



# Children (Care and Justice) (Scotland) Act 2024

2024 asp 5

## PART 6

### UNCRC COMPATIBILITY ISSUES IN CRIMINAL PROCEEDINGS

#### 33 UNCRC compatibility issues in relation to decisions to prosecute children

- (1) The 1995 Act is amended as follows.
- (2) After section 288B insert—

#### **“288BZA UNCRC compatibility issue in relation to decision to prosecute child: restriction on judicial remedies**

- (1) This section applies where—
  - (a) by virtue of section 7(1)(b) of the UNCRC Incorporation Act, a UNCRC compatibility issue has arisen—
    - (i) in criminal proceedings brought against a person who is a child, or who was a child at the time the proceedings were brought,
    - (ii) otherwise than in connection with an appeal against conviction or an appeal against both conviction and sentence,
  - (b) in determining the UNCRC compatibility issue, a court finds that the prosecutor, by bringing criminal proceedings against the person, has acted in a way which is made unlawful by section 6(1) of the UNCRC Incorporation Act, and
  - (c) by reason only of the finding mentioned in paragraph (b), a court is considering—
    - (i) deserting the proceedings *pro loco et tempore* or *simpliciter*, or
    - (ii) dismissing the indictment or (as the case may be) the complaint or any part of it.
- (2) Despite section 8(1) of the UNCRC Incorporation Act, a court—

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- (a) may not—
    - (i) desert the proceedings *pro loco et tempore* or *simpliciter*, except on the motion of the prosecutor, or
    - (ii) dismiss the indictment or (as the case may be) the complaint or any part of it, but
  - (b) must instead—
    - (i) give the prosecutor an opportunity to reconsider the bringing of criminal proceedings against the person in a way which is compatible with the UNCRC requirements,
    - (ii) adjourn or continue the proceedings to another diet to allow such reconsideration, and
    - (iii) following any such reconsideration, decide whether the bringing of criminal proceedings against the person is compatible with the UNCRC requirements.
- (3) But a court is not required to act in accordance with subsection (2) if—
- (a) it considers that there is no reasonable prospect of the bringing of criminal proceedings against the person being reconsidered in a way which is compatible with the UNCRC requirements,
  - (b) it considers that there are exceptional circumstances which justify not doing so, or
  - (c) it decides under subsection (2)(b)(iii) that the bringing of criminal proceedings against the person is incompatible with the UNCRC requirements.
- (4) Subsection (5) applies where—
- (a) the court adjourns or continues the proceedings in accordance with subsection (2)(b)(ii), or
  - (b) by virtue of subsection (3), the court decides to desert the proceedings *pro loco et tempore*.
- (5) Before adjourning or continuing the proceedings or (as the case may be) deserting the proceedings *pro loco et tempore*, the court must give the prosecutor an opportunity—
- (a) in solemn proceedings, to make an application under section 65(3) or (5) for an extension of any of the following periods which apply in respect of the proceedings—
    - (i) the periods of 11 months and 12 months mentioned in section 65(1), including those periods as extended under section 65(3), on appeal under section 65(8) or under section 74(4)(c),
    - (ii) the periods of 80 days, 110 days and 140 days mentioned in section 65(4), including those periods as extended under section 65(5) or on appeal under section 65(8),
  - (b) in summary proceedings in respect of which the period of 40 days mentioned in section 147(1) applies, to make an application under section 147(2) for an extension of that period, including that period as extended under section 147(2) or on appeal under section 147(3).
- (6) For the purposes of subsection (1)(a)(i), the proceedings are taken to be brought—

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- (a) in solemn proceedings, on the date on which the indictment is served,
  - (b) in summary proceedings—
    - (i) in a case where a warrant to apprehend or cite the accused is granted, on the date on which the warrant is granted, or
    - (ii) in any other case, on the date on which the complaint is served.
- (7) In this section—
- “prosecutor” does not include a private prosecutor,
  - “the UNCRC requirements” has the meaning given in section 1(2) of the UNCRC Incorporation Act,
  - “UNCRC compatibility issue” means a question of the kind mentioned in section 288AB(1)(b),
  - “UNCRC Incorporation Act” means the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.”.
- (3) The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 is amended as follows.
- (4) In section 8 (judicial remedies), after subsection (5) insert—
- “(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.”.

#### Commencement Information

**II** [S. 33](#) in force at 16.7.2024, see [s. 38\(2\)](#)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act power to modify conferred by 1995 c. 36, s. 33A (as inserted) by [2024 asp 5 s. 30\(2\)](#)
- Act power to modify conferred by 2010 asp 8, s. 190(2A) (as substituted) by [2024 asp 5 s. 29\(2\)\(b\)](#)