



# An Introduction to Children's Rights in Scotland

**Improving Outcomes**  
for Children and  
Young People in Scotland

# Introduction to Children's Rights

## Who is this for and what will I learn?

This resource is aimed at anyone who wants or needs to better understand children's rights, for example:

- Parents, carers and families
- Children and young people
- Local and national government employees
- Those who work in the children's sector
- Anyone interested in children's rights



The resource provides a broad overview of children's rights and the many rights-based frameworks and legislation which support them in Scotland and internationally.

It also provides a comprehensive overview of how these rights are embedded in Scottish policy and practice and the many ways you can improve your own rights-awareness and practice, including completing a Child's Rights and Wellbeing Impact Assessment (CRWIA) and the inclusion of children and young people in decision-making.

# Introduction to Children's Rights

## What are 'human rights'?

Human rights are the basic rights and freedoms to which we are all entitled in order to live with dignity, equality and fairness, and to develop and reach our potential. Human rights are a list of things that all people – including children and young people – need in order to live a safe, healthy and happy life. Human rights are:

- Universal (they apply to everyone, regardless of who they are)
- inalienable (they cannot be taken from you or given away)
- Indivisible (they are all equally important)
- interdependent (breach of one impacts them all)



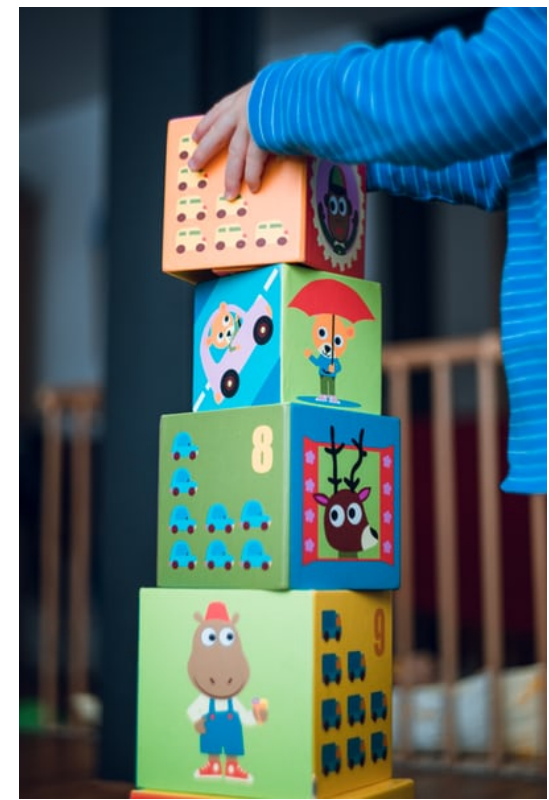
Everyone, including children, have these rights, no matter what their circumstances. Under international law, States/Governments are obliged to respect, protect and fulfil human rights. The Scottish Government aims to make human rights considerations part of the day-to-day business of government.

# Introduction to Children's Rights

## Children's Rights are Human Rights

The Scottish Government is committed to Scotland being the best place in the world for a child to grow up. The [National Outcome](#) for children and young people is that children grow up loved, safe and respected, so that they reach their full potential. A central part of our vision is the recognition of, respect for and promotion of children's human rights. These include rights to be treated fairly, to be heard and to be as healthy as possible.

Our vision is a Scotland where children's human rights are embedded in all aspects of society. A Scotland where policy, law and decision making takes account of children's rights and where all children have a voice and are empowered to be human rights defenders.



Parents, local and national governments and organisations which work with children and families can help children to experience their rights.

# Introduction to Children's Rights

## International human rights instruments

The [Universal Declaration of Human Rights](#) is the foundation for international human rights law. It was adopted by the UN General Assembly in 1948 to provide common human rights standards for all peoples and nations in a post-war world.

From this arose [nine core international human rights instruments](#) or treaties, including the [UN Convention on the Rights of the Child \(UNCRC\)](#). The UNCRC duplicates some of the rights found in other international instruments. This is because the UNCRC affirms and articulates the significance of these human rights for children and young people.

The [UN Committee on the Rights of the Child](#) monitors the implementation of the UNCRC.



# Introduction to Children's Rights

## Human rights mechanisms in Europe

The [European Convention on Human Rights](#) (ECHR) - drafted by the Council of Europe in 1950 and in force from 1953 - was the first regional agreement for the protection of human rights. The primary focus of the ECHR is on political and civil rights.

This is complemented by the [European Social Charter](#) which sets out economic, social and cultural rights - what the Council of Europe calls 'the rights of every day', many of which are of importance to children and young people, including the right to housing, health, education, and legal and social protection.

In 2009, the European Union adopted the [EU Charter of Fundamental Rights](#) which is legally binding on EU members through the Treaty of Lisbon. The EU Charter brings together ECHR rights, rights found in Court of Justice case law, and rights and principles from international treaties and the common constitutional traditions of EU countries.



# Introduction to Children's Rights

## Human rights in Scotland

The European Convention on Human Rights (ECHR) has been incorporated into UK domestic law through the **Human Rights Act (HRA) 1998**. It has been applied in a series of legal cases affecting children and young people, a growing number of which refer to Articles of the United Nations Convention on the Rights of the Child (UNCRC). There is a reporting cycle for Scottish commitments to the various UN and European human rights monitoring Committees (as part of the UK-wide reports). We can seek advice from the following bodies to inform our human rights approaches in Scotland:

- The **Scottish Human Rights Commission (SHRC)** oversees the delivery of [Scotland's National Action Plan \(SNAP\)](#) for Human Rights 2013-17, endorsed by the Scottish Government, and in which issues that affect children and young people are highlighted. SHRC are facilitating the development of proposals for a second phase of SNAP as part of their [2020-24 Strategic Plan](#).
- The **Equality and Human Rights Commission (EHRC) in Scotland** works closely with the SHRC.
- The **Children and Young People's Commissioner Scotland (CYPCS)**

# Introduction to Children's Rights

## What is the UNCRC?

The [UN Convention on the Rights of the Child](#) (UNCRC) is the internationally mandated children's rights framework that informs our strategies and programmes. It builds on the [Charter of the United Nations](#) (1945), which recognised that the inherent dignity and the equal and inalienable rights of all members of the human family are the foundation of freedom, justice, peace and social progress. It realises the [Universal Declaration of Human Rights](#) (1948), which states childhood is entitled to special care and assistance. It also explains how adults and governments must work together to make sure all children can enjoy all their rights.

## How does the UNCRC work?

There are four **general principles** of the **UNCRC**:

- apply rights without discrimination (Article 2)
- best interests of the child to be a primary consideration (Article 3)
- right to life, survival and development (Article 6)
- right to express a view and have that view taken into account (Article 12).





# Introduction to Children's Rights

## What rights do children have under the UNCRC?

The Convention contains **42** substantive articles that cover all aspects of a child's life and set out the civil, political, economic, social and cultural rights that all children everywhere are entitled to.

Examples of these are:

- to be heard and have their opinion considered (Article 12)
- freedom from violence, abuse and neglect (Article 19)
- a proper house, food and clothing (Article 27)
- access to primary and secondary education (Article 28)
- ability to have fun through play and to rest (Article 31)



It sets out children's **individual rights** - such as to a name and nationality, and to an adequate standard of living - alongside additional rights for specific groups of children, such as disabled children, children who have been exploited or mistreated, refugee and migrant children, children in custody, and children in care.

Article 1 of the UNCRC defines a child, for the purposes of the Convention as: *“every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.”*

# Introduction to Children's Rights

## Getting it right for every child (GIRFEC)

Getting it right for every child (GIRFEC) is Scotland's national approach to promoting, supporting and safeguarding the wellbeing of children and young people. It is based on the UNCRC and applies to every child and young person in Scotland. Its principles include:

- Placing the child, young person and family at the centre, and promoting choice, with full participation of children, young people and families in decision-making; and,
- Understanding wellbeing as holistic and interconnected, with a child or young person's developmental experiences understood within the wider context and influences of family, community and society.



**Every child or young person should be safe, healthy, achieving, nurtured, active, respected, responsible and included.**

getting  
it right  
*for eVéry child*



# Introduction to Children's Rights

## Parents and the UNCRC

Children's rights are inextricably linked with the rights of parents and carers, whose important role in children's lives is recognised throughout the UNCRC.

The Convention outlines the role of the parent in guaranteeing and promoting the rights of the child and ensuring that their best interests are always taken into account.



It outlines the support that the state should provide to parents and carers to help them to fulfil their responsibilities

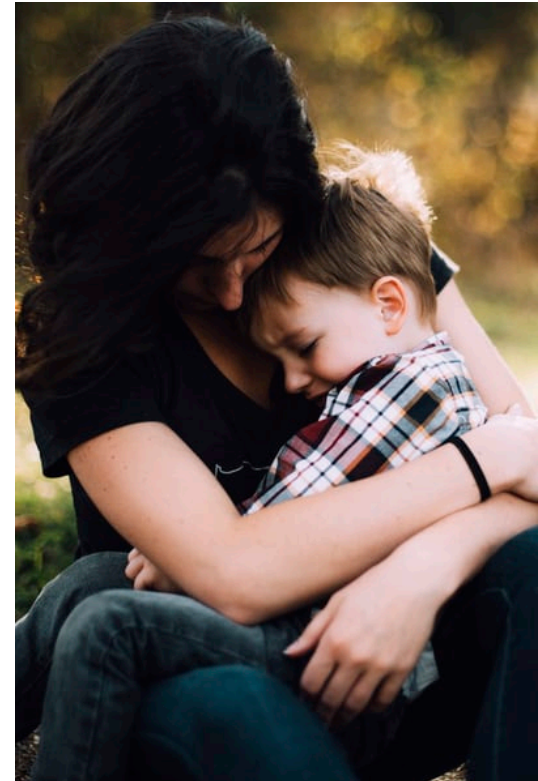
The UNCRC promotes parenting that is respectful of the child's best interests and considerate of the needs of parents. It states that the child is entitled to care, security and an upbringing that is respectful of their rights and individuality.

# Introduction to Children's Rights

## Parental Rights and Responsibilities (PRR)

**Part 1 of The Children (Scotland) Act 1995** sets out that if you have parental responsibilities for a child, you are expected to fulfil certain legal duties in respect of looking after them. Parents are required to:

- safeguard and promote their child's health, development and welfare
- provide, in a manner appropriate to the stage of development of the child, direction and guidance
- maintain personal relations and direct contact with the child on a regular basis (if the child is not living with the parent)
- act as the child's legal representative.



Parental rights enable parents to fulfil their parental responsibilities for their child. Parental responsibilities are directly referenced in articles 5, 18 and 27 of the UNCRC and references to parenting and the role of families are made throughout in no less than 23 of the Articles.

# Introduction to Children's Rights

## Parental Rights and Responsibilities (PRR)

If you have parental rights then you are entitled to:

- have a child live with you or otherwise regulate their residence
- control, direct or guide their upbringing, in a manner appropriate to their stage of development, for example, deciding how the child should be educated
- maintain personal relations and direct contact with them on a regular basis if they are not living with you



A child's mother automatically has PRRs in relation to their child. A father will have PRRs if:

- when the child was conceived the father was married to the child's mother or subsequently marries them
- the mother and father jointly register the child's birth (this applies to births registered on or after 4 May 2006)
- the mother and father complete and register a Parental Responsibilities and Rights Agreement
- or a court so orders.

Families come in different shapes and sizes and there are methods by which parents who would not automatically obtain legally PRR may acquire them e.g., via adoption.

# Introduction to Children's Rights

## Children's Rights and the Scottish Government

The Scottish Government was last examined by the UN Committee on the Rights of the Child in May 2016, as part of UK reporting, and the Committee produced a set of [Concluding Observations](#). These have informed our plans for and actions taken in progressing children's rights. We are due to be next examined in January 2023.



# Introduction to Children's Rights

## Legislation

There are a number of pieces of Scottish legislation which embody the UNCRC in Scots law, such as the [Children \(Scotland\) Act 2020](#), which provides a major part of the legal framework for child welfare and protection in Scotland. The [Children and Young People \(Scotland\) Act 2014](#) is an example of so-called 'rights-based legislation and is a milestone for children's rights in Scotland. Part 1 of the 2014 Act the embeds UNCRC rights in Scottish legislation and places new children's rights duties on Scottish Ministers and public authorities.

Under [Section 1\(1\)](#) Scottish Ministers have a duty to:

- give better or further effect to the requirements of the UNCRC
- take account of the relevant views of children of which they are aware
- promote public awareness and understanding of the rights of children.



The Scottish Government are committed to incorporating the UNCRC into Scots law to the maximum extent possible within the powers of the Scottish Government to further strengthen children's rights.



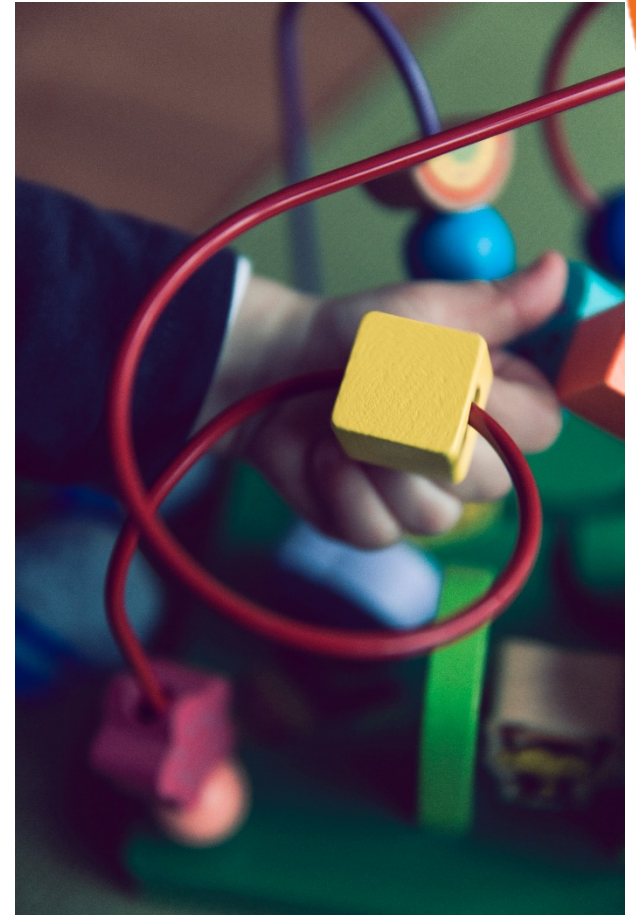
# Introduction to Children's Rights

## Incorporating the UNCRC into Scots Law

Since ratifying the UNCRC in 1991, the UK has been under an obligation to comply with it, but its provisions have not been directly enforceable in our courts. On 1 September 2020, the UNCRC (Incorporation) (Scotland) Bill was introduced to the Scottish Parliament.

The Bill is yet to receive Royal Assent, but if it does, it will mean that children, young people and their families will experience public authorities consistently acting to uphold the rights of all children in Scotland.

Public authorities will be required to fulfil this duty in areas of their responsibility including their decisions, actions and inactions. This will have the effect of creating further accountability and empower children and young people, so if their rights are not being fully respected they can, if they chose to do so, seek to pursue that through the legal system.



# Introduction to Children's Rights

## Incorporating the UNCRC into Scots Law

The UNCRC Bill will mean that public authorities, including Scottish Ministers, will be legally obliged to act compatibly with the rights and requirements of the UNCRC requirements (as defined by the Bill). And, if they don't, the UNCRC Bill will enable children, and those acting on their behalf, to advance their rights in the Scottish courts.

Public authorities across Scotland already take children's rights considerations into day to day decision making and policies. The Bill will expand upon and formalise that good practice and places a duty on public authorities not to act incompatibly with the UNCRC rights set out in the Bill. This is similar to the existing duty not to act incompatibly with the rights set out in the Human Rights Act. The UNCRC Bill aims to ensure that there is a proactive culture of everyday accountability for children's rights across public services in Scotland.



# Update on UNCRC Incorporation

On 12 April 2021, a reference of certain provisions of the Bill was made by UK Law Officers to the UK Supreme Court. The provisions referred to the Supreme Court are sections 6 (the duty on public authorities to act compatibly) and sections 19 to 21 (the interpretation duty and judicial powers of 'strike down' and 'incompatibility declarator') as those apply to Acts of the Westminster Parliament.

A hearing before the UK Supreme Court to consider the reference took place on 28 and 29 June 2021. The Supreme Court held on 6 October 2021 that the sections of the Bill were outwith the legislative competence of the Scottish Parliament. Whilst this means that the Bill cannot receive Royal Assent at this stage, the majority of work in relation to implementation can and is continuing whilst careful consideration is given on how to remedy the difficulties with the Bill.

The Scottish Government remains committed to the incorporation of the UNCRC to the maximum extent of the Parliament's powers and the preference is to bring the Bill back to Parliament for reconsideration as soon as practicable.

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## Progressing Children's Rights in Scotland

The Scottish Government committed to raising awareness of Children's Rights as part of their 2017-18 Programme for Government.

This is outlined in the Action Plan to [Progress the Human Rights of Children in Scotland 2021 to 2024](#) alongside other commitments to incorporate the UNCRC into Scot's Law, develop a strategic approach to children and young people's participation and evaluate and promote the use of CRWIAs.

Lead responsibility for progressing these commitments rests with the Children's Rights Unit within Scottish Government.

In 2021 we published [Progressing the Human Rights of Children in Scotland: A Report 2018-2021](#) which set out the progress made in relation to children's rights between 2018-21.



# Introduction to Children's Rights

## Children and Young People's Commissioner

In line with principles set out by the United Nations, the [Commissioner for Children and Young People \(Scotland\) Act 2003](#) established this role, with the first Commissioner taking up post in 2014. Their role is to promote and safeguard the rights of children, with particular emphasis on the UNCRC. Part 2 of the Children and Young People (Scotland) 2014 Act introduced an individual investigations function to the role of the Commissioner, providing a limited mechanism through which children can seek an investigation into violations of their UNCRC rights.

The Commissioner has a role to:

- Promote awareness and understanding of the rights of children and young people
- Support children and young people's rights to be protected in the law
- Promote best practice by service providers

The Children and Young People's Commissioner Scotland has set out their key priorities for 2020-24 in their [Strategic Plan](#).

Bruce Adamson has been the Children and Young People's Commissioner in Scotland since 2017.



# Introduction to Children's Rights

## Together (Scottish Alliance for Children's Rights)

[Together](#) is an alliance of individuals and professionals with an interest in children's rights, and Scottish children's charities, from small playgroups to large international bodies, that works to improve the awareness, understanding and implementation of the UNCRC. They do this by:

- promoting the UN Convention on the Rights of the Child;
- helping children's organisations to integrate the UNCRC into their work;
- monitoring and reporting on the progress made at a Scottish and UK level.

Every year, Together publishes the [State of Children's Rights](#) in Scotland report which aims to monitor implementation of the UNCRC in Scotland. Each report takes a different approach to looking at whether enough is being done to fulfil the human rights of children living in Scotland.



together

Scottish Alliance for Children's Rights

# Introduction to Children's Rights

## Children's Right to have their views listened to

Under Article 12 (UNCRC), every child has the right to be heard in matters affecting them and to participate in the life of their family, community and society.

The Children and Young People (Scotland) Act 2014 embeds this child's right in primary legislation, and places requirements on Scottish Ministers in relation to policy and service development and services planning.



The Ministerial duty is supplemented by a Scottish Government expectation that, where children and young people's views are not known on a matter that is likely to have an impact on them, steps should be taken to obtain their views. [Part 1 Guidance](#) on the Children and Young People (Scotland) Act 2014 explains in more detail rights based duties and expectations in relation to public bodies, including engagement with children and young people.

# Introduction to Children's Rights

## Engaging Children and Young People in decision making

The Scottish Government wants to make it the norm for children and young people to be involved in decision-making across Scotland, so that they are at the heart of decisions that affect them at local and national levels in line with Article 12 (UNCRC). We have a portfolio of projects that are developing strategic approaches to children and young people's meaningful participation including: Cabinet and Executive Team Take-Overs, The Children and Young Persons Consortium, and a policy project with the Scottish Youth Parliament.

We have also developed a [guide](#) to support those who have or want to engage with children and young people as part of their decision-making.

Further information on the skills and values needed to work with children can be found in the [Common Core](#).





# Child Rights and Wellbeing Impact Assessment

## What is the Child Rights and Wellbeing Impact Assessment (CRWIA)?

CRWIA is a purpose built policy and legislation impact assessment (IA) for use by Scottish Government officials, however, it can be used by anyone including public and third sector. It was launched on 15 June 2015 as part of the implementation strategy for Ministerial duties under Part 1 of the Children and Young People (Scotland) Act 2014. CRWIAs utilise both UNCRC and GIRFEC frameworks to assess the potential impact of a policy/measure on children and young people's rights and wellbeing in Scotland.

CRWIA covers individual children, groups of children, and all children up to age 18. It has been developed as an improvement approach, a tool and a published output, based on EQIA. It is intended to help us champion the interests of children, as well as challenge us to think about what more we can do to place children and young people at the centre of our policies.



# Child Rights and Wellbeing Impact Assessment

## Why do we need CRWIAs?

Ministers committed to CRWIAs as a means of delivering their children's rights duties under the **2014 Act** which embeds UNCRC rights in Scottish legislation.

The reach of the UNCRC is far wider than Equalities legislation although some categories of individuals may be covered by both, for example those with protected characteristics under the **Equality Act 2010**: disability, race, religion or belief, sex, sexual orientation.

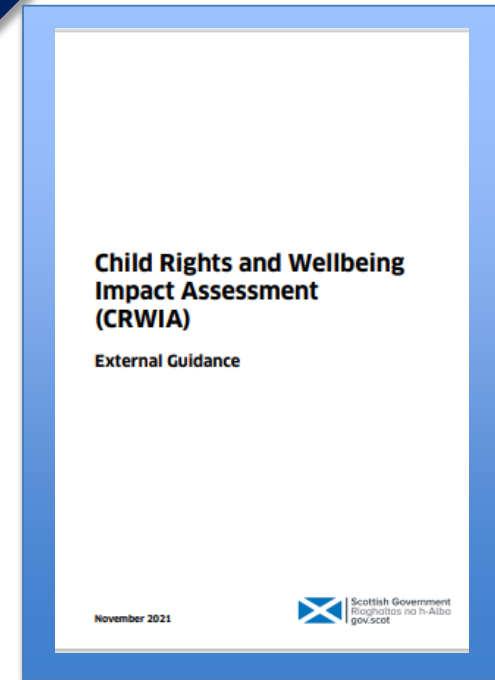
The UNCRC considers all individual children or groups of children, for example by age band or setting, or those who are eligible for special protection or assistance, e.g. pre-school children, children with additional support needs, children in hospital, children in rural areas, looked after children (children in care), young people who offend, children affected by violence, drugs or alcohol, poverty or deprivation, homelessness, victims of abuse or exploitation (trafficking, economic or sexual), child asylum-seekers or refugees.



# Support to undertake a CRWIA

Scottish Government has developed [guidance](#) for the preparation of CRWIAs which includes information on the following:

- When to use the CRWIA
- Benefits of using a CRWIA
- The three-stage CRWIA process
- Publishing a CRWIA
- Involving others in your CRWIA



It sets out the steps that officials can take in order to provide Ministers, stakeholders and the public with evidence that proper consideration has been given to the impact that a policy/measure will have on children and young people up to the age of 18. The Child Rights and Wellbeing Impact Assessment (CRWIA) is the approach that Scottish Government officials use.

[Find out more about children's rights and the CRWIA on the SG website.](#)

**You have  
completed an  
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for Children and  
Young People in Scotland**