

Research articles

# Incorporating the Convention on the Rights of the Child in Scottish education

**Stephen Daniels**

University of Glasgow, UK, [stephen.daniels@glasgow.ac.uk](mailto:stephen.daniels@glasgow.ac.uk)

## Abstract

The incorporation of the United Nations Convention on the Rights of the Child (UNCRC) into Scots law offers an unprecedented opportunity to improve the realisation of the right to education for all children and young people living in Scotland. One feature of such a commitment ought to be clear and comprehensive policies on Human Rights Education (HRE) within Scottish educational policy. This article explores what incorporation of the UNCRC means in the Scottish context and reflects on the current status of HRE in Scottish education. It also asks what role HRE might play alongside incorporation and as part of wider proposed reforms in Scottish education following the Muir Report. I argue that such an examination provides significant opportunities to ask and seek to answer key questions about how HRE may be developed in Scottish education, both conceptually and in classroom practice.

## Keywords

Children's rights, education policy, incorporation, UNCRC, Scottish education

## **Introduction**

On the 30th anniversary of the adoption of the United Nations Convention on the Rights of the Child (UNCRC), Deputy First Minister of Scotland John Swinney announced the intention to introduce a bill by 2021 to incorporate the UNCRC into Scots law. Building on this political commitment, on September 1st, 2020 the Scottish Government introduced the *United Nations Convention on the Rights of the Child (Incorporation)(Scotland) Bill*. This would, to the fullest extent possible under the powers devolved to the Scottish Parliament under the Scotland Act (1998), write the provisions of the UNCRC directly into domestic law. For the first time this would make the UNCRC justiciable within Scottish courts, offering a significant and substantial step forward in domestic protection for children's rights. As Gadda et al. (2019) highlight, while the UK is bound by international law, ratification of the UNCRC in 1991 does not permit rights in the UNCRC *itself* to be justiciable nationally. This, undoubtedly, is an important milestone in the realisation of children's rights in Scotland and was welcomed enthusiastically, the Bill *itself* receiving unanimous support from all political parties within the Scottish Parliament. It passed all stages of committee scrutiny and was subsequently put forward for Royal Assent to become part of Scots law (see Scottish Parliament, 2022 for details of this process).

However, objections raised by the UK Government over the competence of the Scottish Parliament in relation to certain provisions in this bill have currently paused its progress into law (See Brodies, 2021 for discussion). The question is whether all aspects of the Bill are within the legislative competence of the Scottish Parliament (i.e., what is outlined in section 29 of the Scotland Act 1998). The United Kingdom Supreme Court upheld the United Kingdom Government's challenge on the basis that a number of provisions to be enacted in the Bill were beyond the competence of the Scottish Parliament and violated a principle of UK Parliamentary sovereignty under the UK's constitutional arrangements. Whatever the legal merits of this decision, the impression of the UK Government as being politically unwilling to be bound by obligations relating to children's rights is a powerful one. Further, the UK Government's current proposals to repeal and replace the Human Rights Act with a British Bill of Rights that is, *prima facie*, a substantial downgrade in terms of human rights protections remains a considerable threat to human rights protection in Scotland and raises difficult constitutional questions, given the links between the Scotland Act and the Human Rights Act. This growing divergence between the governments in Westminster and Edinburgh both in rhetoric and substance (see Ferrie et al., 2018) lends credence to a perception that, if Scotland is serious about realising rights for all Scots, it must legislate as far as possible within its competence to do so, rather than rely on UK-wide legislation. The Supreme Court ruling led to delay, as the Scottish Parliament was required to look again at the bill and revise or remove a number of provisions. Once the bill receives Royal Assent the articles of the UN Convention

on the Rights of the Child (UNCRC) will be enforceable in Scots law. This temporary pause allows further time to reflect on the current state of human rights in Scotland to ensure that Scotland is prepared to maximise the impact of incorporation in driving forward children's rights.

In this article, I argue that incorporation presents a crucial opportunity for progression in a range of areas in Scottish education, building on existing good practice. Moreover, I argue that Scottish education stands at a point of transition and possible commitment to significant reform across its entire breadth, following the publication of Prof. Ken Muir's report 'Putting Learners at the Centre: Towards a Future Visions for Scottish Education' in March 2022. Taken together, there are considerable opportunities for the development of HRE within Scottish education as part of the proposed educational reforms and as a result of the incorporation of the UNCRC. The crucial issue is how we may best realise this potential and what are the key questions to ask. These are international issues, but it is the Scottish context that I focus on here.

I will, therefore, begin with a brief overview of the Scottish context relevant to this discussion and then examine Human Rights Education itself. I will then detail what incorporating the UNCRC into Scots law amounts to, present some of the key features of the relevant legislation and make clear why incorporation matters. Next, I will discuss the current status of HRE within the Scottish curriculum, before turning to consider the opportunities presented for reforming Scottish education to better realise HRE. Finally, I conclude by offering several recommendations about how to make the most of the significant potential of the incorporation of the UNCRC for realising children's rights in education.

### **The Scottish context**

As part of the devolution settlement established by the Scotland Act (1998), education and training were devolved to the re-established Scottish Parliament. Devolution ensures that the Scottish Parliament, rather than the UK Government, has control over a range of areas of public policy. The UK Government, however, 'reserves' powers in areas such as fiscal, economic, and monetary policy, national security, immigration, and illicit drugs. This stands as a potential barrier to the national priorities of the devolved governments and, necessarily, limits what the Scottish Government can do in key areas of public policy.

Since devolution, education legislation has often looked to draw directly on international human rights law, particularly the UNCRC. Increasingly, consideration of children's wellbeing and rights has come to be a characteristic feature of all legislation passed in the Scottish Parliament. This has involved, amongst other things, consideration of 'human rights budgeting' and the use of Child Rights and Wellbeing Impact Assessments (CRWIAs) as part of

implementing ministerial duties under the 2014 Children and Young People (Scotland) Act. From a legal perspective, Scotland, as a constituent nation within the UK, has certain obligations in relation to human rights treaties that the UK has ratified. As things stand, the UK Government signs and ratifies international conventions and as State Party has the primary obligations in relation to them. However, Schedule 5 of the Scotland Act (1998) empowers the Scottish Government to observe and implement international obligations. As McCall-Smith (2019) notes, Scotland is able to develop children's rights laws and policies independently of the UK. Further obligations under a variety of other international conventions and protocols also apply to Scotland. At the current time, only those rights derived from the European Convention on Human Rights (ECHR) have been given effect in domestic law. These rights are set out in the Human Rights Act (HRA) (1998) and form an important part of the Scotland Act (1998) which, *inter alia*, makes clear the devolved capabilities of the Scottish Parliament. In particular, the Scottish Government is prohibited from legislating in a way that is incompatible with ECHR rights incorporated through the Human Rights Act. In the event of the incorporation of the UNCRC, the Scottish Parliament would be prohibited from passing legislation incompatible with both ECHR rights and, UNCRC rights. This is highly significant and will have wide-ranging implications for the development of legislation in Scotland, including education law.

### **Human rights education**

Following the definition outlined in the United Nations Declaration on Human Rights Education and Training (UNDHRET), human rights education and training encompasses education:

(a) About human rights, which includes providing knowledge and understanding of human rights norms and principles, the values that underpin them and the mechanisms for their protection;

(b) Through human rights, which includes learning and teaching in a way that respects the rights of both educators and learners;

(c) For human rights, which includes empowering persons to enjoy and exercise their rights and to respect and uphold the rights of others. (UN, 2011, Art.2.2)

Human Rights Education (HRE) must, therefore, include both 'content and process' relating to human rights (Bajaj, 2011, p. 482); that is, it is not enough that children learn about their rights, but that education itself must be participatory and rights-respecting. However, it is important in considering how well-placed Scotland is to deliver on the potential of UNCRC incorporation as it relates to HRE to be clear what successful implementation might look like. The UN Plan of Action for HRE (OHCHR, 2014) identifies five key components for successful

realisation of HRE. Using this as a guide, we can offer a non-exhaustive account of what successful realisation of HRE within state education systems may involve. The five key components against which to judge a state's progress would be: HRE1) Clear and comprehensive incorporation of HRE into educational curricula; HRE2) Teachers must be aware of relevant rights legislation; HRE3) States must promote adequate training in human rights for teachers; HRE4) States must ensure rights-respecting learning environments; HRE5) States must ensure teaching practices that reflect and promote human rights values.

As I will later discuss, research has highlighted challenges in each of these areas within Scotland. However, as I will argue, there are also considerable opportunities presented by incorporation to make explicit and meaningful progress.

### **Incorporating the United Nations Convention on the Rights of the Child**

The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill (hereafter, 'the Bill') represents the reiteration of the Scottish Government's commitment to 'fully realising the human rights of all people in Scotland' (Scottish Parliament, 2020b, p. 1). This is a commitment to building a Scotland in which respect for human rights forms 'the bedrock of society and the institutions which govern and deliver public services for the people of Scotland' (Scottish Parliament, 2020b, p. 1). The Bill is, moreover, part of a commitment to a 'revolution' in children's rights in Scotland, while recognising the dual impacts of the COVID-19 pandemic and the United Kingdom's withdrawal from the European Union. Both of these events 'underline the importance of human rights being built into the fabric of society' (Scottish Parliament, 2020b, p. 2). This commitment continues a trend over the past several years where the Government has repeatedly used the strapline 'making rights real' as part of its key policy commitments in a range of areas (Gadda et al., 2019, p. 2). There is a significant body of legislation covering a range of areas in Scotland that is explicitly underpinned by commitments to human rights. Indeed, we can see at least as far back as 2013 (and certainly further) signs of the move in Scotland in this direction and Ferrie et al. (2018, p. 2) draw our attention to Scotland's emergence as a strong pro-rights voice within the UK over the period following devolution.

Lundy, Kilkelly, and Byrne (2014, p. 443) remind us that international human rights treaties do not, in general, 'specify how State Parties are to give effect to their obligations at the domestic level'. UNCRC Article 4, for example, makes plain that 'States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the [UNCRC].' Direct incorporation is, in the simplest terms, when the Convention, either in full or in part, is incorporated *directly* into the domestic legal system. Scotland will seek to take a 'maximalist' approach to incorporation (Scottish Government,

2019a), with ‘maximalism’ to be understood here as the greatest extent possible within the constraints of the Scottish Parliament’s legislative competence. Through the transformation or transposition of the international treaty (in this case the UNCRC), part or all of the treaty will form part of national law, becoming binding on the public agencies of that state and enforceable in court (McCall-Smith, 2019). While direct incorporation is often a very clear sign of commitment to children’s rights protection, it is also important to remember that direct incorporation ‘does not equate to consummate rights protection’ (McCall-Smith, 2019, p. 432).

Incorporation, however, does matter. Increasingly, the research and the experience of those working to promote and protect children’s rights internationally is offering a clearer sense of how and why. Key to successful implementation of any sort is the development of a culture of support for children’s rights in civil society, the public, and in the media (Kilkelly, 2019). As McCall-Smith (2021, p. 18) puts it, incorporation in Scotland is important ‘not only because it will legally entrench children’s rights on an unprecedented scale but also because the process itself is a driver of change’. The development of a human rights culture and the raising of awareness about children’s rights is both central to the UNCRC generally and forms part of the goals of Human Rights Education. Indeed, a strong programme of HRE seems necessary for the task of both educating children about their rights, but also in building a strong civil society with awareness and respect for children’s rights. One of the largest barriers to children’s rights progress generally—and Scotland is no exception—is that there must be:

[a] profound cultural transformation that requires changes in the relationship between parents, children, and the state, [that]...needs to be sustained by a legal framework as well as by the implementation of policies, plans, and institutions truly inspired by the CRC—not a minor issue for policy-makers and for society at large. (Mauras, 2011, p. 63)

Incorporation establishes a crucial legal framework but does not itself ensure that children’s rights to and in education are secured nor offer guidance about how programmes of HRE ought to be developed and justified. Incorporation can be an important symbol even beyond its legal implications but is only one of several steps that must be taken together in order to realise children’s educational rights and build a culture of human rights in Scotland.

### **United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill**

The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill, as introduced, will incorporate the following articles of the UNCRC and first and second optional protocols:

Articles 1 - 42 of the UNCRC;  
Articles 1 - 11 of the first optional protocol;  
Articles 1 - 7 of the second optional protocol.

It is crucial to recall here that the Bill cannot incorporate rights and obligations within the articles of the UNCRC and first and second optional protocols where ‘their inclusion would take the Bill outside the legislative competence of the Parliament’ (Policy Memorandum, 2020, p. 46). As the UK has not ratified Optional Protocol 3, for example, the Scottish Parliament does not have the power to incorporate it into Scots Law even if it so chose. The stated policy intention of the Bill is, therefore, to achieve the ‘highest protection for children’s rights possible within the boundaries of the devolved settlement as provided for in the Scotland Act’ (Scottish Parliament, 2020b, p. 46).

The Scottish Government outlines its preferred policy approach as requiring all legislation, past and future, to be compatible with the incorporated UNCRC rights and obligations (Scottish Parliament, 2020b). In order to achieve this goal, the Bill provides for courts having the power to ‘strike down’ incompatible provisions, including primary legislation. The UNCRC is, we are reminded, the global ‘gold standard’ for children’s rights and by incorporating the UNCRC, the Bill will deliver a ‘fundamental shift in the way children’s rights are respected, protected and fulfilled in Scotland’ (Scottish Parliament, 2020b, p. 2). Significantly, the Bill will ‘ensure that there is a proactive culture of everyday accountability for children’s rights across public services in Scotland’ (Scottish Parliament, 2020b, p. 2). Public authorities will be required to take proactive steps to ensure compliance with children’s rights in their decision-making and service delivery. As McCall-Smith (2022, p. 91) details, section 6 of the Bill imposes a duty of UNCRC compliance on public authorities, with section 11 requiring ministers to publish a ‘Children’s Rights Scheme’ to detail exactly how they are fulfilling these duties. In relation to Articles 28 and 29 of the UNCRC we might well wonder what might be said here about the incorporation of HRE within Scottish education. As I’Anson (2021, p. 16) reminds us, Article 29 presents a ‘distinctive vision’ of education along with ‘detailed expectations’ regarding its implementation. As I will argue shortly, as part of the process of making clearer how these requirements will be enacted, more must be said about the place of HRE within the curriculum as well as how human rights are to be understood as something to be taught.

Having detailed why incorporation matters in a general sense, I will conclude this section by highlighting one particularly salient reason why incorporation matters in Scotland. Incorporation is important because there is strong evidence that it is what the children and young people of Scotland want. Children and young people’s desire for incorporation has been made clear through the work of the Scottish Youth Parliament’s (SYP) campaign *Right Here, Right Now*. The SYP’s 2016-21 youth manifesto, *Lead the Way*, received more than 70,000

consultation responses, finding that 76 per cent of children and young people surveyed agreed that:

The United National Convention on the Rights of the Child (UNCRC) should be fully incorporated into Scots law, and the rights of children and young people should be protected and promoted. (SYP, 2015, p. 13)

Children and young people have continued to make their voices heard on this matter through the SYP and directly to Ministers at their annual Cabinet meeting with children and young people.

### **Human rights education in Scotland**

As detailed above, it is the intention of the Scottish Government to incorporate the UNCRC into Scots law. One feature of such a commitment, we might reasonably posit, ought to be the realisation and implementation of Human Rights Education (HRE) within Scottish educational policy and practice. This plausibly follows from the strength of the legal, political, and philosophical case for HRE that has been developed over the last several decades and made clear in Tomaševski's influential work (2001b). Nevertheless, questions have been raised in the literature about how successful current attempts to incorporate HRE within the Scottish education system have been (Daniels, 2018, 2019; Struthers, 2015a, 2015b, 2015c; Cassidy et al., 2014; BEMIS, 2013, 2011). However, incorporation alongside the considerable progress made in embedding human rights throughout Scottish education more generally provides a clear opportunity to strengthen guidance and more fully realise children's right to education in this regard.

### **Human rights education and Curriculum for Excellence**

The Scottish curriculum, *Curriculum for Excellence* (CfE), was developed as a flexible curriculum focusing on outcomes and experiences rather than centrally mandated content. The intention was to enable a wide range of teaching and learning strategies to be employed as well as to strengthen teacher autonomy. In relation to HRE and human rights more generally, the Scottish Government considers human rights and a rights-based approach to education to be concepts relevant to the provision of education under CfE. Indeed, *Getting it Right for Every Child* (GIRFEC) is explicitly recognized as being founded on the principles of UNCRC (Scottish Government, 2013). GIRFEC is the Scottish Government's national approach to improving the wellbeing of children and young people and underpins both the Scottish Curriculum and all wider policies relating to education and children and young people. I have previously examined the Scottish curriculum for evidence that it is: 1) adequate to the task of supporting education *about, for, and through* human rights; and 2) explicit in its commitment to human rights values (Daniels, 2018). I argue there that while there is some evidence of



elements of the curriculum directed to teaching about rights in a generic sense, there is a distinct lack of detail or explicitness in CfE on human rights themselves (Daniels, 2018, 2019). Turning to the contents of CfE (and related supporting materials), research has shown that aspects of HRE are found, to some extent, across the three teaching areas of: 1) interdisciplinary learning; 2) freestanding subjects; and 3) themes across learning (Daniels, 2018; Struthers, 2015c). Although one finds few explicit requirements in CfE to educate about human rights themselves, several of the experiences and outcomes intended to be delivered through CfE reflect ideas relevant to the fulfilment of the UNDHRET (2011) Article 2(2). This point can be further elaborated by noting that Religious and Moral Education's (RME) express reference to 'human rights' is the only one within any freestanding subject in the curriculum. The current strategy in Scotland has been for HRE to be delivered through inter-disciplinary learning or as a cross-curricular theme, both approaches emphasised by the flexibility of the Scottish curriculum which lends itself to, and requires, learning in key areas to be interconnected and spread across all subject areas. This has taken the guise of HRE through Global Citizenship Education but more recently as part of Learning for Sustainability (Lfs). I have argued that the former is inadequate in many respects for this role, though primarily in respect of teaching *about* and *for* human rights rather than inconsistent as a pedagogical approach, given the strong evidence that rights-respecting educational practices are strongly emphasised (Daniels, 2018). This, it should be noted, reflects the conception of HRE that I think is best suited to the task at hand, an issue I will return to later. Learning for Sustainability is 'an approach to life and learning which enables learners, educators, schools and their wider communities to build a socially-just, sustainable and equitable society' (Education Scotland, 2022). Learning for Sustainability involves a clear direction for children and young people to explore a range of:

perspectives on issues such as fairness, justice and equity. This can help them to understand that our actions have consequences for other human beings and the natural world, and that when we act we have responsibilities as well as rights – a core feature of citizenship. (Scottish Government, 2020)

As Struthers (2015c, p. 69) suggests, the lack of HRE in Scotland is 'largely attributable' to the lack of clear guidance within the curriculum. The major issue identified in research by BEMIS (2013), Struthers (2015c), and Daniels (2018, 2019) on HRE in Scotland is that nowhere in CfE is there a requirement that learners develop a basic understanding of human rights norms and principles, the values that underpin them, and the mechanisms for their protection as per UNDHRET; that is, there is very little engagement on questions about what rights are, how they are protected and promoted, or what sort of values are associated with the human rights culture that is intended to be developed as a result of HRE. Above all else, with human rights and HRE remaining conceptually contested, how to develop mature and comprehensive

programmes of HRE remains an open question, but one which we must seek to answer to continue to develop HRE both within and outside of Scotland. I have in mind here long-standing debates over 'orthodox' versus political conceptions, given the radically different ways one might conceive of the results of HRE and, particularly, what one is licensed to teach as *true* about human rights.

In connection with education *about* human rights, Struthers (2020) asks how teachers' theoretical conceptions of human rights affect their practice in the teaching of human rights values. As she argues, teacher's conceptions of human rights have an important effect on how they present and teach about human rights. She suggests that the accuracy of any express teaching about specific human rights and their relevant instruments and protection mechanisms is likely to be 'somewhat serendipitous' if teachers lack clear guidance and training (Struthers, 2020, p. 115). According to Struthers (2020, p. 114), the complexities of HRE practice make education *about* human rights a 'challenging enterprise'. We know from Tibbitts's (2002, 2017) and Bajaj's (2011) work that there is a wide variation in how HRE is developed and understood by its advocates, but we must also consider how HRE as part of Scottish education answers questions of 'the appropriate relationship' with the international human rights legal framework (Phillips & Gready, 2013). This relationship highlights considerable conceptual variation in understanding human rights and human rights education itself. Moreover, we must grapple with how the incorporation of the UNCRC makes a difference here by bringing both the provisions of the Convention and the commitment to the promotion and realisation of human rights *values* into domestic culture and institutions. There is a potentially crucial difference in focus between, for example, teaching HRE as part of wider efforts to inculcate various pro-social, democratic values in children and young people and teaching HRE as transformative through engagement with the 'dark side' of human rights, the development of legal literacy, and an exploration of distinctive human rights values requiring specialist delivery (Lundy & Martinez Sainz, 2018). In order to properly reflect the status of human rights protection in domestic law following incorporation, I suggest that a very strong case can be made that legal literacy, of the sort argued for by Lundy and Martinez Sainz (2018), should become a central element of HRE as it is developed in Scotland. When the UNCRC becomes part of Scots law, the curricular focus in CfE on the development of 'responsible citizens' surely requires knowledge of these new legal protections as part of the standard legal and political education we think fundamental to citizenship education in general. This is not an insubstantial task in formal education and questions of how to provide such provision would need to be asked about required professional learning and appropriate content and pedagogies. Responsible citizens in Scotland must now, more than ever, know about their rights, the mechanisms for their protection, and the means to seek remedy for the violation of these rights. If we think this is important, the lack of a well-defined epistemic

framework for HRE will surely undermine our efforts (Parker, 2018). In either case, HRE of any form promotes some conception of human rights and we should further ask questions about the educational implications of this fact as we consider how to strengthen its place within the Scottish curriculum.

While there is much that is positive and explicit in relation to guidance surrounding pedagogy and taught content delivered *through* the lens of human rights in Scottish educational policy, the lack of explicit focus on teaching *about* rights is a concern, and evidence that Scotland is currently struggling to provide clear evidence of meeting the requirement for clear and comprehensive incorporation of HRE within the curriculum (HRE1) (Daniels, 2018, 2019). Questions remain about how clearly and comprehensively HRE is incorporated within the curriculum (HRE1), and we may ask whether *all* teachers are sufficiently aware of the relevant rights legislation (HRE2), and if adequate training in human rights for teachers is provided (HRE3).

### **Opportunities and future directions for human rights education**

Indicative of the wider focus on realising children's rights in Scotland discussed throughout this article, we may look to the recently revised Professional Standards for teachers in Scotland. The General Teaching Council Scotland (GTCS) stands as an independent, self-regulating body for teaching in Scotland. All teachers in Scotland must be registered with the GTCS, with the GTCS setting standards for professionalism. Amongst other things, these standards provide a framework for teacher education in Scotland as well as guiding professional development for teachers and acting as a benchmark of professional competency. As such, they are highly significant across the profession, as well as shaping both initial and ongoing teacher education initiatives throughout Scotland. The 2021 standard for full registration marks the most explicit commitment to date to human rights and HRE. We see the direction that teachers must demonstrate in their practice evidence of:

Respecting the rights of all learners as outlined in the United Nations Convention on the Rights of the Child (UNCRC) and their entitlement to be included in decisions regarding their learning experiences and have all aspects of their wellbeing developed and supported. (GTCS, 2021, p. 4)

Specific reference to the UNCRC 'as outlined' is highly significant. Further, teachers must demonstrate how they 'contribute to a rights-respecting culture' where learners 'meaningfully participate in decisions related to their learning, wellbeing, learning environment and their school' (GTCS, 2021, p. 9). Guidance here is supportive of elements of HRE, and there is an important emphasis on participation in decision-making processes. There is no doubt that in this connection, and in the context of the wider commitment in Scotland

to increasing the participation of children and young people, that the further adoption of, for example, the Lundy model of participation in educational decision-making would be a valuable step forward (Lundy, 2007). Further, teachers are required to promote and engender ‘a rights respecting culture and the ethical use of authority associated with one’s professional roles’ (GTCS, 2021, p. 5). Again, we see a clear and definitive commitment to professional duties related to aspects of HRE and the broad realisation of schoolchildren’s rights. Moreover, the issue of the ‘ethical use of authority’ again raises the questions about teaching *about* and *for* HRE raised above. These are the most explicit references, but several other standards can plausibly be read as being related to or directly relevant to the realisation of children’s rights in education. For example, standard 3.2.2 directs teachers towards their duty to encourage effective learner participation (GTCS, 2021, p. 10).

Additionally, the system of Professional Update in Scotland ensures *all* teachers registered in Scotland will need to demonstrate their ability to meet these standards every five years in order to maintain a full registration with the GTCS and continue to work within Scottish schools. As part of both initial teacher education and in wider continuing professional development in Scotland there must, therefore, be adequate input on human rights and HRE in order to support teachers in all local authorities to meet these professional standards. How demanding these standards are will, in part, be determined by how demanding we believe HRE to be and how wide-ranging obligations in relation to teaching *about*, *through*, and *for* human rights is to be within the Scottish curriculum. In order to determine this, greater clarity about how HRE is to be conceptualised and realised within Scotland is necessary.

As noted previously, HRE and human rights themselves remain conceptually contested. How best might we realise them in Scotland? We need to discuss this question in order to enable the teaching profession in Scotland to be adequately supported in meeting these professional duties. It should be possible for there to be a professional dialogue about teachers’ obligations to interpret, enact and create policy around HRE. The nature of CfE allows for the space for this kind of professional autonomy and, if properly supported, there is reason to think that the existing good practice in Scottish schools around HRE could form the bedrock of future national guidance around the delivery of HRE. However, there are also questions to ask about what education *in* and *for* HRE for teachers means. There are clear difficulties in translating a concept devised and principally shaped by lawyers and legal academics into an educational one. These difficulties have been highlighted both in Scotland (BEMIS, 2013) and in other jurisdictions. Recent research has considered these problems: the general consequences and challenges of translation of the UNCRC into legislation in different jurisdictions (Robinson, Quennerstedt & I’Anson, 2020); developing a theoretical understanding of teachers’ responsibilities in HRE (Robinson, Phillips & Quennerstedt, 2020; Jerome, 2018); translating human rights principles into classroom practices (Robinson, 2017). When we consider HRE,

current COVID 'recovery' efforts in schools and the extraordinary disruption of children's right to education during 2020 have significant implications (Magendzo and Osler, 2020). It is clear that a discussion around these issues is necessary in Scotland to make the most of the valuable opportunities presented by the current context and to enable the realisation of children's rights within Scottish education.

In order to update the empirical work carried out in the BEMIS report of 2013, it is time that a further wide-ranging mapping exercise is undertaken of both the extent of teachers' knowledge of HRE as well as their experiences in incorporating it into classroom teaching. In order to complement the legislative changes proposed and changes to Professional Standards for teachers, it is vital that we identify current practice in schools and gaps and barriers to the realisation of HRE, as well as professional development needs for teachers and other educators in Scotland. Similarly, revisiting the work of Struthers (2015a, 2015b) in assessing the development of HRE-related inputs in initial teacher education in Scotland will be equally valuable. With little evidence about how well HRE is implemented in schools or how comprehensively teachers are prepared to deliver HRE, it is difficult to judge how well the rights brought into Scots law via incorporation have been met, or will be met in the future. This must change as a matter of some priority in order to maximise the potential of incorporation for strengthening children's rights within Scotland, and HRE remains a crucial part of this process.

The nature of and role for human rights education in Scotland then may plausibly be part of a broader discussion over the shape of the curriculum and wider education policies and institutions. This discussion must be viewed in the wake of the June 2021 OECD report on Curriculum for Excellence, 'post-pandemic' planning, and Ken Muir's recent report on potential reform in Scottish education (Muir, 2022). The latter made a series of recommendations, many accepted in full or in part by the Scottish Government, as 'Principles for Reform', including the significant direction that:

All efforts, whether concerned with educational recovery post-pandemic or in terms of the future vision for Scottish education, must be directed to the purposes described in Article 29 of the UNCRC. (Muir, 2022, p. 4)

A strong commitment to professional autonomy in Scottish education has ensured that Scottish teachers have long played an important role in interpreting, realising and indeed developing policy as suggested above. With HRE arguably a key element in both meeting professional obligations for teachers under the 2021 revised GTCS standards and realising children's rights more broadly in line with these 'Principles for Reform', there could not be a better time to consider how Scottish education may be reformed in order to put children's rights at the heart of everything and ensuring HRE is a key driver in doing so. As part of this

process, Professor Muir recommends that invitations to shape this vision should be made to ‘all partners and stakeholders, including all learners, teachers, practitioners, parents, and carers’ (Muir, 2022, p. 4). This, in the specific context of HRE, strikes me as a fundamental element of addressing the questions identified earlier about the strengthening of awareness and understanding of human rights within Scotland. Moreover, just such a process, and the importance of children’s and young people’s participation in this process, is identified in connection with the UNCRC Incorporation Bill itself:

The Scottish Government wants a Scotland where policy, law and decision-making take account of children’s rights and where all children have a voice and are empowered not just to know and understand their rights, but also to assert and defend those rights and the rights of others. (Policy Memorandum, 2020, p. 3)

There is certainly a highly significant political aspiration associated with the Bill. While the commitments to ‘voice’ and empowerment are generally familiar features of discussion around children’s rights in Scotland, it is worth commenting on the explicit reference to knowing, understanding, and asserting one’s rights; that is, human rights education of the sort outlined in UNDHRET. It is clear, however, that we must think carefully about what participation is envisaged as and how we determine its meaningfulness to learners (Lundy, 2007; Mannion et al., 2022). Against this backdrop, and the highly significant recommendations of the Muir report, we can see important opportunities for the further development of HRE within Scotland alongside and in addition to the incorporation of the UNCRC.

Finally, the four UK Children’s Commissioners have made clear in a report to the United Nations in December 2020 (Children’s Commissioners UK, 2020) that children’s rights and human rights education should be a *compulsory* part of education throughout the UK. However, while this is a welcome and valuable goal questions remain: What form ought HRE to take as part of the curriculum? How may we justify the inculcation of values (human rights or otherwise) in children and young people and what conception of human rights and HRE will inform policy and practice to ensure this is possible, coherent, and comprehensive? To answer these and other questions, a wide-ranging national discussion is required that engages with the practical and theoretical implications of developing a rights-respecting culture and promoting human rights values in Scotland. I will suggest shortly a potential way forward in seeking to answer some of these questions in my recommendations, but detailed conceptual work remains to be done to better articulate the central human rights value of dignity and its implications for education policy and practice.

As I have argued, incorporation of the UNCRC represents a momentous step forward for children’s rights in Scotland. However, it also demands equally serious consideration is given

to how to further maximise development in the realisation of HRE and children's rights in education both at a conceptual and practical level. This is no easy task, but one that could deliver highly significant reforms to support the realisation of children and young people's rights in Scotland as well as contributing to building a wider culture of knowledge and understanding of human rights within Scotland.

### **Conclusion and recommendations**

This article has highlighted how the current political climate in Scotland offers significant opportunities for strengthening the realisation of the right to education (and HRE) within Scotland. Against such a backdrop the time could hardly be better for serious consideration of the role of human rights education in these strategic aims. With this in mind I offer three recommendations based on the issues raised here: 1) A clear and explicit expression of commitment from the Scottish Government to developing HRE further within Scottish education and consideration of its compulsory status in line with the recommendation of the Children's Commissioner. 2) To continue to address the gap in empirical work on HRE in Scotland to further highlight good practice in HRE and identify teacher and pupil experiences and conceptions of human rights, concepts like dignity, and the development of rights-respecting cultures. This will then serve as part of the wider conversation to determine professional learning needs and potential curricula reform. 3) Taking into consideration the wide-ranging and complex questions identified here, the establishment of a working group involving a range of stakeholders in education, including children, seems vital to beginning to shape what future role HRE should play in Scottish education. There is a wealth of expertise in Scotland and an important role for the lived experiences of children in determining the agenda for the development of HRE and rights-based schooling within Scotland. One can point to the work of the LGBTI Inclusive Education working group between 2017 and 2018 as an example of how this may be undertaken and the Scottish Government's willingness to accept and act on the recommendations of such work seen in the roll-out of LGBT-inclusive education in Scottish Schools in 2021.

In conclusion, this is a moment of considerable change for Scotland; both in the law through the incorporation of the UNCRC, and in education, as the country potentially looks to reform its qualifications body, its inspectorate, and develop a new national education agency amongst other wide-ranging institutional reforms (Scottish Government, 2022). Human Rights Education must surely play an important role in this conversation. This should be seen as an opportunity to adopt an approach that puts children's rights and interests at the very centre of our educational institutions, as recommended by the Muir Report. Such an approach is consistent with a commitment to incorporate the UNCRC and realise children's rights more broadly in Scotland. Consideration of the questions raised in the previous section is, of course,

relevant to all jurisdictions and especially those who have or will seek to incorporate the UNCRC in future. In the Scottish context, to fail to make the most of this important opportunity to make rights real in Scotland and to enable all children and young people to understand and claim their rights and to participate in the building of a rights-respecting culture throughout the land would be to fail to show the human rights leadership on which this government prides itself. It would, moreover, be to fail in the underlying and animating goal of education policymaking in Scotland of 'getting it right for every child'. The Scottish Government must, therefore, show leadership in driving forward Human Rights Education and seek to take another important step in the realisation of children's rights in Scotland.

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