



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

2024 asp 1

PART 1

THE UNCRC REQUIREMENTS

Meaning of “the UNCRC requirements” and related expressions

1 Meaning of “the UNCRC requirements” and related expressions

(1) In this Act—

“the Convention” means the United Nations Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989,

“the first optional protocol” means the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict,

“the second optional protocol” means the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

(2) In this Act, “the UNCRC requirements” means the rights and obligations from the Convention, the first optional protocol and the second optional protocol that are set out in the schedule.

(3) The UNCRC requirements have effect for the purposes of this Act subject to any reservations, objections or interpretative declarations by the United Kingdom as may be in force from time to time.

Commencement Information

II S. 1 comes into force in accordance with s. 47(2)

Status: Point in time view as at 31/01/2024. This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

2 **Meaning of references to States Parties and related expressions in the UNCRC requirements**

- (1) References in the UNCRC requirements to a State Party, States Parties and related expressions are to be read for the purposes of this Act as set out in subsections (2) and (3).
- (2) Unless subsection (3) applies—
- (a) a reference to a State Party is to be read as including reference to a public authority, and
 - (b) a reference to States Parties is to be read as including reference to public authorities.
- (3) In the articles of the UNCRC requirements mentioned in column 1 of the following table, references relating to a State Party, States Parties or (as the case may be) related expressions are to be read as set out in column 2 of the table.

<i>Articles of the UNCRC requirements</i>	<i>Modifications</i>
Article 2 of the Convention	In paragraph 1, the reference to “their jurisdiction” is to be read as “Scotland”. The references to “States Parties” are to be read as “Any Scottish public authority or cross-border public authority carrying out Scottish functions other than any function that relates to the inclusion of persons in non-executive posts on boards of Scottish public authorities with mixed functions or no reserved functions”.
Article 7 of the Convention	In paragraph 2, the reference to “their obligations” is to be read as a reference to “the obligations of the United Kingdom”.
Article 22 of the Convention	In paragraph 1, the reference to “the said States are Parties” is to be read as “the United Kingdom is a party”.
Article 27 of the Convention	In paragraph 4, the reference to “the State Party” is to be read as “Scotland”.
Article 38 of the Convention	In paragraph 1, the reference to “them” is to be read as a reference to “the United Kingdom”. In paragraph 4, the reference to “their” is to be read as a reference to “the United Kingdom’s”.
Article 6 of the first optional protocol	In paragraph 1, the reference to “its jurisdiction” is to be read as “Scotland”. In paragraph 3, the reference to “their jurisdiction” is to be read as “Scotland”.
Article 4 of the second optional protocol	In paragraphs 1, 2 and 3, each reference to “its territory” is to be read as “Scotland”.

- (4) In the modifications relating to article 2 of the Convention in the table—
“cross-border public authority” has the meaning given in section 88(5) of the Scotland Act 1998,

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“non-executive post” and “Scottish functions” have the meaning given in Section L2 (equal opportunities) of Part 2 of schedule 5 of that Act,

“Scottish public authority” has the meaning given in section 126(1) of that Act,

“Scottish public authorities with mixed functions or no reserved functions” has the meaning given in paragraphs 1 and 2 of Part 3 of schedule 5 of that Act.

Commencement Information

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

PROSPECTIVE

3 Power to modify the schedule

- (1) The Scottish Ministers may by regulations modify the schedule as they consider appropriate to—
 - (a) take account of an optional protocol to the Convention,
 - (b) take account of an amendment to the Convention or to an optional protocol to the Convention,
 - (c) add provisions of the Convention, the first optional protocol or the second optional protocol that are not for the time being set out in the schedule.
- (2) Regulations may be made under subsection (1)(a) only if the protocol is one which the United Kingdom has ratified.
- (3) Regulations may be made under subsection (1)(b) only if the amendment is one which is binding on the United Kingdom.
- (4) No modification may be made by regulations under subsection (1)(a) or (b) so as to come into force before the protocol or amendment has entered into force in relation to the United Kingdom.
- (5) Regulations under subsection (1) may make such consequential modification to sections 1, 4, 15 and 42 as the Scottish Ministers consider appropriate.
- (6) Before laying a draft of a Scottish statutory instrument containing regulations under subsection (1) before the Scottish Parliament, the Scottish Ministers must consult—
 - (a) the Commissioner for Children and Young People in Scotland,
 - (b) the Scottish Commission for Human Rights, and
 - (c) such other persons as they consider appropriate.
- (7) Regulations under subsection (1) are subject to the affirmative procedure.

Commencement Information

I3 S. 3 comes into force in accordance with s. 47(2)

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PROSPECTIVE

Interpretation of the UNCRC requirements

4 Interpretation of the UNCRC requirements

(1) A court or tribunal which is determining a question in connection with the UNCRC requirements which has arisen in proceedings before it may take into account the things mentioned in subsection (2) so far as it is relevant to the interpretation of the UNCRC requirements in those proceedings.

(2) The things are—

- (a) provisions of Part 1 of the Convention, the first optional protocol and the second optional protocol that are not for the time being set out in the schedule,
- (b) the preambles to the Convention, the first optional protocol and the second optional protocol,
- (c) General Comments (whenever prepared),
- (d) concluding observations (whenever made),
- (e) views and findings under the third optional protocol (whenever adopted),
- (f) recommendations following days of general discussion (whenever made),
- (g) other international law and comparative law.

(3) In subsection (2)—

“concluding observations” means suggestions and general recommendations made by the United Nations Committee on the Rights of the Child under article 45, paragraph (d) of the Convention,

“General Comments” means comments prepared by the United Nations Committee on the Rights of the Child under rule 77 of its rules of procedure,

“recommendations following days of general discussion” means recommendations made by the United Nations Committee on the Rights of the Child following days of general discussion under rule 79 of its rules of procedure,

“views and findings under the third optional protocol” means—

- (a) views adopted by the United Nations Committee on the Rights of the Child under article 10, paragraph 5 of the third optional protocol, and
- (b) findings, comments and recommendations adopted by the United Nations Committee on the Rights of the Child under article 13, paragraph 4 of the third optional protocol.

(4) In this section and section 5, “the third optional protocol” means the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

Commencement Information

14 S. 4 comes into force in accordance with s. 47(2)

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5 Duty to modify section 4 on ratification of the third optional protocol to the Convention

- (1) If the United Kingdom ratifies the third optional protocol, the Scottish Ministers must by regulations modify section 4 as they consider appropriate to take account of the third optional protocol.
- (2) No modification may be made by regulations under subsection (1) so as to come into force before the third optional protocol has entered into force in relation to the United Kingdom.
- (3) Regulations under subsection (1) are subject to the negative procedure.

Commencement Information

- I5** S. 5 comes into force in accordance with s. 47(2)

PART 2

DUTIES ON PUBLIC AUTHORITIES

PROSPECTIVE

Acts of public authorities to be compatible with the UNCRC requirements

6 Acts of public authorities to be compatible with the UNCRC requirements

- (1) It is unlawful (subject to subsection (4)) for a public authority to act, or fail to act, in connection with a relevant function in a way which is incompatible with the UNCRC requirements.
- (2) In subsection (1), a “relevant function” means a function that—
 - (a) it is within the legislative competence of the Scottish Parliament to confer on the authority, and
 - (b) is conferred by—
 - (i) an Act of the Scottish Parliament,
 - (ii) a Scottish statutory instrument originally made wholly under a relevant enabling power,
 - (iii) a provision in a Scottish statutory instrument originally made partly under a relevant enabling power, provided that the provision itself was either—
 - (A) originally made under the relevant enabling power, or
 - (B) inserted into the instrument by an Act of the Scottish Parliament or subordinate legislation made under a relevant enabling power, or
 - (iv) a rule of law not created by an enactment.
- (3) In subsection (2), “relevant enabling power” means a power to make subordinate legislation conferred by a provision in an enactment of a kind mentioned in that

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subsection, unless the provision was inserted by an enactment of a kind that is not mentioned in that subsection.

- (4) But [subsection \(1\)](#) does not make unlawful doing or failing to do something if the authority was required or entitled to act in that way by words that—
- (a) are not contained in an enactment of a kind mentioned in [subsection \(2\)\(b\)](#), or
 - (b) are contained in such an enactment having been inserted into it by an enactment of a kind that is not mentioned in [subsection \(2\)\(b\)](#).
- (5) In this section, “public authority”—
- (a) includes, in particular—
 - (i) the Scottish Ministers,
 - (ii) a court or tribunal,
 - (iii) any person certain of whose functions are functions of a public nature (but see [subsection \(8\)](#)),
 - (b) does not include the Scottish Parliament or a person carrying out functions in connection with proceedings in the Scottish Parliament.
- (6) For the purposes of [subsection \(5\)\(a\)\(iii\)](#), “functions of a public nature” includes, in particular, functions carried out under a contract or other arrangement with a public authority.
- (7) Functions are not excluded from being functions of a public nature for the purposes of [subsection \(5\)\(a\)\(iii\)](#) solely because they are not publicly funded.
- (8) In relation to a particular act, a person is not a public authority by virtue only of [subsection \(5\)\(a\)\(iii\)](#) if the nature of the act is private.

Commencement Information

I6 S. 6 comes into force in accordance with s. 47(2)

PROSPECTIVE

Remedies for unlawful acts

7 Proceedings for unlawful acts

- (1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by [section 6\(1\)](#) may—
- (a) bring proceedings against the authority under this Act in any civil court or tribunal which has jurisdiction to grant the remedy sought, or
 - (b) rely on the UNCRC requirements concerned in any legal proceedings.
- (2) In [subsection \(1\)\(a\)](#), proceedings against an authority include a counterclaim or similar proceeding.
- (3) In [subsection \(1\)\(b\)](#), “legal proceedings” includes—
- (a) proceedings brought by or at the instigation of a public authority, and
 - (b) an appeal against the decision of a court or tribunal.

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- (4) Subsection (1) does not apply to an act which took place before this section comes into force but paragraph (b) of that subsection applies to proceedings brought by or at the instigation of a public authority whenever the act took place.
- (5) The Scottish Ministers must, if they consider it necessary to ensure that a particular tribunal can provide an appropriate remedy in relation to an act (or proposed act) of a public authority which is (or would be) unlawful as a result of section 6(1), bring forward regulations to add to—
 - (a) the relief or remedies which the tribunal may grant,
 - (b) the grounds on which it may grant any of them, or
 - (c) the orders it may make.
- (6) In subsection (5), “bring forward regulations” means lay before the Scottish Parliament for approval a draft of a Scottish statutory instrument containing regulations to make the provision they consider necessary.
- (7) Before laying a draft of a Scottish statutory instrument containing regulations under subsection (5) before the Scottish Parliament, the Scottish Ministers must consult—
 - (a) the Commissioner for Children and Young People in Scotland,
 - (b) the Scottish Commission for Human Rights, and
 - (c) such other persons as they consider appropriate.
- (8) Regulations under subsection (5) are subject to the affirmative procedure.
- (9) Proceedings under subsection (1)(a) must be brought before the end of the period of 1 year beginning with the day on which the act complained of took place.
- (10) But subsection (9) is subject to any rule in relation to any procedure which imposes a stricter time limit in relation to that procedure.
- (11) In calculating the period of 1 year in subsection (9), any time during which the person by or on whose behalf the proceedings are brought was under the age of 18 is to be disregarded.
- (12) Where a person would be entitled, but for subsection (9), to bring proceedings under subsection (1)(a), the court or tribunal may, if it considers it equitable to do so, allow the person to bring the action despite subsection (9).
- (13) In section 27A of the Court of Session Act 1988 (time limits), after subsection (1) add—

“(1A) To the extent that an application to the supervisory jurisdiction of the Court is in respect of proceedings under section 7(1)(a) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, in calculating the period of 3 months in subsection (1)(a), any time during which the person by or on whose behalf the application was made was under the age of 18 is to be disregarded.”.

Commencement Information

I7 S. 7 comes into force in accordance with s. 47(2)

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8 Judicial remedies

- (1) In relation to any act (or proposed act) of a public authority which the court or tribunal finds is (or would be) unlawful under section 6(1), it may grant such relief or remedy, or make such order, within its powers as it considers effective, just and appropriate.
- (2) But damages for an unlawful act of a public authority may be awarded only by a court or tribunal which has power to award damages in civil proceedings.
- (3) In considering—
 - (a) whether to award damages, or
 - (b) the amount of any award of damages,the court or tribunal must consider whether the award of damages and (if any) the amount of any award of damages is necessary to provide just satisfaction to the person to whom the award is made.
- (4) A public authority against which damages are awarded is to be treated for the purpose of section 3 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 as if the award were made in an action of damages in which the authority has been found liable in respect of loss or damage to the person to whom the award is made.
- (5) In proceedings brought or intervened in by the Commissioner for Children and Young People in Scotland or the Scottish Commission for Human Rights, no award of damages is to be made to the Commissioner or the Scottish Commission for Human Rights.

Commencement Information

18 S. 8 comes into force in accordance with s. 47(2)

9 Child's view on effectiveness of reliefs etc.

- (1) Where a court or tribunal is considering what relief or remedy to grant or what order to make under section 8(1)—
 - (a) it must, in so far as it is practicable to do so, give the child to whom the proceedings relate an opportunity to express the child's views about the effectiveness of that relief, remedy or (as the case may be) order in—
 - (i) the manner that the child prefers, or
 - (ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child's preference, and
 - (b) it must have regard to any views expressed by the child, taking into account the child's age and maturity.
- (2) But the court or tribunal is not required to comply with subsection (1) if it is satisfied that the child is not capable of forming a view.
- (3) The child is to be presumed to be capable of forming a view unless the contrary is shown.

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Commencement Information

I9 S. 9 comes into force in accordance with s. 47(2)

10 Restriction on proceedings in respect of judicial acts

- (1) Proceedings under section 7(1)(a) in respect of a judicial act may be brought only—
 - (a) by exercising a right of appeal,
 - (b) on an application to the supervisory jurisdiction of the Court of Session, or
 - (c) in a case where proceedings in respect of the judicial act could not be brought under paragraph (a) or (b), in the Court of Session.
- (2) Subsection (1) does not affect any enactment or rule of law which prevents a court or tribunal from being subject to the supervisory jurisdiction of the Court of Session.
- (3) In proceedings under this Act, damages may not be awarded in respect of a judicial act done in good faith.
- (4) In this section, “judicial act” means a judicial act of a court or tribunal and includes an act done on the instructions, or on behalf, of a judge or a member of a tribunal.

Commencement Information

I10 S. 10 comes into force in accordance with s. 47(2)

PROSPECTIVE

Power for Commissioner to bring or intervene in proceedings

11 Power for Commissioner to bring or intervene in proceedings

- (1) The Commissioner for Children and Young People (Scotland) Act 2003 is amended as follows.
- (2) In section 4 (promoting and safeguarding rights), after subsection (2) insert—
 - “(2A) In exercising that general function the Commissioner may—
 - (a) bring proceedings under section 7(1)(a) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024,
 - (b) intervene in proceedings in which a person claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) of that Act.”.

Commencement Information

I11 S. 11 comes into force in accordance with s. 47(2)

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PROSPECTIVE

Power for Scottish Commission for Human Rights to bring or intervene in proceedings

12 Power for Scottish Commission for Human Rights to bring or intervene in proceedings

- (1) The Scottish Commission for Human Rights Act 2006 is amended as follows.
- (2) After section 4 insert—

“4A Proceedings under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024

For the purposes of its general duty, the Commission may—

- (a) bring proceedings under section 7(1)(a) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024,
 - (b) intervene in proceedings in which a person claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) of that Act.”.
- (3) In section 6 (no power to assist in claims or legal proceedings), after subsection (2) insert—
 - “(2A) Subsections (1) and (2) do not apply to proceedings brought or intervened in by the Commission under section 4A.”.

Commencement Information

I12 S. 12 comes into force in accordance with s. 47(2)

Guidance on this Part

13 Guidance on this Part

- (1) The Scottish Ministers must issue guidance to support the implementation and operation of this Part.
- (2) Guidance may, in particular—
 - (a) promote understanding of this Part,
 - (b) promote child rights-respecting practice in relation to the implementation and operation of this Part,
 - (c) include information about how the implementation and operation of this Part can secure better or further effect of the rights of children,
 - (d) include information to support public authorities and others in working together in the implementation and operation of this Part.
- (3) Before issuing guidance under subsection (1), the Scottish Ministers must consult—

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- (a) children,
 - (b) the Commissioner for Children and Young People in Scotland,
 - (c) the Scottish Commission for Human Rights, and
 - (d) such other persons as the Scottish Ministers consider appropriate.
- (4) The Scottish Ministers must, as soon as practicable after issuing guidance under subsection (1), publish the guidance in such manner as they consider appropriate.
- (5) The Scottish Ministers must from time to time review guidance issued under subsection (1) and may revise the guidance.
- (6) References in subsections (2) to (5) to guidance include references to revised guidance.

Commencement Information

I13 S. 13 comes into force in accordance with s. 47(2)

PART 3

CHILDREN’S RIGHTS SCHEME, CHILD RIGHTS AND WELLBEING IMPACT ASSESSMENTS AND REPORTING DUTIES

PROSPECTIVE

Children’s Rights Scheme

14 Children’s Rights Scheme

- (1) The Scottish Ministers must make a scheme setting out the arrangements that are in place, or are to be put in place by the Scottish Ministers—
- (a) to ensure that they comply with the duty under [section 6\(1\)](#), and
 - (b) to secure better or further effect of the rights of children.
- (2) The scheme under [subsection \(1\)](#) is to be known as the Children’s Rights Scheme (and is referred to in this Act as “the Scheme”).
- (3) The Scheme must, in particular, include arrangements for the Scottish Ministers to—
- (a) ensure that children are able to participate in the making of decisions that affect them with access to such support and representation (for example from children’s advocacy services) as they require to do so,
 - (b) identify and address any situation where a child’s rights are (or are at a significant risk of) not being fulfilled,
 - (c) raise awareness of and promote the rights of children,
 - (d) promote complaints handling procedures that children can understand and use,
 - (e) ensure that children have effective access to justice,
 - (f) protect the rights of children in relation to their interactions with persons, other than public authorities, who provide services which affect children,
 - (g) consider the rights of children in the Scottish Government’s budget process,

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- (h) ensure that their actions contribute to any national outcome for children determined by them under Part 1 of the Community Empowerment (Scotland) Act 2015,
 - (i) prepare and publish child rights and wellbeing impact assessments (see [section 17](#)),
 - (j) use, and promote the use of, inclusive ways of communicating that ensure that children are able to receive information and express themselves in ways that best meet their needs (in relation to speech, language or otherwise).
- (4) The first Scheme made under [this section](#) must—
- (a) specify the date by which the first report on its operation is to be published and laid before the Scottish Parliament under [section 16](#), and
 - (b) include any actions that the Scottish Ministers are to take in respect of the Scheme during the period beginning with the date on which the Scheme is made and ending on the date that the first report on its operation is to be published.
- (5) The Scottish Ministers may amend the Scheme or make a new scheme to replace it at any time (and references in this Act to the Scheme include the Scheme as amended or replaced).
- (6) [Section 15](#) sets out the procedure that the Scottish Ministers must follow to make, amend or remake the Scheme.
- (7) In [this Part](#), “children” means persons under the age of 18.

Commencement Information

I14 S. 14 comes into force in accordance with s. 47(2)

15 Procedure for making, amending and remaking the Scheme

- (1) In [this section](#), a reference to the proposal is a reference to (as the case may be) a proposal to—
- (a) make the first scheme under [section 14\(1\)](#),
 - (b) amend the Scheme, or
 - (c) make a new scheme to replace the Scheme.
- (2) In preparing the proposal, the Scottish Ministers—
- (a) must have regard to—
 - (i) any report of the United Nations Committee on the Rights of the Child under paragraph 5 of article 44 of the Convention that the Scottish Ministers consider to be relevant, and
 - (ii) any other reports, suggestions, general recommendations or other documents issued by the United Nations Committee on the Rights of the Child relating to the implementation of the Convention, the first optional protocol or the second optional protocol by the United Kingdom that the Scottish Ministers consider to be relevant,
 - (b) may have regard to any international law or comparative law that they consider to be relevant, and

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- (c) may have regard to any other document or matter that they consider to be relevant.
- (3) The Scottish Ministers must publish the proposal and consult—
 - (a) children,
 - (b) the Commissioner for Children and Young People in Scotland,
 - (c) the Scottish Commission for Human Rights, and
 - (d) such other persons as the Scottish Ministers consider appropriate.
- (4) The Scottish Ministers may make such changes to the proposal as they consider appropriate following the consultation under [subsection \(3\)](#).
- (5) The Scottish Ministers may not—
 - (a) make the Scheme,
 - (b) make an amendment to the Scheme, or
 - (c) make a new scheme to replace the Scheme,until the proposal has been laid before the Scottish Parliament.
- (6) A proposal may not be laid before the Scottish Parliament under [subsection \(5\)](#) unless a period of at least 28 days, beginning with the day on which the proposal was published under [subsection \(3\)](#), has elapsed.
- (7) The Scottish Ministers must publish the Scheme, the Scheme as amended or (as the case may be) the Scheme as remade in such manner as they consider appropriate.
- (8) It is immaterial that anything done by way of preparation of, or consultation in relation to, the first scheme under [this section](#) was done—
 - (a) before the Bill for this Act was passed, or
 - (b) after that but before [this section](#) comes into force.

Commencement Information

I15 S. 15 comes into force in accordance with s. 47(2)

16 Reviewing and reporting on the Scheme

- (1) The Scottish Ministers must, as soon as practicable after the end of each reporting period—
 - (a) review the Scheme and its operation, and
 - (b) publish a report of their findings.
- (2) In reviewing the Scheme, the Scottish Ministers—
 - (a) must take into account the following things if they have occurred in the reporting period—
 - (i) the Committee making a suggestion or general recommendation under article 45(d) of the Convention based on a report submitted by the United Kingdom under paragraph 1(b) of article 44 of the Convention,
 - (ii) an amendment to the Convention or to an optional protocol to the Convention entering into force,
 - (iii) the Committee making a General Comment,

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- (iv) the Committee adopting views and findings under the third optional protocol,
 - (v) the Committee making recommendations following days of general discussion,
 - (vi) the United Kingdom ratifying a protocol to the Convention,
 - (vii) a court making a strike down declarator or an incompatibility declarator, and
 - (b) may take into account any international law or comparative law that they consider to be relevant,
 - (c) may take into account any other document or matter that they consider to be relevant.
- (3) A report under [subsection \(1\)](#) must include—
- (a) a summary of the actions taken by the Scottish Ministers for the purpose of—
 - (i) ensuring compliance with the duty under [section 6\(1\)](#) during the reporting period, and
 - (ii) securing better or further effect of the rights of children,
 - (b) a statement as to whether or not they intend to amend the Scheme or make a new scheme to replace it in light of the findings of their review, and
 - (c) a summary of any actions that they intend to take in the next reporting period.
- (4) A report under [subsection \(1\)](#) may include such other material as the Scottish Ministers consider appropriate, whether relating to the operation of the Scheme or to the rights of children generally.
- (5) Before publishing a report under [this section](#), the Scottish Ministers must consult the following in relation to the action to be taken in pursuance of [subsection \(3\)\(c\)](#)—
- (a) children,
 - (b) the Commissioner for Children and Young People in Scotland,
 - (c) the Scottish Commission for Human Rights, and
 - (d) such other persons as the Scottish Ministers consider appropriate.
- (6) Each report published under [this section](#) must be—
- (a) accompanied by a version of the report that children can understand,
 - (b) published in such manner as the Scottish Ministers consider appropriate,
 - (c) laid before the Scottish Parliament as soon as practicable after it is published.
- (7) In [this section](#)—
- “General Comment” means a comment prepared by the Committee under rule 77 of its rules of procedure,
- “recommendations following days of general discussion” means recommendations made by the Committee following days of general discussion under rule 79 of its rules of procedure,
- “reporting period” means—
- (a) the period beginning with the date on which the Scheme is made and ending on the date specified for such a report in the Scheme (see [section 14\(4\)](#)), and
 - (b) each subsequent period of a year,
- “the Committee” means the United Nations Committee on the Rights of the Child,

Status: Point in time view as at 31/01/2024. This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

“views and findings under the third optional protocol” means—

- (a) views adopted by the Committee under article 10, paragraph 5 of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, and
- (b) findings, comments and recommendations adopted by the Committee under article 13, paragraph 4 of that Protocol.

Commencement Information

116 S. 16 comes into force in accordance with s. 47(2)

PROSPECTIVE

Child rights and wellbeing impact assessments

17 Child rights and wellbeing impact assessments

- (1) A child rights and wellbeing impact assessment is an assessment of the likely effects (if any) of a legislative provision on, or decision of a strategic nature relating to, the rights and wellbeing of children.
- (2) The Scottish Ministers must prepare and publish a child rights and wellbeing impact assessment in relation to the following legislative provisions—
 - (a) a Bill for an Act of the Scottish Parliament that the Scottish Ministers intend to introduce in the Scottish Parliament,
 - (b) a Scottish statutory instrument made by the Scottish Ministers other than one which brings a provision of an Act of the Scottish Parliament or an Act of Parliament into force.
- (3) The Scottish Ministers must prepare and publish a child rights and wellbeing impact assessment in relation to decisions of a strategic nature relating to the rights and wellbeing of children as required by, and in accordance with, the arrangements set out in the Scheme.
- (4) Without prejudice to the generality of [subsection \(3\)](#), the Scottish Ministers must prepare and publish a child rights and wellbeing impact assessment in relation to—
 - (a) any decision by the Scottish Ministers to restrict, for a reason relating to coronavirus, the delivery in person of education provision to children at schools,
 - (b) any strategy, policy or criteria of the Scottish Ministers that is to be applied by an education authority in making a decision temporarily to remove or restrict the delivery in person of education provision to children at schools under the education authority’s management, regardless of the reason for the decision.
- (5) For the purposes of [subsection \(4\)](#)—
 - “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2),
 - a reference to the “delivery in person” of education is a reference to a child’s attendance in person at the child’s usual school,

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Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

“school” has the meaning given by section 135(1) of the Education (Scotland) Act 1980.

Commencement Information

I17 S. 17 comes into force in accordance with s. 47(2)

PROSPECTIVE

Reporting duty of listed authorities

18 Reporting duty of listed authorities

- (1) A listed authority must, as soon as practicable after the end of each reporting period, publish a report on—
 - (a) the actions it has taken during the period—
 - (i) for the purpose of ensuring compliance with the duty under [section 6\(1\)](#), and
 - (ii) to secure better or further effect of the rights of children, and
 - (b) the actions that it intends to take during the next reporting period—
 - (i) for the purpose of ensuring compliance with the duty under [section 6\(1\)](#), and
 - (ii) to secure better or further effect of the rights of children.
- (2) Two or more listed authorities may satisfy [subsection \(1\)](#) by publishing a report prepared by them jointly.
- (3) Reports under [this section](#) must be published in such manner as the listed authority (or authorities) considers appropriate.
- (4) A report published under this section must be accompanied by a version of the report that children can understand.
- (5) A listed authority (or, where two or more authorities have prepared a report jointly, either or any of them) must, as soon as practicable after publishing a report under this section, send a copy of it to the Scottish Ministers.
- (6) In [this section](#)—

“listed authority” means an authority listed in [section 19](#),

“reporting period” means—

 - (a) the period beginning with the day on which this section comes into force and ending on 31 March 2026, and
 - (b) each subsequent period of 3 years.

Commencement Information

I18 S. 18 comes into force in accordance with s. 47(2)

Status: Point in time view as at 31/01/2024. This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

19 Listed authorities

- (1) For the purposes of [section 18\(1\)](#), the listed authorities are—
- (a) a local authority,
 - (b) Children’s Hearings Scotland,
 - (c) the Scottish Children’s Reporter Administration,
 - (d) a health board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978,
 - (e) a special health board constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978,
 - (f) Healthcare Improvement Scotland,
 - (g) the Scottish Qualifications Authority,
 - (h) the Skills Development Scotland Co. Limited (registered number SC202659),
 - (i) Social Care and Social Work Improvement Scotland,
 - (j) the Scottish Social Services Council,
 - (k) the Scottish Sports Council,
 - (l) the chief constable of the Police Service of Scotland,
 - (m) the Scottish Police Authority,
 - (n) the Scottish Fire and Rescue Service,
 - (o) the Scottish Legal Aid Board,
 - (p) the Scottish Courts and Tribunals Service,
 - (q) the Mental Welfare Commission for Scotland,
 - (r) the Scottish Housing Regulator,
 - (s) Bòrd na Gàidhlig,
 - (t) Creative Scotland,
 - (u) an integration joint board to which functions in relation to persons under the age of 18 are delegated in pursuance of an integration scheme prepared under section 1 or 2 of the Public Bodies (Joint Working) (Scotland) Act 2014,
 - (v) ILF Scotland.
- (2) The Scottish Ministers may by regulations modify [subsection \(1\)](#) by—
- (a) adding a public authority or a description of public authorities as a listed authority (or authorities),
 - (b) removing a listed authority (or authorities), or
 - (c) amending an entry for a listed authority (or authorities).
- (3) Regulations under [subsection \(2\)](#) are subject to the affirmative procedure.
- (4) Before laying a draft of a Scottish statutory instrument containing regulations under [subsection \(2\)\(a\)](#) or [\(b\)](#) before the Scottish Parliament, the Scottish Ministers must consult—
- (a) the public authority concerned or (as the case may be) the public authorities falling within the description of public authorities concerned, and
 - (b) such other persons as they consider appropriate.

Commencement Information

I19 S. 19 comes into force in accordance with s. 47(2)

Status: Point in time view as at 31/01/2024. This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

20 Guidance on section 18

- (1) The Scottish Ministers must issue guidance about the carrying out of listed authorities’ functions under [section 18](#).
- (2) Before issuing guidance under subsection (1), the Scottish Ministers must consult—
 - (a) children,
 - (b) the Commissioner for Children and Young People in Scotland,
 - (c) the Scottish Commission for Human Rights, and
 - (d) such other persons as the Scottish Ministers consider appropriate.
- (3) The Scottish Ministers must, as soon as practicable after issuing guidance under subsection (1), publish the guidance in such manner as they consider appropriate.
- (4) The Scottish Ministers must from time to time review guidance issued under subsection (1) and may revise the guidance.
- (5) References in subsections (2) to (4) to guidance include references to revised guidance.

Commencement Information

I20 S. 20 comes into force in accordance with s. 47(2)

PROSPECTIVE

Reporting duty of the Scottish Parliament

21 Reporting duty of the Scottish Parliament

- (1) The Scottish Parliamentary Corporate Body must publish a report about the matters set out in subsection (2).
- (2) Those matters are—
 - (a) the actions taken by the Parliament and its committees to secure better or further effect of the rights of children during the period covered by the report,
 - (b) the actions they intend to take to secure better or further effect of the rights of children during the next period.
- (3) The first report under this section is to be published no later than 12 months after the day on which this section comes into force.
- (4) The second and subsequent reports under this section are to be published no later than 12 months after the publication of the previous report.
- (5) Reports under this section are to be—
 - (a) published in such manner as the Scottish Parliamentary Corporate Body considers appropriate, and
 - (b) accompanied by a version of the report that children can understand.

Status: Point in time view as at 31/01/2024. This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Commencement Information

I21 S. 21 comes into force in accordance with s. 47(2)

PROSPECTIVE

Consequential amendments

22 Consequential amendments of Children and Young People (Scotland) Act 2014

- (1) The Children and Young People (Scotland) Act 2014 is amended as follows.
- (2) Part 1 (rights of children) and schedule 1 are repealed.
- (3) In section 99(2) (subordinate legislation), the words “section 3(2)” are repealed.

Commencement Information

I22 S. 22 comes into force in accordance with s. 47(2)

PROSPECTIVE

PART 4

LEGISLATION AND THE UNCRC REQUIREMENTS

23 Statements of compatibility in relation to legislation

- (1) A member of the Scottish Parliament introducing a Public Bill in the Parliament must, on or before introduction of the Bill, make a statement in writing about the extent to which, in the member’s view, the provisions of the Bill would be compatible with the UNCRC requirements.
- (2) The Scottish Ministers must make a statement in writing about the extent to which, in their view, the provisions of a relevant instrument are or (as the case may be) would be compatible with the UNCRC requirements.
- (3) In subsection (2), a “relevant instrument” means a Scottish statutory instrument made by the Scottish Ministers other than one which brings a provision of an Act of the Scottish Parliament or an Act of Parliament into force.

Commencement Information

I23 S. 23 comes into force in accordance with s. 47(2)

Status: Point in time view as at 31/01/2024. This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

24 Interpretation of legislation

- (1) So far as it is possible to do so, the following must be read and given effect in a way which is compatible with the UNCRC requirements—
 - (a) words in an Act of the Scottish Parliament to which section 29 applies,
 - (b) words in subordinate legislation to which section 30 applies.
- (2) Subsection (1) does not affect—
 - (a) the validity, continuing operation or enforcement of any incompatible Act of the Scottish Parliament,
 - (b) the validity, continuing operation or enforcement of any incompatible subordinate legislation made by virtue of an Act of the Scottish Parliament if (disregarding any possibility of revocation) the Act or words in another enactment to which neither section 29 nor 30 apply prevents removal of the incompatibility.

Commencement Information

I24 S. 24 comes into force in accordance with s. 47(2)

25 Strike down declarators

- (1) Subsection (2) applies in any proceedings in which a court determines whether any of the following give rise to an incompatibility with the UNCRC requirements—
 - (a) words—
 - (i) that are in a pre-commencement Act of the Scottish Parliament, and
 - (ii) to which section 29 applies, or
 - (b) words—
 - (i) that are in subordinate legislation made by virtue of a pre-commencement Act of the Scottish Parliament, and
 - (ii) to which section 30 applies.
- (2) If the court is satisfied that the words give rise to an incompatibility with the UNCRC requirements, it may make a declarator stating that they cease to be law to the extent that they give rise to the incompatibility (a “strike down declarator”).
- (3) Where the incompatible words are in subordinate legislation made by virtue of a pre-commencement Act of the Scottish Parliament, the court—
 - (a) may make a strike down declarator in relation to them only if the court is satisfied that (disregarding any possibility of revocation) the Act prevents removal of the incompatibility,
 - (b) may not make a strike down declarator in relation to them if the court is satisfied that (disregarding any possibility of revocation) words in another enactment to which neither section 29 nor 30 apply prevent removal of the incompatibility.
- (4) A strike down declarator has effect only from the date of the declarator and does not affect anything previously done.
- (5) The court may make an order suspending the effect of a strike down declarator for any period and on any conditions to allow the incompatibility to be remedied.

Status: Point in time view as at 31/01/2024. This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (6) In deciding whether to make an order under subsection (5), the court must (among other things) have regard to the extent to which persons who are not parties to the proceedings would be adversely affected.
- (7) Where a court is considering whether to make an order under subsection (5), intimation of that is to be given to the Lord Advocate (unless the Lord Advocate is a party to the proceedings).
- (8) The Lord Advocate may, on giving notice, take part as a party in the proceedings so far as the proceedings relate to the making of the order.
- (9) Where the determination mentioned in subsection (1) is a decision by the Supreme Court in relation to a UNCRC compatibility issue, the power to make an order under subsection (5) is exercisable by the High Court of Justiciary instead of the Supreme Court.
- (10) In this section, a reference to a pre-commencement Act of the Scottish Parliament—
 - (a) means an Act of the Scottish Parliament the Bill for which received Royal Assent before the day on which this section comes into force, and
 - (b) refers to such an Act as at the day on which this section comes into force.
- (11) In this section and section 26, “court” means—
 - (a) the Supreme Court,
 - (b) the High Court of Justiciary sitting otherwise than as a trial court,
 - (c) the Court of Session.

Commencement Information

I25 S. 25 comes into force in accordance with s. 47(2)

26 Incompatibility declarators

- (1) Subsection (2) applies in any proceedings in which a court determines whether any of the following give rise to an incompatibility with the UNCRC requirements—
 - (a) words—
 - (i) that are in a post-commencement Act of the Scottish Parliament, and
 - (ii) to which section 29 applies,
 - (b) words—
 - (i) that are in a pre-commencement Act of the Scottish Parliament, having been inserted on or after the day section 25 comes into force, and
 - (ii) to which section 29 applies,
 - (c) words—
 - (i) that are in subordinate legislation made by virtue of a post-commencement Act of the Scottish Parliament, and
 - (ii) to which section 30 applies,
 - (d) words—
 - (i) that are in subordinate legislation made by virtue of a provision that was inserted, on or after the day section 25 comes into force, into a pre-commencement Act of the Scottish Parliament, and

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Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

(ii) to which section 30 applies.

- (2) If the court is satisfied that the words give rise to an incompatibility with the UNCRC requirements, it may make a declarator stating that incompatibility (an “incompatibility declarator”).
- (3) Where the incompatible words are in subordinate legislation, the court—
- (a) may make an incompatibility declarator in relation to the subordinate legislation only if the court is satisfied that (disregarding any possibility of revocation) the enactment by virtue of which the subordinate legislation is made prevents removal of the incompatibility,
 - (b) may not make an incompatibility declarator in relation to the subordinate legislation if the court is satisfied that (disregarding any possibility of revocation) words in another enactment to which neither section 29 nor 30 apply prevent removal of the incompatibility.
- (4) An incompatibility declarator—
- (a) does not affect the validity, continuing operation or enforcement of the words in respect of which it is made, and
 - (b) is not binding on the parties to the proceedings in which it is made.
- (5) In this section—
- a “post-commencement Act of the Scottish Parliament” means an Act of the Scottish Parliament the Bill for which received Royal Assent on or after the day on which this section comes into force,
 - “pre-commencement Act of the Scottish Parliament” has the meaning given in section 25(10)(a).

Commencement Information

I26 S. 26 comes into force in accordance with s. 47(2)

27 Power to intervene in proceedings where strike down declarator or incompatibility declarator is being considered

- (1) Where a court is considering whether to make a strike down declarator or an incompatibility declarator, 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 to the proceedings so far as the proceedings relate to the making of a strike down declarator or an incompatibility declarator.

Commencement Information

I27 S. 27 comes into force in accordance with s. 47(2)

Status: Point in time view as at 31/01/2024. This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

28 Ministerial action following strike down declarator or incompatibility declarator

- (1) If a court makes a strike down declarator or an incompatibility declarator, the Scottish Ministers must, within the period of 6 months beginning with the day after the day on which the declarator is made—
 - (a) prepare a report setting out what steps (if any) they intend to take in response to the declarator,
 - (b) publish the report in such manner as the Scottish Ministers consider appropriate,
 - (c) lay a copy of the report before the Scottish Parliament, and
 - (d) seek to make a statement to the Scottish Parliament on the contents of the report.
- (2) A report published under subsection (1)(b) must be accompanied by a version of the report that children can understand.

Commencement Information

I28 S. 28 comes into force in accordance with s. 47(2)

29 Primary legislation words to which this Part applies

The words to which this section applies are words that are—

- (a) in an Act of the Scottish Parliament, and
- (b) in the Act as a result of having been—
 - (i) contained in the Bill for the Act,
 - (ii) contained, as part of an amending provision, in the Bill for another Act of the Scottish Parliament, or
 - (iii) inserted by words in subordinate legislation to which section 30 applies.

Commencement Information

I29 S. 29 comes into force in accordance with s. 47(2)

30 Subordinate legislation words to which this Part applies

- (1) The words to which this section applies are words that are—
 - (a) in a Scottish statutory instrument originally made, wholly or partly, by virtue of a relevant enabling power, and
 - (b) in the instrument as a result of—
 - (i) the exercise of a relevant enabling power (either to make the provision containing the words, or to make the amending provision that inserted them), or
 - (ii) having been inserted into the instrument by words in an Act of the Scottish Parliament to which section 29 applies.
- (2) In this section, “relevant enabling power” means a power conferred by a provision that is not in, or derived (directly or indirectly) from, an Act of Parliament.

Status: Point in time view as at 31/01/2024. This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (3) For the purposes of subsection (2), a provision of an Act of the Scottish Parliament is not to be regarded as derived from section 28 of the Scotland Act 1998.

Commencement Information

I30 S. 30 comes into force in accordance with s. 47(2)

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 question whether words in an enactment to which section 29 or 30 applies give rise to an incompatibility with the UNCRC requirements,
 - 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

I31 S. 31 comes into force in accordance with s. 47(2)

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—

Status: Point in time view as at 31/01/2024. This version of this Act contains provisions that are prospective.

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“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,
 - (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.

Status: Point in time view as at 31/01/2024. This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (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

I32 S. 32 comes into force in accordance with s. 47(2)

33 Power to institute proceedings to determine compatibility question

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

Status: Point in time view as at 31/01/2024. This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Commencement Information

I33 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

I34 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

I35 S. 35 comes into force in accordance with s. 47(2)

Status: Point in time view as at 31/01/2024. This version of this Act 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

I36 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

I37 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

I38 S. 38 comes into force in accordance with s. 47(2)

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PROSPECTIVE

PART 6

REMEDIAL REGULATIONS

39 Remedial regulations

- (1) In the circumstances set out in subsection (2), the Scottish Ministers may by regulations (“remedial regulations”) make such provision as they consider necessary or expedient in consequence of—
- (a) any provision of affected legislation, or
 - (b) any exercise or purported exercise of functions by a member of the Scottish Government,
- which is or may be incompatible with the UNCRC requirements.
- (2) The circumstances are that the Scottish Ministers consider that there are compelling reasons for making remedial regulations as distinct from taking any other action.
- (3) Remedial regulations may—
- (a) relate to—
 - (i) all cases to which the power to make it extends,
 - (ii) those cases subject to specified exceptions, or
 - (iii) any particular case or type of case,
 - (b) modify any enactment (including this Act) or prerogative instrument or any other instrument or document relating to the exercise or purported exercise of functions by the Scottish Ministers,
 - (c) create criminal offences (but see subsection (4)),
 - (d) make provision (other than provision creating criminal offences or increasing the punishment for criminal offences) which has retrospective effect,
 - (e) provide for the delegation of functions.
- (4) The maximum penalties that may be provided for in remedial regulations are—
- (a) on summary conviction, imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both),
 - (b) on conviction on indictment, imprisonment for a term not exceeding 2 years.
- (5) In this section, “affected legislation” means an enactment (whenever enacted) that it would be within the legislative competence of the Scottish Parliament to make—
- (a) that comprises—
 - (i) an Act of the Scottish Parliament,
 - (ii) an Act of Parliament, or
 - (b) that is wholly or partly made by virtue of an enactment mentioned in paragraph (a).
- (6) For the purposes of subsection (5), an enactment that extends to Scotland and other jurisdictions is not, for that reason alone, to be regarded as outside the legislative competence of the Scottish Parliament.

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Commencement Information

I39 S. 39 comes into force in accordance with s. 47(2)

40 Remedial regulations: procedure

- (1) Remedial regulations are subject to the affirmative procedure.
- (2) Before laying a draft of a Scottish statutory instrument containing remedial regulations before the Scottish Parliament, the Scottish Ministers must—
 - (a) lay a copy of the proposed draft regulations, together with a document setting out their reasons for proposing to make the regulations, before the Scottish Parliament,
 - (b) give such public notice of the contents of the proposed draft regulations as they consider appropriate and invite persons wishing to make observations on the draft regulations to do so, in writing, within the comment period,
 - (c) have regard to any written observations submitted within the comment period.
- (3) In subsection (2)(b), the “comment period” means the period of 60 days beginning with—
 - (a) the day on which the public notice was given,
 - (b) if earlier, the day on which the draft regulations were laid, or
 - (c) if both (a) and (b) happened on the same day, that day.
- (4) Along with a draft of a Scottish statutory instrument containing remedial regulations, the Scottish Ministers must also lay before the Scottish Parliament a document which—
 - (a) summarises the observations to which they had regard under subsection (2)(c), and
 - (b) sets out the changes (if any) which they have made to the remedial regulations and the reasons for them.
- (5) In calculating the period of 60 days for the purpose of subsection (3), no account is to be taken of any period during which the Scottish Parliament is—
 - (a) in recess for more than 4 days, or
 - (b) dissolved.

Commencement Information

I40 S. 40 comes into force in accordance with s. 47(2)

41 Urgent remedial regulations

- (1) Where it appears to the Scottish Ministers that, for reasons of urgency, it is necessary to make remedial regulations without following the procedure in section 40, they may do so.
- (2) Immediately after making such remedial regulations, the Scottish Ministers must—
 - (a) give such public notice of the contents of the remedial regulations as they consider appropriate and invite persons wishing to make observations on

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- the remedial regulations to do so, in writing, within the period of 60 days beginning with the day on which the regulations were made,
- (b) lay the regulations, together with a statement of their reasons for having made them, before the Scottish Parliament.
- (3) The Scottish Ministers must have regard to any written observations submitted within the period mentioned in subsection (2)(a).
- (4) As soon as practicable after the end of that period, the Scottish Ministers must lay before the Scottish Parliament a document which—
- (a) summarises the observations to which they had regard under subsection (3), and
- (b) sets out the changes (if any) which they consider it appropriate to make to the remedial regulations.
- (5) If changes have been specified under subsection (4)(b), the Scottish Ministers must make remedial regulations by virtue of this subsection giving effect to those changes and replacing the remedial regulations made under subsection (1).
- (6) Regulations under subsection (5) simply revoking remedial regulations made under subsection (1) are subject to the negative procedure.
- (7) Other regulations under subsection (5) are subject to the affirmative procedure.
- (8) If, at the end of the period of 120 days beginning with the day on which remedial regulations were made under subsection (1), the Scottish Parliament has not, by resolution, approved the remedial regulations or any remedial regulations made by virtue of subsection (5) replacing them, then the remedial regulations or (as the case may be) the replacement remedial regulations cease to have effect (but without that affecting anything done under those regulations or the power to make fresh remedial regulations, whether under the procedure set out in section 40 or this section).
- (9) Subsection (8) has no effect where the Scottish Ministers have, before the end of the period referred to in that subsection, simply revoked the remedial regulations made under subsection (1).
- (10) In calculating the periods of 60 or 120 days for the purposes of subsections (2)(a), (8) and (9) no account is to be taken of any period during which the Scottish Parliament is—
- (a) in recess for more than 4 days, or
- (b) dissolved.

Commencement Information

I41 S. 41 comes into force in accordance with s. 47(2)

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PART 7

FINAL PROVISIONS

42 Interpretation

(1) In this Act—

- “compatibility question” has the meaning given in section 31,
- “incompatibility declarator” has the meaning given in section 26(2),
- “public authority” has the meaning given in section 6(5) and (8),
- “remedial regulations” has the meaning given in section 39(1),
- “strike down declarator” has the meaning given in section 25(2),
- “Supreme Court” means the Supreme Court of the United Kingdom,
- “the Convention” has the meaning given in section 1(1),
- “the first optional protocol” has the meaning given in section 1(1),
- “the second optional protocol” has the meaning given in section 1(1),
- “the UNCRC requirements” has the meaning given in section 1(2),
- “UNCRC compatibility issue” has the meaning given in section 288AB(1) of the Criminal Procedure (Scotland) Act 1995.

(2) For the purposes of this Act, a function conferred by words inserted by one enactment into another enactment (“the modified enactment”) is to be regarded as conferred only by the modified enactment.

Commencement Information

I42 S. 42 in force at 17.1.2024, see [s. 47\(1\)\(a\)](#)

PROSPECTIVE

43 No modification of the Human Rights Act 1998

Nothing in this Act modifies the Human Rights Act 1998.

Commencement Information

I43 S. 43 comes into force in accordance with s. 47(2)

44 Rules of court

- (1) In this section, “rules of court” means rules made under any power to make provision for regulating the practice or procedure of any court or tribunal.
- (2) Any power to make provision for regulating the practice or procedure of any court or tribunal includes power to make provision for the purposes of this Act including, in particular, provision—
- (a) for specifying the stage in the proceedings at which a compatibility question is to be raised or referred,

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- (b) for the sisting of proceedings for the purposes of any proceedings under this Act, and
 - (c) for determining how and when any intimation or notice is to be given.
- (3) The giving of intimation or notice under this Act is to be done in accordance with provision made in rules of court.

Commencement Information

I44 S. 44 comes into force in accordance with s. 47(2)

45 Regulations

- (1) A power of the Scottish Ministers to make regulations under this Act includes power to make—
- (a) incidental, supplementary, consequential, transitional, transitory or saving provision,
 - (b) different provision for different purposes.
- (2) Subsection (1) does not apply to regulations under section 47(2).

Commencement Information

I45 S. 45 in force at 17.1.2024, see s. 47(1)(b)

46 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.
- (2) Regulations under this section may modify any enactment (including this Act).
- (3) Regulations under this section—
- (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act, but
 - (b) otherwise are subject to the negative procedure.

Commencement Information

I46 S. 46 in force at 17.1.2024, see s. 47(1)(c)

47 Commencement

- (1) The following provisions come into force on the day after Royal Assent—
- (a) section 42,
 - (b) section 45,
 - (c) section 46,

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- (d) this section,
 - (e) section 48.
- (2) The other provisions of this Act come into force—
- (a) at the end of a period of 6 months beginning with the day of Royal Assent,
 - (b) on such earlier day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under this section bringing into force any provisions containing any text referring to the day on which the provisions come into force may amend the text so that the text specifies the date on which the provisions actually come into force.
- (4) Regulations under this section—
- (a) may make different provision for different purposes,
 - (b) may include transitional, transitory or saving provision.

Commencement Information

I47 S. 47 in force at 17.1.2024, see [s. 47\(1\)\(d\)](#)

48 Short title

The short title of this Act is the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.

Commencement Information

I48 S. 48 in force at 17.1.2024, see [s. 47\(1\)\(e\)](#)

Status:

Point in time view as at 31/01/2024. This version of this Act contains provisions that are prospective.

Changes to legislation:

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