

# **CHILDREN (WITHDRAWAL FROM RELIGIOUS EDUCATION AND AMENDMENT OF UNCRC COMPATIBILITY DUTY) (SCOTLAND) BILL**

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## **POLICY MEMORANDUM**

### **INTRODUCTION**

1. As required under Rule 9.3.3 of the Parliament’s Standing Orders, this Policy Memorandum is published to accompany the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill, (“the Bill”) introduced in the Scottish Parliament on 30 April 2025.

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 66–EN);
- a Financial Memorandum (SP Bill 66–FM);
- a Delegated Powers Memorandum (SP Bill 66–DPM);
- statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 66–LC).

3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government’s policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### **POLICY OBJECTIVES OF THE BILL**

#### **Overview**

4. The Scottish Government is committed to upholding the rule of law by ensuring that laws are clear, accessible and effective. It is also committed to fully realising the human rights of all people in Scotland, including complying with international human rights obligations.

5. This Bill therefore contains targeted and technical measures aimed at enhancing the coherence and clarity of the processes for withdrawal from Religious Observance (RO) and Religious and Moral Education (RME) in schools, as well as the operation of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (“the UNCRC Act”), in line with the Scottish Government’s commitment to children’s rights and the UN Convention on the Rights of the Child.

6. Specifically, the Bill will amend both the UNCRC Act and the Education (Scotland) Act 1980 (“the 1980 Act”) to provide clarity to public authorities on how they should interpret and apply their duties, and improve the clarity of our statute book, thus strengthening the legal framework for the rights of children and young people in Scotland. As well as ensuring consideration of pupils’ views, the changes to RO/RME will put beyond doubt the position in Scotland in relation to UNCRC obligations in this context.

7. The overarching policy objectives are to:

- RO/RME<sup>1</sup>: Amend the current legislation to require that pupils’ views are considered when parents<sup>2</sup> are exercising their right to withdraw their child from RO and RME in order to provide clarity and align legislation with existing non-statutory guidance.
- UNCRC: Add an exemption to the section 6 compatibility duty in 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.

8. More detail on the specific amendments the Scottish Government is proposing to make is provided below.

## **RO/RME**

### **Background**

9. Section 9 of the 1980 Act gives parents a right to withdraw their child (of any age) from both RO and from RME (also called Religious Education (RE) in denominational schools) as a subject, without taking into account the views of the child. While longstanding non-statutory guidance on RO<sup>3</sup> notes that “schools should include children and young people in any discussions about aspects of their school experience, ensuring their views are taken into account”, there is no legal requirement to consider a pupil’s views as part of the withdrawal process.

10. Scotland, as part of the UK, is bound by the international obligations flowing from the UN Convention on the Rights of the Child (“UNCRC”). The current legislation on RO and RME in Scotland raises questions in connection with the Scottish Government’s obligations under the UNCRC, namely Article 12 of the UNCRC, which gives children the right to have their views considered in matters which affect them, with due weight being given in accordance with the age and maturity of the child. It also raises questions in relation to Article 14 of the UNCRC, which details the right to freedom of thought, conscience and religion. While the UNCRC was recently incorporated into Scots Law by the UNCRC Act, it is important to clarify that the provisions of

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<sup>1</sup> This memorandum refers to RO/RME throughout this memorandum as a collective shorthand, and the Bill applies to the right to withdraw from both, but it is critical to establish at this stage RO and RME are distinct activities. It is also important to note that unless otherwise stated, ‘RME’ here encompasses both RME in denominational schools, and Religious Education in denominational schools.

<sup>2</sup> In this memorandum, as in section 135 of the 1980 Act, unless otherwise stated “parent” includes guardian and any person who is liable to maintain or has parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995) in relation to, or has care of a child or young person.

<sup>3</sup> [Curriculum for Excellence: religious observance - gov.scot](https://www.gov.scot/curriculum-for-excellence/religious-observance)

the UNCRC Act do not apply to the 1980 Act<sup>4</sup> so the UNCRC reasons for aspects of this Bill are connected to the UNCRC as a matter of international law, rather than domestic law.

11. To ensure clarity and put the position in relation to UNCRC obligations beyond doubt the Bill proposes to amend section 9 of the 1980 Act to qualify the parental right to withdraw 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.

### **Current practice**

12. RO, sometimes also called 'time for reflection' or 'collective worship', plays an important role in promoting the spiritual development of pupils, as well as expressing and celebrating the shared values of the school community. This might be woven throughout the school day, or take the form of specific assemblies, and sometimes includes parents, carers and community representatives from faith and non-faith groups, as well as pupils and staff. Scotland is a multi-faith and multi-cultural society, where people of all faiths and none can flourish. Therefore, as noted in current Scottish Government guidance, RO in schools must be sensitive to individual spiritual needs and beliefs, whether these come from a faith or non-faith perspective, while being equally sensitive to Scotland's longstanding religious traditions and origins, including Christianity, and seeking to reflect these.

13. RME is one of the eight curriculum areas within the Curriculum for Excellence framework and is considered to make an important contribution to the personal and social development of children and young people. RME is anomalous as both the only part of the school curriculum for which there is provision in legislation, and the only part of the curriculum in respect of which there is a statutory right to withdraw a pupil. It is also important to note that RE specifically has an important role in faith formation for learners in Catholic Schools. It is the Scottish Government's policy that all children and young people should benefit from the entitlements of the full spectrum of learning afforded by Curriculum for Excellence.

14. The Scottish Government's engagement with key stakeholders as part of preparation for this Bill suggests that practical approaches to managing RO/RME withdrawal vary by school and depend on a number of factors including resource and staff complement, timetabling, the number of enrolled students, and the proportion of withdrawals across the wider student body. Pupils who have been withdrawn will typically be placed into another class, subject, or activity which is operating concurrently to the activities from which they are withdrawn. However, in some cases they may also be 'present but not participating' either observing or undertaking separate activities within the same class or group. Where activities are observed by the entire school, there may be a need to provide dedicated supervision for withdrawn pupils.

15. Some consultation responses indicate that in a minority of cases parents are asked to remove withdrawn pupils from school for the duration of an RO/RME activity. However, this does not reflect existing guidance, which is clear that schools should make suitable arrangements for withdrawn pupils to participate in a worthwhile alternative activity, and that in no circumstances should a pupil be disadvantaged as a result of being withdrawn.

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<sup>4</sup> This is because the section 6 compatibility duty in the UNCRC Act applies only to Scottish Parliament derived legislation, and not to UK enactments even in devolved areas.

16. While a literature search to identify and review any relevant research, evidence or scholarly publication on the right of withdrawal from RO/RME was undertaken by the Scottish Government, evidence regarding how the right to withdraw is currently being implemented is incredibly limited, including in terms of current rates of withdrawal. Therefore, a range of consultation and engagement activity has been undertaken in the preparation of this aspect of the Bill, detailed below.

## **Consultation and engagement**

17. In order to inform the legislation and further articulate the Scottish Government's position on the necessity of change and obtain further evidence on the likely impact, a public consultation was published on 14 November 2024 and closed on 26 January 2025. Specifically, the consultation<sup>5</sup> sought views on the proposal to amend section 9 of the 1980 Act to require due weight to be given to the pupil's views when parents are exercising their right to withdraw their child from RO/RME, which would bring legislation into line with existing guidance on RO.

18. The consultation posed six targeted questions that covered current practice, financial implications and positive and negative impacts associated with the proposed changes. This included asking respondents to consider any practical implications for schools, as well as any equalities, and children's rights or wellbeing implications.

19. Alongside the public consultation, the Scottish Government met with key stakeholders, including the Association of Directors of Education in Scotland (ADES), the Scottish Catholic Education Service (SCES), the Scottish Teachers Association of Religious and Moral Education (STARME), Humanist Society Scotland (HSS), the Scottish Youth Parliament (SYP), Together (Scottish Alliance for Children's Rights), and the office of the Children and Young People's Commissioner Scotland, as well as representatives from a broad range of faith and belief groups.

20. There were over 500 respondents to the consultation<sup>6</sup>. These included collective representative and advocacy organisations, educators, denominational bodies, local authorities and private citizens. Support for, or against the change, as well as estimations of its likely impact varied. Responses were almost exclusively qualitative in nature and, for the most part, did not provide detailed data on the current incidence of RO/RME withdrawal in schools.

21. A wide range of stakeholder views were expressed in consultation responses and engagement meetings, with some objecting to any legislative changes and others of the view that far more radical change is needed, for example providing a parallel right to withdraw for pupils or, by contrast, removing the right to withdraw entirely for either or both RO and RME.

22. It has also been challenging to acquire robust evidence on the current rate of withdrawal from RO and RME as neither the Scottish Government nor individual local authorities conduct routine data gathering or publish regular statistical material on this. As noted above, for the most part consultation responses did not feature data on the current incidence of withdrawal. The

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<sup>5</sup> [Schools - religious observance and religious and moral education: consultation - gov.scot](https://www.gov.scot/publications/consultations/religious-observance-and-religious-and-moral-education/consultation-2024-25/pages/10.aspx)

<sup>6</sup> Consultation analysis report - <https://www.gov.scot/isbn/9781836915638> (available from June 2025)

Scottish Government therefore conducted additional targeted engagement through ADES to gather the necessary intelligence to inform estimated impacts and to test these estimates to ensure they were accurate.

23. This engagement took the form of a short survey which sampled schools in 3 local authorities (Aberdeenshire, East Lothian and East Renfrewshire) to provide more robust data on current rates of withdrawal from RO/RME. One hundred and sixteen schools responded accounting for approximately 48% of schools in the sample area. 36,166 pupils are currently enrolled in the responding schools. A total of 213 pupils were withdrawn from RO, RME or both (0.59%). 143 were withdrawn from RO only, while 9 were withdrawn from RME. Only 61 pupils were withdrawn from both RO and RME.

24. Applying the survey figures to published statistics for 2024 on primary, secondary, and special schools amounting to 702,419 total pupils across 2445 schools, suggests that approximately 4144 pupils in total are currently withdrawn from RO, RME or both. If the survey results are reflective of withdrawal rates across Scotland, then this suggests significant variation between schools, with some schools reporting no withdrawals at all, and some reporting 10 or more. However, there is insufficient data to suggest any particular reasons behind the variation.

### **Proposed approach to changes**

25. The proposed provisions aim to support alignment with the UNCRC while balancing three key considerations: parental rights, likely stakeholder views, and the practicality of implementing the changes for schools.

26. The proposed approach will amend provisions in the 1980 Act to require schools to have regard to a pupil's views when parents are applying their right to withdraw their child from RO/RME, and taking into account the pupil's age and maturity. These changes will effectively align legislation with existing non-statutory guidance on RO. The Bill provisions will also require the school to have regard to any guidance that Ministers may give about these provisions.

### ***Duty to involve the pupil in decisions around withdrawal***

27. Under this approach the education authority or the manager of a grant-aided school ("the operator"), will have a duty to have regard to a pupil's views in the event of a parental request for withdrawal. 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 (albeit the 1980 Act is outwith the scope of the UNCRC Act). The operator will be required to assess whether or not the pupil has sufficient capacity to form a view on the withdrawal, with the presumption being that the pupil has adequate capacity unless there is evidence to the contrary, which would align with similar legislation<sup>7</sup>. There is also precedent for education authorities making a judgement on a pupil's capacity<sup>8</sup>.

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<sup>7</sup> [Children \(Scotland\) Act 2020, section 1\(2\).](#)

<sup>8</sup> [Education \(Additional Support for Learning\) \(Scotland\) Act 2004, section 3A.](#)

### ***Practical process for giving due weight to a pupil's views***

28. In terms of how the withdrawal process would operate in practice, upon receipt of a request from a parent to withdraw their child from RO and/or RME, the operator would be required to assess whether or not the pupil had sufficient capacity to reach an informed view. If they judge the pupil not capable of forming a view, the parental request should be fulfilled. However, should they be satisfied that the pupil is capable of forming a view, the operator would then be required to tell the pupil about the request and their right to object to the withdrawal. The pupil would then have the opportunity to express their views, and in the event of the pupil objecting, the operator would discuss the objection with the pupil and the parent and have regard to any views expressed. It is possible that the parent and pupil may be able to come to an agreement during this discussion. However, if the withdrawal request and objection remain in place after this step has been completed, the operator would then not give effect to the withdrawal request to the extent of the pupil's objection, effectively allowing the pupil (if capable of forming a view) to override a parental withdrawal in the event the pupil does not wish to be withdrawn.

29. The Scottish Government acknowledges that Bill provisions would introduce a legal requirement to consider pupil views where this has previously been non-statutory, which may create some additional short-term workload for any schools where guidance has not previously been fully implemented. However, this approach may also reduce practical issues for schools in the long term, given the potential that the legislation brings for pupils to remain in RO/RME rather than being withdrawn and, therefore, to decrease withdrawals and the associated need to provide alternative provision for withdrawn pupils.

### ***Alignment with UNCRC and parental rights***

30. These changes will mean that the parental right to withdraw their child from RO/RME is balanced with the pupil's views depending on the pupil's capacity as judged by the operator, rather than being based on a specific age being reached. This ensures stronger alignment with the UNCRC, as well as with recent precedents for this in wider legislation<sup>9</sup>. Further detail on how the operator might reach a judgement will be provided in statutory guidance.

31. In practice, these changes will mean that there would only be a legal requirement to consider a pupil's views following a parental withdrawal request where the pupil is considered to be capable of forming a view. A pupil would not be able to initiate consideration of their views should they wish to be withdrawn (if the parent has not made a withdrawal request). Additionally, a pupil's preference to remain in RO/RME would only supersede that of the parent if the operator had judged the pupil to have the capacity to form a view. This aligns with Article 14 of the UNCRC and the child's right to freedom of thought, conscience and religion (which specifically mentions the child's evolving capacity). The Scottish Government considers that this approach is compliant with both the UNCRC and wider parental rights.

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<sup>9</sup> [Children \(Scotland\) Act 2020, section 1\(2\)](#).

## **Amending the UNCRC Act**

### **Background of the UNCRC Act**

32. The Scottish Government is committed to fully realising the human rights of all people in Scotland. It is committed to building a Scotland where respect for human rights forms the bedrock of society and the institutions which govern and deliver public services for the people of Scotland.

33. As part of its commitment to human rights, the Scottish Government, backed unanimously by the Scottish Parliament, took the decision to directly incorporate the UNCRC into our domestic law in Scotland – within the limits of our devolved competence. This led to the UNCRC Act which fully commenced in July 2024.

34. The intent behind the UNCRC Act is to deliver a proactive culture of everyday accountability for children’s rights across public services in Scotland. Under the UNCRC Act, public authorities now have a legal duty not to act, or fail to act, in a way that is incompatible with the UNCRC requirements in the schedule of the UNCRC Act when carrying out a relevant function. Children and their representatives who believe that a public authority’s action, proposed act or failure to act is incompatible with the UNCRC requirements, can now seek legal redress through the courts.

### **Background to the Supreme Court referral**

35. Following its original passage in the Scottish Parliament, in April 2021, the UNCRC Bill was subject to a reference made by UK Law Officers to the UK Supreme Court. In October 2021, the UK Supreme Court judgment on the UNCRC Bill found that some provisions were outwith the legislative competence of the Scottish Parliament. An amended Bill was brought back to Parliament using the ‘Reconsideration Stage’, where it was unanimously passed for a second time.

36. Under the revised section 6 compatibility duty, as commenced, it is now unlawful for a public authority to act, or fail to act, in a way that is incompatible with UNCRC requirements if acting in connection with a function that could competently be conferred by the Scottish Parliament and is not conferred by legislation originating from the UK Parliament.

37. As a result of the Supreme Court judgment, section 6 was also redrafted to make clear that where a function is conferred by legislation originating from the Scottish Parliament but amended by legislation originating from the UK Parliament, a public authority cannot be found to have acted unlawfully (by acting incompatibly) if it was required or entitled to do so by that amendment. However, that is the only context in which this type of exemption applies to provision in Acts of the Scottish Parliament or Scottish statutory instruments.

38. During the Reconsideration Stage of the Bill, officials considered proposing an amendment to add an exemption to the section 6 compatibility duty in circumstances where a public authority is compelled to act incompatibly in fulfilment of another Act of the Scottish Parliament. However, the Standing Orders on admissibility meant that amendments had to be narrowly focused on addressing the Supreme Court judgment. As such, provision like this was only made regarding legislation originating in the UK Parliament.

## **Policy rationale**

39. This 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 (including where an Act of the Scottish Parliament has required Scottish subordinate legislation to require a public authority to take the particular action). In other words, where the Act itself requires the public authority to act incompatibly, or in relation to secondary legislation, where the incompatibility was mandated by the parent Act of the Scottish Parliament. The policy rationale behind this exemption is:

- To minimise complexity for public authorities in interpreting and applying their duties under the UNCRC Act;
- To ensure legal coherence; and
- To ensure that the delivery of essential services that support children can continue, where a potential incompatibility arises.

### ***Minimising complexity for public authorities in interpreting and applying their duties under the UNCRC Act***

40. Adding this provision will make clear that the compatibility duty does not apply if a public authority is delivering its functions in fulfilment of another Act of the Scottish Parliament that prevents them from acting compatibly.

41. Under the current provisions in the UNCRC Act, public authorities could be left having to decide whether to act in a way that puts them in breach of the compatibility duty in the UNCRC Act or to act in a way that puts them in breach of an Act of the Scottish Parliament (or secondary legislation made under an ASP) that imposes a statutory duty.

42. This provision would ensure that there is an appropriate course of action open to public authorities, if this situation arises (this is explored more in the section on “the delivery of essential services” below), thus minimising complexity for public authorities and clarifying to the wider public how public authorities will operate.

### ***Ensuring legal coherence***

43. As described above, this provision will strengthen legal coherence by resolving the situation where a public authority could be left to decide between two pieces of conflicting legislation.

44. This provision will also enhance legal coherence by ensuring consistency, where appropriate, between the section 6 compatibility duty and similar provision in the Human Rights Act 1998 (HRA), as well as with relevant provision within the UNCRC Act itself (section 6(4) which the Bill moves to a standalone section for clarity but does not substantively alter). However, the exemptions under the HRA and section 6(4) of the UNCRC Act (which is based on the HRA model for reasons relating to legislative competence), are broader in scope and allow public authorities discretion to choose to act incompatibly if they were entitled to by an enactment of the UK Parliament. The provision in this Bill, which relates to Acts of the Scottish Parliament, is



narrower so that it only applies where the public authority was required to act incompatibly with UNCRC requirements. This strikes the necessary balance between strengthening legal coherence, maximising rights protections, and minimising the operational complexity for public authorities in the Scottish context.

***Ensuring that the delivery of essential services that support children can continue, where a potential incompatibility arises***

45. This provision will also ensure that the delivery of essential services can continue where a potential incompatibility arises.

46. This is because there could be detrimental practical implications if, for example, a public authority stopped delivering a function because they believed that they could not deliver it in a UNCRC-compliant way.

47. Adding this exemption would make clear that public authorities can continue to exercise functions and therefore deliver services, that are potentially incompatible with the UNCRC requirements, until remedial action is taken to remove the incompatibility.

***Additional note on provisions in existing legislation in devolved areas that require a public authority to act in a way that is incompatible with the UNCRC***

48. There should not be any provisions in existing legislation in devolved areas that require a public authority to act in a way that is incompatible with the UNCRC.

49. The UK has been a signatory to the UNCRC since 1991 and the Scottish Ministerial Code recognises the overarching duty on Ministers to comply with the law, including treaty obligations.

50. The interpretation duty at section 24 of the UNCRC Act requires public authorities and the courts to read certain legislation, wherever possible, in a way that is compatible with the UNCRC requirements. That means that legislation passed by the Scottish Parliament has to be interpreted and given effect to in a way that is compatible with the UNCRC requirements, as far as possible.

51. It will be for the courts to determine compatibility questions that are brought to them, and those determinations may highlight the need for legislative change. Where legislation cannot be read in a UNCRC compatible way, Ministers may take action to address a legislative incompatibility. This exemption does not remove access to a remedy regarding an incompatibility with the UNCRC requirements. Rather, it focusses redress on the statutory source of any incompatibility, ensuring democratic accountability.

**Consultation and engagement**

52. The Scottish Government conducted targeted stakeholder engagement to explain the rationale behind the exemption and explore its practical implications. This included engagement with the UNCRC Strategic Implementation Board, which has representatives from the Children and Young People's Commissioner Scotland Office, Together, UNICEF, and the Scottish Courts and Tribunals Service. In addition, Scottish Government engaged with the Embedding Children's

Rights in Public Services Group, COSLA, the UNCRC Peer Support Network, NHS Education Scotland and SOLAR.

53. Together (Scottish Alliance for Children’s Rights) also worked with the children and young people consulted on the original UNCRC Bill to explore this provision and develop a child-friendly explainer, which will be shared with key children’s rights stakeholders. All stakeholders consulted understood the rationale for this amendment and did not raise any concerns.

54. As part of this engagement, officials also explored whether public authorities should be required in law to report to the Scottish Government and the Children and Young People’s Commissioner Scotland when they become aware of a legal requirement to act incompatibly with UNCRC requirements. The public authorities consulted did not support making this a legal requirement but were in favour of a clear notification process. The statutory guidance on Part 2 of the UNCRC Act states<sup>10</sup>: “Should public authorities become aware of issues of incompatibility in legislation, they should notify Scottish Government by raising this with Scottish Government policy team with whom they usually engage as well as alerting the Scottish Government’s Children’s Rights Unit by emailing [UNCRCIncorporation@gov.scot](mailto:UNCRCIncorporation@gov.scot).” The Scottish Government will work with the Children and Young People’s Commissioner Scotland to ensure there is a notification process in place, on a non-statutory basis, which will provide the Commissioner’s Office with sufficient reassurance.

## **ALTERNATIVE APPROACHES**

### **RO/RME**

55. Given the questions raised around current legislation on RO and RME and the Scottish Government’s UNCRC obligations, it is important to ensure clarity and put the position in relation to UNCRC compliance beyond doubt as a matter of priority. The policy aim of the proposed legislative changes is therefore to provide this clarity and support alignment with the UNCRC by improving consideration of pupil views in the withdrawal process, as well as improving coherence between existing non-statutory guidance and legislation.

56. As part of considering the changes, the Scottish Government aimed to support alignment with the UNCRC while balancing 3 key considerations: parental rights, views from key stakeholders and the wider public, and the practicality of implementing the changes for schools.

57. The Scottish Government therefore considered 4 different approaches to achieving the policy aims, detailed below.

### **Option 1: Do nothing**

58. While existing non-statutory guidance is clear that pupil views should be considered as part of the withdrawal process, this is not reflected in legislation and therefore this option would not meet the policy aims of providing clarity and ensuring coherence between legislation and guidance.

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<sup>10</sup> [UNCRC \(Incorporation\) \(Scotland\) Act 2024 - part 2: statutory guidance](#)

## **Option 2: Give due weight to pupil views**

59. This option (the proposed approach) would amend section 9 of the 1980 Act to require schools to have regard to pupil views when parents are applying their right to withdraw their child from RO and/or RME.

## **Option 3: Provide an independent right for pupils to withdraw from RO and RME**

60. This option would give learners a formal parallel right to withdraw from RO and RME in addition to that held by their parents, which would partially address the 2016 and 2023 recommendations from the UN Committee on the Rights of the Child (“the UN Committee”), which recommended the removal of requirements for collective worship and a pupil right to independently withdraw from worship, and signal a maximalist approach to upholding children’s rights. (It should be noted that such recommendations are not binding in international law.) However, consultation and engagement raised concerns around how an independent right for pupils would be balanced with parental rights. For example, some consultation respondents expressed a view that parents are the first and best educators of their children, and noted concerns about the potential for disagreement between parent and child, including where a child wishes to withdraw when a parent wishes them to participate in RO or RME.

61. Another concern raised by stakeholders with this option was that despite being a more significant change, as with the two preceding options, it would continue to conflate RO and RME in legislation. While this is currently the case, in part for historic reasons, feedback from consultation and engagement made clear that some stakeholders disagree with the right to withdraw applying to RO and RME equally. In particular some stakeholders expressed concerns about the potential detrimental impact on pupils’ learning (given RME’s status as one of the 8 curriculum areas), as well as practical issues for schools from increased withdrawals, should an independent right for pupils to withdraw from RME be introduced. Practical issues for schools may be a particular concern should an independent right to withdraw from RME for pupils be introduced and there be an associated increase in withdrawals, given RME is typically timetabled with greater frequency and duration than RO, particularly in non-denominational schools. RO and RME remain two very different aspects of a pupil’s school experience, with RO supporting a pupil’s spiritual development and celebrating the shared values of a school, and RME providing opportunities for pupils to learn about the beliefs and practices of different faiths, as well as exploring moral and philosophical questions.

62. A joint ADES and Scottish Government survey suggested that of those pupils currently withdrawn, a significantly greater proportion are withdrawn from RO compared to RME (0.56% compared to 0.19%). Additionally, anecdotal evidence suggests that many requests for withdrawal are based on some families equating modern RME with the ‘religious instruction’ of the past, rather than the pluralistic and inclusive way modern RME is delivered under the Curriculum for Excellence.

63. This is reflected in some consultation responses, which highlighted that initial parental requests to remove a child from RME are often withdrawn following a discussion between schools and parents to explain the purpose and content of modern RME. Given the relatively small estimated number of withdrawals from RME, the widespread recognition of the value and importance of RME in the consultation responses, and the absence of widespread calls for an

independent right to withdraw from RME for pupils, there does not appear to be a strong justification for making such a substantial change in relation to RME in particular.

64. Another concern reflected in some consultation responses from a range of respondents was that an independent right to withdraw for pupils may result in practical issues for schools in the event of a significant increase in withdrawals, particularly in relation to RME. The UNCRC does not provide the right to withdraw from any part of the curriculum and there were concerns that an independent right to withdraw from RME, when there is no equivalent right to withdraw from other curriculum areas, might set an unwelcome precedent. It could suggest that RME is a less valuable curriculum area, undermining wider curriculum policy which gives parity of esteem across the 8 curriculum areas.

#### **Option 4: Broader reform**

65. Two more radical approaches were also considered. Firstly, removing RME from the face of legislation, which could include removing the right to withdraw from RME for the reasons discussed under option 3, as well as removing the “compulsory” nature of RME from sections 8 and 9 of the 1980 Act, given RME is the only curriculum area with this status. Under this approach the legislative duty to provide RO would have been retained, but with the potential addition of a right for pupils to independently withdraw from RO.

66. The second radical approach considered was to remove both RME and RO altogether from the face of the legislation, which would remove sections 8 and 9 from the 1980 Act entirely, including the legal basis for the parental right to withdraw. This would address the 2016 and 2023 UN Committee recommendations that States Parties (and devolved administrations) remove requirements for collective worship in schools, and could potentially be combined with updated non-statutory guidance to allow pupils to withdraw independently from RO, while retaining the ability for parents to withdraw their child from RO albeit on a non-statutory basis. (As above, it should be noted that such recommendations are not binding in international law.)

67. Some engagement with wider stakeholders suggested that removing RME and/or RO from the legislation may be welcomed by some schools. This may be particularly true in the case of RME, given its status as the only curriculum area required by legislation and the only one with a corresponding right to withdraw, as well as the inclusive, pluralistic nature of modern RME. Additionally, as with option 3, providing an independent right for pupils to withdraw from RO would address the UN Committee recommendations, and signal a maximalist approach to upholding children’s rights. However, the same concerns around how an independent right for pupils would be balanced with parental rights under option 3 also apply to this approach.

68. It was also suggested by some stakeholders, including some RME teachers, that removing the legislative requirement to provide RO and/or RME might be seen to diminish their value, and may discourage delivery of RO and RME in schools, which is not the Scottish Government’s policy intention.

#### **Conclusion**

69. Following consideration of the 4 options outlined above, the Scottish Government decided to proceed with option 2, amending section 9 of the 1980 Act to require that the operators of

schools have regard to pupil views when parents are applying their right to withdraw their child from RO and/or RME. It was felt that this was the option which best supported alignment with the UNCRC while balancing the 3 key considerations noted above: parental rights, likely views from key stakeholders and the wider public, and the practicality of implementing the changes for schools.

### **Amending the UNCRC Act**

70. The Scottish Government has considered alternative approaches, such as issuing guidance or using secondary legislation, but neither would achieve the necessary legal coherence. Guidance would lack legal force, and there are no relevant secondary legislation making powers here. To ensure clarity, consistency, and legal certainty, legislating through a Bill is the only appropriate course of action.

### **EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

#### **Equal opportunities**

71. As a result of the EQIA completed for this Bill no negative equality impacts were identified. The positive impacts identified show progression of opportunities within the age characteristic. The changes may particularly positively affect those of a non-Christian background given the reported prevalence of Christianity based RO. Those attending denominational schools may also be more positively affected. Given the central role played by religious faith in these schools' ethos and practice, and the associated difficulty of extricating a pupil from all experiences which are influenced by the school's faith character (an issue which has been raised in consultation responses), pupils withdrawn from RO in denominational schools may feel they are not fully able to participate in the life and community of the school. Giving pupils the opportunity to object to their withdrawal will therefore ensure due weight is given to their wishes, in line with their age and maturity. Therefore, the religion or belief characteristic was considered as relevant. However, these changes should not disadvantage these groups, but instead improve the withdrawal process in a way that protects and improves the religious freedom of pupils in accordance with their evolving capacity, while balancing parental rights and the aim of reducing practical issues for schools.

#### **Human rights**

72. The Scottish Government is committed to fully realising the human rights of all people in Scotland, including complying with international human rights obligations. Human rights have been considered throughout the development of this Bill. A Child Rights and Wellbeing Impact Assessment has been prepared.

73. The Children and Young People's Commissioner Scotland, through her response to the consultation on the proposed RO/RME changes, has raised concerns about the lack of a proposed reciprocal right for a child to withdraw themselves from RO/RME, and noted that, in addition to not significantly improving children's rights, "the proposal may also be incompatible with "parents' human rights under Articles 8 and 9 and A2P1 of the ECHR, through weakening their existing legal right to withdraw their child from religious observance."

74. However, it is the Scottish Government’s view that the RO/RME provisions will strengthen the rights of children and young people in Scotland while balancing parental rights, views from key stakeholders and the wider public, and the practicality of implementing the changes for schools. Thus, resulting in a positive impact in relation to Article 12 of the UNCRC, which gives children the right to have their views considered in matters which affect them, with due weight being given in accordance with the age and maturity of the child, and Article 14 of the UNCRC, which details the right to freedom of thought, conscience and religion.

75. While the Scottish Government recognises the concerns raised by the Commissioner in relation to the proposals in the consultation, the Scottish Government does not consider these concerns applicable to the provisions in the Bill. This is because the parental right in this case recedes in a manner consistent with the evolving capacities of the child, which is, in our view, not incompatible with either the ECHR or the UNCRC.

76. In relation to the provision which amends the UNCRC Act, a positive impact has been identified in relation to Article 4 of the UNCRC, which requires governments to take all appropriate legislative, administrative, and other measures to implement the rights set out in the UNCRC. By clarifying how the compatibility duty interacts with existing statutory obligations, this amendment will help to create a clearer and more coherent legal framework for implementation. It will reduce uncertainty for public authorities, enabling them to continue delivering essential services while maintaining accountability for any potential legislative incompatibility. This strengthens the overall system for protecting and fulfilling children's rights in Scotland.

### **Statement of compatibility under section 23(1) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024**

77. The Cabinet Secretary for Education and Skills, Jenny Gilruth MSP, has made the following statement regarding children’s rights:

“In accordance with [section 23\(1\) of the United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#), in my view the provisions of the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill are compatible with the UNCRC requirements as defined by [section 1\(2\) of that Act](#).”

### **Island communities**

78. The Island Communities Impact Assessment (ICIA) process has identified that there is potential for smaller communities with smaller school sizes to be more significantly impacted by the proposed changes to the withdrawal process. For example, there may be instances where a school has only one or a very small number of teachers. While the Scottish Government does not anticipate that the proposed changes will increase the number of withdrawals, introducing a legal requirement to consider pupil views may have a disproportionate workload impact on teachers in very small schools compared to larger schools. The Scottish Government will continue to engage with relevant stakeholders to support implementation and ensure statutory guidance reflects these specific circumstances and mitigates any associated issues as far as possible.

79. The UNCRC Act amendment is expected to impact all island communities equally. The ICIA process did not identify any negative impacts specific to island communities due to this aspect of the Bill.

### **Local government**

80. The Verity House Agreement<sup>11</sup> commits to placing the realisation of human rights at the heart of decisions taken locally and nationally. Any legislative changes on RO and RME will require close partnership working with local authorities and schools. Engagement with local authorities through the Association of Directors of Education in Scotland (ADES) has been prioritised as part of the consultation activity and will continue throughout the passage of the Bill and its implementation. This will be important in exploring any practical implications related to the proposed legislative changes for schools and ensuring statutory guidance is fit for purpose.

81. Education authorities have a statutory responsibility to deliver education, including delivery of the RO/RME provision which section 1 of this Bill is concerned with. The Scottish Government anticipates that schools will conduct an exercise to update their handbooks to reflect the contents of this Bill. Schools may already involve pupils while managing a parental request for withdrawal, per current non-statutory guidance. In these cases, the creation of a duty to take into account a pupil's views would incur negligible additional costs or accommodations for schools, particularly as the Scottish Government will prepare dedicated resources to support schools to discharge this duty. However, where current non-statutory guidance is not currently fully implemented or there are particularly complex issues involved in a request, this may prolong or complicate the process of exercising the right of withdrawal, thereby leading to increased costs in terms of staff time. These implications are more fully explored in the financial memorandum for this Bill.

82. COSLA were consulted about the proposed amendment to the UNCRC Act; they understood the rationale for the amendment, welcomed the greater clarity it would provide for public authorities, and raised no concerns.

### **Sustainable development**

83. Following completion of the pre-screening Strategic Environmental Assessment it was determined that there would be no environmental impacts as a result of this Bill. There may be positive impacts in terms of the UN Sustainable Development Goals, specifically 4 (quality education) given the expected improvement in the educational experience of pupils from the RO and RME changes. There may also be positive impacts in relation to goal 16 (Peace, Justice and Strong Institutions), since as noted above the UNCRC Act amendment will clarify how the compatibility duty interacts with existing statutory obligations. This amendment will help to create a clearer and more coherent legal framework for implementation. It will reduce uncertainty for public authorities, enabling them to continue delivering essential services while maintaining accountability for any potential legislative incompatibility. This strengthens the overall system for protecting and fulfilling children's rights in Scotland.

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<sup>11</sup> [https://www.cosla.gov.uk/data/assets/pdf\\_file/0019/43525/Verity-House-Agreement-JUNE-2023.pdf](https://www.cosla.gov.uk/data/assets/pdf_file/0019/43525/Verity-House-Agreement-JUNE-2023.pdf)

## **CROWN CONSENT**

84. It is the Scottish Government's view that the Bill as introduced does not require Crown consent. Crown consent is required, and must be signified during a Bill's passage, where the Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign, the Prince and Steward of Scotland or the Duke of Cornwall. The Scottish Government's view is that this Bill does none of those things.

85. For the source of the requirement for Crown consent, see [paragraph 7 of schedule 3 of the Scotland Act 1998](#), and [rule 9.11 of the Parliament's Standing Orders](#). For further information about the considerations that go into determining whether Crown consent is required for a Bill see [Erskine May](#), the guide to procedure in the UK Parliament.





*This document relates to the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill (SP Bill 66) as introduced in the Scottish Parliament on 30 April 2025*

# **CHILDREN (WITHDRAWAL FROM RELIGIOUS EDUCATION AND AMENDMENT OF UNCRC COMPATIBILITY DUTY) (SCOTLAND) BILL**

## **POLICY MEMORANDUM**

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