

PARLIAMENTARY BUREAU

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION) (SCOTLAND) BILL: RECONSIDERATION STAGE

Introduction

1. It is understood that the Scottish Government intends to lodge a motion proposing that the Parliament resolves to reconsider the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill (“UNCRC Bill”). A debate to consider the motion has been scheduled for Thursday 14 September. This is the first time the Parliament has been asked to reconsider a Bill.
2. This paper provides information about the anticipated process for Reconsideration Stage of the UNCRC Bill.

Background

Referral of UNCRC Bill to Supreme Court

3. The Scottish Parliament passed the UNCRC Bill on the 16 March 2021. Once a Bill is passed, the Scotland Act 1998 provides that the Presiding Officer cannot submit the Bill for Royal Assent for a 4-week period. During this time, the Bill can be subject to legal challenge by the Advocate General, the Lord Advocate or the Attorney General under section 32A (protected subject matter) or section 33 (legislative competence) of the Scotland Act 1998.¹
4. The UNCRC Bill was referred to the Supreme Court by the Advocate General and Attorney General under section 33. The Supreme Court handed down its judgment on 6 October 2021. It found that certain provisions² would be outside the legislative competence of the Scottish Parliament. As such, the Presiding Officer cannot submit the Bill for Royal Assent in its unamended form.³

Reconsideration Stage procedure

5. Section 36(4)(a) of the Scotland Act 1998 provides that Standing Orders must allow for the reconsideration of a Bill if the Supreme Court decides that a Bill or any provision of it would not be within the legislative competence of the Scottish Parliament.
6. Rule 9.9 of Standing Orders sets out the procedure for Reconsideration Stage.

¹ The Secretary of State also has a separate power during the 4-week period to make an order under section 35 of the Scotland Act 1998 prohibiting the Presiding Officer from submitting the Bill for Royal Assent.

² Sections 6, 19(2)(a)(ii), 20(10)(a)(ii) and 21(5)(b)(ii) UNCRC Bill.

³ Section 32(3) Scotland Act 1998.

Motion for Reconsideration

7. Under Standing Orders, it is for the member in charge of the Bill to initiate Reconsideration Stage proceedings following a decision of the Supreme Court that the Bill or any provision of it would not be within legislative competence. The member in charge does this by lodging a motion proposing that the Parliament resolve to reconsider the Bill (see Rule 9.9.2(a)).

8. If Parliament agrees to the motion, then the Parliament can move to reconsider the Bill. It is for the Bureau to propose a time for Reconsideration Stage proceedings to take place at a meeting of the Parliament. **Standing Orders do not provide a timescale within which Reconsideration Stage proceedings must take place after the motion has been agreed to.**

9. If the Parliament does not agree to the motion, then the Bill cannot be reconsidered. As noted above, this means that the Bill could not be submitted for Royal Assent in its unamended form.

Reconsideration Stage proceedings

10. Rule 9.9.3 provides that proceedings at Reconsideration Stage will be taken at a meeting of the Parliament.

11. Under Rule 9.9.4, a Bill may be amended at Reconsideration Stage. **Amendments must be for the purpose of resolving the problem which is the subject of the Supreme Court decision.** This requirement is in addition to the normal rules of admissibility in Rule 9.10.5 (so amendments would still need to be relevant and consistent with the general principles of the Bill). In the case of any dispute, it would be for the Presiding Officer to decide on the admissibility of the amendment (Rule 9.10.4).

12. Members can lodge amendments as soon as the Parliament has agreed to a motion to reconsider the Bill. The deadline for lodging amendments is 12 noon, four sitting days before Reconsideration Stage is due to take place (Rule 9.10.2). Any amendments lodged will appear on a Daily List in the normal way and, following the deadline for amendments, a Marshalled List and Groupings of amendments will be circulated.

13. There is no selection of amendments at Reconsideration Stage, so all admissible amendments lodged may be moved.

14. Section 36(5) of the Scotland Act 1998 requires that any Bill amended on reconsideration must be subject to a final stage at which it can be approved or rejected.

Committees

15. As noted above, Rule 9.9.3 provides that Reconsideration Stage proceedings are to be taken at a meeting of the Parliament. Although Standing Orders do not require any committee consideration, there is nothing which would preclude a

committee from considering matters within its remit relating to the reconsideration of a Bill.

16. While reconsideration stage amendments are to be taken at a meeting of the Parliament, it is understood that the Equalities, Human Rights and Civil Justice Committee may have an interest in scrutinising any amendments lodged by the Member in Charge of the Bill. An update will be provided to the Bureau, at a future meeting, on the Committee's proposed approach and timetable.

Timing of Reconsideration Stage

17. The Bureau may wish to take the Committee's approach and timetable into account when setting the proposed date for Reconsideration Stage. An update will be provided at a future meeting.

Information for Members

18. In advance of Reconsideration Stage proceedings taking place, SPICe has published a [briefing](#) looking at all the circumstances in which a Bill may be eligible for reconsideration. SPICe will also shortly publish a briefing focusing on reconsidering a Bill to address legislative competence problems (which is directly relevant to the UNCRC Bill).

19. Parliamentary officials will be available to brief any committees undertaking scrutiny of the amendments. Officials will also offer briefings to any MSPs or staff on a one-to-one or group basis as required. An email will be sent to party groups with details on how to arrange a briefing.

Recommendation

20. The Bureau is invited to note information about Reconsideration Stage of the UNCRC Bill.

**Legislation Team
September 2023**