Note: This consultation document was compiled in 2019 when the charity was called Royal Blind.

***Legal mechanisms for incorporating the UNCRC into domestic law***

**1. Are there particular elements of the framework based on the Human Rights Act as described here that should be included in the model for incorporation of the UNCRC in domestic law?**

Incorporation offers the chance to place children and young people’s rights on the strongest possible footing. We agree with the Scottish Government and the Advisory Group convened by Together and CYPCS that a UNCRC framework similar to the Human Rights Act is required in Scotland by 2021.

Children and Young People’s rights must be legally binding, not guiding, in courts and tribunals. All public authorities should be legally obliged to act in a way which is compliant with the UNCRC and the Optional Protocols which the UK has signed up to.

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

While we very much welcome the Scottish Government’s plans to incorporate children's rights under the UNCRC, we believe this work would be strengthened by the incorporation of the United Nations Convention on the Rights of Persons with Disabilities in all areas of its responsibilities, activities and all public services in Scotland. We believe that taking this rights agenda forward for disabled people as it seeks to incorporate the Rights of the Child in Scots Law would be of particular benefit to disabled children.

We also support the Scottish Youth Parliament’s recommendation that Scottish Ministers should be able to sign up to and apply the International Protocol which lets children take cases to the UN Committee on the Rights of the Child if all national remedies have been tried.

We welcome the consultation paper’s reference to the Education (Additional Support for Learning) (Scotland) Act 2004. However, it is important to recognise that there remain significant gaps in provision for children with vision impairment. We are concerned that in many instances the main driver for decisions over the education for vision impaired children is based on budget, rather than where they will receive education which best meets their needs.

In this context, it is worth noting that there is no mention of disabilities in the consultation document. To guarantee the human rights of children with disabilities, there needs to be greater focus on specific measures which protect their rights, and full incorporation of the UN Convention on the Rights of Persons with Disabilities would help to achieve this. We recognise this area has reserved competences, but, as the consultation document states, these matters also apply in relation to legislation affecting children’s rights.

**3. Do you agree that the framework for incorporation should include a “duty to comply” with the UNCRC rights? Please explain your views.**

We agree that an “act compatibly” duty as found in the Human Rights Act would ensure children’s rights are binding and not just guiding. However, we also reaffirm the view of Together (Scottish Alliance for Children’s Rights), which has pointed to evidence from Wales showing the value of including a “due regard” duty to promote rights-based decision making. A model with both duties would enhance accountability and transparency by ensuring a reactive and proactive approach to children’s rights. Under this model, authorities would need to show they have considered children’s human rights in all decisions while also complying with the UNCRC when these decisions are put into practice.

**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 which are party to the UNCRC should be given in our domestic law?**

No answer.

**5. To what extent do you think other possible aids would provide assistance to the courts in interpreting the UNCRC in domestic law?**

The consultation document states that where a right in the UNCRC overlaps with other international human rights – such as, for example, the right to freedom of expression or the right to freedom of thought, conscience and religion - the courts may obtain assistance from decisions made under other international treaty regimes, including the ECHR. The Convention on the Rights of Persons with Disabilities could also be a useful aid to interpreting the UNCRC in relation to children with disabilities.

**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.**

Yes, we welcome the recognition by the First Minister’s Advisory Group on Human Rights Leadershipthat longer term ambitions should not impede action to incorporate the UNCRC. We echo the view of the CYPCS that the UNCRC must be incorporated fully and without delay while there is majority support in the Scottish Parliament. Incorporation is made all the more urgent by the UK’s planned withdrawal from the EU, as specific legal protections of the rights of children and disabled people included in the EU Charter of Fundamental Rights could be lost.

**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 agree with the model of direct incorporation advocated by the advisory group and believe further provision could be made for disabled children, particularly through legislative action to incorporate the UN Convention on the Rights of Persons with Disabilities. We support the support the justification for direct incorporation set out by Together:

“The UNCRC has been directly incorporated into law in a range of countries, including Norway, Iceland and Sweden. In countries that have directly incorporated, courts have not had difficulties in interpreting UNCRC rights. Direct incorporation provides clarity and means that domestic law keeps pace with developments in international law. It gives courts clarity that the rights incorporated into law are UNCRC rights rather than an alternative version. It allows courts to look to other countries that have incorporated the UNCRC and draw from UN General Comments and wider jurisprudence to inform decisions. Courts in Scotland and the wider UK are already doing this and regularly refer to the rights in the UNCRC when considering cases under the Human Rights Act 1998.”

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

No answer.

**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?**

A children’s rights awareness programme, updated to reflect the incorporation of the UNCRC, should be made part of the Curriculum for Excellence in broad general education, PSE and other subjects. Easy-read versions of guidance, including in audio, braille and large print formats, should be available, along with resources for parents and carers. It is imperative that this is accompanied by education and training, including sensory impairment awareness, for teachers, staff and those working in public bodies.

Royal Blind is aware of QTVIs being removed from their support to children who are blind and use braille to access the curriculum or those who are large print users requiring scribing, to act as supply teachers to cover teacher absence. If the rights of children with vision impairment and other disabilities were better understood and more central in teacher training, such instances might be less likely to occur or at least provide greater means to challenge them.

**10. Do you think we are right to reject incorporating the UNCRC solely by making specific changes to domestic legislation? Please explain your views.**

Yes. Limiting changes to domestic legislation would not take into account the full suite of rights enshrined in the UNCRC.

**11. If the transposition model was followed here, how would we best enable people to participate in the time available?**

No Answer.

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

We agree with the model of direct incorporation advocated by the advisory group. As the Children & Young People’s Commissioner Scotland argues, “rewriting the articles risks undermining the rights the children.” They note that the Convention was written to be incorporated and have highlighted guidance from the UN to help interpret the UNCRC. Direct incorporation was also backed at a seminar in May 2019 by a wide range of Scotland’s legal experts. Norway, Iceland and Sweden have all incorporated the UNCRC without difficulties in interpretation.

It is essential to take account of the views of children and young people themselves on incorporation. The Scottish Youth Parliament is in favour of direct incorporation, with the majority of its membership agreeing that re-writing rights is not full incorporation. While UNCRC rights can be interpreted and applied according to the domestic context, the rights themselves must be kept universal. In the case of rights of disabled children, these rights would be reinforced through the incorporation of the UN Convention on the Rights of Persons with Disabilities.

***Embedding children’s rights in public services***

**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 your views.**

We think this is a sensible proposal. It would provide a good reference point and draw together existing measures into a coherent document/charter. It is important this specifically sets out the intersectional rights of children with disabilities.

As Together states: “In Wales, the Children’s Rights Scheme has been largely effective in promoting rights-based policy making within national government. It is supported by the duty on Welsh ministers to publish a compliance report and lay it before the Welsh Parliament every three years. These duties combined have provided children, young people, the Children’s Commissioner and wider civil society with the opportunity to influence government action to promote children’s human rights.”

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

We support whichever approach ensures the legislation comes into effect as soon as possible.

**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.**

No answer.

**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.**

As the charity which runs the Royal Blind School and services to support mainstream education of children with vision impairment, we believe a rights based approach in services for children is of vital importance. Ensuring pupils have access to the specialist support they require and that they are genuinely included in their school environment are important aspects of their human rights. Royal Blind is concerned that too many vision impaired pupils in mainstream education do not have access to the specialist educational support they need to address the attainment gap and also do not feel genuinely included.

These concerns arise from a lack of resource in mainstream provision and the lack of a fair and pupil-centred placement system for vision impaired young people. The number of vision impaired pupils has doubled while there has been a decline in the number of specialist teachers for vision impaired young people. There remains an attainment gap for vision impaired pupils with their fully sighted peers. In 2017-18, 24.9% of pupils with vision impairment progressed to higher education compared to 48.1% of all leavers. In 2017-18, 87.8% of school leavers with a vision impairment progressed to further or higher education, training or employment, compared to 96% of those without an additional support need. If the incorporation of their rights into Scots Law is to make a meaningful difference, these issues need to be addressed.

Royal Blind is seeking four specific actions on the provision of education for vision impaired pupils:

* A Scottish Government Action Plan to recruit and retain the specialist teachers we need for increasing numbers of vision impaired pupils
* A new SQA training qualification in vision impairment for education support staff at all levels who work with vision impaired pupils
* Effective transitions for vision impaired young people
* A fair and pupil-centred placement system for vision impaired young people.

We also welcome the proposal for co-production. It is essential this involves children who are disabled including those with vision impairment. The manner in which public bodies make preparations must fully account for the needs of children with disabilities. The incorporation of the UNCRC offers a good opportunity to build upon progress made by the children’s rights provisions in the Education (Scotland) Act 2016, including empowering children between the age of 12 and 15 to ensure they are able to influence decisions about their education and support.

***Enabling compatibility and remedies.***

**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. There should also be an acknowledgement of how the rights of disabled children are specifically impacted, as well as clear guidance for children and families on how these will be secured.

**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, this would enable children and young people to access justice through the courts if their rights are violated. We believe there are significant questions around issues such as rights of every disabled child in Scotland to access appropriate education provision. While we agree these can be contentious areas of law we believe such provisions are necessary.

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

No answer.

**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?**

We agree. There is clear evidence internationally that the most effective models of incorporation are those in which the human rights treaty is given precedence over other legislation.

**21. Do you agree that the Bill should contain strong provisions requiring an Act of the Scottish Parliament 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.**

If incorporation is to be meaningful then it needs to enable every Act of the Scottish Parliament to be interpreted and applied in a way that is compatible with the convention.

**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.**

We agree that such provisions should be included in incorporation while acknowledging that these would need to be carefully considered to ensure that they are compatible with, and operate within, the legislative competence of the Parliament. In this context, we note the view of Together: “If a ‘strike down’ power is outwith the legislative competence of the Scottish Parliament, provisions for a ‘statement of incompatibility’ would provide an important – albeit weaker – alternative.”

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

A broader definition of standing should be included than the one in the Human Rights Act. Under the Human Rights Act, to have ‘standing’ you must be the ‘victim’ of a rights violation. This could be challenging for children and young people who may wish someone else to take a case on their behalf. This can be of particular relevance for many disabled children, particularly those with communication challenges.