

# United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill

[AS PASSED]

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## CONTENTS

Section

### PART 1

#### THE UNCRC REQUIREMENTS

##### *Meaning of “the UNCRC requirements” and related expressions*

- 1 Meaning of “the UNCRC requirements” and related expressions
- 2 Meaning of references to States Parties and related expressions in the UNCRC requirements
- 3 Power to modify the schedule

##### *Interpretation of the UNCRC requirements*

- 4 Interpretation of the UNCRC requirements
- 5 Duty to modify section 4 on ratification of the third optional protocol to the Convention

### PART 2

#### DUTIES ON PUBLIC AUTHORITIES

##### *Acts of public authorities to be compatible with the UNCRC requirements*

- 6 Acts of public authorities to be compatible with the UNCRC requirements

##### *Remedies for unlawful acts*

- 7 Proceedings for unlawful acts
- 8 Judicial remedies
- 8A Child’s view on effectiveness of reliefs etc.
- 9 Restriction on proceedings in respect of judicial acts

##### *Power for Commissioner to bring or intervene in proceedings*

- 10 Power for Commissioner to bring or intervene in proceedings

##### *Power for Scottish Commission for Human Rights to bring or intervene in proceedings*

- 10A Power for Scottish Commission for Human Rights to bring or intervene in proceedings

##### *Guidance on this Part*

- 10B Guidance on this Part

**PART 3**

## CHILDREN'S RIGHTS SCHEME, CHILD RIGHTS AND WELLBEING IMPACT ASSESSMENTS AND REPORTING DUTIES

*Children's Rights Scheme*

- 11 Children's Rights Scheme
- 12 Procedure for making, amending and remaking the Scheme
- 13 Reviewing and reporting on the Scheme

*Child rights and wellbeing impact assessments*

- 14 Child rights and wellbeing impact assessments

*Reporting duty of listed authorities*

- 15 Reporting duty of listed authorities
- 16 Listed authorities
- 16A Guidance on section 15

*Reporting duty of the Scottish Parliament*

- 16B Reporting duty of the Scottish Parliament

*Consequential amendments*

- 17 Consequential amendments of Children and Young People (Scotland) Act 2014

**PART 4**

## LEGISLATION AND THE UNCRC REQUIREMENTS

- 18 Statements of compatibility in relation to legislation
- 19 Interpretation of legislation
- 20 Strike down declarators
- 21 Incompatibility declarators
- 22 Power to intervene in proceedings where strike down declarator or incompatibility declarator is being considered
- 23 Ministerial action following strike down declarator or incompatibility declarator

**PART 5**

## COMPATIBILITY QUESTIONS AND UNCRC COMPATIBILITY ISSUES

- 24 Meaning of "compatibility question"
- 25 UNCRC compatibility issues in criminal proceedings
- 26 Power to institute proceedings to determine compatibility question
- 27 Power to intervene in proceedings where compatibility question arises
- 28 Reference of compatibility question to higher court
- 29 Direct references to Supreme Court: compatibility question arising in proceedings
- 30 Direct references to Supreme Court: compatibility question not arising in proceedings
- 31 Additional expenses

**PART 6**

## REMEDIAL REGULATIONS

- 32 Remedial regulations
- 33 Remedial regulations: procedure

34 Urgent remedial regulations

**PART 7**

FINAL PROVISIONS

35 Interpretation  
36 No modification of the Human Rights Act 1998  
37 Rules of court  
38 Regulations  
39 Ancillary provision  
40 Commencement  
41 Short title

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Schedule—The UNCRC requirements

Part 1—Rights and obligations from the Convention

Part 2—Rights and obligations from the first optional protocol

Part 3—Rights and obligations from the second optional protocol



**Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.**

# United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill

## [AS PASSED]

An Act of the Scottish Parliament to incorporate in Scots law rights and obligations set out in the United Nations Convention on the Rights of the Child; to make related provision to ensure compliance with duties relating to the Convention; and for connected purposes.

### PART 1

#### THE UNCRC REQUIREMENTS

##### *Meaning of “the UNCRC requirements” and related expressions*

#### **1 Meaning of “the UNCRC requirements” and related expressions**

(1) In this Act—

“the Convention” means the United Nations Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989,

“the first optional protocol” means the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict,

“the second optional protocol” means the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

(2) In this Act, “the UNCRC requirements” means the rights and obligations from the Convention, the first optional protocol and the second optional protocol that are set out in the schedule.

(3) The UNCRC requirements have effect for the purposes of this Act subject to any reservations, objections or interpretative declarations by the United Kingdom as may be in force from time to time.

#### **2 Meaning of references to States Parties and related expressions in the UNCRC requirements**

(1) References in the UNCRC requirements to a State Party, States Parties and related expressions are to be read for the purposes of this Act as set out in subsections (2) and (3).

- (2) Unless subsection (3) applies—
- (a) a reference to a State Party is to be read as including reference to a public authority, and
- (b) a reference to States Parties is to be read as including reference to public authorities.
- (3) In the articles of the UNCRC requirements mentioned in column 1 of the following table, references relating to a State Party, States Parties or (as the case may be) related expressions are to be read as set out in column 2 of the table.

<i>Articles of the UNCRC requirements</i>	<i>Modifications</i>
10  15	<p style="text-align: center;">Article 2 of the Convention</p> <p style="text-align: center;">In paragraph 1, the reference to “their jurisdiction” is to be read as “Scotland”.</p> <p>The references to “States Parties” are to be read as “Any Scottish public authority or cross-border public authority carrying out Scottish functions other than any function that relates to the inclusion of persons in non-executive posts on boards of Scottish public authorities with mixed functions or no reserved functions”.</p>
20	<p style="text-align: center;">Article 7 of the Convention</p> <p style="text-align: center;">In paragraph 2, the reference to “their obligations” is to be read as a reference to “the obligations of the United Kingdom”.</p>
25	<p style="text-align: center;">Article 22 of the Convention</p> <p style="text-align: center;">In paragraph 1, the reference to “the said States are Parties” is to be read as “the United Kingdom is a party”.</p>
30	<p style="text-align: center;">Article 27 of the Convention</p> <p style="text-align: center;">In paragraph 4, the reference to “the State Party” is to be read as “Scotland”.</p>
35	<p style="text-align: center;">Article 38 of the Convention</p> <p style="text-align: center;">In paragraph 1, the reference to “them” is to be read as a reference to “the United Kingdom”.</p> <p style="text-align: center;">In paragraph 4, the reference to “their” is to be read as a reference to “the United Kingdom’s”.</p>
40	<p style="text-align: center;">Article 6 of the first optional protocol</p> <p style="text-align: center;">In paragraph 1, the reference to “its jurisdiction” is to be read as “Scotland”.</p> <p style="text-align: center;">In paragraph 3, the reference to “their jurisdiction” is to be read as “Scotland”.</p>
45	<p style="text-align: center;">Article 4 of the second optional protocol</p> <p style="text-align: center;">In paragraphs 1, 2 and 3, each reference to “its territory” is to be read as “Scotland”.</p>

- (4) In the modifications relating to article 2 of the Convention in the table—
- “cross-border public authority” has the meaning given in section 88(5) of the Scotland Act 1998,
- “non-executive post” and “Scottish functions” have the meaning given in Section L2 (equal opportunities) of Part 2 of schedule 5 of that Act,
- “Scottish public authority” has the meaning given in section 126(1) of that Act,

“Scottish public authorities with mixed functions or no reserved functions” has the meaning given in paragraphs 1 and 2 of Part 3 of schedule 5 of that Act.

### **3 Power to modify the schedule**

- 5 (1) The Scottish Ministers may by regulations modify the schedule as they consider appropriate to—
- (a) take account of an optional protocol to the Convention,
  - (b) take account of an amendment to the Convention or to an optional protocol to the Convention,
  - 10 (c) add provisions of the Convention, the first optional protocol or the second optional protocol that are not for the time being set out in the schedule.
- (2) Regulations may be made under subsection (1)(a) only if the protocol is one which the United Kingdom has ratified.
- (3) Regulations may be made under subsection (1)(b) only if the amendment is one which is binding on the United Kingdom.
- 15 (4) No modification may be made by regulations under subsection (1)(a) or (b) so as to come into force before the protocol or amendment has entered into force in relation to the United Kingdom.
- (5) Regulations under subsection (1) may make such consequential modification to sections 1, 4, 12 and 35 as the Scottish Ministers consider appropriate.
- 20 (5A) Before laying a draft of a Scottish statutory instrument containing regulations under subsection (1) before the Scottish Parliament, the Scottish Ministers must consult—
- (a) the Commissioner for Children and Young People in Scotland,
  - (b) the Scottish Commission for Human Rights, and
  - (c) such other persons as they consider appropriate.
- 25 (6) Regulations under subsection (1) are subject to the affirmative procedure.

#### *Interpretation of the UNCRC requirements*

### **4 Interpretation of the UNCRC requirements**

- 30 (1) A court or tribunal which is determining a question in connection with the UNCRC requirements which has arisen in proceedings before it may take into account the things mentioned in subsection (2) so far as it is relevant to the interpretation of the UNCRC requirements in those proceedings.
- (2) The things are—
- (a) provisions of Part 1 of the Convention, the first optional protocol and the second optional protocol that are not for the time being set out in the schedule,
  - 35 (b) the preambles to the Convention, the first optional protocol and the second optional protocol,
  - (c) General Comments (whenever prepared),
  - (d) concluding observations (whenever made),
  - (e) views and findings under the third optional protocol (whenever adopted),

- (f) recommendations following days of general discussion (whenever made),
- (g) other international law and comparative law.

(3) In subsection (2)—

“concluding observations” means suggestions and general recommendations made by the United Nations Committee on the Rights of the Child under article 45, paragraph (d) of the Convention,

“General Comments” means comments prepared by the United Nations Committee on the Rights of the Child under rule 77 of its rules of procedure,

“recommendations following days of general discussion” means recommendations made by the United Nations Committee on the Rights of the Child following days of general discussion under rule 79 of its rules of procedure,

“views and findings under the third optional protocol” means—

- (a) views adopted by the United Nations Committee on the Rights of the Child under article 10, paragraph 5 of the third optional protocol, and
- (b) findings, comments and recommendations adopted by the United Nations Committee on the Rights of the Child under article 13, paragraph 4 of the third optional protocol.

(4) In this section and section 5, “the third optional protocol” means the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

**5 Duty to modify section 4 on ratification of the third optional protocol to the Convention**

- (1) If the United Kingdom ratifies the third optional protocol, the Scottish Ministers must by regulations modify section 4 as they consider appropriate to take account of the third optional protocol.
- (2) No modification may be made by regulations under subsection (1) so as to come into force before the third optional protocol has entered into force in relation to the United Kingdom.
- (3) Regulations under subsection (1) are subject to the negative procedure.

**PART 2**

DUTIES ON PUBLIC AUTHORITIES

*Acts of public authorities to be compatible with the UNCRC requirements*

**6 Acts of public authorities to be compatible with the UNCRC requirements**

- (1) It is unlawful for a public authority to act in a way which is incompatible with the UNCRC requirements.
- (2) In subsection (1), “act” includes fail to act.
- (3) 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 (4)),

(b) does not include the Scottish Parliament or a person carrying out functions in connection with proceedings in the Scottish Parliament.

5 (3A) For the purposes of subsection (3)(a)(iii), “functions of a public nature” includes, in particular, functions carried out under a contract or other arrangement with a public authority.

(3B) Functions are not excluded from being functions of a public nature for the purposes of subsection (3)(a)(iii) solely because they are not publicly funded.

10 (4) In relation to a particular act, a person is not a public authority by virtue only of subsection (3)(a)(iii) if the nature of the act is private.

### *Remedies for unlawful acts*

## **7 Proceedings for unlawful acts**

15 (1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may—

(a) bring proceedings against the authority under this Act in any civil court or tribunal which has jurisdiction to grant the remedy sought, or

(b) rely on the UNCRC requirements concerned in any legal proceedings.

20 (2) In subsection (1)(a), proceedings against an authority include a counterclaim or similar proceeding.

(3) In subsection (1)(b), “legal proceedings” includes—

(a) proceedings brought by or at the instigation of a public authority, and

(b) an appeal against the decision of a court or tribunal.

25 (4) Subsection (1) does not apply to an act which took place before this section comes into force but paragraph (b) of that subsection applies to proceedings brought by or at the instigation of a public authority whenever the act took place.

30 (5) The Scottish Ministers must, if they consider it necessary to ensure that a particular tribunal can provide an appropriate remedy in relation to an act (or proposed act) of a public authority which is (or would be) unlawful as a result of section 6(1), bring forward regulations to add to—

(a) the relief or remedies which the tribunal may grant,

(b) the grounds on which it may grant any of them, or

(c) the orders it may make.

35 (5ZA) In subsection (5), “bring forward regulations” means lay before the Scottish Parliament for approval a draft of a Scottish statutory instrument containing regulations to make the provision they consider necessary.

(5A) Before laying a draft of a Scottish statutory instrument containing regulations under subsection (5) before the Scottish Parliament, the Scottish Ministers must consult—

(a) the Commissioner for Children and Young People in Scotland,

40 (b) the Scottish Commission for Human Rights, and

(c) such other persons as they consider appropriate.

(6) Regulations under subsection (5) are subject to the affirmative procedure.

(7) Proceedings under subsection (1)(a) must be brought before the end of the period of 1 year beginning with the day on which the act complained of took place.

5 (8) But subsection (7) is subject to any rule in relation to any procedure which imposes a stricter time limit in relation to that procedure.

(9) In calculating the period of 1 year in subsection (7), any time during which the person by or on whose behalf the proceedings are brought was under the age of 18 is to be disregarded.

10 (10) Where a person would be entitled, but for subsection (7), to bring proceedings under subsection (1)(a), the court or tribunal may, if it considers it equitable to do so, allow the person to bring the action despite subsection (7).

(11) In section 27A of the Court of Session Act 1988 (time limits), after subsection (1) add—

15 “(1A) To the extent that an application to the supervisory jurisdiction of the Court is in respect of proceedings under section 7(1)(a) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2021, in calculating the period of 3 months in subsection (1)(a), any time during which the person by or on whose behalf the application was made was under the age of 18 is to be disregarded.”.

## 20 **8 Judicial remedies**

(1) In relation to any act (or proposed act) of a public authority which the court or tribunal finds is (or would be) unlawful under section 6(1), it may grant such relief or remedy, or make such order, within its powers as it considers effective, just and appropriate.

25 (2) But damages for an unlawful act of a public authority may be awarded only by a court or tribunal which has power to award damages in civil proceedings.

(3) In considering—

(a) whether to award damages, or

(b) the amount of any award of damages,

30 the court or tribunal must consider whether the award of damages and (if any) the amount of any award of damages is necessary to provide just satisfaction to the person to whom the award is made.

35 (4) A public authority against which damages are awarded is to be treated for the purpose of section 3 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 as if the award were made in an action of damages in which the authority has been found liable in respect of loss or damage to the person to whom the award is made.

(5) In proceedings brought or intervened in by the Commissioner for Children and Young People in Scotland or the Scottish Commission for Human Rights, no award of damages is to be made to the Commissioner or the Scottish Commission for Human Rights.

## 40 **8A Child’s view on effectiveness of reliefs etc.**

(1) Where a court or tribunal is considering what relief or remedy to grant or what order to make under section 8(1)—

(a) it must, in so far as it is practicable to do so, give the child to whom the proceedings relate an opportunity to express the child's views about the effectiveness of that relief, remedy or (as the case may be) order in—

(i) the manner that the child prefers, or

(ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child's preference, and

(b) it must have regard to any views expressed by the child, taking into account the child's age and maturity.

(2) But the court or tribunal is not required to comply with subsection (1) if it is satisfied that the child is not capable of forming a view.

(3) The child is to be presumed to be capable of forming a view unless the contrary is shown.

## **9 Restriction on proceedings in respect of judicial acts**

(1) Proceedings under section 7(1)(a) in respect of a judicial act may be brought only—

(a) by exercising a right of appeal,

(b) on an application to the supervisory jurisdiction of the Court of Session, or

(c) in a case where proceedings in respect of the judicial act could not be brought under paragraph (a) or (b), in the Court of Session.

(2) Subsection (1) does not affect any enactment or rule of law which prevents a court or tribunal from being subject to the supervisory jurisdiction of the Court of Session.

(3) In proceedings under this Act, damages may not be awarded in respect of a judicial act done in good faith.

(4) In this section, “judicial act” means a judicial act of a court or tribunal and includes an act done on the instructions, or on behalf, of a judge or a member of a tribunal.

### *Power for Commissioner to bring or intervene in proceedings*

## **10 Power for Commissioner to bring or intervene in proceedings**

(1) The Commissioner for Children and Young People (Scotland) Act 2003 is amended as follows.

(2) In section 4 (promoting and safeguarding rights), after subsection (2) insert—

“(2A) In exercising that general function the Commissioner may—

(a) bring proceedings under section 7(1)(a) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2021,

(b) intervene in proceedings in which a person claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) of that Act.”.

*Power for Scottish Commission for Human Rights to bring or intervene in proceedings*

**10A Power for Scottish Commission for Human Rights to bring or intervene in proceedings**

(1) The Scottish Commission for Human Rights Act 2006 is amended as follows.

(2) After section 4 insert—

**“4A Proceedings under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2021**

For the purposes of its general duty, the Commission may—

(a) bring proceedings under section 7(1)(a) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2021,

(b) intervene in proceedings in which a person claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) of that Act.”.

(3) In section 6 (no power to assist in claims or legal proceedings), after subsection (2) insert—

“(2A) Subsections (1) and (2) do not apply to proceedings brought or intervened in by the Commission under section 4A.”.

*Guidance on this Part*

**10B Guidance on this Part**

(1) The Scottish Ministers must issue guidance to support the implementation and operation of this Part.

(2) Guidance may, in particular—

(a) promote understanding of this Part,

(b) promote child rights-respecting practice in relation to the implementation and operation of this Part,

(c) include information about how the implementation and operation of this Part can secure better or further effect of the rights of children,

(d) include information to support public authorities and others in working together in the implementation and operation of this Part.

(3) Before issuing guidance under subsection (1), the Scottish Ministers must consult—

(a) children,

(b) the Commissioner for Children and Young People in Scotland,

(c) the Scottish Commission for Human Rights, and

(d) such other persons as the Scottish Ministers consider appropriate.

(4) The Scottish Ministers must, as soon as practicable after issuing guidance under subsection (1), publish the guidance in such manner as they consider appropriate.

(5) The Scottish Ministers must from time to time review guidance issued under subsection (1) and may revise the guidance.

(6) References in subsections (2) to (5) to guidance include references to revised guidance.

**PART 3**

CHILDREN’S RIGHTS SCHEME, CHILD RIGHTS AND WELLBEING IMPACT ASSESSMENTS AND REPORTING DUTIES

*Children’s Rights Scheme*

**11 Children’s Rights Scheme**

- 5 (1) The Scottish Ministers must make a scheme setting out the arrangements that are in place, or are to be put in place by the Scottish Ministers—
- (a) to ensure that they comply with the duty under section 6(1), and
  - (b) to secure better or further effect of the rights of children.
- 10 (2) The scheme under subsection (1) is to be known as the Children’s Rights Scheme (and is referred to in this Act as “the Scheme”).
- (3) The Scheme must, in particular, include arrangements for the Scottish Ministers to—
- (a) ensure that children are able to participate in the making of decisions that affect them with access to such support and representation (for example from children’s advocacy services) as they require to do so,
  - 15 (aa) identify and address any situation where a child’s rights are (or are at a significant risk of) not being fulfilled,
  - (b) raise awareness of and promote the rights of children,
  - (ba) promote complaints handling procedures that children can understand and use,
  - 20 (bb) ensure that children have effective access to justice,
  - (bc) protect the rights of children in relation to their interactions with persons, other than public authorities, who provide services which affect children,
  - (c) consider the rights of children in the Scottish Government’s budget process,
  - (d) ensure that their actions contribute to any national outcome for children determined by them under Part 1 of the Community Empowerment (Scotland) Act 25 2015,
  - (e) prepare and publish child rights and wellbeing impact assessments (see section 14),
  - (f) use, and promote the use of, inclusive ways of communicating that ensure that children are able to receive information and express themselves in ways that best meet their needs (in relation to speech, language or otherwise).
- 30 (4) The first Scheme made under this section must—
- (a) specify the date by which the first report on its operation is to be published and laid before the Scottish Parliament under section 13, and
  - 35 (b) include any actions that the Scottish Ministers are to take in respect of the Scheme during the period beginning with the date on which the Scheme is made and ending on the date that the first report on its operation is to be published.
- (5) The Scottish Ministers may amend the Scheme or make a new scheme to replace it at any time (and references in this Act to the Scheme include the Scheme as amended or replaced).
- 40

- (6) Section 12 sets out the procedure that the Scottish Ministers must follow to make, amend or remake the Scheme.
- (7) In this Part, “children” means persons under the age of 18.

## **12 Procedure for making, amending and remaking the Scheme**

- 5 (1) In this section, a reference to the proposal is a reference to (as the case may be) a proposal to—
  - (a) make the first scheme under section 11(1),
  - (b) amend the Scheme, or
  - (c) make a new scheme to replace the Scheme.
- 10 (2) In preparing the proposal, the Scottish Ministers—
  - (a) must have regard to—
    - 15 (i) any report of the United Nations Committee on the Rights of the Child under paragraph 5 of article 44 of the Convention that the Scottish Ministers consider to be relevant, and
    - (ii) any other reports, suggestions, general recommendations or other documents issued by the United Nations Committee on the Rights of the Child relating to the implementation of the Convention, the first optional protocol or the second optional protocol by the United Kingdom that the Scottish Ministers consider to be relevant,
  - 20 (aa) may have regard to any international law or comparative law that they consider to be relevant, and
  - (b) may have regard to any other document or matter that they consider to be relevant.
- (3) The Scottish Ministers must publish the proposal and consult—
  - 25 (a) children,
  - (b) the Commissioner for Children and Young People in Scotland,
  - (ba) the Scottish Commission for Human Rights, and
  - (c) such other persons as the Scottish Ministers consider appropriate.
- (4) The Scottish Ministers may make such changes to the proposal as they consider appropriate following the consultation under subsection (3).
- 30 (5) The Scottish Ministers may not—
  - (a) make the Scheme,
  - (b) make an amendment to the Scheme, or
  - (c) make a new scheme to replace the Scheme,until the proposal has been laid before the Scottish Parliament.
- 35 (6) A proposal may not be laid before the Scottish Parliament under subsection (5) unless a period of at least 28 days, beginning with the day on which the proposal was published under subsection (3), has elapsed.
- (7) The Scottish Ministers must publish the Scheme, the Scheme as amended or (as the case may be) the Scheme as remade in such manner as they consider appropriate.

- (8) It is immaterial that anything done by way of preparation of, or consultation in relation to, the first scheme under this section was done—
- (a) before the Bill for this Act was passed, or
  - (b) after that but before this section comes into force.

5 **13 Reviewing and reporting on the Scheme**

- (1) The Scottish Ministers must, as soon as practicable after the end of each reporting period—
- (a) review the Scheme and its operation, and
  - (b) publish a report of their findings.

- 10 (2) In reviewing the Scheme, the Scottish Ministers—
- (a) must take into account the following things if they have occurred in the reporting period—

15 (i) the Committee making a suggestion or general recommendation under article 45(d) of the Convention based on a report submitted by the United Kingdom under paragraph 1(b) of article 44 of the Convention,

(ii) an amendment to the Convention or to an optional protocol to the Convention entering into force,

(iii) the Committee making a General Comment,

20 (iiia) the Committee adopting views and findings under the third optional protocol,

(iiib) the Committee making recommendations following days of general discussion,

(iv) the United Kingdom ratifying a protocol to the Convention,

25 (v) a court making a strike down declarator or an incompatibility declarator, and

(b) may take into account any international law or comparative law that they consider to be relevant,

(c) may take into account any other document or matter that they consider to be relevant.

- 30 (3) A report under subsection (1) must include—

(a) a summary of the actions taken by the Scottish Ministers for the purpose of—

(i) ensuring compliance with the duty under section 6(1) during the reporting period, and

(ii) securing better or further effect of the rights of children,

35 (b) a statement as to whether or not they intend to amend the Scheme or make a new scheme to replace it in light of the findings of their review, and

(c) a summary of any actions that they intend to take in the next reporting period.

(4) A report under subsection (1) may include such other material as the Scottish Ministers consider appropriate, whether relating to the operation of the Scheme or to the rights of children generally.

5 (5) Before publishing a report under this section, the Scottish Ministers must consult the following in relation to the action to be taken in pursuance of subsection (3)(c)—

(a) children,

(b) the Commissioner for Children and Young People in Scotland,

(ba) the Scottish Commission for Human Rights, and

(c) such other persons as the Scottish Ministers consider appropriate.

10 (6) Each report published under this section must be—

(a) accompanied by a version of the report that children can understand,

(b) published in such manner as the Scottish Ministers consider appropriate,

(c) laid before the Scottish Parliament as soon as practicable after it is published.

(7) In this section—

15 “General Comment” means a comment prepared by the Committee under rule 77 of its rules of procedure,

“recommendations following days of general discussion” means recommendations made by the Committee following days of general discussion under rule 79 of its rules of procedure,

20 “reporting period” means—

(a) the period beginning with the date on which the Scheme is made and ending on the date specified for such a report in the Scheme (see section 11(4)), and

(b) each subsequent period of a year,

25 “the Committee” means the United Nations Committee on the Rights of the Child,

“views and findings under the third optional protocol” means—

(a) views adopted by the Committee under article 10, paragraph 5 of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, and

30 (b) findings, comments and recommendations adopted by the Committee under article 13, paragraph 4 of that Protocol.

### *Child rights and wellbeing impact assessments*

## **14 Child rights and wellbeing impact assessments**

35 (1) A child rights and wellbeing impact assessment is an assessment of the likely effects (if any) of a legislative provision on, or decision of a strategic nature relating to, the rights and wellbeing of children.

(2) The Scottish Ministers must prepare and publish a child rights and wellbeing impact assessment in relation to the following legislative provisions—



(a) a Bill for an Act of the Scottish Parliament that the Scottish Ministers intend to introduce in the Scottish Parliament,

(b) 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.

(3) The Scottish Ministers must prepare and publish a child rights and wellbeing impact assessment in relation to decisions of a strategic nature relating to the rights and wellbeing of children as required by, and in accordance with, the arrangements set out in the Scheme.

(3A) Without prejudice to the generality of subsection (3), the Scottish Ministers must prepare and publish a child rights and wellbeing impact assessment in relation to—

(a) any decision by the Scottish Ministers to restrict, for a reason relating to coronavirus, the delivery in person of education provision to children at schools,

(b) any strategy, policy or criteria of the Scottish Ministers that is to be applied by an education authority in making a decision temporarily to remove or restrict the delivery in person of education provision to children at schools under the education authority’s management, regardless of the reason for the decision.

(3B) For the purposes of subsection (3A)—

“coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2),

a reference to the “delivery in person” of education is a reference to a child’s attendance in person at the child’s usual school,

“school” has the meaning given by section 135(1) of the Education (Scotland) Act 1980.

#### *Reporting duty of listed authorities*

### **15 Reporting duty of listed authorities**

(1) A listed authority must, as soon as practicable after the end of each reporting period, publish a report on—

(a) the actions it has taken during the period—

(i) for the purpose of ensuring compliance with the duty under section 6(1), and

(ii) to secure better or further effect of the rights of children, and

(b) the actions that it intends to take during the next reporting period—

(i) for the purpose of ensuring compliance with the duty under section 6(1), and

(ii) to secure better or further effect of the rights of children.

(2) Two or more listed authorities may satisfy subsection (1) by publishing a report prepared by them jointly.

(3) Reports under this section must be published in such manner as the listed authority (or authorities) considers appropriate.

(3A) A report published under this section must be accompanied by a version of the report that children can understand.

(3B) A listed authority (or, where two or more authorities have prepared a report jointly, either or any of them) must, as soon as practicable after publishing a report under this section, send a copy of it to the Scottish Ministers.

(4) In this section—

“listed authority” means an authority listed in section 16,

“reporting period” means—

(a) the period beginning with the day on which this section comes into force and ending on 31 March 2023, and

(b) each subsequent period of 3 years.

## 16 Listed authorities

(1) For the purposes of section 15(1), the listed authorities are—

(a) a local authority,

(b) Children’s Hearings Scotland,

(c) the Scottish Children’s Reporter Administration,

(d) a health board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978,

(e) a special health board constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978,

(f) Healthcare Improvement Scotland,

(g) the Scottish Qualifications Authority,

(h) the Skills Development Scotland Co. Limited (registered number SC202659),

(i) Social Care and Social Work Improvement Scotland,

(j) the Scottish Social Services Council,

(k) the Scottish Sports Council,

(l) the chief constable of the Police Service of Scotland,

(m) the Scottish Police Authority,

(n) the Scottish Fire and Rescue Service,

(o) the Scottish Legal Aid Board,

(oa) the Scottish Courts and Tribunals Service,

(p) the Mental Welfare Commission for Scotland,

(q) the Scottish Housing Regulator,

(r) Bòrd na Gàidhlig,

(s) Creative Scotland,

(t) an integration joint board to which functions in relation to persons under the age of 18 are delegated in pursuance of an integration scheme prepared under section 1 or 2 of the Public Bodies (Joint Working) (Scotland) Act 2014,

(u) ILF Scotland.

5 (2) The Scottish Ministers may by regulations modify subsection (1) by—

(a) adding a public authority or a description of public authorities as a listed authority (or authorities),

(b) removing a listed authority (or authorities), or

(c) amending an entry for a listed authority (or authorities).

10 (3) Regulations under subsection (2) are subject to the affirmative procedure.

(4) Before laying a draft of a Scottish statutory instrument containing regulations under subsection (2)(a) or (b) before the Scottish Parliament, the Scottish Ministers must consult—

15 (a) the public authority concerned or (as the case may be) the public authorities falling within the description of public authorities concerned, and

(b) such other persons as they consider appropriate.

#### **16A Guidance on section 15**

(1) The Scottish Ministers must issue guidance about the carrying out of listed authorities’ functions under section 15.

20 (2) Before issuing guidance under subsection (1), the Scottish Ministers must consult—

(a) children,

(b) the Commissioner for Children and Young People in Scotland,

(c) the Scottish Commission for Human Rights, and

(d) such other persons as the Scottish Ministers consider appropriate.

25 (3) The Scottish Ministers must, as soon as practicable after issuing guidance under subsection (1), publish the guidance in such manner as they consider appropriate.

(4) The Scottish Ministers must from time to time review guidance issued under subsection (1) and may revise the guidance.

(5) References in subsections (2) to (4) to guidance include references to revised guidance.>

30 *Reporting duty of the Scottish Parliament*

#### **16B Reporting duty of the Scottish Parliament**

(1) The Scottish Parliamentary Corporate Body must publish a report about the matters set out in subsection (2).

(2) Those matters are—

35 (a) the actions taken by the Parliament and its committees to secure better or further effect of the rights of children during the period covered by the report,

(b) the actions they intend to take to secure better or further effect of the rights of children during the next period.

- (3) The first report under this section is to be published no later than 12 months after the day on which this section comes into force.
- (4) The second and subsequent reports under this section are to be published no later than 12 months after the publication of the previous report.
- 5 (5) Reports under this section are to be—
- (a) published in such manner as the Scottish Parliamentary Corporate Body considers appropriate, and
- (b) accompanied by a version of the report that children can understand.

*Consequential amendments*

10 **17 Consequential amendments of Children and Young People (Scotland) Act 2014**

- (1) The Children and Young People (Scotland) Act 2014 is amended as follows.
- (2) Part 1 (rights of children) and schedule 1 are repealed.
- (3) In section 99(2) (subordinate legislation), the words “section 3(2)” are repealed.

**PART 4**

15 LEGISLATION AND THE UNCRC REQUIREMENTS

**18 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
- 20 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
- 25 the Scottish Ministers other than one which brings a provision of an Act of the Scottish Parliament or an Act of Parliament into force.

**19 Interpretation of legislation**

- (1) So far as it is possible to do so, legislation mentioned in subsection (2) must be read and given effect in a way which is compatible with the UNCRC requirements.
- 30 (2) That legislation is 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
- 35 (b) that is wholly or partly made by virtue of an enactment mentioned in paragraph (a).

- (3) For the purposes of subsection (2), 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.
- (4) Subsection (1) does not affect—
- 5 (a) the validity, continuing operation or enforcement of any incompatible Act of the Scottish Parliament or Act of Parliament,
- (b) the validity, continuing operation or enforcement of any incompatible enactment mentioned in subsection (2)(b) made by virtue of an enactment mentioned in subsection (2)(a) (“primary legislation”) if (disregarding any possibility of revocation) the primary legislation prevents removal of the incompatibility.
- 10

## **20 Strike down declarators**

- (1) Subsection (2) applies in any proceedings in which a court determines whether a provision of relevant legislation is compatible with the UNCRC requirements.
- (2) If the court is satisfied that the provision is incompatible with the UNCRC requirements, it may make a declarator stating that the provision ceases to be law to the extent of the incompatibility (a “strike down declarator”).
- 15
- (3) Where the incompatible provision of relevant legislation is an enactment mentioned in subsection (10)(b) (“subordinate legislation”) made by virtue of an enactment mentioned in subsection (10)(a) (“primary legislation”), the court may make a strike down declarator in relation to the subordinate legislation only if the court is satisfied that (disregarding any possibility of revocation) the primary legislation prevents removal of the incompatibility.
- 20
- (4) A strike down declarator has effect only from the date of the declarator and does not affect anything previously done under the provision.
- (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.
- 25
- (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).
- 30
- (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.
- 35
- (10) In this section, “relevant legislation” means an enactment that it would be within the legislative competence of the Scottish Parliament to make—
- 40 (a) that comprises—
- (i) an Act of the Scottish Parliament the Bill for which received Royal Assent before the day on which this section comes into force,

(ii) an Act of Parliament the Bill for which received Royal Assent before the day on which this section comes into force, or

(b) that is wholly or partly made (at any time) by virtue of an enactment mentioned in paragraph (a).

5 (11) For the purposes of subsection (10), 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.

10 (12) In subsection (10)(a)(i) and (ii), the reference to an Act of the Scottish Parliament or (as the case may be) an Act of Parliament is to such an Act of the Scottish Parliament or (as the case may be) such an Act of Parliament as at the day on which this section comes into force.

(13) In this section and section 21, “court” means—

(a) the Supreme Court,

(b) the High Court of Justiciary sitting otherwise than as a trial court,

15 (c) the Court of Session.

## **21 Incompatibility declarators**

(1) Subsection (2) applies in any proceedings in which a court determines whether a provision of future legislation is compatible with the UNCRC requirements.

20 (2) If the court is satisfied that the provision is incompatible with the UNCRC requirements, it may make a declarator stating that incompatibility (an “incompatibility declarator”).

25 (3) Where the incompatible provision of future legislation is an enactment made by virtue of an enactment mentioned in sub-paragraph (i) or (ii) of subsection (5)(b) (“subordinate legislation”), the court 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.

(4) An incompatibility declarator—

(a) does not affect the validity, continuing operation or enforcement of the provision in respect of which it is made, and

30 (b) is not binding on the parties to the proceedings in which it is made.

(5) In this section, “future legislation” means an enactment—

(a) that it would be within the legislative competence of the Scottish Parliament to make, and

(b) that comprises, or is wholly or partly made by virtue of—

35 (i) an Act of the Scottish Parliament the Bill for which receives Royal Assent on or after the day on which this section comes into force,

(ii) an Act of Parliament the Bill for which receives Royal Assent on or after the day on which this section comes into force.

40 (6) For the purposes of subsection (5)(a), 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.

- 5 (7) In subsection (5)(b)(i) and (ii), the reference to an Act of the Scottish Parliament or (as the case may be) an Act of Parliament includes provision in such an Act of the Scottish Parliament or (as the case may be) such an Act of Parliament which modifies an Act of the Scottish Parliament or (as the case may be) an Act of Parliament which has become relevant legislation by virtue of section 20(10) and (12).

**22 Power to intervene in proceedings where strike down declarator or incompatibility declarator is being considered**

- 10 (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).
- 15 (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.

**23 Ministerial action following strike down declarator or incompatibility declarator**

- 20 (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.
- 25 (2) A report published under subsection (1)(b) must be accompanied by a version of the report that children can understand.

**PART 5**

COMPATIBILITY QUESTIONS AND UNCRC COMPATIBILITY ISSUES

**24 Meaning of “compatibility question”**

- 30 (1) In sections 26 to 37, a “compatibility question” means—
- (a) a question whether a provision of relevant legislation or future legislation is incompatible with the UNCRC requirements,
- (b) a question whether a public authority has acted (or proposed to act) in a way which is made unlawful by section 6(1).
- 35 (2) But a question arising in criminal proceedings that would, apart from this subsection, be a compatibility question is not a compatibility question if it is a UNCRC compatibility issue.
- 40 (3) A compatibility question is not to be taken to arise in any proceedings merely because of any contention of a party to the proceedings which appears to the court or tribunal before which the proceedings take place to be frivolous or vexatious.

- (4) Any duty or power conferred by this Act to refer a compatibility question to a court is to be read as a duty or (as the case may be) power to refer the issue to the court for decision.

## 25 **UNCRC compatibility issues in criminal proceedings**

- (1) The Criminal Procedure (Scotland) Act 1995 is modified as follows.
- (2) In the heading before section 288ZA, for “and devolution issues” substitute “, devolution issues and UNCRC compatibility issues”.
- (3) After section 288AA, insert—

### **“288AB References of UNCRC compatibility issues to the High Court or Supreme Court**

- (1) In this section and section 288AC, “UNCRC compatibility issue” means a question, arising in criminal proceedings as to—

(a) whether a provision of relevant legislation or future legislation is incompatible with the UNCRC requirements,

(b) whether a public authority has acted (or proposed to act) in a way which is made unlawful by section 6(1) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2021.

- (2) In subsection (1)—

“future legislation” has the meaning given in section 21(5) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2021,

“public authority” has the same meaning as in section 6(3) of that Act,

“relevant legislation” has the meaning given in section 20(10) of that Act,

“the UNCRC requirements” has the meaning given in section 1(2) of that Act.

- (3) Where a UNCRC compatibility issue has arisen in criminal proceedings before a court, other than a court consisting of 2 or more judges of the High Court, the court may, instead of determining it, refer the issue to the High Court.

- (4) The Lord Advocate, if a party to criminal proceedings before a court, other than a court consisting of 2 or more judges of the High Court, may require the court to refer to the High Court any UNCRC compatibility issue which has arisen in the proceedings.

- (5) The High Court may, instead of determining a UNCRC compatibility issue referred to it under subsection (4), refer it to the Supreme Court.

- (6) Where a UNCRC compatibility issue has arisen in criminal proceedings before a court consisting of 2 or more judges of the High Court, otherwise than on a reference, the court may, instead of determining it, refer it to the Supreme Court.

- (7) The Lord Advocate, if a party to criminal proceedings before a court consisting of 2 or more judges of the High Court, may require the court to refer to the Supreme Court any UNCRC compatibility issue which has arisen in the proceedings otherwise than on a reference.



- (8) On a reference to the Supreme Court under this section—
- (a) the powers of the Supreme Court are exercisable only for the purpose of determining the UNCRC compatibility issue,
  - (b) for that purpose the Court may make any change in the formulation of that issue that it thinks necessary in the interests of justice.
- (9) When it has determined a compatibility issue on a reference under this section, the Supreme Court must remit the proceedings to the High Court.
- (10) An issue referred to the High Court or the Supreme Court under this section is referred to it for determination.

**288AC Appeals to the Supreme Court: UNCRC compatibility issues**

- (1) For the purpose of determining any UNCRC compatibility issue an appeal lies to the Supreme Court against a determination in criminal proceedings by a court of 2 or more judges of the High Court.
- (2) On an appeal under this section—
- (a) the powers of the Supreme Court are exercisable only for the purpose of determining the UNCRC compatibility issue,
  - (b) for that purpose the Court may make any change in the formulation of that issue that it thinks necessary in the interests of justice.
- (3) When it has determined the UNCRC compatibility issue, the Supreme Court must remit the proceedings to the High Court.
- (4) An appeal under this section against a determination lies only—
- (a) with the permission of the High Court, or
  - (b) if the High Court has refused permission, with the permission of the Supreme Court.
- (5) Subsection (4) does not apply if it is an appeal by the Lord Advocate against a determination by the High Court of a UNCRC compatibility issue referred to it under section 288AB(4).
- (6) An application to the High Court for permission under subsection (4)(a) must be made—
- (a) within 28 days of the date of the determination against which the appeal lies, or
  - (b) within such longer period as the High Court considers equitable having regard to all the circumstances.
- (7) An application to the Supreme Court for permission under subsection (4)(b) must be made—
- (a) within 28 days of the date on which the High Court refused permission under subsection (4)(b), or
  - (b) within such longer period as the Supreme Court considers equitable having regard to all the circumstances.”.

- (4) In section 288B (appeals to the Supreme Court: general), in subsection (1), after “288AA” insert “or 288AC”.

**26 Power to institute proceedings to determine compatibility question**

The Lord Advocate may institute proceedings for the determination of a compatibility question.

**27 Power to intervene in proceedings where compatibility question arises**

- 5 (1) Where a compatibility question arises in any proceedings before a court or tribunal, 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).
- 10 (2) A person to whom intimation is given under subsection (1) may, on giving notice, take part as a party in the proceedings so far as the proceedings relate to a compatibility question.

**28 Reference of compatibility question to higher court**

- 15 (1) A court, other than the Supreme Court or the Inner House of the Court of Session, may refer any compatibility question which arises in proceedings (other than criminal proceedings) before it to the Inner House.
- (2) A tribunal from which there is no appeal must refer any compatibility question which arises in proceedings before it to the Inner House and any other tribunal may make such a reference.
- 20 (3) The Inner House may refer any compatibility question which arises in proceedings before it (otherwise than on a reference under subsection (1) or (2)) to the Supreme Court.
- (4) An appeal against a determination of a compatibility question by the Inner House on a reference under subsection (1) or (2) lies to the Supreme Court.
- 25 (5) An appeal against a determination of a compatibility question by the Inner House from which there is no appeal to the Supreme Court apart from this subsection lies to the Supreme Court only—
- (a) with the permission of the Inner House, or
  - (b) if the Inner House has refused permission, with the permission of the Supreme Court.

30 **29 Direct references to Supreme Court: compatibility question arising in proceedings**

The Lord Advocate may require any court or tribunal to refer to the Supreme Court any compatibility question which has arisen in proceedings before it to which the Lord Advocate is a party.

35 **30 Direct references to Supreme Court: compatibility question not arising in proceedings**

- (1) The Lord Advocate may refer to the Supreme Court any compatibility question which is not the subject of proceedings.
- 40 (2) Subsections (3) to (5) apply where a reference is made under subsection (1) in relation to a compatibility question that relates to the proposed exercise of a function by a public authority.

- (3) The Lord Advocate must notify the public authority of the making of the reference.
- (4) The public authority may not exercise the function in the manner proposed during the period beginning with the receipt of the notification under subsection (3) and ending with the reference being decided or otherwise disposed of.
- 5 (5) Proceedings relating to any possible failure by the public authority to comply with subsection (4) may be instituted by the Lord Advocate.

### **31 Additional expenses**

- 10 (1) A court or tribunal before which any proceedings take place may take account of any additional expense of the kind mentioned in subsection (3) in deciding any question as to expenses.
- (2) In deciding any such question, the court or tribunal may award the whole or part of the additional expense as expenses to the party who incurred it (whatever the decision on the compatibility question).
- 15 (3) The additional expense is any additional expense which the court or tribunal considers that any party to the proceedings has incurred as a result of the participation of any person under section 20(8), 22(2) or 27(2).

## **PART 6**

### REMEDIAL REGULATIONS

### **32 Remedial regulations**

- 20 (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
  - 25 (c) 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—
  - 30 (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,
  - 35 (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)),
  - (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.

### **33 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
  - (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.

### **34 Urgent remedial regulations**

- 5 (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 33, they may do so.
- 10 (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.
- 15 (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.
- 20 (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.
- 25 (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 33 or this section).
- 30 (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).
- 35 (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
- 40 (b) dissolved.

**PART 7**

## FINAL PROVISIONS

**35 Interpretation**

In this Act—

- 5 “compatibility question” has the meaning given in section 24,  
“future legislation” has the meaning given in section 21(5),  
“incompatibility declarator” has the meaning given in section 21(2),  
“public authority” has the meaning given in section 6(3) and (4),  
“relevant legislation” has the meaning given in section 20(10),  
10 “remedial regulations” has the meaning given in section 32(1),  
“strike down declarator” has the meaning given in section 20(2),  
“Supreme Court” means the Supreme Court of the United Kingdom,  
“the Convention” has the meaning given in section 1(1),  
“the first optional protocol” has the meaning given in section 1(1),  
15 “the second optional protocol” has the meaning given in section 1(1),  
“the UNCRC requirements” has the meaning given in section 1(2),  
“UNCRC compatibility issue” has the meaning given in section 288AB(1) of the  
Criminal Procedure (Scotland) Act 1995.

**36 No modification of the Human Rights Act 1998**

20 Nothing in this Act modifies the Human Rights Act 1998.

**37 Rules of court**

- (1) In this section, “rules of court” means rules made under any power to make provision  
for regulating the practice or procedure of any court or tribunal.
- 25 (2) Any power to make provision for regulating the practice or procedure of any court or  
tribunal includes power to make provision for the purposes of this Act including, in  
particular, provision—
- 30 (a) for specifying the stage in the proceedings at which a compatibility question is to  
be raised or referred,  
(b) for the sisting of proceedings for the purposes of any proceedings under this Act,  
and  
(c) for determining how and when any intimation or notice is to be given.
- (3) The giving of intimation or notice under this Act is to be done in accordance with  
provision made in rules of court.

**38 Regulations**

- 35 (1) A power of the Scottish Ministers to make regulations under this Act includes power to  
make—

- (a) incidental, supplementary, consequential, transitional, transitory or saving provision,
- (b) different provision for different purposes.

(2) Subsection (1) does not apply to regulations under section 40(2).

5     **39     Ancillary provision**

(1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.

10     (2) Regulations under this section may modify any enactment (including this Act).

(3) Regulations under this section—

- (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act, but
- (b) otherwise are subject to the negative procedure.

15     **40     Commencement**

(1) The following provisions come into force on the day after Royal Assent—

- (a) section 35,
- (b) section 38,
- (c) section 39,
- 20     (d) this section,
- (e) section 41.

(2) The other provisions of this Act come into force—

- (a) at the end of a period of 6 months beginning with the day of Royal Assent, or
- (b) on such earlier day as the Scottish Ministers may by regulations appoint.

25     (3) Regulations under this section bringing into force any provisions containing any text referring to the day on which the provisions come into force may amend the text so that the text specifies the date on which the provisions actually come into force.

(4) Regulations under this section—

- (a) may make different provision for different purposes,
- 30     (b) may include transitional, transitory or saving provision.

**41     Short title**

The short title of this Act is the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2021.

SCHEDULE  
*(introduced by section 1(2))*

THE UNCRC REQUIREMENTS

**PART 1**

5 RIGHTS AND OBLIGATIONS FROM THE CONVENTION

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years.

Article 2

- 10 1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
- 15 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

- 20 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
- 25 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

- 30 States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.



Article 5

5 States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.
- 10 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name and, as far as possible, the right to know and be cared for by his or her parents.
- 15 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including name and family relations as recognized by law without unlawful interference.
- 20 2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

Article 9

- 25 1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
- 30 2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

#### Article 10

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents.

#### Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

#### Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

#### Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

#### Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

5 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

#### Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

10 2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

#### Article 16

15 1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

#### Article 17

20 States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

25 (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

30 (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, *inter alia*, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

5 (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

10 (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

15 (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

#### Article 22

20 1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

25 2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organisations or non-governmental organisations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any  
30 other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

#### Article 23

35 1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international co-operation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

#### Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

5 States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
- 10 2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

- 15 1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
- 20 3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
- 25 4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the making of appropriate arrangements.

Article 28

- 30 1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
  - (a) Make primary education compulsory and available free to all;
  - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take  
35 appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

5 (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

10 3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

15 Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

20 (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

25 (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

30 2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.



Article 30

5 In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
- 10 2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

- 15 1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
- 20 (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

25 States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

- 30 States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national measures to prevent:
- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

5

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

10

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

15

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

20

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

25

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

30

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

5 (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

10 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

#### Article 41

15 Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State Party; or

(b) International law in force for that State.

#### Article 42

20 States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

### **PART 2**

#### RIGHTS AND OBLIGATIONS FROM THE FIRST OPTIONAL PROTOCOL

#### **Article 4**

25 1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3. The application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict.

#### **Article 5**

30 Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

### Article 6

1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of this Protocol within its jurisdiction.

5 2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.

10 3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

### Article 7

15 1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary to the Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to this Protocol, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with concerned States Parties and relevant international organizations.

2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes or, *inter alia*, through a voluntary fund established in accordance with the rules of the General Assembly.

## PART 3

### RIGHTS AND OBLIGATIONS FROM THE SECOND OPTIONAL PROTOCOL

### Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

### Article 2

For the purposes of the present Protocol:

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

25 (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

### Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether these offences are committed domestically or transnationally or on an individual or organized basis:

- 5 (a) In the context of sale of children as defined in article 2:
- (i) The offering, delivering or accepting, by whatever means, a child for the purpose of:
- a. Sexual exploitation of the child;
  - b. Transfer of organs of the child for profit;
  - c. Engagement of the child in forced labour;
- 10 (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
- (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;
- 15 (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.
2. Subject to the provisions of a State Party's national law, the same shall apply to an attempt to commit any of these acts and to complicity or participation in any of these acts.
3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.
- 20 4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, this liability of legal persons may be criminal, civil or administrative.
- 25 5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

### Article 4

- 30 1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.
2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:
- (a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;

(b) When the victim is a national of that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the above-mentioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. This Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

#### **Article 6**

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

#### **Article 7**

States Parties shall, subject to the provisions of their national law:

(a) Take measures to provide for the seizure and confiscation, as appropriate, of:

(i) Goods such as materials, assets and other instrumentalities used to commit or facilitate offences under the present Protocol;

(ii) Proceeds derived from such offences;

(b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a)(i);

(c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

#### **Article 8**

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;

(d) Providing appropriate support services to child victims throughout the legal process;

5 (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

10 (g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

15 3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

20 4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

25 6. Nothing in the present article shall be construed as prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

### **Article 9**

30 1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.

35 2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.



3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

5 4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

#### **Article 10**

10 4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

#### **Article 11**

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

15 (a) The law of a State Party;

(b) International law in force for that State.

# **United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill**

[AS PASSED]

An Act of the Scottish Parliament to incorporate in Scots law rights and obligations set out in the United Nations Convention on the Rights of the Child; to make related provision to ensure compliance with duties relating to the Convention; and for connected purposes.

Introduced by: John Swinney  
Supported by: Maree Todd  
On: 1 September 2020  
Bill type: Government Bill

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