

*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 26 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

#### 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.

*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 26 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*

- (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).

#### Commencement Information

- II** S. 26 comes into force in accordance with s. 47(2)

**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 26 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.

[View outstanding changes](#)

**Changes and effects yet to be applied to :**

- s. 26 coming into force by [2024 asp 1 s. 47\(2\)](#)