

REPORT TO EDUCATION & CHILDREN'S SERVICES COMMITTEE – 26 AUGUST 2021

INCORPORATION OF UNCRC (UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD) INTO SCOTS LAW: UPDATE

1 Reason for Report / Summary

- 1.1 This report seeks to provide an update on the United Nations Convention on the Rights of the Child (UNCRC) incorporation into Scots Law.

2 Recommendations

Committee is asked to:

- 2.1 Acknowledge the current position with regards the incorporation of UNCRC into Scots Law and the associated opportunities and challenges and work currently underway in Aberdeenshire**
- 2.2 Note and comment upon the “next steps” identified at the end of this report**
- 2.3 Agree to submit this report to Full Council given its cross cutting nature and also arrange workshops for local Councillors at an area level.**

3 Purpose and Decision Making Route

- 3.1 The UNCRC is an international treaty, signed by UK in 1991. The UNCRC is viewed as the ‘gold standard’ for children’s rights. It covers all aspects of a child’s life and sets out the civil, political, economic, social and cultural rights that all children everywhere are entitled to. It also explains how adults and governments must work together to make sure all children can enjoy all their rights.
- 3.2 The UNCRC can be broadly broken down into 3 areas:
- Protection (from harm and exploitation)
 - Participation (an active participant in own lives and society)
 - Provision (education, health care, shelter, nutrition)
- 3.3 Since 1991, the UK has been obliged to give effect to the UNCRC as part of its international treaty obligations. As a result of this, much of our children’s legislation is already compatible with UNCRC. In particular, the focus in most children’s legislation on the best interests of the child as paramount is a well settled feature of our law and is a cornerstone of UNCRC.

- 3.4 The Scottish Government has been obliged to actively consider UNCRC in its decision making since the coming into force of the Children & Young People

(Scotland) Act 2014. As part of these duties, Scottish Government carry out children's rights and wellbeing impact assessments to assess the impact of all new legislation on children and young people.

- 3.5 In April 2019 the Scottish Government indicated its intent to take further steps to recognise UNCRC, by incorporating UNCRC directly into Scots Law. The policy intent of incorporation is to

“revolutionise the way we listen to children and take their rights into account. By directly incorporating the UNCRC into Scots law, and to the maximum extent possible under the current powers of the Parliament, children's rights will mean children and young people are involved in the decisions that affect their lives and that children's rights are always respected, protected and fulfilled by public authorities. Where necessary, children will be able to go to courts to enforce their rights. The Bill is a significant step towards a future based on tolerance, equality, shared values and respect for the worth and human dignity of all people.”

- 3.6 There was significant support for the Bill during the public consultation, with most organisations working with children and young people agreeing that incorporation was essential to further the progress already made in having a society which respects and listens to children and young people.

The Bill

- 3.7 The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill was passed on 16 March 2021. It was to have received Royal Assent on in mid-April and was due to come into force 6 months after Royal Assent (October 2021).
- 3.8 The UK government announced on 13 April 2021 that it was referring the legislation to the Supreme Court, on the basis that some aspects of the legislation exceed the Scottish Parliament's devolved powers in some limited respects.
- 3.9 Although this will inevitably delay the giving of Royal Assent, it may not ultimately significantly delay implementation of the essential elements of the legislation which are not being challenged; that will depend on the timetable for the Supreme Court to consider the case. At this stage, there is no reason to believe that it will not at some point come into force as it relates to Scottish public authorities. This is because the UK government's position is that it has no objection to the policy content of the Bill, only to its potential to limit UK decision making in Scotland.
- 3.10 The Bill seeks to directly incorporate the UNCRC into Scots law with the aim of delivering a fundamental shift in the way children's rights are protected, fulfilled,

and realised in Scotland. This legislation will have significant implications for local authorities across the breadth of services and areas that interface—directly and indirectly—with children, young people, and families.

- 3.11 It is vital that UNCRC should not be seen as something which is only relevant to, or the sole responsibility of Education and Children’s Services. Rather it is relevant to and the responsibility of all Council services and indeed all public bodies. It is likely there will be significant implications for such corporate matters as budget setting, as well as for any Service providing services which may affect children such as Housing and Planning, for example.
- 3.12 The incorporation of UNCRC provides a strong legacy from the Year of Young People in 2018 and the 30th anniversary of UNCRC (2019). It builds on a solid foundation of 30 years of experience in developing Scotland’s overall approaches to children’s rights.
- 3.13 The Bill sets out that public authorities must not act in a way that is incompatible with the UNCRC. Children, young people and their representatives will be able to use the courts to enforce their rights if they feel they are not being met. The Bill intends to ensure that there is a proactive culture of everyday accountability for children’s rights across public services in Scotland.
- 3.14 Particularly relevant duties within the Bill include;
- **Duty not to act incompatibly with the UNCRC** – placed on all those delivering “functions of a public nature” include functions carried out “under a contract or other arrangements with a public authority”. This will include non governmental funding contract
 - **Children’s Rights Scheme** – Scottish Ministers to publish an annual plan and report on steps taken to further the UNCRC, including children’s participation, raising awareness, child rights budgeting, complaints mechanisms, child rights impact assessment and more
 - **Public Body Reporting** – listed public bodies to report on steps taken and steps planned to further UNCRC ***cross cutting all services***
- 3.15 In total, there are 54 Articles within the UNCRC and Children’s Rights are defined as universal, unconditional, inalienable, inherent and indivisible.

Impact for the Council

- 3.16 This is a high-profile piece of legislation and it is expected that there will be a great deal of attention paid to implementation across the country. The Children & Young People Commissioner Scotland (CYPCS) has a particular interest in monitoring how public authorities will implement UNCRC. This is part of their role. Children, young people and parents are also likely to be aware of the implementation of UNCRC.

- 3.17 Although there is widespread support for the idea of incorporation, this will not come without challenges. It is therefore important for the Council to proactively consider its readiness for implementation, and to set up appropriate systems for assessing the impact of both current and new policies and practices for compatibility with UNCRC, in the same way that it already does for equality, fairness and human rights.
- 3.18 It is important that UNCRC is not viewed solely as a piece of legislation that affects Education and Children's Services. The Council will have to exercise all of its powers and duties in a way that is compatible with UNCRC across all Services.
- 3.19 Legislation in Scotland relating to children is by and large already likely to be compatible with UNCRC. It is also already embedded in areas of child care practice. For example, the GIRFEC model is built around UNCRC.
- 3.20 Notwithstanding this, how the Council implements its powers and duties in these areas will still need to be considered to ensure compatibility e.g. for looked after children, the law already states that children's views must be sought. It will however still be important to consider how we implement that duty, to ensure that we are fulfilling it in a way which is compatible with UNCRC. Another example is recent work done by the CYPCS in relation to secure accommodation. The extent to which young people's views were sought was part of their investigation. This goes beyond compliance with the letter of the law and is about best practice and culture in seeking the views of children and young people.
- 3.21 There are two main areas where work is likely to be needed to ensure compatibility. These are relevant to all of the Council's functions. These are also probably the two areas where implementation is likely to have the most beneficial effect in terms of advancing the embedding of a children's rights culture:
- Participation and engagement of children and young people - this will impact on a huge range of the Council's functions – from processes where the views of individual children are sought (e.g. a pupil in relation to their additional support needs), to public consultation and engagement exercises involving the whole community (e.g. planning policies). There is already some guidance on this in relation to some functions, for example for looked after children and children with additional support needs. In relation to consultation, there is already guidance issued by the CYPCS in relation to participation of children and young people in statutory school consultations and this may be a useful starting point when considering participation and engagement in a wider sense across all Services.
 - Ensuring that the best interests of children are considered when making decisions – this is relevant both for decisions affecting individual children but also for decisions which affect or are relevant to the whole population of children and young people in Aberdeenshire. In many cases decisions may affect the whole population, not just children and young people. However,

the Act now requires us to separately consider the impact on children and young people. This is likely to require a form of Children's Rights and Wellbeing Impact Assessment. (Aberdeenshire council have already incorporated this into our Equality and Fairness Impact Assessment processes.)

3.22 Apart from services which are delivered specifically for children and young people, it is not difficult to identify areas where more specific assessment of the impact on children and young people will likely be required. For example:

- Decisions about use of public space
- Transport
- Culture
- Recreation
- Planning – how space is used and developed and whether the needs of C&YP are factored into that
- Housing, including evictions and Anti-Social Behaviour
- Events
- Climate change
- Health

3.23 Resources, both in terms of funding and staff time, have been identified as a significant pressure that will need to be addressed in order that public bodies can meaningfully and successfully implement the UNCRC at a local level and some parts of the public sector will be more prepared to implement this than others, however there will be significant challenge in ensuring the entire system is set up in time for commencement. The reality of the legislation is such that the *entire* public sector must understand the legislation and be prepared to comply with new duties.

3.24 There are issues around workforce capacity and availability to support implementation with a potential commencement date in six months, particularly in the context of the significant challenges of Covid-19. Staff are busy responding to increasing familial crises, dealing with an increase in demand for welfare support, administering business grants and Free School Meal payments, and playing a pivotal role in the vaccine roll-out. COSLA and Local Government partners have been clear that comprehensive and accessible guidance, which should be produced in partnership with all stakeholders, will be integral to ensuring that public bodies fully understand and are prepared for Incorporation of the UNCRC. It is imperative that the Local Government workforce and its elected members have access to clearly defined examples of what good practice looks like. Similarly, drawing on and sharing existing knowledge and practice at the local level will be a valuable resource.

3.25 Education Scotland is providing training for local authorities and Regional Improvement Collaboratives to build further capacity in the system to prepare for implementation. To date, much of this is focusing on education staff and consideration requires to be given to the wider workforce.

Aberdeenshire Position

- 3.26 Within our Children's Services Planning arrangements in Aberdeenshire, we have a thematic group working closely on developing our partnership approach to Children's Rights and UNCRC. This group reports to the GIRFEC Strategic Group and is due to present an update on its progress to the GIRFEC Strategic Group meeting in June 2021.
- 3.27 Aberdeenshire is already in a strong position. In 2018 to celebrate the Year of the Young Person, we developed our very own Children and Young People's Charter which all services should be aware of and should be using in their work. This will provide a very strong platform on which to build as we move to fully embed children's rights and UNCRC in our work as an organisation.
- 3.28 As part of our contribution to the Children's Services Planning Partnership, the council has incorporated Children's Rights Reporting as an integrated component of Aberdeenshire's annual Children's Services Plan report and has explicitly integrated Children's Rights within the Children's Services Plan. To support understanding and responsibilities around the UNCR, a GIRFEC module has also been developed on Children's Rights/Participation for council officers and partners.
- 3.29 Aberdeenshire council also demonstrates a strong commitment to children & people's **participation and engagement** leading to tangible improvement activity through forums including Youth Voice and Participation Platforms.
- 3.30 We also have a strong engagement with the **Rights Respecting Schools Programme** which develops the principles of equality, dignity, respect, non-discrimination and participation. Schools who participate have reported a positive impact on school ethos, improved relationships and well-being leading to better learning and behaviour. Young people have learned new skills in how to respect themselves and others and how to actively participate in the life of their school, their community and in global action.
- 3.31 In 2019, as a council, we also implemented wellbeing/rights guidance for all committee reporting and a revised Integrated Equalities Impact Assessment incorporate Children's Rights & Wellbeing one of the five assessment impact areas alongside Equalities and Fairer Duty Scotland, Climate Change and Sustainability, Health and Wellbeing and Town Centre First.
- 3.32 Within Education and Children's Services, a Quality Improvement Manager (Kay MacDonald) has been identified as our strategic lead officer and has been tasked with pulling together key colleagues from across the Council to develop Aberdeenshire Council's approach to driving UNCRC forward within ECS. It is recognized that cross Council work and input will be required over the coming months to ensure all colleagues in all directorates are aware of their responsibilities.
- 3.33 Initial training sessions have been arranged for Aberdeenshire school staff, organized at a local authority and Northern Alliance level, led by Education Scotland, local authority and Northern Alliance colleagues. There are also "wee

blethers” under development for young people to allow them to reflect on the incorporation of UNCRC and what this means to them. These will all be offered in June.

- 3.34 Given the impact UNCRC will have on schools, there will be a focus on incorporation at forthcoming Area Days for Head Teachers, asking them to consider both their self-evaluation and leadership of change, ensuring the vision, values and aims of all our schools reflect the aspirations of UNCRC. A presentation pack is also being developed that will be issued to all schools to share on the first day of the new school session in August alongside the annual child protection and GIRFEC updates.

Next Steps

- 3.35 In order to be prepared for implementation, the following actions are considered necessary:
- Identifying relevant lead officers from all services to lead the Council-wide incorporation of UNCRC. **It is important that incorporation is not seen as a legal or ECS issue. The purpose is to encourage and ultimately force a change in culture and this needs to be considered when identifying lead officers in the Council;**
 - Awareness raising and training for staff and Elected Members with the following aims:
 - Assessing how compliant current policies and practices are
 - Equipping staff and Elected Members with information about UNCRC and what it means in practice for the Council
 - Bringing about any necessary changes in practice and culture relating to participation/engagement with children and young people;
 - Developing appropriate models to ensure active participation and engagement with children and young people across all of the Council’s functions;
 - Developing an appropriate reporting format, to comply with the reporting requirements set out in the Bill

4 Council Priorities, Implications and Risk

- 4.1 UNCRC is cross cutting and as such should impact positively on all three Council pillars and all six priorities.

Pillar	Priority
Our People	Education Health & Wellbeing
Our Environment	Infrastructure Resilient Communities
Our Economy	Economy & Enterprise Estate Modernisation

4.2 This report helps deliver against all priorities outlined in the Aberdeenshire Children’s Services Plan 2020 – 2023.

4.3 The table below shows whether risks and implications apply if the recommendations are agreed.

Subject	Yes	No	N/A
Financial		x	
Staffing			
Equalities and Fairer Duty Scotland	x		
Children and Young People’s Rights and Wellbeing	x		
Climate Change and Sustainability		x	
Health and Wellbeing		x	
Town Centre First		x	

4.4 Integrated Impact Assessment has been carried out as part of the development of the proposals set out above. It is included as **Appendix 1** and UNCRC will demonstrate a number of positive impacts for children and young people once incorporated into Scots’ Law.

4.5 The following Risks have been identified as relevant to this matter on a Corporate Level:

- *ACORP002 Changes in government policy, legislation and regulation*

The following Risks have been identified as relevant to this matter on a Strategic Level:

5 Scheme of Governance

5.1 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and had no comments to make and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

5.2 The Committee is able to consider this item in terms of Section E.10.1.1 of the List of Committee Powers in Part 2A of the Scheme of Governance.

Laurence Findlay, Director of Education & Children’s Services

Report prepared by Leigh Jolly, Head of Children’s Services & Laurence Findlay,
Director of Education & Children’s Services
Date 27 May 2021

List of Appendices

Appendix 1 – Integrated Impact Assessment

Aberdeenshire Council

Integrated Impact Assessment

UNCRC

Assessment ID	IIA-000039
Lead Author	Laurence Findlay
Additional Authors	Christine McLennan
Service Reviewers	Christine McLennan
Subject Matter Experts	Lynne Gravener, Christine McLennan
Approved By	Caran Richardson
Approved On	Thursday August 12, 2021
Publication Date	Thursday August 12, 2021

1. Overview

This document has been generated from information entered into the Integrated Impact Assessment system.

UNCRC report to ECS Committee

During screening 5 of 10 questions indicated that detailed assessments were required, the screening questions and their answers are listed in the next section. This led to 2 out of 5 detailed impact assessments being completed. The assessments required are:

- Childrens' Rights and Wellbeing
- Equalities and Fairer Scotland Duty

In total there are 15 positive impacts as part of this activity. There are 0 negative impacts, all impacts have been mitigated.

A detailed action plan with 1 points has been provided.

This assessment has been approved by caran.richardson@aberdeenshire.gov.uk.

The remainder of this document sets out the details of all completed impact assessments.

2. Screening

Could your activity / proposal / policy cause an impact in one (or more) of the identified town centres?	No
Would this activity / proposal / policy have consequences for the health and wellbeing of the population in the affected communities?	No
Does the activity / proposal / policy have the potential to affect greenhouse gas emissions (CO2e) in the Council or community and / or the procurement, use or disposal of physical resources?	No
Does the activity / proposal / policy have the potential to affect the resilience to extreme weather events and/or a changing climate of Aberdeenshire Council or community?	No
Does the activity / proposal / policy have the potential to affect the environment, wildlife or biodiversity?	No
Does the activity / proposal / policy have an impact on people and / or groups with protected characteristics?	Yes
Is this activity / proposal / policy of strategic importance for the council?	Yes
Does this activity / proposal / policy reduce inequality of outcome?	Yes
Does this activity / proposal / policy have an impact on children / young people's rights?	Yes
Does this activity / proposal / policy have an impact on children / young people's wellbeing?	Yes

3. Impact Assessments

Children's Rights and Wellbeing	No Negative Impacts Identified
Climate Change and Sustainability	Not Required
Equalities and Fairer Scotland Duty	No Negative Impacts Identified
Health Inequalities	Not Required
Town Centre's First	Not Required

4. Childrens' Rights and Wellbeing Impact Assessment

4.1. Wellbeing Indicators

Indicator	Positive	Neutral	Negative	Unknown
Safe	Yes			
Healthy	Yes			
Achieving	Yes			
Nurtured	Yes			
Active	Yes			
Respected	Yes			
Responsible	Yes			
Included	Yes			

4.2. Rights Indicators

UNCRC Indicators upheld by this activity / proposal / policy	<p>Article 1 - Definition of a child</p> <p>Article 2 - Non-discrimination</p> <p>Article 3 - Best interests of the child</p> <p>Article 4 - Protection of rights</p> <p>Article 5 - Parental guidance and a child's evolving capacities</p> <p>Article 6 - Life, survival and development</p> <p>Article 7 - Birth registration, name, nationality, care</p> <p>Article 8 - Protection and preservation of identity</p> <p>Article 9 - Separation from parents</p> <p>Article 10 - Family reunification</p> <p>Article 11 - Abduction and non-return of children</p> <p>Article 12 - Respect for the views of the child</p> <p>Article 13 - Freedom of expression</p> <p>Article 14 - Freedom of thought, conscience and religion</p> <p>Article 15 - Freedom of association</p> <p>Article 16 - Right to privacy</p> <p>Article 17 - Access to information; mass media</p> <p>Article 18 - Parental responsibilities and state assistance</p> <p>Article 19 - Protection from all forms of violence</p> <p>Article 20 - Children deprived of a family</p> <p>Article 21 - Adoption</p> <p>Article 22 - Refugee children</p> <p>Article 23 - Children with disabilities</p> <p>Article 24 - Health and health services</p> <p>Article 25 - Review of treatment in care</p> <p>Article 26 - Social security</p> <p>Article 27 - Adequate standard of living</p> <p>Article 28 - Right to education</p> <p>Article 29 - Goals of education</p> <p>Article 30 - Children of minorities / indigenous groups</p> <p>Article 31 - Leisure, play and culture</p> <p>Article 32 - Child labour</p> <p>Article 33 - Drug abuse</p> <p>Article 34 - Sexual exploitation</p> <p>Article 35 - Abduction, sale and trafficking</p> <p>Article 36 - Other forms of exploitation</p> <p>Article 37 - Inhumane treatment and detention</p> <p>Article 39 - Recovery and rehabilitation of child victims</p> <p>Article 40 - Juvenile justice</p> <p>Article 42 - Knowledge of rights</p>
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4.3. Positive Impacts

Impact Area	Impact
Achieving	By incorporating UNCRC, we are ensuring that all young people are provided with an education and able to achieve
Active	By incorporating UNCRC, we ensure young people are active participants in their own lives and society and we provide them with opportunities for active participation
Healthy	By incorporating UNCRC we ensure young people have access to health care, shelter and nutrition (Healthy)

Impact Area	Impact
Included	By incorporating UNCRC, all young people should be active participants in their own lives and included in all decision made about them
Nurtured	Nurtured - By incorporating UNCRC we ensure young people are protected and are provided with health care, shelter and nutrition
Responsible	By incorporating UNCRC we ensure young people are supported to make the right choices for themselves in their lives and are encouraged to play an active role in society
Respected	By incorporating UNCRC we ensure young people are active participants in society and their views and listened to, respected and taken into consideration
Safe	By incorporating UNCRC we ensure all children and young people are protected from harm and exploitation and are provided with health care, shelter and nutrition. These are all essential in ensuring young people are safe

4.4. Evidence

Type	Source	It says?	It Means?
Other Evidence	International and national documentation	The UNCRC is an international treaty signed by the UK in 1991. it sets out the civil, political, economic, social and cultural rights that all children are entitled to	Once incorporated into Scots' Law, there will be a shift in how children's rights are protected, fulfilled and realised which will impact on all Council services

4.5. Accounting for the Views of Children and Young People

In Aberdeenshire we already have a Children and Young People's Charter which was developed by young people themselves. This provides a strong platform for us to build upon.

4.6. Promoting the Wellbeing of Children and Young People

UNCRC will have an impact on all Council services who will be required to ensure that all young people can enjoy their rights in line with the three areas of protection, participation and provision

4.7. Upholding Children and Young People's Rights

UNCRC is fundamental to Children's Rights

4.8. Overall Outcome

No Negative Impacts Identified.

UNCRC will ensure that all Council services take appropriate cognisance of children's rights in their work which should advance children and young people's rights in Aberdeenshire across all service areas.

5. Equalities and Fairer Scotland Duty Impact Assessment

5.1. Protected Groups

Indicator	Positive	Neutral	Negative	Unknown
Age (Younger)	Yes			
Age (Older)		Yes		
Disability	Yes			
Race	Yes			
Religion or Belief	Yes			
Sex	Yes			
Pregnancy and Maternity		Yes		
Sexual Orientation	Yes			
Gender Reassignment	Yes			
Marriage or Civil Partnership		Yes		

5.2. Socio-economic Groups

Indicator	Positive	Neutral	Negative	Unknown
Low income		Yes		
Low wealth		Yes		
Material deprivation		Yes		
Area deprivation		Yes		
Socioeconomic background		Yes		

5.3. Positive Impacts

Impact Area	Impact
Age (Younger)	The UNCRC should have a significant impact on all children and young people, allowing them to better enjoy their rights
Disability	UNCRC is universal and as such protects the rights of ALL children and young people
Gender Reassignment	UNCRC is universal and as such protects the rights of ALL children and young people
Race	UNCRC is universal and as such protects the rights of ALL children and young people
Religion or Belief	UNCRC is universal and as such protects the rights of ALL children and young people
Sexual Orientation	UNCRC is universal and as such protects the rights of ALL children and young people
Sex	UNCRC is universal and as such protects the rights of ALL children and young people

5.4. Evidence

Type	Source	It says?	It Means?
Other Evidence	International and National documentation	UNCRC is an international treaty, designed to cover all aspects of a child's life and sets out the rights which all young people are entitled to	UNCRC, once incorporated, will outline how adults and services must work together to ensure all children and young people can enjoy their rights.

5.5. Engagement with affected groups

Aberdeenshire already has a Children and Young People's Charter, developed by young people themselves and this provides a strong platform on which to build as we incorporate UNCRC

5.6. Ensuring engagement with protected groups

The CYP Charter was developed by a range of young people from across Aberdeenshire, including those with protected characteristics

5.7. Evidence of engagement

As above

5.8. Overall Outcome

No Negative Impacts Identified.

UNCRC is all about upholding, protecting and advancing the rights of ALL children and young people, including those with protected characteristics

5.9. Improving Relations

We will continue to promote active participation with young people across Aberdeenshire, both at a local level and strategically.

5.10. Opportunities of Equality

UNCRC should ensure that all Council services allow ALL children and young people to play their part, have their views and voices heard and this should allow equality of opportunity to be advanced

6. Action Plan

Planned Action	Details
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Planned Action	Details
Action Plan in place for schools. Training provided for staff and materials available to support	<p>Lead Officer Kay MacDonald</p> <p>Repeating Activity Yes</p> <p>Frequency Ongoing</p> <p>Duration Ongoing</p> <p>Expected Outcome Raised awareness and understanding among school staff</p> <p>Resource Implications Staff time</p>