

Status: This version of this provision is prospective.

Changes to legislation: *United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, Section 25 is up to date with all changes known to be in force on or before 05 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*



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

2024 asp 1

PART 4

LEGISLATION AND THE UNCRC REQUIREMENTS

PROSPECTIVE

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

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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—
 - (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

- II** S. 25 comes into force in accordance with s. 47(2)

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Changes and effects yet to be applied to :

- s. 25 coming into force by [2024 asp 1 s. 47\(2\)](#)