

# Consultation on the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024: Statutory Guidance on Part 2 and 3, section 18

Due 16 May 2024

<https://consult.gov.scot/children-and-families/part-2-and-3-uncrc-incorporation-scotland-act-2024/>

## Background and Purpose

The Act requires Scottish Ministers to publish guidance (“statutory” guidance) of Part 2 and Part 3, section 18. It also requires them to consult on that guidance. This consultation fulfils that requirement and is launched by Scottish Ministers in accordance with sections 13(3) and 20(2) of the Act.

The draft guidance attached to this consultation was developed with support from stakeholders. A Guidance Subgroup comprising of members from the Embedding in Public Services group was established to assist and support with this process.

This consultation seeks your views on the following draft statutory guidance:

- [Part 2: Compatibility with the UNCRC requirements, and child rights-respecting practice](#) (79 pages)
- [Part 3: Reporting duty of listed authorities](#) (38 pages)

## Questions

1. I have read the draft statutory guidance on Part 2 of the UNCRC Act

- Yes
- No

**2. Section 3, 'Background and introduction to the UNCRC Act', provides sufficient information on the UNCRC and the background to incorporation.**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please give us your views

**3. Section 3.4, 'Meaning of UNCRC requirements', clearly articulates what is meant by this in relation to the section 6 duty.**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please give us your views

**4. Section 4.2, 'Remedies for unlawful acts (sections 7 to 10)' is useful.**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please give us your views

**5. Section 4.3.2 'Definition of a public authority' is clear.**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree

- Strongly disagree

Please give us your views

**6. Section 4.3.1 'Definition of functions of a public nature' is clear.**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please give us your views

**7. Section 4.4, 'Explanation of the duties on public authorities in Part 2, section 6' clearly explains the nature of the section 6 duty on public authorities, including clearly articulating that the section 6 duty applies only when a public authority is carrying out devolved functions conferred under Acts of the Scottish Parliament or common law powers.**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please give us your views

**8. Annexes A.1 – A.5, 'Clarification of conceptual aspects of the UNCRC' are clear.**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**9. Annexes B.1 – B.4 ‘Sources to guide interpretation’ are useful.**

More information

- Strongly agree
- **Agree**
- Neither agree nor disagree
- Disagree
- Strongly disagree

**10. Annex C, ‘Framework for Reviewing Compatibility (s.6 duty)’ is presented in an accessible manner, e.g. the content, style, and length make this a user-friendly and practical resource.**

- Strongly agree
- **Agree**
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please give us your views

**11. I clearly understand how to use the Compatibility Review Framework.**

- Strongly agree
- Agree
- **Neither agree nor disagree**
- Disagree
- Strongly disagree

Please give us your views

**12. Overall, the guidance is presented in an accessible manner, e.g. the content, style, and length make this a user-friendly and practical resource.**

- Strongly agree
- **Agree**
- Neither agree nor disagree

- Disagree
- Strongly disagree

**13. Overall, the guidance supports an improved understanding and ability to fulfil the duties under Part 2 of the Act.**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**14. Are there any areas where you think the Part 2 guidance could be improved? Please cite specific parts of the guidance if relevant.**

**Please give us your views**

Zero Tolerance is Scotland's expert organisation on preventing men's violence against women and girls. We tackle the root cause: gender inequality. Ensuring that children and young people grow up experiencing gender equality in the world around them is a vital part of the primary prevention picture.

As Scotland continues its efforts to embed human rights legislation, it presents a pivotal moment to ensure that the rights and well-being of girls are adequately addressed. It is imperative that we acknowledge and address the specific needs of girls within our legislative frameworks and guidance to foster an environment where they can thrive. Part 2 of the guidance, which focuses on supporting public authorities to be compliant, presents a unique opportunity to require and support all duty-bearers in Scotland to prioritise and realise girls' human rights.

Human rights legislation serves as the cornerstone for ensuring that children have access to the resources and support they require. However, the current legislative landscape falls short in adequately safeguarding the rights of girls. Gender-neutral approaches to children's rights and age-neutral approaches to women's rights result in girls slipping through the cracks of policy and practice.

As a result, girls' human rights are not being realised in Scotland. A new report commissioned by Zero Tolerance (Nevens and Hutchinson, 2024) reveals the extent to which girls in Scotland are routinely denied equal access to their human rights.

Girls in Scotland are not safe at home, online, or in the street. Girls are sexually harassed in public, face misogyny online, and experience sexual and domestic violence. 1 in 3 13 to 17-year-old girls reported experiencing some form of sexual violence (Scottish Government, 2018). Violence is underreported because many girls do not think what has happened is serious enough to report or do not trust adults to help them (LGBT Youth Scotland, 2020; Agenda Alliance, 2022; NHS Health Scotland, 2018).

Girls are not able to access their right to education. In schools, girls continue to experience sexual harassment and other forms of violence, preventing them from concentrating on learning. 64% of girls aged 13 to 21 experience sexual harassment at school (Girlguiding UK, 2021), with experiences of violence against women and girls at school correlating with lower academic achievement, fear of attending school, and diminished concentration and confidence in class (Plan International UK, 2016). Sexist language is prevalent in schools, creating a hostile environment for girls (EVAW, 2010; UK Feminista, 2017; NUT, 2007: 4–10; WEI, 2021). Teachers and senior management do not have the skills or resources to respond to this violence and support girls through it (Nevens and Hutchinson, 2024).

All children should have the freedom to play, but gender stereotypes limit the activities girls can take part in. Girls feel constrained from a very young age by stereotypical toys, play equipment, clothing, and adults' attitudes (Girlguiding Scotland, 2020; Zero Tolerance, 2021). They also have less time to play as they are expected to do more domestic tasks than boys (Button, 2014: 15). Sexual harassment and feeling unsafe also limit girls' ability to enjoy the outdoors and public parks (Girlguiding UK, 2022), whilst misogyny stops them enjoying online gaming (Girlguiding Scotland, 2020).

This violence and lack of freedom to play impacts girls' health. Girls' happiness has been in decline over the past decade (particularly for girls aged between 7 and 10)

(Girlguiding UK, 2021: 6). Reports find young women are three times as likely as young men to suffer from common mental health problems (Mental Health Foundation, 2017: 3). But when girls seek healthcare, they are often labelled as attention seeking (Hussen, 2023; CALM, 2023). Tragically, 79% of women under 25 who died by suicide were previously assessed as low risk, highlighting the potential consequences of dismissing their mental health concerns (CALM, 2023). Girls also feel dismissed when accessing physical health care and struggle to access reproductive healthcare (Nevens and Hutchinson, 2024).

Girls feel their opinions are dismissed and silenced, and their right to participation is not realised. 53% of 11 to 21-year-old girls feel older people don't listen to or respect their opinions (Girlguiding Scotland, 2020). Policy makers often fail to adequately engage girls (Nevens and Hutchinson, 2024).

The above rights – to be heard, be free from violence, education and play – are all listed as key on page eight of the draft guidance. Yet, the guidance itself must do more to ensure that girls are equally protected.

To rectify this oversight, it is crucial that we explicitly recognise and address girls' unique needs within implementation of UNCRC. In all related guidance, girls must be recognised as a group whose rights are a risk, and their specific needs must be prioritised. By doing so, we can pave the way for a Scotland where girls not only survive but thrive.

In order to do this, Zero Tolerance makes seven overarching recommendations to improve Part 2 of the guidance overall.

1. A gender-sensitive approach is necessary throughout, with close attention to the specific needs of girls. The refreshed Equally Safe Strategy is successful at this, and UNCRC must be implemented in the same way to ensure policy coherence.
2. Public authorities must be required to use disaggregated data. If they report on 'children' as a homogenous group, girls – especially disabled girls, LGBT+ girls,

girls of colour and girls living in poverty – will be left behind. This will mean that their specific needs are not considered in compliance efforts.

3. Public authorities must be required to consider which children their policy might affect in different ways, and not be allowed to consider children as a homogenous group.
4. The guidance must frame girls – especially multiply marginalised girls – as being at risk of not having their rights realised.
5. The guidance should require that both a CRWIA and an EQIA are written side by side so that an equalities lens is also applied to assessing the work's impact.
6. The guidance should require that public authorities provide strong evidence when claiming that there will be no impact on children's rights, or when claiming that all children would be served equally by a policy. Gender always has a role to play, and it is well evidenced in Zero Tolerance's (2024) report that so-called 'gender neutral' children's rights work does not work for girls.
7. Supplementary guidance must be created, in collaboration with expert organisations, on gender, power, and girls' specific needs.

There are also specific changes required on certain pages of the guidance – which represent just a few examples of the gaps which would be filled by taking forward the above recommendations.

On page 14, in paragraph one, it is encouraging to see it noted that children experiencing violence, abuse and trauma require additional support to access legal proceedings. Due to gendered power dynamics, girls – especially multiply marginalised girls – also require this support. A sentence outlining this should be added.

On page 23, we are pleased to see girls specifically referenced. Further clarity which frames girls' rights as specifically at risk and requiring additional consideration would be beneficial.

The commentary on Article 2: Non-discrimination is useful. However, an explanation of intersectionality must be added to reflect the fact that children can experience

discrimination at the intersection of multiple systems of oppression. For example, disabled, LGBT+ girls of colour living in poverty are furthest from realising their rights because of oppression at the intersection of misogyny, ableism, homophobia, racism and poverty.

On page 24, in point three, a sentence should be added to encourage public authorities to specifically consider the possible impact on the most marginalised children, which includes girls.

On page 26, we are pleased to see girls being considered specifically.

On page 38, the questions are useful. However, an additional question should be added to prompt public authorities to involve children whose rights are most at risk in the review, providing specific safe spaces for them to participate. We know that non-gendered questions get seemingly gender-neutral answers, meaning the reality of girls' experiences are lost. Girls' need their own spaces for participation (Nevens and Hutchinson, 2024), and public authorities require guidance on this. Indeed, after question eight, an additional question prompting public authorities to engage with gender and equality experts would be beneficial.

On page 41, section C.1.2, step 1, third sector evidence and reports should be added to the list of valid evidence. Third sector organisations representing specific groups produce excellent evidence on their experiences which is often not captured by 'mainstream' data sources. This can be seen in our 'Girls' rights are human rights!' report. This evidence should not be devalued or ignored.

On page 42, question four, gender should be given equal weight with poverty. A sentence should be added to encourage public authorities to find and use disaggregated data to evidence their impact assessment.

On page 43, a sentence should be added to reflect the fact that marginalised children have specific participation needs, encouraging public authorities to seek support from organisations who work with them, including girls' organisations.

On page 50, it would be useful to define whether education is an absolute, limited or qualified right.

On page 51, it is important not to lose the equality focus in the summary section. Many will only read the summary, so children should not be homogenised here. A question should be added encouraging consideration of specific groups of marginalised children, including girls. We would also recommend reframing the second question to require strong evidence if a public authority is claiming that there will be no impact on children, or the same impact on all children. They should assume that there will be an impact, and it will not be the same for all children.

On page 52, step two, public authorities should be encouraged to consider the specific impact on different groups of marginalised children, including girls. Where they claim there is no impact or the same impact on all children, strong evidence should be required for this.

The above recommendations draw on the asks Zero Tolerance has made of the Scottish Government in our new 'Girls' rights are human rights!' report (Nevens and Hutchinson, 2024). You can read the report and recommendations by following the link in the references list.

By prioritising these areas and implementing gender-and-age-sensitive approaches to the UNCRC Guidance, we can build a Scotland where girls are safe, educated, empowered, and healthy. This Scotland truly would be the best place in the world to grow up – for *all* children.

## References

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**15. I have read the draft statutory guidance on Part 3 (section 18) of the UNCRC Act**

- Yes
- No

**16. Section 4, 'Reporting duties of listed authorities' is sufficiently clear on the reporting requirements under Part 3 of the Act.**

- Strongly Agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please give us your views

**17. Section 5, 'Publication requirements of reports' is sufficiently clear on the publication requirements under Part 3 of the Act.**

- Strongly agree
- Agree

- Neither agree nor disagree
- Disagree
- Strongly disagree

Please give us your views

**18. Section 6, 'Policy intention of children's rights reports under section 18 of the Act', clearly explains how the reporting process contributes to progressing children's rights.**

- Strongly agree
- **Agree**
- Neither agree nor disagree
- Disagree
- Strongly disagree

**19. Annexes B.1 – B.4 Frameworks for children's rights reporting are helpful.**

- Strongly agree
- **Agree**
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please give us your views

**20. Annex C, 'Scottish Government use of children's rights reports', is clear.**

- Strongly agree
- **Agree**
- Neither agree nor disagree
- Disagree
- Strongly disagree

**21. The guidance is presented in an accessible manner, e.g. the style, length and content are useful in aiding implementation of duties in respect of the Act.**

- Strongly agree

- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**22. Are there any areas where you think the Part 3 guidance could be improved? Please cite specific parts of the guidance if relevant.**

**Please give us your views**

Zero Tolerance is Scotland's expert organisation on preventing men's violence against women and girls. We tackle the root cause: gender inequality. Ensuring that children and young people grow up experiencing gender equality in the world around them is a vital part of the primary prevention picture.

As Scotland continues its efforts to embed human rights legislation, it presents a pivotal moment to ensure that the rights and well-being of girls are adequately addressed. It is imperative that we acknowledge and address the specific needs of girls within our legislative frameworks and guidance to foster an environment where they can thrive. Part 3 of the guidance, which focuses on supporting public authorities to report effectively on their progress, presents a unique opportunity to require and support all duty-bearers in Scotland to prioritise and realise girls' human rights.

Human rights legislation serves as the cornerstone for ensuring that children have access to the resources and support they require. However, the current legislative landscape falls short in adequately safeguarding the rights of girls. Gender-neutral approaches to children's rights and age-neutral approaches to women's rights result in girls slipping through the cracks of policy and practice.

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1 in 3 13 to 17-year-old girls reported experiencing some form of sexual violence (Scottish Government, 2018). Violence is underreported because many girls do not think what has happened is serious enough to report or do not trust adults to help them (LGBT Youth Scotland, 2020; Agenda Alliance, 2022; NHS Health Scotland, 2018).

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This violence and lack of freedom to play impacts girls' health. Girls' happiness has been in decline over the past decade (particularly for girls aged between 7 and 10) (Girlguiding UK, 2021: 6). Reports find young women are three times as likely as young men to suffer from common mental health problems (Mental Health Foundation, 2017: 3). But when girls seek healthcare, they are often labelled as attention seeking (Hussen, 2023; CALM, 2023). Tragically, 79% of women under 25 who died by suicide were previously assessed as low risk, highlighting the potential consequences of dismissing their mental health concerns (CALM, 2023). Girls also feel dismissed when accessing

physical health care and struggle to access reproductive healthcare (Nevens and Hutchinson, 2024).

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To rectify this oversight, it is crucial that we explicitly recognise and address girls' unique needs within implementation of UNCRC. In all related guidance, girls must be recognised as a group whose rights are a risk, and their specific needs must be prioritised. By doing so, we can pave the way for a Scotland where girls not only survive but thrive.

In order to do this, Zero Tolerance makes seven overarching recommendations to improve Part 3 of the guidance overall.

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3. Public authorities must be required to consider which children their policy has affected in different ways, and not be allowed to consider children as a homogenous group.
4. The guidance must frame girls – especially multiply marginalised girls – as being at risk of not having their rights realised.
5. The guidance should require reporting on the impact of work on multiply marginalised girls specifically.
6. The guidance should require that public authorities provide strong evidence when claiming that there has been no impact on children's rights, or when claiming that

all children would be served equally by a policy. Gender always has a role to play, and it is well evidenced in Zero Tolerance's (2024) report that so-called 'gender neutral' children's rights work does not work for girls.

7. More consideration must be given to accountability – it is unclear what the consequences for public authorities for harming children's rights will be.

There are also specific changes required on certain pages of the guidance – which represent just a few examples of the gaps which would be filled by taking forward the above recommendations.

On page 9, a sentence should be added to note that marginalised children, including girls, have specific participation needs.

On page 25, cluster iii, point one is too vague. Public authorities should be able to demonstrate that marginalised groups, including girls specifically, have been considered and are thus equally able to access their rights.

On page 26, cluster v, a point should be added which draws out the nuance of responding to peer violence. As discussed in Zero Tolerance's report, the rights of boy perpetrators are too often prioritised over the rights of girl survivors (Nevens and Hutchinson, 2024). Public authorities should be encouraged to evidence that marginalised children and victims of violence have their rights prioritised in responses to abuse.

On page 27, cluster viii, these points must make the role of gender explicit so that girls do not become lost in a neutral 'equalities' approach. Public authorities require prompting to consider girls' specific needs.

On page 29, section B.3, point 5, girls must be added as a group whose rights are at risk, which is well evidenced by Zero Tolerance's recent report (Nevens and Hutchinson, 2024).

The above recommendations draw on the asks Zero Tolerance has made of the Scottish Government in our new 'Girls' rights are human rights!' report (Nevens and

Hutchinson, 2024). You can read the report and recommendations by following the link in the references list.

By prioritising these areas and implementing gender-and-age-sensitive approaches to the UNCRC Guidance, we can build a Scotland where girls are safe, educated, empowered, and healthy. This Scotland truly would be the best place in the world to grow up – for *all* children.

## References

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## **For Further Information**

Contact: Katie Horsburgh, Policy and Practice Officer: Children and Young People

Email: [katie.horsburgh@zerotolerance.org.uk](mailto:katie.horsburgh@zerotolerance.org.uk)

## **About Us**

Zero Tolerance is a Scottish charity working to end all forms of men's violence against women by tackling its root cause: gender inequality