



# United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024

2024 asp 1

PROSPECTIVE

## PART 5

### COMPATIBILITY QUESTIONS AND UNCRC COMPATIBILITY ISSUES

#### 31 Meaning of “compatibility question”

- (1) In sections 33 to 44, a “compatibility question” means—
  - (a) a question whether words in an enactment to which section 29 or 30 applies give rise to an incompatibility with the UNCRC requirements,
  - (b) a question whether a public authority has acted (or proposed to act) in a way which is made unlawful by section 6(1).
- (2) But a question arising in criminal proceedings that would, apart from this subsection, be a compatibility question is not a compatibility question if it is a UNCRC compatibility issue.
- (3) A compatibility question is not to be taken to arise in any proceedings merely because of any contention of a party to the proceedings which appears to the court or tribunal before which the proceedings take place to be frivolous or vexatious.
- (4) Any duty or power conferred by this Act to refer a compatibility question to a court is to be read as a duty or (as the case may be) power to refer the issue to the court for decision.

#### Commencement Information

- II S. 31 comes into force in accordance with s. 47(2)

*Status: This version of this part contains provisions that are prospective.*

**Changes to legislation:** There are currently no known outstanding effects for the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, Part 5. (See end of Document for details)

## 32 UNCRC compatibility issues in criminal proceedings

- (1) The Criminal Procedure (Scotland) Act 1995 is modified as follows.
- (2) In the heading before section 288ZA, for “and devolution issues” substitute “, devolution issues and UNCRC compatibility issues”.
- (3) After section 288AA, insert—

### “288AB References of UNCRC compatibility issues to the High Court or Supreme Court

- (1) In this section and section 288AC, “UNCRC compatibility issue” means a question, arising in criminal proceedings as to—
  - (a) whether words in an enactment to which section 29 or 30 of the UNCRC Incorporation Act applies give rise to an incompatibility with the UNCRC requirements,
  - (b) whether a public authority has acted (or proposed to act) in a way which is made unlawful by section 6(1) of the UNCRC Incorporation Act.
- (2) In subsection (1)—
 

“public authority” has the same meaning as in section 6(5) of the UNCRC Incorporation Act,

“the UNCRC requirements” has the meaning given in section 1(2) of that Act,

“UNCRC Incorporation Act” means the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.
- (3) Where a UNCRC compatibility issue has arisen in criminal proceedings before a court, other than a court consisting of 2 or more judges of the High Court, the court may, instead of determining it, refer the issue to the High Court.
- (4) The Lord Advocate, if a party to criminal proceedings before a court, other than a court consisting of 2 or more judges of the High Court, may require the court to refer to the High Court any UNCRC compatibility issue which has arisen in the proceedings.
- (5) The High Court may, instead of determining a UNCRC compatibility issue referred to it under subsection (4), refer it to the Supreme Court.
- (6) Where a UNCRC compatibility issue has arisen in criminal proceedings before a court consisting of 2 or more judges of the High Court, otherwise than on a reference, the court may, instead of determining it, refer it to the Supreme Court.
- (7) The Lord Advocate, if a party to criminal proceedings before a court consisting of 2 or more judges of the High Court, may require the court to refer to the Supreme Court any UNCRC compatibility issue which has arisen in the proceedings otherwise than on a reference.
- (8) On a reference to the Supreme Court under this section—
  - (a) the powers of the Supreme Court are exercisable only for the purpose of determining the UNCRC compatibility issue,

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- (b) for that purpose the Court may make any change in the formulation of that issue that it thinks necessary in the interests of justice.
- (9) When it has determined a compatibility issue on a reference under this section, the Supreme Court must remit the proceedings to the High Court.
- (10) An issue referred to the High Court or the Supreme Court under this section is referred to it for determination.

### **288AC Appeals to the Supreme Court: UNCRC compatibility issues**

- (1) For the purpose of determining any UNCRC compatibility issue an appeal lies to the Supreme Court against a determination in criminal proceedings by a court of 2 or more judges of the High Court.
  - (2) On an appeal under this section—
    - (a) the powers of the Supreme Court are exercisable only for the purpose of determining the UNCRC compatibility issue,
    - (b) for that purpose the Court may make any change in the formulation of that issue that it thinks necessary in the interests of justice.
  - (3) When it has determined the UNCRC compatibility issue, the Supreme Court must remit the proceedings to the High Court.
  - (4) An appeal under this section against a determination lies only—
    - (a) with the permission of the High Court, or
    - (b) if the High Court has refused permission, with the permission of the Supreme Court.
  - (5) Subsection (4) does not apply if it is an appeal by the Lord Advocate against a determination by the High Court of a UNCRC compatibility issue referred to it under section 288AB(4).
  - (6) An application to the High Court for permission under subsection (4)(a) must be made—
    - (a) within 28 days of the date of the determination against which the appeal lies, or
    - (b) within such longer period as the High Court considers equitable having regard to all the circumstances.
  - (7) An application to the Supreme Court for permission under subsection (4)(b) must be made—
    - (a) within 28 days of the date on which the High Court refused permission under subsection (4)(b), or
    - (b) within such longer period as the Supreme Court considers equitable having regard to all the circumstances.”.
- (4) In section 288B (appeals to the Supreme Court: general), in subsection (1), after “288AA” insert “or 288AC”.

#### **Commencement Information**

**I2** S. 32 comes into force in accordance with s. 47(2)

*Status: This version of this part contains provisions that are prospective.*

**Changes to legislation:** There are currently no known outstanding effects for the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, Part 5. (See end of Document for details)

### 33 Power to institute proceedings to determine compatibility question

The Lord Advocate may institute proceedings for the determination of a compatibility question.

#### Commencement Information

**I3** S. 33 comes into force in accordance with s. 47(2)

### 34 Power to intervene in proceedings where compatibility question arises

- (1) Where a compatibility question arises in any proceedings before a court or tribunal, intimation of that is to be given to the Lord Advocate, the Commissioner for Children and Young People in Scotland and the Scottish Commission for Human Rights (unless the person to whom the intimation would be given is a party to the proceedings).
- (2) A person to whom intimation is given under subsection (1) may, on giving notice, take part as a party in the proceedings so far as the proceedings relate to a compatibility question.

#### Commencement Information

**I4** S. 34 comes into force in accordance with s. 47(2)

### 35 Reference of compatibility question to higher court

- (1) A court, other than the Supreme Court or the Inner House of the Court of Session, may refer any compatibility question which arises in proceedings (other than criminal proceedings) before it to the Inner House.
- (2) A tribunal from which there is no appeal must refer any compatibility question which arises in proceedings before it to the Inner House and any other tribunal may make such a reference.
- (3) The Inner House may refer any compatibility question which arises in proceedings before it (otherwise than on a reference under subsection (1) or (2)) to the Supreme Court.
- (4) An appeal against a determination of a compatibility question by the Inner House on a reference under subsection (1) or (2) lies to the Supreme Court.
- (5) An appeal against a determination of a compatibility question by the Inner House from which there is no appeal to the Supreme Court apart from this subsection lies to the Supreme Court only—
  - (a) with the permission of the Inner House, or
  - (b) if the Inner House has refused permission, with the permission of the Supreme Court.

#### Commencement Information

**I5** S. 35 comes into force in accordance with s. 47(2)

*Status: This version of this part contains provisions that are prospective.*

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### **36 Direct references to Supreme Court: compatibility question arising in proceedings**

The Lord Advocate may require any court or tribunal to refer to the Supreme Court any compatibility question which has arisen in proceedings before it to which the Lord Advocate is a party.

#### **Commencement Information**

**I6** S. 36 comes into force in accordance with s. 47(2)

### **37 Direct references to Supreme Court: compatibility question not arising in proceedings**

- (1) The Lord Advocate may refer to the Supreme Court any compatibility question which is not the subject of proceedings.
- (2) Subsections (3) to (5) apply where a reference is made under subsection (1) in relation to a compatibility question that relates to the proposed exercise of a function by a public authority.
- (3) The Lord Advocate must notify the public authority of the making of the reference.
- (4) The public authority may not exercise the function in the manner proposed during the period beginning with the receipt of the notification under subsection (3) and ending with the reference being decided or otherwise disposed of.
- (5) Proceedings relating to any possible failure by the public authority to comply with subsection (4) may be instituted by the Lord Advocate.

#### **Commencement Information**

**I7** S. 37 comes into force in accordance with s. 47(2)

### **38 Additional expenses**

- (1) A court or tribunal before which any proceedings take place may take account of any additional expense of the kind mentioned in subsection (3) in deciding any question as to expenses.
- (2) In deciding any such question, the court or tribunal may award the whole or part of the additional expense as expenses to the party who incurred it (whatever the decision on the compatibility question).
- (3) The additional expense is any additional expense which the court or tribunal considers that any party to the proceedings has incurred as a result of the participation of any person under section 25(8), 27(2) or 34(2).

#### **Commencement Information**

**I8** S. 38 comes into force in accordance with s. 47(2)

**Status:**

This version of this part contains provisions that are prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, Part 5.