



Children and Young People's
Centre for Justice

Consultation response

[UNCRC Act \(2024\) Statutory Guidance](#)

May 2024

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Overview

We at the Children and Young People's Centre for Justice (CYCJ) have long championed incorporating the United Nations Convention on the Rights of the Child into Scots Law. We strongly welcomed the passing of the UNCRC (Incorporation) (Scotland) Act 2024 by the Scottish Parliament in December 2023 and have been [busy preparing](#) for the first stage of the Act coming into force on 16th July 2024.

Ahead of this implementation, the Scottish Government consulted on Statutory Guidance Part 2 and 3, section 18, of the Act. We were very pleased to have this opportunity to offer our thoughts on the statutory guidance set out for public bodies and others with legal obligations under the Act.

Key Summary

What comes across strongly in our consultation response, set out in full below, is the need for a more coherent structure throughout the guidance, with a greater emphasis on making it accessible. The guidance contains a lot of legal phraseology but the people interpreting this won't be specialists in those areas.

In our response, we highlighted our intention to write our own version of materials and provide support for professionals using this guidance and working with children in conflict with the law. We have requested to work with the Scottish Government Children's Rights Unit to do this.

Consultation questions and **CYCJ response**

Part 2 Guidance

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

CYCJ response

- Yes
 No

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

CYCJ response

- Strongly agree
 Agree
 Neither agree nor disagree
 Disagree
 Strongly disagree

At CYCJ we largely agree that section 3 provides sufficient information on the UNCRC and the background to incorporation. The information provided uses simple language and avoids overly legalistic language which could be unhelpful for practitioners of different specialisms and expertise. That said, we do believe some additional information may be helpful, set out as follows.

Section 3 begins by briefly outlining the history behind the development of the UNCRC. This is critical in helping public bodies understand the significance of this treaty and in upholding child rights. We believe the beginning of Section 3 could be strengthened by further explaining why a specific treaty was designed for children. In particular, the recognition that children are autonomous rights holders, while also having dependent status due to their age, meaning specific consideration must be given to ensuring their rights are upheld and not overruled by the adults around them. Providing the utmost clarity as to *why* we are required to consider children's rights specifically will leave those with legal duties with no questions as to why this is a critical piece of legislation that must be implemented fully.

Section 3.1 briefly names the Committee on the Rights of the Child (CRC) as mandated within the text of the UNCRC, before going on to refer to it in the context of the Third Optional Protocol. It may be of relevance to expand the explanation of the CRC role here (pg 8), given the relevance of its commentary in promoting an 'evolutive interpretation' of the UNCRC. Although detail is provided later in Annex B1, providing role clarity at this early stage in the guidance will help cement the helpful role the CRC plays for those implementing the Act. In developing Annex B1 further, we suggest that the explanation of the CRC role could be better structured around its three main roles: reviewing the progress of State Parties, issuing soft law and general guidance, and hearing individual complaints.

Likewise, in Annex B1 the reporting process for States parties is briefly referred to. Given the significant weight afforded to the opinions of the CRC and its role in advocating for and informing change domestically, it feels prudent to include further detail on the reporting process, including key steps in the reporting cycle and the role/authority of Concluding Observations. We believe it would also be helpful to include a link to the [UNCRC treaty body database](#) to ensure public bodies can remain up to date with the most recent Concluding Observations and other CRC commentary.

Although section 3.2 refers to the legal intervention by the UK Supreme Court, it may be helpful to provide further detail on what amendments were made to the legislation prior to the Parliamentary Reconsideration stage. Public discourse surrounding the passage of the Bill was powerful and effective in communicating what the intended Bill could do. It may be important to list the specific elements that were amended at this stage to ensure all those with legal duties to comply with the Act are fully cognisant of the final version.

We welcome reference to historical examples of partial or 'sectoral' incorporation in Scotland in Section 3.2. It is important to acknowledge that Scotland has been on a progressive child rights journey for some time, as well as highlighting that public

bodies have already been expected to act compatibly with the UNCRC through various laws, albeit in a piecemeal manner. We believe this section could be strengthened by providing further clarity on how the new Act interacts with other legislation in relation to the UNCRC, such as outlining where aspects of older pieces of legislation have been replaced or where reporting expectations will now be superseded by the UNCRC Act such as with the Children and Young People (Scotland) Act 2014.

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

CYCJ response

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

While we appreciate the complex nature of incorporation of the UNCRC and the further complications created by the UK Supreme Court ruling, we believe Section 3.4 could provide further clarity on the 'meaning of UNCRC requirements'.

The first two paragraphs of this section clearly explain the difference between the requirements incorporated by the Act, and the Convention. However, in attempting to provide examples to evidence the 'carved out' sections of Convention text, we believe Section 3.4 then becomes confusing and at times, misleading.

In particular, the examples which discuss Articles 11 and 38 could be interpreted as though those articles are not covered at all by the Act, where in fact only certain subparagraphs have been 'carved out'. The guidance then names Article 7 to show that, in this case, simply a sentence has been removed. This unintentionally compounds the impression that Articles 11 and 38 are removed entirely.

To aid understanding, we would propose simplifying the descriptions of Articles 7, 11 and 38, perhaps using a table to compare the Convention wording in comparison to the wording in the Act. It may also be helpful in Section 3.4 to point readers to Annex C.1.1 including the table on pages 40-41 which helpfully outlines the elements of the Convention that are reserved or devolved matters.

Likewise, Annex D could also be referred to here, showing instantly what elements of the Convention are included in the Act. However, we note that in the current draft guidance Annex D is referred to as 'UNCRC Articles' which we believe should be changed to 'UNCRC requirements' as it is a list of the Act's requirements excluding the 'carved out' sections. Doing so would improve accuracy, avoid potential confusion and prevent an incorrect understanding of the international treaty text.

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

CYCJ response

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

We agree that section 4.2 provides useful guidance. We strongly support the Scottish Government's use of a wide 'access to justice' definition, including both judicial and non-judicial methods such as advocacy and complaints mechanisms. For children in conflict with the law, who are potentially already caught within a complex criminal or family law context, being able to access remedy that avoids further entanglement with a justice system is paramount.

That said, a significant strength of the Act is its provision of legal redress for children who believe the public authorities around them have acted incompatibly with the Act. Ensuring children, families and professionals understand how to initiate legal proceedings is integral to effective and full implementation of the Act and so we welcome this section of the guidance. To ensure full clarity, there are some small additions we would propose.

Structure

To aid clarity and understanding, we believe this section could be better structured. We agree with Together (Scotland's Children's Rights Alliance) who have proposed this alternative structure:

"(1) Definition of public authority, including functions of public nature (i.e. who needs to follow the law); (2) Explanation of the duties (i.e. what these people have to do); and (3) Remedies for unlawful acts".

Expanding glossary definitions

The glossary within the guidance is extremely helpful. We would propose that the terms 'judicial remedy', 'non-judicial remedy', and 'relief' are added to the glossary.

Provision of examples

In addition to providing definitions of the above words, the inclusion of examples would help duty bearers in their interpretation of the guidance and the Act. Likewise, examples of 'complaints procedures', particularly those that fall within the non-judicial space would be helpful.

Further information on audit trails

Reference to public authorities considering information management systems is welcome. Placing emphasis on this means that not only will public authorities be better equipped should a challenge arise, but justice for the child is less likely to fail simply due to poor record management. That said, we agree with Together (Scotland's Children's Rights Alliance) who have advised caution and encouraged the use of framing that protects the child's right to privacy (Article 16, UNCRC) within record and information management systems.

The Sufficient Interest Test

The guidance would benefit from stating clearly that those considered to have 'sufficient interest', with an accompanying descriptor of this term, can raise legal proceedings on behalf of children. As currently written, this is not clear from the guidance. Third sector organisations are likely to be some of those considered to have 'sufficient interest' given their proximity to service provision for children.

During the early influencing of the Act as it passed through Parliament, many children's organisations welcomed this addition to the legislation but warned that without further training and information on how to do this, it may have low uptake. Ensuring all organisations who might have 'sufficient interest' are knowledgeable of this provision and are signposted to ways to improve their understanding, will significantly enhance routes to remedy for children.

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

CYCJ response

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

We find the 'Definition of a public authority' section to be relatively clear but given the importance of this section in ensuring those who are duty-bearers understand their legal obligations, we believe there are some steps that can be taken to improve the guidance content. Currently, the structure and the content of these sections cause confusion and this creates a challenge in understanding who is considered a duty-bearer under the Act.

Structure

It may be helpful to review the structure of section 4.3 and place 'Definition of a public authority' before 'Definitions of a public nature'. Given the 'functions of a public nature' derive from the role of standard public authorities, it makes sense for this definition to follow the basic description of what constitutes a public authority.

Further clarity on definition

It would be helpful to see further clarity given to the definition of ‘public authority’. The current wording might be challenging to interpret. Where possible, examples of organisations could be listed to help guide understanding. While we understand there may be reticence to name listed authorities in the guidance, we believe that identifying some authorities by way of example might create further clarity.

The reference to hybrid and core public authorities as defined under the Human Rights Act 1998 is helpful and makes it abundantly clear that it is those duties considered to be of a public nature that are covered by the Act. However, this section is lengthy and would benefit from a clearer structure using headings and bullet point lists to ensure content is easier to digest and more accessible.

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

CYCJ response

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

As mentioned previously, this section would benefit from following the ‘Definition of a public authority’ section. While the basic description of this section is relatively clear, we believe there are edits/additions that could provide further clarity.

Reference to ‘private functions’

While we understand the relevance of clarifying that privately executed actions are not covered by the Act, placed in this section we feel it causes some confusion. Also, the article provided as a reference for this is complex and inaccessible. A simpler reference would be beneficial.

We believe a reference to the PVI sector should be included as a core part of defining ‘functions of a public nature’. As we understand it, the role of the PVI sector in delivering public functions on behalf of a public authority was a core reason for including this definition within the Act. As a result, we feel that ‘Application to Private, Voluntary and Independent Sector’ should follow or be included within ‘Definition of functions of a public nature’.

Application to Private, Voluntary and Independent Sector

Further attention could be given to the list of reflective questions. It may be that case studies or tangible examples of a PVI delivering a public function would help when working through the reflective questions.

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.

CYCJ response

- Strongly agree
 Agree
 Neither agree nor disagree
 Disagree
 Strongly disagree

We recognise that the content in this section is complicated in nature and therefore explaining how this relates to the Act will be challenging. It may be helpful to include an introductory paragraph at the start of this section outlining the purpose of the information that follows and providing clarity on how to engage with it.

As a 'centre of excellence' we provide guidance to public authorities and the PVI sector when it comes to upholding the rights of children and implementing policy and law effectively – especially when it relates to children in conflict with the law. With this in mind, we believe that we are both duty-bearers under the Act and have a role to support others to understand their duties.

As an example, we have recently been contacted by several public authority and PVI professionals requesting advice, training and guidance on how to implement the Act within the youth justice context. We believe it would be helpful to include a section in the guidance which helps support those of us who have supportive roles to play in the Act's implementation. We at CYCJ plan to draft our own practice guidance to assist the youth justice sector and would welcome advice and support on this.

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

CYCJ response

- Strongly agree
 Agree
 Neither agree nor disagree
 Disagree
 Strongly disagree

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

CYCJ response

- Strongly agree
 Agree
 Neither agree nor disagree
 Disagree
 Strongly disagree

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.

CYCJ response

- Strongly agree
 Agree
 Neither agree nor disagree
 Disagree
 Strongly disagree

We agree that this framework is accessible and believe it will be a helpful resource for public authorities and others to use. In particular the introductory paragraph gives a helpful indication of how to use the rest of the section. This should be replicated for other sections in the guidance.

CRIA

We agree with Together (Scotland's Children's Rights Alliance) who ask for clarity to be provided on how the framework interacts with expectations around the use of Child Rights Impact Assessments (CRIA).

Summary of reserved elements of the UNCRC

The summary tables on pages 40 and 41 are extremely helpful in clarifying which aspects of the UNCRC have been 'carved out' in the Act. It would be helpful to have this summary table referenced or linked to earlier in the guidance when discussing what has been carved out in section 3.3.

Accessible appendices

The framework section of the guidance is full of helpful tools and information that duty-bearers can use. In particular, we found the flowchart to be very accessible. It would be even more helpful if these tools could be included as appendices to allow professionals to easily access them and add information to. If not appendices, it may be helpful to have these tools available as separate links on the Scottish Government website.

Consistency in framing

Annex D lists the UNCRC 'requirements', reflective of Scotland's devolved powers and excluding reserved matters. We would suggest that the heading of this section is changed to 'UNCRC requirements' as a result.

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

CYCJ response

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

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.

CYCJ response

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

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

CYCJ response

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

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

CYCJ response

In addition to our comments throughout this response, we suggest a review of each section's structure. In some sections the information is dense and complicated – simply because it refers to legal terminology or phraseology. This may mean that it is

challenging to rewrite. However better structure and use of headings, lists, flowcharts and case studies will make the guidance more accessible.

Part 3 Guidance

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

CYCJ response

- Yes
 No

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

CYCJ response

- Strongly agree
 Agree
 Neither agree nor disagree
 Disagree
 Strongly disagree

Developing baseline information

We support reference to the need to collate disaggregated data and to better understand which children are most at risk of their rights not being upheld. We note that there are several groups of children who experience a threat to their rights not being upheld by the context in which they live. Many of these children will not be covered by the listed protected characteristics within the Equality Act 2010. Children who are in conflict with the law are one such group.

We also know from our work that there is limited data collected in Scotland in relation to children in conflict with the law and the impact of the justice and care systems they are in. This lack of data means it is challenging to truly understand their experience and to what extent their rights are upheld.

Consultation and engagement

While we strongly support reference to public authorities engaging with children and young people to compile the report, we are conscious of young people telling us that they can feel over-consulted. Authorities should be encouraged to implement meaningful and inclusive participation structures to enable progressive participation practice that continually contributes to their work on being rights respecting, rather than leaning on one-off consultation processes.

The breadth of organisations covered under the Act could mean that established groups of young people could be asked to contribute by several authorities. With this

in mind, we welcome the inclusion of the last sentence which encourages authorities to use recently gathered evidence from young people, should consent allow.

Requirements to produce a child friendly report

In the avoidance of over-consultation with children and young people as mentioned above, it may be helpful to [provide resources](#) that can help in the creation of accessible, child-friendly reports.

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

CYCJ response

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

We largely agree that this section is sufficiently clear. Consideration should be given to how reports will be collated and stored. Having all reports accessible in one centralised place will promote learning between authorities and encourage best practice to be shared. Without this guidance or centralised storage, there is a risk that reports will be challenging to find and remain inaccessible to children and young people.

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.

CYCJ response

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

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

CYCJ response

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

This appendix is a helpful addition to the guidance document and provides clear and helpful information on how to compile children's rights reports. We find the use of the UNCRC clusters to be particularly helpful and easy to follow.

It may be helpful to provide good examples of report structures. While avoiding being prescriptive, examples of similar good quality reports or basic structures may be helpful for those using the guidance.

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

CYCJ response

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

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.

CYCJ response

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

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

CYCJ response

As with the guidance for Part 2, we suggest some consideration is given to the document's structure. Setting out the purpose and rationale for reporting at the very beginning, before discussing how to do this, will potentially read better and be simpler to put into practice.

Section 6 helpfully outlines the policy intention being rights reporting and is simple to understand. We welcome the inclusion of reference to sharing of good practice and would encourage consideration on how this can happen in an on-going way through the storing and sharing of reports.

Annex C outlines the Scottish Government's use of the reports. This is helpful to understand, and we would propose moving this section to the beginning of the guidance document. Doing so will provide clarity early on how the reports will be scrutinized and shared.



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CYCJ is primarily funded by the Scottish Government and based at the University of Strathclyde.