



Briefing in advance of Webinar 'Implementing Children's Rights in Scotland - Developing Systems of Child-Friendly Complaints, Remedy and Redress'

Fiona Morrison, [Centre for Child Wellbeing and Protection](#), University of Stirling

Máire McCormack and Kay Tisdall, [Childhood & Youth Studies Research Group](#), University of Edinburgh

This briefing aims to provide background and to pose questions to explore during the webinar.

The [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Bill](#) marks a major milestone for children's human rights in Scotland. It is the Scottish Government's response to repeated calls for more to be done to make children's human rights real – for children's human rights to be more than rhetoric. Incorporation has the potential to bring positive changes for children's human rights. It can change how children and young people are perceived and how they are treated in society. We hope it will expedite a shift in how children are viewed – from dependents, to bearers of rights – rights that must be respected and protected.

What does the Bill do?

The Bill will directly incorporate the UNCRC into Scots law. It aims to ensure 'children's rights are woven into policy, law and practice in Scotland and enable children to rely on their rights in the domestic courts'¹. It promises to undertake a 'maximalist approach' to incorporation¹. The Bill sets out a range of provisions that have the potential to 'make rights real' for children in Scotland, including:

- Public authorities must not act in a way that is incompatible with the UNCRC requirements
- Courts will have powers to decide if legislation is compatible with the UNCRC requirements
- The Scottish Government can change laws to make sure they are compatible with the UNCRC requirements
- The Children and Young People's Commissioner Scotland would have power to take legal action if children's rights under the UNCRC are breached
- The Scottish Government must publish a Children's Rights Scheme to show how they are meeting UNCRC requirements and explain their future plans for children's rights
- The Scottish Government must review how the Scheme is working every year
- Other public authorities mentioned in the Bill must report every three years on what they have done to meet the UNCRC requirements.²

¹ <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/introduced/policy-memorandum-united-nations-convention-on-the-rights-of-the-child-scotland-bill.pdf>

² <https://beta.parliament.scot/bills-and-laws/bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill>

What more does the Bill need to do to uphold children's rights?

The Bill is positive in many ways. But we think it can go further to ensure children's human rights are not only recognised but also are implemented. In our [written evidence](#), we highlight 10 areas where we think more can be done to embed children's rights. Several of these could be met by strengthening the requirements of the Children's Rights Scheme: for example, requiring a system of children's rights indicators to effectively monitor the Bill's implementation; and stronger duties to promote public awareness and understanding of children's rights, including amongst children. While these measures will help at a macro level, more needs to be done at the micro level to ensure individual children can claim their rights and seek remedy and redress when they think their rights have been violated.

What about Child-Friendly Systems of Complaints, Remedy and Redress?

The Bill makes provisions so that a child/ children can take legal action against a public authority if they believe their rights have been violated. This is an important first step to enable children to claim their rights. However, we think the Bill should go further. During the Stage 1 debate, Deputy First Minister John Swinney MSP committed to strengthen the Children's Rights Scheme by requiring Ministers to publish *'updates on arrangements to promote a child-friendly complaints mechanism and ensure effective access to justice for children and young people'*.³ Issues of child-friendly court processes, access to justice (including legal aid) and effective remedies featured in the Equalities and Human Rights Committee Stage 1 Report.⁴

There needs to be significant and systematic efforts to ensure that child-friendly systems of complaints, remedy and redress are embedded across public bodies. We highlighted the lack of accessible child-friendly complaints, remedy and redress in family law during the passage of the now Children (Scotland) Act 2020 through Parliament.⁵ This issue remains unresolved. In family law there are no clear or accessible ways for children, to tell a court that their child welfare report was inaccurate before a decision is made. While there is an existing legal process for appeals it is not accessible to children. The lack of redress and complaints goes beyond family law: for example, no child-friendly system of complaints exists for children's hearings should a child wish to complain about a decision made. UNCRC incorporation encourages us to think systematically – from children's perspectives -- about mechanisms and resources already in place, gaps and barriers, and opportunities, to create a coherent, child-friendly system.

The diagram on page 3 shows one approach to an embedded system to support children's rights to complaints, remedy and redress. This approach requires that:

- Information is provided to children, adults and public bodies about children's rights and that culture change is accelerated in respect of children's human rights.
- Enhanced systems of advocacy are available to children, which are adequately resourced. These are critical to ensure children are able to access systems of redress and claim their rights when they are breached. The need for advocacy for children when implementing their human rights was recognised in the Children (Scotland) Bill, with the Government's welcome commitment to developing advocacy services for children. There will be a need, which is recognised by Government,

³ <https://www.parliament.scot/parliamentarybusiness/report.aspx?r=13062&mode=pdf>

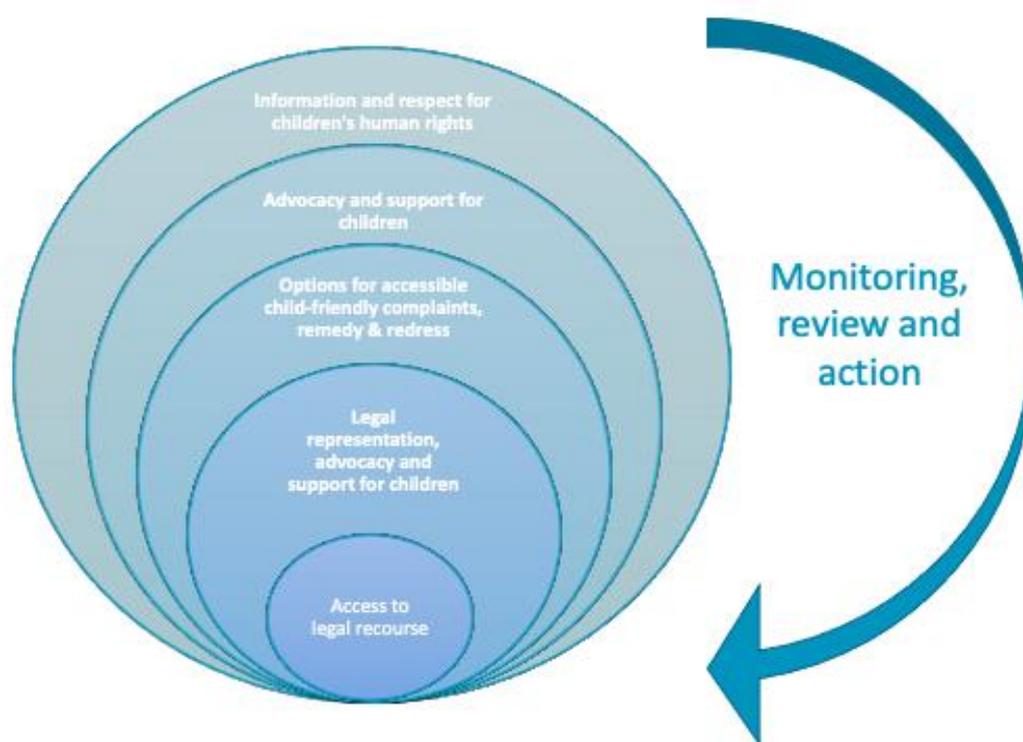
⁴ <https://sp-bpr-en-prod-cdnep.azureedge.net/published/EHRiC/2020/12/20/b8645859-4fa2-4a02-ab99-1300cc14f686/EHRiCS052020R4.pdf>

⁵ https://www.ed.ac.uk/files/atoms/files/stage_three_children_scotland_bill_-_joint_briefing_-_swa_children_1st_dr_fiona_morrison_prof_kay_tisdall_21-08.pdf

to coordinate the various forms of advocacy in different areas of children’s lives – such as for children with additional support needs⁶ and within the children’s hearing system⁷.

- Children have options to raise complaints and seek remedy and redress if their rights have been breached: such as, advocacy to support children to have conversations with public bodies and share their concerns, support for children to raise formal complaints with public bodies, the option to have the Commissioner for Children and Young People Scotland to act for a child,⁸ or for children being supported to raise their own legal action.
- Children have access to independent legal representation. Children’s legal representation has been seriously curtailed by changes in legal aid provision. We recognise that the Government is considering this separately under legal aid reform.⁹ We need to *reimagine* legal processes so that that they are accessible rather than exclusionary to children who wish to seek legal recourse if their rights have been breached.
- Systems and processes are established to monitor, review and take action on the effectiveness of systems of complaint or seeking remedy and redress for children. Such data should be routinely collected by public bodies, including children’s views and experiences of these, and reported on.

Figure 1. Embedding Child-Friendly Complaints, Remedy and Redress



⁶ <https://www.healthandeducationchamber.scot/additional-support-needs/63>

⁷ <https://www.scra.gov.uk/2020/11/childrens-hearings-and-advocacy/>

⁸ This is an aspiration. Under the Bill, the Commissioner will be able to initiate proceedings on behalf of the child or to become a party and intervene in a case where there has been a violation of a child’s rights and to seek a judicial remedy.

⁹ <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/introduced/policy-memorandum-united-nations-convention-on-the-rights-of-the-child-scotland-bill.pdf>, paragraph 100.

What guidance is there about Child-Friendly Complaints, Remedy and Redress?

The need to address these issues is made explicit by the UN Committee on the Rights of the Child, in its General Comment No. 5 (2003) on General Measures of Implementation of the UNCRC. It states: *“For rights to have meaning, effective remedies must be available to redress violations. This requirement is implicit in the UNCRC ...”*.¹⁰ In other words, a duty to comply with rights needs mechanisms for enforcement for non-compliance.

The Council of Europe’s Guidelines on Child-Friendly Justice¹¹ provide further emphasis on the importance of child-friendly complaints’ systems. The Guidelines note that children should have recourse to remedies to effectively exercise their rights or act upon violations of their rights. They call on Member States to facilitate children’s access to courts and complaints mechanisms and to recognise and facilitate the role of NGOs and other independent bodies or institutions such as children’s ombudsmen to support children’s effective access, both on a national and international level (Guideline 83). Therefore, domestic law should facilitate access to courts for children who have sufficient understanding of their rights and of the use of remedies to protect these rights, based on adequately given legal advice.

The Council of Europe Guidelines on Child-Friendly Justice further directs:

- Any obstacles to access to court, such as the cost of the proceedings or lack of legal counsel, should be removed (Guideline 35).
- Children should have the right to their own legal counsel and representation, in their own name, in proceedings where there is, or could be, a conflict of interest between the child and the parents or other involved parties (Guideline 37).
- Children should have access to free legal aid, under the same or more lenient conditions as adults (Guideline 38).
- Lawyers representing children should be trained in and knowledgeable on children’s rights and related issues, receive ongoing and in-depth training and be capable of communicating with children at their level of understanding (Guideline 39).
- Children should have access to adequate representation and the right to be represented independently from the parents to be guaranteed, especially in proceedings where the parents, members of the family or caregivers are the alleged offenders (Guideline 43).

Questions to explore in the webinar

In thinking about how we might practically improve the Bill and ensure that systems of child-friendly complaints, remedy and redress are adequately planned for there are a several questions we hope to explore together on the 4th February:

- How can we embed systems of child-friendly complaints, remedy and redress across all public authorities? How can we monitor the effectiveness of such systems? What do we envision redress will ‘look like’ for a child or young person?
- How can we ensure that children, adults and public authorities know about children’s rights, and how to complain, seek remedy or redress if a child’s rights are breached? What steps must we take

¹⁰

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f5&Lang=en, para 24

¹¹ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804b2cf3

to ensure that children who are more at risk of having their rights breached are able to access systems of complaint, remedy and redress?

- How can we encourage adults and public institutions to view children's complaints positively and to take them seriously?
- What might we do to support public authorities to be positively accountable to children?
- How do we ensure such systems squarely address familiar tensions between children's rights to protection and participation? How do we ensure the process of complaining or seeking remedy and redress are not detrimental to children? What safeguards might be necessary to ensure children's rights are not used as a vehicle by adults to advance their own interests? How might systems support children to be represented independently from their parents/ caregivers?
- How can we extend such learning to organisations beyond public authorities – such as businesses and other organisations in the private sector?

This webinar is supported by the Impact Acceleration Grant from the ESRC Impact Acceleration Grant awarded to the University of Edinburgh (grant reference ES/T50189X/1 and the Carnegie Trust for Universities in Scotland (grant number RIG008635).