

Cross-Party Group on Children and Young People

Wednesday 12 June

13:00 – 14:30

Scottish Government Consultation on Incorporation of the UNCRC

Chair: Kezia Dugdale MSP

Minutes

Attendees:

Kezia Dugdale MSP	Fulton MacGregor MSP	Alison Johnston MSP
Chris Ross	Sarah Paterson	CYP
Megan Burt	Kevin Kane	CYP
Susan Hunter	Todd Henshaw	CYP
Parisa Shirazi	Elaine Stalker	CYP
Daniel Rutherford	Cathy McCulloch	Jane Miller
Kirsten Shield	Angus MacLean	Helen Forrest
Sara McFarlane	Khaleda Noon	David Mackay
Emma Rogan	Vicky Wan	Sarah Rogers
Nina Collins	Dr Kasey McCall Smith	Maria Doyle
Sara Lurie	Sarah McDermott	Louise Slorance
Vivien Jayne	Katie Burke	Cherie Morgan
Claire Hunter	Lovisa Backman	Roseanna MacDonald
Lucinda Rivers	Jemma Tracey	Elizabeth Lumsden
Liam Furby	James Peebles MSYP	Amy Woodhouse
Helen Fogarty	Janis McCulloch	Kirndeeep Kaur
Tamasin Knight	May Chamberlain	Laura Pasternak

1. Welcome from Chair

The meeting was opened with a welcome from Chair, Kezia Dugdale MSP. She gave a general welcome to attendees of the meeting and thanked them for attending. Kezia was elected to this Cross-Party Group in 2011 and this would be her last meeting. She explained that the meeting had a dual purpose, firstly the AGM and secondly exploration of the issue of incorporation of the UNCRC.

Incorporation of the UNCRC is a really important issue and has been a prominent focus for the CPG. Children's rights have been a specific topic for the group on several occasions. They have also been a recurring theme across the range of other topics that have been discussed by the group.

Kezia was delighted that the Scottish Government has brought forward a consultation on incorporation and welcomed the fact that they were in attendance at the meeting to discuss their plans for the consultation and their preferred course of action.

She explained that the meeting would also provide an opportunity for attendees at the CPG to discuss views on the Bill in order to provide some contribution to the consultation process.

She clarified that before moving onto the discussions on the consultation, the CPG first needed to conduct general business, including the AGM.

2. Confirm previous minutes and actions

There was a handover to Chris Ross, *Children in Scotland*, to run the membership of the CPG through the actions agreed at the previous meeting.

Chris confirmed that the previous minutes were circulated in advance of meeting. He asked for any concerns. None were raised.

He was pleased to say that a response had been received from Minister for Children and Young People, Maree Todd MSP in relation to a letter sent by the CPG following the meeting on the Minimum Age of Criminal Responsibility (Scotland) Bill. The letter has been circulated, and they are now considering a follow up.

A letter is to be sent to Minister for Children and Young People, Maree Todd MSP on the legacy of YOYP. He is currently waiting for final confirmation on this letter.

A paper was circulated around changes to the structure of the CPG, including meaningful involvement of children and young people, trialling evening meetings and alternative locations, accessible language and bringing in a group of children and young people as convenors, so as to avoid the weight falling on one set of shoulders.

There were no comments against this paper.

3. AGM

Kezia Dugdale MSP conducted the AGM for the group.

Kezia explained that she would be stepping down from parliament and therefore the CPG, creating a space for a Labour representative.

- Iain Gray MSP was nominated by Sara Lurie from The Fostering Network Scotland. This was seconded by Louise Slorance from RCPCH.
- The Membership agreed to re-elect Alison Johnstone MSP, Fulton MacGregor MSP and Alex Cole-Hamilton MSP and Brian Whittle MSP as co-convenors.
- Kezia Dugdale MSP asked for a formal note of thanks to the secretariat for their ongoing work on the CPG.
- The Membership agreed to re-elect the joint secretariat provided by YouthLink Scotland and Children in Scotland.

Kezia thanked the membership for their time and perseverance.

4. Panel Discussion

Kezia Dugdale MSP noted that she had been a convenor of the group since 2011. She remembered the last time Parliament discussed incorporating the UNCRC and was delighted that we are now at this point. However, she reminded attendees to remember the history, as greater progress could have been made in the past.

Kezia introduced the two speakers, who would speak for roughly 8 minutes on their work around incorporation of the UNCRC.

a. Helen Fogarty, Scottish Government

Helen is Head of the Children's Rights Unit at the Scottish Government. She was grateful and delighted to present about the incorporation of UNCRC into domestic law.

She reminded the CPG that this is the perfect time to incorporate the UNCRC into domestic law, as this year is the 30th anniversary of the UNCRC. Helen noted that many people in the room have been involved in campaigns for this incorporation, including MSYPs.

The Scottish Government want to ensure that children's rights are woven into policy law and decision making, so that those rights are known and can be defended in Scottish courts, where necessary. Helen outlined the timeline of the consultation; it will last 12 weeks and run until 14th August.

In terms of the timescale, there was a commitment from the First Minister herself that the incorporation would be achieved within this parliamentary session. It will be completed by the next elections in 2021. The substance of the consultation itself includes legal mechanisms and suggestions for embedding children's rights into public services, enabling compatibility and redress.

Which model is appropriate?

There are a whole variety of legal methods and it is for individual states to decide how to make children's rights real. In Scotland's case, the constitutional setting needs to be considered.

The major ways of incorporation are:

1. *Direct Incorporation*

This is the most well-known method and the most advocated by those in the children's rights sector. It is similar to the incorporation of the human rights act in the ECHR.

Advantages:

- The clarity it brings. This would mean that individuals or those working for public authorities can simply refer to the text of the international convention to identify the rights which form part of domestic law.
- Evidence suggests that in a number of countries that has directly incorporated the UNCRC, it has had a positive impact in providing a platform for the development of other legal and non- legislative measures.

Disadvantages:

- Legislative competence of parliament; would need to work through this with direct approach.
- Some aspects of the UNCRC relate to matters which are reserved to the UK Parliament. In the absence of a section 30 Order or similar provision extending competence, it will not be possible to include certain Articles or aspects of certain Articles of the UNCRC Language of the UNCRC: designed to be international and written in general terms.
 - Difficult to interpret.
 - Less certainty and difficult to enforce in the courts.

Example: Belgium. In the courts, when using UNCRC to make judgements, the rights were found not to be self-executing. If not written in domestic law in a way in which the courts could understand, they couldn't use it.

2. *Transposing*

This would involve looking at the language of the UNCRC and how it would work in a Scottish context but also to provide at least the level of protection that the UNCRC does.

Advantages:

- Gives more legal clarity.
- Beneficial when handling issues with devolution. Could carve them out or make amendments.

If Scottish Parliament want to go further than the UNCRC then they could do that, for example the Scottish hearing system goes beyond what is required in the UNCRC.

Disadvantages:

- Would not be exactly the same as the UNCRC.
- Once we start changing this, some people have raised questions about how we could ensure that the rights offer the same protection as the UNCRC.
- Requires time to develop for Scottish context.

3. *Human Rights Framework*

The First Minister's Advisory Group on Human Rights Leadership has recommended the creation of a new statutory human rights framework, which would bring all UN rights into one place. The advantage of this is that it would cover all rights, but Scottish Ministers want to move on UNCRC quickly and this wouldn't work in the timeframe.

Helen confirmed that the Scottish Government would be running events across Scotland over the summer, including events to make the consultation accessible to CYP.

Kezia Dugdale noted that the big questions will shape group discussions. Kezia was struck by the timescales. She asked if we have enough time and whether they are expecting a bill in the forthcoming legislative programme. Helen replied that work is well under way. The programme will be published in September and completed within this parliamentary session.

Kezia Dugdale welcomed Alison Johnstone MSP to the meeting.

b. Dr Kasey McCall Smith, The University of Edinburgh

Dr Kasey McCall Smith thanked the CPG for allowing her to come and speak.

Kasey noted that the Incorporation Advisory Group convened by Together (Scottish Alliance for Children's Rights) and the Children and Young People's Commissioner Scotland, of which she is a member, comes from a different perspective. They are international law experts and therefore have expertise on how treaties are directly incorporated in a domestic legal setting.

The concept of full incorporation demands direct incorporation. This has many advantages, for example, the rights remain comparable in UNCRC.

Kasey commented that the consultation paper shows confusion; it uses the word transposition incorrectly. This word has never been used to define international conventions and goes against all of her research findings. She suggested avoiding the use of the word transposition.

Implementation and incorporation are two different things.

The UNCRC framework is a trusted reference point across the world and in consideration of the basic needs of children. The UNCRC is a floor not a ceiling; governments must do more than pay lip service.

The UNCRC language overlaps with many human rights from other legislation. The draft Children's Rights Scotland Bill, written by the advisory group, is designed to ensure that no children are left behind.

There are 3 parts to the draft bill, and all are extremely necessary.

The first part is about prevention. The bill would make it unlawful for people not to take children's rights into account. This includes the optional protocols.

The second part is about enforcement; decisions will be decided by a court. This means that all relevant authorities will think before missteps are taken. Simply because rights are reinforced, does not mean children will line up to litigate.

The third part is about securing compatibility and promoting rights in Scotland. This provides an opportunity to make sure children's rights are ready from the beginning of incorporation. There must be sources that can aid in interpretation and children must be involved in the development. Without children's participation, this does not work.

Why is this the best approach?

It will promote a culture of children's rights across all levels. The First Minister claims that Scotland should meet the gold standard. Full incorporation is the only way to achieve that.

Kasey ended by highlighting that further information can be found in the draft discussion paper.

Kezia Dugdale asked for a round of applause for both speakers. Before breaking into groups, she asked if there were any questions for the speakers.

Amy Woodhouse thanked the advisory committee for all the work they had done. She highlighted that Helen had indicated that the main issue is around reserved matter. She asked how they would overcome this. Kasey replied that the advisory group had spent a lot of time on this with experts. They couldn't incorporate anything outwith the confidence. Their brief speaks to the limits of the Scottish Government. Further devolution will be taking place, so this means no need to go back over laws. They believe they have addressed the issue of anything outwith the confidence.

Kezia Dugdale noted that Wales and Scotland have differences in legislation. The Welsh act says exactly what is devolved, whilst in Scotland it says what is reserved. Kasey noted that the group's key advisor had helped to show the differences between Welsh and Scottish legislation, but they concluded that it would still be possible to incorporate in the way they had laid out in the draft bill.

5. Group discussions

CPG members split into small groups of around 8 for group discussions based round the following themes. Children in Scotland and YouthLink Scotland staff were appointed to scribe and feedback on the discussions.

Questions:

- a. How should Scotland take forward incorporation of the UNCRC?
- b. How can children's rights be embedded within public authorities?
- c. What additional non-legislative activities are needed to support Incorporation of the UNCRC?

Fulton MacGregor MSP joined the CPG during the group discussions.

Feedback from the group discussions:

Chris Ross, Children in Scotland

- Accessibility and complexity of the document. It is difficult for CYP and families to engage. Consultations with CYP will be done with organisations in the group.
- Support for direct incorporation model, because of the strength it gives.
- CRWIAs can add strength to legislation.
- Awareness raising is important, but especially with CYP.

Amy Woodhouse, Children in Scotland

- Helen Fogarty was in the group and reminded members that they don't have to be constitutional experts; any feedback is good. Feedback on key principles that are meaningful to them is especially welcome.
- Incorporation might mean that 16- and 17-year olds don't have to go straight into adult services.
- Parents as advocates on children's rights. There is no conflict between children's and parents' rights; rights are not a finite resource, or a pie cut up between children and parents.

Kevin Kane, YouthLink Scotland

- There was a consensus on the gold standard as mentioned by the First Minister.
- Why not direct incorporation? It would be aligned to international processes.
- The consultation is not a child friendly appropriate version.
- Onus should be on the Scottish Government to drive this forward.
- Children's rights awareness campaigns could be done right now.
- Use the CPG as a vehicle to get legal experts on board (maybe in September).
- More CYP should be involved.

Kezia Dugdale asked Sarah McDermott, the representative of the Children and Young People's Commissioner Scotland, why this was not their responsibility. Sarah

responded that they have done work with the advisory group. It is a Scottish Government consultation, so they must make it accessible to everybody.

Kezia asked if more can be done. Sarah stated that there was more to be done and this was hugely important. Members of the CPG are doing work towards this and she noted that they should join together and ask the same questions.

Emma Rogan, Children in Scotland

- Importance of CYP voices being involved in issues that impact them. There is a need for consistency and sharing of good practice between local authorities.
- Make sure space is made for CYP in processes and decision making.
- Resources are needed behind this: education campaigns and children's rights training, at the same standard as child protection training.
- Use voices from the children's sector at the CPG.

6. Agree Actions and Close

Kezia Dugdale thanked attendees for attending the AGM and final meeting of this parliamentary term.

Kezia asked who in the room was in policy making/advocacy. She noted that it was worthwhile going back to the 2014 Act. Lots of organisations at the CPG were involved in producing papers about UNCRC incorporation back then. Members should use some of the arguments from 5 years ago. She was optimistic that it will be achieved this time around.

Kezia wished the group luck in the future. This was the last meeting before summer, so she reminded members about the summer member's survey that will be circulated soon.

Cross Party Group Members thanked Kezia Dugdale for her work on the CPG over the last 8 years.

Actions:

- The Secretariat will prepare a paper for submission to the Scottish Government Consultation on Incorporation of the UNCRC summarising points made at this meeting.
- Secretariat to hold annual summer members survey.