



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

PART 2

DUTIES ON PUBLIC AUTHORITIES

Acts of public authorities to be compatible with the UNCRC requirements

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- (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 - (ii) a Scottish statutory instrument originally made wholly under a relevant enabling power,
 - (iii) a provision in a Scottish statutory instrument originally made partly under a relevant enabling power, provided that the provision itself was either—
 - (A) originally made under the relevant enabling power, or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

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.