*Submission by the Scottish Home Education Forum, 16 October 2020*

**UN Convention on the Rights of the Child Bill**

**1 Will the Bill make it easier for children to access their rights?**

Not unless Convention rights that are self-defined and self-determined take precedence over state-dictated, outcomes-based, rights-inimical GIRFEC policy.

It promises to be a Clash of the Titans where children always lose out.

Excessive collection and sharing of the personal and special category data of home educated children (and parents) by Local Authorities infringes Article 16 on a routine basis.

As we pointed out in our newly published report

"Given such ignorance of the law, we wonder what hope there is for UNCRC incorporation when the self-defined, rights-based, immoveable object that is the Convention meets the state outcomes-driven, irresistible force that is GIRFEC?"

[https://scothomeed.co.uk/taking-local-authorities-to-task]

**2 What do you think about the ability to take public authorities to court to enforce children’s rights in Scotland?**

It is necessary if children's rights are to be meaningfully realised, but access to courts and tribunals must be available to all children and their chosen representatives without financial barriers to doing so.

We believe greater care needs to be taken to protect children from arbitrary interference with Convention rights in their entirety, including Article 16. It is morally wrong that home educated children and young people should have their rights infringed on a routine basis by service providers who are hostile to home education, and that they should receive less favourable treatment from those tasked with upholding these rights, including the ICO and Children’s Commissioner.

We are troubled by the apparent hierarchy of rights and rightsholders that has evolved as a result of a pick and mix approach to the UNCRC that has left some children unrepresented and effectively silenced.

**3 What more could the Bill do to make children’s rights stronger in Scotland?**

There must be an explicit duty on public bodies to comply with the UNCRC in its totality (including the preamble which underlines the role of the family) in order to avoid a continuation of the selective approach to upholding some rights and not others and refusing to recognise the inherent conflict with outcomes-based policy.

The Bill risks of being incompatible with Convention rights if it excludes some children from realising their rights and perpetuates the pecking order for access to justice. Children’s rights are not reserved for ‘right-on’ groups and there is no justification for the popularity contest approach that permits discrimination against certain rights-holders.

**4 If you work for an organisation or public authority, what resources do you need to help children and young people access their rights? Will you require additional resources or training to implement the Bill, for example to make or respond to challenges in court?**

We are a volunteer-run group which receives no funding or support (by choice) in order to remain independent.

We believe legal aid should be available to all children who wish to enforce their rights and seek redress through the courts.

In the absence of a comprehensive legislative and policy audit that identifies and corrects children's rights-inimical provisions, some of which we have repeatedly highlighted in relation to data protection and Article 16, children and young people will continue to be denied access to justice.

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**1 Are there any relevant equalities and human rights issues related to this Bill, or potential barriers to rights, that you think we should look at?**

The conflict between UNCRC and outcomes-based policy (GIRFEC).

Our joint parliamentary petition calling for an examination of the human rights impact of GIRFEC has been passed to the Education & Skills Committee and highlights examples of these conflicts. [https://www.parliament.scot/GettingInvolved/Petitions/PE01692]

Key court judgments in relation to data protection and human rights need to underpin the Bill, including the 'named person' (2016) and EV (2017) rulings on thresholds for interference with Article 8, notably that nothing in Article 3 of the UNCRC (acting in the best interests of children and young people when making decisions that affect them) extends the state’s powers to interfere with the negative rights in Article 8 of the ECHR.

**2 What are your views on the provisions in the Bill that allow the courts to strike down legislation judged to be incompatible with the UNCRC?**

Laudable in principle but will never be achieved in a command and control culture where rights are always secondary to state imposed outcomes.

There are incompatibilities in the 2011 Children's Hearings Act, the 2016 Education Act, the 2014 national child protection guidance (that references the wrong intervention threshold) and the entire GIRFEC policy framework.

The UK Supreme Court found provisions within the 2014 Children & Young People Act to be unlawful and to breach children's rights, yet the government has remained in denial that their parrot is dead.

**3 What are your views on the Children’s Rights Scheme and the requirement on public authorities to report?**

It promises to be a box ticking exercise in empty rhetoric at great public expense.

**4 Is there anything else you want to tell us about the Bill?**

Please enter your response in the box provided. : be included, given the cavalier approach by public bodies to the 2018 Data Protection Act and the 1998 Human Rights Act. If adults are unable to enforce their rights due to access issues (affordability, representation, popularity with rights protection agencies) what hope is there for children and young people and their chosen representatives?

We have advocated for a dedicated children’s rights tribunal that is easily accessible to CYP and their advocates, with all the powers of an employment tribunal, since children have no effective redress for abuse of their rights (especially to education, privacy, dignity and freedom of expression) in schools and care settings, and no protection under whistleblowing legislation so that they can report wrongdoing without adverse consequences such as permanent exclusion.

Access to rights should not be conditional upon capacity tests by public bodies or other vested interests (as in the 2016 Education Act), nor subject to a double standard when it comes to having their personal data mined, recorded and shared at 12 with presumed capacity but without their fully informed (GDPR compliant) consent in power-over settings like schools. Such arbitrary interference with self-defined rights will essentially prevent meaningful incorporation of the Convention and become just another vehicle for adults with power to impose subjectively assessed, state dictated ‘wellbeing’ outcomes on children and young people.