
RESPONDENT INFORMATION FORM

Please Note this form must be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:
https://beta.gov.scot/privacy/

Are you responding as an individual or an organisation?

☐ Individual
X Organisation

Full name or organisation’s name

Healthcare Improvement Scotland

Phone number 0131 623 4300

Address

Gyle Square
1 South Gyle Crescent
Edinburgh

Postcode

EH12 9EB

Email

Jane.illingworth@nhs.net

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

X Publish response with name
☐ Publish response only (without name)
☐ Do not publish response

Information for organisations:
The option ‘Publish response only (without name)’ is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option ‘Do not publish response’, your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.
We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

X   Yes

☐   No
Questionnaire

Healthcare Improvement Scotland’s (HIS) core aim is to make health and social care better for everyone in Scotland. Our priorities are to:

- Enable people to make informed decisions about their own care and treatment
- Help health and social care organisations to redesign and continuously improve services
- Provide evidence and share knowledge that enables people to get the best out of the services they use and help services to improve
- Provide and embed quality assurance that gives people confidence in the quality and sustainability of services and supports providers to improve
- Make best use of all resources

As an organisation we are committed to ensuring that we meet our legal duties under the Children and Young People (Scotland) Act 2014. One of these duties is to report every three years on the steps we have taken to further effect the United Nations Convention on the Rights of the Child (UNCRC) within our areas of responsibility. The first of these reports is due after 1 April 2020.

HIS welcomes further action to incorporate the UNCRC into our domestic law in Scotland and make these rights real for children (and parents) in Scotland.

While the consultation document as a whole is of interest to us, we have limited our response to the consultation questions that are most relevant to our work.

**THEME 1: Legal mechanisms for incorporating the UNCRC into domestic law**

1. Are there particular elements of the framework based on the HRA as described here, that should be included in the model for incorporation of the UNCRC in domestic law? Please explain your views.

2. Are there any other aspects that should be included in the framework? Please explain your views.

3. Do you agree that the framework for incorporation should include a “duty to comply” with the UNCRC rights? Please explain your views.
As an organisation we are keen to demonstrate a rights-based approach to decision-making, by considering children’s rights in our decisions about how to improve health and care and thus producing outcomes that are compatible with the UNCRC. We agree that the inclusion of a ‘duty to comply’ with the UNCRC would help facilitate this. Where children (and those acting on their behalf) believe that their rights have been infringed by the acts or omissions of public bodies there should be clear routes to challenge these bodies.

However, to ensure that issues are resolved quickly and efficiently there should be alternative pathways to support issue resolution so that legal action is taken only as a last resort when necessary to ensure compliance and protect rights.

Interpretation of Rights

4. What status, if any, do you think General Comments by the UN Committee on the Rights of the Child and Observations of the Committee on reports made by States party to the UNCRC should be given in our domestic law?

5. To what extent do you think other possible aids would provide assistance to the courts in interpreting the UNCRC in domestic law?
Statutory Human Rights Framework for Scotland

6. Do you agree that it is best to push forward now with incorporation of the UNCRC before the development of a Statutory Human Rights Framework for Scotland? Please explain your views.

We believe that securing children’s rights is very important and would agree with moving forward with the incorporation now.

7. We would welcome your views on the model presented by the advisory group convened by the Commissioner for Children and Young People in Scotland and Together (the Scottish Alliance for Children’s Rights)

We broadly support this model, which seeks to introduce future-proofed legislation to secure children’s rights now.

8. How should the issue of whether particular UNCRC rights are self-executing be dealt with?

9. How could clarity be provided to rights holders and duty bearers under a direct incorporation approach, given the interaction with the Scotland Act 1998?

Clarity for both rights holders and duty bearers is of utmost importance. The UNCRC, as written, is clear and comprehensive and, as such we would support its direct incorporation. We note that there may be issues relating to matters reserved to the UK Parliament and clear guidance would need to be provided on this.

10. Do you think we are right to reject incorporating the UNCRC solely by making specific changes to domestic legislation? Please explain your views.
11. If the transposition model was followed here, how would we best enable people to participate in the time available?

12. What is your preferred model for incorporating the UNCRC into domestic law? Please explain your views.

THEME 2: Embedding Children’s Rights in public services

Children’s Rights Scheme

13. Do you think that a requirement for the Scottish Government to produce a Children’s Rights Scheme, similar to the Welsh example, should be included in this legislation? Please explain why.

☐ Yes ☐ No

Preparation for public authorities

14. Do you think there should be a “sunrise clause” within legislation? Please explain your views.

X ☐ Yes ☐ No

As duty bearers we would need time to prepare for the proposed legislative changes but we also acknowledge the desire for certainty regarding when children’s rights will be incorporated into domestic law. We believe that the ‘sunrise clause’ proposed by the First Minister’s Advisory Group on Human Rights Leadership would address these needs by introducing a transitional period to ensure that policies and practices are aligned with the rights in the Act, after which we would be under a duty to comply. We would not, however, expect this transitional period to be long given that public bodies should be well prepared due to their current duties set out in the Children and Young People (Scotland) Act 2014.
15. If your answer to the question above is yes, how long do you think public bodies should be given to make preparations before the new legislation comes into full effect? Please explain your views.
Additional non-legislative activities to progress implementation of the UNCRC

16. Do you think additional non-legislative activities, not included in the Scottish Government’s Action Plan and described above, are required to further implement children’s rights in Scotland? Please explain your views.

X Yes ☐ No

Non-legislative activities will be essential in supporting enactment of the legislative changes. We believe there should be opportunities for stakeholders to participate in decisions about what non-legislative activities will be necessary.

THEME 3: Enabling compatibility and redress

Certification of Scottish Parliament Bills

17. Do you agree that any legislation to be introduced in the Parliament should be accompanied by a statement of compatibility with children’s rights? Please explain your views.

☐ Yes ☐ No

Remedies and Redress

18. Do you agree that the Bill should contain a regime which allows right holders to challenge acts of public authorities on the ground that they are incompatible with the rights provided for in the Bill? Please explain your views.

☐ Yes ☐ No

19. Do you agree that the approach to awards of financial compensation should broadly follow the approach taken to just satisfaction damages under the HRA? Please explain your views.

☐ Yes ☐ No
20. Do you agree that the UNCRC rights should take precedence over provisions in secondary legislation as is the case under the HRA for ECHR rights? Are there any potential difficulties with this that you can see?

☐ Yes  ☐ No

21. Do you agree that the Bill should contain strong provisions requiring an ASP to be interpreted and applied so far as possible in a manner which is compatible with the rights provided for in the Bill? Please explain your views.

☐ Yes  ☐ No

22. Should the Bill contain a regime which would enable rulings to be obtained from the courts on the question of whether a provision in an ASP is incompatible with the rights secured in the Bill? Please explain your views.

☐ Yes  ☐ No

23. Do you consider any special test for standing to bring a case under the Bill should be required? Please explain your views.

☐ Yes  ☐ No