



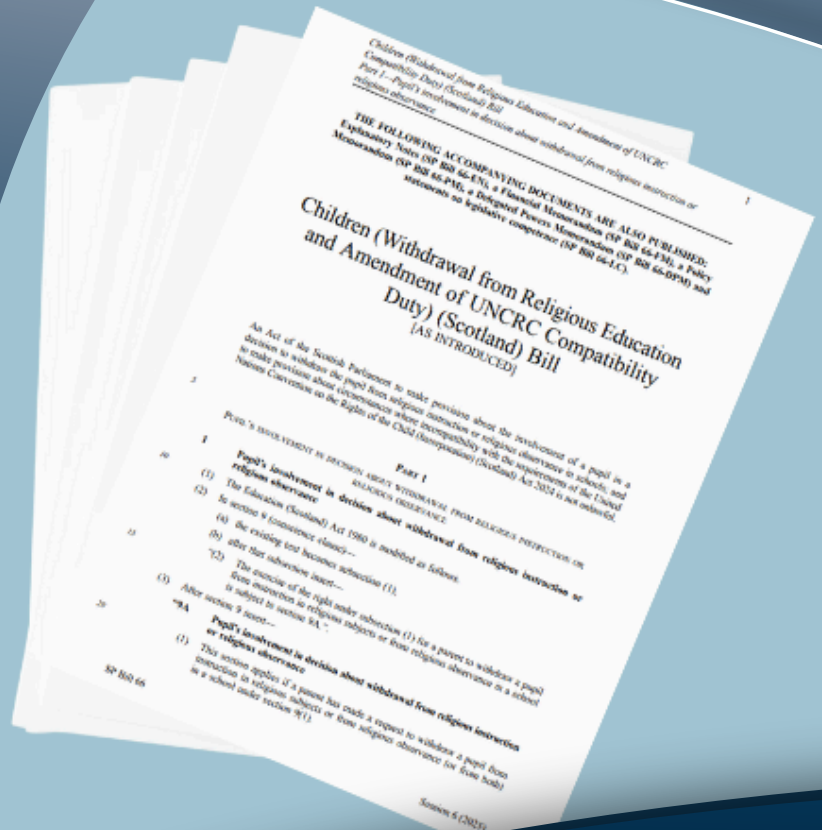
SPICe Briefing

Pàipear-ullachaidh SPICe

Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill: Consideration prior to Stage 3

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Stage 3 proceedings for the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill are due to take place on 17 February 2026. This briefing outlines the main issues considered during Stages 1 and 2.



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Summary

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 (UNCRC) ¹ :

- 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).
- 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).

The Committee did not reach a consensus on the general principles of the Bill. A majority supported the principles subject to substantial amendment; a minority opposed the Bill; and one member abstained from making a recommendation, instead inviting Parliament to scrutinise the evidence closely. The Parliament agreed the general principles at Stage 1 on 25 November 2025.

During Stage 2, the Committee agreed a number of amendments. Most significantly, amendments were passed to separate RO and RME and remove the right to withdraw from RME entirely. This reflected the Committee's majority view that educational subjects should not be subject to parental withdrawal.

Further amendments agreed will require schools to provide written information to parents when a withdrawal request is made, and introduce new notification duties under the UNCRC Act for cases where an exemption arises in legal proceedings.

Proposals to create an independent right for children to withdraw from RO, and to introduce a minimum age of 16 for presuming capacity, were debated but not agreed. Several other amendments relating to reporting and guidance were withdrawn, with the Scottish Government indicating willingness to consider these issues further ahead of Stage 3.

As amended, the Bill now incorporates structural changes to the withdrawal framework and further refines how the UNCRC Act's compatibility duty will operate in situations where public authorities may be compelled to act incompatibly with the UNCRC under Acts of the Scottish Parliament.

Introduction

The [Children \(Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty\) \(Scotland\) Bill](#) was introduced on 30 April 2025.²

The Bill is short, and is divided into three Parts, with five sections.

The [Policy Memorandum](#),³ [Explanatory Notes](#),⁴ [Financial Memorandum](#)⁵ and [Delegated Powers Memorandum](#)⁶ were published alongside the Bill.

The [SPICe briefing](#) on the Bill considers the provisions and the Bill's legislative and policy context.⁷

The Equalities, Human Rights and Civil Justice Committee was the lead committee for the Bill and held three Stage 1 evidence sessions on:

- [30 September 2025](#)⁸
- [7 October 2025](#)⁹
- [28 October 2025](#).¹⁰

The Delegated Powers and Law Reform Committee published its [report on the Bill](#) on 26 June 2025. It did not express any concern about any of the powers conferred on the Scottish Ministers under this Bill.

The Finance and Public Administration Committee undertook its own call for views on the Bill's Financial Memorandum. It forwarded the [two submissions](#) received to the Equalities, Human Rights and Civil Justice Committee. Many of the areas highlighted in these submissions were also raised with the Equalities, Human Rights and Civil Justice Committee.

The [Stage 1 report](#)¹¹ was published on 19 November 2025 and the [Stage 1 debate](#)¹² took place on 25 November 2025.

Stage 2 consideration took place on [16 December 2025](#).¹³

Stage 3 proceedings are scheduled to take place on 17 February 2026.

Stage 1 scrutiny

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

The Committee held three evidence sessions in September and October 2025, and heard from religious organisations, secular organisations, representatives from the education sector, experts on children's human rights, and the Cabinet Secretary for Education and Skills, Jenny Gilruth MSP.

The Committee's [Stage 1 report](#) was published on 19 November 2025.¹¹ The Scottish Government [responded with a letter on 24 November 2025](#).¹⁴

At Stage 1, there is a requirement for the lead committee to consider and report on the general principles of the Bill. However, the Committee heard serious concerns about Parts 1 and 2 of the Bill. Some stakeholders indicated support for the basic premise of the Bill, but this was still predicated on significant amendments being made.

Given these concerns, the Committee did not meet a consensus view on the general principles:

- A majority (Karen Adam MSP, Maggie Chapman MSP, Paul McLennan MSP and Marie McNair MSP) supported the general principles of the Bill, recognising that substantial amendments would be required to address concerns.
- One member (Rhoda Grant MSP) was not in a position to make a recommendation on the general principles of the Bill and instead invited the Parliament to give careful consideration to the evidence taken by the Committee at Stage 1.
- A minority (Pam Gosal MSP and Tess White MSP) did not support the general principles of the Bill, given their significant concerns about parts 1 and 2 of the Bill.

The sections below consider the key points heard by the Committee, the Committee's conclusions and the Scottish Government's response on Parts 1 and 2 of the Bill.

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

Part 1 is concerned with withdrawal from both religious observance (RO) and religious and moral education (RME) in schools.

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 and/or 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.

During Stage 1, the following concerns were raised:

- 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 the UNCRC.

The conflation between RO and RME

The conflation between RO and RME was a key concern from many stakeholders. It was stressed that RO is about worship and RME is about education and therefore they should not be treated in the same way. Both faith-based and secular organisations argued for removing the option to withdraw from RME from the Bill.¹¹

The whole Committee was of the view that RO and RME should be separated. A majority of the Committee agreed that opting out of RME should not be possible for either young people or their parents/carers and urged the Scottish Government to bring forward amendments at Stage 2 to provide that withdrawal only applies to RO. Pam Gosal MSP and Tess White MSP dissented from this.¹¹

The Scottish Government said it would give careful consideration to the majority view of the Committee that the parental right to withdraw from RME be removed, in advance of Stage 2.¹⁴

The potential for conflict between parents and children

Another concern was that the Bill could create family conflict by giving children the right to object to their parents' decision to withdraw them from RO or RME. There was also a potential knock-on effect of any conflict on schools. However, it was also suggested that the potential to create conflict already exists under the current system.¹¹

The Committee recognised that there is potential for conflict under the Bill and urged the Scottish Government to consider such an unintended consequence. Should the Bill pass, the Committee encouraged the Scottish Government to monitor any impact on family conflict as well as the impact on schools.¹¹

The Committee also said that the Scottish Government should consider what resources schools might need to give effect to the Bill. This is because it had been suggested that increased awareness of the right to withdraw, as well as changing demographics, could lead to higher levels of withdrawal, to which schools would need the resources to respond.

The Scottish Government said that the potential for conflict already exists without a legal requirement to consider the child's views. The Bill's requirement to seek discussion between school, parent and pupil in the event of a pupil objecting to their withdrawal aims to reduce conflict.¹⁴

The right for a child to independently opt-out of RO and RME

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 for a child to independently opt-out of RO/ RME. This 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.⁷

A majority of stakeholders who expressed a view on this issue to the Committee supported amending the Bill to provide children with an independent right to withdraw from RO. One member, Maggie Chapman MSP, found this evidence compelling and held the view that a child's right to a view should not only apply when responding to a decision taken by their parents, and that it does not make sense that a child can choose to opt in to RO but not opt out.¹¹

The Committee noted, however, that responses to the Scottish Government's consultation were not as definitive in their support for an independent right to withdraw from RO, which is what prompted the Cabinet Secretary's approach on the Bill, to "chart a middle ground". On that basis, a majority of the Committee agreed it would be more appropriate to progress with the right for children to object to their parents withdrawal of them for RO/ RME alone. However, they also invited the Cabinet Secretary to give further consideration to providing children with an independent right to withdrawal in future legislation.¹¹

The Scottish Government acknowledged the views expressed to the Committee in favour of a child's independent right to withdraw from RO. However, it intends to proceed with its "middle ground" approach, but will "continue to listen" to views during the passage of the Bill and in the longer term.¹⁴

A child's capacity to form a view

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, but does not set a minimum age.

Some of the evidence taken by the Committee expressed concern about the absence of a prescribed age at which a child is considered capable of forming a view. It was also suggested there is already a complex landscape in place as to when a child is considered to have capacity. The Committee heard that it is very difficult to establish an age when a child will be capable of forming a view. Some witnesses said that this would place a burden on schools, while others said that teachers are always discussing children's capacity.¹¹

The Cabinet Secretary recognised that making such decisions would be challenging and

noted that there would be guidance on this to support teachers, but also noted that teachers would be familiar with these kinds of decisions.¹⁰

A majority of the Committee support the Scottish Government's approach not to specify an age in the Bill.¹¹

A minority of members held the view that because children develop in different ways it makes it challenging to determine when a child is capable of forming a view. Allowing teachers to make such decisions could lead to variation in practice and have an emotional impact on children.¹¹

The Scottish Government welcomed the majority view of the Committee that the Bill should not specify an age threshold for when a pupil has a capacity to express their views. It also noted the Committee's view on the need for support and training for teachers to make decisions involving the decision-making capacity of pupils, and said that statutory guidance on the updated withdrawal process would accompany the implementation of the Bill.¹⁴

Compatibility with the UNCRC

Part 1 of the Bill would be achieved by amending the Education (Scotland) Act 1980 (the 1980 Act), which 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." However, a function conferred by an Act of the UK Parliament does not qualify as a relevant function.

A number of witnesses, including the Scottish Human Rights Commission (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. It was argued that the Bill should be amended to bring it into scope of the UNCRC Act 2024.¹¹

The Cabinet Secretary said ([in correspondence](#)) that it would be very difficult to create the change required through a stand-alone provision "outside the overall context of the 1980 Act" for a range of reasons and therefore amending the 1980 Act was viewed as the most pragmatic approach to take.¹⁵

The Committee noted the recommendation from stakeholders that the Bill should be amended so that it is stand-alone Scottish legislation within the scope of the UNCRC Act. However, the Committee recognised that it was unlikely the Bill could be easily amended so significantly at Stage 2. A majority of the Committee shared the view that, on balance, "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."¹¹

The Scottish Government restated its view that the 1980 Act is a long-standing piece of legislation which provides much of the fundamental framework of the Scottish school education system, and its provisions are interwoven in a range of complex ways. This would make it "difficult to restate one part of one section alone in a new Act without taking that provision out of its context and causing potential issues of interpretation." It is said this would not be proportionate and it risks creating "fragmented and incoherent legislation."¹⁴

The Scottish Government references the first [Children's Rights Scheme](#) to be published under section 14 of the UNCRC Act.¹⁶ The Scheme recognises the concerns about key aspects of devolved legislation that are Acts of the UK Parliament. During the Scottish Parliament Reconsideration Stage for the UNCRC Act, Ministers agreed to commission a review of UK Acts in devolved areas to identify any key provisions that interact with children's rights to such an extent that it may be worth re-enacting them in Acts of the Scottish Parliament. However, in the Children's Rights Scheme it says that it will first engage and explore with the UK Government if there might be a more effective route, and, if there is insufficient progress by November 2026, it will commission a review of provisions in UK Acts in devolved areas.¹⁶

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 the 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.⁷

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.

During Stage 1 the following concerns were raised:¹¹

- The rationale for it - many witnesses, including the SHRC, argued that the Scottish Government has not made a case for why Part 2 of the Bill is needed and that it is unclear what problem it is trying to address.
- The precedent it sets - it was suggested that the Bill is setting a precedent in terms of looking for "carve outs" in the UNCRC Act, and this approach could also have implications for a future Scottish Human Rights Bill. Further, that it shows a worrying lack of commitment on the part of the Scottish Government to UNCRC incorporation.
- Whether the Bill is an appropriate vehicle for these provisions - some witnesses queried whether Part 2 was sufficiently related to Part 1 for it to be included in the Bill.

However, others indicated broad support for Part 2 of the Bill, but with sufficient improvements being made.¹¹ The Children and Young People's Commissioner Scotland (Children's Commissioner) set out a number of amendments to the Committee.⁹ The SHRC wrote to the Committee after its appearance, and reiterated its concerns on Part 2

and suggested amendments.¹⁷ The specific areas to be addressed included:

- addressing the gap in access to justice for children who can no longer challenge incompatible acts of the public authority in court
- creating a duty to require public authorities to notify the Scottish Government when they become aware that legislation is obliging them to act in a way that is not compatible with the UNCRC requirements
- creating a duty for the Scottish Government to publish notification 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.

The Committee expressed these concerns to the Cabinet Secretary in writing prior to her appearance.¹⁸ The Cabinet Secretary said that the Scottish Government's Children's Rights Scheme is committing to seeking information from relevant public authorities at least annually on:¹⁵

- whether they are aware of any legislation that may be incompatible with the UNCRC requirements
- whether they have relied, or expect to rely, on the exemption in Part 2.

The Cabinet Secretary also said that the exemption in Part 2 will not prevent children 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.¹⁵

The Committee recognised the concerns raised and said it was unclear why Part 2 is so essential at this juncture and said that if the legislation should pass, then the Parliament should be kept updated on the operation of this provision and how it may be used.¹¹

The Scottish Government said it had listened carefully to the reflections of stakeholders, including the caveated support from Together, the Children's Commissioner, and the SHRC. It said it had strengthened the UNCRC Act framework to provide greater transparency through the Children's Rights Scheme. This was laid in the Parliament on 20 November 2025 and set out a process to seek information from public authorities on annual basis regarding incompatible legislation. It does not consider any statutory reporting duties would be necessary or effective.¹⁴ The Scheme also provides information on the non-judicial routes available for children to seek a remedy, where a breach cannot be challenged under the UNCRC Act.¹⁶

Stage 1 debate

The [Stage 1 debate](#) took place on 25 November 2025.¹²

The Cabinet Secretary said:

“ The bill is an important opportunity to strengthen the rights of children and young people in Scotland, building on our commitment to the United Nations Convention on the Rights of the Child.”

She described the Bill as "technical in nature" dealing with two separate but related objectives, and that it has been drafted narrowly to address those two objectives.

While there was broad support for the aim of increasing the rights of children and young people, Members who spoke in the Stage 1 debate reflected the concerns raised during Stage 1 consideration. For example:

Conflation between RO and RME

Martin Whitfield MSP described the conflation between RO and RME as a "historical anomaly that this legislation should have corrected."

Paul McLennan MSP (Committee member) said "... RME is increasingly relevant, and I agree with the majority of the committee that RME should not be a topic that children can withdraw from."

Alex Cole-Hamilton MSP said that "The committee heard legitimate concerns about the conflation of religious observance and RME"

Maggie Chapman MSP (Committee member) said she would introduce an amendment at Stage 2 to separate RO and RME.

The potential for conflict between parents and children

Pam Gosal MSP (Committee member) said she was concerned that the Bill creates conflict between the rights of parents and the views of children.

Stephen Kerr MSP said "I very much see it as a fundamental challenge to the rights of parents, the integrity of the family and, I would argue, to the proper limits of the state ...

...

It does something unprecedented, because it subjects the long-standing parental right of withdrawal from religious observance and from religious and moral education to the veto of the child."

The right for a child to independently opt-out of RO and RME

Alex Cole-Hamilton MSP referenced the concluding observations of the UN Committee on the Rights of the Child, which has twice said that Scotland is "out of step with the provisions of the convention by not legislating to allow children the right to have their voice heard?" He also indicated support for the changes proposed by Maggie Chapman MSP to give children the right to independently opt-out.

Elena Whitman MSP said that "Only children whose parents initiate withdrawal are given any voice at all. That falls short of the UN Committee's recommendations."

A child's capacity to form a view

Pam Gosal MSP said, "There are also extreme worries when it comes to determining whether a child is mature enough to override their parents. Who is to tell whether one child

is capable of forming a view but another is not? That puts teachers in a very difficult place, because it potentially creates conflicts between pupils, teachers and parents."

Amendment to the UNCRC Act (Part 2 of the Bill)

Martin Whitfield MSP said that Part 2 "will introduce a significant risk to the integrity of the incorporation of the UNCRC in Scotland."

Alex Cole-Hamilton MSP said that Part 2 "fatally undermines" attempts to successfully incorporate the UNCRC.

Maggie Chapman MSP (Committee member) said that "Witnesses told the committee that it sends entirely the wrong message to say that one of the first acts in implementing the UNCRC is to set up a system of carve-outs from it."

Rhoda Grant MSP (Committee member) said "I believe that Part 2 is in direct conflict with the UNCRC legislation. It calls into question why the 2024 act exists"

The Cabinet Secretary said that without the safeguard in Part 2, a public authority could be put in an impossible position - "compelled by law to act in a particular way, while being told that to do so would breach the compatibility duty." The Scottish Government does not believe any current Acts of the Scottish Parliament require incompatible action, but "this is about future proofing, and our understanding of children's rights will continue to develop over time. Court judgments can shift interpretations over time, too." Further, this approach reflects a similar approach in the Human Rights Act 1998.

However, the Cabinet Secretary did say that she had listened to Members' views and would "continue to engage on the matter."

Vote

The Scottish Parliament supported the general principles of the Bill at Stage 1.

The result was: 66 for, 29 against, 21 abstained, 13 did not vote.

Financial Resolution

The total estimated cost of implementing the Bill is up to £1 million, although the upper estimates are considered unlikely.⁵

Ahead of Stage 2 proceedings, the Presiding Officer determined under Rule 9.12 of Standing Orders that, if certain Stage 2 amendments were to be agreed, a Financial Resolution would be required for the Bill. A Financial Resolution is required where it is deemed likely that public spending on a Bill may increase significantly. The Bill cannot continue until the Financial Resolution is agreed.

Parliament agreed a Financial Resolution at its meeting on [11 December 2025](#).¹⁹

Stage 2 consideration

Stage 2 scrutiny took place at a meeting of the Equalities, Human Rights and Civil Justice Committee on [16 December 2025](#).²⁰

The [Marshalled List](#) and [Groupings of Amendments](#) can be viewed on the Parliament website.

The results of all amendments can be viewed in the Equalities, Human Rights and Civil Justice Committee [Minutes](#)²¹ and what was said can be viewed in the [Official Report](#).²⁰

The following amendments were agreed to under Part 1:

Amendments 9, 10, 11, 12, 13, 14, 15, 16, 17 and 19 in the name of Maggie Chapman MSP, to separate RO from RME and remove the right to withdraw from RME entirely. These were agreed to by division.

Amendment 21 in the name of Tess White MSP, to require schools to provide parents with written information setting out the steps that will be followed once a withdrawal request is made. This was agreed to without division.

The following amendments were agreed to under Part 2:

Amendments 7 and 8 in the name of Jenny Gilruth MSP, Cabinet Secretary for Education and Skills, which creates a new section in the 2024 Act that is triggered when the question of an exemption arises in legal proceedings. It requires the Lord Advocate, the Children's Commissioner and the SHRC to be notified, unless they are already parties to the case. The Lord Advocate and the commissioner bodies will then have the opportunity to intervene on the question.

Other amendments that were not agreed included:

Amendments in the name of Maggie Chapman MSP to introduce an independent right for pupils to withdraw themselves from religious observance in schools.

Amendment in the name of Tess White MSP to require pupils to be aged 16 before they are presumed to have the maturity to form a view.

Amendments withdrawn or not moved, but where the Government would consider further at Stage 3:

Amendments in the names of Tess White MSP, Paul O'Kane MSP and Maggie Chapman MSP, that would require schools to submit reports on requests for withdrawals and on the form and content of religious observance.

Amendments in the name of Tess White MSP, requiring the Scottish Government to publish guidance for schools, and to consult with schools, parents and teachers beforehand.

The changes can be viewed in the [Bill as amended at Stage 2](#).

Stage 3

The deadline for Stage 3 amendments was 12 noon on 10 February 2026. Stage 3 Proceedings are due to be held on 17 February 2026 in the Chamber. Details of proposed amendments lodged can be viewed on the [Scottish Parliament website](#).

The Cabinet Secretary [wrote to the Committee](#) on 10 February 2026 with an update on stakeholder engagement and Stage 3 amendments.²²

On stakeholder engagement, the Cabinet Secretary said she had met with Barbara Coupar, Director of the Scottish Catholic Education Service (SCES), and officials had also met with SCES and the Bishops' Conference of Scotland. This was to address concerns over the Stage 2 amendment to separate religious education and religious observance and to apply parental rights to withdraw their young people from religious observance only.

The Cabinet Secretary said she reassured Ms Coupar that the intrinsic link between religious education and religious observance in Catholic schools, as well as other faith schools, is appreciated and endorsed by the Scottish Government. The separation of RO and RME is intended to reflect the importance of religious education, and is not intended to undermine the religious observance in Catholic or other faith schools.

On Stage 3 amendments, the Cabinet Secretary said she has worked with:

- Maggie Chapman MSP and Elena Whitman MSP on monitoring and reporting amendments, and guidance duty amendments, under Part 1 of the Bill.
- Maggie Chapman MSP on a duty for listed public authorities under the UNCRC Act to notify the Scottish Ministers, the Children's Commissioner and the SHRC, where they are of the view that the exemption to the UNCRC compatibility duty applies. The Cabinet Secretary has lodged an amendment requiring the Scottish Government to report annually on the use of the exemption and any actions it intends to take in response. These are under Part 2 of the Bill.

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