



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

2024 asp 1

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.

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.

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.
- (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—

Status: This is the original version (as it was originally enacted).

- (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.

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
 - (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).

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.

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.

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.

30 Subordinate legislation words to which this Part applies

- (1) The words to which this section applies are words that are—

Status: This is the original version (as it was originally enacted).

- (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.
- (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.