



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.

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,

Status: This is the original version (as it was originally enacted).

“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.

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.

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.

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.