



Response from the National Carer Organisations to
“United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill”

About the National Carer Organisations

The National Carer Organisations are brought together by a shared vision that all Scotland’s unpaid carers will be valued, included and supported as equal partners in the provision of care and will be able to enjoy a life outside of caring. They are Carers Trust Scotland, the Scottish Young Carers Services Alliance, Carers Scotland, the Coalition of Carers in Scotland, Shared Care Scotland, Minority Ethnic Carers of Older People Project (MECOPP and Crossroads Caring Scotland).

Questions

1. Will the Bill make it easier for children to access their rights?

Yes. The National Carers Organisations welcomes this important Bill to incorporate the United Nations Convention on the Rights of the Child (UNCRC) into our domestic law in Scotland. The Bill is an important progression to ensuring young carers and all other children in Scotland have their human rights recognised, fulfilled, and protected. The Bill has the ability to be a powerful tool ensuring that a children rights-based approach is incorporated in the recovery and future decision making following the current pandemic.

If the Bill passes through Scottish Parliament, it is imperative that the Act is fully resourced and all children, including young carers, should be made aware of these changes and their rights. A key element to children accessing their rights is having knowledge of these; this requires national campaigns, and ensuring there is a plethora of accessible information and resources available to children - including targeted information and advice to young carers - to help them know about their rights, be empowered and have an awareness as to what support is available to them if their rights have been breached.

As we set out in our initial response in 2019 to the *Consultation on incorporating the United National Convention on the Rights of the Child into our domestic law in Scotland*¹ we are continuing to advocate that:

“There should be mandatory training for duty bearers, public authorities and the Third Sector working with children and young people. There should be a national campaign so that young carers, and all other children and young people, and society at large are aware of the UNCRC rights and changes to domestic law. There should be resources developed which are concise, clear and simplify the information regarding UNCRC incorporation. This needs to be made available to rights holders

¹ Response from the National Carer Organisations to “Consultation on incorporating the United Nations Convention on the Rights of the Child into our domestic law in Scotland”
<https://carers.org/downloads/scotland-pdfs/ncouncrcintoscotslawresponse-2019final1.pdf>

and also staff working with children and young people across Scotland. This should include rights as part of the Curriculum for Excellence as standard, it could be through PSE lessons in schools. Therefore, highlighting that rights are universal and unchangeable and should not be confused or misused with concepts of responsibility. Considerate regard needs to be made to reach and inform children and young people in Scotland who do not access education, so that they are also empowered and knowledgeable about their rights.”

This historic Bill not only puts children’s rights at the forefront of policy and practice, but also provides the opportunity for public authorities to better identify young carers to ensure their rights are being fulfilled and they receive the support that they are entitled to as children and young people first and foremost.

Many young carers remain hidden and are not receiving the support they are entitled to; this can be for many reasons including, not recognising themselves as an unpaid carer due to fear of repercussions if they disclose their caring role. Young carers have reported that they can find it difficult to speak out and often struggle to find time to put their own health, wellbeing, education, and wider needs before their cared for persons. More needs to be done to support children to raise their own complaints in court; we therefore welcome section 10 of the Bill which grants powers to the Children and Young People’s Commissioner Scotland to intervene in proceedings.

We also agree with Together (Scottish Alliance for Children’s Rights) that the Bill will make it easier for children to access their rights through a range of proactive and reactive measures, as set out in their response to this consultation.

2. What do you think about the ability to take public authorities to court to enforce children’s rights in Scotland?

We welcome the ability to take public authorities to court to enforce children’s rights in Scotland. This will not only hold public authorities to account but is also an essential part of incorporation of the UNCRC into Scots law. This helps promote a rights based approach on decision making and crucially ensures transparency across public authorities. We also agree with Together that this may help prevent *“future breaches, supporting positive culture change and encouraging the establishment of child-friendly complaints mechanisms.”*

3. What more could the Bill do to make children’s rights stronger in Scotland?

The Bill has the ability to successfully make children’s rights much stronger in Scotland. However, there are areas in the Bill that could be strengthened, such as independent advocacy and remedies. We also agree and echo with the points highlighted to this question in Together’s response to this consultation.

As we stated in our initial response in 2019 to the *Consultation on incorporating the United National Convention on the Rights of the Child into our domestic law in Scotland:*

“Young carers and all of the other children and young people in Scotland often face many complexities and difficulties in bringing their case to court, it is essential that they are appropriately supported and able to exercise their rights when violations occur to reduce barriers that they may experience.”

Therefore, highlighting the need for comprehensive and clear independent advocacy channels. Consideration should also be given to a wide range of advocates and representatives, such as - but not limited to - Children and Young People’s Commissioner Scotland, a representative organisation or charity, a trusted professional etc. Easy read information must be readily available so young carers and all other children are informed about what advocacy is, what support is available to them and what they expect from raising a complaint.

Independent advocates need to consider the rights of young carers and the responsibilities that these children and young people have for their cared for person and the additional challenges and concerns that they have when making a complaint.

We also agree with Together that Ministers should be required to report annually on advocacy services and the impact these services are having for children and young people.

In relation to remedies, we set out in our 2019 response that:

“Personalisation is crucial, violations can result in financial and non-financial loss - such as injury and abuse - and courts should have discretion over awarding compensation on a case by case basis. But it is important, as much as possible, to ensure victims are in the same position they would have been if the violation hadn’t taken place. Violations of rights should also result in legislation being amended or developed to prevent similar violations in the future and therefore reducing the likelihood of future financial compensation being required.”

We would welcome greater detail on remedies in primary or secondary legislation and essentially in guidance. We believe in order for young carers and all other children and young people to be able to have their rights fully upheld that it is essential to have child-friendly complaints systems built within the legalisation and it is reviewed and annually reported on.

4. If you work for an organisation or public authority, what resources do you need to help children and young people access their rights? Will you require additional resources or training to implement the Bill, for example to make or respond to challenges in court?

As National Carer Organisations, it is important for us to be able to help inform local carer services and young carer projects about policy changes and the resources that are available to them to support young carers. Bespoke resources for young carers are important to help them to recognise their rights and for these to be upheld. The role of young carer services in young carer’s lives is crucial and as these are key practitioners in supporting young carers, it is important that training and resources are provided. Free training about the legalisation and policy changes should be

readily available for carer services to access so that they are aware and can empower young carers to comprehend their rights.

As previously noted, easy read resources are vital so that carer services and young carers are able to be fully aware of the processes and support available to raise a complaint and they are empowered to take action if a breach occurs.

As highlighted in question one of this response, we believe that a national campaign is essential so that young carers, and all other children and young people in Scotland have further opportunities to be aware of their rights and changes to domestic law in Scotland. This will also help inform wider society of these key policy changes and to embed a culture change about children's rights in Scotland.

All resources that are developed for children must be concise and clear, this will not only help to manage expectations but will also provide children and young people, their families and the services that support them with the key information that they may require to promote children's rights, protect children's rights and understand the complaints process if a breach occurs. This will also assist in helping society at large to understand that rights are universal and unchangeable and should not be confused or misused with concepts of responsibility. For children and young people to also access their rights fully, their needs be more detail and information readily available about the role that the Commissioner plays in the Bill through the complaints procedure.

Previous research² that Carers Trust undertook found that young carers aged 16-18 were more likely than their non-caring peers to not be in education, employment, or training. As noted in our 2019 response, we continue to echo that *"considerate regard needs to be made to reach and inform children and young people in Scotland who do not access education, so that they are also empowered and knowledgeable about their rights."*

5. Are there any relevant equalities and human rights issues related to this Bill, or potential barriers to rights, that you think we should look at?

It is paramount that the Bill recognises the intersectionality between children's rights and young carer's rights, including through the Carers (Scotland) Act 2016. Research³ illuminates that the number of unpaid carers in Scotland is significantly increasing and many carers have highlighted an intensification of caring responsibilities and experiencing additional inequalities since the Coronavirus outbreak. During this time, this also included easements to Carers (Scotland) Act 2016 duties to provide Young Carer Statements. It is essential to recognise this changing landscape for young carers and the impact the pandemic has had on the economic inequality faced by carers, the support they receive and, on their

²Time to be Heard for Young Adult Carers Bridging the Gap: Young Adult Carers in Scotland: <https://carers.org/downloads/scotland-pdfs/ttbhscotlandreport-final.pdf>

³Carers Week 2020 Research Report; The rise in the number of unpaid carers during the coronavirus (COVID-19) outbreak: https://www.carersuk.org/images/CarersWeek2020/CW_2020_Research_Report_WEB.pdf

education, health and wellbeing and their ability to live their own life alongside their caring responsibilities. Carers Trust Scotland's recent survey⁴ about young carers experiences during the pandemic also found that young carers were struggling to access food and medicines, have a break from caring, worried more about their cared for person and felt isolated. It is important that guidance in the Bill clearly and directly references the unique intersectionality of legalisation and issues that many young carers grapple with.

We also agree with Together's response that: *"COVID-19 clearly demonstrates the need for progress on incorporating wider human rights protections into Scots law."*

6. What are your views on the provisions in the Bill that allow the courts to strike down legislation judged to be incompatible with the UNCRC?

The National Carers Organisations supports the power in the Bill that allows that courts are able to strike down legislation judged to be incompatible with the UNCRC.

7. What are your views on the Child Rights Scheme and the requirement on public authorities to report?

The Child Rights Scheme sets out how it is meeting the UNCRC requirements and explains future plans for children's rights – young carers rights should be included in this specifically, for example their rights under the Carers (Scotland) Act 2016. We also welcome an annual review of this Scheme.

As we stated in our 2019 response:

"We support a requirement for the Scottish Government to produce a Children's Rights Scheme and this should be included in this legislation. This scheme not only creates accountability processes but also establishes monitoring and information on the progress undertaken by Scottish Ministers in relation to the legislation."

We agree that public authorities should be required to report every three years on what they have done to meet the UNCRC requirements. These public authorities include Local Authorities, Health Boards, social care and SQA – all of whom have a huge impact on young carer's lives.

We also support and echo Together in their submission response to this question, relating to suggestions to further strengthening measures on the Child Rights Scheme and the requirements on public body reporting.

8. Is there anything else you want to tell us about the Bill?

⁴2020 VISION: HEAR ME, SEE ME, SUPPORT ME AND DON'T FORGET ME; The impact of Coronavirus on young and young adult carers in Scotland, and what they want you to do next. <https://carers.org/downloads/scotland-pdfs/2020-vision.pdf>

As previously noted, the National Carer Organisations welcomes the Bill and believes this will provide a robust foundation for incorporating the UNCRC into domestic law in Scotland. Implementation will be crucial to the success of the proposed legislation and this must be fully resourced to ensure it is implemented effectively and young carers and all other children and young people in Scotland can truly benefit from the intent of the Bill.

Young carers must have meaningful opportunities to participate and to have their voices heard during the implementation process to ensure they are empowered and knowledgeable about their rights. Effective mechanisms, such as working with young carer services across Scotland ensures that the unique experiences and needs of young carers are recognised and taken into account.

The National Carer Organisations fully supports Together's response to this consultation and the points which they have stated for potential strengthening of the Bill.