

# **Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill**

Briefing for MSPs – Stage 3 – 17<sup>th</sup> February 2026

## **Statement from Together members**

The Stage 3 debate on 17<sup>th</sup> February is MSPs' final opportunity to ensure the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill delivers on its stated aim of strengthening children's rights. As members of Together (Scottish Alliance for Children's Rights), this briefing sets out our position on Part 1 and Part 2 of the Bill.

### **Part 1: religious observance**

We cannot support Part 1 unless amendments are passed to provide children with a reciprocal, independent right to withdraw from religious observance.

This Bill was introduced to respond to a recommendation from the UN Committee on the Rights of the Child. Yet even at Stage 3, it fails to meet that recommendation and risks embedding discrimination into law by protecting children's rights unequally depending on whether they wish to practise religious observance.

In practice, it affords stronger protection to children who wish to participate in religious observance than to those who do not, denying some children an independent route to exercise their right to freedom of thought, conscience and religion (Article 14 UNCRC).

We urge MSPs to support amendments that remove this discrimination and provide a robust, rights-respecting framework.

We are also disappointed that Part 1 of the Bill has been drafted outwith the scope of the UNCRC (Incorporation) (Scotland) Act 2024. This leaves children without access to the direct accountability mechanisms that incorporation was intended to provide. We ask MSPs to continue to scrutinise the legislative process and call for future Bills to be drafted within scope of the UNCRC Act.

### **Part 2: UNCRC compatibility duty**

We continue to support Part 2 and recognise that it makes necessary amendments to the UNCRC (Incorporation) (Scotland) Act 2024. Changes agreed at Stage 2 represented meaningful progress, and we have welcomed the Cabinet Secretary's commitment to further cross-party work to strengthen accountability mechanisms ahead of Stage 3.

Stage 3 now provides an opportunity to pass amendments that will reduce the burden on children to raise court proceedings, strengthen transparency, accountability and access to justice.

## Conclusion

As a collective of children's organisations, we are united in seeking a Bill that fully reflects Scotland's children's rights commitments.

**We therefore call on MSPs to ensure that Part 1 of the Bill is compatible with the UNCRC, and that Part 2 makes the necessary amendments to the UNCRC (Incorporation) (Scotland) Act 2024 to clarify how incompatibilities are identified, notified and addressed in practice by:**

- **Supporting amendments that create a clear, statutory and independent right for children to withdraw from religious observance, ensuring equal protection of children's right to freedom of thought, conscience and religion;**
- **Supporting amendments that strengthen guidance, monitoring and transparency, so that children's rights are realised in practice;**
- **Opposing amendments that restrict children's agency or undermine the presumption of capacity;**
- **Supporting amendments that strengthen accountability and access to justice, reducing the burden on children to have to resort to court action; and**
- **Continuing to call for future legislation to be drafted within the scope of the UNCRC Act.**

**Supporting organisations:**



## Detailed consideration of amendments

### Part 1: Religious observance

#### Group 1: meaning and character of religious education and observance

*Amendment 6, 11 (Maggie Chapman)* – we support these amendments.

These amendments clarify terminology and help to modernise language in the Education (Scotland) Act 1980. The term “religious instruction” is often what we would consider as religious “observance” today. Replacing this with the term “religious education” helps to avoid confusion or conflation. Amendment 11 clarifies language around the removal of the parental opt-out from Religious and Moral Education as a classroom subject, as MSPs agreed at Stage 2.

*Amendment 21 (Elena Whitham)* – we support this amendment.

This amendment would place a duty on Scottish Government to issue guidance for schools and education authorities on the meaning of religious observance (RO). It requires Scottish Government to “have regard to the importance of” inclusiveness in the content and delivery of religious observance in schools, and to ensure children and young people are consulted in its development.

Evidence from Humanist Society Scotland has shown the need to clarify guidance for schools on religious observance, particularly around provision of inclusive RO. The current lack of clear definition and examples has contributed to significant variation in practice. Whilst this amendment could be stronger, we recognise it will go some way towards addressing our concerns.

*Amendments 22 and 22A (Maggie Chapman)* – we support these amendments.

Amendment 22 requires non-denominational schools to provide pupils and parents with information about religious observance, including format and content. This amendment would support children’s rights under Articles 12 UNCRC (right to be heard) and Article 13 (right to information) by ensuring they have the necessary information upon which to make an informed decision. Schools should ensure that this information is in a format that is accessible to children and young people.

Amendment 22A clarifies that all public and grant-aided schools should be subject to this duty to provide information – not just non-denominational ones.

*Amendment 24 (Paul O’Kane)* – Neutral.

This amendment clarifies that the Bill does not modify certain provisions of the Education (Scotland) Act 1980 or Education (Scotland) Act 1918 in relation to operation of denominational schools. This amendment appears largely declaratory and does not change the substantive effect of the Bill. As such, we take a neutral position.

## Group 2: process following receipt of parental withdrawal request

*Amendment 1 (Stephen Kerr)* – We support this amendment.

This amendment would require schools to ensure that pupils who are withdrawn from RO are provided with “suitable and purposeful educational activity”. This would help to address the current situation where pupils feel dismissed and not provided for – for example, being given token tasks, asked to sit and wait in the classroom or go to the library. There is significant testimony from pupils and parents in Humanist Society Scotland’s [‘Preaching Is Not Teaching’ report](#).

*Amendments 2-4 (Stephen Kerr)* – We oppose these amendments.

These amendments introduce a presumption that children under 16 are not mature enough to form views. This conflicts with the Bill’s UNCRC-based presumption of capacity and the UN Committee on the Rights of the Child’s 2023 concluding observations.

At Stage 2, the Equalities, Human Rights and Civil Justice Committee heard consistent evidence that age-based thresholds were inappropriate and that schools required guidance, not burdensome new structures. Amendments 2-4 run counter to that evidence, and Together’s asks at Stage 1 and Stage 2. We welcomed MSPs’ rejection of similar amendments at Stage 2 and ask them to vote against them again at Stage 3.

*Amendments 5 (Stephen Kerr)* – We oppose this amendment.

This amendment provides that schools must act impartially and not seek to influence pupils’ views in relation to withdrawal. While we understand and support the intention behind this amendment, its practical effect will depend heavily on how it is interpreted. There is a risk that teachers may view it as a ‘gagging clause’. For example, could the provision of factual information, or simply reminding children and young people of their rights, be construed as “undue influence”? This amendment could risk teachers taking an overly cautious approach, which could unintentionally limit appropriate discussion or support for pupils.

*Amendments 19 (Elena Witham)* – Neutral.

This amendment requires Scottish Government to issue guidance to schools on the withdrawal process within 12 months of the provision entering into force. It also places a corresponding duty on schools to have regard to the guidance. The amendment specifies that the guidance must include information about the process for considering withdrawal requests, support for pupils and parents, assessment of pupil capacity, and handling of discussions with pupils and parents. It also requires Scottish Government to consult with various stakeholders in developing the guidance - including children and young people.

We welcome that this amendment puts on the face of the Bill a clear requirement to consult with children and young people in the development of guidance that directly affects them. In line with our position that children should have an independent right to opt-out of RO, this guidance must be framed sufficiently broadly to address all aspects of this issue. However, we share other stakeholders’ concerns that the requirement that guidance includes information on

assessing pupil capacity could be read as a presumption against capacity, which is at odds with the approach in Children (Scotland) Act 2020.

### Group 3: pupil's right to withdraw from religious observance

*Amendments 16-18, 20 (Maggie Chapman)* – We support these amendments.

Together has consistently called for an independent statutory right for children and young people to decide whether to participate in religious observance (RO), in line with their evolving capacities. As currently drafted, the Bill gives pupils a right to object where a parent seeks to withdraw them, but it does not give children a reciprocal, independent right to withdraw themselves. In doing so, it affords stronger protection to children who wish to participate in religious observance than to those who do not. This creates an imbalance in the protection of children's Article 14 UNCRC rights (freedom of thought, conscience and religion) and risks embedding discrimination into law.

Amendment 17 would insert a new section 9AA providing pupils with a right to request withdrawal from RO. This would strengthen alignment with Articles 12 and 14 of the UNCRC, recommendations from the UN Committee on the Rights of the Child, and with Scotland's commitment to child-centred decision-making. It reflects the principle of evolving capacities by recognising that, as children get older, they are more able to exercise their rights independently, while still respecting the role of parents and carers to provide direction and guidance in a manner consistent with the child's development. The amendment incorporates a presumption of capacity and a clear process for schools, ensuring proportionality and legal clarity.

Amendments 16, 18 and 20 are consequential.

*Amendments 7, 7A and 9 (Maggie Chapman)* – We support these amendments, but 17 is stronger.

Amendment 7 would give Scottish Government the power to introduce regulations giving pupils a right to request withdrawal from RO. While this could help to address the issue, it postpones meaningful change to a future point and leaves the right dependent on subsequent regulations being brought forward. By contrast, Amendment 17 would place the right directly into primary legislation, providing clarity and certainty now rather than at an unspecified later date.

Amendment 7A requires Scottish Government to lay a draft statutory instrument containing the first regulations as soon as possible after the relevant provision enters into force.

Amendment 9 specifies that these regulations would be subject to the affirmative procedure.

### Group 4: reporting on religious observance and withdrawal from it

*Amendment 8 (Maggie Chapman)* – We support this amendment.

This amendment requires Scottish Government to report on the number of pupils who have been withdrawn from RO during the school year. The report must be published as soon as practicable after the end of the school year. This addresses the significant evidence gap identified in earlier stages and supports greater transparency and accountability. We will

continue to support qualitative, as well as quantitative reporting - and encourage Scottish Government to report on the form and content of RO, reasons for withdrawal, and other information beyond just the number of withdrawals.

*Amendment 12 (Maggie Chapman) and 23 (Elena Witham)* – We support these amendments, with 12 being stronger.

These amendments require periodic reporting on RO practice.

Amendment 12 requires Scottish Government to commission an independent review on RO, including compliance with the UNCRC, form and content of RO, and provision for children who withdraw. The first report must be prepared within two years of Royal Assent, with subsequent reporting every five years.

Amendment 23 requires Ministers to commission and publish a post-commencement review of Part 1 of the Act. This must include information on how RO is delivered, inclusiveness and content. The report must be published within three years of commencement.

We support amendment 12 as the stronger option, as it requires an independent review and more regular reporting.

While these amendments could improve understanding of RO across Scotland and help ensure consistent rights-respecting practice, we note other stakeholders' views that thematic inspection by HMIE may be a better approach for achieving this.

*Group 5: making freestanding provision for pupil involvement in withdrawal requests*

*Amendment 10 (Maggie Chapman)* – We support this amendment.

This amendment restructures the provisions on pupil involvement in withdrawal decisions so that they sit as standalone provisions, rather than as amendments to the Education (Scotland) Act 1980. The substantive process remains largely unchanged but, by making the provisions 'freestanding', it ensures they fall within the scope of the UNCRC Act. This will strengthen rights protection and access to justice by providing children with a clear and direct legal route to challenge potential rights breaches. The amendment also introduces a requirement for schools to have regard to any Scottish Government guidance on the pupil involvement process.

## **Part 2: UNCRC compatibility duty**

*Group 6: scrutiny of use of exemptions from UNCRC compatibility duty*

Together welcomes the constructive steps taken by Scottish Government to strengthen the safeguards around the new exemption in section 6B. Together and the Equalities, Human Rights and Civil Justice Committee have both highlighted the importance of transparency, accountability and ongoing review. The amendments at Stage 2 represented meaningful progress, and we encourage MSPs to ensure the final framework provides children with the strongest possible protection.

*Amendment 25 (Jenny Gilruth)* - We support this amendment.

This amendment requires Scottish Government to report annually on public authorities' use of the exemption in section 6B. It does so by inserting a new requirement into existing reporting duties for the Children's Rights Scheme (s16, UNCRC Act). Specifically, it requires Scottish Government to publish a summary of notifications and intimations received in relation to the application of Section 6B and to set out any actions it intends to take in response.

This amendment strengthens transparency and oversight of how the exemption is being used in practice. By placing this new duty within the Children's Rights Scheme, it will help to ensure that reliance on section 6B exemption is visible, monitored and subject to scrutiny - helping to promote accountability and continuous improvement.

*Amendment 13 and 13A (Maggie Chapman)* - We support these amendments.

These amendments require listed authorities to notify Scottish Government, Children and Young People's Commissioner Scotland (CYPCS) and Scottish Human Rights Commission (SHRC) when they intend to rely on the section 6B exemption.

They will strengthen existing transparency and accountability measures by introducing an earlier trigger point for notification. At Stage 2, we welcomed Scottish Government's amendment placing a duty on courts and tribunals to notify when a public authority seeks to rely on section 6B in proceedings. Amendment 13 builds on this important safeguard, by adding an earlier, proactive duty on listed authorities, without having to wait for an issue to reach court. This provides a clearer, more proactive mechanism for identifying potential incompatibilities in legislation, helping to shift the burden away from children having to pursue legal action and allowing concerns to be addressed at an earlier stage.

*Amendment 14 (Maggie Chapman)* - We support this amendment.

This amendment would extend the powers in Section 33 UNCRC Act to the Children and Young People's Commissioner Scotland (CYPCS) and the Scottish Human Rights Commission (SHRC), enabling them to raise proceedings to determine a compatibility question where they consider that section 6B may apply.

In practice, this would give both organisations a clear, direct route to test whether legislation is compatible with children's rights, rather than relying on individual cases or pursuing judicial review proceedings. This amendment strengthens the overall accountability framework and complements the notification provisions introduced at Stage 2 by ensuring CYPCS and SHRC can act in response to notifications received. The amendment will help to secure early legal clarity on potentially incompatible legislation and will also reduce the reliance on children to take cases to court. It would enable those delivering public services who are not a "listed authority" with a formal route through which they can refer a compatibility question where they believe section 6B may apply.



*Amendment 15 (Maggie Chapman) - We support this amendment*

This amendment would place a duty on Scottish Government to carry out an annual audit of legislation that, in its view, could give rise to the s6A or s6B exemptions. It requires Scottish Government to prepare and publish a report of its findings including any steps Ministers plan to take in response. This amendment would promote greater transparency and accountability by introducing a focused and systematic mechanism for identifying and addressing legislation that requires public authorities to act incompatibly with the UNCRC requirements.

**About Together (Scottish Alliance for Children's Rights)**

Together (Scottish Alliance for Children's Rights) is an alliance that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) and other international human rights treaties across Scotland. We have over 600 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs and interested professionals. The views expressed in this submission are based on wide consultation with our members but may not necessarily reflect the specific views of every one of our member organisations. Members who have endorsed the opening statement may not necessarily support every point raised in our detailed assessment of each amendment. Views expressed separately should also be taken into account.

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