**Consultation on the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024: Statutory Guidance on Part 2 and 3 (section 18)**

**Introduction**

The [United Nations Convention on the Rights of the Child](http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf) (UNCRC) is an international treaty which sets out the civil, political, economic, social and cultural rights which all children up to the age of 18 years have, regardless of their circumstances. The UNCRC must be seen as a whole: all the rights are linked and no right is more important than another.  The UNCRC includes the following general principles:

* for rights to be applied without discrimination (Article 2);
* for the best interests of the child to be a primary consideration (Article 3);
* the right to life, survival and development (Article 6); and
* the right for the child to express a view in matters that affect them and to have that view taken into account in accordance with the child’s age and maturity (Article 12).

The Scottish Government is committed to ensuring that children’s rights are respected, protected and fulfilled. The UNCRC (Incorporation) (Scotland) Act 2024 (“the Act”) was approved by the Scottish Parliament on 7 December 2023 and received Royal Assent on 16 January 2024. The Act is a landmark piece of legislation that incorporated the UNCRC into Scots law to the maximum extent of the Scottish Parliament’s powers – signalling a revolution in children’s rights in Scotland.

The intent behind the Act is to deliver a proactive culture of everyday accountability for children’s rights across public services in Scotland. The Act also seeks to empower our children and young people to claim their rights and help to make Scotland the best place in the world to grow up.

**Overview**

In accordance with section 47(2)(a) of the Act, Part 2 (duties on public authorities) and Part 3, section 18 (reporting duties of listed public authorities) of the Act will come into force 6 months after Royal Assent. As Royal Assent was obtained on 16 January 2024, this will be on 16 July 2024.

The Act requires Scottish Ministers to publish guidance (“statutory” guidance) on Part 2 and Part 3, section 18. It also requires them to consult on that guidance. This consultation fulfils that requirement and is launched by Scottish Ministers in accordance with sections 13(3) and 20(2) of the Act.

The draft guidance attached to this consultation was developed with support from stakeholders. A [Guidance Subgroup](https://www.gov.scot/groups/united-nations-convention-on-the-rights-of-the-child-uncrc-embedding-childrens-rights-in-public-services-sub-group/) comprising of members from the [Embedding in Public Services](https://www.gov.scot/groups/uncrc-implementation-embedding-in-public-services-group/) group was established to assist and support with this process.

This consultation seeks your views on the draft statutory guidance.

**Part 2: Compatibility with the UNCRC requirements, and child rights-respecting practice**

Part 2, section 6 of the Act provides that it is unlawful for a public authority to act in a way which is incompatible with the UNCRC requirements as set out in the Act. The section 6 duty also applies to those carrying out functions of a public nature.

The meaning of “public authority” has been drawn intentionally wide so as to ensure that the duty applies to all public authorities in respect of which it is within the power of the Scottish Parliament to apply the duty. The Act makes it clear that this includes the Scottish Ministers and Scottish courts and tribunals.

Public functions are generally understood to be functions performed for the collective benefit of the general public (although in the event of a claim of unlawfulness being raised, the courts will determine whether a function is public on a case-by-case basis). Therefore, the Act will not apply to private businesses, except in relation to any instance where they carry out functions of a public nature.

The guidance is intended to provide accessible information which supports public authorities to understand and fulfil their duties under section 6, and to secure better or further effect of children’s rights.

**Part 3: Reporting duty of listed authorities**

Part 3, section 18 of the Act places a duty on public authorities listed in section 19 to report on the actions taken and planned to comply with the Part 2, section 6 duty, and the actions taken and planned to give further effect to children’s rights. This is an important mechanism for respecting, protecting and fulfilling children’s rights.

This guidance includes an explanation of the duty in the Act and annexes with suggested reporting formats, information on inclusive communication and on producing child friendly reports. It is aimed at those with responsibilities within listed public authorities for implementing and delivering on the provisions of the Act.

**CONSULTATION PROCESS**

**Responding to the Consultation**

The consultation will run for 12 weeks. We are inviting written responses to this consultation before or by 16 May 2024. Responses are invited from organisations and individuals, where the response is not in relation to an organisation. Relevant organisations and networks may wish to respond jointly.

There are a number of consultation questions on which the Scottish Government would welcome views. Please do not feel obliged to answer all questions. Equally, if you would like to comment on any other aspects of the draft statutory guidance the Scottish Government would welcome your views.

We would be grateful for responses to be completed electronically via Citizen Space, where possible. This will aid handling and analysis of all responses.

If this is not possible, we would be grateful if you could use the separate consultation questionnaire (Annex A) provided and submit your answers via email. Please send your responses with the completed Respondent Information Form to: [uncrcstatutoryguidanceconsultation@gov.scot](mailto:uncrcstatutoryguidanceconsultation@gov.scot)

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at: <https://consult.gov.scot/>

**ANNEX A**

**CONSULTATION QUESTIONS**

**Part 2 Guidance**

The following consultation questions 1-14, relate to the draft statutory guidance on Part 2 of the UNCRC Act. This is particularly relevant to public authorities.

1. I have read the draft statutory guidance on Part 2 of the UNCRC Act

Yes

No

1. Section 3, ’**Background and introduction to the UNCRC Act’,** provides sufficient information on the UNCRC and the background to incorporation.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please give us your views:

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1. Section 3.4, ‘**Meaning of UNCRC requirements**’, clearly articulates what is meant by this in relation to the section 6 duty.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please give us your views:

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1. Section 4.2, ‘**Remedies for unlawful acts (sections 7 to 10)’** is useful.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please give us your views:

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1. Section 4.2.3 ‘**Definition of a public authority**’ is clear.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please give us your views:

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1. Section 4.3.1 ‘**Definition of functions of a public nature’** is clear.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please give us your views:

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1. Section 4.4, ‘**Explanation of the duties on public authorities in Part 2, section 6’** clearly explains the nature of the section 6 duty on public authorities, including clearly articulating that the section 6 duty applies only when a public authority is carrying out devolved functions conferred under Acts of the Scottish Parliament or common law powers.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please give us your views:

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1. Annexes A.1 – A.5, ‘**Clarification of conceptual aspects of the UNCRC**’ are clear.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

1. Annexes B.1 – B.4 ‘**Sources to guide interpretation**’ are useful.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

1. Annex C, ‘**Framework for Reviewing Compatibility (s.6 duty)**’ is presented in an accessible manner, e.g. the content, style, and length make this a user-friendly and practical resource.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please give us your views:

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1. I clearly understand how to use the Compatibility Review Framework.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please give us your views:

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1. Overall, the guidance is presented in an accessible manner, e.g. the content, style, and length make this a user-friendly and practical resource.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

1. Overall, the guidance supports an improved understanding and ability to fulfil the duties under Part 2 of the Act.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

1. Are there any areas where you think the Part 2 guidance could be improved? Please cite specific parts of the guidance if relevant.

Please give us your views:

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**Part 3 Guidance**

The following consultation questions 14-20, relate to the draft statutory guidance on Part 3 (section 18) of the UNCRC Act. This is particularly relevant to public authorities listed in section 19 of the Act.

1. I have read the draft statutory guidance on Part 3 (section 18) of the UNCRC Act

Yes

No

1. Section 4, ‘**Reporting duties of listed authorities’** is sufficiently clear on the reporting requirements under Part 3 of the Act.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please give us your views:

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1. Section 5, ‘**Publication requirements of reports’** is sufficiently clear on the publication requirements under Part 3 of the Act.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please give us your views:

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1. Section 6, ‘**Policy intention of children’s rights reports under section 18 of the Act’,**  clearly explains how the reporting process contributes to progressing children’s rights.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

1. Annexes B.1 – B.4 **Frameworks for children’s rights reporting** are helpful.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please give us your views:

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1. Annex C, ‘**Scottish Government use of children’s right’s reports**’,is clear.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

1. The guidance is presented in an accessible manner, e.g. the style, length and content are useful in aiding implementation of duties in respect of the Act.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

1. Are there any areas where you think the Part 3 guidance could be improved? Please cite specific parts of the guidance if relevant.

Please give us your views:

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