



SPICe Briefing

Pàipear-ullachaidh SPICe

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

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The Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill proposes two changes. The first is to require schools to consider pupils' views when parents withdraw them from Religious Observance or Religious and Moral Education. The second is to amend the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 so that public authorities are not conflicted between complying with the UNCRC Act and other Scottish legislative duties.



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Summary

The Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill proposes two key legislative changes aimed at aligning Scottish education law with the United Nations Convention on the Rights of the Child (UNCRC).

Part 1. Pupil Involvement in Withdrawal from Religious Observance (RO) and Religious and Moral Education (RME)

Currently, parents and carers have the legal right to withdraw children from RO and RME, but pupils do not have the same legal right. However, there is non-statutory guidance which advises schools to consider a pupil's view if a parent seeks to withdraw them from RO/RME.

The Scottish Government is proposing to change this. Schools will have to inform pupils when a withdrawal request is made by their parent and about their right to object, discuss any objection with the pupil and parent, and respect the pupil's wishes if they object to the withdrawal request. Schools will have to assess whether a pupil has sufficient capacity to form a view on withdrawal. There are no age limits. The pupil is presumed to be capable of forming a view unless the contrary is shown.

It is the Scottish Government's view that this change supports compliance with Article 12 (right to be heard) and Article 14 (freedom of thought, conscience, and religion) of the UNCRC.

However, it falls short of meeting the Concluding Observations made by the UN Committee on the Rights of the Child. The Committee has twice recommended (in 2016 and 2023) that children should have the legal right to withdraw from collective worship in school.

There were mixed views from a public consultation and engagement with stakeholders on these proposals. Some objected to any legislative changes, while others are in favour of more radical change. For example, some suggested a parallel right for pupils to withdraw, while others suggested the right to withdraw from either or both RO/RME should be removed.

Part 2. Amendment to the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (UNCRC Act)

Under the UNCRC Act, public authorities must act compatibly with UNCRC requirements - this is the 'compatibility duty'. The duty does not apply where the function is derived from an Act of the UK Parliament, and there is an exemption where a public authority is required or entitled to act incompatibly by words in UK derived legislation, or provisions inserted into Scottish legislation by UK legislation. These changes were added following a ruling by the Supreme Court on the UNCRC Bill.

The proposed amendment creates a further exemption for public authorities. This will apply where public authorities are legally compelled to act incompatibly with UNCRC requirements due to provisions in Acts of the Scottish Parliament.

The aim is to avoid any legislative conflicts and ensure that public authorities are not in a

position where they must choose between complying with the UNCRC Act and other legal obligations under Acts of the Scottish Parliament. There is no information on where such a conflict might arise.

The total estimated cost of implementing the Bill is up to £1 million, although the upper estimates are considered unlikely.

Introduction

The [Children \(Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty\) \(Scotland\) Bill](#) (the Bill), was introduced by the Scottish Government on 30 April 2025.

The Bill has two main objectives, both of which relate to the United Nations Convention on the Rights of the Child ¹ (UNCRC).

Pupil Involvement in Withdrawal from Religious Observance and Religious and Moral Education - Amendment of the Education (Scotland) Act 1980

The Bill seeks to ensure that pupils' views are taken into account when parents/carers exercise their right to withdraw their child from Religious Observance (RO) and Religious and Moral Education (RME).

Currently, only parents/carers have a legal right to withdraw their child from RO/RME. There is advice in guidance that schools should include pupils in any discussions about their school experience, but no legal right for pupils to have their views heard on the matter.

Under the Bill, schools will be required to:

- inform the pupil if a withdrawal request is made by their parent
- provide the pupil with an opportunity to express their views
- seek to discuss a pupil's objection with the pupil and parent
- respect the pupil's wishes if they differ from those of the parent.

The intention here is to support compliance of the [Education \(Scotland\) Act 1980](#) (1980 Act) with the UNCRC.

Amendment of the Compatibility Duty in the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024

The Bill proposes a further exemption to the compatibility duty under section 6 of the [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#) (UNCRC Act).

Currently, it is unlawful for public authorities to act, or fail to act, in connection with a relevant function in a way which is incompatible with the UNCRC requirements in the UNCRC Act.

However, the duty does not apply where the relevant function stems from legislation originating in the UK Parliament, such as for example, the Education (Scotland) Act 1980. There are exemptions to the duty where a public authority is required or entitled to act incompatibly by words contained in:-

- enactments made by, or by virtue of powers conferred by, the UK Parliament, or
- enactments made by, or by virtue of powers conferred by, the Scottish Parliament if

the particular words in question were inserted by an enactment made by, or by virtue of powers conferred by, the UK Parliament.

The proposed exemption would apply in cases where a public authority is legally compelled to act in a way that is incompatible with UNCRC requirements due to provisions in other Acts of the Scottish Parliament.

The intention here is to ensure that public authorities are not placed in a position where they must choose between complying with the UNCRC Act and fulfilling other legal obligations under Acts of the Scottish Parliament.

The lead committee scrutinising the Bill is the Equalities, Human Rights and Civil Justice Committee. It ran a call for views on the Bill between 20 June and 1 September 2025. The [responses are available to view](#).

The Delegated Powers and Law Reform Committee has already considered the delegated powers in the Bill and indicated it is content. ²

Background

Religious observance and education

Religious observance and education in schools is the subject of sections 8 and 9 of the [Education \(Scotland\) Act 1980](#).

[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.

Some of the language and construction of section 8 has been passed down from the preamble of the Education (Scotland) Act 1872.³ The text is dated and can be difficult to follow. However, given the narrow focus of the Bill, the Scottish Government has chosen not to update and modernise the law here.

It is not mandatory for the child or young person to participate in religious observance or education.

Under [section 9 of the 1980 Act](#), parents have the right to withdraw their child (of any age) from Religious Observance (RO) and Religious and Moral Education (RME). RME is also called Religious Education (RE) in denominational schools.

Section 9 - Conscience clause

"Every public school and every grant-aided school shall be open to pupils of all denominations, and **any pupil may be withdrawn by his parents from any instruction in religious subjects and from any religious observance in any such school**; and no pupil shall in any such school be placed at any disadvantage with respect to the secular instruction given therein by reason of the denomination to which such pupil or his parents belong, or by reason of his being withdrawn from any instruction in religious subjects."

Religious Observance (RO) is something that can be part of the school day, or is part of specific assemblies, and may include the wider school community, such as parents and community representatives as well as pupils and staff. Non-denominational schools may refer to it as 'time for reflection'. It is described in Scottish Government Guidance on Religious Observance as:

" Community acts which aim to promote the spiritual development of all members of the school's community and express and celebrate the shared values of the school community.⁴ "

Religious and Moral Education (RME) is one of the eight curriculum areas in the [Curriculum for Excellence](#). The Scottish Government Guidance on Religious and Moral Education outlines the statutory basis for RME:

“ It remains that schools and local authorities must provide religious and moral education to every child and young person in accordance with their legal requirements. Religious and moral education in non-denominational schools and religious education in Roman Catholic schools is a statutory core subject for all pupils attending primary and secondary education, including those in years S5 and S6, and it is their entitlement to have this taught in a meaningful and progressive way. ⁵ ”

The Guidance on RO, published in 2017, says that the right to withdraw their children from participation in RO should always be made known to parents and their views respected. Parents should be provided with sufficient information on which to base their decision. ⁴

Children and young people do not have a statutory right to withdraw from RO themselves. However, the Guidance says that schools should include children and young people in any discussions about aspects of their school experience, ensuring their views are taken into account. The Guidance says that this is in line with the [Children and Young People \(Scotland\) Act 2014 \(the 2014 Act\)](#); this is likely to be a reference to the provisions in the 2014 Act regarding the UNCRC, which were then repealed and replaced in the UNCRC Act 2024.

The Guidance on RME, published in 2011, also covers the parental right to withdraw children from participation in Religious and Moral Education (non-denominational schools) and Religious Education (Roman Catholic schools). It also says that providing parents with sufficient information about the content of RME is especially relevant within the context of Curriculum for Excellence:

“ ... since this area of their education contributes to pupils thinking for themselves and making their own decisions about what they believe to be true about human living. Without this aspect of their education, learners will not enjoy the full benefits of Curriculum for Excellence. ⁵ ”

The RME Guidance does not suggest that schools should also take the views of children and young people into account when a parent requests their withdrawal. However, this is likely to be because this Guidance was published in 2011, before the 2014 Act and the provisions in the UNCRC Act.

Denominational schools

Local authority denominational schools differ from non-denominational schools in that they reflect the ethos of a particular religious standpoint. Most denominational schools in Scotland are Roman Catholic.

[Section 21 of the 1980 Act](#) sets out some of the specific rights and duties in relation to denominational schools. For example, the local authority “shall appoint as supervisor of religious instruction, without remuneration, a person approved as regards religious belief and character as aforesaid, and the supervisor so appointed shall report to the education authority as to the efficiency of the religious instruction given in such school, and shall be entitled to enter the school at all times set apart for religious instruction or observance.”

There is also an approval process to teach in denominational schools. ⁶

The RO Guidance states:

“ Where a parent chooses a denominational school for their child's education, they choose to opt in to the school's ethos and practice which is imbued with religious faith and religious observance. In denominational schools, it is therefore more difficult to extricate a pupil from all experiences which are influenced by the school's faith character. Where a pupil is withdrawn from RO, schools should make suitable arrangements for the pupil to participate in a worthwhile alternative activity. In no circumstances should a pupil be disadvantaged as a result of withdrawing from RO. ⁴ ”

The RME Guidance states:

“ All Catholic schools are expected by the Bishops' Conference of Scotland to follow guidelines established by the Catholic Education Commission on the provision of adequate time for religious education within the school curriculum. These guidelines indicate a requirement for a minimum of 2.5 hours per week in primary school and two hours per week in all stages of secondary school. In all secondary stages this minimum time allocation is expected by the Commission to be provided through two periods of religious education classes per week and enriched by additional activities throughout the school year. ⁵ ”

Connection with the UNCRC

The Scottish Government states that the current legislation on RO and RME raises questions in connection with its obligations under the UNCRC as a matter of international law. In particular:

Article 12 - 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.

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 14 - which details the right to freedom of thought, conscience and religion.

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

In its Child Rights and Wellbeing Impact Assessment for the Bill (CRWIA),⁷ the Scottish Government says the proposed changes are also relevant to Article 5 - parental guidance and the child's evolving capacities, and to Article 29 regarding education.

Connection with the UNCRC

As noted in the Policy Memorandum, the provisions of the UNCRC Act do not apply to the Education (Scotland) Act 1980. This is because the 1980 Act originates from the UK Parliament, even though education is a devolved matter ([discussed further below](#)).

The aim, therefore, is to align the right to withdraw from religious observance and education with the UNCRC as a matter of international law. This means that the new provisions cannot be challenged under the UNCRC Act.

Balance of UNCRC with parental rights

The Scottish Government states that amending the 1980 Act 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 school rather than being based on the age of the pupil. It says that this will align more with the UNCRC, and with recent precedents in wider legislation.⁸ Reference is made to the [Children \(Scotland\) Act 2020](#) which introduced provisions on listening to a child's views, taking into account their age and maturity. However, this Act is not yet fully in force, including the provisions on listening to a child's views.

The Policy Memorandum to the Bill states that schools will be required to assess whether a pupil has sufficient capacity to form a view on withdrawal, "with the presumption being that the pupil has adequate capacity unless there is evidence to the contrary". The Scottish Government intends to provide further detail on how a school might reach such a decision in statutory guidance under the Bill.⁸

What does this mean in practice?

Ultimately, however, children and young people will only be able to have their views considered and respected under the Bill, if their parent has requested their withdrawal from RO and/or RME, and they wish to remain in RO and/or RME. There will be no legal right for a child or young person to request the withdrawal from RE and/or RME for themselves.

The Bill will retain:

- RO and RME as a legal requirement for state funded schools
- the legal parental right to withdraw their child from RO/RME.

The Bill will add:

- a legal right for pupils to express their views and have their wishes followed, where a parent has exercised their right to withdraw a pupil. Currently this is only recommended in guidance.

The Bill does not:

- create an independent legal right for a pupil to request the withdrawal from RO and/or RME.

Currently, only parents/carers have a legal right to withdraw their child from RO/RME. There is also advice in guidance that schools should include pupils in any discussions about their school experience.

Under the Bill, schools will be required to:

- inform the pupil if a withdrawal request is made by their parent
- provide the pupil with an opportunity to express their views
- seek to discuss a pupil's objection with the pupil and parent
- respect the pupil's wishes if they differ from those of the parent.

Other options considered

The Policy Memorandum sets out three other approaches that were considered in order to meet the aim of supporting alignment with the UNCRC. These were balanced against:

- parental rights
- views from stakeholders and the wider public
- the practicality of implementing changes.

It also refers to the UNCRC Committee Reports on the UK. The UN [Committee on the Rights of the Child](#) reviews how well each state party is putting into practice the rights in the Convention on the Rights of the Child. This happens around every five years. The 2016 report ⁹ said the Committee was concerned that children in Scotland do not have the right to withdraw from collective worship without parental permission. It recommended that legal provisions for compulsory attendance at collective worship in publicly funded schools are repealed. Further, that children should have the independent right to withdraw from religious worship at school. This recommendation was repeated in the Committee's report on the UK for 2023. ¹⁰

The Policy Memorandum notes that "such recommendations are not binding in

international law." ⁸ It is interesting that this point is raised because section 4 of the UNCRC Act provides that when a court or tribunal is determining a question in connection with the UNCRC requirements, it 'may' consider other relevant information including any 'concluding observations'.

In addition to the approach set out in the Bill, the Policy Memorandum details three alternatives that were considered by the Scottish Government.

Do nothing

Given existing non-statutory guidance, it was an option to make no changes.

This would not meet the policy aims of providing clarity and ensuring coherence between legislation and guidance.

The first, is that given that there is already non-statutory guidance stating that pupils should have their views considered as part of the withdrawal process, it was an option to do nothing. The Scottish Government did not choose this approach because it "would not meet the policy aims of providing clarity and ensuring coherence between legislation and guidance."

Independent pupil right to withdraw

Grant pupils a right to withdraw from RO and RME, in addition to parental right to withdraw.

But, concerns raised about conflicts between pupils and parents, and potential to undermine status of RME.

A second option would be to give pupils a parallel right to withdraw from RO and RME in addition to that held by their parents. However, concerns were raised during the consultation and engagement about conflicts between parental and pupil wishes, especially where parents want participation but the child does not. This would impact on the parental right to withdraw.

Stakeholders also highlighted that RO and RME are distinct in their purpose and frequency. RO is focused on spiritual development, whereas RME is a core curriculum subject exploring different faiths, and moral and philosophical questions. RME is also timetabled more frequently and for longer periods than RO. Stakeholders also said that applying the same withdrawal rights to both would continue to conflate RO and RME. This approach could potentially increase withdrawals from RME (which are lower than RO) and disrupt learning in one of the eight core curriculum areas. It might also place an administrative burden on the school, and more generally, could undermine the status of RME. Schools often resolve any concerns from parents about RME through discussions, which often lead to withdrawal requests being reversed.

It was also noted by respondents that the UNCRC does not provide a right to withdraw from any part of the curriculum. The Scottish Government states that granting an independent right to withdraw from RME, and not other curriculum areas, "might set an unwelcome precedent".

Radical reform

Remove RME from legislation, but introduce an independent pupil right to withdraw from RO.

Remove both RO and RME from legislation, removing legal basis for parental rights of withdrawal.

However, removing the legislative duty to provide RO and/or RME could diminish their value and may discourage their provision in schools, which is not the policy intention.

The final option considered was for much broader reform. There were two potential approaches considered, which the Scottish Government refers to as 'radical'.

The first would require the removal of RME from legislation. This would remove its status as the only curriculum area required by law, as well as removing the right to withdraw from RME. Religious Observance would remain in legislation, as well as the right for parents to withdraw a child, but potentially with an additional right for pupils to independently withdraw from RO.

The second would require the removal of both RO and RME in legislation, thereby removing the legal basis for parental withdrawal rights. This would address the recommendations made by the UN Committee on the Rights of the Child to remove the requirement for collective worship in schools. It could also be combined with non-statutory guidance to allow pupils to independently withdraw from RO.

Through the Scottish Government's engagement, there was some support for removing RO and RME from legislation, as well as introducing a right for pupils to withdraw from RO. However, there were still concerns about how a pupil right to withdraw might balance with a parental right to withdraw. There was also concern that removing the legislative duty to provide RO and/or RME could diminish their value and may discourage their provision in schools, which is not the Scottish Government's policy intention.

Consultation

The Scottish Government ran a consultation between 14 November 2024 and 26 January 2025 on Religious Observance and Religious and Moral Education.¹¹

The consultation was short. There were eight substantive paragraphs setting out the proposals, followed by six questions.

As well as the public consultation, the Scottish Government met with key stakeholders in education, children's rights and representatives from faith and belief groups. This included, 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.

In summary, the views expressed ranged between those objecting to any legislative

change and those in favour of more radical change. For example, some called for a parallel right for pupils to withdraw, while others suggested the right to withdraw for either or both RO/RME should be removed.

The consultation sought views on proposed changes to the current legislation on RO/RME in schools. It said the proposed changes will support the alignment of legislation with the UNCRC, and refers to Articles 12 and 14.¹

Reference is also made to the Scottish Government guidance on Religious Observance, which advises that schools should ensure that pupils' views are taken into account.⁴ The consultation notes that this guidance is non-statutory and the principle is not reflected in current legislation.

The Scottish Government said it proposes to amend current legislation on RO/RME to "ensure clarity and put the position in relation to UNCRC compliance beyond doubt as soon as possible."

Given that the proposed legislation would bring a key principle of existing guidance into law, the Scottish Government said it did not "expect there to be significant practical implications resulting from these changes." It also said that responses would help inform further consideration on implementation and any potential support that would be required.
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Independent analysis

The Scottish Government commissioned [EKOS](#) to undertake independent analysis of the consultation responses.¹²

The public consultation received 533 responses, with 530 validated responses included in the analysis. The majority of responses received (88%) were from individuals (including parents, teachers and grandparents), and 12% were from organisations (faith groups, schools, local authorities and teacher associations).

Low participation from children and young people prompted the Scottish Government to undertake further direct engagement with groups like the Scottish Youth Parliament. It is unclear what engagement the Scottish Government undertook with school pupils as this is not mentioned in the Policy Memorandum.

The authors highlighted some concerns about the consultation. They commented that while the consultation document had been designed to be brief for ease of reading and to encourage more responses:

“ ... the limited detail may have contributed to varied interpretations of the level and nature of the proposed changes to section 9 of the 1980 Act. Respondents may also have found it difficult to make an informed response to some questions.¹² ”

Respondents also strongly called for further clarification and comprehensive guidance from the Scottish Government on how the proposed changes are expected to be implemented consistently in practice.

Different interpretations influenced how some respondents answered specific questions, with some assuming that the changes would give children and young people a new right to withdraw independently.

Some respondents highlighted that the consultation paper appeared to conflate RO and RME.

The authors reported on the **key findings**:

In response to the only closed question, 62% of respondents felt the changes do not offer a reasonable way forward for UNCRC compliance. Individual responses were more likely to respond in this way than an organisation. Further analysis illustrated two clear groupings:

- some respondents strongly support allowing children and young people to independently withdraw from RO/RME regardless of their parents' views
- others suggest that an 'opt-in' approach would be better and more reflective of Scotland's secular and religious diversity.

A range of other reasons were identified as to why these respondents were not supportive of the proposed changes:

- a perceived negative impact on parental rights
- challenges in implementation, especially for denominational schools
- a potential for the changes to undermine the role and value of RO/RME.

Of the 31% who said the proposed changes do offer a reasonable way forward to address questions about UNCRC compliance, further analysis illustrated that this was due to a range of reasons:

- alignment with UNCRC rights
- a safeguard against undue parental or institutional control
- the proposed changes did not go far enough to align with the UNCRC because pupils would not have the right to independently withdraw from RO/RME.

From both groups of respondents, those who support the changes and those who do not, a majority consider that the changes will present a range of issues to schools and families, such as:

- logistical issues - an increase in withdrawal requests and provision of alternative activities
- resource needs - in terms of staffing, training and funding
- particular difficulties for denominational schools.

A smaller number felt that implementation would be straightforward, especially given that schools already consider pupils' views in a range of contexts.

A majority of respondents gave details of how the withdrawal process from RO and RME currently works, or is intended to work. Key points raised were:

- withdrawal rates are low

- a perception of inconsistency across schools, particularly in how meaningfully the pupil's voice is heard and considered
- some schools may lack capacity and resource to provide alternative activities
- communication between schools and parents could be improved to ensure that all parties clearly understand the withdrawal process.

In addition, a small number of respondents said that some schools have been hesitant or reluctant to accommodate withdrawal requests.

A majority (55%) of consultation respondents offered ideas on how to ensure pupils' views are considered, such as:

- age-appropriate surveys, discussions and forums
- staged conversations, where pupils first share their views with a teacher, followed by joint discussions with parents
- designated staff advocates to support pupils in expressing their views.

Of the 53% of respondents who answered the question on the potential impact of the proposed changes on children's rights and equalities:

- the vast majority (84%) identify a potential negative impact, such as not fully upholding children's rights because they will not have the right to withdraw independently
- some (27%) said the impacts would be positive because it continues to give pupils a voice when their parents exercise their right to withdraw them from RO/RME.

Respondents were also separately asked what they anticipate being the main positive implications of these changes in general terms. A majority of the 95% that answered this question identified several positive implications of the proposed changes, including:

- listening to children and young people's views and involving them in discussions about their school experience, including on RO/RME
- increasing awareness and discussion of the purpose and value of RO/RME as part of a holistic education, and providing an opportunity for greater dialogue and discussion between all parties (that is, pupils, parents, teachers)
- improving pupil morale and confidence.

Stakeholder views

This section briefly covers some of the comments made by the organisations responding to the Scottish Government's consultation.

Children and Young People's Commissioner Scotland

The Commissioner's response focused on RO, and said that this is an issue that continues to be raised by children and young people.¹³

At a recent visit to a diverse non-denominational secondary school, pupils told the

Commissioner that their experience in primary and secondary was that RO had always had a Christian focus. This could make those of another faith uncomfortable.

The young people suggested that they should be able to choose to withdraw themselves, or opt-in to RO if they wished.

There was a collective view that children and young people should be able to learn about different religions at primary and secondary school.

The Commissioner criticised the approach taken by the Scottish Government and suggested it should comply with the Concluding Observations made by the UN Committee on the Rights of the Child in 2023, which called for children to have the right to withdraw (or opt-in).

Humanist Society Scotland

The Humanist Society has a long-standing interest in the current opt-out provisions for RO.¹⁴ They state that the Scottish Government's revised guidance on RO in 2017 was made in response to a legal challenge brought about by the Humanist Society and they are pleased that the Scottish Government has recognised the need for legislative reform.

It is their view that pupils must be able to independently withdraw from RO to ensure alignment with the UNCRC. They argue that secondary school pupils should have an automatic right to withdraw from RO.

Together (Scottish Alliance for Children's Rights)

Together (Scottish Alliance for Children's Rights) focus on RO only.¹⁵ It is their view that the proposal on RO does not align with the UNCRC requirements. They call for the Scottish Government to reconsider the proposal and introduce the child's right to withdraw from RO, as well as the choice to 'opt-in' to RO should they wish to do so.

Association of Directors of Education in Scotland (ADES)

ADES¹⁶ said there are two main issues with the Scottish Government's proposal:

- there needs to be clarification of the difference between RO and RME, so that the right to withdraw relates to religion only and not other curriculum areas
- there is concern that judging a child's capacity based on their age and maturity is a subjective matter.

In addition, there are concerns about the practical impact on schools in terms of resources and administrative demand.

School Leaders Scotland (SLS)

The SLS said it has reached a consensus that the inclusion of young people's views is a positive step forward, which they welcome.¹⁷

However, there may be challenges for denominational schools, where religion is part of the school ethos. There may be a resource issue where alternative classes are provided to support pupils who have withdrawn from RME.

Educational Institute of Scotland (EIS)

The EIS welcomes the proposed changes, because it will bring Scottish education into line with its obligations under the UNCRC and in line with their own policy objectives.¹⁸

The EIS supports the right of pupils in Scottish schools, at a suitable point in their development, to decide for themselves whether or not to participate in RO. In their view, the capacity to decide to withdraw may be present from around the age of 12, and "certainly by the age of 16-18." They also acknowledge that younger pupils in certain circumstances may wish to exercise this right, and that this right must be recognised.

Scottish Teachers Association of RME (STARME)

STARME state that linking RO and RME in legislation comes from a time when RME was more akin to Religious Instruction.¹⁹ It is now a rounded curriculum subject. They do not support the right to withdraw from RME in non-denominational schools, viewing this as outdated.

STARME are concerned about the impact of the proposals. They argue that staffing would not allow for increased numbers of pupils being supervised elsewhere, and that the added workload to provide meaningful work for such pupils is not sustainable for teachers.

Scottish Catholic Education Service

The Scottish Catholic Education Service said it finds the parameters of the proposal helpful, given that pupils will not be able to withdraw from RO or RME independently.²⁰ However, they do have concerns, such as that the value of RO/RME could be diminished, the change in law may increase the number of withdrawal requests, and there may be a particular impact on denominational schools.

Church of Scotland

The Church of Scotland does not consider that legislative change is necessary, and are in favour of maintaining the status quo.²¹ They are concerned that the proposals could impact on school resources when pupils are withdrawn from timetabled RME, and about the potential conflict between parents and their children.

Christian Concern

Christian Concern²² is of the view that the status quo should be maintained. It is their view that it is morally, socially and educationally right that parental rights are enshrined in law on this matter. Amending the legislation would upset the natural order of the relationship between parents and children and create competition between those rights.

Evangelical Alliance Scotland

The Evangelical Alliance think the proposals strike the right balance by providing children the opportunity to discuss their views when parents are exercising their right to withdraw their child from RO or RME.²³ However, it is their view that RME should not be a school subject that children can be withdrawn from, because it is essential that children have the opportunity to learn about different religions and beliefs.

Current practice

There is little existing evidence or research on how the current process to manage pupil withdrawal from RO/RME works in practice.

The Scottish Government's engagement with key stakeholders suggests that 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.

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.

This practice reflects current Scottish Government guidance. The guidance advises that schools should make suitable arrangements for withdrawn pupils to participate in a worthwhile alternative activity and in no circumstances should a pupil be disadvantaged as a result of being withdrawn:

- [Curriculum for Excellence: religious observance](#) (2017)
- [Curriculum for Excellence: religious and moral education](#) (2011).

However, 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.

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.

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.

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.

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The Scottish Government's CRWIA on the Bill suggests that children and young people of all schools ages (4-18) have the potential to be affected by the Bill. It is also anticipated that the changes may particularly affect those attending denominational schools.⁷ There are 362 denominational schools in Scotland, around 15% of all schools in Scotland, and 358 of these are Roman Catholic.

UNCRC Act

The [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#) (the UNCRC Act), came into force on 16 July 2024.

The UNCRC Act incorporated the [United Nations Convention on the Rights of the Child](#) (UNCRC) into Scots law. It means that public authorities, including Scottish Ministers, are legally obliged to respect children's rights by acting in a way that is compatible with UNCRC requirements. Children and their representatives can now challenge public authorities in the courts for breaches of their rights.

However, the scope of what may be challenged has reduced since the UNCRC Bill was passed unanimously by the Scottish Parliament on 16 March 2021.

Following its original passage through the Scottish Parliament, the UNCRC Bill was referred to the Supreme Court by UK Law Officers on the grounds that some of its provisions were outside the legislative competence of the Scottish Parliament.

On 6 October 2021, the Supreme Court unanimously ruled that four provisions were outside legislative competence; this included section 6, the 'compatibility duty.'²⁴ This meant that the Bill could not become law as passed.²⁵

Section 6 of the Bill, as originally passed, would make it unlawful for any public authority to act in a way that is not compatible with UNCRC requirements. It was not disputed that section 6 is outside the legislative competence of the Scottish Parliament. However, the Scottish Government argued that the provision could be interpreted by the courts on a case-by-case basis. The Supreme Court said that the way the provision had been drafted meant it could apply to UK authorities working in reserved areas and that it should not be left to courts to decide. It therefore went beyond the legislative competence of the Scottish Parliament.

The Scottish Government accepted the ruling.

A motion to reconsider the UNCRC Bill was agreed on 14 September 2023.²⁶ This was the first time the Reconsideration Stage process had been used in the Scottish Parliament.²⁷

Amendments were lodged by the Scottish Government on 18 September 2023.²⁸

The amendments on the compatibility duty for public authorities would mean that the duty only applies to legislative functions that are required by Acts of the Scottish Parliament, but not Acts of the UK Parliament in devolved areas. Key legislation would not be covered by the compatibility duty, such as the Education (Scotland) Act 1980 and the Children (Scotland) Act 1995.

The Equalities, Human Rights and Civil Justice Committee heard evidence on 31 October 2023 from human rights and children's rights organisations, public authorities and Dr Andrew Tickell (Glasgow Caledonian University).²⁹

In summary:

- there was continued support for the principle of UNCRC incorporation

- public authorities expressed concern about how they will navigate the new legislative landscape, the gaps created in the enforceability of children's rights, and practical implementation issues
- children's rights and human rights organisations said that public authorities should be complying with the UNCRC regardless of the Bill
- there was a shared view that the Scottish Government must provide clear information and guidance on the Bill
- there was a call from public authorities to review what legislation is in and out of scope of the Bill
- there was a call from rights organisations to identify what provisions could be brought within scope over time.

On 7 November 2023, the Committee heard evidence from the Cabinet Secretary for Social Justice, Shirley-Anne Somerville MSP.³⁰

The Committee set out its consideration and support for the amendments in a letter to the Cabinet Secretary on 17 November 2023.³¹ The Cabinet Secretary responded to the Committee on 28 November 2023,³² and in summary said:

For public authorities:

- there would be statutory guidance to help public authorities comply with the compatibility duty and non-statutory guidance on taking a children's rights approach
- there would be access to resources and training.

For children, young people and their representatives:

- funding for the Scottish Public Services Ombudsman to develop a child-friendly complaints process
- funding had also been provided to Clan Childlaw and the Scottish Child Law Centre to support free legal advice.

Review of legislation

- Officials were asked by the Cabinet Secretary to commission a review of UK Acts in devolved areas. The purpose was to identify provisions in UK Acts that might benefit from being re-enacted in Acts of the Scottish Parliament. No timescale was given for this as it was recognised this would take time.
- The Cabinet Secretary said there was a risk of unintended consequences with an exercise to establish what legislation is in or out of scope: "The question of what is in the scope of the compatibility duty should only become relevant if and when a rights issue cannot be addressed without the need to consider bringing proceedings in a court or tribunal."

The amendments were considered and approved by the Parliament on 7 December 2023.

Under the revised section 6 compatibility duty, "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." ⁸

Engagement

The Scottish Government undertook engagement with key stakeholders on the proposed changes to the UNCRC Act. This included the UNCRC Strategic Implementation Board, the Embedding Children's Rights in Public Services Group, COSLA, the UNCRC Peer Support Network, NHS Education Scotland and SOLAR.

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.

The Scottish Government 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. However, the public authorities that were consulted did not support this approach, instead they were in favour of a clear notification process.

The Scottish Government will work with the Children's Commissioner to ensure a notification process is in place, on a non-statutory basis. It may be similar to the approach set out in the statutory guidance on Part 2 of the UNCRC Act:

“ 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. ³⁴ ”

The Bill

This is a short Bill with two substantive parts:

- Part 1 - Pupil's involvement in decision about withdrawal from religious instruction or religious observance.
- Part 2 - United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024: circumstances where incompatible action or failure to act is not unlawful.

Part 3 of the Bill covers regulation-making procedures, commencement and the short title.

The Delegated Powers and Law Reform Committee has considered the delegated powers in the Bill and is content with them.² In summary, the Committee:

- is content with the power to issue guidance in section 1 - about carrying out the functions under the Bill regarding withdrawal from RO/RME - and that such guidance would not be subject to parliamentary procedure.
- supports the ancillary power in section 3 to make regulations in connection with or for giving full effect to the Bill - without such power, any changes would require primary legislation. The affirmative procedure would be used for changes to amend primary legislation, but otherwise the negative procedure would be used.
- supports the use of powers for commencement, where regulations are laid before Parliament but are not subject to any further procedure.

Part 1 - Pupil's involvement in decision about withdrawal from religious instruction or religious observance

The first part of the Bill has one section only.

Section 1 aims to amend section 9 of the 1980 Act - the [conscience clause](#).

It adds the procedure below to the conscience clause.

The operator of the school, which is either the education authority, or managers if it is a grant-aided school, must:

- tell the pupil about the request and the pupil's right to object to the withdrawal
- give the pupil an opportunity to express their views about the request, in a manner the pupil prefers or that is suitable if no preference has been indicated
- have regard to any views expressed by the pupil about the request, taking into account their age and maturity.

If the school is satisfied that the pupil is not capable of forming a view, they do not have to seek the pupil's views on the request. The pupil is to be presumed capable of forming a

view "unless the contrary is shown".

If the pupil objects to all or part of the parent's request, the school must:

- seek to discuss the pupil's objection with the pupil and the parent, and
- have regard to any views expressed in that discussion.

There is also a provision for schools to give due regard to any guidance from the Scottish Ministers on these new functions. The Explanatory Notes to the Bill state that it is likely that guidance will be made to set out how such engagement should be carried out.³⁵

There is no requirement in the Bill for the parent or pupil to take part in a discussion.

If the pupil objects to all or part of the parent's request, then the school must not give effect to the parent's request, in full or in part. The Explanatory Notes to the Bill provide the following example:

“ ... if a parent requests that a pupil is withdrawn from both religious instruction and religious observance and the pupil objects only to being withdrawn from religious observance, the part of the request relating to religious instruction will be granted.”

Section 1 of the Bill also includes a provision that schools must have regard to any guidance that Scottish Ministers may give, regarding these new functions.

Part 2 - United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024: circumstances where incompatible action or failure to act is not unlawful

Part 2 of the Bill has one section only.

Section 2 provides for the UNCRC Act 2024 to be amended. It aims to amend section 6 of the UNCRC Act - Acts of public authorities to be compatible with the UNCRC requirements.

The amendments in section 2 propose to:

- remove and replicate the existing text of section 6(4) with new section 6A. This is the section which provides that it is not unlawful for a public authority to act incompatibly where they are required or entitled to do so by words emanating from UK derived legislation. This will not change the existing legal effect.
- add a new section 6B which is a further exemption to the compatibility duty. It will not be unlawful if a public authority is compelled to act incompatibly if it is as a result of "words" in an Act of the Scottish Parliament or Scottish subordinate legislation which is not derived from an Act of the UK Parliament. The exemption to Scottish subordinate legislation only applies where the parent Act of the Scottish Parliament requires a breach of the compatibility duty.

The legal purpose of section 6B is to remove the potential for public authorities to have to decide whether they have to act in a way that puts them in breach of the UNCRC Act, or in breach of another legal duty in devolved legislation.³⁵

The Policy Memorandum to the Bill expands on this by stating that the purpose is to:⁸

- minimise complexity for public authorities in interpreting and applying their duties under the UNCRC Act
 - public authorities will be able to fulfil functions of other Acts of the Scottish Parliament even where they prevent them from acting compatibly with the UNCRC Act
- ensure legal coherence
 - by being consistent with similar provision in the Human Rights Act 1998 and the UNCRC Act
- ensure that the delivery of essential services that support children can continue, where a potential incompatibility arises
 - there might be practical implications where a public authority stops providing a function because it is potentially incompatible with the UNCRC requirements.

What this means for existing Acts of the Scottish Parliament

The Scottish Government says that there should not be any provisions in existing Scottish Parliament legislation that requires a public authority to act in a way that is incompatible with the UNCRC requirements.

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.

However, where compatibility questions are addressed by the courts, this may highlight a need for legislative change. Scottish Ministers may then take action to address a legislative incompatibility.

Costs

The Scottish Government has estimated **costs on the Scottish Government** to implement the Bill, with upper and lower estimates as follows: ³⁶

Year 1 (2025-26) - initial start-up costs:

RO/RME ongoing engagement, guidance development and training:
£21,417-£22,441.

Year 2 (2026-27) - initial start-up costs:

RO/RME ongoing engagement, guidance development, training and publications:
£26,101-£62,643.

UNCRC Act update to statutory guidance potential communications activity: £5,220.

The total estimate is between £52,738-£90,304.

The estimated **costs to local authorities** are focused on the second year:

Year 2 (2026-27) - initial start up costs, including RO/RME school handbook updates, training and withdrawal management: £283,620-£919,480.

The overall cost estimate is between £336,358 and £1,009,784.

The Scottish Government states where upper and lower estimates are provided, the upper estimate has been selected as a cautionary measure. In the case of RO/RME, the upper estimated costs on education authorities and managers of grant-aided schools are "highly unlikely to materialise." ³⁶

The Finance Committee will publish its report on the Financial Memorandum to the Bill in due course.

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