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Equalities, Human Rights and Civil Justice Committee
Tuesday 28 October 2025
23rd Meeting, 2025 (Session 6)

The Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill – Note by the Clerk

Introduction

1. The purpose of this paper is to provide information to help inform the Committee's third and final evidence session scrutinising the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill.

2. At its first meeting, on 30 September, the Committee took evidence from groups representing religious organisation, secular organisations and groups considering the Bill from a legal and human rights perspective. The official report of that meeting can be accessed via the following link:

   Official Report

3. At its second meeting, on 7 October, the Committee took evidence from groups representing the interests of children, parents and the education sector. The official report of that meeting can be accessed via the link below:

   Official Report

4. At this meeting the Committee will hear from the Cabinet Secretary for Education and Skills, Jenny Gilruth MSP. She will be supported by the following Scottish Government officials—

   - Lewis Hedge, Deputy Director, Curriculum and Qualifications
   - Joe Smith, Children's Rights Reporting and Monitoring Team Leader
   - Denise McKay, Scottish Government Legal Directorate School Education. Deputy Director, Children, Education, Rights Incorporation & Disclosure
   - Sarah Booth, Scottish Government Legal Directorate UNCRC, Lawyer

5. In advance of the Cabinet Secretary's appearance, the Committee sought a response from her on a variety of issues arising out of the evidence sessions to date. A copy of that letter can be accessed via the link below.

   Letter to the Cabinet Secretary for Education and Skills from the Convener of the Equalities, Human Rights and Civil Justice Committee, 8 October 2025

6. The Cabinet Secretary's response can be accessed at the link below:

   Letter to the Convener from the Cabinet Secretary for Education and Skills, 21 October 2025

Background information

7. The Children (Withdrawal from Religious Education and Amendment of UNCRC Incompatibility Duty (Scotland) Bill ("the Bill") is a Government Bill introduced by the Cabinet Secretary for Education and Skills on 30 April 2025. The Bill and its accompanying documents are available on the Bill webpage.

8. The Parliament designated the Equalities, Human Rights and Civil Justice Committee as lead committee on 7 May 2025. Under the Parliament's Standing Orders Rule 9.6.3.(a), it is for the lead committee to report on the general principles of the Bill, as well as accompanying documents such as the Financial Memorandum and Policy Memorandum.

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

10. Firstly, under the Education (Scotland) Act 1980 parents can withdraw a child from religious instruction and religious observance in school. The Scottish Government's aim is to provide clarity and align legislation with non-statutory guidance.

11. Part 1 of the Bill would require schools to inform a child if their parent asks for them to be withdrawn from either or both of these. It also gives the child the chance to express their views. Where the child's views are different from the parent's views, and following discussion with the child and parent, the school would have to follow the child's wishes.

12. Where a child is not capable of forming a view, the school would not have to take these steps. However, it is assumed that a child is able to do so unless it is shown otherwise.

13. The second purpose of the Bill concerns changes to Part 2 of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.

14. This Act places a duty on public authorities not to act in a way that is incompatible with the UNCRC requirements. There is an exception to that duty where an Act of the UK Parliament requires them to act differently. This exception was added at the UNCRC Reconsideration Stage to comply the Supreme Court judgment on the UNCRC Bill (6 October 2021).

15. The Bill would put in place another exception so that Acts of the Scottish Parliament were treated in a similar way to Acts of the UK Parliament, where there are conflicting duties on public authorities. The aim here is to ensure legal coherence for public authorities. Consideration had been given to proposing such an amendment at Reconsideration Stage, but Standing Orders on admissibility meant that amendments had to be narrowly focused on addressing the Supreme Court judgment.

16. More information about the Bill can be found in the SPICe Bill briefing.

Call for views

17. The Committee ran a call for views on the Bill between 20 June and 1 September 2025 The 158 responses have been published.

18. There were 52 responses from organisations, which included primary and secondary schools (all RC schools), five local authorities, two teaching unions, several faith-based organisations, secular organisations and rights-based organisations.

Key themes raised from the individual and organisational responses

The need for clearer distinction between RO and RME

- Many individual respondents regard these as very separate things, one is worship and the other education. RME was widely supported as part of the curriculum.
- Many organisational responses (eg, Together, Church of Scotland, NSS, Humanist Society) said that RO is not the same as RME, and that the option to withdraw should only apply to RO.

Support for children's rights

- There was strong support from individual respondents for children having the right to opt out of RO independently of their parents. However, there was criticism that children can only override parental withdrawal.
- There were mixed views from organisations on whether the Bill supports children's rights. For example, some support the Bill's intentions, but that it does not go far enough (eg, Together), some support a child's right to be heard, but not the ability for a child to go against the parent's choice (eg, SCES, RC schools), some see the Bill as providing limited rights for children (eg, NSS, SHRC).

Balancing parental rights and children's rights

- Some individual respondents felt parents should have authority in decisions over RO/RME, while others felt that children should be able to make such decisions themselves. There were also concerns about the potential for conflict between parents and children.
- Some of the faith-based groups (eg, Free Church, Catholic schools, Christian Institute) argued that parents should maintain their authority over the option to withdraw from RO/RME. Rights-based groups and secular groups (eg, Together, UNICEF, National Secular Society, Humanist Society Scotland) argued for children to have the independent right to withdraw from RO.

- A common theme was the potential for family conflict (eg Free Church, Logos Scotland, Unite for Education) or for the school to navigate through any conflict (eg EIS, Together).

Concerns about administrative and resource implications

- Some individual respondents said that the requirement to hold discussions, as well as the provision of alternative activities when a child is withdrawn from RO/RME, could have an impact on the school and staff.
- Some organisations raised concern about how schools will assess whether a child is capable of forming a view (eg, Jewish Council for Scotland, SCES, a number of Catholic schools).
- There was concern from some local authorities and education unions about the potential for pressures on staffing and increased workloads.
- Some organisations indicated there might be particular difficulties for denominational schools.

Calls for further clarity and guidance

- A number of the Roman Catholic schools that responded to the call for views welcomed the clarity brought by Part 1 of the Bill, especially that a child is to be informed when a request for withdrawal has been made by their parent. It is also noted that withdrawal rates from RO/RME are low in Catholic schools.
- However, others have called for further clarity and guidance with regard to Part 1 of the Bill (eg Law Society, Free Church, South Lanarkshire Council, Jewish Council of Scotland, SCES, EIS).

Calls for further reform on withdrawal from RO/RME

- From the individual respondents, there were calls to make RO an ‘opt-in’ rather than an ‘opt-out’ and calls to remove RO from non-denominational schools entirely.
- Several organisations criticised the fact that Bill has no parallel right for children to withdraw from RO, independently from their parents, as twice recommended by the UN Committee on the Rights of the Child (SHRC, Together, UNICEF, NSS).

Further exemption to the UNCRC compatibility duty

- Many individual respondents skipped this question, and some said they did not understand the question. Those who did provide a response opposed the idea of an exemption for Scottish legislation suggesting it undermines children’s rights.
- The SHRC and the joint response from Dr Conor Hill and Melissa Murray were very critical of Part 2 of the Bill.
- The SHRC said that the effect of section 2 is to give primacy to other statutory duties over the general duty to act compatibly with the UNCRC:
  “The legal effect of this is that more acts which are incompatible with the UNCRC may be taken outwith the scope of the compatibility duty and unable to be directly challenged in the courts.”
- The SHRC is concerned:

    - That the Bill reduces the options available to children who have had their rights violated.
    - It is not clear whether the Scottish Government has undertaken an audit of existing legislation to assess what may be incompatible with the UNCRC, and it has not provided any examples. The wider concern is that this approach may be replicated if a Scottish Human Rights Bill is introduced after the next election.
- Hill and Murray question why two 'unrelated' issues have been included in the Bill. They argue that Part 1 on withdrawal from RO/RME will not be within scope of the UNCRC Act 2024, and Part 2 amends the UNCRC Act 2024. In their view there is a risk that Part 2 will not be subject to sufficient scrutiny, and recommended it is removed from the Bill.
- Hill and Murray are opposed to Part 2 of the Bill for two reasons:
    - it is unclear why the amendments are required, given that the Policy Memorandum says that the aim is to address an issue – making sure public authorities are not conflicted between complying with the UNCRC Act and other legislative duties - that is unlikely to occur.
    - The amendments in Part 2 undermine the spirit of the legislation. It is noted that the Supreme Court ruling on the UNCRC Bill limited the scope of the UNCRC Act 2024. But to add a further exemption "would be an unacceptable dilution of duties in the 2024 Act".
- Both responses (SHRC, Hill and Murray) also suggest that Part 1 of the Bill could be drafted in a way to ensure that the right to withdraw from RO/RME is within scope of the UNCRC Act 2024.
- However, Together indicated their support for Part 2. They have also consulted with children and young people who have also shown broad support for the amendment.
    - "Children and young people were clear that:
        - The amendment should not be presented as "weakening" rights but as a mechanism to ensure rights are realised in practice.
        - Examples are essential to help children and young people understand how the amendment works, with preference for one clear, in-depth scenario (e.g. health care or social work) presented visually.
        - There must be clarity on what it means to "challenge the Scottish Government," what happens while a case is before the courts, and what other routes exist for children to rely on the law without going to court."

Next steps

19. The Committee will reflect on the evidence it has heard and consider a report on the general principles of the Bill.

Conclusion

20. The Committee is invited to consider the above information in its evidence session with the Cabinet Secretary for Education and Skills and her officials.

Clerks to the Committee and SPICe
October 2025