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## **Equalities, Human Rights and Civil Justice Committee**

# **Stage 1 report on the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill**



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# Equalities, Human Rights and Civil Justice Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- a. matters relating to equal opportunities, and upon the observance of equal opportunities within the Parliament; and
- b. matters relating to human rights.
- c. matters relating to civil justice within the responsibility of the Cabinet Secretary for Justice and Home Affairs.

## 2. In these Rules

(a) “equal opportunities” includes the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds or on grounds of disability, age, sexual orientation, language or social origin or of other personal attributes, including beliefs or opinions such as religious beliefs or political opinions; and

(b) “human rights” includes Convention rights (within the meaning of section 1 of the Human Rights Act 1998) and other human rights as for example contained in any international convention, treaty or other international instrument ratified by the United Kingdom.

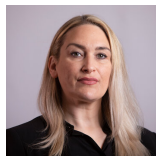


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# Introduction

1. The [Children \(Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty\)\(Scotland\) Bill](#) ("the Bill") was introduced on 30 April 2025.
2. The Equalities, Human Rights and Civil Justice Committee was designated as the lead committee on the Bill.
3. The Bill has two main objectives, both of which relate to the United Nations Convention on the Rights of the Child (UNCRC):
  - Firstly, to require schools to consider pupils' views when parents withdraw them from Religious Observant and Religious and Moral Education.
  - And secondly, to amend the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 ("UNCRC Act") so that public authorities are not conflicted between complying with the UNCRC Act and other Scottish legislative duties.
4. The Scottish Parliament's Information Centre (SPICe) prepares impartial research and analysis to assist MSPs in their examination of Bills and other parliamentary business. SPICe has published [a research briefing on the provisions of the Bill](#).
5. The Committee issued a call for written views on the Bill and held oral evidence sessions on the Bill. This evidence can be found on the Scottish Parliament's website on [a page dedicated to the Bill](#).
6. We are very grateful to all those who took their time to contribute their views as they have greatly assisted our understanding of the Bill and helped shape the conclusions and recommendations in this report.

## Delegated Powers and Law Reform Committee

7. On 26 June 2025, the Delegated Powers and Law Reform (DPLR) Committee [reported on the Bill](#). The report noted that the Bill confers two powers to make subordinate legislation and one power to issue guidance on the Scottish Ministers.
8. The Delegated Powers and Law Reform Committee did not express any concern about any of the powers conferred on the Scottish Ministers under this Bill.

## Finance and Public Administration Committee

9. The Finance and Public Administration Committee issued a call for views on the Bill's Financial Memorandum.
10. Responses were received from the Educational Institute of Scotland and Dumfries and Galloway Council, [which can be found online](#).
11. The Finance and Public Administration Committee wrote to this Committee forwarding the submissions to inform our scrutiny of the Bill.

12. Many of the areas highlighted in these submissions were also raised with this Committee. These issues are discussed in the relevant sections of the report.

## Policy Memorandum

13. Under Standing Orders Rule 9.6.1, the lead committee scrutinising a Government Bill is required to consider and report on its Policy Memorandum.
14. In general terms the Committee has found in its scrutiny of the Bill that there has been lack of clarity as to why certain provisions of the Bill are being pursued at this juncture. In particular, the Committee has found that stakeholders have struggled to understand the rationale for pursuing Part 2 of the Bill at this time.
15. The Committee asks that the Scottish Government reflect on the policy memorandum and consider whether a clearer and more cogent argument could have been made therein for this Bill and in particular for Part 2 of the Bill.

# The Bill

16. The Bill is divided up into three Parts.
17. Part 1 is concerned with withdrawal from both religious observance (“RO”) and religious and moral education (“RME”) in schools.
18. Currently, section 9 of the Education (Scotland) Act 1980 gives parents a right to withdraw their child from both RO and RME in schools. The Scottish Government states in its Policy Memorandum that it considers that the current legislation on RO and RME in Scotland raises questions in connection with its obligations under the United Nations Convention on the Rights of the Child (“UNCRC”). It considers that those questions arise due to the lack of statutory opportunity for the child to participate in any decision to withdraw them from RO and RME, in light of Article 12 of the UNCRC which gives children the right to have their views considered in matters which affect them, and Article 14, which details the right to freedom of thought, conscience and religion.
19. The purpose of the Bill is therefore to make statutory provision that, where a parent has made a request to withdraw a pupil from instruction in RO or RME, the operator of the school must tell the pupil about the request and tell the pupil about their right to object to the withdrawal. The operator of the school must have regard to any views expressed by the pupil about the request, taking into account the pupil's age and maturity. The operator is not required to comply with this requirement if it is satisfied that the pupil is not capable of forming a view. However, the pupil is to be presumed to be capable of forming a view unless the contrary is shown.
20. If the pupil objects to all or part of the parent's request, the operator must seek to discuss the pupil's objection with the pupil and the parent and have regard to any views expressed during any discussion. Ultimately, if the pupil continues to object after such a discussion has taken place, the operator of the school must not give effect to the parent's request, to the extent of the pupil's objection.
21. Part 2 of the Bill modifies the UNCRC Act. Under the UNCRC Act, public authorities must act compatibly with UNCRC requirements. The duty does not apply where the function is derived from an Act of the UK Parliament, this exemption was added to the UNCRC Bill at Reconsideration Stage, to comply with a ruling from the Supreme Court. This Bill makes equivalent provision in respect of legislation which has originated in the Scottish Parliament. The Scottish Government sought to include an amendment dealing with this matter during the Reconsideration Stage for the UNCRC Bill. The amendment was deemed to be outwith the scope of the Reconsideration Stage, and therefore the Scottish Government has chosen to include the amendment in this Bill.
22. Part 3 of the Bill makes provisions about commencement and ancillary provision.
23. In the remainder of this report, the Committee focusses its scrutiny on Parts 1 and 2 of the Bill.

## Current practice

24. Currently, parents and carers have the legal right to withdraw children from RO and RME, but pupils do not have the same legal right.
25. As noted above, religious observance and education in schools is the subject of sections 8 and 9 of the Education (Scotland) Act 1980.
26. Section 8 of the 1980 Act sets out that the provision of religious instruction (it uses this term rather than religious education) and observance is essentially mandatory for the local authority. The only way a local authority could discontinue the religious observance or instruction would be through a local referendum.
27. Under section 9 of the 1980 Act, parents have the right to withdraw their child (of any age) from RO and RME. RME is also called Religious Education (RE) in denominational schools.
28. There is no monitoring of the numbers of withdrawals and, as Barbara Coupar of the Scottish Catholic Education Service noted to the Committee, no reporting back to local authorities on withdrawals.<sup>1</sup> Consequently, although the impression is that the numbers of withdrawals are low, there is a distinct lack of data to support this.
29. Moreover, there is little existing evidence or research on how the current process to manage pupil withdrawal from RO/RME works in practice.
30. There is also no monitoring or oversight of how RO is delivered across schools. The Scottish Government indicates that delivery is inclusive, subjective and pluralist, but no research has been undertaken to back this up.
31. Practical approaches to withdrawal from RO/RME vary by school. They also depend on factors such as staff numbers, timetabling, the number of pupils, and the proportion of withdrawals across the school.
32. Pupils that have been withdrawn will typically be placed in another class, subject or activity. In some cases, they may be 'present but not participating' by undertaking separate activities in the same class or group.
33. Some responses to the Scottish Government's consultation indicate that, in a minority of cases, parents are asked to remove withdrawn pupils from the school for the duration of the RO/RME activity.
34. The Scottish Government conducted a survey across three local authorities - Aberdeenshire, East Lothian, and East Renfrewshire - to assess pupil withdrawal rates from RO and RME. Out of the schools in these areas, 116 (48%) responded, representing a total of 36,166 enrolled pupils.
35. From these schools, 213 pupils (0.59%) were withdrawn from RO, RME, or both:
  - 143 pupils were withdrawn from RO only
  - 9 pupils were withdrawn from RME only
  - 61 pupils were withdrawn from both RO and RME.

36. Applying these figures across the school population, which in 2024 was 702,419 pupils across 2,445 schools (primary, secondary and special) suggests that approximately 4,144 pupils are currently withdrawn from RO/RME or both. It also suggests significant variation across Scotland, with some schools reporting no withdrawals at all, and some reporting 10 or more. Insufficient data makes it difficult to understand the reasons behind the variation.
37. The Committee explored with witnesses the extent of withdrawals in schools currently. In general, witnesses told the Committee that it is an issue affecting a very small number of people. Barbara Coupar of the Scottish Catholic Education Service told the Committee:
- ” ...having surveyed all Catholic schools in Scotland, I must stress that we are talking about very small numbers. <sup>1</sup>
38. The Reverend Stephen Allison of the Free Church of Scotland noted that his experience was similar:
- ” Conversations that I have had with headteachers suggest that a very low number of people have asked anything about withdrawal. Most of that is done informally in conversations with the headteacher, who usually seems to reassure parents and answer their questions. I have not seen many pupils exercising their right to withdraw. People may have questions, but they are dealt with very well by the school. <sup>1</sup>
39. Leah Rivka of the Jewish Council of Scotland, however, suggested that there may be an underestimation of the number people wishing to withdraw from RO or RME, particularly in rural areas where there may be no other schooling options and there might be a fear of being stigmatised for pursuing withdrawal. <sup>1</sup>
40. Juliet Harris of Together also felt that there may be an underestimation and that parents and children may not be aware of the current right to withdraw:
- ” We also know that parents, children and young people are often unaware of the right to withdraw. The Scottish Government’s own child rights and wellbeing impact assessment included research showing that only about 30 per cent of school handbooks—that is a rough figure; I would need to check the assessment document—mention the right to withdraw. As a result, the actual withdrawal numbers are really low. The Scottish Government anticipates that only about 4,000 children would be affected. I wonder whether better awareness of the right to withdraw might lead to the numbers being higher. <sup>2</sup>
41. In evidence to the Committee the Cabinet Secretary stressed her belief that levels of withdrawal will be low, but she also recognised that there is perhaps currently a lack of awareness of the option to withdraw. <sup>3</sup>

**42. The Committee recognises that if the number of withdrawals do end up being significantly higher than expected as a result of greater awareness of the right to withdrawal this will have a significant impact on schools.**

43. **The Committee notes that there is very little information currently on the number of withdrawals. With that in mind, the Committee recommends that the Scottish Government undertakes research to better understand how withdrawal is monitored.**

44. **In addition, the Committee recommends that the Scottish Government undertakes research not just to understand the number of withdrawals, but also what schools put in place for young people who have been withdrawn.**

45. **The Committee urges the Scottish Government to consider how it can best inform itself on how RO is delivered in schools and the numbers requesting withdrawal**

## Part 1

46. As noted earlier, Part 1 is concerned with withdrawal from RO and RME in schools.

47. A number of concerns were raised about Part 1 of the Bill. In particular:

- The conflation between RO and RME,
- The potential for conflict between parents and children,
- The right for a child to independently opt-out of RO and RME,
- A child's capacity to form a view,
- Compatibility with UNCRC

48. Each of these issues presented serious concerns about the Bill, which are explored over the following paragraphs.

### Conflation between RO and RME

49. One of the key concerns presented to the Committee by many stakeholders was about a perceived conflation in the Bill between RO and RME.

50. Under the Bill there is no delineation between RO and RME in terms of the process for withdrawal.

51. Many respondents stressed that RO is about worship and RME is about education and therefore they should not be treated in the same way.

52. Clare Benton-Evans of the Scottish Episcopal Church told the Committee about her concerns about RO and RME being treated in the same way:

” We were surprised that the bill lumps them together, because religious observance is a matter of belief, but RME is a matter of education. The committee that I represent believes that RME stands firmly within the school curriculum...our children need to understand other faiths, beliefs and cultures if they are to grow up in the diverse, inclusive and tolerant society that we want in Scotland. I want to really hammer home the point that there is a big distinction between RME and RO, and the bill does not recognise it. <sup>1</sup>

53. Respondents including Together, the Church of Scotland, the National Secular Society and Humanist Society echoed this sentiment and suggested that the option to withdraw should only apply to RO.

54. The Reverend Stephen Miller of the Church of Scotland explained why he considered that withdrawal from RME should be removed from the scope of the Bill:

” RME is so bound up with and sewn into the fabric of curriculum for excellence as a curricular area that it definitely should come out of the bill’s scope. <sup>1</sup>

55. Dr Douglas Hutchison of the Association of Directors of Education in Scotland (ADES) also suggested to the Committee that reference to RME should be removed from the Bill:

” ...religious and moral education should be seen as a curricular subject in the same way as any other subject. I do not understand the idea that there should be a conscience clause...The idea that, in a liberal democracy, there is no place in the curriculum for religious education and there should be a right to withdraw from it does not make sense in 2025. It should just be considered in the same way as any other subject. <sup>2</sup>

56. The Scottish Teachers of Religious, Moral and Philosophical Studies Association (STARME) also argued for the removal of the option to withdraw from RME from the Bill. STARME highlighted the experience in Wales where that option has been removed:

” We note the guidance given when Wales reviewed its curriculum, which retained the right to withdraw from RO but not from RE, as continuing the withdrawal right was preventing pupils from accessing the full curriculum. We urge the Committee to consider a similar approach for RME in non-denominational schools in Scotland. <sup>4</sup>

57. Dr Sanchez of the Scottish Secular Society went further and suggested that RO should not be legally mandated in schools at all. <sup>1</sup>

58. Fraser Sutherland of the Humanist Society Scotland echoed this sentiment and proposed an alternative model:

” For a number of years, we have championed a move to a time for reflection model, which would be guided by the three basic principles of inclusivity, objectivity and plurality. <sup>1</sup>

59. Given the strength of these concerns the Committee wrote to the Cabinet Secretary for Education and Skills before her appearance to better understand the approach

taken in the Bill. In her response she set out the rationale behind the approach:

” The accompanying documents for the Bill are clear that RO and RME are two distinct aspects of school education, with RO supporting pupils’ spiritual development and building a sense of community, and RME helping pupils learn about and from different religions and belief groups, as well as exploring ethical questions and promoting understanding of different beliefs. Both play a vital role in a pupils’ education. However, as you are aware, there is also a longstanding parental right to withdraw a pupil from both RO and RME, and therefore the questions raised in relation to the current legislation and the Scottish Government’s UNCRC obligations (in particular article 12) require addressing in relation to both RO and RME.<sup>5</sup>

60. In oral evidence the Committee explored with the Cabinet Secretary why the Scottish Government had not taken the opportunity afforded by the Bill to adopt a different approach, limiting withdrawal to RO alone. In her response, the Cabinet Secretary noted that this is the approach that has been adopted in Wales, but suggested that on the basis of responses to the consultation there was not sufficient support for adopting this approach in Scotland.<sup>3</sup>
61. However, the Cabinet Secretary committed to exploring these issues further in the context of the curriculum improvement cycle.<sup>3</sup>

62. **The Committee is of the view that RO and RME should be separated.**
63. **The Committee acknowledges the Cabinet Secretary's reluctance to adopt a different approach in light of some of the stakeholders' responses to the Scottish Government's consultation. However, the Committee found the evidence presented to it for a differentiated approach to be compelling. It was noteworthy that both faith-based and secular organisations argued for removing the option to withdraw from RME from the Bill.**
64. **A majority of the Committee agree that opting out from RME should not be possible for either young people or their parents/guardians. In an ever more fragmented society, RME seems an increasingly important subject and one from which the Committee considers children should not be withdrawing.[Pam Gosal and Tess White dissented from this paragraph]**
65. **A majority of the Committee therefore urges the Scottish Government to reflect further on this approach and bring forward amendments at Stage 2 to provide that withdrawal only applies to RO. [Pam Gosal and Tess White dissented from this paragraph]**

## Potential for conflict

66. A common concern presented to the Committee was that the Bill will precipitate family conflict by giving children the right to object to their parents' decision to withdraw them from RO or RME.

67. Leah Rivka of the Jewish Council of Scotland talked about the particularly invidious position that children of interfaith marriages or children with separated parents might find themselves in as a result of this Bill:

” We are generally supportive of listening to pupils and hearing their views, but the way in which the bill proposes to enact that gives us a lot of concerns on behalf of schools, pupils and families. Stephen Miller and Stephen Allison mentioned making schools arbiters between parents and children, but we are concerned about the potential for forcing children—I use the word “forcing” advisedly—to become arbiters between their parents. We often find interfaith marriages in which the parents have different views about what the children should be learning in school. Beyond that, if parents separate, there is the potential for bad actors wanting to contradict the other parent as a matter of course. The bill states: “If the pupil objects to all or part of the parent’s request ... the operator”— the school— “is not to give effect to the parent’s request to the extent of the pupil’s objection.” The pupil is in a cleft stick if they know that their parents have diametrically opposed views. Whatever the child does—whether they say nothing and effectively consent to the withdrawal, object to the withdrawal or try to balance things in their explanation to the teacher—one way or another, they will, positively or by default, have a casting vote between their parents. We are very concerned that the legislation should not put children in that horrendous position. <sup>1</sup>

68. Stakeholders including the Free Church, Catholic schools and the Christian Institute all stressed that parents are the primary educators of a child and should maintain their authority over the withdrawal of children from RO/RME.

69. The Reverend Stephen Allison of the Free Church of Scotland explained this position to the Committee:

” Children should, fundamentally, be listened to and engaged with, and there should be discussion with them. That might mean that there is no need for them to be withdrawn. However, I think that allowing the child’s views to trump the parents’ views goes against what is a well-established principle. It also sets a precedent, potentially, for other areas of education. I can think of other areas where a parent might want to withdraw their child—for example, sexual health and relationship education. Would the pupil be able to say, “Actually, I want to be part of that”? I think that we will be setting a precedent with this move away from parental rights, and it will create discontent within the family. That is where we have concerns. <sup>1</sup>

70. The Committee also heard about the potential knock-on effect of any conflict on schools. Susan Quinn of the Educational Institute of Scotland told the Committee about the potential impact of such conflict on schools:

” ...we have significant concerns about the apparent underestimation of the resources that will be required for implementation and about the potential impact on workload and relationships. We do not feel that the bill fully realises our policy intentions for pupils’ rights, and there is a lack of clarity about practical implementation issues. The idea is all right, but what is actually in the bill and the potential issues with it are problematic for our members. <sup>2</sup>

71. Susan Quinn also highlighted that changing demographics in schools might impact on the number of withdrawals from RO and RME in turn impacting in schools.
72. Linking back to its views on the separation of RO and RME, in its written submission STARME highlighted the potentially significant impacts on teachers if the right to withdraw from RME is retained in the Bill:
- ” If the right to withdraw from RME is not removed, any increase in the number of withdrawn pupils—whether due to parental request or a child’s exercise of their right to object to remaining in the class—will create significant, unsustainable burdens on schools and staff.
- Staffing Burden: School staffing would not allow for increased numbers of pupils being supervised elsewhere in the school and not taught.
  - Workload: The added workload of providing meaningful work not related to RME to pupils who are withdrawn is not sustainable for teachers. <sup>4</sup>
73. Like Leah Rivka, Dr Hutchison of ADES suggested that this impact on schools can be compounded in situations where parents have separated, both have parental rights, but have different world views:
- ” One issue that regularly comes up in schools is when two parents are separated, both have parental rights and they have entirely different world views. In those circumstances, it becomes even more complex. It is difficult to imagine any way in which it could be operated straightforwardly or simply that is not burdensome for the school and challenging for the parents. <sup>1</sup>
74. Juliet Harris of Together noted that while the Bill had the potential to create conflict, that potential already exists in the status quo. <sup>2</sup>
75. Rachel Fox of UNICEF, however, stressed that the focus should be on the evolution of a child's rights, rather than on the potential for conflict. <sup>1</sup>
76. The Cabinet Secretary in her oral evidence echoed this sentiment.
77. In her letter to the Committee prior to her appearance before the Committee she highlighted the requirement in the Bill to seek discussion between school, parent and pupil as a means to reduce the potential for conflict in any event. In oral evidence the Cabinet Secretary did also note that she would be willing to listen to other suggestions to reduce the potential for conflict. <sup>5</sup>
78. In the same letter she cast doubt on the extent to which the Bill will precipitate increased withdrawals and the extent to which it will impact schools:
- ” As noted in the Financial Memorandum for the Bill, while this may result in additional demands on schools to process requests in a minority of cases, this could conceivably result in a reduced rate of withdrawal from RO and/or RME, and reduced overall resource expended by schools on the on-going supervision and management of withdrawn pupils. In advance of any changes, work would also be undertaken with schools to identify any implementation support which may be helpful alongside the updated guidance, for example professional learning. <sup>5</sup>

79. **The Committee recognises that there is potential for conflict under this Bill. The Committee recognises too that the intention of the Bill is to increase rights for children, but urges the Scottish Government to give further consideration to unintended consequences such as the possibility of increased conflict between parents and children in its response to the Committee's Stage 1 report.**

80. **Should this legislation pass, the Committee would encourage the Scottish Government to monitor the impacts of this legislation and would welcome updates on the impact of this legislation in terms of any potential familial conflict as well the impact on schools.**

81. **Again, in the event that this legislation passes, the Committee urges the Scottish Government to give careful consideration to what resources schools will need to be able to give effect to this Bill. From the evidence the Committee received, in spite of the Cabinet Secretary's assurances to the contrary, there would appear to be a possibility that increased awareness of the right to withdraw and changing demographics could result in increased levels of withdrawal and schools need to be resourced to respond to this challenge.**

## **Right for a child to independently opt out of RO and RME**

82. The Bill provides a right for a child to opt into RO/RME where a parent has exercised their right to withdraw a pupil, but no right to independently opt-out of RO/RME.

83. In that regard the Bill falls short of meeting the Concluding Observations made by the UN Committee on the Rights of the Child. That Committee twice recommended (in 2016 and 2023) that children should have the legal right to withdraw from collective worship in school.

84. Professor Sutherland of the Law Society set this out for the Committee:

” The UN Committee on the Rights of the Child had made it clear that this is about the whole picture—the right to do it and the right not to do it—so it is curious to us that the bill does only part of the job. <sup>1</sup>

85. The majority of those who offered a view on whether the Bill should be amended to include an independent right for children to opt-out of RO/RME supported giving children that right.

86. Specifically, the following offered their support for this right:

- Claire Benton-Evans, Scottish Episcopal Church
- Leah Rivka, Jewish Council of Scotland

- Fraser Sutherland, Humanist Society Scotland
  - Dr Sanchez, National Secular Society
  - Professor Elaine Sutherland, Law Society of Scotland
  - Melissa Murray, Glasgow Caledonian University
  - Caitlin Fitzgerald SHRC
  - Professor O'Hagan, SHRC
  - Juliet Harris Together - Scottish Alliance for Children's Rights
  - Gina Wilson children's commissioner
  - Susan Quinn, EIS
  - Louise Church SYP
87. While Babara Coupar of the Scottish Catholic Education Service and the Reverend Stephen Allison of the Free Church of Scotland did not support that right.
88. As noted above, support for this independent right came from a wide variety of stakeholders, both secular and faith-based .
89. For example, Clare Benton-Evans of the Scottish Episcopal Church, while recognising the challenges that an independent right for children to withdraw from RO or RME might present to schools, affirmed her support for that independent right. <sup>1</sup>
90. Fraser Sutherland of the Humanist Society of Scotland called on the Committee to recommend that the Bill is amended to provide children with an independent right of withdrawal:
- ” To meet the concluding observations of the UN Committee on the Rights of the Child, this committee should absolutely recommend that the bill is amended to allow a child to opt out of RO, as has been recommended in those concluding observations on numerous occasions, and as suggested in the evidence that has been put forward to the committee by the Children and Young People's Commissioner Scotland, the Scottish Human Rights Commission, UNICEF and Together, the Scottish alliance for children's rights. They all say that children's rights have to be respected through an independent opt out. <sup>1</sup>
91. Professor Angela O'Hagan, of the SHRC, argued that not affording this right to children was "problematic". Moreover, she expressed to the Committee her concerns about the failure of the Bill to focus sufficiently on the rights of the child:

” ...the focus has to be on the rights of the child. We are talking about children, but what the bill talks about is the child’s right to opt in but not to opt out. As a result, a very blunt primacy is being given to the rights of the parent in contrast to the various UNCRC rights that you referred to and which are relevant in this context. Therefore, in balancing those rights, we need that balance of provision to allow the child to opt out.<sup>1</sup>

92. Professor O'Hagan expanded on this argument in subsequent correspondence to the Committee, making a specific proposal for an amendment at Stage 2:

” Part 1 in its current form does not achieve compliance with the UNCRC. We are mindful that there is not only one way to guarantee a child's right to freedom of religion within the school curriculum. However, the current proposal would maintain religious observance as a mandatory part of the curriculum subject to parental withdrawal. As a result, we suggest an amendment should be made to Part 1 to also provide children with a right to withdraw from religious observance in schools, as recommended by the UN Committee on the Rights of the Child.<sup>6</sup>

93. Although the majority of evidence presented to the Committee expressed support for this independent right for children, some witnesses expressed reservations about the opt out as well as the precedent this could set in terms of requests to withdraw from other subjects. The Revered Allison of the Free Church voiced this concern:

” I completely agree, logically, that the bill is not balanced by not having opt out on the same basis as opt in, but we see so many problems with an independent right to opt out that we think that it should not apply in either case. We live in a society that is often illiterate about religion and does not understand different faith traditions. We have all highlighted the importance of RME for understanding the different faith traditions, but this right would apply to opting out of that, just because people are perhaps bored or think that RME is not the most engaging at times. RME lessons and RO can give opportunities to develop moral reasoning, respect for differences and discussion, which are all important things. An opt-out would place a bigger burden on the school. You would not necessarily know why pupils were opting out. It might be that they had decided that it was not for them at one stage but they might look back later and regret not learning about other faith traditions. Fundamentally, there should be better discussion.<sup>1</sup>

94. The Committee explored this issue with the Cabinet Secretary in oral evidence. She explained to the Committee the rationale behind this policy decision:

” On the one hand, we could go for the independent right to withdraw, which might appease some stakeholders that the committee has heard from, but it would not appease them all. I have therefore had to take a pragmatic approach that maintains parental rights to opt their children out of religious education or religious observance and puts the views of children into law.<sup>3</sup>

95. Following the Cabinet Secretary's appearance before the Committee the Humanist Society of Scotland wrote to the Committee expressing concern that choosing to

adopt this independent right was characterised as being about "appeasing stakeholders" by the Cabinet Secretary.<sup>7</sup>

96. Moreover, the Humanist Society of Scotland's letter suggested that it was disingenuous of the Cabinet Secretary to describe the evidence presented to the Committee as reflecting a "wide range of views" on providing an independent right when 13 of the 19 organisations and individuals the Committee heard from supported the provision of this right and only four expressly opposed it.<sup>7</sup>

**97. The Committee notes the Cabinet Secretary's wish to "chart a middle ground". The Committee recognises, however, that this means failing to give full effect to the Concluding Observations made by the UN Committee on the Rights of the Child.**

**98. A majority of those who expressed a view on this issue to the Committee (as noted at paragraph 86) supported amending the Bill to provide children with an independent right to withdraw from RO.**

**99. One member [Maggie Chapman] found this evidence compelling and contended that a child's right to a view should not only apply when it is responding to a decision taken by their parents. For that member, it does not make sense that a child can choose to opt in to RO but not opt out.**

**100. The Committee notes, however, that the responses to the Scottish Government's consultation were not as definitive in their support for an independent right to withdraw from RO, prompting the Cabinet Secretary's decision to "chart a middle ground".**

**101. Mindful of that, a majority of members [Karen Adam, Rhoda Grant, Paul McLennan and Marie McNair ] consider that it would be more appropriate at this juncture to progress with the right for children to object to their parents withdrawal of them for RO/RME alone. However, the Committee invites the Cabinet Secretary to give further consideration to providing children with an independent right to withdrawal in future legislation.**

## **Child's capacity to form a view**

102. The Bill will require schools to seek the pupil's views on a request to withdraw from RO/RME if they are satisfied that the pupil is capable of forming a view. The Bill does not prescribe a particular age at which a child is capable of forming a view, rather leaving that decision to the school.

103. Some of the evidence presented to the Committee expressed concern about the absence of a prescribed age at which a child is considered capable of forming a view and the potential implications of this. The Catholic Headteachers Association of Primary Schools in its written submission told the Committee that:
- ” CHAPS feels there is a very real risk that the proposed changes to the Bill could result in primary-aged children being isolated from their school community. For example, for a child not to participate in their school’s weekly assembly (which, in a Catholic school, includes both RE and RO) cannot, in our view, be considered good for their wellbeing. Likewise, for a Primary 7 pupil not to mark the end of their primary school career by gathering with their classmates , family and teachers for Leavers Mass would not, in our view, be in their best interests. <sup>8</sup>
104. Leah Rivka of the Jewish Council made a suggestion for an alternative means of measuring a child's capacity to opt-in:
- ” One of the proposals in our written submission relates to the reference in the bill and the policy memorandum to the pupil’s “age and maturity”. That will have implications, and we would like the bill’s very bald proposal that, if a pupil objects, the school will comply with the pupil’s objection and not with the parent’s view to be reworded to the pupil having “relevant, reasoned objections to all or part of the parent’s request”. It will be an indicator of the child’s age and maturity if they can actually say, “These hymns don’t reflect my viewpoint,” or, “I would rather read my own prayers and sit quietly while other prayers are going on.” Indeed, not only will that be a sign of the pupil’s age and maturity; it will also prevent pupils opting out for frivolous reasons. <sup>1</sup>
105. It was noted, however, that there is already a complex legislative landscape in place as to when a child is considered to have capacity. Melissa Murray of Glasgow Caledonian University told the Committee:
- ” Child law in Scotland is in some ways quite messy, in that it is not the case that a child evolves and they get access to everything and all sorts of legal abilities and capacities on the day that they reach adulthood. The landscape of children’s capacity in Scotland is fairly complex. Certain ages are significant in a child’s life. The age of 12 is important because, at that point, they can stop an adoption process, they have testamentary capacity and they can make a will and, at 16, they can get married. There is not one point where a child becomes an adult and the doors open and they get access to everything. <sup>1</sup>
106. Moreover, witnesses told the Committee that it is very difficult to establish an age when a child will be capable of forming a view. Gavin Yates of Connect told the Committee that there is no "golden rule". <sup>2</sup>
107. Louise Church, MSYP, agreed with the approach taken in the Bill:
- ” ...there should not be an age limit. Everyone matures differently and thinks differently, so putting an age on it does not help much, especially when it comes to our role. <sup>2</sup>
108. Some concerns were expressed to the Committee about the burden making a

decision on capacity to form a view will place on schools. Dr Hutchison of ADES told the Committee that:

” ...it is difficult to imagine any straightforward or consistent mechanism to make it work that would not be burdensome for the school and onerous for the child and parent.<sup>2</sup>

109. Juliet Harris of Together, however, told the Committee that teachers are always discussing children's capacity. She noted that parents are doing this all the time too, deciding when children can walk to school for example. It is a judgement to be made, rather than there being a defined age.<sup>2</sup>
110. In evidence to the Committee the Cabinet Secretary recognised that it is challenging for teachers to make decisions on capacity. She noted that guidance will be forthcoming to support teachers.<sup>3</sup>
111. At the same time, the Cabinet Secretary stressed, as others had, that teachers will be familiar with having to make these kind of decisions.

112. **The Committee notes that children do not all develop in the same way and the Scottish Government needs to take this into account. A majority of members [Karen Adam, Maggie Chapman, Rhoda Grant, Paul McLennan and Marie McNair] agree with the position taken by the Scottish Government in the Bill not specify an age in the Bill.**
113. **The Committee recognises that there will be challenges to teachers in making these decisions, but understands the Cabinet Secretary's point that these are the kind of judgements they are making all the time. Nonetheless, the Committee believes that if teachers are to be making decisions on capacity they must receive support and training. The Committee notes the Cabinet Secretary's commitment to provide guidance to support teachers.**
114. **A minority of members [Pam Gosal and Tess White] wished to highlight that because children do not all develop in the same way it makes it challenging to determine when a child is capable of forming a view. Allowing teachers to make this choice on this issue could lead to a lot of inconsistency and the emotional impact on children, of a very young age, should be recognised. Moreover, it should be recognised that this approach adds yet more complexity to what is already a complex legislative landscape in terms children's capacity in Scotland.**

## Compatibility with UNCRC

115. Part 1 of the Bill, which makes provision for a child to object to their withdrawal from RO/RME, does so by way of an amendment to the Education (Scotland) Act 1980 ("the 1980 Act"). The 1980 Act is a pre-devolution Act of the UK Parliament. The UNCRC Act creates a duty for public authorities to act compatibly with the UNCRC when exercising a relevant function ("the compatibility duty"), but a function conferred by an Act of the UK Parliament (even in a devolved area) does not qualify

as a relevant function.

116. A number of witnesses, including the SHRC, highlighted to the Committee that if a public authority acts incompatibly with the UNCRC when implementing the new process created by Part 1, it would not be possible to challenge this through the courts.
117. This concern was echoed by Dr Hill and Fraser Sutherland who said that this was the first test for the UNCRC Act 2024 and a decision had been taken to draft the Bill in such a way as to make it outside the scope of that Act. <sup>1</sup>
118. Juliet Harris of Together also stressed to the Committee that the Bill is not compatible with the UNCRC. <sup>2</sup>
119. In written evidence following their appearances, both the SHRC and Together argued that the Bill should be amended to bring the Bill into the scope of the UNCRC Act. The SHRC recommended to the Committee that:
- ” ...the process set out in Part 1...should be brought in scope of the compatibility duty in the UNCRC Incorporation Act. We recommend that the Committee considers carefully whether this can genuinely be achieved within the confines of the current Bill. <sup>6</sup>
120. Together echoed these sentiments:
- ” The Bill must be amended so that the provisions on children’s involvement in decisions about withdrawal from religious observance are re-enacted as stand-alone sections within this Bill, rather than as amendments to the Education (Scotland) Act 1980. <sup>9</sup>
121. Prior to her appearance before the Committee, the Committee sought the Cabinet Secretary’s views on this issue. The Cabinet Secretary explained that given the size and scale of this Bill it would be inappropriate to bring forward stand-alone legislation:
- ” If we were to try to make only the change required by stand-alone provision, it would be very difficult to make this possible to interpret outside the overall context of the 1980 Act. It would also cause practical issues for children, young people, parents and schools as they would have to try to read the stand-alone provision in parallel with their broader rights and duties under the 1980 Act. However, trying to replicate the context of the 1980 Act by moving multiple sections would involve a very significant amount of restatement of its provisions. Not only would this be disproportionate given the targeted and technical nature of the proposed change, but it would also risk creating conflict between those restated provisions and the 1980 Act when considering other duties. For example, if we fully restate the provisions relating to RO and RME, we would need to consider updating language which would then be inconsistent with other parts of the 1980 Act. This would have become a much bigger restatement project than the change requires. <sup>5</sup>

122. **The Committee notes that the effect of drafting the Bill as an amendment to**

**the 1980 Act is to remove it from the scope of the UNCRC Act.**

123. **While noting the Scottish Government's arguments for its approach the a majority of the Committee is disappointed that, at the first opportunity, the Scottish Government has intentionally removed the provisions in this Bill from the scope of the UNCRC Act.[Pam Gosal and Tess White dissented from this paragraph]**

124. **The Committee also notes that stakeholders have recommended that the Bill be amended so that it is stand-alone Scottish legislation within the scope of the UNCRC Act.**

125. **It does not, however, seem likely to the Committee that the Bill could be easily amended so significantly at Stage 2.**

126. **A majority of the Committee recognises that it would have evidently been preferable if the Bill had been drafted in such a way as to bring its provisions within the scope of the UNCRC Act. Therefore, the Committee considers that the benefits accruing from this Bill may not be so significant as to outweigh the negatives that are precipitated by drafting the Bill in this way. [Pam Gosal and Tess White dissented from this paragraph]**

## Part 2

127. The Explanatory Notes to the Bill explain that the purpose of Part 2 of the Bill is as follows:

” The second purpose of the Bill is to amend the 2024 Act in order to add an exception to the duty on public authorities under section 6 to act compatibly with the UNCRC, in circumstances where the authority is compelled to act incompatibly in reliance on another Act of the Scottish Parliament. This is intended to remove the potential for public authorities to have to decide whether to act in a way that puts them in breach of the compatibility duty in the 2024 Act or to act in a way that puts them in breach of another statutory duty.

128. The Scottish Government further explained that Part 2 of the Bill is about "ensuring legal clarity while protecting children from avoidable harm." It reflects a safeguard in the Human Rights Act 1998.

129. The Committee notes that the Scottish Government is not aware of any Acts of the Scottish Parliament that require incompatible action at this stage and this provision is with a view to future proofing.

130. As with Part 1, significant concerns were presented to the Committee about Part 2.
131. Fundamentally, many witnesses argued that the Scottish Government has not made a case for why Part 2 of the Bill is needed. Dr Hill told the Committee:
- ” The amendments made in part 2 of the bill are trying to address a problem, the extent of which we are not really clear on, in a way that is disproportionate to the impact that it would have on children’s rights. <sup>1</sup>
132. This view was echoed by Caitlin Fitzgerald of the SHRC:
- ” The Scottish Government’s position seems to be that it does not think that there are any current incompatibilities. However, we respectfully urge some caution in accepting that position given that we have not seen the Scottish Government’s working. That links back to the issue that we discussed about what the Scottish Government has done to assess what is currently on its statute book and how that fits with the UNCRC obligations. The more we might be speaking about unknowns, the more that exacerbates the issues that we have expressed about access to justice and the potential dilution of the rights in the 2024 act. <sup>1</sup>
133. Professor O'Hagan also raised concerns about the precedent this Bill is setting in terms of looking for "carve outs" and questioned what the implications of this approach might be for a future Scottish Human Rights Bill. <sup>1</sup>
134. Gina Wilson of the Children's Commissioner echoed this sentiment and expressed concern about how this appears to demonstrate a worrying lack of commitment on the part of the Scottish Government to UNCRC incorporation. <sup>2</sup>
135. Other witnesses questioned whether Part 2 was sufficiently related to Part 1 of the Bill to make it appropriate for them to be included in the same Bill. Professor Elaine Sutherland of the Law Society of Scotland told the Committee that:
- ” It is another of our concerns that the bill is doing these other things that are almost unrelated. <sup>1</sup>
136. At the same time, there was support from other witnesses for Part 2 of the Bill. Juliet Harris of Together told the Committee that it was broadly support Part 2:
- ” We see it as a way of addressing systemic children's rights issues at a primary legislation level, but we believe that there need to be improves safeguards to ensure that children and young people still get children friendly access to justice in relation to the changes that have been made. <sup>2</sup>
137. Gina Wilson of the Children's Commissioner offered qualified support for the Part 2 of the Bill and made recommendations for how she believed Part 2 could be improved. <sup>2</sup>
138. Firstly, the Children's Commissioner suggested that the ‘incompatibility declarators’ (an order from the court about a specific legal duty or right) in the UNCRC Act could be broadened. At present, incompatibility declarators under the UNCRC Act 2024 can be issued only by higher courts and made only in relation to post

commencement of the 2024 Act provisions. The Children’s Commissioner suggested that incompatibility declarators could be issued by a wider range of courts and tribunals in relation to relevant acts of the Scottish Parliament and subordinate legislation made at any time.

139. Secondly, the duties on ministerial action when legislation has been found to be incompatible with the UNCRC could be strengthened. Gina Wilson said this would help address the gap in access to justice that will be created for children who can no longer challenge incompatible acts of the public authority in court. Currently, Ministers must report to the Parliament within six months what steps, if any, they will take in response to the declarator. The Commissioner would like the timescale reduced to three months and would like the report to go further by including an assessment of the breach on children, and providing that report to the court/tribunal that issued the declarator, the child affected, if relevant, and to the Children’s Commissioner.
140. Thirdly, the Children’s Commissioner advocates for a duty on public authorities to notify the Scottish Government and the Children’s Commissioner when they become aware that legislation is obliging them to act in a way that is not compatible with the UNCRC requirements.<sup>2</sup>
141. In correspondence subsequent to its appearance before the Committee, the SHRC reiterated its concerns about Part 2 of the Bill, but at the same time made proposals for amendments to Part 2. Specifically, it proposed a requirement on the Scottish Government to regularly publish notifications from public authorities of any legislation which they consider to be potentially incompatible with the UNCRC and to publish what action it will take in response and by when or, where appropriate, why there will be no action.<sup>6</sup>
142. The Committee explored these concerns with Cabinet Secretary in writing prior to her appearance. She stressed that in its Children’s Rights Scheme the Scottish Government is committing to seeking information from relevant public authorities at least annually on:
  - whether they are aware of any legislation that may be incompatible with the UNCRC requirements, and
  - whether they have relied, or expect to rely, on the exemption in Part 2.<sup>5</sup>
143. She also noted that the Scottish Government is committed to updating statutory guidance to advise public authorities to notify them and the Children’s Commissioner if they become aware of any incompatibilities, and it is open to also including the SHRC in that process.<sup>5</sup>
144. The Cabinet Secretary also stressed that the exemption in Part 2 will not prevent children (or their representatives) from challenging the actions of a public authority in a court or tribunal. If it concerns legislation that is exempt from the UNCRC Act, the focus will be on the legislation where the problem lies.<sup>5</sup>
145. Additionally, the Cabinet Secretary noted she was open to discussion on the amendments proposed by the Children’s Commissioner, however, she indicated that these would require consultation and that would not be possible in the time-

frame for a Bill this session.<sup>5</sup>

**146. The Committee recognises that there are very strong concerns about Part 2 of the Bill. There appear to be three primary concerns about Part 2:**

- **the rationale for it,**
- **the precedent it sets,**
- **whether the Bill is an appropriate vehicle for these provisions.**

**147. It is unclear to the Committee why Part 2 is so essential at this juncture given that a scoping exercise has not been undertaken to inform the decision to bring forward these provisions. The Committee notes that Together, the SHRC and the Children's Commissioner have all offered their support for the Bill even if that support is caveated. The Committee notes that the Children's Commissioner has proposed mitigations.**

**148. The Committee is concerned too about the precedent that this approach sets in terms of establishing carve outs from legislation.**

**149. Should this legislation be passed the Committee asks that the Scottish Government ensure Parliament is kept updated about the operation of this provision and how it may be used.**

# General principles

150. At Stage 1, there is a requirement for the lead committee to consider and report on the general principles of the Bill. The ‘general principles’ of the Bill are generally understood to refer to the main purposes of the Bill rather than its finer details.

151. Very serious concerns have been presented to this Committee about both Parts 1 and 2 of the Bill.

152. The Committee supports the premise of the Bill to improve rights for young people, however, it is debatable as to the benefits that would accrue from passing this legislation.[Pam Gosal and Tess White dissented from this paragraph]

153. At the same time the Committee notes that further to their appearances before the Committee, the SHRC, the Humanist Society Scotland and Together have all stressed their support for the basic premise of the Bill despite their serious concerns about the Bill.

154. That support is, however, still predicated on very significant amendments being made to the Bill.

155. Despite these concerns a majority of the Committee [Karen Adam, Maggie Chapman, Paul McLennan and Marie McNair] supports the general principles of the Bill, recognising that substantial amendments will be required.

156. Given the concerns expressed about the Bill, however, one member of the Committee [Rhoda Grant] was not in a position to make a recommendation on the general principles of the Bill and instead invites the Parliament to give careful consideration to the evidence the Committee has taken as it comes to weigh up the merits of the legislation at Stage 1.

157. A minority of members [Pam Gosal and Tess White] do not support the general principles of this Bill. They have significant concern about both parts 1 and 2 of the Bill. They are concerned about the conflict the Bill puts on rights of parents and the views of children; the impact on families; the impact on teachers; the reality that children develop at such different rates and the concerns raised by stakeholders. They do not necessarily believe part 2 fits within this Bill either.

# Annex

The Committee discussed its approach to the Bill, the views of witnesses and its report at the following meetings:

- 17 June 2025
- 30 September 2025
- 7 October 2025
- 28 October 2025
- 11 November 2025
- 18 November 2025

Details of the meetings, the Official Reports and written submissions are available on the Parliament's [webpage](#) for this Bill.

- [1] Equalities, Human Rights and Civil Justice Committee, Official Report, 30 September 2025. (2025). Retrieved from <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=16612> [accessed 10 November 2025]
- [2] Equalities, Human Rights and Civil Justice Committee, Official Report, 7 October 2025. (2025). Retrieved from <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=16627> [accessed 10 November 2025]
- [3] Equalities, Human Rights and Civil Justice Committee, Official Report, 28 October 2025. (2025). Retrieved from <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=16640> [accessed 10 November 2025]
- [4] Written submission to the Equalities, Human Rights and Civil Justice Committee from the Scottish Teachers of Religious, Moral and Philosophical Studies Association. (2025). Retrieved from [https://yourviews.parliament.scot/ehrcj/children-withdrawal-religious-education-uncrc-bill/consultation/view\\_respondent?\\_b\\_index=120&uuld=551288782](https://yourviews.parliament.scot/ehrcj/children-withdrawal-religious-education-uncrc-bill/consultation/view_respondent?_b_index=120&uuld=551288782) [accessed 10 November 2025]
- [5] Correspondence from the Cabinet Secretary for Education and Skills to the Convener of the Equalities, Human Rights and Civil Justice Committee. (2025, October 21). Retrieved from <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-equalities-human-rights-and-civil-justice-committee/correspondence/2025/children-withdrawal-from-religious-education-21-october-2025> [accessed 10 November 2025]
- [6] Correspondence from the Chair of the Scottish Human Rights Commission to the Convener of the Equalities, Human Rights and Civil Justice Committee. (2025, October 14). Retrieved from <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-equalities-human-rights-and-civil-justice-committee/correspondence/2025/children-withdrawal-from-religious-education-14-october-2025> [accessed 10 November 2025]
- [7] Correspondence from the Humanist Society Scotland to the Convener of the Equalities, Human Rights and Civil Justice Committee. (2025, October 31). Retrieved from <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-equalities-human-rights-and-civil-justice-committee/correspondence/2025/children-withdrawal-from-religious-education-31-october-2025> [accessed 10 November 2025]
- [8] Written Submission from the Catholic Headteachers' Association Scotland to the Equalities, Human Rights and Civil Justice Committee. (2025). Retrieved from [https://yourviews.parliament.scot/ehrcj/children-withdrawal-religious-education-uncrc-bill/consultation/view\\_respondent?\\_b\\_index=120&uuld=21425472](https://yourviews.parliament.scot/ehrcj/children-withdrawal-religious-education-uncrc-bill/consultation/view_respondent?_b_index=120&uuld=21425472) [accessed 10 November 2025]
- [9] Correspondence from Together to the Convener of the Equalities, Human Rights and Civil Justice Committee. (2025, October 27). Retrieved from <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-equalities-human-rights-and-civil-justice-committee/correspondence/2025/children-withdrawal-from-religious-education-27-october-2025> [accessed 10 November 2025]

**Equalities, Human Rights and Civil Justice Committee**

Stage 1 report on the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill, 7th Report, 2025 (Session 6)

