

**REPORT TO:** Education & Children's Services Committee

**MEETING DATE:** 18 June 2024

**BY:** Executive Director, Education & Children's Services

**SUBJECT:** United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024

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## **1 PURPOSE**

- 1.1 To provide an update on the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.
- 1.2 To detail the work done by ELC UNCRC Working Group on understanding and supporting policy implications across the Council and next steps.

## **2 RECOMMENDATIONS**

- 2.1 The Committee is asked to note the contents of this report.

## **3 BACKGROUND**

- 3.1 The UK Government ratified the UNCRC in 1991. It was signed and ratified by all UN member states, except the United States, making it the most widely ratified international human rights treaty. It seeks to ensure that children and young people, as more vulnerable members of society, are afforded specific additional human rights protections.
- 3.2 The UNCRC is underpinned by four general principles, all of which are reflected throughout the specific articles of the Convention:
  - Children should not be discriminated against;
  - The best interests of the child should be a primary consideration;
  - Children have rights to life, survival and development;
  - Children's views should be given due weight and consideration.

- 3.3 The UNCRC (both the Convention itself and the Act) outlines a minimum standard of rights for children and young people and aims to ensure they grow up loved, supported and empowered to reach their potential. Many of the Articles or general aims of the UNCRC have already been included in Acts of the Scottish Parliament. These are, however, scattered through a number of individual pieces of legislation. This approach means that only some UNCRC rights can be enforced in Scottish courts. To address this, the Scottish Government made a commitment in their Programme for Government 2018-2019 to incorporate the full articles (not just the principles) of the UNCRC into Scots law. That goal was finally reached in January 2024.
- 3.4 The Bill was passed unanimously by the Scottish Parliament, but before receiving Royal Assent was subject to legal challenge from the UK Government. This focussed on the scope of the Bill and submitted that this Bill should not be able to “strike down” anything outside of the legislative competence of the Scottish Parliament, in short, UK Government Acts. The challenge further explained that this Bill should not seek to control or react to actions of UK ministers. This challenge was upheld, and the Bill was redrafted with amendments to its scope. This redrafted version again passed unanimously through the Scottish Parliament and achieved Royal Assent 16 January 2024. The vast majority of its terms are due to come into force in six months following Royal Assent, which will be July 2024. It is this deadline that we as a Council are now working towards.
- 3.5 With the Act now passed, it is important to note the difference between specific rights that are enforceable, and the duties owed by local authorities and other applicable bodies in respecting or taking account of those rights. The duty on local authorities imposed by this Act makes it *“unlawful ... for a public authority to act, fail to act, in connection with a relevant function in a way which is incompatible with the UNCRC requirements”*. As noted, the scope of this Act has been reduced and no longer includes UK Acts or actions beyond the Scottish Parliament’s competence. Operationally this is likely to mean that although we will strive to give full effect to the UNCRC, there may be situations where we will have to carefully consider whether to do so would be to act incompatibly with service specific legislation and if so, how we approach such situations. It is also important to understand that it will be unlawful for the Council to act *“in a way which is incompatible with the UNCRC requirements”*. This duty is not the same as a requirement to act compatibly with the UNCRC. This distinction is likely to become important in any conversations or formal challenges or complaints we see or must answer, after the Act is fully in force.
- 3.6 East Lothian Council has had a long history of considering and promoting the UNCRC and how to bring our practices, policies and procedures into line with the aims and principles of this Convention. For example, many of our schools are ‘Rights Respecting’ and in our recent Joint Inspection of Services for children and young people at risk of harm, inspectors commented on how well children’s rights are embedded in our work across the partnership. We have been actively considering local incorporation for

several years and for some time before the original Bill was drafted. The COVID pandemic impacted the progress and timeline of the UNCRC Act, as did the challenge to the UK Supreme Court. Questions of how best to support and protect the rights of children and young people, however, have been at the forefront of our thinking when considering specific changes we can make to our existing policies, procedures, practices and assumptions.

- 3.7 Although our advanced work was hampered by the considerations of the Scottish Government, work continued on the aspects of the UNCRC that could be taken on board as best practice; Article 12 (respect for the views of the child) and Article 13 (freedom of expression) are all examples of specific children's rights that can be incorporated into any service or procedure. Many services within the Council already work to include children and young people's views in the actions they take, allowing a range of communication methods to suit individual needs. Work to review, strengthen and improve these methods is already underway.
- 3.8 A UNCRC working group has been in place in the Council since September 2022. It is chaired by the Executive Director for Education and Children's Services and includes representatives from all service areas across the Council. Members of the working group act as UNCRC 'Champions' and provide support and advice to their service areas. Our discussions have included how to identify and meet training and support needs, how we best learn from actions taken in other council areas or individual service plans and how these relate and give effect to Council-wide corporate plans and the updating or renewal of Council-wide policies.
- 3.9 The Council has benefitted from direct support from the Improvement Service who have supported us in self-assessing our work on children's rights and creating an action plan. We have also discussed our training needs with external providers (Scottish Child Law Centre and CLAN Childlaw, both of whom provide legal services, advice and support exclusive to children and young people in Scotland) and are working hard to use the experience and expertise of those within the Council as a basis for plans and actions.
- 3.10 With a clear timescale for implementation of the provisions of the Act, UNCRC Champions are producing service specific actions. This has involved raising the profile of the UNCRC within service team meetings, a bespoke UNCRC piece in Inform and regular discussions about how individual service plans feed into and support the overall corporate action plan. Through these discussions we are highlighting more and more examples of very good practice, explored alongside new ideas and questions that are challenging and testing existing practice, all with the goal of improving our protection and advancement of children's rights.
- 3.11 Although clear progress has been made, we still have more to do. It is important that the whole Council is aware of these new duties and is working together to improve our interactions with children and young people. While the Convention was considered to be forward thinking and ahead of its time when drafted in 1989, it is now decades old. The family

unit does not look as it did at the time of drafting and issues of gender identity in particular, have moved on significantly since the Convention was finalised. The Act brings in new, higher duties that we must consider and discharge in our professional roles. It may be that this is easier in some actions or services than others, but we must maintain the same standard of approach across the council. We have committed and are required to update our working practices to take account of the Act.

- 3.12 Officers provided a detailed Elected Member briefing in May 2024. At that briefing, it was noted that elected members will have a role in supporting and challenging practice and to consider where the Council could improve its work. Support will be given to all employees and elected members of the Council to actively consider and improve how children and young people are included in the duties and activities of the Council. This includes both individual service and Council-wide implementation plans, as well as rethinking public activities such as committees and surgeries. Elected members will be supported to examine the ways they carry out their functions and engage with the public to ensure that there are routes and opportunities for children and young people to engage with their local councillor in a way that empowers them, their rights and voice. Every individual working to discharge the duties of the Council is being called upon to bring about what Scottish Government have referred to as a “culture change” to ensure that not just what the Council does, but how it is done, has the needs and rights of our children and young people as a central consideration.

## **4 POLICY IMPLICATIONS**

- 4.1 Whilst a retrospective review of Council policies is not required following the UNCRC Act coming into force, all revisions to or creation of new Council policies will be subject to consideration of the new UNCRC legislation.

## **5 INTEGRATED IMPACT ASSESSMENT**

- 5.1 The subject of this update report does not at this stage directly affect the wellbeing of the community or have a significant impact on equality, the environment or economy. However, it should be noted that whilst the new legislation does not require local authorities to carry out Children’s Rights Impact Assessments (CRIA) by law, undertaking CRIAs remains good practice and as such, we are looking at how best to incorporate the CRIA process alongside existing Integrated Impact Assessments (IIA). It will be for each individual service to ensure that appropriate CRIAs and IIAs are completed on the policies, processes or procedures for which they have responsibility for. Our Equalities officer is currently working on guidance and will be able to support service areas in undertaking the CRIA.

## 6 RESOURCE IMPLICATIONS

- 6.1 Financial - There has been no additional funding allocated by the Scottish Government to support the implementation of the Act. We will continue to make use of all national and local resources alongside networking with other local authorities to share information and training materials. We will continue to raise the need for additional resources with the Scottish Government given the additional work that will be required following full incorporation beyond July 2024.
- 6.2 Personnel - No additional personnel will be employed or engaged to support the implementation of the Act.
- 6.3 Other – None.

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