

## Play Scotland response

4<sup>th</sup> October 2023

The questions in this document refer to information contained in '[A Human Rights Bill for Scotland: Consultation](#)'.

### Questions 1 – 5 refer to Part 4: Incorporating the Treaty Rights

#### Question 1

What are your views on our proposal to allow for dignity to be considered by courts in interpreting the rights in the Bill?

Allow

Don't Allow

Play Scotland expects the principle of dignity to always influence human rights in areas which affect children and young people and in whatever context is relevant. Dignity should therefore be considered by courts in interpreting the rights in the Bill. Dignity is a fundamental principle of human rights and is reflected across the human rights treaties that the Bill will incorporate as well as in the UNCRC.

#### Question 2

What are your views on our proposal to allow for dignity to be a key threshold for defining the content of minimum core obligations (MCOs)?

Allow

Don't Allow

Play Scotland believes that human dignity should be a key threshold for defining the content of minimum core obligations. Our work with children and young people, and that of our member organisations, shows that children believe that fairness, respect, being listened to and having a voice all contribute to upholding human dignity and are fundamental to children and young people's human rights.

#### Question 3

What are your views on the types of international law, materials and mechanisms to be included within the proposed interpretative provision?

Play Scotland is firmly of the view that the extensive UN guidance including UN General Comments, Concluding Observations, decisions and other resources, should be included in the proposed interpretative provision. Play experts in Scotland have substantially contributed to international tools, such as General Comment no.17 on Article 31 of the UNCRC. We have found this resource and other General Comments and UN tools invaluable to our work in Scotland. In addition, our recent experience as a major contributor to the International Play Association conference in Glasgow (June 2023), highlighted the importance of having a globally shared

understanding around human rights to share experience, learn from others and explore ways forward.

These international tools, which have been developed by experts, informed by civil society and by lived experience including that of children and young people, provide a resource-effective way of accessing guidance and information.

#### **Question 4**

What are your views on the proposed model of incorporation?

Play Scotland supports embedding the exact text of treaties into the Bill, except for any parts that reserved. This is essential to ensure consistency across legislation. We therefore support Together's response to this question which proposes a 'due regard' procedural model to enable judicial review if necessary.

We note the Scottish Government's proposal to have a duty to comply only for ICESCR rights and the right to a healthy environment. We believe that a duty to comply is essential for *all substantive rights*, regardless of which treaty they are set out in.

In addition, we would urge the Scottish Government to conduct a legislative audit to identify where acts of Scottish and UK Parliament (in line with devolved competence) fall short of human rights standards. We are aware of the very wide range of legislation – including that relating to planning, environment, transport, health, education etc. – that affect children's right to play. Mapping the legislation, and areas which need to be strengthened, is therefore essential.

Specifically, we support the HRCS's view that the CRPD includes important rights that are not found in the ICESCR. We therefore would want the Scottish Government to ensure there is a duty to comply with CRPD. As an organisation, we have substantial experience in exploring and developing protocols and advice around the inclusion of disabled children and young people in play including our UK 4 nation statement. Including Disabled Children in Play Provision.<sup>1</sup>

#### **Question 5**

Are there any rights in the equality treaties which you think should be treated differently? If so, please identify these, explain why and how this could be achieved.

Yes

No

Play Scotland supports HRCS and Together's view that the appropriate term 'special protection' should be used rather than 'equality' treaties. All rights are indivisible and interdependent, so it is not appropriate for specific rights to be treated differently. We would urge that the Bill aims for maximum provision, in line with the Scottish Parliament's powers.

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<sup>1</sup> Including Disabled Children in Play Provision (2022)  
<https://www.playscotland.org/resources/including-disabled-children-in-play-provision/>

We are concerned, as an organisation, that all children have access to play provision, noting that the UN Committee on the Rights of the Children, drew attention to areas where the state party need to make progress in the area of play (see para 48.c) to ensure that all children ‘including children with disabilities, young children, children in rural areas and children with disadvantaged socioeconomic backgrounds, have access to accessible and safe public outdoor play spaces.’

## **Questions 6 – 11 refer to Part 5: Recognising the Right to a Healthy Environment**

### **Question 6**

Do you agree or disagree with our proposed basis for defining the environment?

Agree

Disagree

Play Scotland broadly agrees with the proposal to use the Aarhus Convention’s definition of the environment. The Aarhus Convention emphasises the importance of the role of public authorities in the environment and the need to focus on public participation. These are areas which Play Scotland has long championed in the provision of high quality and inclusive play environments and in highlighting the need to involve children and young people at the earliest stages of planning. The UN Committee on the Rights of the Child drew attention to this in its Concluding Observations (para 48: a- d) which highlighted that the state party should ‘involve children in decisions regarding urban-planning processes, including public transportation, and in the development of spaces for children to play.’ Play Scotland has an extensive body of work on outdoor play and the environment.<sup>2</sup>

We disagree with the Scottish Government’s proposal that the right to food does not need to be included. The recent General Comment no.26 on children’s rights and the environment highlights that States should take action to ensure that healthy and sustainable food is produced for children. Our view is that children need access to healthy food to maximise their physical wellbeing and have the best play experiences.

### **Question 7**

If you disagree please explain why:

As above and see below response, Play Scotland would want the right to food to be included.

### **Question 8**

What are your views on the proposed formulation of the substantive and procedural aspects of the right to a healthy environment?

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<sup>2</sup> Play Scotland resources on the environment: <https://www.playscotland.org/resource-category/climate-environment/>.

Please give us your views:

Play Scotland agrees with the position of HRCS and Together. We therefore disagree with the exclusion of adequate sanitation under safe and sufficient water and disagree with the right to healthy and sustainably produced food being excluded. The Human Rights Bill should align with the Aarhus Convention and other international tools such as the UN Committee on the Rights of the Child's General Comment 26 on children's rights and the environment.

### **Question 9**

Do you agree or disagree with our proposed approach to the protection of healthy and sustainable food as part of the incorporation of the right to adequate food in ICESCR, rather than inclusion as a substantive aspect of the right to a healthy environment? Please give reasons for your answer.

Agree

Disagree

Please provide your reasons why:

Play Scotland disagrees with the proposed approach on food. The right to food should be included as a substantive aspect of the right to a healthy environment. Without this commitment, we believe that there could be insufficient attention to the economic and social right to food, and specifically healthy food.

Play Scotland wants children and young people to have the best possible physical, social and economic conditions in order that they can play. This means access to healthy, nutritious food. We would draw the Scottish Government's attention to the UN Committee on the Right of the Child's Concluding Observations which called for greater attention to environmental rights and children's right to food, and to the relevant discussion in the UN Committee on the Rights of the Child General Comment no. 26.

### **Question 10**

Do you agree or disagree with our proposed approach to including safe and sufficient water as a substantive aspect of the right to a healthy environment? Please give reasons for your answer.

Agree

Disagree

Please give us your views:

Play Scotland agrees with the proposed approach. We believe that defining the right to water under the right to healthy environment and ICESCR. We want children and young people to have the best possible conditions so that they are healthy and can play. This means access to 'safe and sufficient' water and to adequate sanitation. Children play in many different environments, and, where these include water (such as water that comes out of taps, standing water, ponds, lochs, streams, rivers,

canals and the sea), these should be safe for children to access and be near to, where this is appropriate (see our resources on water and play).<sup>3</sup>

### Question 11

Are there any other substantive or procedural elements you think should be understood as aspects of the right?

Yes

No

If yes, please specify what substantive or procedural elements and explain how this could be achieved:

Play Scotland supports the position of HRCS and Together. Play Scotland would urge the importance of sustainable and affordable travel routes to be reflected as a component of the right to a healthy environment. In a recent Play Scotland review<sup>4</sup>, children highlighted the importance of sustainable and affordable travel options to access a range of play environments. They wanted:

- Better access to play spaces - *children and young people need to be able to get to where they want to play.*
- Fewer cars, slower traffic - *the danger posed by cars is real, so reducing or calming traffic is vital.*
- Opportunities for active travel - *children and young people want to walk and cycle, this gives them freedom.*

(The State of Play in Scotland, 2023)

The need for support for travel is highlighted by the UN Committee on the Rights of the Child General Comment no. 26, para. 61, which states the need for children to be able to access 'safe, affordable, and accessible transportation to green areas, large open spaces and nature for play and recreation.'

## Questions 12 – 18 refer to Part 6: Incorporating Further Rights and Embedding Equality

### Question 12

Given that the Human Rights Act 1998 is protected from modification under the Scotland Act 1998, how do you think we can best signal that the Human Rights Act (and civil and political rights) form a core pillar of human rights law in Scotland?

Please give us your views:

We support the position that the Human Rights Act is a core pillar of human rights law in Scotland. Any process around this should be transparent and subject to public scrutiny.

### Question 13

How can we best embed participation in the framework of the Bill?

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<sup>3</sup> Play Scotland: water play <https://www.playscotland.org/water-play/#:~:text=Make%20your%20own%20water%20slide,with%20your%20bath%20toys%20outside.&text=Smooth%20Pebbles%3A%20In%20a%20stream,bottles%20and%20attach%20to%20wall.>

<sup>4</sup> L. Fitzgibbon and H. Dodd, (2023) The State of Play in Scotland, Play Scotland

Please give us your views:

Play Scotland would urge the Scottish Government to draw on the experience of the UNCRC Bill in order to embed participation in the framework of the Human Rights Bill.

We strongly believe that participation must be at the core of human rights, and that this should focus on the rights of people, including children and young people, whose rights are most at risk. We would encourage the Scottish Government to explore what is already known to avoid unhelpful duplication and to explore the realistic resources that are needed to support participation in meaningful ways. Play Scotland has collated children and young people's views on play and would be pleased to share the report, *The State of Play in Scotland*, and other findings with the Scottish Government.<sup>5</sup>

We also draw attention to the UN Committee on the Rights of the Child's Concluding Observations (para.48. d) which highlights that the state party should 'involve children in decisions regarding urban-planning processes, including public transportation, and in the development of spaces to play.'

#### **Question 14**

What are your views on the proposed approach to including an equality provision to ensure everyone can access rights in the Bill?

Please give us your views:

Play Scotland supports the inclusion of an equality provision in the Bill and believe that this is an essential underpinning principle.

#### **Question 15**

How do you think we should define the groups to be protected by the equality provision?

Please give us your views:

Play Scotland supports the positions of Together and Who Cares that care experience should be recognised as a lifelong characteristic.

#### **Question 16**

Do you agree or disagree that the use of 'other status' in the equality provision would sufficiently protect the rights of LGBTI and older people? If you disagree, please provide comments to support your answer.

Play Scotland disagrees that the use of 'other status' is sufficient. We would support Together's position that a non-exhaustive listing should be used, along with 'other status.' This would help specifically where children and young people do not have access to equality protection.

Agree

Disagree

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<sup>5</sup> L. Fitzgibbon and H. Dodd, (2023) *The State of Play in Scotland*, Play Scotland

**Question 17**

If you disagree, please provide comments to support your answer.

Play Scotland supports the position of other Together members that LGBTI, older people and Care Experienced People are named and that 'other status' is also included.

**Question 18**

Do you think the Bill framework needs to do anything additionally for LGBTI or older people?

Yes

No

Please give us your views:

As above.

**Questions 19 – 26 refer to Part 7: The Duties****Question 19**

What is your view on who the duties in the Bill should apply to?

Please give us your views:

The duties in the Bill should apply as widely as possible, taking devolution into account, and should include all organisations which provide public services. This should include private and third sector organisations who provide childcare and play. Many of these are Play Scotland members and are therefore committed to providing high quality play experiences for children.

**Question 20**

What is your view on the proposed initial procedural duty intended to embed rights in decision making?

Please give us your views:

Play Scotland supports Together's position that a procedural duty should apply across all the treaties and that this should follow a 'due regard' model.

**Question 21**

What is your view on the proposed duty to comply?

Please give us your views:

Play Scotland supports a strong duty to comply.

**Question 22**

Do you think certain public authorities should be required to report on what actions they are planning to take, and what actions they have taken, to meet the duties set out in the Bill?

Please give us your views:

Yes. All public authorities should be required to monitor and report against minimum standards and be looking ahead as well as reflecting on past actions. The Scottish Government should ensure that the Bill is consistent with the UNCRC Bill, and builds on this, as appropriate. This should include the topics that the named authorities should report on including child friendly complaints procedures, independent advocacy services, access to legal aid, and those actions which focus on the rights of children most at risk.

Children and young people should have a role in informing and shaping these reports. Play Scotland is firmly of the view that children are experts on play and how this is planned, delivered and monitored (see also UN Committee on the Rights of the Child's Concluding Observation, para 48 (d) on state party's duty to involve children in urban planning processes etc.). Children therefore need to be consulted on reporting on these services (see, for example, our work on Play Sufficiency assessments.<sup>6</sup> and our work on Outdoor Play and Learning (OPAL)<sup>7</sup>).

### **Question 23**

How could the proposed duty to report best align with existing reporting obligations on public authorities?

Please give us your views:

Play Scotland agrees that there are ways in which existing reporting obligations could be aligned, as long as this does not diminish scrutiny or children and young people's contribution to the reporting process. The emphasis should be on a meaningful and inclusive process, which proactively supports participation by rights holders.

### **Question 24**

What are your views on the need to demonstrate compliance with economic, social and cultural rights, as well as the right to a healthy environment, via minimum core obligations (MCOs) and progressive realisation?

Please give us your views:

There is a need to demonstrate compliance with the above, to realise children's rights. Minimum core obligations should be secured, regardless of the extent of available resources. This is in line with the UNCRC's statement that governments should commit to their 'maximum available resources' in order to realise children's rights.

### **Question 25**

What are your views on the right to a healthy environment falling under the same duties as economic, social and cultural rights?

Please give us your views:

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<sup>6</sup> Play Sufficiency Assessments <https://www.playscotland.org/projects/play-sufficiency-assessments/>

<sup>7</sup> Outdoor Play and Learning (OPAL) <https://www.playscotland.org/projects/opal/>

Play Scotland supports the same duties applying.

**Question 26**

What is your view on the proposed duty to publish a Human Rights Scheme?

Please give us your views:

Play Scotland supports the duty to publish a Human Rights Scheme. This should be in line with the Children’s Rights Scheme, which has been a positive component of the Scottish Government’s commitment to implementing the UNCRC as outlined in the Bill. We support Child rights impacts assessments (CRIA), inclusive communications which enable children and young people to access documentation, and child-friendly complaints.

**Questions 27 – 37 refer to Part 8: Ensuring Access to Justice for Rights Holders**

**Question 27**

What are your views on the most effective ways of supporting advocacy and/or advice services to help rights-holders realise their rights under the Bill?

Please give us your views:

The Human Rights Bill should strengthen access to independent advocacy, and this be included in the Bill. This is important for children who may need access if their rights were breached including where they are not able to access play – for example, in a care setting, or in access to play facilities/environments.

**Question 28**

What are your views on our proposals in relation to front-line complaints handling mechanisms of public bodies?

Please give us your views:

Play Scotland supports HRCS’s position that complaints handling needs to be enhanced, and specifically for children and young people. These should include a spectrum of both formal and informal procedures which are accessible to children and young people. We would urge learning to be taken from the UNCRC Bill. This should be informed and co-produced with those whose are most at risk.

**Question 29**

What are your views in relation to our proposed changes to the Scottish Public Services Ombudsman’s remit?

Please give us your views:

As above.

**Question 30**

What are your views on our proposals in relation to scrutiny bodies?

Please give us your views:

Play Scotland supports HRCS's position that scrutiny bodies should include human rights as part of their remit. This will significantly help in ensuring that human rights are fully integrated across all bodies.

**Question 31**

What are your views on additional powers for the Scottish Human Rights Commission?

Please give us your views:

Play Scotland support the HRCS position calling for additional powers for the Scottish Human Rights Commission.

**Question 32**

What are your views on potentially mirroring these powers for the Children and Young People's Commissioner Scotland where needed?

Please give us your views:

Play Scotland agrees that these powers should be mirrored. There should be consistency across human rights bodies in terms of powers.

**Question 33**

What are your views on our proposed approach to 'standing' under the Human Rights Bill? Please explain.

Please give us your views:

Play Scotland agrees with Together's position which supports the Scottish Government's proposal to adopt the 'sufficient interest' test for standing.

**Question 34**

What should the approach be to assessing 'reasonableness' under the Human Rights Bill?

Please give us your views:

Play Scotland supports HRCS's position.

**Question 35**

Do you agree or disagree that existing judicial remedies are sufficient in delivering effective remedy for rights-holders?

Agree

Disagree

Play Scotland does not agree that current judicial remedies are sufficient and would urge the Scottish Government to explore this further in order to identify remedies which consistently meet the needs of children and young people.

### **Question 36**

If you do not agree that existing judicial remedies are sufficient in delivering effective remedy for rights-holders, what additional remedies would help to do this?

Play Scotland supports Together's position that the Human Rights Bill should align with the UNCRC Bill and its position.

### **Question 37**

What are your views on the most appropriate remedy in the event a court finds legislation is incompatible with the rights in the Bill?

Please let us know your views:

Play Scotland supports HRCS's position.

### **Questions 38 – 44 refer to Part 9: Implementing the New Scottish Human Rights Act**

### **Question 38**

What are your views on our proposals for bringing the legislation into force?

Please give us your views:

Play Scotland would wish commencement to take place within the reasonable timescale of six months, following Royal Assent.

### **Question 39**

What are your views on our proposals to establish minimum core obligations (MCOs) through a participatory process?

Please give us your views:

Play Scotland supports the Scottish Government's proposal to establish the minimum core obligations through a participatory process. We would support Together's view that this should be informed by guidance from General Comments from the International Committee on Economic, Social and Cultural Rights. We would be pleased to support this process through providing children's views and experiences on their right to play, and by supporting a participatory process which involves children and young people.

### **Question 40**

What are your views on our proposals for a Human Rights Scheme?

Please give us your views:

Play Scotland supports the Scottish Government's proposals for a Human Rights Scheme. This should be modelled on the Children's Rights Scheme which was set out in the UNCRC Bill.

#### **Question 41**

What are your views on enhancing the assessment and scrutiny of legislation introduced to the Scottish Parliament in relation to the rights in the Human Rights Bill?

Please give us your views:

Play Scotland supports HRCS's position.

#### **Question 42**

How can the Scottish Government and partners effectively build capacity across the public sector to ensure the rights in the Bill are delivered?

Please give us your views:

The Scottish Government should use the experience of the UNCRC Bill to develop mechanisms, tools and communications to build capacity across the public sector.

Play Scotland has an extensive body of experience through its experience of working with local authorities to develop play strategies, and on play sufficiency and across play provision. Our experience demonstrates that a collaborative, resource-friendly and rights-based approach is essential. This should include the views of rights holders, children and young people (see, for example, our work on play sufficiency).<sup>8</sup> We would be pleased to share our wide experience.

#### **Question 43**

How can the Scottish Government and partners provide effective information and raise awareness of the rights for rights-holders?

Please give us your views:

Play Scotland believes that this is an essential part of the process. Learning from the UNCRC Bill should be utilised as well as the learning from organisations such as Play Scotland. We have a very extensive membership of play experts and organisations that can support information sharing and awareness raising.

#### **Question 44**

What are your views on monitoring and reporting?

Please give us your views:

Play Scotland supports HRCS's position. We also agree with Together that there should be a reporting duty on the Scottish Parliament, reflecting the provision in the

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<sup>8</sup> Play Sufficiency Assessments: <https://www.playscotland.org/projects/play-sufficiency-assessments/>

UNCRC Bill, that the Scottish Parliament accepts these duties itself. Appropriate, regular and timely monitoring mechanisms should be put in place across all duty bearers.

## **About you**

Please tell us which of the following categories best describe you (select all that apply):

- Legal profession
- Organisation - Private
- Organisation – Public
- Rights holder
- Other – please specify **Charity/national membership organisation for play in Scotland.**

## **Additional space for answers- About You**

*(Please specify the question information relates to)*

**Play Scotland's response is supported by :**

- Early Years Scotland
- Inspiring Scotland
- IPA Scotland

## **About us**

### **Play Scotland**

Play Scotland is the national organisation driving the play agenda in Scotland, working strategically with partners to ensure that children's right to play is fully realised.

Play Scotland's vision is for Scotland to be a playful nation.

Our Mission: To enable all children and young people in Scotland to have equal opportunities to participate in diverse and quality play experiences that meet their individual need.

We strongly believe that children's voices should be listened to, taken seriously, and included in consultations and actions.

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