

Stage 1 Briefing

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

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors. We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Section 1

It is necessary to amend section 9 of the 1980 Act to qualify the parental right to withdraw a child (RME/RO) to ensure that the child's views are considered as part of any withdrawal request, with due weight being given in line with the child's age and maturity. It is essential that the law relating to the exercise of the parent's right to withdraw a child from RME/RO is clear and compliant with Scotland's UNCRC obligations. Respecting that there are many strongly held views on whether or not children should be able to withdraw from religious education the Society is neutral on the question of withdrawal from either or both religious instruction or religious observance.

However, we noted the non-legally binding Concluding Observations of the UN Committee on the Rights of the Child in 2023, calling upon the UK: "to repeal legal provisions for compulsory attendance in collective worship and establishing statutory guidance to ensure the right of all children, including children under 16 years of age, to withdraw from religious classes without parental consent.": Paragraph 26(d) [Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland](#) The Policy Memorandum whilst considering the views of the Children and Young People' Commissioner Scotland did not explain fully why the Government did not consider that it was appropriate at the present time to give effect to the recommendations made by the UN Committee: see [Policy Memorandum accessible](#) paragraph 75. The Government should take to opportunity at Stage 1 to set out fully its reasons for the course of action which have resulted in the bill as introduced.

Section 1(3) inserts into the 1980 Act a new section 9 which requires the operator of the school to: (a) tell the pupil about the request and the pupil's right to object to withdrawal, (b) give the pupil an opportunity to express the pupil's views about the request in— (i) the manner that the pupil prefers, or (ii) a manner that is suitable to the pupil if the pupil has not indicated a preference or it is not reasonable to accommodate the pupil's preference, and (c) have regard to any views expressed by the pupil about the request, taking into account the pupil's age and maturity. As the Policy Memorandum states "This aligns with the complementary duty on education authorities to comply with UNCRC requirements under the UNCRC Act when carrying out a "relevant function" under section 6 of that Act." We agree with this approach.

Section 2



Section 2 of the Bill will introduce an exemption to the section 6 compatibility duty of the UNCRC Act in circumstances where a public authority is compelled to act incompatibly with UNCRC requirements in fulfilment of another Act of the Scottish Parliament. This mirrors the approach taken to Acts of the UK Parliament. Section 2 (3) of the Bill will add new sections 6A and 6B to the [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#). These new sections introduce an exemption to the compatibility duty in section 6 of the UNCRC Act where a public authority is compelled to act incompatibly with UNCRC requirements by either an Act of Parliament (new section 6A) or by another Act of the Scottish Parliament or by Scottish subordinate legislation where the parent Act of the Scottish Parliament mandated the incompatibility (new section 6B). The Scottish Government sought to include an amendment dealing with this matter during the Reconsideration State for the UNCRC Bill. The amendment was outwith the scope of the Reconsideration Stage. Accordingly, the Scottish Government has included the amendment in the Bill.

On principle the Scottish Parliament should not legislate to compel public authorities to act in a way which is incompatible with the UNCRC. If the Parliament is confronted with such a bill in the future, it should only proceed to legislate if it is satisfied that that is the only course open to it. In particular, the Parliament should demand that the Government presenting such a measure has consulted broadly, considered the results of the consultation carefully and fully demonstrated that there is no other course of action which can be taken.

Section 3

We are concerned at the terms of section 3(2): “Regulations under this section may— (a) modify any enactment (including this Act)...”: [Bill as introduced](#) The exercise of the power is limited to giving “full effect to this Act”, why then does it apply to “any enactment”? The Government must know which legislation it may wish to amend under such regulations. These regulations fall within the category of Henry VIII powers which include the power to amend primary legislation by subordinate legislation. The bill provides that “any regulations under this section which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure.” We disagree generally with the provision of Henry VIII powers. If Ministers require to amend legislation regulations (other than remedial orders where there is a constitutional imperative to amend legislation quickly) are not the way to do it. Expedited or Emergency legislation have scrutiny methods which are better than that accorded to regulations. In particular, those procedures allow the measure under consideration to be amended. Ministers should set out clearly the reason why such a power is thought necessary in this bill.

For further information, please contact:
Michael P Clancy, OBE, WS, FSRE
Director of Law Reform
Law Society of Scotland
michaelclancy@lawscot.org.uk