

Response to 'Human Rights and the Scottish Parliament' Inquiry by the Equalities and Human Rights Committee at The Scottish Parliament

Submission from the Scottish Youth Parliament

March 2018



Introduction

The Scottish Youth Parliament represents Scotland's young people. Our vision for Scotland is of a nation that actively listens to and values the meaningful participation of its children and young people. Our goal is to make this vision a reality, in order to ensure Scotland is the best place in the world to grow up.

Our democratically elected members listen to and recognise the issues that are most important to young people, ensuring that their voices are heard by decision-makers. We exist to provide a national platform for young people to discuss the issues that are important to them, and campaign to effect the change they wish to see.

SYP's Values are:

Democracy - We are youth-led and accountable to young people aged 12 to 25. Our democratic structure, and the scale of our engagement across Scotland, gives us a mandate that sets us apart from other organisations.

Rights - We are a fundamentally rights-based organisation. We are passionate about making young people aware of their rights, and ensuring that local and national government deliver policies that allow those rights to be upheld.

Inclusion - We are committed to being truly inclusive and work tirelessly to ensure the voices of every young person from every community and background in Scotland are heard.

Political Impartiality - We are independent from all political parties. By working with all stakeholders, groups, and individuals who share our values, we can deliver the policies that are most important to young people.

Our approach

SYP welcomes the opportunity to respond to the 'Human Rights and the Scottish Parliament' inquiry by the Equalities and Human Rights Committee (EHRC) at the Scottish Parliament (hereinafter referred to as 'the inquiry'). This response structured around the three questions posed by EHRC on participation and engagement, parliamentary procedure and process and accountability. A summary of SYP's recommendations can be found in the Conclusion (pp.8-9).

Our response is informed by:

1. *Right Here, Right Now* national campaign on young people's rights and SYP Policy

SYP's Conveners Group decided to respond to this public consultation in March 2018 as part of the *Right Here, Right Now* national campaign on



young people's rights, which launched in October 2017 after MSYPs voted to focus on this topic at the 63rd National Sitting in West Dunbartonshire in June 2017. This was following consultation with over 5,000 young people across Scotland. Through a youth-led process led by the Conveners Group, the key messages, themes and objectives of the *Right Here, Right Now* campaign, as well as official [SYP Policy](#), inform this response.

Campaign key messages

Right Here, Right Now will work to ensure that Scotland's young people are aware of and understand their own rights, and are empowered to take action to defend their own rights and those of others.

Furthermore, *Right Here, Right Now* calls for Scotland's decision-makers to take a human rights-based approach to all policy-making, service provision, and planning, ensuring young people's voices are at the heart of decisions affecting them.

Campaign themes

The campaign has three main themes: **Advocacy**, **Action**, and **Awareness**.

Advocacy: This is the overarching campaign theme, aiming to influence law, policy, and practice in order to strengthen the protection of young people's rights.

Action: Focusing on Article 12 of the UNCRC, this theme will seek to strengthen and enhance the status of MSYPs at a local level and within national voluntary organisations, and improve the links SYP has with other institutions, such as the Scottish Parliament.

Awareness: Promoting young people's rights to young people and those responsible for upholding these rights, and empowering individuals to defend their own rights and the rights of others.

As SYP represents young people up to the age of 25, *Right Here, Right Now* does not just focus on United Nations Convention on the Rights of the Child (UNCRC), which relates to children and young people up to the age of 18. Instead, we are taking a broader view of rights, to make sure all young people are recognised in the campaign activities, know their legally binding rights under the Human Rights Act, and other international rights mechanisms, and are empowered to take action.

Campaign objectives

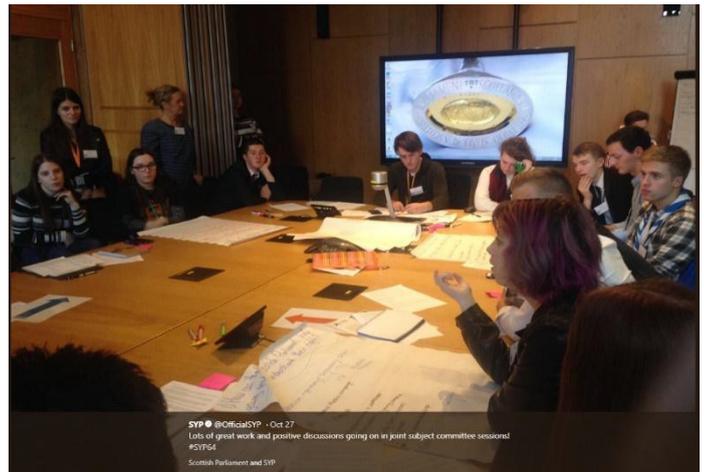
There are four main objectives which *Right Here, Right Now* plans to achieve by the end of the campaign:

- To influence law, policy, and practice in order to strengthen the protection of young people's rights.
- To improve links between SYP, public bodies, and national institutions, such as the Scottish Parliament, to respect, protect, and promote young people's rights.
- To promote young people's rights, and empower individuals to defend their own rights and those of others.
- To strengthen and enhance the status of MSYPs as the voice of Scotland's young people at a local level, and to strengthen the role of voluntary organisation MSYPs nationally.¹

¹ For more information on SYP's *Right Here, Right Now* campaign, please see [here](#).

2. 'The Scottish Parliament as a Human Rights Guarantor?' - Joint Committee Consultation Workshop at SYP64

We carried out a Consultation Workshop, 'The Scottish Parliament as a Human Rights Guarantor?', on the inquiry with EHRiC and SYP's Sports and Leisure Committee and Social Security Committee at the 64th National Sitting (SYP64) at the Scottish Parliament on Friday 27th October 2017. EHRiC hosted this workshop with approximately 23 Members of the Scottish Youth Parliament (MSYPs), co-facilitated by Conor McNamara MSYP and Zac McCaffery MSYP as Conveners of these respective SYP Subject Committees. For more information on the demographic of SYP's current membership, please see [here](#).



Prior to SYP64, we conducted an online survey ('Pre-SYP64 Consultation Survey') aimed at young people aged 12-25 on issues including the Scottish Parliament and human rights. This survey received 81 responses, from 21 of all 32 Local Authorities across Scotland. The gender balance of responses was as follows: 56.58% female, 40.79% male, and 2.63% who identify with another gender. Responses came from young people currently in school, college, university, full-time or part-time work and training. 69.74% of responses came from young people in school. SYP, Zac and Conor co-designed this part of the survey, the workshop questions and the session plan with EHRiC.

MSYPs consulted widely with the young people they represent in their constituencies and national voluntary organisations before the workshop, using their unique democratic mandate to ensure they represented the views of as wide a cross-section of young people in Scotland as possible. Therefore, our comments are fundamentally shaped by the genuine views of young people. However, as our membership represents young people aged 12-25, SYP's response is not representative of children below the age of 12, or of adults over 26. Furthermore, the survey was subject to relatively strict time constraints, which limited the overall quantity of responses.

3. Together and HRCS' responses to the inquiry

We support our partners' responses to this inquiry, namely from Together (Scotland's Alliance for Children's Rights) and the Human Rights Consortium Scotland (HRCS), and echo some of their recommendations in our response.

We too commend the launch of this inquiry and the commitment shown by EHRiC to bring human rights to the heart of parliamentary work. It is really leading the way in terms of progressing rights in Scotland.

We feel our responses reflect the ambition in the [Scottish Declaration on Human Rights](#) referred to in the HRCS' response, calling on the Scottish Parliament to lead the way and not regress on human rights protection in the context of Brexit, and prioritising meaningful participation. This sentiment is reflected in [Rights Outright: SYP's Brexit Manifesto](#), which SYP developed through consultation with almost 500 young people from December 2017 - January 2018.

Participation and engagement:

SYP's purpose embodies Article 12 of the UNCRC: that young people have the right to express their views freely and have their opinions listened to in all matters affecting them. As a completely youth-led organisation, the words and sentiment of Article 12 have profound importance for our work.

- SYP recommends that the Scottish Parliament approaches participation and engagement *about, through* and *for* human rights. This means that views should be sought *about* rights issues to influence change *for* human rights, *through* a rights-respecting process.
- As part of the human rights based approach to policy-making, the Scottish Parliament should create empowering participation and engagement opportunities which are inclusive and meaningful.
- When engaging with young people, we recommend that sessions are designed in a youth-led process using co-design and ensuring accessibility in terms of location, timing, resources, and inclusion. Participants should represent a wide cross-section of young people in Scotland, including marginalised groups of children and young people with 'protected characteristics', experience of care, poverty or who identify as transgender. The young people we asked want to be consulted on a wide range of issues in face-to-face scenarios as well as online, and in a comfortable, safe environment.
- For participation to be meaningful and not tokenistic in practice, and drive accountability, young people's voices need to be actually listened to, recommendations carried out and followed up with the young people who contributed 'at a high, visible level'.

There are various models of participation the Scottish Parliament can consider, and participation can be monitored using the Council of Europe's Child Participation Assessment Tool.² This includes indicators for how to protect, promote awareness and create spaces for participation.

A good example of this kind of participation to build on is some of the co-designed joint-committee work and consultation which has taken place since SYP64 between the Scottish Parliament Committees and SYP Committees. These opportunities were enabled by the Commission on Parliamentary Reform's recommendations R71 and R72 for closer working between MSYPs and MSPs, and SYP Committees and Scottish Parliament Committees.³

SYP welcomes this approach from the Scottish Parliament and looks forward to building on our partnership and systematic joint-committee work in due course. SYP welcomes Together's recommendation in this respect on the formation of an Intergroup on children and young people's rights to ensure that all Committees are taking these rights into account when policy-making.

² For example, see:

- Council of Europe's Children's Rights Division and Youth Department, *Child Participation Assessment Tool* (2016), available at: <http://bit.ly/2HzxUpC>.
- The Children and Young People's Commissioner Scotland (CYPCS), 'CYPCS' 7 golden rules for participation', available at: <http://bit.ly/2DkffDz>.
- Laura Lundy's Model of Participation which highlights Space, Voice, Audience and Influence as key elements to ensuring Article 12 UNCRC is realised (Laura, Lundy [2007] "'Voice" is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child', *British Educational Research Journal*, 33:6, 927- 942).
- Roger Hart's Ladder of Participation, available at: <http://bit.ly/2oGwPWj>.

³ (20th June 2017), available at: <http://bit.ly/2xnb6oY>, 68.

Moreover, as part of the Action theme of the *Right Here, Right Now*, campaign, MSYPs have been securing decision-makers' pledges from MSPs acknowledging MSP's recognition of MSYPs unique democratic mandate to represent the views of young people.

- We recommend that the Scottish Parliament encourages even more MSPs to work with their MSYP to make these pledges and commit to working with local and national voluntary organisation MSYPs even more going forward, e.g. through joint surgeries, meetings and children and young people's panels which result in the measurable change young people wish to see.
- Respondents also recommended that this participation be promoted by the Scottish Parliament to local decision-making where possible, including elected representatives within Local Authorities.
- We recommend that SYP Policy (located [here](#)) on rights issues is listened to and acted upon at the Scottish Parliament, including the current *Lead the Way* manifesto, policy statements resulting from Members' and Committee Motions debated at our National Sitings, and recommendations published in research reports and consultation responses.

For example, one online survey respondent asked the Scottish Parliament to: *'help children (in the legal system) who are arguing their human rights and are not getting help.'*

Examples of how young people's voices can influence rights-based policy include:

- The EHRIC and SYP's Equalities and Human Rights Committee [joint response](#) to the Hate Crime Review in November 2017. This focussed on freedom from discrimination.
 - Working on recommendations from the joint committee session with SYP's Education and Lifelong Learning Committee, the Education and Skills Committee invited MSYPs to external informal Committee meetings in Peterhead and Glasgow, providing easy-read briefings to facilitate MSYPs engagement with the consultation on the Education (Scotland) Bill. The [Committees papers](#) showed the MSYPs' views were recorded (see page 10 of hyperlink), and these informed [SYP's response](#) to the Bill which focused on young people's participation rights in schools in January 2018.
- The consultation workshops which took place between the Scottish Parliament and MSYPs at SYP64 on issues such as:
- Period Poverty → influencing [SYP's response](#) in November 2017 to Monica Lennon MSP's public consultation on their proposed Sanitary Products [Free Provision] [Scotland] Bill. This focussed on the rights to dignity, education, work, play, an adequate standard of living and freedom from discrimination.
 - Information Sharing (which led to [SYP's response](#) to the Children and Young People [Information Sharing] Scotland Bill in November 2017. This focussed on the rights to privacy, participation and non-discrimination.

Our consultation results also call overwhelmingly for enhanced parliamentary awareness-raising/outreach, and empowering, relevant, accessible and well-resourced education and training on human rights.

For example, SYP recommends that:

‘Substantial additional efforts need to be made to ensure that all of Scotland’s young people have a good understanding of their rights as set out in the UNCRC.’ (SYP recommendation in response to a 2012 consultation on the Children and Young People Bill, extended by the Conveners Group on 6th August 2016).

Some specific suggestions from the consultation activities include:

- Incorporating human rights education into Personal, Health and Social Education (PSHE) or by other means in the school setting, parliamentary workshops on rights in the school, youth-work, community and family settings, and even ‘rights road shows’.
- Promoting human rights information and guidance through online portals, accessible leaflets, guidance, school resources, posters, infographics, events, advertising and social media content.
- Training of MSPs and parliamentary staff on human rights, in line with the United Nations Declaration on Human Rights Education and Training, drawing from international expertise at the Council of Europe and the United Nations Office of the High Commissioner for Human Rights.⁴
- The training should be empowering, for example, one online survey respondent stated that if young people don’t know what their rights are or the life skills needed to enforce them, they won’t do as well in life.

Parliamentary procedure and process

Beyond the recommendations above, with particular reference to the stronger, more systematic relationship the Scottish Parliament is developing with SYP on rights-based policy, young people reported that they want to make sure the Scottish Parliament has access to expert human rights input (e.g. from those with lived experience and from human rights lawyers who specialise in children and young people’s rights) when policy-making.

- SYP recommends that the Scottish Parliament properly scrutinises and investigates the Scottish Government’s international human rights obligations;
- And ensures bills pass through Parliament with enough time for thorough human rights impact assessments.
- More consultations, inquiries, debates, motions and meetings across the Scottish Parliament should have a rights-focus, within all Parliamentary Committees rather than being viewed as the responsibility of the EHRiC.

For more detailed recommendations on these points, please see the call for incorporation of the UNCRC below including its impact on parliamentary procedure and process in relation to rights, as well as Together and HRCS’ responses (in particular, we echo Together’s recommendation for the Scottish Parliament to hold an annual debate on children and young people’s rights issues).

⁴ Available at: [A/RES/66/137](https://www.parliament.scot/parliamentary-reform-report). Also as per R56(c) of the Commission on Parliamentary Reform report, 55.

Accountability

If the approach to participation and engagement (including empowering awareness-raising, education and training) outlined above is taken forward by the Scottish Parliament, young people and those responsible for upholding their rights would be more empowered to constructively hold the Scottish Government and public bodies to account for their human rights obligations.

- **SYP echoes the HRCS' recommendation to EHRiC to investigate civil society resourcing of capacity-building and work on human rights issues, including to encourage engagement with UN treaty monitoring.**

Moreover, SYP believes that the Scottish Parliament has a significant role to play in safeguarding human rights under the Human Rights Act 1998, as well as other human rights mechanisms.

- **We recommend the Scottish Parliament plays a greater role in scrutinising cases of human rights violations, and calling on the Scottish Government to enforce judgments.**
- **We recommend that the Scottish Parliament use human rights indicators to monitor human rights compliance in Scotland, or enables our national human right institutions to do so.⁵**

Respondents made many calls for incorporation of the UNCRC into Scots law.

Children and young people's rights are being breached in Scotland. It is now the 'Year of Young People' (YOYP) in Scotland, an opportunity for generations to come together and celebrate Scotland's young people. With this in mind, and for Scotland to truly be the best place to grow up - SYP believes that it is time to incorporate the United Nations Convention on the Rights of the Child (UNCRC) into Scots law *Right Here, Right Now*, to ensure young people's rights are properly respected, protected and fulfilled.⁶

- **We recommend that the Scottish Parliament members and committees support SYP in its call to the Scottish Government for a formal statement of intent around incorporation of the UNCRC during the YOYP.**

UNCRC rights currently guide, not bind, all decision-makers in Scotland. SYP wants to change that, and **make UNCRC rights *binding, not guiding***. Young people in Scotland want UNCRC rights to be legally enforceable in Scottish courts and tribunals. Importantly, incorporation will ensure the early protection of UNCRC rights in policy-making - preventing rights abuses in the first place.

According to official SYP Policy: '*Human rights and civil liberties should be strongly protected by law.*' (Lead the Way Manifesto commitment, launched 12th March 2016 - 82% agreement).

For example, online survey respondents said:

- *'Could make it that all policy affecting children and young people is cross examined and checked through the lens of the UNCRC to ensure that it is being upheld'.*
- *'Have a court hearing if young people are not given their rights or their rights are abused'.*

Incorporation will help SYP succeed in achieving its mission to further Article 12 of the UNCRC - for young people to have the right to express their views freely and have their opinions listened to in all matters affecting them. As previously stated, young people are actively calling for incorporation and the need to

⁵ Office of the High Commissioner for Human Rights (2012), *Human Rights Indicators: A Guide to Measurement and Implementation*, Geneva: OHCHR: <http://bit.ly/2tSrFLJ>.

⁶ Year of Young People 2018, available at: <http://bit.ly/2zTRexT>.

be heard - in [SYP's Lead the Way Manifesto \(2016-2021\)](#), 76% of 74,744 consultation responses agreed with UNCRC incorporation.

SYP believes that incorporation will bring about a culture of respect for children and young people's rights, as well as a culture of compassion, tolerance, broad-mindedness and equality. Young people will be treated with dignity. It will also ensure UNCRC principles and a human rights based approach apply when laws and policies affecting young people are made in Scotland, and when services are provided.

- The Presiding Officer should have to check that any new legislation passing through the Scottish Parliament is compatible with UNCRC rights.
- The Scottish Parliament should discuss, and scrutinise the Scottish Government's response to the UN's reviews of the UK's human rights record, and use the Concluding Observations, General Comments, and Universal Periodic Review Recommendations.

Incorporation of the UNCRC could also be a platform for incorporation of economic, social and cultural rights. There is currently a protection gap for economic, social and cultural rights (ESCR) in the UK, such as the rights to food and to social security. These rights are mostly aspirations and not reality for many young people across Scotland. It could also catalyse the incorporation of other UN rights treaties into Scots law.

SYP is calling for incorporation of the UNCRC as a line over which the UK and Scottish governments cannot step when introducing austerity measures, including through legislative processes in the Scottish Parliament. For example, any cuts to services such as health care, education or youth work, which disproportionately violate young people's rights, would be illegal.

SYP believes that if we incorporate the UNCRC into Scots law, Scotland will be a world leader of young people's rights protection on a global stage.

Conclusion

SYP's response to the inquiry shows that the Scottish Parliament as a human rights guarantor can help the human rights calls of our *Right Here, Right Now* campaign be achieved:

- To ensure that Scotland's young people are aware of and understand their own rights, and are empowered to take action to defend their own rights and those of others.
- For Scotland's decision-makers to take a human rights-based approach to all policy-making, service provision, and planning, ensuring young people's voices are at the heart of decisions affecting them.

We welcome EHRiC's approach to participation and engagement on this human rights inquiry itself, and the joint committee consultation work which took place with SYP to help inform this response. We believe that EHRiC is really leading the way and demonstrating true ambition in terms of ensuring human rights are at the heart of the Scottish Parliament.

SYP recommends that the Scottish Parliament:

- Approaches participation and engagement *about, through and for* human rights, in line with national and international best practice:
 - By providing empowering, inclusive, youth-led, accessible and meaningful opportunities for young people's voices to be heard when making laws and policies.

- By carrying out young people’s recommendations and following these up with young people.
- By continuing to strengthen its relationship with SYP and build even closer, systematic working relationships between MSYPs and MSPs and counterpart committees in due course (e.g. through decision-maker pledges and resulting actions).
- By promoting this approach to local decision-making where possible, including elected representatives within Local Authorities.
- By using SYP Policy (located [here](#)) on rights issues.
- For enhanced parliamentary awareness-raising/outreach, and empowering, relevant, accessible and well-resourced education and training on human rights, including for MSPs and parliamentary staff.

(That the Scottish Parliament)

Approaches parliamentary procedure and process:

- With even more reference to expert human rights input and people’s lived experience.
- With proper scrutiny and investigation of the Scottish Government’s international human rights obligations, and allocation of sufficient time for human rights impact assessments.
- With more consultations, inquiries, debates, motions and meetings across the Scottish Parliament with a young people’s rights-focus, within all Parliamentary Committees rather than being viewed as the responsibility of the EHRC.

(That the Scottish Parliament)

Approaches accountability:

- By playing a greater role in scrutinising cases of human rights violations, and calling on the Scottish Government to enforce judgments.
- By using human rights indicators to monitor human rights compliance in Scotland, or enabling our national human rights institutions to do so.
- **By supporting SYP in its call to the Scottish Government for a formal statement of intent around incorporation of the UNCRC during the Year of Young People.**
- By requiring the Presiding Officer to check that any new legislation passing through the Scottish Parliament is compatible with UNCRC rights, and other rights going forward.
- By openly discussing and scrutinising the Scottish Government’s response to the UN’s reviews of the UK’s human rights record, and using Concluding Observations, General Comments, and Universal Periodic Review Recommendations.

SYP believes that implementing these recommendations would ensure Scotland really is the best place in the world in which to grow up and realise human rights.

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