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Dear Children's Rights Organisations,

Thank you for your letter of 10 July 2023 in which you confirm your plans to engage with the recently announced public consultation on the Human Rights Bill and note concerns around the Scottish Government's lack of progress in the amendment, and subsequent commencement, of the UNCRC (Incorporation)(Scotland) Bill.

First of all, I would like to put on record my gratitude for the engagement you outline in your letter, on the Scottish Government's proposals for a new Human Rights Bill. You may be aware that we have published the Human Rights Bill [consultation](#) in a range of formats to enhance engagement and accessibility, supported by a programme of public in-person and digital consultation events.

I hope these resources are of use when engaging on the proposals with your members and networks over the coming period and I look forward to reading your responses to help shape development of the Human Rights Bill.

As regards your concerns over progress with the UNCRC (Incorporation) (Scotland) Bill, legal issues around the Bill are complex, and consideration of these issues has taken longer than hoped. The time taken to bring the UNCRC Bill back to Parliament for reconsideration has largely been due to the need to give careful consideration to whether the compatibility duty can apply when public authorities are delivering services under an Act of the UK Parliament in devolved areas. I hope that my statement to Parliament on 27 June helped to explain the complexities that we have been working through and provided reassurance that we have given these very careful consideration.

In drafting amendments to the compatibility duty, we have tried to balance three important considerations: protecting children's rights to the maximum effective extent possible; minimising the risk

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of another Supreme Court referral; and making the law as accessible as possible for users. We have reached the conclusion that the maximum effective coverage for children's rights is for the compatibility duty to apply only when a public authority is delivering services under powers conferred by an Act of the Scottish Parliament. Key stakeholders, with whom we have engaged confidentially, are content with our rationale for this. Other sections of the Bill that were the subject of the Supreme Court Judgment (the interpretative obligation, strike down power and incompatibility declarator power) have been more straightforward to fix and will also be limited to Acts of the Scottish Parliament.

I am acutely aware that restricting the compatibility duty in this way will entail a disappointing loss of coverage for children's rights, compared with what we originally hoped to achieve. The extent of that loss will become apparent over time as we explore the legal sources of duties under which rights issues are encountered. This loss is a direct consequence of the complexity of drafting to address the Supreme Court judgment within a legislative landscape in which public authorities are still acting under powers within Acts of the UK Parliament in devolved areas.

Despite the limitations, our proposals will result in a Bill that provides valuable protections for children rights, and will allow Scotland to begin a journey to legislate for children's rights and wider human rights. We are confident that our proposals for amending the Bill will be within legislative competence, and will deliver a clear, coherent and workable Bill.

As you have asked, we will give careful consideration to mitigating for the loss of coverage for children's rights by commissioning an audit across UK Acts in devolved areas that impact on children's rights. The aim would be to maintain compatibility in devolved areas and also to identify UK Acts in devolved areas that impact on children's rights to the extent that it would be worth bringing them into the scope of the compatibility duty by being converted into new Acts of the Scottish Parliament. Officials are finalising some further advice to me on this matter.

We are currently making arrangements to begin the process of Parliamentary Reconsideration of a revised UNCRC (Incorporation) (Scotland) Bill. The process agreed for this Bill means that the next steps are to confirm with the Parliamentary authorities that our amendments are admissible under Standing Orders for Reconsideration. The amendments will be presented to Parliament as soon as possible after that stage has been completed. The timetable for this will be determined by Parliament authorities but we hope this can happen shortly after the summer recess and I am confident that this will be before the end of the Human Rights consultation period.

You also asked that we begin Reconsideration Stage immediately. That formal stage will begin with Parliament passing a motion to reconsider the Bill. Again the timetable for that will depend on the relevant Parliamentary authorities but we hope that can happen in September.

I give you my reassurance that work on this Bill is being prioritised and that I am pressing the Bill team on the timetable with the aim of having a revised Bill passed before the end of the year.

Yours sincerely,



**SHIRLEY-ANNE SOMERVILLE**

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