

United Nations Convention On The Rights Of The Child (Incorporation) (Scotland) Bill

(As amended at Stage 2)

Revised Financial Memorandum

Introduction

1. As required under Rule 9.7.8B of the Parliament's Standing Orders, this revised Financial Memorandum is published to accompany the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill, as amended at Stage 2.

2. The following other accompanying documents are published separately:

- revised Explanatory Notes (SP Bill 80A–EN)

3. This revised Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill as amended at Stage 2. It does not form part of the Bill and has not been endorsed by the Parliament.

Purpose of the Bill

4. Delivering the rights of children and young people, as enshrined in the United Nations Convention on the Rights of the Child (UNCRC), is fundamental to making children's rights real and Scotland the best place in the world to grow up. One of the most fundamental tests of success in respecting and protecting those rights is whether they are part of the day-to-day lived experience of every child and young person in Scotland.

5. Scotland has a strong track record on building respect, protection and fulfilment of children's rights into law, policy and practice. Since ratifying the UNCRC in 1991, the UK has been under an obligation to comply with it. Scotland has led the way on children's rights. There is a strong track record which predates even the creation of the UNCRC in 1989, such as Scotland's pioneering children's hearings system, which became operational in 1971. Children's rights are embedded in the Scottish Government's National Performance Framework and in how public services are delivered through specific pieces of legislation and policy such as the Children and Young People (Scotland) Act 2014 and the Getting it Right for Every Child approach. The Scottish Government respects, protects and fulfils children's rights to help deliver the collective ambition that children grow up loved, safe and respected, and so that they reach their full potential.

6. The Bill will require public authorities to act compatibly with the rights and requirements of the UNCRC and Optional Protocols 1 and 2 incorporated by the Bill so far as is possible within the powers of the Scottish Parliament. The Scottish Government believes that the Bill will be a catalyst for change in all aspects of public life, supporting full realisation of all children's rights in practice.

7. The Bill will ensure that there is a proactive culture of everyday accountability for children's rights across public services in Scotland. It will ensure that public authorities are required to take proactive steps to ensure compliance with children's rights in their decision-making and service delivery. This will mean that the structures within which decisions are made in Scotland must enable children and young people to be heard and take an active role in their own lives and communities.

8. The Bill will mean that children, young people and their families will experience public authorities consistently acting to uphold the rights of all children in Scotland. Bodies exercising functions of a public nature in Scotland, including the Scottish Ministers, will be legally obliged to respect children's rights and rights-holders will be able to challenge public authorities in the courts for breaches of their rights. In relation to both which bodies are captured and how those bodies exercise their functions, the duty applies only to the extent permissible within the limits of the Scottish Parliament's legislative competence. In recognition of the additional barriers that are faced by children and young people realising their rights and accessing justice, specific measures are provided for in the

Bill which remove barriers and require the proactive realisation of children's rights in practice.

9. The Scottish Ministers recognise the important role that the Commissioner for Children and Young People plays in ensuring the highest standards for children's rights in Scotland. The Scottish Government recognises the responsibility it holds to ensure justice is accessible for children and young people and the additional barriers faced by children and young people in accessing justice. Further, the Scottish Government recognises the strategic importance in ensuring that incompatible legislation in Scotland is identified and remedied as soon as possible. As such, the Bill makes provision supplementing the current powers of the Commissioner and enabling the Commissioner to raise proceedings under the Bill. This is a new form of public interest litigation and will give the Commissioner similar powers in respect of the incorporated elements of the UNCRC as the Equality and Human Rights Commission has under the Equality Act 2006 in respect of the European Convention on Human Rights. In recognition of the strategic nature of the Commissioner's role, the Bill provides that no award of damages may be made to the Commissioner where the Commissioner instigates or intervenes in litigation in accordance with this power. The Commissioner is also given functions to intervene where the court is considering whether to make a strike down declarator or incompatibility declarator.

10. The Bill was amended at stage 2 to give the same powers to the Scottish Commission for Human Rights (SHRC) to raise, and intervene in, proceedings under the Bill in the same way as the Commissioner for Children and Young People. This recognises the distinct but complementary role which the SHRC plays as Scotland's principal UN-accredited National Human Rights Institution in promoting awareness, understanding and respect for all human rights, including the rights of children.

11. The Bill repeals Part 1 of the Children and Young People (Scotland) Act 2014, which places a requirement on certain public authorities to report every three years on what steps it has taken in that period to secure better or further effect within its areas of responsibility of the UNCRC requirements, and replaces it with a similar requirement on the same public authorities to report every three years on what steps they have taken to comply with the new compatibility duty. The requirement for those public authorities to continue to report how they give effect to children's rights

remains an important mechanism in ensuring that children's rights are given full effect in practice.

12. The Bill will require the Scottish Ministers to publish a Children's Rights Scheme to set out what arrangements it has, or will have in place, to comply with the compatibility duty. The Bill will also require the Scottish Ministers to review the Scheme and report on its operation every year. The Scheme may include arrangements for the Scottish Ministers to:

- ensure that children are able to participate in the making of decisions that affect them,
- raise awareness of and promote the rights of children,
- consider the rights of children in the Scottish Government's budget process,
- ensure that their actions contribute to any national outcome for children determined by them under Part 1 of the Community Empowerment (Scotland) Act 2015,
- prepare child rights and wellbeing impact assessments.

13. The provisions in relation to the Children's Rights Scheme will ensure that Scottish Ministers are not only accountable for their actions in relation to the compatibility duty under the Bill, but that they are accountable for planning and reporting on how they will fulfil the rights and obligations under the Bill in practice. The Scottish Ministers will also be required to carry out a child rights and wellbeing impact assessment in respect of provisions of primary and secondary legislation and certain decisions of a strategic nature that relate to the rights and wellbeing of children. The purpose of such an impact assessment is to consider the likely effects of the provision or decision on children's rights and wellbeing and so inform the process of making the legislation or the decision.

Implementation Programme

14. Building on this, the Scottish Government will develop an implementation programme covering three years to ensure that the Bill's duties are fulfilled with children's rights being embedded in decision-making at all levels in public services.

15. **Leadership** – The Scottish Government is fully committed to ensuring that accessible guidance and training is developed as part of an implementation programme in support of the Bill and for public authorities to support preparation and planning in advance of commencement of the Bill. This will be supported by a central implementation team within the Scottish Government who will be dedicated to coproducing and delivering effective guidance and training with public authorities and the third sector so that it best meets the needs of practitioners, and the rights of the children and young people they serve. The Scottish Government will ensure that an appropriate governance structure provides collective leadership to the implementation programme. The central implementation team will also be responsible for delivery of the Scottish Government’s Children’s Rights Scheme. The Scottish Government will continue to make Child Rights and Wellbeing Impact Assessment guidance and templates freely available so partners in the public sector and the third sector can assess how their policy and practice impacts on children’s rights and wellbeing.

16. **Empowering children to claim their rights** – Ensuring that children, young people and their families can claim their rights is central to delivering a Scotland where human rights are made real. As set out in the Progressing Children’s Human Rights Action Plan 2018-2021, children’s rights awareness-raising and children and young people’s participation are two of the strategic priorities to which the Scottish Government is already committed. The Scottish Government will make available a fund of £250,000 for awareness-raising in each of the three years of the implementation programme, with a commitment to increase funding to enable the participation of children and young people in decision-making in public services by £100,000 in each year for the same period. The awareness-raising activities aim to support children and young people across Scotland to be human rights defenders and challenge breaches of their and others’ rights. The fund for participation will look to provide a sustainable approach to the strategic participation of children and young people in decision-making, and to enable the voices of those children and young people who are seldom heard to be listened to. A social marketing campaign, at a cost of £200,000, will also be developed in the second year of the programme and delivered in the third year. This campaign will aim to raise the profile and support for children’s rights across Scottish society.

17. **Embedding children’s rights in public services** – The Scottish Government recognises the vital role that public services play in

delivering for children, young people and their communities. To ensure that public services are appropriately supported in delivering the step-change in respecting, protecting and fulfilling children's rights that this Bill seeks to deliver, the Scottish Government will create a fund of £835,000 over two years to support the delivery of this implementation.

18. The fund will provide flexibility for an innovative implementation programme that gives the public sector access to the expertise of the third sector and the central implementation team. This fund will include a design phase to listen to children, young people and their families about what will make a difference to their experience of rights-respecting public services. Similarly, as part of the design phase, public bodies will also be engaged on their priorities for fulfilling their duties. This approach will enable public authorities to tailor implementation activities to best meet the rights of the children and communities they serve. £85,000 will be made available in the first year for the design phase. The fund will deliver capacity-building and awareness-raising activities to practitioners in public services in Scotland. The fund will also be used to provide intensive support to senior leaders in public services to take proactive steps to embed children's rights in their organisations and communities. The fund will also support public services to consider how to progressively realise the rights of children by utilising available resources to the maximum extent. £250,000 will be made available in the first year of the programme, with £500,000 following in the second.

19. In addition to the fund to embed children's rights, the Scottish Government is committed to refreshing the Getting it right for every child (GIRFEC) policy and practice guidance. The UNCRC is the foundation of GIRFEC. Accordingly, the upcoming practice guidance will reflect the incorporation of the UNCRC and will continue to promote children's rights, including as a core element of good practice. This refreshed guidance will provide organisations and practitioners with confidence, clarity and practical support to deliver GIRFEC, underpinned by children's rights at every level. This guidance is being developed in partnership with delivery partners and stakeholders including children, young people and parents. Engagement with key practitioners and stakeholder networks is already underway including health, education, social work, and leadership forums.

20. The table below provides an indicative estimate of how costs will arise over the three-year implementation period. This will be reviewed ahead of delivery to ensure that the programme provides value for money.

Given that the duties will be commenced by regulations, the nomenclature of “Year X” has been used rather than specific financial years. There will be an inflationary impact on these figures depending on the date of commencement.

Table 1				
Summary of Implementation Programme Costs				
Years 1-3				
Empowering children to claim their rights	Year 1	Year 2	Year 3	Subtotal
Children’s rights awareness-raising with children, young people and their families	£250,000	£250,000	£250,000	£750,000
Increased funding to enable the participation of children and young people in decision-making in public services	£100,000	£100,000	£100,000	£300,000
Social marketing campaign to raising awareness and support for children’s rights	£0	£50,000	£150,000	£200,000
Embedding children’s rights in public services	Year 1	Year 2	Year 3	Subtotal
Co-design of an innovative implementation programme based on the experiences of children and families,	£85,000	£0	£0	£85,000

and the priorities of and public bodies				
Delivery of capacity-building and awareness-raising for practitioners and senior leaders in public services	£250,000	£500,000	£0	£750,000
Totals	£685,000	£900,000	£500,000	£2,085,000

Costs on the Scottish Administration

21. The costs to deliver the implementation programme will be borne by the Scottish Government. In addition, the Scottish Government will refocus existing resources to provide for the costs of staffing a central implementation team, operation of the Children’s Rights Scheme, and delivery of Child Rights and Wellbeing Impact Assessments as required by the Bill.

22. Based on published research¹ about the impact of UNCRC incorporation internationally and the use of human rights legislation in Scotland, a small increase in the amount of litigation faced by public bodies is anticipated; however, the Scottish Government will keep this under review.

23. Complying with the duties in the Bill may result in one-off costs for other authorities in the Scottish Administration, relating to updating training materials, reporting procedures and guidance. These minimal costs should be accommodated within the regular review and update processes. Costs to the Scottish Courts and Tribunal Service of changes to their IT system, where required, will be kept under review. As noted above, a fund will be provided to support public services to embed children’s rights in their decisions, policies and practices to ensure their duties under the Bill can be fulfilled. If a public authority identifies an issue of compliance in respect of

¹ “The Use of Human Rights Legislation in the Scottish Courts” <https://www2.gov.scot/Publications/2004/11/20181/45873> and “The UN Convention on the Rights of the Child: A Study of Legal Implementation in 12 Countries” <https://www.unicef.org.uk/publications/child-rights-convention-2012-report/>

a particular policy or practice, the central implementation team will offer support and policy advice as appropriate.

Costs on Local Authorities

24. Local authorities in Scotland are already under a duty under Part 1 the Children and Young People (Scotland) Act 2014 to report every three years on what steps they have taken to secure better or further effect within its areas of responsibility of the UNCRC requirements. Complying with the duties in the Bill may result in one-off costs for local authorities relating to updating training materials, reporting procedures and guidance. These minimal costs should be accommodated within the regular review and update processes.

25. As noted above, a fund will be provided to support local authorities and other public services to embed children's rights in their decisions, policies and practices to ensure their duties under the Bill can be fulfilled. If a local authority identifies an issue of compliance in respect of a particular policy or practice, the central implementation team will offer support and policy advice as appropriate.

Costs on other Bodies, Individuals and Businesses

26. The Commissioner for Children and Young People intends to use the power to raise proceedings as a measure of last resort, and so the volume of cases generated by such public interest litigation is expected to be small. It is not anticipated that these powers will result in a material cost and, where it does create costs, the Commissioner has indicated that this can be provided for through re-prioritisation of existing resources. Similarly, it is not anticipated that the SHRC will require to use the powers under the Bill routinely. As the amendments at stage 2 represented an expansion of the SHRC's powers they are expected to entail additional costs. Indicative costs range between £100,000 and £150,000 per annum. Funding of the SHRC is a matter for the Scottish Parliamentary Corporate Body (SPCB) and any decision on budgets in respect of these additional powers would be for the SPCB to take in due course.

27. Complying with the duties in the Bill may result in one-off costs for health boards and other bodies relating to updating training materials, reporting procedures and guidance. These minimal costs should be accommodated within the regular review and update processes.

28. As noted above, a fund will be provided to support health boards and other public services to embed children's rights in their decisions, policies and practices to ensure their duties under the Bill can be fulfilled. If a public authority identifies an issue of compliance in respect of a particular policy or practice, the central implementation team will offer support and policy advice as appropriate.

This document relates to the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill (SP Bill 80A) as amended at Stage 2

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