

**Scottish Government**  
**A Human Rights Bill for Scotland**  
**5 October 2023**

**Introduction**

1. NASUWT welcomes the opportunity to comment on proposals to embed international human rights in Scotland.
2. NASUWT is the Teachers' Union, representing teachers and school leaders in all sectors of education.

**GENERAL**

3. NASUWT supports the principles underpinning the four international conventions and covenants, in addition to the principle of a right to a healthy environment. Furthermore, in principle, the Union does not have any objection to the incorporation of these aforementioned rights within UK or Scots law. Nevertheless, the detail regarding how this is achieved is exceedingly important and currently NASUWT has significant concerns that insufficient time has been spent unpacking this complexity and that the Scottish Government has moved too swiftly to the formal consultation phase.
4. For any country, the incorporation of international conventions is complex because they are, for good reason, written in ways that are pitched at a high level of generality. As such, they are open to a wide range of different interpretations. Clarity is secured through case law or through the publication of clear accompanying guidance that sets out in

more detail how any particular provision in a convention might be applied in real-life instances.

5. The debates about the UNCRC Bill in Scotland highlight this issue very clearly. In effect, all there is in Scotland is the text of the Convention. This creates a great deal of scope for interested parties to impose on the text of the Convention meanings that suit particular positions. In Scotland, there remains a lack of clarity about what the UNCRC means or doesn't mean in practice: this will become a serious issue when the UNCRC is given legal standing and imparts rights that can be enforced in courts. In time, the courts will rule on cases and we may move towards a position where the specific requirements of the UNCRC will become clearer, but this is going to be a slow process. In the meantime, those impacted by the incorporation of the UNCRC might understand that complying with it is a legal obligation but will not know what these obligations are in practice because there is no credible means available to help them find out.
6. The same issue could in theory arise with the proposed incorporation of these conventions. It is helpful that the consultation document states that the Scottish Government wants the courts to be able to draw upon sources such as General Comments and Committee recommendations. This is considerably more helpful than the approach taken in respect of the UNCRC, where the use of these authorities has been largely discounted, and, indeed, the Union will be seeking a similar commitment to draw on international authorities in respect of the UNCRC Bill.
7. Nevertheless, law needs to be accompanied by a reasonable degree of certainty so that everyone has a basic understanding of what is expected of them and can act accordingly. Notwithstanding the reference to comments and recommendations, it is extremely important that the Scottish Government commits to providing as much clarity as possible on the rights and obligations that incorporation would create before any Bill becomes law.

8. Clarity is also required around the interaction with existing rights.  
Another source of uncertainty that NASUWT has highlighted in respect of the UNCRC is how the rights it would confer post-incorporation relate to other rights. Post-Supreme Court UNCRC ruling, this is a particularly important consideration in relation to the HRA, the Equality Act, the PSED, the Health and Safety at Work Act, GDPR and the Public Interest Disclosure Act and any other legislation relating to powers that are reserved to Westminster. Presumably, any conflicts would mean that these legislative provisions take priority? This has not been clearly unpacked within the consultation papers, but undoubtedly it is a fundamental question. While we would acknowledge that, to some extent, it will depend on how the incorporated provisions are interpreted in practice, it is critical that the Scottish Government provides reassurance and a firm commitment that all these points will be thought through before any moves are made to progress the Bill. Any anticipated or proposed process detailing statements of incompatibility, for example, should be clearly set out alongside any implications flowing therefrom.
  
9. NASUWT is particularly concerned with LGBTI rights because, of course, there is no convention or covenant in play that addresses those rights. The Bill runs the risk of relegating these rights relative to those of others covered by the relevant conventions. Simply positing a question in the consultation papers about what should be done here is rather glossing over important questions about LGBTI rights and is not good enough. It is incumbent on the Scottish Government to come forward with a coherent plan about how equal status would be afforded to LGBTI rights in this context. If part of the aim of the exercise is to promote cultural and attitudinal shifts, then the exclusion of LGBTI rights in this context is deeply problematic and undoubtedly creates a hierarchy of rights.

10. As noted above, while the principles on which these conventions are based mean that an appropriate system of incorporation is not objectionable in and of itself, if the Bill doesn't include rights and entitlements for LGBTI people that are as robust and as comprehensive as those that would be introduced for those with other protected characteristics, to use the language of the Equality Act, this disparity would begin to call into serious question the extent to which the Union could support a Bill on the basis proposed.

### **SPECIFIC**

11. The Union strongly suggests that the Scottish Government returns and reconsiders the following questions before the legislative process proceeds any further:

- Is an act capable of not only being widely understood but also supportive and facilitative of a shared understanding?  
Historically, as related to the named person scheme, the Scottish Government's ambitions fell short – in large part due to an overly complex and bureaucratic legal framework. Have any lessons been learned?
- How will all new rights work alongside each other and alongside pre-existing legal rights and entitlements which span UK and Scottish legislation both pre- and post-devolution?
- Will intersectionality be truly understood under the proposed incorporation or will the framework further entrench the disadvantage faced by those who have a combination of two protected characteristics, to again borrow language from the Equality Act? How can intersectionality be understood if it is not explicitly named?
- How will the flexibility for future change be incorporated? Both STUC and TUC policy is that employment law should be devolved. ICESCR includes the right to work and may currently need to be carved out as not devolved. However, should this

position change in the near future, would the legal framework be sufficiently malleable as to be amended to embrace that change?

- As part of the consultation process, have a variety of voices been heard? The Union is aware of some unhelpful attempts to use the UNCRC, as a comparison, to focus on the rights of one child to the exclusion of the rights of other children and adults in a school setting. While children's rights organisations have been engaged to date in the process leading up to this consultation paper, can the Scottish Government truly say that the same level of engagement has been afforded to those advocating for workers' rights?
- Has sufficient money been set aside to support not only dissemination of information but also a contingency fund for the inevitable raft of claims against the government?

12. It is frustrating that, as per the UNCRC Bill, the Scottish Government is again seeking to speed ahead with introducing legislation without first ensuring sufficient thought has been given to the complexities and potential unintended consequences.

## **CONCLUSION**

13. The Union is keen to see a national approach from the government which will, inter alia, support existing policy around: the right to food and universal free school meals; sexual harassment; addressing climate and anti-racism, to name a few areas. But action from the government need not wait upon the incorporation of international treaties.

14. It is true that the right to food is set out in international human rights law and is closely linked to children's rights to health and education. Children who experience food insecurity are more likely to experience poor health, obesity and malnutrition, as well as other challenges to

their physical and mental development. Food insecurity also affects educational performance. But the Scottish Government is able to take immediate action to mitigate these impacts now. Universal free school meals are one of the ways in which the Scottish Government can fulfil children's right to food, by providing a nutritious meal to all children. Free school meals for everyone reduces stigma and helps reinforce the understanding of food as a human right. The universality of provision of the rights to education and healthcare has been long accepted and children's right to food should be considered similarly as a necessary universal good. The ability of all children to access universal free school meals would have a positive impact on addressing the food insecurity that many households with children continue to face. NASUWT, alongside the STUC Women's Committee, has been calling for the Scottish Government to prioritise rolling out universal free schools meals to all as soon as possible: 2026 is too late; hunger will not wait.

15. Until more consideration has been given to the issues raised in this consultation response and, no doubt, others, NASUWT's position remains that it does not make sense to introduce or progress with a Human Rights Bill. Time, money, effort and ultimately the aims of the bill will be frustrated if the Scottish Government does not first focus on becoming clearer about the myriad of potential implications of this proposal.

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