

Response ID ANON-XADZ-RVSR-4

Submitted to **UN Convention on the Rights of the Child Bill**

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About you

1 Please read the privacy notice below and tick the box below to show that you understand how the data you provide will be used as set out in the policy.

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2 How would you like your response to be published?

I would like my response to be published in its entirety

3 What is your name?

Name:

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4 What is your email address?

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5 Are you responding as a, child or young person, an older individual or on behalf of an organisation?

Organisation

Organisation :

Scottish Association of Social Work

UN Convention on the Rights of the Child Bill

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

Please enter your response in the box provided. :

The Scottish Association of Social Work is the largest professional association for social workers in Scotland. We are here to promote the best possible social work services for all people who may need them, whilst also securing the wellbeing of social workers.

Social Work is defined internationally as “a practice-based profession and an academic discipline that promotes social change and development, social cohesion, and the empowerment and liberation of people. Principles of social justice, human rights, collective responsibility, and respect for diversities are central to social work” (IFSW; 2014).

SASW welcomes the UNCRC Incorporation (Scotland) Bill and agrees that it will make it easier for children to access their rights. The Bill's introduction marks a shift towards ensuring children's human rights are respected across Scotland, and a positive step towards fulfilling the Scottish Government's commitment to make Scotland 'the best place in the world to grow up'. The objectives of this Bill clearly align with the principles of the social work profession, as outlined above, and will see children's rights embedded within and included from the out-set of decision-making, filtering into policy, practice, legislation and society more broadly.

This Bill enables the Scottish Government to respond proactively, rather than reactively, to ensure that the rights of children and young people are protected, and to safeguard against future breaches.

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

Please enter your response in the box provided. :

SASW welcomes the Bill's intention to allow children to take public authorities to court to enforce their rights, as this clearly forms the basis for full incorporation.

This view is reinforced by the UN Committee on the Rights of the Child who state: “incorporation should mean that the provisions of the Convention can be directly invoked before the courts and applied by national authorities and that the Convention will prevail where there is a conflict with domestic legislation or common practice”.

As with other stakeholders who have responded to this call for evidence, SASW agrees that this will have many positive effects, including:

- Forming the basis of a preventative mechanism against future breaches and facilitating cultural change within and across public authorities

- Ensuring children have access to remedy and redress in the most serious breaches of their human rights, to which they are entitled under UNCRC Article 39

- Encouraging the establishment of accessible mechanisms by which children can put in a complaint, relevant to the child's age and stage of development, including information, advocacy, and advice throughout the process

Whilst SASW wholeheartedly supports this, we ask for further clarity on what constitutes a 'public authority' in the context of this Bill. Although it's clear that local authorities fall within this remit, it is less clear where individual actors fit. SASW asks for further clarity on where individual social work practitioners who provide a statutory service under the employment of a public authority – including those practicing independently – fall. Social workers face many inherent tensions within their practice, operating in crisis situations, supporting those in high-risk situations and managing tensions within families. The pressures on the profession cannot be overstated and must be taken into consideration. Furthermore, Social Work is a profession fundamentally about human rights, as outlined in the international definition above. Practitioners are bound by Codes of Ethics that underpin their practice, ensuring they remain accountable, with the principles of human rights and social justice central to all they do. The ability for children to take public authorities to court is a positive mechanism for allowing social workers to hold councils and other public authorities to account, to ensure they always act in the best interests of children and young people, meaning they are held to the same standards as practitioners in remaining compliant with their Codes of Ethics.

SASW suggests that clear and accessible guidance must be provided to support social workers to report a breach – to ensure they are protected and have clear information on how they report and the process by which they do this. They must face no repercussions from their employer for doing so.

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

Please enter your response in the box provided. :

As outlined in our response to Question 2, we believe further clarity is needed on where individual actors employed by organisations/public authorities fit.

Furthermore, the Bill states that "it is unlawful for a public authority to act in a way which is incompatible with the UNCRC requirements". This includes private actors whose "functions are of a public nature" unless the nature of the particular act is private, echoing a similar provision in the Human Rights Act 1998.

SASW welcomes that private actors fall within the scope of the Bill but share the same concerns as "Together" members, regarding the practical application of this. It is essential that private bodies providing services to children do not escape liability due to technicalities, and further clarity is needed to alleviate uncertainty and ensure this does not happen.

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?

Please enter your response in the box provided. :

As was outlined in the response to Question 2, clear guidance, information and training must be provided to social workers to allow them to feel comfortable and informed of all due process, including how to support children and young people, where to go if they encounter a breach and how to report this. As Social Work Scotland outlined in their response at the public consultation stage of this Bill, it is essential that lessons be learned from the Named Person, which shows that 'no matter how strong the evidence and expert support for a proposal, a failure to identify and address the concerns of a minority of the public can derail legislative implementation indefinitely'. The provision and investment into guidance to alleviate concerns and keep practitioners – and indeed the public – informed would prevent this from happening, and be in the best interests of the children and young people to which this Bill applies.

It is assumed that the added focus on sibling relationships, which is very much supported by SASW, might require additional funding in order to facilitate such contact. Contact arrangements in cases of children being looked after and accommodated can become quite an organisational task depending on the geographical distribution of the child and its family members. The contact is often facilitated by social services. It could also mean an additional strain on the use of contact centres which may require further funding.

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1 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?

Please enter your response in the box provided. :

Social work promotes a holistic approach. As such, SASW, like other stakeholders, believes it is important that the Bill takes into account the intersectionality between women's rights, children's rights, the rights of disabled people, ethnic minorities and other protected groups.

The impact of Covid-19 on such groups has been significant, exacerbating existing inequalities and human rights breaches and demonstrating a need for progress on incorporating wider human rights protections into Scots law.

For example, as has been widely reported, economic inequalities have been significantly worsened for women, who, for the most part, remain the primary caregivers of children and are more likely to be at risk of increased job insecurity, and poverty. Disabled children are also facing greater risks of poverty as well as barriers in accessing healthcare services and education.

Guidance around UNCRC implementation must take these connections into consideration.

2 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?

Please enter your response in the box provided. :

SASW welcome this, but acknowledge that this will have significant resource implications that must be taken into consideration, and clear guidance must underpin it. Expectations, systems and even elements of practice may be built around such legislation and the implication of changes must be carefully thought through across all dependencies.

3 What are your views on the Children's Rights Scheme and the requirement on public authorities to report?

Please enter your response in the box provided. :

SASW welcomes the Children's Rights Scheme and requirement on public bodies to report, as a means of ensuring greater accountability. We also believe that a culture change is required and the Scheme ensures that the focus remains on respecting the rights of children in all aspects.

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

Please enter your response in the box provided. :

Evaluation

1 Was this views submission tool easy to use?

Easy to use

Why did you feel it was, or was not, easy to use?:

2 Do you think this Call for Views submission tool provides a good way for you to get involved in the work of Parliament?

Yes

Please explain the reasons for your answer?: