



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

## 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 (subject to [subsection \(4\)](#)) for a public authority to act, or fail to act, in connection with a relevant function in a way which is incompatible with the UNCRC requirements.
- (2) In [subsection \(1\)](#), a “relevant function” means a function that—
  - (a) it is within the legislative competence of the Scottish Parliament to confer on the authority, and
  - (b) is conferred by—
    - (i) an Act of the Scottish Parliament,
    - (ii) a Scottish statutory instrument originally made wholly under a relevant enabling power,
    - (iii) a provision in a Scottish statutory instrument originally made partly under a relevant enabling power, provided that the provision itself was either—
      - (A) originally made under the relevant enabling power, or
      - (B) inserted into the instrument by an Act of the Scottish Parliament or subordinate legislation made under a relevant enabling power, or
    - (iv) a rule of law not created by an enactment.
- (3) In [subsection \(2\)](#), “relevant enabling power” means a power to make subordinate legislation conferred by a provision in an enactment of a kind mentioned in that

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subsection, unless the provision was inserted by an enactment of a kind that is not mentioned in that subsection.

- (4) But [subsection \(1\)](#) does not make unlawful doing or failing to do something if the authority was required or entitled to act in that way by words that—
- (a) are not contained in an enactment of a kind mentioned in [subsection \(2\)\(b\)](#), or
  - (b) are contained in such an enactment having been inserted into it by an enactment of a kind that is not mentioned in [subsection \(2\)\(b\)](#).
- (5) 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 \(8\)](#)),
  - (b) does not include the Scottish Parliament or a person carrying out functions in connection with proceedings in the Scottish Parliament.
- (6) For the purposes of [subsection \(5\)\(a\)\(iii\)](#), “functions of a public nature” includes, in particular, functions carried out under a contract or other arrangement with a public authority.
- (7) Functions are not excluded from being functions of a public nature for the purposes of [subsection \(5\)\(a\)\(iii\)](#) solely because they are not publicly funded.
- (8) In relation to a particular act, a person is not a public authority by virtue only of [subsection \(5\)\(a\)\(iii\)](#) if the nature of the act is private.

#### **Commencement Information**

**II** [S. 6](#) in force at 16.7.2024, see [s. 47\(2\)\(a\)](#)

### *Remedies for unlawful acts*

## **7 Proceedings for unlawful acts**

- (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.
- (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.
- (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.

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- (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.
- (6) 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.
- (7) 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,
  - (b) the Scottish Commission for Human Rights, and
  - (c) such other persons as they consider appropriate.
- (8) Regulations under subsection (5) are subject to the affirmative procedure.
- (9) 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.
- (10) But subsection (9) is subject to any rule in relation to any procedure which imposes a stricter time limit in relation to that procedure.
- (11) In calculating the period of 1 year in subsection (9), 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.
- (12) Where a person would be entitled, but for subsection (9), 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 (9).
- (13) In section 27A of the Court of Session Act 1988 (time limits), after subsection (1) add—

“(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 2024, 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.”.

#### **Commencement Information**

**I2** S. 7 in force at 16.7.2024, see s. 47(2)(a)

## **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.

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- (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,
- 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.
- (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.
- [<sup>F1</sup>(6) Section 288BZA of the Criminal Procedure (Scotland) Act 1995 modifies the court's power under subsection (1) in relation to certain UNCRC compatibility issues in criminal proceedings.]

#### Textual Amendments

**F1** S. 8(6) inserted (16.7.2024) by Children (Care and Justice) (Scotland) Act 2024 (asp 5), ss. 33(3), 38(2)

#### Commencement Information

**I3** S. 8 in force at 16.7.2024, see s. 47(2)(a)

## 9 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.

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#### Commencement Information

**I4** S. 9 in force at 16.7.2024, see s. 47(2)(a)

### 10 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.

#### Commencement Information

**I5** S. 10 in force at 16.7.2024, see s. 47(2)(a)

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

### 11 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 2024,
  - (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.”.

#### Commencement Information

**I6** S. 11 in force at 16.7.2024, see s. 47(2)(a)

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

**12 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 2024**

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 2024,
  - (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.”.

**Commencement Information**

**I7** S. 12 in force at 16.7.2024, see s. 47(2)(a)

*Guidance on this Part*

**13 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.

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- (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.

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**Commencement Information**

**18** S. 13 in force at 31.1.2024, see s. 47(2)(b) and S.S.I. 2024/13, reg. 2

**Status:**

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**Changes to legislation:**

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