

United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Section 1
Sections 2 to 41

Schedule
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 3

Alexander Stewart

6 In section 3, page 3, line 25, at end insert—

<() Before laying draft regulations under subsection (1) before the Scottish Parliament for approval, the Scottish Ministers must consult such persons as they consider appropriate.>

Section 4

Alison Harris

2 In section 4, page 3, line 30, leave out <may> and insert <must>

John Swinney

Supported by: Mary Fee

7 In section 4, page 3, line 37, at end insert—

<() General Comments (whenever prepared),
() concluding observations (whenever made),
() views and findings under the third optional protocol (whenever adopted),
() recommendations following days of general discussion (whenever made).>

() In subsection (2)—

“concluding observations” means suggestions and general recommendations made by the United Nations Committee on the Rights of the Child under article 45, paragraph (d) of the Convention,

“General Comments” means comments prepared by the United Nations Committee on the Rights of the Child under rule 77 of its rules of procedure,

“recommendations following days of general discussion” means recommendations made by the United Nations Committee on the Rights of the Child following days of general discussion under rule 79 of its rules of procedure,

“views and findings under the third optional protocol” means—

- (a) views adopted by the United Nations Committee on the Rights of the Child under article 10, paragraph 5 of the third optional protocol, and
- (b) findings, comments and recommendations adopted by the United Nations Committee on the Rights of the Child under article 13, paragraph 4 of the third optional protocol.

- () In this section and section 5, “the third optional protocol” means the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.>

Mary Fee

51 In section 4, page 3, line 37, at end insert—

<(c) UN Treaty Body General Comments, Concluding Observations, and comparative law which aid the interpretation of UNCRC rights.

- (3) For the purposes of subsection (2)(c), the court or tribunal may consider General Comments and Concluding Observations, insofar as they are relevant to the interpretation of UNCRC rights, made in relation to the—

- (a) United Nations Convention on the Rights of Persons with Disabilities,
- (b) Committee on the Elimination of Discrimination Against Women,
- (c) United Nations Convention on the Elimination of All Forms of Racial Discrimination,
- (d) International Covenant on Civil and Political Rights,
- (e) International Covenant on Economic, Social and Cultural Rights,
- (f) United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.>

Section 5

John Swinney

8 In section 5, page 4, line 10, leave out subsection (4)

Section 6

Mary Fee

52 In section 6, page 4, line 24, at end insert—

<() all public bodies who have functions in relation to the care of a child,>

John Swinney

9 In section 6, page 4, line 26, at end insert—

<() For the purposes of subsection (3)(a)(iii), “functions of a public nature” includes, in particular, functions carried out under a contract or other arrangement with a public authority.>

Mary Fee

9A As an amendment to amendment 9, line 3, after <functions> insert <—
<(a)>

Mary Fee

9B* As an amendment to amendment 9, line 4, after <authority> insert <, and
(b) the core purpose of which is the provision of services which fulfil the rights set out in the UNCRC requirements, regardless of how the service is funded>

After section 6

Mary Fee

53 After section 6, insert—
<**Guidance to public authorities**
(1) Each public authority to which section 6 applies must have regard to any guidance issued by the Scottish Ministers about the carrying out of their functions in a way which is not incompatible with the UNCRC requirements.
(2) Before issuing guidance of the type mentioned in subsection (1), the Scottish Ministers must consult—
(a) children and young people,
(b) the Commissioner for Children and Young People in Scotland, and
(c) such other persons as the Scottish Ministers consider appropriate.
(3) The Scottish Ministers must review any guidance issued on an annual basis.>

Section 7

Alexander Stewart

10 In section 7, page 5, line 6, leave out <may> and insert <must>

Alexander Stewart

11 In section 7, page 5, line 12, at end insert—
<() Before laying draft regulations under subsection (5) before the Scottish Parliament for approval, the Scottish Ministers must consult such persons as they consider appropriate.>

Alexander Stewart

12 In section 7, page 5, line 18, leave out subsection (9)

Alexander Stewart

13 In section 7, page 5, line 23, at end insert—

<() When considering under subsection (1) whether it is equitable to allow the person to bring the action, the court or tribunal must take account of—

- (a) any delay in the person becoming aware of the act, and
- (b) the person's age at the date of the act.>

Section 8

Alexander Stewart

14* In section 8, page 5, line 34, after <considers> insert <effective,>

Alexander Stewart

15 In section 8, page 5, line 42, at end insert—

<() In considering the matters in subsection (3), the court or tribunal must—

- (a) as so far as practicable give any child affected by the act (or proposed act) of a public authority an opportunity to indicate whether the child wishes to express views,
- (b) if the child wishes to do so, give the child an opportunity to express them, and
- (c) have regard to such views as the child may express, taking into account the child's age and maturity.>

John Swinney

16 In section 8, page 6, line 6, after <Scotland> insert <or the Scottish Commission for Human Rights>

John Swinney

17 In section 8, page 6, line 6, at end insert <or the Scottish Commission for Human Rights>

After section 8

John Swinney

18 After section 8, insert—

<Child's view on effectiveness of reliefs etc.

(1) Where a court or tribunal is considering what relief or remedy to grant or what order to make under section 8(1)—

- (a) it must, in so far as it is practicable to do so, give the child to whom the proceedings relate an opportunity to express the child's views about the effectiveness of that relief, remedy or (as the case may be) order in—
 - (i) the manner that the child prefers, or

- (ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child's preference, and
- (b) it must have regard to any views expressed by the child, taking into account the child's age and maturity.
- (2) But the court or tribunal is not required to comply with subsection (1) if it is satisfied that the child is not capable of forming a view.
- (3) The child is to be presumed to be capable of forming a view unless the contrary is shown.>

After section 10

John Swinney

19 After section 10, insert—

<Power for Scottish Commission for Human Rights to bring or intervene in proceedings

Power for Scottish Commission for Human Rights to bring or intervene in proceedings

- (1) The Scottish Commission for Human Rights Act 2006 is amended as follows.
- (2) After section 4 insert—

“4A **Proceedings under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2021**

For the purposes of its general duty, the Commission may—

- (a) bring proceedings under section 7(1)(a) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2021,
- (b) intervene in proceedings in which a person claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) of that Act.”.
- (3) In section 6 (no power to assist in claims or legal proceedings), after subsection (2) insert—
 - “(2A) Subsections (1) and (2) do not apply to proceedings brought or intervened in by the Commission under section 4A.”.>

Section 11

John Swinney

20 In section 11, page 7, line 7, after <Ministers> insert <—
(a)>

John Swinney

21 In section 11, page 7, line 8, at end insert <, and
() to secure better or further effect of the rights of children.>

Alexander Stewart

- 22 In section 11, page 7, line 11, leave out <may> and insert <must>

Mary Fee

- 54 In section 11, page 7, line 13, at end insert—
<() ensure that children have access to independent advocacy services, so as to enable them to participate in the making of decisions that affect them,>

Mary Fee

- 55 In section 11, page 7, line 13, at end insert—
<() ensure that children have access to legal aid,>

Mary Fee

- 56 In section 11, page 7, line 13, at end insert—
<() ensure that children who have one or more protected characteristics or are in a situation of vulnerability have their rights respected, protected and fulfilled,>

John Swinney

- 23 In section 11, page 7, line 14, at end insert—
<() promote complaints handling procedures that children can understand and use,>

John Swinney

- 24 In section 11, page 7, line 14, at end insert—
<() ensure that children have effective access to justice,>

John Swinney

- 25 In section 11, page 7, line 19, after <prepare> insert <and publish>

Alexander Stewart

- 26 In section 11, page 7, line 21, after <date> insert <(being no later than two years after the day this section comes into force)>

Mary Fee

- 57 In section 11, page 7, line 31, at end insert—
<“protected characteristics” means the characteristics listed in sections 149(7) of the Equality Act 2010.>

Section 12

John Swinney

- 27 In section 12, page 8, line 12, at end insert—

<() the Scottish Commission for Human Rights,>

Section 13

Mary Fee

58 In section 13, page 9, line 8, at end insert—

<() a summary of the actions taken by the Scottish Ministers for the purpose of ensuring that children who have one or more protected characteristics or are in a situation of vulnerability have their rights respected, protected and fulfilled,>

John Swinney

28 In section 13, page 9, line 18, at end insert—

<() the Scottish Commission for Human Rights,>

Gillian Martin

47 In section 13, page 9, line 21, leave out <the Scottish Ministers consider will be understood by children> and insert <children can understand>

Section 14

John Swinney

29 In section 14, page 10, line 1, after <prepare> insert <and publish>

John Swinney

30 In section 14, page 10, line 8, after <prepare> insert <and publish>

Alexander Stewart

31 In section 14, page 10, line 9, leave out <such>

Alexander Stewart

32 In section 14, page 10, line 10, leave out <as they consider appropriate>

John Swinney

33 In section 14, page 10, line 10, leave out <as they consider appropriate> and insert <as required by, and in accordance with, the arrangements set out in the Scheme>

Rachael Hamilton

48 In section 14, page 10, line 10, at end insert—

<(3A) Without prejudice to the generality of subsection (3), the Scottish Ministers must prepare a child rights and wellbeing impact assessment in relation to—

(a) any decision to restrict, for a reason relating to coronavirus, the delivery in person of education provision to children of school age,

- (b) any strategy, policy or criteria to be applied by an education authority in making a decision temporarily to remove or restrict the delivery in person of education provision to children of school age at any school in its area, regardless of the reason for the decision.

(3B) For the purposes of subsection (3A)—

“coronavirus” has the meaning given by section 1 of the Coronavirus (Scotland) Act 2020,

a reference to the “delivery in person” of education is a reference to a child’s attendance in person at the child’s usual school,

“school” has the meaning given by section 135(1) of the Education (Scotland) Act 1980.>

John Swinney

- 34 In section 14, page 10, line 11, leave out subsections (4) and (5)

Section 15

John Swinney

- 35 In section 15, page 10, line 19, after <on> insert <—
(a)>

John Swinney

- 36 In section 15, page 10, line 19, after <period> insert <—
(i)>

John Swinney

- 37 In section 15, page 10, line 20, at end insert <, and
 - (ii) to secure better or further effect of the rights of children, and(b) the actions that it intends to take during the next reporting period—
 - (i) for the purpose of ensuring compliance with the duty under section 6(1), and
 - (ii) to secure better or further effect of the rights of children.>

Mary Fee

- 59 In section 15, page 10, line 20, at end insert—
 - <() A report under subsection (1) must include a summary of the actions taken by the authority for the purpose of ensuring that children who have one or more protected characteristics or are in a situation of vulnerability have their rights respected, protected and fulfilled.>

Mary Fee

- 60 In section 15, page 10, line 22, at end insert—

<() A report prepared under subsection (1) must include, where relevant, what listed authorities are doing to—

- (a) promote complaints handling procedures that children can understand and use,
- (b) ensure that children have access to independent advocacy services,
- (c) ensure that children have access to legal aid.>

Gillian Martin

49 In section 15, page 10, line 24, at end insert—

<() A report published under this section must be accompanied by a version of the report that children can understand.>

Section 16

Alison Harris

Supported by: Mary Fee

3 In section 16, page 11, line 6, at end insert—

<() the Scottish Ministers in the exercise of their powers in relation to prisons and prisoners under the Prisons (Scotland) Act 1989,>

Alison Harris

Supported by: Mary Fee

4 In section 16, page 11, line 10, at end insert—

<() the Scottish Courts and Tribunals Service,>

Section 21

John Swinney

38 In section 21, page 14, line 7, after <in> insert <sub-paragraph (i) or (ii) of>

Section 22

John Swinney

39 In section 22, page 14, line 35, leave out <Advocate and> and insert <Advocate,>

John Swinney

40 In section 22, page 14, line 36, after <Scotland> insert <and the Scottish Commission for Human Rights>

Section 23

John Swinney

41 In section 23, page 15, line 7, after <report> insert <in such manner>

Alison Harris

5 In section 23, page 15, line 7, at end insert—

<() publish a version of the report that the Scottish Ministers consider will be understood by children,>

Gillian Martin

50 In section 23, page 15, line 9, at end insert—

<() A report published under subsection (1)(b) must be accompanied by a version of the report that children can understand.>

Section 27

John Swinney

42 In section 27, page 17, line 33, leave out <Advocate and> and insert <Advocate,>

John Swinney

43 In section 27, page 17, line 34, after <Scotland> insert <and the Scottish Commission for Human Rights>

Section 32

John Swinney

44 In section 32, page 19, line 13, leave out from <made> to <Parliament> in line 14 and insert <of affected legislation>

John Swinney

45 In section 32, page 19, line 35, at end insert—

<(5) In this section, “affected legislation” means an enactment (whenever enacted) that it would be within the legislative competence of the Scottish Parliament to make—

(a) that comprises—

(i) an Act of the Scottish Parliament,

(ii) an Act of Parliament, or

(b) that is wholly or partly made by virtue of an enactment mentioned in paragraph (a).

(6) For the purposes of subsection (5), an enactment that extends to Scotland and other jurisdictions is not, for that reason alone, to be regarded as outside the legislative competence of the Scottish Parliament.>

Section 35

Mary Fee

61 In section 35, page 21, line 30, at end insert—

<“protected characteristics” has the meaning given by section 11(7),>

Section 40

John Swinney

- 46** In section 40, page 23, line 6, leave out from <on> to end of line 7 and insert <—
- (a) at the end of the period of 12 months beginning with the day of Royal Assent, or
 - (b) on such earlier day as the Scottish Ministers may by regulations appoint.>

Alex Cole-Hamilton

Supported by: Mary Fee

- 1** In section 40, page 23, line 6, leave out from <on> to end of line 13 and insert <at the end of a period of 6 months beginning with the day of Royal Assent.>

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