

Secretary of State for Scotland, Rt Hon Douglas Alexander MP
House of Commons
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HM Advocate General for Scotland, Baroness Smith of Cluny KC
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Via douglas.alexander.mp@parliament.uk enquiries@advocategeneral.gov.uk

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Dear Secretary of State for Scotland and Advocate General for Scotland

The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024

As Chair of the Scottish Human Rights Commission (SHRC), I write to raise a significant and ongoing issue with the implementation of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (UNCRC Act). In particular I would welcome engagement with the UK Government to support a resolution to this issue.

The UNCRC Act was passed unanimously by the Scottish Parliament in 2024. The UNCRC Act makes the rights contained in the UNCRC (and set out in Schedule 1 to the Act) part of the domestic law of Scotland and therefore directly enforceable in the Scottish courts. However, prior to passage of the UNCRC Act, an earlier version of the Bill was referred to the UK Supreme Court in 2021 by the previous Advocate General for Scotland. The Supreme Court's interpretation of section 28(7) of the Scotland Act 1998 in that reference has resulted in a significant accountability gap which is limiting the effectiveness of the UNCRC Act in practice.

In short, this judgment has meant that the Scottish Government and Scottish public authorities are not subject to the duty to act compatibly with the UNCRC requirements in a number of key areas. This is because major pieces of legislation in areas such as education, housing, the care system and the criminal justice system are currently out of scope of the accountability mechanisms in the UNCRC Act despite relating to matters which are fully devolved to the Scottish Parliament.

The reason for this is the legislation was originally passed by Westminster, prior to devolution and the Scotland Act 1998 coming into force. Over the years, the Scottish Parliament has frequently made changes by way of amendments to this Westminster legislation, rather than creating new standalone legislation.

This has created a complex landscape which is very difficult for children and young people and their representatives, to navigate. The uncertainty can also create challenges for public authorities. We have already observed significant time and public money spent on litigation to determine what is in scope of the UNCRC Act or not. This issue has also required a significant amount of parliamentary time at Holyrood as MSPs grapple with the impact of this issue on new legislation. This is diverting the focus of decision makers away from compliance with the children's rights themselves.

Importantly, as has been highlighted by Together, the Scottish Alliance for Children's Rights, in its recent [briefing](#) to the Prime Minister, it also means that the Scottish Government often cannot be held to the standards it has championed through its flagship policy of incorporation, and as voted for by the Scottish Parliament.

We are aware that a number of other stakeholders in the Scottish children's rights sector have recently written to the Prime Minister in relation to this matter. This demonstrates the significant level of concern about this issue across the children's rights sector in Scotland. We would encourage the UK Government to engage with these stakeholders and would welcome being part of any conversation resulting from this engagement. While the Scottish Government could re-enact legislation on a piecemeal basis to bring it within scope of the UNCRC Act, we believe that the UK Government's support in achieving a systemic solution to the issue is the preferable approach. We believe this could be done without changing the current balance of powers in the devolution settlement, nor weakening the authority of Westminster to legislate for Scotland.

Moreover, we consider that a systemic solution is particularly important in the context of a forthcoming Scottish Government Bill to incorporate further international human rights treaties into the domestic law of Scotland.

We welcome the commitment of the Scottish Government in its [first children's rights scheme](#) laid before the Scottish Parliament under section 15 of the UNCRC Act to progressing engagement with the UK Government on this issue. We hope that the Scottish and UK Governments can work together constructively to improve the operation of devolved governance in the UK and achieve a pragmatic resolution for the children and young people of Scotland.

The SHRC would welcome a meeting with you and your officials to discuss our concerns and proposed solution in more detail, building on earlier positive engagement between myself and the Advocate General about human rights protection in Scotland. We would be available to do so at your earliest convenience, noting the Scottish Government is due to provide an update on this issue to the Scottish Parliament in November 2026.

Yours sincerely,



Angela O'Hagan
Chair, Scottish Human Rights Commission