young people to have a legal right to independent advocacy to support them to realise their rights as enshrined in the UNCRC.

Article 12 of the UNCRC states that children have the right to be listened to and taken seriously. This means that children and young people must be given the information they need to make good decisions and that their views and opinions need to be considered in decisions that are made about them. However, many children will, in practice, require significant support to make this a reality. They may need help in understanding the complexities of decisions that are being made about them, as well as in overcoming barriers to their participation such as power imbalances, lack of confidence and a history of feeling ignored and irrelevant in previous decision-making. "Advocacy gives the young person a chance to tell someone what they want or like, outwith the line of professionals. It helps children and young to put their views across with what they think is best for them as a lot of children don't as they don't think they would be listened to or they don't know how to say it" (Who Cares? Scotland, <https://www.whocarescotland.org/what-we-do/advocacy/>).

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

SIAA noted in our previous response that a key strength of the Human Rights Act model is its focus on ensuring that rights are justiciable and the provision of legal remedies in cases where they are violated. For rights to be meaningful, incorporation of the UNCRC must deliver effective ways for children and young

people – and those representing them – to be able to challenge duty bearers and seek redress. Consequently, SIAA would welcome the ability to take public authorities to court to enforce children’s rights in Scotland.

In some circumstances, particularly for very young or marginalised children, it might be unfair to expect them to raise their own complaint in court. To that end, we welcome the powers granted in Section 10 of the Bill allowing the Children and Young People’s Commissioner Scotland to bring/intervene in proceedings.

However, in addition, there is also a significant need for independent advocacy within these processes, to redress power imbalances and give those challenging public bodies both the confidence to do so and the necessary support to ensure their views and opinions are heard throughout. Alongside independent advocacy, there is also a need for a range of other child-friendly supports and services, including access to information, advice and legal assistance.

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

As Together notes, the UN Committee clearly states that, when children’s rights are breached, they can face a range of barriers in seeking justice. Consequently, the Committee recommends that a clear channel of redress, ‘should include provision of advocacy and child-friendly information as well as access to independent complaint procedures and the courts’.

In the absence of a provision in the Bill for all children and young people to have a legal right to independent advocacy, SIAA strongly supports Together’s proposal to strengthen the Bill by amending sections 11(3) and 13(3) on the Children’s Rights Scheme so that Ministers are required to set out and report annually on what they are doing to ensure advocacy services for children and young people that are available, accessible, acceptable and of high quality.

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?

In our previous response, SIAA highlighted the need for effective implementation of the Bill to be supported by a range of additional support measures such as accessible guidance, awareness-raising, training, monitoring and evaluation, with these services delivered accessibly in a variety of formats to suit diverse audiences.

These include:

- co-ordination within and between different levels of government and civil society, including with children and young people themselves
- training and awareness-raising activities for a range of audiences
- child-rights budgeting, such that “All levels of government should evidence that budgetary planning and decision-making should include the best interests of children as a primary consideration and that children, including in particular marginalised and disadvantaged groups of children, are protected from the adverse effects of economic policies or financial downturns” (Together (Scottish Alliance for Children’s rights) response to the Scottish Government’s Consultation on the Incorporation of the UNCRC into Scots Law, August 2019)
- provision of independent advocacy to support children and young people to understand and realise their rights and seek redress if necessary.

5. 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?

Independent advocacy is a key mechanism for ensuring *all* children's right to be heard - it is a human rights tool that should be placed at the heart of the incorporation process in order to ensure that Scotland's most vulnerable and marginalised children are not left behind in their ability to exercise their rights.

Evidence from SIAA members indicates that, even when children have a right to access independent advocacy (e.g. through the Mental Health (Scotland) Act 2003, there are still multiple barriers to their actually receiving this support. This includes a lack of knowledge and understanding about their right to advocacy, as well as a paucity of adequate funding for independent advocacy organisations to be able to deliver at the necessary capacity. Even when enshrined in legislation, the right to independent advocacy remains for many children an abstract notion that cannot be realised in practice. For children who do not have the right to independent advocacy, but who are nonetheless extremely vulnerable, the situation is even worse.

The Bill has missed an opportunity to include a provision for all children and young people to have a legal right to independent advocacy to support them to realise the rest of their rights, supported by clear and transparent detail around budgeting for the provision of independent advocacy across Scotland at adequate and sustainable levels.

6. 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?

In our previous response, SIAA called for the inclusion of 'strike down' powers to be included in the Bill. Consequently, we welcome this provision, which will allow courts to declare that any Act of the Scottish Parliament that violates the UNCRC is no longer law and will therefore cease to have effect. This will also create parity between the UNCRC and the existing 'strike down' provisions that exist in relation to breaches of ECHR rights.

7. What are your views on the Child Rights Scheme and the requirement on public authorities to report?

As noted in our 2019 response, SIAA strongly supports the inclusion of a Children's Rights Scheme. We also welcome the requirement on public authorities to report.

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