

Status: This version of this provision is prospective.

Changes to legislation: *United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, Section 32 is up to date with all changes known to be in force on or before 01 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*



United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 2024 asp 1

PART 5

COMPATIBILITY QUESTIONS AND UNCRC COMPATIBILITY ISSUES

PROSPECTIVE

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,

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“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,
 - (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.

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- (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

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

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Changes and effects yet to be applied to :

- s. 32 coming into force by [2024 asp 1 s. 47\(2\)](#)