

Children's Rights (Scotland) Bill

An Act to give further effect in Scotland to the rights and obligations set out in the United Nations Convention on the Rights of the Child.

PART 1 – THE CONVENTION, RELEVANT AUTHORITIES AND THE OVERARCHING OBJECTIVE

The Convention

1. In this Act:
 - a. The 'Convention' means those articles of the United Nations Convention on the Rights of the Child set out in schedule 1.
 - b. The 'Optional Protocols' means:
 - i. those articles of the Optional Protocol to the Convention on the involvement of children in armed conflict,
 - ii. those articles of the Optional Protocol on the sale of children, child prostitution and child pornography,set out in schedule 2.
 - c. The Scottish Ministers may by order amend schedule 2 to add further optional protocols.

Incorporation

2. On commencement of this Act the Convention and the Optional Protocols are part of Scots law for the purposes of this Act.
 - a. In relation to the exercise of devolved functions.
 - b. In relation to devolved law as amended from time to time

Relevant Authorities

3. Relevant authorities for the purpose of the Act are:
 - a. The Scottish Parliament.
 - b. The Scottish Ministers.
 - c. Authorities which are:
 - i. Exercising functions in areas of law or policy devolved to Scotland under the Scotland Act 1998.
 - ii. Scottish public authorities within the meaning of the Human Rights Act 1998.
4. The Scottish Ministers may by Order declare that a body exercising public functions in Scotland in areas of law or policy devolved to Scotland under the Scotland Act 1998 is a relevant authority for the purposes of this Act.

The Overarching Objective

5. A relevant authority must at all times seek to ensure the realisation of the Convention and the Optional Protocols in Scotland.

6. Ensuring realisation of the Convention and the Optional Protocols in Scotland means:
 - a. Respecting children's rights by taking steps to avoid acts or omissions which would result in a breach of the Convention or the Optional Protocols.
 - b. Protecting children's rights by taking steps to prevent acts or omissions by others which would result in a breach of the Convention or the Optional Protocols.
 - c. Fulfilling children's rights by taking steps to fully implement the Convention and the Optional Protocols.

PART 2 – PREVENTING ACTS INCOMPATIBLE WITH CHILDREN’S RIGHTS

AND REDRESS

Unlawful Acts

7. It is unlawful for a relevant authority, when exercising any of its functions insofar as they are referable to matters that are devolved to Scotland, to act in manner which is incompatible with the Convention or the Optional Protocols.
 - a. For the avoidance of doubt, a relevant authority may act in manner made unlawful by this section through an act or omission.
 - b. An authority which acts contrary to this section will commit an ‘unlawful act’.

8. When laying a Bill before the Scottish Parliament the Scottish Ministers or a Member of the Scottish Parliament must, when the Bill is laid, include a statement that the Bill is compatible with the Convention and the Optional Protocols.
 - a. A statement required to be laid in accordance with this section may not be made by way of a Child Rights Impact Assessment as required by section 27 [a].
9. A relevant authority may not rely on statement of compatibility laid in accordance with section 8 as a defence in any proceedings where it is claimed that the said relevant authority commits an unlawful act.
10. Whether a relevant authority commits an unlawful act is a matter to be decided by a court.

Enforcement

11. Any person who claims to be a person affected of an unlawful act may bring proceedings before a court or tribunal or rely on the unlawful act as a defence in any action against them by a relevant public authority.
12. Where proceedings brought under this Part are to be dealt with by way of judicial review the persons listed below have standing to bring proceedings:
 - a. A child affected or likely to be affected directly or indirectly by the claimed unlawful act.

- b. The Commissioner for Children and Young People in Scotland
 - c. The Scottish Commission for Human Rights
 - d. The Equality and Human Rights Commission in Scotland
 - e. Any person or body with sufficient interest in the subject matter of the proceedings
13. In addition to any other matter which it considers relevant, a court called upon to determine whether a relevant authority has committed an unlawful act shall consider which of those matters set out in section 14 it will take into account.
14. Relevant considerations that may be taken into account in accordance with section 13 are:
- a. The extent to which the claimed unlawful act ensures the overarching objective.
 - b. Any General Comment issued by the Committee on the Rights of the Child which is relevant to the article or articles of the Convention or the Optional Protocols which are in issue.
 - c. Any Concluding Observation or Recommendation made by the Committee on the Rights of the Child subsequent to examination of the UK State Party under Part II of the UN Convention on the Rights of the Child which is relevant to the article or articles of the Convention or the Optional Protocols which are in issue.
 - d. The views of any child or children affected.

- e. Any opinion submitted to the court by the Commissioner for Children and Young People in Scotland and/or the Scottish Commission for Human Rights Commission and/or the Equality and Human Rights Commission in Scotland.
- f. Whether the act or omission which it is claimed is an unlawful act is proportionate taking account of all relevant matters.

Redress and Remedies for an Unlawful Act

15. In relation to any act which the court finds is, or would be an unlawful act, it may grant such relief to the person affected by the unlawful act as it considers just and appropriate.

16. When granting relief under section 15 a court may grant:

- a. Any relief, remedy, or order that is within the power of a court to make in civil proceedings in Scotland.
- b. In addition to any remedy under section 16[a], damages for an unlawful act.

in order to afford just satisfaction to the victim.

17. Where a higher court is satisfied that the unlawful act is by reason of legislation enacted or to be enacted by the Scottish Parliament it shall have power to declare the legislation unlawful.

18. Where a court makes a declaration as mentioned in section 17:

- a. Unless the court orders otherwise in accordance with section 17[b], the legislation to which the declaration refers will cease to have affect on a day the declaration is made.
- b. The court may make an order to suspend the effect of the declaration mentioned in section 17 for such time as it considers necessary to allow the incompatibility to be remedied.
- c. The court may give directions as to the operation of the declarations mentioned in legislation prior to date on which it ceases to have effect.
- d. Such directions as are given under section 18[c] may include directions as to the payment of damages under section 16[b].

19. Where a court is satisfied that damages under section 16[b] or section 29[c] will provide just satisfaction to the victim it must award damages, irrespective of whether any other relief or remedy is contemplated or awarded, unless there are strong and compelling reasons why such an award should not be made.

PART 3 – SECURING COMPATIBILITY AND PROMOTING THE RIGHTS OF CHILDREN IN SCOTLAND

The Due Regard Duty

20. Subject to section 32 a relevant authority must, when exercising any of its functions, have due regard to:

- a. The Convention
- b. The Optional Protocols.
- c. The overarching objective in section 5.

21. A relevant authority, when having due regard as required by section 21, must take into account:

- a. The Preamble to the United Nations Convention on the Rights of the Child.
- b. Any relevant General Comment issued by the United Nations Committee on the Rights of the Child.
- c. Any relevant Concluding Observation or Recommendations made by the Committee on the Rights of the Child subsequent to examination of the UK State Party under Part II of the UN Convention on the Rights of the Child relevant to Convention or the Optional Protocols.
- d. Findings from a relevant Child Rights Impact Assessment carried out in accordance with any procedure established under section 27[a] below.
- e. Any other matter that the Scottish Ministers may by Order direct.

A Children's Rights Scheme

22. The Scottish Ministers must make a Children's Rights Scheme (the 'Scheme') setting out the arrangements they have made, or propose to make, for the purposes of:

- a. Meeting the overarching objective in section 5.
- b. Discharging their duty under section 20.

23.The Scheme must be made, published and laid before the Scottish Parliament no later than 6 months from the date this Act comes into force.

24.Subject to sub-section 25[a], the Scottish Ministers may remake the Scheme at any time.

- a. The Scottish Ministers must review, and if they consider it appropriate, remake the Scheme within three years of the date on which the first Scheme and any subsequent Scheme is published.
- b. If the Scottish Ministers decide to remake the Scheme at any time they must lay the remade Scheme before the Scottish Parliament.

25.Before making or remaking the Scheme the Scottish Ministers must:

- a. Publish a draft of the Scheme they propose to make.
- b. Carry out a Child Rights Impact Assessment on the Scheme they propose to make and publish this with the draft Scheme .
- c. Consult with children on the Scheme they propose to make.
- d. Consult with the Children and Young People's Commissioner for Scotland on the Scheme they propose to make.

26.The Scheme may include such matters as the Scottish Ministers consider appropriate, but must include:

- a. A procedure for Child Rights Impact Assessment.
- b. Information on procedures to consult with children as part of carrying out Child Rights Impact Assessment.
- c. Information on publication of the findings from Child Rights Impact Assessment.

27.In addition to any arrangement for publication as mentioned in section 26[c], a Child Rights Impact Assessment must be completed on, and laid with any Bill that the Scottish Ministers or any Member of the Scottish Parliament lay Bill before the Scottish Parliament.

Reports on Progress

28.The Scottish Ministers must publish and lay before the Scottish Parliament a Compliance Report, reporting on:

- a. Action they have taken to meet the overarching objective in section 5.
- b. How they have complied with their duty under section 20.

29.The Compliance Report may be published a part of any report the Scottish Ministers are required to publish under Part 1 of the Children and Young People (Scotland) Act 2014 or as a separate report.

30.If the Compliance Report is published as a separate report the

Scottish Ministers must:

- a. By [date to be specified] lay the Compliance Report before the Scottish Parliament.
- b. At or before the end of each succeeding period of three years from the date of any previous Compliance Report, publish a further Compliance Report.

31.The Scottish Ministers shall when laying any report or publishing any document they are required to lay or publish in accordance with this Part, publish a child friendly version of the said report or document.

Scope and Extent

32.Nothing in this Act is to be read or given effect so as to:

- a. Extend the competences of the Scottish Parliament beyond those set out in the Scotland Act 1998.
- b. Extend the powers of the Scottish Ministers beyond those set out in the Scotland Act 1998

Orders

33.Before deciding whether or not to exercise any power to make an Order under this Act the Scottish Ministers must:

- a. Consult with children.
- b. Consult with the Commissioner for Children and Young People in Scotland
- c. Consult with any other body that they see fit.
- d. Carry out a Child Rights Impact Assessment.

Additional sections:

- Commencement
- Interpretation
- Repeals etc.
- Rules of procedure
- Orders (whether + or – procedure is to apply)