



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

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)),

*Status: This version of this part contains provisions that are prospective.*

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- (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.

#### Commencement Information

- II** 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

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- (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

**I2** 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 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).

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- (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.

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#### **Commencement Information**

- I3** S. 41 comes into force in accordance with s. 47(2)

**Status:**

This version of this part contains provisions that are prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, Part 6.