



Statutory guidance on Part 2 of the UNCRC (Incorporation) (Scotland) Act 2024

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1. Preface

This statutory guidance is pursuant to section 13 of the [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#) (the ‘UNCRC Act’ or ‘Act’). It is issued by Scottish Ministers to support the implementation and operation of Part 2 of the Act.

The purpose of this guidance is to provide public authorities with pragmatic information that may assist them with understanding and acting in accordance with section 6 of the UNCRC Act, which places a duty on public authorities not to act incompatibly with the ‘UNCRC requirements’ as defined by section 1 of the Act.

The guidance is primarily intended for those with responsibilities within public authorities for implementing and delivering the provisions of the Act. This is likely to include strategic leaders and senior planning managers. Public authorities may wish to develop accessible information on their duties within the Act as they relate to their functions, to support the awareness and understanding of children, young people and their families. This guidance is for all public authorities as defined by the Act, however, sector experts may wish to develop specific guidance for their contexts.

This guidance must be read in conjunction with the legislation to which it relates. It is not intended as a substitute for direct reference to the Act itself. Interpretation of the Act and its duties will ultimately be for the courts to decide in the event of any proceedings raised before them. If an individual public authority is unclear if the section 6 duty applies, it is recommended that legal advice be sought in order to achieve clarity.

The UNCRC Act received Royal Assent on 16 January 2024. Section 6 of the Act will come into force 6 months from Royal Assent, on 16 July 2024.

2. Aim and scope of this guidance

This guidance is issued by Scottish Ministers on a statutory basis to promote understanding, implementation and operation of Part 2 of the Act. The guidance will be of assistance to anyone who wishes to use it for those purposes, in particular, those bodies who meet the definition of a public authority.

The Scottish Government recognises the vital role that those providing public services play in delivering improved outcomes for children, young people and their communities and that the full realisation of children's rights requires proactivity on the part of all public services and not only those working directly with children and young people.

All decisions made about actions taken to deliver public services may impact on the rights of children and young people. It is vital for all those undertaking public functions to consider children's rights in their work. Consideration of children's rights should be evident across all public service delivery. This guidance aims to provide meaningful support for this purpose to any organisation who is or would be a 'public authority' as defined in sections 6(5), (6), (7) and (8) of the Act and those acting under contract or other arrangement.

How is the guidance to be used?

This guidance is issued to support public authorities in the implementation and operation of their duties under Part 2. It is intended to promote understanding of Part 2 of the Act and includes information to support public authorities in the implementation and operation of their duties. Public authorities retain discretion on the implementation and operation of their duties under Part 2 and may wish to consider this guidance in that regard.

How was the guidance developed?

This draft guidance was developed in consultation with representative public authorities, including public services, third sector organisations and children's rights bodies. In addition, feedback from a public consultation with children, young people and their representatives, a range of public authorities, the Scottish Human Rights Commission (SHRC) and the Commissioner for Children and Young People in Scotland ('The Commissioner') will inform the final version.

Summary of the contents of this Guidance

The content of the guidance consists of the following sections:

1. An introduction to human rights, children's rights and the UNCRC Act, including a definition of 'UNCRC requirements' as included in the Act
2. An introduction to Part 2 of UNCRC Act including frequently used terms and remedies now available to children and their representatives to seek redress through the courts if their rights have been (or a proposed action would mean that they would be) infringed
3. Definitions of key terms in the Act
4. An explanation of the section 6 duty on public authorities

Further information to assist public authorities in applying the section 6 duty is included in annexes:

5. An introduction to concepts within the UNCRC relevant to the Act and their interaction with other human rights treaties ratified by the UK
6. Sources to guide interpretation of the UNCRC
7. A framework that public authorities may wish to use to review compatibility with UNCRC within their practice

3. Background and introduction to the UNCRC Act

This section provides some background and context to the UNCRC Act.

3.1 Children's rights are human rights

The [Universal Declaration of Human Rights](#) is the foundation for international human rights law. It was adopted by the UN General Assembly in 1948 to provide common human rights standards for all peoples and nations in a post-war world. From this arose [nine core international human rights instruments](#) or treaties, including the [UN Convention on the Rights of the Child \(UNCRC\)](#). The UNCRC duplicates some of the rights found in other international instruments. This is because the UNCRC affirms and articulates the significance of these human rights for children up to the age of 18.

The UNCRC was adopted by the General Assembly of the United Nations in 1989 and was ratified by the UK Government in 1991. It is the most widely ratified human rights treaty in the world. The UNCRC was a landmark treaty, recognising the importance of childhood and the unique needs of children across the globe. It sets out the civil, political, economic, social, and cultural rights that all children, everywhere, are entitled to and it remains, to this day, a core international human rights treaty.

The UNCRC builds on the [Charter of the United Nations](#) (1945) which recognised that the inherent dignity and the equal and inalienable rights of all members of the human family are the foundation of freedom, justice, peace and social progress. It realises the [Universal Declaration of Human Rights](#) (1948), which states childhood is entitled to special care and assistance. It also explains how adults and governments must work together to make sure all children can enjoy all their rights. The UNCRC is a holistic children's rights framework that informs Scottish Government strategies and programmes to fulfil the rights of every child, regardless of the child's or their parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Human rights are the basic rights and freedoms which we all have to live with dignity, equality and fairness, and to develop and reach our potential. Human rights are a list of things that all people – including children and young people – need to live a safe, healthy and happy life.

Human rights, including those within the UNCRC are:

- universal (they apply to everyone, regardless of who they are)
- inalienable (they cannot be taken from you or given away)
- indivisible (they are all equally important)
- interdependent (breach of one impacts them all)

The UNCRC consists of 54 articles, and these are where the rights of the child are stated within the treaty. Articles 1 to 42 contain the substantive rights and obligations which States Parties must uphold and give effect to and cover the child's civil, political, economic, social and cultural rights. These include:

- the right of the child to be heard and have their opinion considered (Article 12)
- freedom from violence, abuse and neglect (Article 19)
- the right to housing, food and clothing (Article 27)
- access to primary and secondary education (Article 28)
- the right to play and to rest (Article 31)

Articles 43 to 54 concern procedural arrangements for the signature, ratification, and amendment of the UNCRC; the establishment of the UN Committee on the Rights of the Child (CRC); and the process for States Parties to report to the CRC on progress made in taking forward children's rights. The signature and ratification of international treaties are reserved to the UK Government. The Scottish Government contributes to the UK-wide reports to the CRC which are collated by the UK Government as the State party.

There are four articles in the UNCRC which are known as the "General Principles". These assist in interpreting all the other articles and can play a fundamental role in realising all the rights in the UNCRC for all children. These are also useful when considering how to give practical effect to taking a rights based approach. They are:

- non-discrimination (Article 2)
- best interest of the child (Article 3)
- right to life, survival, and development (Article 6)
- right to be heard (Article 12)

The mutually reinforcing nature of human rights means that children's civil, political, economic, social and cultural rights as expressed within the 54 articles of the UNCRC, all have equal status. Whilst the General Principles are a useful lens through which to consider the rights of children, they should not be considered paramount or in any way imply a hierarchy of rights.

The UK Government has also ratified the first optional protocol on the involvement of children in armed conflict and the second optional protocol on the sale of children, child prostitution and child pornography.

A third optional protocol which allows complaints to be made to the CRC has not yet been ratified by the UK Government, but the Act grants the Scottish Government the power to incorporate this and any other additional protocols if at some point they are ratified by the UK and have entered into force in the UK, or should it be possible to ratify this within the powers of Scottish Parliament at a later stage.

Childhood, defined as the period of life up to the age of 18, represents a time in our lives where we all require support from others to have a good quality of life, and where our wellbeing and needs are provided for. The actions, or inactions, of government impact children more strongly than any other group in society and every area of government policy affects children to some degree. The additional rights afforded to children within the UNCRC recognise that childhood is a special time which must have additional protections.

The Scottish Government is committed to Scotland being the best place in the world to grow up. A central part of our vision is the recognition of, respect for, and promotion of children's rights. These include rights to be treated fairly, to be heard and to be as healthy as possible.

Our vision is a Scotland where children's rights are embedded in all aspects of society, where policy, law, and decision-making take account of children's rights and where all children have a voice and are empowered to be human rights defenders.

3.2 Incorporation history in Scotland

Scotland has a strong track record in implementing the rights of children by taking steps to respect, protect and fulfil children's rights within law, policy, and practice. The Act builds upon a proud tradition of respecting children's rights in Scotland that predates even the adoption of the UNCRC by the UN General Assembly in 1989, such as the pioneering and unique children's hearings system, which became operational in 1971.

Examples of legislation and policy which have previously given effect to the rights and obligations within the UNCRC in Scotland include the Children and Young People (Scotland) Act 2014 (2014 Act) and 'Getting it right for every child' (GIRFEC) - the national approach in Scotland to improving outcomes and safeguarding, supporting and promoting the wellbeing¹ of children and young people by offering the right help at the right time from the right people.

The Children (Scotland) Act 1995 and Children (Scotland) Act 2020 provide a major part of the legal framework for child welfare and protection in Scotland and are based on the UNCRC. In addition, the Scottish Government respects, protects and fulfils children's rights to help deliver the National Outcomes which underlie the [National Performance Framework](#), in particular, that children "grow up loved, safe and respected, so that they reach their full potential" and "we respect, protect and fulfil human rights and live free from discrimination".

On 1 September 2020, the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill was introduced to the Scottish Parliament and was passed unanimously on 16 March 2021. In October 2021, following referral by the UK Law Officers, the UK Supreme Court found certain of the provisions in the Bill to be outwith the legislative competence of the Scottish Parliament, as set out in the Scotland Act 1998. That judgment was addressed by returning a revised Bill to Parliament via the Parliamentary Reconsideration stage on 7 December 2023 when it was approved unanimously. It gained Royal Assent on 16 January 2024 and the section 6 duty will come into force 6 months from Royal Assent, on 16 July 2024.

The UNCRC (Incorporation) (Scotland) Act 2024 ("the UNCRC Act" or "the Act" for all references hereafter) will make Scotland the first country in the UK, and the first devolved nation in the world, to directly incorporate the UNCRC into domestic law and is a landmark piece of legislation in making sure Scotland is the best place to grow up.

¹ Scotland has a legislative and policy definition for wellbeing which is expressed through the aspiration that every child and young person will be Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, and Included (SHANARRI.)

3.3 Meaning of the ‘UNCRC requirements’

The term ‘UNCRC requirements’ is defined by section 1 of the Act as the rights and obligations set out in the [schedule of the Act](#). References throughout this guidance to the ‘UNCRC requirements’ mean the UNCRC requirements as will be incorporated by the Act rather than the full requirements in the Convention.

The Act has incorporated the direct text of the UNCRC to the maximum extent possible within the powers of the Scottish Parliament. Therefore, some aspects of the text have been ‘carved out’ and do not appear in the Act. Those ‘carved out’ elements refer to reserved matters under the Scotland Act 1998 that are outwith the legislative competence of the Scottish Parliament.

This includes, for instance, Article 11 (abduction and non-return of children) of the UNCRC which relates to the reserved matter of international relations, and Article 38 (war and armed conflicts) which relates to the reserved matter of defence. In some instances, only a phrase has been affected, for example in Article 7 (birth registration, name, nationality, care) the text “the right to acquire a nationality” has been removed as this relates to the reserved matter of immigration. All text from within the UNCRC and the First and Second Optional Protocols which was within the legislative competence of the Scottish Parliament has been included.

In addition, section 3 of the Act provides Scottish Ministers “power to modify the schedule” in certain circumstances. For example, if the UK Government ratified the Third Optional Protocol of the UNCRC, the section 3 power would enable Ministers to modify the schedule of the Act to also include the Third Optional Protocol to the maximum extent possible.

Section 2(3) of the Act contains a table setting out how certain references in the schedule should be read. For example, in which provisions certain terms are to be understood as referring to the United Kingdom or to Scotland.

The UNCRC requirements apply across the entire system of government and public administration in Scotland, and to any bodies across the public, third and independent sectors, where they too meet the definition of a ‘public authority’ as defined in sections 6(5), (6), (7) and (8) of the Act. This is covered more extensively in section 4.3 of this guidance.

3.4 International human rights context

In Scotland, human rights are a devolved matter. The Scottish Parliament also has competence to observe and implement international human rights treaties. In Scotland, civil and political rights are protected by the [Human Rights Act 1998](#) which incorporated the [European Convention on Human Rights \(ECHR\)](#) into UK law and makes it unlawful for the Scottish Parliament to enact legislation that is incompatible with the rights defined in the Human Rights Act. Scottish Ministers cannot act in a way that is incompatible with those rights.

The Scottish Government's vision is for a statutory human rights framework for Scotland that ensures the rights of every member of Scottish society are respected, protected and fulfilled, and that everyone can live with fundamental human dignity. Following on from the [recommendations of the National Taskforce for Human Rights Leadership](#) and a subsequent [public consultation](#), the Scottish Government will bring forward a new Human Rights Bill. The Bill will give effect to a wide range of internationally recognised human rights belonging to everyone in Scotland, within the limits of devolved competence, and strengthen domestic legal protections by making these rights enforceable in Scots law. In particular, the Bill will seek to bring an enhanced focus to the implementation of economic and social rights and will include specific rights for women, disabled people and people experiencing racism.

The UNCRC Act, which will ensure that children's rights are fully embedded in the law of Scotland, is a first step in achieving that larger ambition. The intent behind the Act is to ensure that the rights contained in the UNCRC are afforded the highest protection and respect possible within the current constitutional settlement.

The Act has the intent of delivering a proactive culture of everyday accountability for children's rights across public services in Scotland. As part of this, public authorities must take proactive steps to ensure compliance with children's rights in their decision-making and service delivery.

4. Part 2 of the UNCRC Act

This section explains Part 2 of the UNCRC Act.

4.1 Introduction to Part 2 and overview of guidance

This section relates to Part 2 of the Act. It briefly introduces the intentions of this part before providing an overview of the content of the subsections that follow.

As outlined above, the aim of Part 2 of the Act is to ensure that children's rights in Scotland are protected to the fullest extent possible through the requirement for all public authorities, including Scottish Ministers, not to act incompatibly with the UNCRC requirements (as defined in section 1 of the Act and explained in section 4.4 below). Part 2 of the Act also outlines legal remedies should they fail to do so and strengthens the powers of the Commissioner and the SHRC to bring or intervene in legal proceedings in relation to potential breaches (further explained in section 4.2 below).

The Act not only places legal duties on public authorities but also intends to improve the culture of children's rights in Scotland. [Non statutory guidance on taking a children's human rights approach](#) aims to support this shift by introducing how public authorities can build on their existing practice to secure better or further effect of the rights of children.

This guidance on the duties placed on public authorities by section 6 of the Act begins with definitions of specific terms within the Act (such as 'public function') and provides information about how the duty applies to the functions of public authorities. It also clarifies how the duty applies in relation to the public, voluntary and independent sectors.

Annexes A to C include an overview of some of the conceptual aspects underlying children's rights and the UNCRC, e.g. terms such as 'progressive realisation' and 'evolving capacities' and how these can be understood in relation to the UNCRC requirements; outline sources for interpretation of the UNCRC and its Optional Protocols, such as the General Comments and Days of General Discussion organised by the CRC; and include, a decision-making route map as well as a compatibility review framework, both of which can be used by public authorities to analyse when and how the duty applies to their services and functions.

Public authorities may also wish to consult [non-statutory guidance on taking a children's human rights approach](#) (CHRA), which includes suggestions on how to facilitate participation of children in decision-making, considerations around inclusive communication, raising awareness of child rights, budget allocation and the potential benefits of using a Child Rights and Wellbeing Impact Assessment (CRWIA) tool. While there is no legal requirement for public authorities to follow these suggestions, this guidance was published to help promote good practice.

Before we move on to those parts of the guidance specific to section 6, we will provide a brief overview of sections 7 to 10 of Part 2 of the Act which outline the provisions in the Act for legal challenges from children and their families, and the strengthened powers of the Commissioner and the SHRC at sections 11 and 12. The processes for remedies that can be awarded by the courts as well as the circumstances under which this can take place are also briefly outlined here.

4.2 Remedies for unlawful acts (sections 7 to 10)

The Act enables children who believe that public authorities have acted or intend to act incompatibly with the UNCRC requirements defined by the Act, to seek legal redress through the courts. This will provide a route to achieving justice for children and their families.

While the preference is to resolve disputes and complaints without the need to go to court (see sections 4.6.1 and 4.6.2 of [non-statutory guidance on taking a children's human rights approach](#), on child friendly complaints procedures and advocacy), litigation can play an important role in realising child rights and also has the potential more broadly to positively influence practice, policy and the law.

It is recognised that for many children seeking justice via a court or tribunal would be a daunting prospect and may not be their preferred option. The child friendly complaints process guidelines of the Scottish Public Services Ombudsmen (SPSO) (to be issued in Spring of 2024) will give consideration to how best to support children and their caregivers to potentially resolve complaints before these are lodged through the judicial system.

The Act contains three sections that contain the processes for seeking a remedy:

1. section 7 (“Proceedings for unlawful acts”) sets out the right to bring proceedings against a public authority which has acted (or proposes to act) unlawfully in relation to the UNCRC requirements. The UNCRC requirements may also be relied on in the context of other legal proceedings;
2. section 8 (“Judicial remedies”) deals with the possible remedy or relief that a court or tribunal could grant on finding that a public authority has acted, or was proposing to act, incompatibly with section 6(1); and
3. section 9 (“Restriction on proceedings in respect of judicial acts”) clarifies the process and parameters for seeking redress in respect of a judicial act.

Each section will now be explained in turn with an emphasis on the implications this may have for public authorities. This will be followed by an explanation of sections 11 and 12 on the new powers for the Commissioner and SHRC.

Proceedings for unlawful acts (section 7)

Every child can challenge actions (or planned actions) that breach the UNCRC requirements through the courts in respect of breaches that take place after the duties in the Act come into force. The UNCRC Act provides that where a public authority has been found to have acted (or proposed to act) in a way that is incompatible with the UNCRC requirements, the courts can award a remedy within its powers as it considers effective, just and appropriate. Damages may be awarded by a court or tribunal which has the power to award damages in civil proceedings. Children are in the process of growing, developing and understanding and therefore may not have capacity or access to raise legal proceedings. This is particularly so for children with additional needs or those experiencing violence, abuse and trauma.

Legal proceedings for an alleged breach of section 6(1) must generally be raised within one year from when the act complained of took place (section 7(9)) – though this is subject to any other rule in relation to the relevant procedure which imposes a stricter time limit (section 7(10)). There is an exception to the one-year time limit for an alleged breach which may have taken place at any point before a child reaches the age of 18 (section 7(11)). This means that a claimant who wishes to bring proceedings for a breach under the UNCRC Act can do so at any point during their childhood or for the period of one year after they have turned 18. In calculating the three month Judicial Review time limit, any time during which the person by or on whose behalf the application was made was under 18 is to be disregarded (section 7(13)). In addition to that, section 7(12) allows the court to disregard the year time limit at section 7(9) if it considers it equitable to do so.

The lack of a time-bar for most actions brought during the period whilst a claimant is a child means that proceedings could be brought against public authorities for a relatively considerable period of time after an alleged breach took place. Public authorities need to be aware of this possibility and may wish to consider any implications for their record and information management systems. It would be advisable to maintain a robust audit trail in relation to decision-making and service delivery.

Judicial remedies (section 8)

The Scottish Government recognises that it is important that relief or remedy is available for any breach of the UNCRC requirements and that children have access to effective remedies if such a breach occurs.

Courts or tribunals may grant such remedy or relief within its powers that it considers ‘effective, just and appropriate’ on finding that a public authority has acted incompatibly with the UNCRC requirements (or failed to act which has resulted in an incompatibility with the UNCRC requirements) and so unlawfully under section 6(1) of the Act (section 8(1)). The maximum disposals available to each court or tribunal (i.e. whether or not it may award damages in civil proceedings – section 8(2)) will depend on the existing specific rules by which it is governed. The court or tribunal, in deciding whether to grant damages and the quantification of damages (if applicable), would be required to consider whether the award would be necessary (and if so, the amount) to provide “just satisfaction” to the claimant (section 8(3)) in addition to any court rules pertaining to that court.

Child's view on effectiveness of reliefs (section 9)

Children must be given the opportunity to express their view on the effectiveness of any proposed relief, remedy or order in a manner that the child prefers (section 9(1)(a)(i)) or that would be suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child's preference (section 9(1)(a)(ii)). The court or tribunal must have regard to any views expressed by the child, taking into account the child's age and maturity (section 9(1)(b)). The court or tribunal is not required to comply with section 9(1) if it is satisfied that the child is not capable of forming a view (section 9(2)), however, the child is to be presumed to be capable of forming a view unless the contrary is shown (section 9(3)).

Restrictions on proceedings in respect of judicial acts (section 10)

For the purposes of the Act, courts and tribunals are included in the definition of public authorities, and they are bound by the section 6(1) duty to act compatibly with the UNCRC requirements. 'Judicial act' is defined by section 10(4). Judicial acts may be challenged on the basis of an alleged section 6(1) breach in certain circumstances, by way of an appeal, or in the Court of Session (including on an application to its supervisory jurisdiction if applicable) (sections 10(1)(a) – (c) and (2)).

No damages could be awarded against a court or tribunal if the judicial act which is being challenged was done in 'good faith' (section 10(3)).

Powers for the Commissioner for Children and Young People in Scotland and the Scottish Commission for Human Rights to bring or intervene in proceedings (sections 11 and 12)

The Act also makes provision supplementing the existing powers of the Commissioner for Children and Young People in Scotland (the 'Commissioner') and the Scottish Commission for Human Rights (the 'SHRC') to enable them to raise or intervene in proceedings under the Act.

The reason for this is to strengthen the SHRC's and Commissioner's existing functions, providing the power to bring litigation, with a view to ensuring that incompatibilities can be identified and brought to a court or tribunal, if necessary.

Section 11 of the Act amends the Commissioner for Children and Young People (Scotland) Act 2003, to give the Commissioner (CYPSC) the power to intervene in court proceedings in which a person claims that a public authority has acted or proposes to act unlawfully under section 6(1) of the Act (i.e. in breach of the UNCRC requirements, as incorporated in the Act). Section 12 amends the Scottish Commission for Human Rights Act 2006 to give the SHRC the same powers to intervene in such proceedings.

4.3 Definition of key terms

This section shares the definition of key terms in the Act, to support organisations to determine whether the section 6 duty is applicable to them.

4.3.1 Definition of functions of a public nature

Public functions are generally understood to be functions performed for the collective benefit of the general public. In relation to Human Rights and Equality Duties, the term ‘public function’ “refers to things that a public body or someone acting on its behalf does when delivering a public service or carrying out activities that are public in their nature. An activity is public in nature if it is something that a private individual or organisation would not normally do”², for example providing public health care or government policy making.

Private functions are generally understood to be acts that are conducted by individuals for their own interests or profits and are therefore not under government control. While there is always clearly an obligation to adhere to criminal law, the obligations are somewhat less clear for administrative, private and human rights law.

4.3.2 Definition of public authority

In understanding to whom the duty to act compatibly applies, it is helpful to refer to case law developed under the Human Rights Act (1998) (“HRA”) which contains a similar duty to not act incompatibly with a Convention right. Case law for the HRA distinguishes between “core” public authorities and “hybrid” public authorities. “Core” public authorities are described as “certain bodies that so obviously have the character of a public authority that it is not necessary to mention them”³, in other words those that do not need to be defined. Many of these are listed authorities under section 19 of the Act and examples include local authorities, government departments, the police and health authorities. “Hybrid” public authorities are those who carry out a mixture of public and private functions. This may include bodies from the private, voluntary and independent sector.

“Core” public authorities, who carry out functions which are clearly of a public nature (such as social care, housing, health and education which are publicly funded), need to ensure any functions which are within the legislative competence of the Scottish Parliament are compatible with the UNCRC requirements as provided for in section 6(1). These are functions under common law and from legislation originating⁴ from the Scottish Parliament. For these authorities there is no need to distinguish between private and public functions as all of their functions are considered to be of a public nature.

2 [Public functions and private services: A gap in human rights protection](#) | International Journal of Constitutional Law | Oxford Academic

3 *Quark Fishing Ltd v Secretary of State for Foreign and Commonwealth Affairs (No.2)* [2005] UKHL 57 para 85

4 Legislation may amend other enactments. Where this happens, text inserted into one enactment by another enactment is, for most legal purposes, considered to form part of the enactment into which it is inserted rather than being considered to be part of the enactment which inserted the text. The Act proceeds on this basis

In addition, it is important to note that section 6 applies to all “acts” of public authorities which means that it applies not only to specific functions of a public authority but to all acts of public authorities that are within the legislative competence of the Scottish Parliament. There is extensive jurisprudence on the meaning of “act” in the context of the HRA which clarifies that it should be given a “broad and purposive meaning”⁵. Examples of “acts” which may be covered by section 6(1) include recommendations, a preliminary decision (e.g. proposals made by local authorities which are put before the Government for approval), final decisions, advice (including general advice) and reports.

Bodies that undertake functions of both a public and a private nature will only fall within the scope of the Act in relation to their functions which are of a public nature. Their functions which are of a private nature are excluded from the legal duties of the Act. “Hybrid” public authorities who carry out a mixture of public and private functions will need to assess when and how the duty applies to these areas. For the HRA, this has sometimes meant that the courts have had to determine on a case by case basis which bodies are considered “public authorities” for the purpose of this Act. It has been stated that “[t]here is no single test of universal application”⁶ and factors to be considered by the courts include “the extent to which in carrying out the relevant function the body is publicly funded, or is exercising statutory powers, or is taking the place of central government or local authorities, or is providing a public service”⁷. However, it should be noted that section 6(7) of the Act states that “functions are not excluded from being functions of a public nature ... solely because they are not publicly funded”. This makes it clear that the source of funding is not a determining factor in deciding whether a function is public or private in nature. Nevertheless, it is likely that case law will play an important role in clarifying whether functions and acts are within or outwith the scope of the Act in relation to hybrid bodies and the private, voluntary and independent (PVI) sector.

The section 6 duty will not apply to bodies that do not have any functions of a public nature or where the nature of the acts are wholly private. This recognises that the obligations under the UNCRC (as with other human rights frameworks) are placed on the State. The Act states under section 6(8) that:

“In relation to a particular act, a person is not a public authority by virtue only of subsection (5)(a)(iii) if the nature of the act is private.”

Therefore, if the nature of an act is purely private, the duty to act compatibly with the UNCRC requirements does not apply. The Act does contain some subsections (i.e. section 6 (6 and 7)), that make it clear that the nature of the function performed rather than the characteristics of the body performing it are to be the primary consideration⁸.

5 R v Lambert [2002] 2 AC 545 – para 114

6 Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Wallbank [2004] 1 AC 546 at para 12

7 Aston Cantlow and Wilmcote with esley Parochial Church Council v Wallbank [2004] 1 AC 546 at para 12

8 Ferguson, E. (2022). Human Rights Reform and “Functions of a Public Nature”. The Edinburgh Law Review (26), 244-250.

Application to Private, Voluntary and Independent Sector

Expanding upon the above, the Act also specifies (in section 6 (6)) that functions carried out under contract or any other arrangement⁹ with a public authority are included in the definition of “functions of a public nature”:

“For the purposes of subsection (5)(a)(iii), “functions of a public nature” includes, in particular, functions carried out under a contract or other arrangement with a public authority”.

It will ultimately be for the court to determine whether or not a function is ‘public’. However, the section above makes clear that where a person or body is undertaking a function pursuant to a contract or other arrangement with a public authority, that person or body is required to act compatibly with the UNCRC requirements. Thus, a person or body under a contract or other arrangement with a public authority is classified as a ‘public authority’ for the purposes of the definition at section 6(6) and must comply with the section 6(1) duty. The duty applies to the specific function under consideration and not to the person or body as a whole.

However, it should be pointed out that when core public authorities contract out service delivery to private persons or bodies, public authorities do not escape liability if the functions are incompatible with the UNCRC requirements. Public authorities are not exempt from their duty not to act incompatibly with the UNCRC requirements by virtue of ‘contracting-out’. Both the privately contracted person or body and the public authorities have to comply with the section 6(1) duty in respect of that function, and entering into a contract or arrangement does not shift the burden from one party to the other.

This is true also where services are commissioned by a party or consortium of public authorities. However, only those parties who hold the original obligation to deliver the service of a public function would retain the duty under section 6 - it would not be conferred to other parties in the joint commission. While not mandatory, public authorities may wish to include a clause in their contracts or other arrangements (such as grants) that specifies that the contractor must, in the performance of the contract, act in accordance with relevant UNCRC requirements.

Questions for working with PVI organisations

It is important to note that each case must be considered on its own merits. The recommendation is to seek legal advice, if in doubt. When making an assessment of whether acts or functions carried out by individuals and/or organisations within the private, voluntary or independent sector have to be compatible with the UNCRC requirements in line with section 6 of the Act, the following questions can assist in the analysis:

- Is there an arrangement between a known or recognised public authority (e.g. core or hybrid) and the private person or organisation?
- Does the arrangement involve a function that delivers a public service?
- Is the service being delivered under contract or any other arrangement, one which the public authority would also have a legal responsibility or duty to deliver?

If the answer to any of these questions is ‘yes’, then it may be likely that the individual or organisation must comply with the duty under section 6 of the Act. As stated above, the recommendation is to seek legal advice, if in doubt.

⁹ Other arrangements can include publicly funded or grant aided provisions such as publicly funded early learning and childcare, publicly funded provision at independent schools, and grant aided educational provision.

4.4 Explanation of the duties on public authorities in Part 2, section 6

Nothing in this Part prevents a public authority from acting compatibly in any situation where they are carrying out functions in relation to children. As the UK has ratified the UNCRC, compliance is in any event expected under international law obligations, unless the legislation prevents a public authority from acting compatibly.

A children's human rights approach will support organisations to improve service delivery for children and young people; the Scottish Government published [non statutory guidance on taking a children's human rights approach](#) on 8 January 2024.

Section 6 places a duty on public authorities not to act incompatibly with the UNCRC requirements in schedule 1 of the Act. This includes failures to act, that would result in an incompatibility with the UNCRC requirements. The UNCRC requirements are explained in section 3.3 of this guidance.

This means action could be taken by a court against a public authority in respect of a breach of their duties if they act incompatibly when the duty applies.

The circumstances in which a public authority can be found to have acted unlawfully on this basis are where an action or failure to act is incompatible with the UNCRC requirements.

This duty applies when public authorities are carrying out 'relevant functions' which are defined in the Act as:

(2) In subsection (1), a "relevant function" means a function that—

- a. it is within the legislative competence of the Scottish Parliament to confer on the authority, and
- b. is conferred by—
 - (i) an Act of the Scottish Parliament,
 - (ii) a Scottish statutory instrument originally made wholly under a relevant enabling power,
 - (iii) a provision in a Scottish statutory instrument originally made partly under a relevant enabling power, provided that the provision itself was either—
 - (A) originally made under the relevant enabling power, or
 - (B) inserted into the instrument by an Act of the Scottish Parliament or subordinate legislation made under a relevant enabling power, or
 - (iv) a rule of law not created by an enactment

Legislative Competence- 2(a)

To be within the competence of the Scottish Parliament a function must not relate to reserved matters. The UNCRC requirements in schedule 1 to the Act, as detailed at section 1.3 of this guidance, are of assistance here. The articles or aspects of the articles of UNCRC which are reserved are not included in the UNCRC requirements. The legal duty therefore does not apply to any reserved functions, but public authorities can still choose to act compatibly unless the source of the reserved function prevents them from doing so.

Common law functions- 2(iv)

The “rule of law” refers to what is known as “common law”. Common law refers to case law developed over time by decisions made by the courts – this can also be referred to as judicial precedent, or case law. Courts can interpret legislation and set out findings which explain how public authorities must comply with their statutory duties. An example of this is how the courts have interpreted the duty not to act incompatibly with the ECHR, as set out in the Human Rights Act. Individual public authorities should seek their own legal advice in relation to how case law may impact upon how they should carry out their functions. When a public authority is carrying out functions derived from common law powers, they will always be required to not act incompatibly with UNCRC requirements.

Legislation- 2(b)

The word “legislation” means the same as the word “enactment”. The types of legislation to which the duty applies are specified as functions¹⁰ enacted by the Scottish Parliament, or enacted by virtue of the Scottish Parliament delegating its power to make legislation to Scottish Ministers. This means that the duty will apply to stand alone provisions in Acts of the Scottish Parliament (ASPs), or subordinate legislation which are made using powers from an ASP.

Legislation may amend other pieces of legislation; when it does, text inserted into one enactment by another enactment is generally considered to form part of the enactment into which it is inserted, rather than being considered to be part of the enactment which inserted the text. The definition of the compatibility duty proceeds on this basis, and means that the duty does not apply to text inserted by ASPs (or subordinate legislation made under powers in ASPs) into other enactments (such as UK Acts or subordinate legislation made under powers in a UK Act).

To help determine whether the duty applies, a public authority would need to identify whether the statutory function in question was enacted by the Scottish Parliament or the UK Parliament.

UK Act amendments to ASPs

As a result of this approach to statutory interpretation, amendments to ASPs by UK legislation **are** covered by the duty. However, to avoid affecting the UK Parliament’s ability to make law for Scotland, provision is made to remove such amendments from the scope of the section 6 duty, **if** the UK legislation which makes the amendment is worded in a way that the authority is required or entitled to act incompatibly.¹¹

¹⁰ listed in sub-paragraphs (i) to (iii)

¹¹ Section 6 (4) of the [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#)

Secondary legislation

Scottish Statutory Instruments (SSIs) made using powers solely from ASPs are also covered by the duty.

SSIs made **partly** under a power conferred by an Act of the Scottish Parliament and **partly** under a power conferred by an Act of UK Parliament are within the scope of the Act. However, only functions conferred by provisions which were enacted solely by virtue of the power conferred by the Act of the Scottish Parliament, plus provisions inserted directly into the instrument by an Act of the Scottish Parliament, are subject to the duty.

In summary, this means that:

- functions conferred by Acts of UK Parliament,
- statutory instruments made solely under powers conferred by Acts of Parliament, and
- provisions of Scottish statutory instruments made under a power conferred by an Act of Parliament are not subject to the duty.

As functions in reserved areas are already excluded, the definition of “relevant function” in relation to Scottish Statutory Instruments mainly serves, in practice, to exclude devolved functions created by or under the authority of the UK Parliament.

Summary of coverage in legislation

In summary, the duty will apply to devolved functions created by legislation of the Scottish Parliament and does not extend to devolved functions created by legislation of the UK Parliament. There is however no barrier to a public authority choosing to act compatibly under all or any of their devolved functions, unless the legislation itself makes it unlawful to do so.

Acting compatibly under section 6

To meet the section 6 duty means not to act incompatibly with the UNCRC requirements. Annexes A and B provide assistance in how to approach this.

Annex A. Clarification of conceptual aspects of the UNCRC

The UNCRC, as an international treaty, lays down common standards for the rights of all children across the globe. Given its international status, the Convention also takes into account the different cultural, social, economic and political realities of individual States Parties, so that each State may seek its own means to implement the rights common to all children.

In this section, central concepts of the international Convention will be explained to assist public authorities in Scotland when considering their duty to act compatibly with the UNCRC requirements under the Act. It is important to keep in mind that these concepts apply, at the international level, to States which are party to the Convention, and are not definitive or authoritative as to how the UNCRC requirements in the Act will be interpreted in Scots law as applying to public authorities. While they may provide guidance, these concepts can be interpreted differently across different audiences, and there are many sources which may assist in further understanding and interpreting them. This section is therefore not intended to be a definitive or authoritative source but instead aims to provide useful guidance.

In addition, while the Convention refers to responsibilities and duties of “State Parties”, such references in the UNCRC requirements in the Act are to be read as including public authorities.

A.1 Four general principles of the Convention

There are four articles in the Convention which are known as the “General Principles”. These assist in interpreting all the other articles and can play a fundamental role in realising the rights in the Convention for all children. These are also useful when considering how to give practical effect to taking a rights-based approach. The General Principles include:

- non-discrimination (Article 2)
- best interests of the child (Article 3)
- right to life, survival, and development (Article 6)
- right to be heard in decision-making (Article 12).

Children’s civil, political, economic, social and cultural rights are expressed within the first 42 articles of the Convention, and all articles have equal status. Therefore, whilst the General Principles are a useful lens through which to consider the rights of children, they should not be considered paramount or in any way imply a hierarchy of rights.

Considered together, the General Principles help to construct a perception of children and childhood, one where they are equal to their adult counterparts. The General Principles contribute to the enhancement of a positive attitude towards children and their rights.

Article 2: Non-discrimination

The obligation to treat all children equally is expressed in Article 2 which states:

“1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members”.¹²

It should be noted that this Article includes both direct and indirect discrimination. Direct discrimination occurs where a person is treated unfairly compared to others in the same situation because of a protected characteristic, for example sex or disability. An example of this would be a selective school imposing a higher pass mark for applicants from an ethnic minority background, or to girls. This would be direct race or sex discrimination.¹³ Direct discrimination can also occur where a person is treated unfairly because they are linked or associated to another person, for example a parent or carer with a protected characteristic. An example of this would be if a child is treated unfavourably because their parents are in a same-sex relationship. This would be discrimination by association because of the parents’ sexual orientation.¹⁴

Indirect discrimination occurs where a policy, rule or criterion applies to everyone but puts a particular group with a protected characteristic at a disadvantage. An example of this would be where a school does something which applies to all children, but is more likely to have an impact on disabled children; for instance, a school only allows pupils to go on a cultural trip abroad if they have more than 95 per cent attendance. This does not take into account instances where a pupil with a long-term medical condition has missed a lot of school for health reasons and is told they cannot go.¹⁵

Article 3: Best interests of the child

Article 3 states that:

1. “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”

¹² [United Nations \(1989\). Convention on the Rights of the Child. \[online\] OHCHR.](#)

¹³ [What equality law means for you as an education provider: schools](#)

¹⁴ [Direct and indirect discrimination | EHRC](#)

¹⁵ [Disability discrimination in school](#)

The best interests principle and its interpretation is explained in [General Comment 14 which defines it as a threefold concept](#):

1. As a right: This refers to the right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake. This should also translate into a guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general.
2. As a principle: If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for such an interpretation.
3. As a rule of procedure: Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned.¹⁶ Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision should show that the right has been explicitly taken into account. This may take the form of showing how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases.

It may also be useful for public authorities to consider how this article applies in relation to issues not directly related to the provision of services to children, as children's interests may be affected by decisions and activities that are not ostensibly 'about' them in the first instance.

Article 6: Right to life, survival and development

Article 6 states that:

1. "States Parties recognise that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child."

The right to life has been understood to refer to both a civil and political as well as an economic, social and cultural right.¹⁷ The interpretation of the right to life as a civil and political right provides the right to be safeguarded against arbitrary killing and the "entitlement to be free from acts and omissions intended or expected to cause their unnatural and premature death".¹⁸

16 Refworld | [2021 UNHCR Best Interests Procedure Guidelines](#): Assessing and Determining the Best Interests of the Child

17 UN Committee on the Rights of the Child (CRC), [General comment No. 21](#) (2017): Children in street situations, 21 June 2017, CRC/C/GC/21

18 UN Committee on the Rights of the Child (CRC), [General comment No. 21](#) (2017): Children in street situations, 21 June 2017, CRC/C/GC/21

As stated earlier, the Convention articles are indivisible (section 3.1) and should be read in conjunction with the guiding principles and substantive rights within the Convention. In relation to the right to survival and development, General Comment 7 explains that this can only be implemented in a holistic manner, through the enforcement of all other provisions of the Convention, including “[rights to health](#), adequate nutrition, social security, an adequate standard of living, a healthy and safe environment, education and play”¹⁹ (articles 24, 27, 28, 29 and 31). The right to ‘development’ in this context is not defined in the Convention but the Committee has stated that States Parties to the Convention should interpret the term as a “holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological and social development”.²⁰ The principle of ‘maximum available resources’ is discussed further in section A.4 below.

Article 12: Views of the child

Article 12 states that:

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.”

This article has often been understood to refer to the right of children to participation. It addresses issues pertaining to the social and legal status of the child, seeking to ensure that children are firstly able to express their opinions on matters that affect them, and secondly, for those children who are capable of forming their own views, to have these views given due weight in accordance with the age and maturity of the child. General Comment 12 points out that the expression of views generally forms part of “ongoing processes, which include information-sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcome of such processes”.²¹ The concept of participation is understood as the inclusion of children in decision-making being the starting point for an exchange between children and those responsible for the development of policies, programmes and measures in all relevant contexts of children’s lives.

The CRC Implementation Handbook²² stresses the importance of a wide interpretation of Article 12, including the phrase “in all matters affecting the child.” It explains that in the initial working group drafting the provision, the group considered a list of matters affecting the child and decided matters “should not be subject to the limits of a list, and therefore the list ought to be deleted” (2007:155).

19 UN Committee on the Rights of the Child (CRC), [General comment No. 7](#) (2005): Implementing Child Rights in Early Childhood, 20 September 2006, CRC/C/GC/7/Rev.1. [online]

20 UN Committee on the Rights of the Child (CRC), [General comment no. 5](#) (2003): General measures of implementation of the Convention on the Rights of the Child, 27 November 2003, CRC/GC/2003/5

21 UN Committee on the Rights of the Child (CRC), [General Comment No. 12](#) (2009) The right of the child to be heard. Save the Children’s Resource Centre

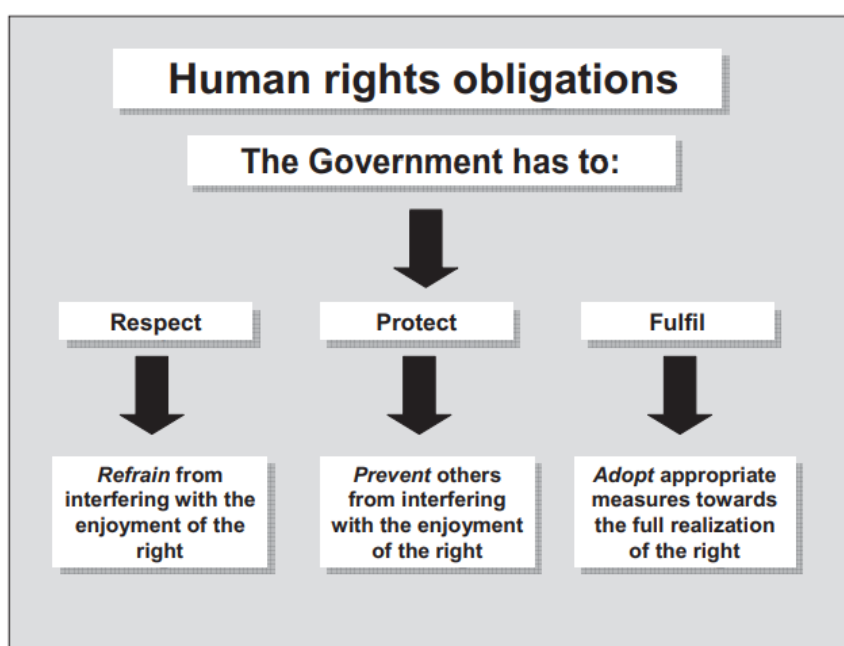
22 UN Children’s Fund (UNICEF) [Implementation Handbook for the Convention on the Rights of the Child](#), September 2007

In complying with their duties under the Children and Young People (Scotland) Act 2014, Scottish Ministers must take such account, as they consider appropriate, of any relevant views of children of which the Scottish Ministers are aware. When the UNCRC Act becomes law, both Scottish Ministers and public authorities will have a duty not to act incompatibly with Article 12 of the UNCRC, as incorporated. General Comment 12 gives more information about this article, including in specific types of decisions such as separation of parents, custody, care and adoption and health care. The Committee makes a distinction between the right to be heard as an individual child and the right to be heard as applied to a group of children (e.g. a class of school children, the children in a neighbourhood, the children of a country, disabled children, or girls).

Paragraph 2 of Article 12 refers to the right, in particular, for children to be heard in any judicial and administrative proceedings affecting them, either directly or through a representative or appropriate body, in a manner consistent with the procedural rules of national law. The Committee emphasizes that this provision applies to all relevant judicial proceedings affecting the child, without limitation, including, for example, proceedings relating to social security, separation from parents, custody, care and adoption, children in conflict with the law, child victims of physical or psychological violence, sexual abuse or other crimes, amongst others. Typical administrative proceedings include, for example, decisions about children's education, health, environment, living conditions, or protection.

A.2 Respecting, protecting and fulfilling children's rights

In international law, requirements on the State in relation to human rights are expressed differently in various human rights treaties. In order to categorise the different types of human rights obligations, they are sometimes organised under three headings according to the action the State must take: to respect, to protect and to fulfil human rights. The following diagram from the Office of the United Nations High Commissioner for Human Rights (OHCHR) explains this more fully:²³



23 OHCHR (undated). Frequently Asked Questions on Economic, Social and Cultural Rights. [Fact Sheet No 33](#)

All three concepts are crucial for the full realisation of rights and may pertain to different aspects of certain rights. An example from the right to health demonstrates these differences:

Respect: the State must not deny access to health facilities on a discriminatory basis.

Protect: the State must control the quality of medicines marketed in the country by both public or private suppliers.

Fulfil: the State must facilitate the enjoyment of the right to health by, for example, establishing universal vaccination campaigns for children.²⁴

A.3 Progressive realisation

Public authorities may find it useful to consider the international legal concept of “progressive realisation” when reflecting on how best to fulfil their duties under the Act. Under the Act, public authorities will have a duty to not act in a way which is incompatible with the UNCRC requirements as set out in the Schedule to the Act, however, it is not yet known how the term “progressive realisation” will be interpreted in the context of domestic legislation.

The concept of “progressive realisation” in the international Convention refers to the obligation on the State to take steps towards the full realisation of children’s rights, using available resources to a maximum extent. The concept has been interpreted by the CRC as applying, to Articles 4 and 24-32 of the Convention.

Article 4 of the Convention states that, States are required to “undertake all appropriate legislative, administrative and other measures to implement the rights recognised in the Convention”. This refers to the immediate duties which apply to the civil and political rights within the Convention. Article 4 also specifies that in regard to economic, social and cultural (ESC) rights, States must “undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation”.

Central to this concept in international law is that progress must be made over time towards the full realisation of these rights, in recognition that this process can be hampered by a lack of resources and may only be achieved over a period of time.²⁵ States’ plans to take action to improve child rights realisation are an important mechanism for showing progress and are viewed in the light of the resources available to them. The term ‘resources’ includes not only financial means but may also refer to human or organisational resources.²⁶

Progressive realisation has sometimes been interpreted to mean that States do not have to fully implement children’s rights until they have sufficient resources to do so. This is not an interpretation supported by the CRC. The responsibility on States to take appropriate steps is understood in international law as involving constant efforts to improve the enjoyment of children’s rights.

A lack of resources should therefore not be used by the State to justify inaction or indefinite postponement of measures to implement children’s rights. This means that, while their full realisation may be achieved progressively, steps towards that goal must be taken within a reasonably short time. Such steps should be deliberate, concrete and targeted as clearly as possible, using all appropriate means.

24 OHCHR (undated). Frequently Asked Questions on Economic, Social and Cultural Rights. [Fact Sheet No 33](#)

25 OHCHR (undated). Frequently Asked Questions on Economic, Social and Cultural Rights. [Fact Sheet No 33](#)

26 UN Children’s Fund (UNICEF) [Implementation Handbook for the Convention on the Rights of the Child](#), September 2007

The OHCHR has provided some examples of steps that States could take towards progressively realising rights in line with international requirements.²⁷ It is important to keep in mind that these examples are not definitive or authoritative as to how the UNCRC requirements in the Act will be interpreted in Scots law as applying to public authorities. However, public authorities may wish to take these examples into account when considering their duty to not act incompatibly with the UNCRC requirements under the Act:

- Assessing the current state of enjoyment of children's rights, including ensuring adequate mechanisms to collect and assess relevant and suitably disaggregated data;
- Formulating strategies and plans, incorporating indicators and time bound targets, which should be realistic, achievable and designed to assess progress in the realisation of children's rights;
- Adopting child rights-based practices and policies, and providing adequate resources to put the plans and strategies into practice;
- Regularly monitoring and assessing the progress made in the implementation of the plans and strategies;
- Establishing or utilising existing complaints mechanisms so that children and young people and their families or carers can complain if a public authority is not meeting their responsibilities.

Monitoring the progressive realisation of children's rights:

The gathering of reliable and relevant information on the status of children's rights, e.g. the extent to which they are implemented and being enjoyed by children, is important for monitoring States' progressive realisation of rights in international law. With precise data, discussions regarding steps to be taken will be better informed and focused. In considering their duties under the Act, public authorities may therefore wish to monitor the realisation of children's rights in order to understand what further steps need to be taken.

This may include identifying trends, such as measuring changes in literacy rates and any inequalities in educational attainment over time and the analysis of budgets, and in particular, trends in budget allocations (for a fuller explanation, see section 4.2.2 on budget allocation in [non-statutory guidance on taking a children's human rights approach](#)). The findings from this monitoring could be used to comply with the Reporting Duty under Section 18(1) of the Act, which provides that listed authorities must publish a report on the actions it has taken during a reporting period, and intends to take over the next period, to both ensure compliance with the compatibility duty as well as to secure better or further effect of the rights of children.

27 OHCHR (undated). Frequently Asked Questions on Economic, Social and Cultural Rights. [Fact Sheet No 33](#)

A.4 Maximum available resources

Under the Act, public authorities have a duty to not act in a way which is incompatible with the UNCRC requirements set out in the schedule to the Act, however, it is not yet known how the term “to the maximum extent of their available resources” will be interpreted in the context of domestic legislation.

The term “maximum extent of their available resources”, contained within Article 4 of the Convention, is understood in international law as containing two important elements: firstly, the recognition that the availability (or absence) of resources plays a crucial role in the realisation of children’s rights in the economic, social and cultural sphere; and secondly, that where those resources are available, States should make efforts to deploy them in ways that further the fulfilment of rights. The Convention recognises that some of the more costly reforms cannot take place overnight. It specifies, for instance, that the rights to health care (Article 24) and education (Article 28) may be achieved “progressively”.

To comply with effective implementation of children’s rights, States must show that the rights have been progressed using the “maximum extent of available resources”. In international law this is understood to mean generating, allocating and spending resources in a way that is effective and efficient for the realisation of children’s rights (see section 4.2.2 on budget allocation in [non-statutory guidance on taking a children’s human rights approach](#)) and States are expected to demonstrate they are taking steps to improve the enjoyment of children’s rights, even when resources are scarce.

There are substantive and procedural elements of ESC rights within the Convention which are not subject to progressive realisation, but certain elements within the overall right are interpreted in international law as requiring immediate protection, such as the provision of free primary education within Article 28, basic shelter and housing within Article 27 and access to specific medicines at all times within Article 24. These are known in international law as minimum core obligations²⁸ (MCOs) and are understood as “a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each article of the rights”.²⁹

The Act does not specify the minimum core of the UNCRC requirements and so it will be a matter for the courts, when interpreting the compliance duty in the Act, to decide what the appropriate minimum essential levels for ESC rights might be in Scotland.

28 CRC, [General comment No. 19](#) (2016) on public budgeting for the realisation of children’s rights (art. 4)

29 Committee on Economic, Social and Cultural Rights, [General Comment No. 3](#), 1990

A.5 Evolving capacity

Evolving capacity is a term which is not defined in the Convention but is referred to in two different Articles within the Convention, namely Article 5 and Article 14(2) and it may also be significant in relation to Article 12. The Committee defines this term in international law as “an enabling principle that addresses the process of maturation and learning through which children progressively acquire competencies, understanding and increasing levels of agency to take responsibility and exercise their rights”.³⁰

“Evolving capacities” is therefore a term used to refer to the child’s own increasing ability to make reasoned decisions in different parts of their life.³¹ The Committee has provided guidance in General Comment 20, and has stated that, “the more a child knows and understands, the more his or her parents will have to transform direction and guidance into reminders and gradually to an exchange on an equal footing”.³² A child’s capacity develops gradually, and in different ways. It may depend on a child’s experiences, education and maturity, as well as the complexity and magnitude of the decision being made.³³

This principle of evolving capacities within international law may have profound implications for the rights of the child. The Convention recognises that children in different environments and cultures who are faced with diverse life experiences and circumstances will acquire competencies at different ages. It also allows for the fact that children’s capacities can differ according to the nature of the rights to be exercised. Children, therefore, require varying degrees of protection, participation and opportunity for autonomous decision-making in different contexts and across different areas of decision-making.

The concept of evolving capacities within international law is central to the balance embodied in the Convention between recognising children as active agents in their own lives, who are entitled to be listened to, respected and granted increasing autonomy in the exercise of their rights, while also being entitled to protection in accordance with their level of maturity and youth. As Lansdown (2005, p.9) explains: “This concept provides the basis for an appropriate respect for children’s agency without exposing them prematurely to the full responsibilities normally associated with adulthood”³⁴. However, it is important to note that the concept is different from legal capacity, which in Scotland is defined through the Age of Legal Capacity (Scotland) Act 1991 and which sets out the specific provisions for persons under the age of 18 in regard to their legal capacity.

30 UN Committee on the Rights of the Child (CRC). [General comment No. 20](#) (2016) on the implementation of the rights of the child during adolescence (paragraph 1) 6 December 2016, CRC/C/GC/20.

31 The Children and Young People’s Commissioner Scotland. [What are evolving capacities?](#)

32 UN Committee on the Rights of the Child (CRC). [General comment No. 20](#) (2016) on the implementation of the rights of the child during adolescence (paragraph 1) 6 December 2016, CRC/C/GC/20.

33 The Children and Young People’s Commissioner Scotland. [What are evolving capacities?](#)

34 Lansdown, G. (2005). [The Evolving Capacities of the Child](#)

What does the Convention say about evolving capacities?

As mentioned previously, the concept of evolving capacities is referred to in two articles within the Convention, Article 5 and Article 14(2) and may also be important in relation to Article 12. The full text of Article 5 states:

“States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention”.³⁵

However, the term ‘evolving capacities’ is not defined in the Convention nor the UNCRC Act. Guidance from the UN Committee in the form of General Comment No 20³⁶ provides useful information about the rights of the child during adolescence. When a child is younger, they may need more protection, as they may be more likely to make choices without considering or understanding the consequences. As a child develops into adolescence, the parents or other persons legally responsible for the child, need to fulfil with care their obligation to provide appropriate direction and guidance in accordance with the evolving capacities of the child. The concept of evolving capacities also applies to Article 14 which specifically covers a child’s right to freedom of thought, religion and conscience. Article 14(2) states that, “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”.³⁷

The concept of evolving capacities may also be important with regards to Article 12 of the Convention. As mentioned previously, this article relates to the views of the child. It states that “State 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”. This recognises the importance of considering the views of children in matters affecting them and that they should be taken seriously in accordance with their evolving capacities.³⁸ The concept of evolving capacities should never be used to dismiss a child’s view. Adults can ensure they have a better idea of what’s important to the child by taking into account children’s views.

35 United Nations (1989). [Convention on the Rights of the Child OHCHR](#).

36 UN Committee on the Rights of the Child (CRC). [General comment No. 20](#) (2016) on the implementation of the rights of the child during adolescence (paragraph 18) 6 December 2016, CRC/C/GC/20.

37 United Nations (1989). [Convention on the Rights of the Child OHCHR](#).

38 The Children and Young People’s Commissioner Scotland (2006). [Article 12 - I have the right to be listened to and taken seriously](#).

Annex B. Sources to guide interpretation

There are many sources of interpretation for the international Convention that may provide guidance for public authorities when considering their duty not to act incompatibly with the UNCRC requirements under the Act. As above, it is important to keep in mind that these sources apply at the international level, to States which are party to the Convention, and are not definitive or authoritative as to how the UNCRC requirements in the Act will be interpreted in Scots law as applying to public authorities. The following sources may assist public authorities when considering their duties under the Act:

- General Comments which aim to provide guidance and additional clarity on the interpretation of the Convention
- Concluding observations on the UK, where the Committee comments as part of their reporting cycle on any progress achieved, any areas of concern and provides recommendations on what needs to change for the UK Government and devolved governments to improve implementation of the Convention
- Reports from Days of General Discussion, where the Committee invites experts to discuss a significant issue impacting human rights³⁹.

B.1 Committee on the Rights of the Child

The Committee on the Rights of the Child is the body of [18 independent experts](#) set up by the UN to monitor the progress that State Parties to the Convention have made in relation to implementation of the Convention.

State Parties which have adopted the Convention are obliged to submit [regular reports](#) to the Committee on implementation of the Convention. States must submit an initial report two years after acceding to the Convention and then periodic reports every five years. The Committee examines each report and addresses its concerns and recommendations to the State Party in the form of “concluding observations” (see section B.4 on concluding observations in response to periodic state reports).

The Committee has a range of responsibilities, it provides and issues General Comments, Concluding Observations, views and findings under the third Optional Protocol (not yet ratified by the UK) and recommendations following days of general discussion.

These responsibilities all form part of sources which can assist in interpreting the international Convention, and are available on the [United Nations High Commissioner for Human Rights \(OHCHR\) website](#).

B.2 General Comments

The Committee makes recommendations on issues relating to children to which it believes the State Parties should devote more attention. [General Comments](#) provide interpretation and analysis of the international Convention articles to help State Parties understand how the Convention can be put into practice. For example:

- [General Comment 5](#) outlines States parties' obligations to develop what it has termed "general measures of implementation"
- [General Comment 12](#) specifically focuses on a child's right to be heard
- [General Comment 10](#) looks at children's rights in juvenile justice, and highlights important core elements needed for a comprehensive policy focussing on prevention of juvenile delinquency, intervention without resorting to judicial proceedings and diversion (e.g. referral to alternative (social) services)
- [General Comment 14](#) highlights the right of the child to have their best interests taken as a primary consideration

The full list of final [General Comments](#) are available on the UN online [database](#), including supporting documents which aim to assist with interpretation. When considering how to implement children's rights across their services, public authorities may find consideration of relevant General Comments useful in supporting their understanding of how the Convention is analysed and interpreted at an International level. General Comments and Concluding Observations provide a source of international expert opinion which experts and children's rights observers, as well as rights holders, will be keen to see public authorities considering during implementation. It has been suggested that drawing on the learning and expertise included in the General Comments may enable Scotland to keep pace with developments in international law and practice.⁴⁰

B.3 Days of General Discussion

The [Days of General Discussion](#) are convened by the Committee every two years. They provide an opportunity to develop a deeper understanding of the contents and implications of the Convention under international law as these relate to specific articles or topics.

In particular, the Days of General Discussion offer an opportunity to engage directly in a dialogue with members of the Committee and other relevant stakeholders, and more importantly, to hear from children and young people with lived experience.

Representatives of Governments, non-governmental organisations, United Nations human rights mechanisms, United Nations bodies and specialised agencies, national human rights institutions, the business sector, as well as individual experts and children are invited to take part.⁴¹

As a recent example, during its 81st session, the Committee decided to devote its 2020 Day of General Discussion to the issue of children in alternative care. Other recent topics have included children's rights and the environment, digital media and children's rights, and children of incarcerated parents. A [full list of topics and reports](#) can be accessed through the United Nations website.

40 Scottish Government, 2019, [United Nations Convention on the Rights of the Child: consultation analysis](#)

41 Office of the High Commissioner of Human Rights, [Days of general discussion](#)

B.4 Concluding observations in response to periodic state reports

The international Convention requires State Parties to the Convention to report on the steps they have taken to give effect to the Convention. The Committee reviews these reports and may, usually after a period of engagement and clarification with the State Party, produce a set of country-specific suggestions and recommendations known as ‘Concluding Observations’, highlighting positive practice and recommending areas for improvement. The Scottish Government was last examined by the Committee in May 2023 as part of UK State Reporting.

Annex C. Framework for reviewing compatibility with UNCRC requirements (section 6 duty)

Introduction

This document⁴² presents a framework that public authorities may choose to use to review compatibility with the ‘UNCRC requirements’ as defined by the UNCRC Act. It outlines a three-step process which involves a preparation phase, followed by the actual review and concludes with considerations of actions that may result from the review. A checklist which lists key questions for public authorities to consider is provided at the end of the document together with a list of resources.

The UK, as a State Party, has ratified the UNCRC and the First and Second Optional Protocols. They are therefore binding on the UK as a matter of international law. Article 4 of the UNCRC requires States Parties to “undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention”. In line with the Scottish Ministerial Code and as a responsible government, Scottish Ministers are already committed to the principles of the UNCRC and to complying with the UNCRC in devolved areas. As such, all legislation in devolved areas should already be compliant with the UNCRC and it is the responsibility of the Scottish Government to ensure that legislation in devolved areas is compliant with the UNCRC requirements.

This framework is intended to assist public authorities to review their own functions in accordance with the UNCRC requirements.

The rest of this introduction will now explain what is meant by “acting compatibly with the UNCRC requirements” by unpacking and clarifying each of these components. It explains who would need to comply with the Act as well as how the framework can be used. The introduction concludes with a synopsis of the review process.

What does “compatibility with the UNCRC requirements” mean?

The UNCRC requirements are explained at section 3.3 of this guidance. In legal terms, ‘acting compatibly’ refers specifically to the legal requirement to act in a manner that is consistent with something else, in this instance to act in a way which is consistent with the rights as outlined in the UNCRC requirements.

In relation to the application of law, compatibility means interpreting and giving effect to the law in a way which is as close to the UNCRC requirements in the Act as possible. In the context of human rights conventions and treaties, a general rule is that articles of a convention should be interpreted honestly (in good faith) in line with the “common sense meaning” of the terms of the Convention within their context and in light of the purpose of the convention⁴³. A “common sense meaning” of a term can refer to the conventional understanding based on the original language used in the text, but can also be adapted and interpreted by the courts to include current

⁴² The format of the framework was based on [Right First Time](#): A practical guide for public authorities in Scotland to decision-making and the law - third edition

⁴³ Vienna Convention on the Law of Treaties, Article 31 “General rule of interpretation 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”.

meanings that fulfil the intention of the Convention⁴⁴. The context refers to the entire text of the Convention, including its preamble and annexes. The purpose of the Convention needs to be derived from its overall intention as exemplified in its entire text, but referred to specifically in the four articles known as the ‘general principles’ (see section A.1 of this guidance).

When seeking to establish if actions or functions are compatible with a legal requirement, it is necessary to understand what the legal requirement is and the next few sections will aim to explain this in more detail.

Who is this Framework for: “functions of a public nature”

This framework can be used by all with a duty to comply with section 6 of the Act. The Act mandates public authorities, Scottish Ministers, courts and tribunals and “any person certain of whose functions are functions of a public nature” to act compatibly. The meaning of the term ‘public authority’ has been drawn intentionally wide in the Act so as to include not only those public authorities which routinely provide public services, but also other bodies when they exercise functions of a public nature.

Please refer to section 4.3 of this guidance for definitions of key terms in the UNCRC Act, including, ‘functions of a public nature’ and ‘public authority’.

Who should undertake the compatibility review process?

Once an organisation considers itself, by virtue of the functions it delivers, to be a public authority for the purposes of the Act, they may wish to consider when and how to undertake a review of compatibility, and whom to involve.

Whilst public authorities will be accustomed to the legislation in their statutory context, and will have pre-existing processes in place to ensure this, for the purposes of undertaking a review of compatibility against the UNCRC requirements, the following is recommended:

1. Those undertaking the review have an understanding of child rights and the UNCRC requirements (see sections 3.1 and 3.3 of this guidance)
2. Ensuring, in the process of awarding the contract or other arrangement, that both bodies collaborate to undertake the compatibility review, i.e. those who hold the original obligation to deliver the service of a public function and those delivering the service
3. Those undertaking the review have considerable insight into the specific measure, service or policy area under consideration
4. Working in partnership with other public authorities who deliver the same or similar functions, to support the sharing of learning and to reduce duplication of effort, where possible
5. Where different groups/ individuals within the public authority are undertaking reviews on separate acts, they communicate frequently to ensure consistency of application and understanding

⁴⁴ An example of this comes from the case of *Ghaidan v Godin-Mendoza* [2004] where the meaning of non-discrimination in section 3 of the HRA was extended to outlaw discrimination on the basis of sexual orientation although this was not explicitly stated on the face of the text.

6. Upon completion of the review, agreeing how the public authority and provider will keep this under review once operational delivery of the service begins.

These processes are likely to ensure that the review is carried out as thoroughly as possible. It is also understood that the skills of conducting the review will be developed within and across organisations as this process becomes more embedded. Whilst at the discretion of each public authority, some element of legal advice may be required before, during or after the process.

When and how to use this Framework

The framework can be used to review compatibility both for existing, ongoing functions, as well as for ones that are proposed or considered for future implementation, and to identify gaps in policy and practice where there is an absence of action being undertaken or considered for future implementation. The review framework is applicable to a number of different actions and functions considered to be within the realm of the work of public authorities:

- Policies: existing policies, any proposed changes to these or new policies and the absence of policies
- Services provided: current service provision, including the absence of such provision, as well as any proposed changes
- Strategic and operational decision-making, including public authority resourcing

The two purposes, i.e. the review of existing functions as well as the review of proposed functions, will now be discussed in turn.

The first purpose will allow users to review existing functions and measures which could include, for example, policies, services and provisions that are currently in place or absent. Public authorities may wish to undertake a review as an assessment of the current UNCRC compatibility of their relevant existing functions. The framework provides one optional process, you may also wish to consider the [Getting Ready for UNCRC Framework](#).

The second purpose could facilitate a compatibility check of any proposed changes to be made in the future. This could include, for example, new policies, services and provisions to be developed or changes proposed to existing ones.

The proposed compatibility assessment bears some resemblance to the methodologies of other impact assessments currently undertaken by public authorities, such as the Equality Impact Assessment (EqIA), Children's Rights and Wellbeing Impact Assessments (CRWIA), Fairer Scotland Duty Assessment, Islands Impact Assessment, Health Impact Assessment, and Human Rights Assessment amongst others. However, it should be seen as a separate assessment specifically focused on reviewing against the UNCRC requirements (see Step 2 below).

If conducting a compatibility review for proposed measures or functions, i.e. forward-looking as opposed to reviewing existing measures, the **timing** of when it is conducted is important. The review should be done as early as possible and not just as an add-on or afterthought after a policy has been developed already. If it is not conducted early on, the findings of the review may delay the policy process by identifying problems that need to be fixed before it can be implemented. Efficient – i.e. very early - use of the compatibility review thus means that modifications or changes to the policy under development and the strategy for engaging stakeholders can be made early on in the process.

The process outlined below will help signpost you to relevant issues when assessing whether your measures or functions are compatible with the UNCRC Act.

The checklist at the end of section 4 sets out the key questions to ask yourself at each step of the review process. The checklist does not represent a linear process. The review may be more circular than the checklist suggests in that steps may be revisited if issues are identified and modifications need to be made. Regardless of how circular the process is, however, do bear in mind that all questions may have to be considered.

The review framework and checklist are designed to apply across a range of public authorities, and across any number of functions. Public authorities may wish to consider local adaptation of the framework to enable a more nuanced assessment of their compatibility.

C.1 Step 1: Preparation: getting ready for compatibility review

When considering whether to undertake a compatibility review for a measure or function, there are several aspects to consider in preparation for the process. These include but are not limited to the following questions:

1. Is the function reserved?
2. Is the function conferred by common law or by Scottish legislation?
3. When is the best time to conduct the review?
4. What information and evidence do you need to conduct the review thoroughly?
5. How will you specifically ensure the involvement of children and young people in the review, or - if this is not required/ possible - how will you access information about their views and opinions?
6. Taking account of the evolving capacities of children and young people, will you need to involve parents, carers and families to understand the impact on children's rights?
7. Who else should be involved in conducting the review?
8. How will you secure specific expertise on policy-related issues, on facilitating child participation or in relation to legal matters in order to conduct the review?

Some of these questions will be discussed in more detail below.

C.1.1 Legislative competence of Scottish Parliament: devolved & reserved matters

The Act places a duty on public authorities not to act incompatibly with the UNCRC requirements only in relation to devolved matters which are within the scope of the Act. Please see the explanation of the duties on public authorities in Part 2, section 6 in section 4.4 of this guidance.

The duty on public authorities is to ensure that they comply with the compatibility duty under section 6 of the UNCRC Act in relation to relevant functions. The duty is not to review either Scottish or UK legislation for compatibility, as this is the responsibility of Scottish Ministers. Should public authorities become aware of issues of incompatibility in legislation, they should notify the Scottish Government by raising this with the Scottish Government policy team with whom they usually engage as well as alerting the Children's Rights Unit by emailing UNCRCIncorporation@gov.scot.

Specifically, the Act ‘carves out’ certain articles that either fully or partially relate to reserved matters. These specific articles in the Convention and the first two protocols are listed in the table below.

Article	Fully/Partially Reserved	Discussion
2	Partially relates to a reserved matter	Elements of Article 2 relate to the reserved matter of equal opportunities under section L2 of Part 2 of schedule 5 of the Scotland Act.
7(1) and (2)	Partially relates to a reserved matter	Elements of both Article 7(1) and 7(2) relate to the reserved matter of immigration and nationality in section B6 of Part 2 of schedule 5 of the Scotland Act.
8(1)	Partially relates to a reserved matter	Elements of Article 8(1) relate to the reserved matter of immigration and nationality in section B6 of Part 2 of schedule 5 of the Scotland Act.
9(4)	Partially relates to a reserved matter	Elements of Article 9(4) relate to the reserved matter of immigration and nationality in section B6 of Part 2 of schedule 5 of the Scotland Act.
10(1)	Fully relates to a reserved matter	Article 10(1) relates to the reserved matter of immigration and nationality in section B6 of Part 2 of schedule 5 of the Scotland Act.
10(2)	Partially relates to a reserved matter	Elements of Article 10(2) relate to the reserved matter of immigration and nationality in section B6 of Part 2 of schedule 5 of the Scotland Act.
11(2)	Fully relates to a reserved matter	Article 11(2) relates to the reserved matter of international relations in paragraph 7(1) of Part 1 of schedule 5 of the Scotland Act.
21(e)	Partially relates to a reserved matter	Elements of Article 21(e) relate to the reserved matter of international relations in paragraph 7(1) of Part 1 of schedule 5 of the Scotland Act.
26(1)	Partially relates to a reserved matter	Elements of Article 26(1) relate to the reserved matter of national insurance under section F1 of Part 2 of schedule 5 of the Scotland Act.
27(4)	Partially relates to a reserved matter	Elements of Article 27(4) relate to the reserved matter of international relations in paragraph 7(1) of Part 1 of schedule 5 of the Scotland Act.
34	Partially relates to a reserved matter	Elements of Article 34 relate to the reserved matter of international relations in paragraph 7(1) of Part 1 of schedule 5 of the Scotland Act.
35	Partially relates to a reserved matter	Elements of Article 35 relate to the reserved matter of international relations in paragraph 7(1) of Part 1 of schedule 5 of the Scotland Act.
38(3)	Fully relates to a reserved matter	Article 38(3) relates to the armed forces which is reserved under paragraph 9 of Part 1 of schedule 5 of the Scotland Act.

The First Optional Protocol on the involvement of children in armed conflict

Article	Fully/Partially Reserved	Discussion
1	Fully relates to a reserved matter	Article 1 relates to the armed forces, which is reserved under paragraph 9 of Part 1 of schedule 5 of the Scotland Act.
2	Fully relates to a reserved matter	Article 2 relates to the armed forces which is reserved under paragraph 9 of Part 1 of schedule 5 of the Scotland Act.
3	Fully relates to a reserved matter	Article 3 relates to the armed forces which is reserved under paragraph 9 of Part 1 of schedule 5 of the Scotland Act.

The Second Optional Protocol on the sale of children, child prostitution and child pornography

Article	Fully/Partially Reserved	Discussion
5	Fully relates to a reserved matter	Article 5 relates to the reserved matter of extradition under section B11 of Part 2 of schedule 5 of the Scotland Act.
6(1)	Partially relates to a reserved matter	Elements of article 6(1) relate to the international relations and extradition reservations in, respectively, paragraph 7(1) of Part 1 and section B11 of Part 2 of schedule 5 of the Scotland Act.
10(1), (2) and (3)	Fully relates to a reserved matter	Article 10(1)-(3) relate to the international relations reservation under paragraph 7(1) of schedule 5 of the Scotland Act.

C.1.2 Gathering evidence & data that supports your review

This section covers two steps to support public authorities to gather evidence which will inform a compatibility review.

Step 1: Identifying what evidence is required and whether it is accessible

To conduct the review, it will be necessary to identify what evidence is required to assess how the measure or function potentially relates to child rights and/or affects children either directly or indirectly, and whether or not that evidence is accessible. Relevant information can exist in the form of annual or other reports produced by your organisation such as Children's Services Planning Reports, routine monitoring and evaluation data collected, research that has been published on a specific issue or child right, and civil society reports, amongst others. Questions that could guide this process are:

1. What information do we need to understand how the policy or measure relates to child rights?
2. What information do we need to know how children will be directly or indirectly affected by this measure or policy?
3. Where is the information held, and can we access it from them e.g. other public

authorities, Scottish Government, NGOs or civil society groups, academic researchers, has the UN Committee on the Rights of the Child published reports about these issues on their websites or through other means?

4. Will groups of children be affected in different ways and do we need/ have data that tells us about the impact of this? Think about how protected characteristics (age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and other statuses may play a role. Think also about whether the policy or measure will impact differently on the rights of children from different socio-economic backgrounds and, in doing so, could contribute to a poverty-related outcome gap.
5. Will we need to know what parents, carers or families think about the measure or policy?

Step 2: What evidence already exists? Is it necessary to collect missing information?

In the interests of efficiency and to avoid duplication, the second step is to determine what evidence is already available. The following questions may help guide you in ensuring that you 'cast your net widely' to capture as much of the available data as possible:

1. Is there relevant qualitative and quantitative data available on the policy area and/or the specific child rights that are affected by the measure or policy?
2. Is there available information about different groups of children and how they have been affected?
3. What data is missing that may need to be collected to complete the review?

Once the data has been collected and analysed, it will be possible to advance the review as described in the steps below.

C.1.3 Views of children and their parents, carers and families on the measure or function

Consultation with the persons being, or likely to be affected by the measure or function is likely to form part of the review process. It can assist in making the process transparent and helps to ensure that the reviewers are in possession of all the relevant information and is in keeping with a children's human rights approach. This is especially the case for 'forward-looking' compatibility reviews for proposed measures or policies. As the purpose of the process is to ensure compatibility with child rights, it makes sense to include children and young people in the group of stakeholders whose opinions you may wish to draw on. Consideration should also be given to involving parents, carers, families and/ or other representatives of children and young people, to ensure children's views can be taken into account. This approach might be more appropriate in a number of scenarios, such as for infants, non-communicative children, or children who require such an approach in keeping with a trauma-informed way of working. However, public authorities should not simply defer to parents or other representatives when this is the easier approach, and instead recognise the many ways in which children, including young children and those with communication needs, can and do manage to have their views understood, when inclusive approaches are used (see section 4.3.1 on inclusive communication in [non-statutory guidance on taking a children's human rights approach](#)).

There are two ways in which children can be involved in expressing their views on proposed measure or policies:

1. **Indirectly** through accessing existing evidence on children's views through reports, survey data, research publications, civil society organisations who work with children on these issues, or through their parents, carers, families and those who represent them.
2. **Direct** participation through engagement with children and young people – this can be facilitated by the public authority themselves, or via an arrangement with a third party.

Please refer to section 4.5 on participation in [non-statutory guidance on taking a children's human rights approach](#) for more advice, further resources and some case studies on how to undertake meaningful child participation in policy development.

C.2 Step 2: Undertaking the compatibility review

The review consists of two stages: an initial screening stage which will aid in determining whether the section 6 duty applies to the specific functions or acts under consideration and the full review component.

C.2.1 Initial screening stage

The purpose of the screening stage is to determine whether or not the section 6 compatibility requirement applies to specific functions or acts under consideration. The following flowchart assists in this decision-making by taking the user through a series of questions that need to be considered in relation to this issue. Specifically, the user will need to consider whether:

1. They are a designated listed authority as per the Act;
2. If this is not the case, are the functions or acts considered to be of a public nature as defined in the Act; and
3. If the answer to either of the above questions is 'yes', is the function or act under consideration a 'relevant function' within the scope of section 6 of the Act.

Each of these will questions will be explained in more detail below.

There are three possible final outcomes for this flowchart:

1. Yes, the section 6 duty applies and the function, service or act needs to be compatible with the UNCRC requirements.
2. No, the section 6 duty does not apply. However, as the UK government has committed itself to ensuring children's rights are upheld through the ratification of the UNCRC in 1991, users may wish to adopt a children's human rights approach in keeping with this.
3. It is unclear if the section 6 duty applies. In this case, it is recommended that legal advice be sought in order to achieve clarity.

Steps for the decision-making flowchart

Step 1: Are you a public authority under the Act?

In this step, users need to decide whether or not they are considered to be a public authority to whom the requirement to act compatibly applies as specified in the Act. All listed authorities under section 6 would fall under this category, as would “core” public authorities, as defined previously in the guidance.

If the user is a listed or core public authority, they can go straight to Step 3 (see below) and do not need to undertake Step 2. If the user is unsure or is not a listed or core public authority they need to go to Step 2 before they can move on to Step 3.

Step 2: Are your acts or functions of a public nature?

If the user is not a public authority or is unsure about this, they need to determine whether their functions and acts are of a public nature or not. The Act specifies that functions carried out “under a contract or other arrangement with a public authority” are considered to be of a public nature; as such, any such functions will result in a ‘Yes’ decision at this step. A further consideration is the source of funding: the Act makes it clear that functions are not excluded from being functions of a public nature purely because they are not publicly funded.

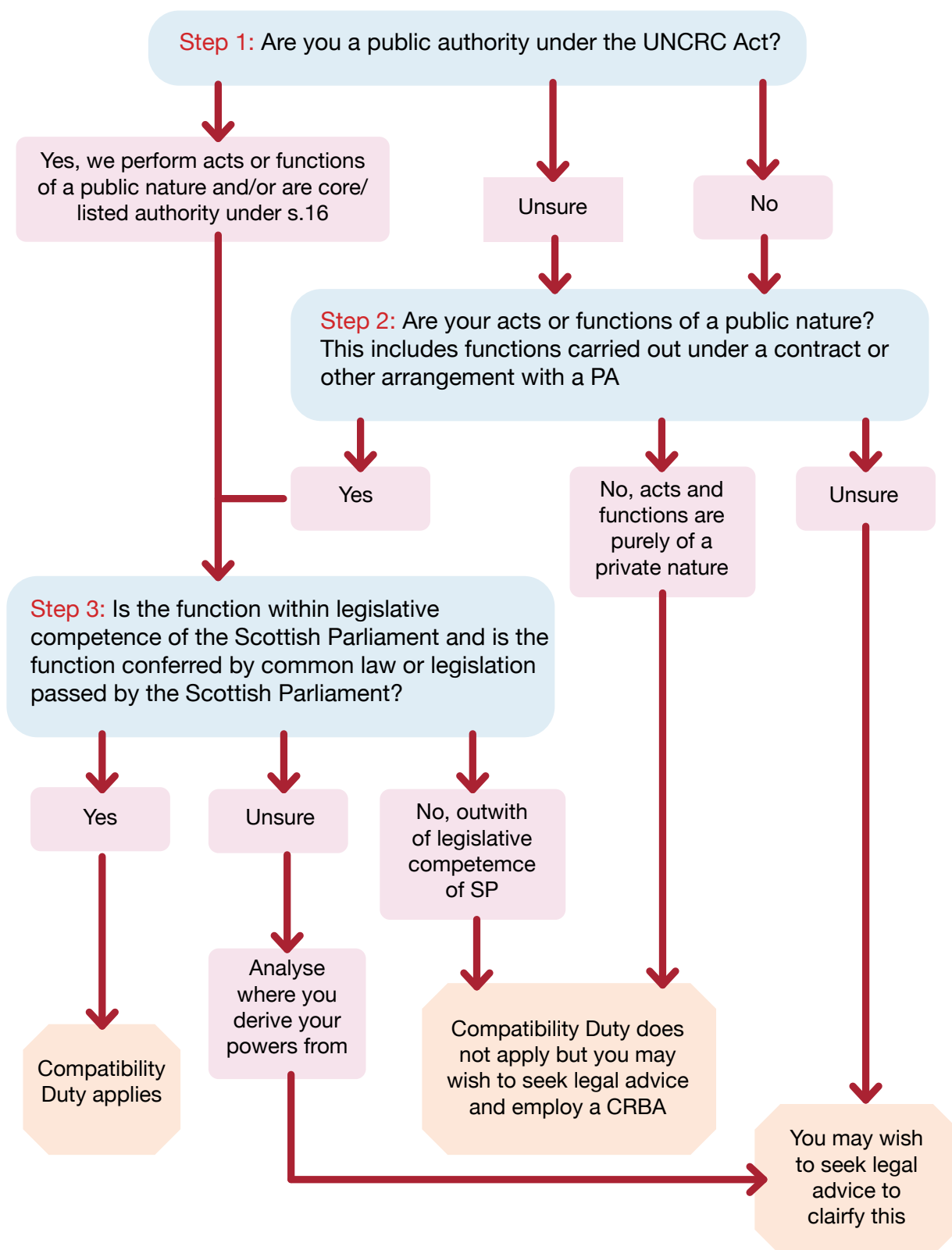
A ‘Yes’ decision will automatically lead to Step 3 of the flowchart. A ‘No’ decision, based for instance on the fact that the function or act is solely private, may imply that the section 6 compatibility duty does not apply. These users may decide to screen out but should note that a ‘no’ decision achieved via application of this Framework does not definitively mean your functions are not caught by the duty to act compatibly: legal advice on this should be sought if there is any uncertainty. For those who do screen out, they are nevertheless encouraged to consider applying a children’s human rights approach (CHRA) to their functions and actions. However, it should be noted that as there are a range of factors to be considered, it might sometimes be unclear as to whether functions or acts are of a public nature. Therefore, users who are unsure about this are advised to seek legal advice.

Step 3: Is it a relevant function ?

All users who have answered ‘Yes’ to either question 1 or 2, may decide to use the flowchart in Step 3 which asks them to consider whether their functions are relevant functions under section 6. If the answer is ‘Yes’, the section 6 duty applies. If the answer is ‘No’, the duty may not apply but users are encouraged to apply a CHRA to their functions. If users are unsure, they will need to analyse where they derive their powers from in relation to the function or act in order to determine whether the function or act is within legislative competence of the Scottish Parliament. They may wish to seek legal advice to determine this.

Flowchart to aid decision-making in relation to the Compatibility Duty

Screening Stage: UNCRC Compatibility Duty



If the outcome of the flowchart indicates that the section 6 duty applies, users are encouraged to undertake the full review (see 2.3. below) of their function, policy or act against all articles of the UNCRC requirements as specified in the Act. This stage provides a table that users may find helpful when undertaking this review.

C.2.2 Reviewing against the UNCRC requirements

When a decision has been reached that a review against the UNCRC requirements needs to be undertaken, public authorities may find the following table useful. It sets out, in a **hyperlinked** list, all the articles and Optional Protocols that form part of the UNCRC requirements (Annex 1):

Articles of the UNCRC

	Compatible	Not compatible	Unsure
Article 1 Definition of the child			
Article 2 Non-discrimination			
Article 3 Best interests of the child			
Article 4 Implementation of the Convention			
Article 5 Parental guidance and a child's evolving capacities			
Article 6 Life, survival and development			
Article 7 Birth registration, name, nationality, care			
Article 8 Protection and preservation of identity			
Article 9 Separation from parents			
Article 10 Family reunification			
Article 11 Abduction and non-return of children			
Article 12 Respect for the views of the child			
Article 13 Freedom of expression			
Article 14 Freedom of thought, belief and religion			
Article 15 Freedom of association			
Article 16 Right to privacy			
Article 17 Access to information from the media			
Article 18 Parental responsibilities and state assistance			
Article 19 Protection from violence, abuse and neglect			
Article 20 Children unable to live with their family			
Article 21 Adoption			
Article 22 Refugee children			
Article 23 Children with a disability			
Article 24 Health and health services			
Article 25 Review of treatment in care			
Article 26 Social security			
Article 27 Adequate standard of living			
Article 28 Right to education			

Article 29 Goals of education			
Article 30 Children from minority or indigenous groups			
Article 31 Leisure, play and culture			
Article 32 Child labour			
Article 33 Drug abuse			
Article 34 Sexual exploitation			
Article 35 Abduction, sale and trafficking			
Article 36 Other forms of exploitation			
Article 37 Inhumane treatment and detention			
Article 38 War and armed conflicts			
Article 39 Recovery from trauma and reintegration			
Article 40 Juvenile justice			
Article 41 Respect for higher national standards			
Article 42 Knowledge of rights			

First optional protocol on the involvement of children in armed conflict

	Compatible	Not compatible	Unsure
Article 4			
Article 5			
Article 6			
Article 7			

Second optional protocol on the sale of children, child prostitution and child pornography

	Compatible	Not compatible	Unsure
Article 1			
Article 2			
Article 3			
Article 4			
Article 6			
Article 7			
Article 8			
Article 9			
Article 10			
Article 11			

When reviewing against the articles and optional protocols, you will need to read the wording carefully to understand the obligations they impose on duty bearers in relation to child rights. Some of the provisions are clear, e.g., Article 7 which refers to every child's right to have a birth certificate.⁴⁵ In other instances, you may need to consider the implications of the meaning or intention behind the wording (e.g. Articles 5 and 14 refer to the “evolving capacities of the child”). Section in Annex C of this guidance, ‘What does “compatibility with the UNCRC requirements” mean?’, Annex A on the conceptual aspects of the UNCRC and Annex B on sources to guide interpretation provide some explanations which may be helpful in this regard. You may also wish to seek independent legal advice.

C.2.3 Assessing impact on children and their rights

An important aspect of seeking to implement child rights to the fullest extent possible is a consideration of how the particular policy or measure impacts on children. For the purposes of the Framework, acts which are determined to have a positive or neutral impact may be at a lower risk of being incompatible. Those found to have a negative impact, i.e. which remove, restrict or reduce the rights experienced by children may be at greater risk of being incompatible. This is a simplistic way to consider impact on children and will be subjective depending on the specific matter being considered. In the interest of making Scotland the best place to grow up and providing children with what they need to [“grow up loved, safe and respected so that they realise their full potential”](#), all public authorities will be keen to understand the impact their actions/ omissions may have on children's rights, pursuant to improving their outcomes and wellbeing in general.

Impact on children can be understood to be negative, positive or neutral, direct or indirect, and as short, medium or long-term.

- A **negative** impact is described as one where the policy or measure regresses existing rights or brings about a detrimental effect to particular groups of children, in relation to the enjoyment of their rights. Whilst there are limited and exceptional reasons for when this may legally occur, it is possible such an impact would not comply with the UNCRC requirements, particularly if there are not convincing reasons and controls in place to return the fulfilment of rights back to their previous position.
- A **positive** impact is where the actions in question seek to further respect, protect and fulfil the rights of children, thus giving fuller and further effect to how those rights are enjoyed by children. It is likely that such acts would be considered as compatible with the UNCRC requirements.
- A **neutral** impact is described as one where children's rights are neither regressed or reversed nor furthered in any way (UNICEF, 2021: 17).

In addition to a duty to not act incompatibly, section 6(2) of the Act makes clear that the duty on public authorities also extends to a failure to act. Therefore, public authorities should give consideration not only to their actions, but their inaction as well. Public authorities may find it useful to consider instances where no action was taken, when said action may have led to better and further effect to the rights of children and how that affects their compliance with the duty to not act incompatibly.

⁴⁵ UNCRC Article 7(1): The child shall be registered immediately after birth and shall have the right from birth to a name and, as far as possible, the right to know and be cared for by his or her parents.

C.2.4 Assurance & accountability: reasonableness, proportionality, and seeking legal advice

If the above compatibility review has been completed and there are areas of uncertainty about whether an action/inaction is compatible with the UNCRC requirements, and therefore, the public authority is at risk of not being compliant with the section 6 duty, the public authority is strongly encouraged to seek legal advice, and where required, to effect plans to mitigate against the risk of non-compliance. Whilst this recommendation is in relation to any ticks in the columns 'Incompatible' and 'Unsure' in the above table, this would not provide certainty that anything assessed as 'compatible' is so. This framework facilitates a review of compatibility but cannot provide assurance that the outcome of an individual assessment is accurate.

There are two factors that you may wish to consider in deciding whether to proceed with the decision to implement a measure or function: the principle of reasonableness, and proportionality of impact.

The principle of reasonableness

The principle of reasonableness concerns the decision as well as the way in which it was reached. The courts have recognised that when two different reasonable persons have the same set of facts, they may arrive at different decisions – according to the [Judge Over Your Shoulder \(JOYS\)](#), “a range of lawful decisions may lie within the discretion of a decision maker.” When making a decision, it must not be so unreasonable that no reasonably acting person could have made it. This is known as the ‘Wednesbury’ principle after the well-known court case⁴⁶. A decision could be deemed to be unreasonable if the decision-maker took account of irrelevant factors or relied on inaccurate information. This underscores the importance of having accurate information available which has been gathered through consultation with relevant stakeholders as well as through other means (see section 1.3. above). While a decision can be considered to be reasonable, a court may not necessarily reach the same decision. In all instances where such matters arise, it is advisable to seek legal advice.

Proportionality of impact

When analysing the potential negative impact that a policy or measure may have on children and their rights or specific groups of children, proportionality may be a relevant factor to consider. In human rights cases proportionality can mean considering:

- whether what you are trying to achieve is important enough to justify interfering with a Convention right;
- whether what you are deciding to do makes sense in relation to what you are trying to achieve;
- whether you could decide to do something else that would have interfered less with a Convention right, and still achieve what you are trying to do; and
- whether you are striking a fair balance between the effects of your decision on a Convention right and what you are trying to achieve⁴⁷.

46 Associated Provincial Picture Houses Ltd v Wednesbury Corp [1948] 1 K.B. 223

47 Adapted from Scottish Government, 2023, [Right First Time](#): A practical guide for public authorities in Scotland to decision-making and the law - third edition

The proportionality of a decision can be reviewed by courts if a decision is challenged. The courts can look at whether the decision to interfere with a right is justified and proportionate. The circumstances of the case will influence how different options or decisions will be weighed against one another in determining whether the most proportionate decision was taken.

We do not yet know how the courts will approach the issue of proportionality in relation to UNCRC rights as part of domestic law in Scotland. However, under the HRA, the concept of proportionality has been drawn from the European Court of Human Rights case law in relation to the ECHR rights, which has resulted in distinguishing between three different kinds of rights: absolute rights, limited rights and qualified rights⁴⁸:

- Absolute rights: these rights can never be interfered with or limited in any way. Examples include rights such as not to be tortured or treated in an inhuman or degrading way and the right to hold religious beliefs.
- Limited rights: these rights can only be restricted in specific circumstances, for example, the right to personal freedom can be limited if someone is detained following a criminal conviction or under mental health legislation and the correct procedure was followed.
- Qualified rights: Some rights can be qualified if it is in the interest of the wider community or to protect other people's rights. Examples of these rights are the right to privacy, freedom of expression and freedom of assembly, amongst others. The public authority must be able to show that it has a legitimate reason to do so, for example the protection of other people's rights, national security interests, the prevention of crime or for public safety, amongst others.

In existing Human Rights law, a public authority can only interfere with a qualified right if it is allowed under the law, there is a legitimate reason to do so and the response is proportionate. 'Proportionate' refers to a fair and balanced response that is not greater than what is absolutely necessary to achieve the legitimate aim. The degree of weight or respect that should be given to an assessment of what is proportionate will depend upon the context as well as the information available. In relation to the Act, the courts will decide whether or not the rights contained within the Act are subject to this form of distinction, and if so, how those distinctions will be applied.

Proportionality may thus be relevant to the assessment of the UNCRC requirements under the Act but this will ultimately be determined through case law by the courts. For public authorities it will be important to keep records of decisions made as well as the grounds upon which they were made for such eventualities.

48 Based on 1) Equality and Human Rights Commission, [What are Human Rights](#) and 2) Citizens Advice, [When can a public authority interfere with your human rights?](#)

C.3 Step 3: Action to be taken & communication

The final step in the review process involves assessing if any action needs to be taken as a consequence of the review conducted under Step 2, as well as considering to whom you may wish to communicate the findings of your review.

C.3.1 Mitigation & action plans: what to do if review identifies concerns

If you have undertaken step 2 above and there are concerns about the compatibility of the measure with the UNCRC requirements, it is necessary to assess the nature of these concerns and to take appropriate action. Some examples of the types of concerns that may occur are listed below but this list is not exhaustive:

Lack of clarity: there may be instances where it is unclear if a proposed or existing action/inaction is compatible with the UNCRC requirements. This may be due to a lack of sufficient information or evidence and it may be necessary to seek this out to assess whether this assuages the concerns. If this does not clarify the issues deemed to be potentially incompatible with the Act, further legal advice may be required.

Choice of options: there may be situations where public authorities could discharge their duties to provide various services or functions in a number of ways. Whilst public authorities have discretion on which option to choose, it may be helpful to consider the available options with the outcome of the review in mind, as well as which options are likely to have a positive impact on children.

Some negative impact on children's outcomes: there may be situations where an analysis of the impact on children reveals that some groups of children may be negatively impacted by the measure. You will need to consider whether compensatory measures are needed to mitigate any negative impacts of the proposal on children's rights. The proposed measure or policy may need to be amended before it can go ahead and targeted mitigation measures and plans may need to be outlined.

Risk of incompatibility: if an action/inaction is found to be at risk of being incompatible with the UNCRC requirements, action must be taken to set in motion arrangements to comply with the Act.

Summary questions

Some summary questions are suggested that you may wish to consider:

- Is the policy or measure the best way of achieving your aims, considering children's rights? If not, can the policy or measure be changed in ways that improve or give further effect to children's rights?
- Has a child rights impact assessment been undertaken and raised concerns that children's rights may be negatively affected for a particular group? (section 4.2.1 on decision making in [non-statutory guidance on taking a children's human rights approach](#) provides information on child rights and wellbeing impact assessments)
- Are there conflicting rights that may need to be balanced with one another? If so, can decisions to limit or restrict a specific right be based on the principles of reasonableness and proportionality (see section C.2.4 above)?
- Are there any barriers to not acting incompatibly with the UNCRC requirements?

C.3.2 Keeping your measures under review: new case law & UNCRC Committee developments

Once they have reviewed existing functions and have taken steps in response to that review, public authorities may wish to keep their policies and measures under review to accommodate changes in legislation and emerging children's rights issues. Specifically, they could review these in light of:

- New case law arising from legal proceedings brought under the UNCRC Act in Scotland.
- As appropriate, the sources of interpretation listed in section 4(2) of the Act, e.g. recommendations following Days of General Discussion, Concluding Observations and General Comments by the UNCRC Committee.

C.3.3 Communicating impact: giving better and further effect to child rights

Where the compatibility review has indicated positive impact on children's rights, public authorities may wish to communicate this as evidence of their initiatives to give better and further effect to child rights. The reporting duty under Section 18 of the Act requires listed authorities to report on the actions taken and their plans for giving better and further effect to child rights, and positive results from the compatibility review can form part of this. However, public authorities may also wish to communicate neutral or negative outcomes for children's rights to highlight particular issues within their report. Guidance on Part 3 provides suggested frameworks and considerations to assist listed authorities to prepare and publish their children's rights report.

C.4 Summary of steps public authorities may wish to consider

Step 1

- Are required resources and planning in place for undertaking the review?
- Do you have sufficient data and relevant information available to complete the review?
- Do you know what the views of children and their parents, families and carers are on the functions or measures under review?

Step 2

- Have you reviewed against the UNCRC requirements when this is necessary?
- Have you considered the impact of your measure or function on children and young people?

Step 3 Action to be taken

Action resulting from your compatibility review:

- If the review has identified any potential problems or aspects where you are unsure about compatibility, what action needs to be taken to either clarify or mitigate these problems?
- What are the consequences of these actions or processes?
- Who needs to know the outcome of your compatibility review?
- If the decision is taken to communicate the outcome externally to your organisation, how best can this be communicated?
- If external communication is undertaken, how will children and young people and their carers be informed in an accessible and child friendly manner?

Keeping new child rights development under review:

- Has new case law in Scotland affected any of the services, measures or policies that you deliver?
- Has there been new information from the Committee on the Rights of the Child that relates to functions or measures you deliver, such as the Concluding Observations on State Reports, General Comments or Days of General Discussion?
- If the decision has been taken to adjust measures or functions, how is this being communicated to the people who need to know?

Giving better & further effect to child rights:

- For listed authorities in section 19 of the Act, if your review has demonstrated a positive impact on child rights through strengthening these, how can this be communicated or incorporated into your children's right reports under Section 18?
- If your review has noted a neutral effect, can this be turned into a positive effect in future or through adjustments to the policy or measure?

Annex D

UNCRC Articles

Article 1 Definition of the child ([Return to table](#))

For the purposes of the present Convention, a child means every human being below the age of eighteen years

Article 2 Non-discrimination ([Return to table](#))

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all 15 forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3 Best interests of the child ([Return to table](#))

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision

Article 4 Implementation of the Convention ([Return to table](#))

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation

Article 5 Parental guidance and a child's evolving capacities ([Return to table](#))

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

Article 6 Life, survival and development ([Return to table](#))

1. States Parties recognise that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child

Article 7 Birth registration, name, nationality, care ([Return to table](#))

1. The child shall be registered immediately after birth and shall have the right from birth to a name, and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field

Article 8 Protection and preservation of identity ([Return to table](#))

1. States Parties undertake to respect the right of the child to preserve his or her identity, including name and family relations as recognised by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity

Article 9 Separation from parents ([Return to table](#))

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

Article 10 Family reunification ([Return to table](#))

A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents.

Article 11 Abduction and non-return of children ([Return to table](#))

States Parties shall take measures to combat the illicit transfer and non-return of children abroad

Article 12 Respect for the views of the child ([Return to table](#))

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 13 Freedom of expression ([Return to table](#))

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14 Freedom of thought, belief and religion ([Return to table](#))

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

Article 15 Freedom of association ([Return to table](#))

1. States Parties recognise the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16 Right to privacy ([Return to table](#))

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks

Article 17 Access to information from the media ([Return to table](#))

States Parties recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of Articles 13 and 18.

Article 18 Parental responsibilities and state assistance ([Return to table](#))

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible

Article 19 Protection from violence, abuse and neglect ([Return to table](#))

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20 Children unable to live with their family ([Return to table](#))

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21 Adoption ([Return to table](#))

States Parties that recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognise that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22 Refugee children ([Return to table](#))

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organisations or non-governmental organisations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention

Article 23 Children with a disability ([Return to table](#))

1. States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognise the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international co-operation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24 Health and health services ([Return to table](#))

1. States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary healthcare, though, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realisation of the right recognised in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25 Review of treatment in care ([Return to table](#))

States Parties recognise the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement

Article 26 Social security ([Return to table](#))

1. States Parties shall recognise for every child the right to benefit from social security, and shall take the necessary measures to achieve the full realisation of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27 Adequate standard of living ([Return to table](#))

1. States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the making of appropriate arrangements.

Article 28 Right to education ([Return to table](#))

1. States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29 Goals of education ([Return to table](#))

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

2. No part of the present article or Article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30 Children from minority or indigenous groups ([Return to table](#))

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31 Leisure, play and culture ([Return to table](#))

1. States Parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32 Child labour ([Return to table](#))

1. States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33 Drug abuse ([Return to table](#))

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34 Sexual exploitation ([Return to table](#))

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35 Abduction, sale and trafficking ([Return to table](#))

States Parties shall take all appropriate national measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36 Other forms of exploitation ([Return to table](#))

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37 Inhumane treatment and detention ([Return to table](#))

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38 War and armed conflicts ([Return to table](#))

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39 Recovery from trauma and reintegration ([Return to table](#))

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40 Juvenile justice ([Return to table](#))

1. States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognised as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law, and, in particular:
 - (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41 Respect for higher national standards ([Return to table](#))

Nothing in the present Convention shall affect any provisions which are more conducive to the realisation of the rights of the child and which may be contained in:

- (a) The law of a State Party; or
- (b) International law in force for that State.

Article 42 Knowledge of rights ([Return to table](#))

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

First optional protocol on the involvement of children in armed conflict**Article 4** ([Return to table](#))

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.
2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.
3. The application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict.

Article 5 ([Return to table](#))

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realisation of the rights of the child.

Article 6 ([Return to table](#))

1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of this Protocol within its jurisdiction.
2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.
3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

Article 7 ([Return to table](#))

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary to the Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to this Protocol, including through technical co-operation and financial assistance. Such assistance and co-operation will be undertaken in consultation with concerned States Parties and relevant international organisations.
2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.

Second optional protocol on the sale of children, child prostitution and child pornography

Article 1 [\(Return to table\)](#)

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2 [\(Return to table\)](#)

For the purposes of the present Protocol:

- (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- (b) Child prostitution means the use of a child in sexual activities for remuneration or any 30 other form of consideration;
- (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 3 [\(Return to table\)](#)

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether these offences are committed domestically or transnationally or on an individual or organised basis:

(a) In the context of sale of children as defined in article 2:

(i) The offering, delivering or accepting, by whatever means, a child for the purpose of:

- a. Sexual exploitation of the child;
- b. Transfer of organs of the child for profit;
- c. Engagement of the child in forced labour;

(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

2. Subject to the provisions of a State Party's national law, the same shall apply to an attempt to commit any of these acts and to complicity or participation in any of these acts.

3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, this liability of legal persons may be criminal, civil or administrative.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Article 4 ([Return to table](#))

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.

2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:

(a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;

(b) When the victim is a national of that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the above-mentioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. This Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6 ([Return to table](#))

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 7 ([Return to table](#))

States Parties shall, subject to the provisions of their national law:

(a) Take measures to provide for the seizure and confiscation, as appropriate, of:

(i) Goods such as materials, assets and other instrumentalities used to commit or facilitate offences under the present Protocol;

(ii) Proceeds derived from such offences;

(b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a)(i);

(c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

Article 8 ([Return to table](#))

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

- (a) Recognising the vulnerability of child victims and adapting procedures to recognise their special needs, including their special needs as witnesses;
- (b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
- (c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
- (d) Providing appropriate support services to child victims throughout the legal process;
- (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
- (f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- (g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures to protect the safety and integrity of those persons and/or organisations involved in the prevention and/or protection and rehabilitation of victims of such offences.

6. Nothing in the present article shall be construed as prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

Article 9 ([Return to table](#))

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.
2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.
3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.
4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.
5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

Article 10 ([Return to table](#))

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

Article 11 ([Return to table](#))

Nothing in the present Protocol shall affect any provisions that are more conducive to the realisation of the rights of the child and that may be contained in:

- (a) The law of a State Party;
- (b) International law in force for that State.

Annex E. List of links

1. Preface

- [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#)

3.1 Children's rights are human rights

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- [Nine core international human rights instruments](#)
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3.2 Incorporation history in Scotland

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3.3 Meaning of the 'UNCRC requirements'

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3.4 International human rights context

- [Human Rights Act 1998](#)
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- [Recommendations of the National Taskforce for Human Rights Leadership](#)
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4.1 Introduction to Part 2 and overview of guidance

- [Non statutory guidance on taking a children's human rights approach](#)

4.2 Remedies for unlawful acts (sections 7 to 10A)

- [Non statutory guidance on taking a children's human rights approach](#)

4.3.1 Definition of functions of a public nature

- [Definition of a public function](#)

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- [Non statutory guidance on taking a children's human rights approach](#)
- [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#)

A.1. Four general principles of the Convention

- [Article 2 of the United Nations Convention on the Rights of the Child](#)
- [What equality law means for you as an education provider: schools - Equality and Human Rights Commission](#)
- [Disability discrimination in school - Contact](#)
- [UN Committee on the Rights of the Child \(CRC\) - General Comment 14](#)
- [UNHCR - Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child](#)
- [UN Committee on the Rights of the Child \(CRC\) - General Comment No. 21 \(2017\): on children in street situations, 20 June 2017](#)
- [UN Committee on the Rights of the Child \(CRC\) - General comment No. 7 \(2005\): Implementing Child Rights in Early Childhood, 20 September 2006](#)
- [UN Committee on the Rights of the Child \(CRC\) - General comment No. 5 \(2003\): General measures of implementation of the Convention on the Rights of the Child, 27 November 2003](#)
- [UN Committee on the Rights of the Child \(CRC\) - General Comment No. 12 \(2009\): The right of the child to be heard. Save the Children's Resource Centre](#)
- [UN Children's Fund \(UNICEF\) - Implementation Handbook for the Convention on the Rights of the Child, September 2007](#)

A.2 Respecting, protecting and fulfilling children's rights

- [OHCHR - Frequently Asked Questions on Economic, Social and Cultural Rights](#)

A.3. Progressive realisation

- [OHCHR - Frequently Asked Questions on Economic, Social and Cultural Rights](#)
- [UNICEF - Implementation Handbook For The Convention On The Rights Of The Child](#)
- [Non-statutory guidance on taking a children's human rights approach](#)

A.4 Maximum available resources

- [Non-statutory guidance on taking a children's human rights approach](#)

A.5 Evolving capacity

- [UN Committee on the Rights of the Child \(CRC\) - General comment No. 19 \(2016\) on public budgeting for the realisation of children's rights \(art. 4\)](#)
- [UN Committee on the Rights of the Child \(CRC\) - General comment No. 3: The Nature of States Parties' Obligations \(Art. 2, Para. 1, of the Covenant\)](#)
- [UN Committee on the Rights of the Child \(CRC\) - General comment No. 20 \(2016\) on the implementation of the rights of the child during adolescence \(paragraph 1\) 6 December 2016](#)
- [The Children and Young People's Commissioner Scotland - What are evolving capacities?](#)
- [UNICEF - The Evolving Capacities of the Child - G Lansdown](#)
- [United Nations - Convention on the Rights of the Child](#)
- [UN Committee on the Rights of the Child \(CRC\) - General comment No. 20 \(2016\) on the implementation of the rights of the child during adolescence \(paragraph 18\) 6 December 2016](#)
- [The Children and Young People's Commissioner Scotland - Article 12 - I have the right to be listened to and taken seriously](#)

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C. Framework for reviewing compatibility with UNCRC requirements (section 6 duty)

- [Right First Time: A practical guide for public authorities in Scotland to decision-making and the law - third edition](#)
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C.1.3. Views of children and their parents, carers and families on the measure or function

- [Non-statutory guidance on taking a children's human rights approach](#)

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C.2.4. Assurance & accountability: reasonableness, proportionality, and seeking legal advice

- [Judge Over Your Shoulder \(JOYS\) - A guide to the legal environment in which decisions in public bodies are made](#)
- [Right First Time: A practical guide for public authorities in Scotland to decision-making and the law - second edition](#)
- [Understanding human rights - Equality and Human Rights Commission](#)
- [When can a public authority interfere with your human rights? - Citizens Advice](#)

C.3.1. Mitigation & action plans: what to do if review identifies concerns

- [Non-statutory guidance on taking a children's human rights approach](#)

Annex F. Glossary of key terms

Acts of the Scottish Parliament (ASPs)

An Act of the Scottish Parliament is primary legislation scrutinised and passed by the Scottish Parliament.

Appropriate remedy

A remedy, in the context of court proceedings, means when a court determines that there has been an unlawful act that requires addressing. Examples of a remedy include enforcing a right, imposing a penalty, or making an order to compensate an individual or individuals for the harm inflicted upon them as a result of the unlawful act. Remedies can be pursued to enforce human rights.

The UN Basic Principles and Guidelines on the Right to a Remedy provide a number of remedies where human rights have been breached, including, restitution, rehabilitation, satisfaction, and a guarantee of non-repetition

An “appropriate” remedy in the context of the UNCRC requirements refers to the adequate, effective and prompt remedy for breaches of children’s rights .

Article

The [UNCRC](#) sets out children’s rights across a series of 54 “Articles”. The first 42 Articles cover all aspects of a child’s life and set out the civil, political, economic, social and cultural rights that all children have. Articles 43–54 cover how adults and governments must work together to make sure all children can enjoy all their rights.

ASP Amendment to a UK Act

An Act of the Scottish Parliament can insert provisions into Acts of the UK Parliament, or amend or repeal provisions in an Act of the UK Parliament, when they relate to matters devolved to the Scottish Parliament. When this happens, the inserted or amended provisions then form part of the UK Act of Parliament itself, because this is the ‘operative’ part of the legislation.

Child

For the purposes of the duties outlined in this guidance, an individual is a child until their 18th birthday.

Children’s human rights approach

This approach uses the UN Convention on the Rights of the Child as the framework for working with and for children and young people. It has the goal of promoting and securing the full range of children’s human rights and places children and young people at the centre of policy development, as well as the design, delivery and evaluation of services.

Children’s services plan

This refers to the document which must be prepared every three years by a local authority and the relevant health board, under the terms of Part 3 (Children’s Services Planning) of the Children and Young People (Scotland) Act 2014.

Child rights and wellbeing impact assessment (CRWIA)

A Child Rights and Wellbeing Impact Assessment (CRWIA) is a process, tool and report which is used to identify, research, analyse and record the anticipated impact any proposed decision, including policy, projects, service and budgeting decisions relating to the rights and wellbeing of children and young people. Therefore, CRWIAs (and other impact assessments) should be used to inform decision making and thus should be started as early as possible in the development process so necessary changes can be made from evidence gathered.

From 16 July 2024, Section 17 of the UNCRC Act will legally require all Scottish Ministers to prepare and publish a CRWIA in respect to all new Bills, most Scottish Statutory Instruments, covid-19 related school closures, and all decisions of a strategic nature that relate to the rights and wellbeing of children. While the s.17 duty does not apply to public authorities, CRWIAs are a useful tool to aid decision making and could assist Public Authorities in preparing their children's rights report under section 18 of the Act.

Children's rights scheme

The UNCRC Act requires Scottish Ministers to publish a Children's Rights Scheme setting out the arrangements Ministers have made or propose to make to ensure compliance with the compatibility duty and to secure better or further effect of the rights of children more generally. Ministers must consult on the Scheme, lay it before the Scottish Parliament, and thereafter publish it. Scottish Ministers will then be required to report on the Scheme, including actions being taken by the Government in respect of it, on a regular basis. The Scheme aims to aid transparency and scrutiny of how the Scottish Ministers fulfil their obligations under the Act.

Children's rights reports

This refers to the reports that certain listed public authorities have a duty to prepare under Part 3 (section 18) of the Act.

Concluding observations

After reviewing the steps States Parties have taken to implement the UNCRC, the Committee on the Rights of the Child will, in a closed meeting, agree on written "Concluding Observations" which include suggestions and recommendations.

The Concluding Observations usually contain the following: introduction; positive aspects (including progress achieved); factors and difficulties impeding the implementation; principal subjects for concern; suggestions and recommendations addressed to the State party.

Days of General Discussion

Days of general discussion (DGDs) are organised by the UN Committee to foster a deeper understanding of the contents and implications of the Convention for specific articles or topics. They are held every two years.

Representatives of governments, non-governmental organisations, United Nations human rights mechanisms, United Nations bodies and specialised agencies, national human rights institutions, the business sector, as well as individual experts and children are invited to take part. A full list of previous DGDs is available [here](#).

Functions of a public nature

Public functions are generally understood to be functions performed for the collective benefit of the general public. For Human Rights and Equality Duties, the term ‘public function’ “refers to things that a public body or someone acting on its behalf does when delivering a public service or carrying out activities that are public in their nature. (See section 4.3.1: Definition of functions of a public nature)

General comments

“General comment” means a publication prepared by the Committee under its rules of procedure⁴⁹.

The Committee adopts [general comments](#) based on specific articles, provisions and themes of the UNCRC to assist States Parties in fulfilling their obligations under it.

Committee members may propose at any time that a general comment relating to a specific article, provision or theme be prepared. The Committee sometimes decides to develop a general comment on an article, provision or theme that has been discussed earlier in one of its days of general discussion (DGD).

Optional Protocol

An Optional Protocol is an additional UN legal agreement that complements and adds to an international treaty after its original adoption.

The UK Government has ratified two of the three Optional Protocols to the UNCRC. The first Optional Protocol is on the involvement of children in armed conflict and the second Optional Protocol is on the sale of children, child prostitution and child pornography.

Public Authority

Bodies who meet the definition of a public authority in section 6(5) of the Act (see section 4.3.2: Definition of public authority).

“Core” public authorities carry out functions which are clearly of a public nature (such as social care, housing, health and education which are publicly funded). For these authorities there is no need to distinguish between private and public functions as all of their functions are considered to be of a public nature. Many of these are listed authorities under section 16 of the Bill and examples include local authorities, government departments, the police and health authorities.

“Hybrid” public authorities are those who carry out a mixture of public and private functions. This may include bodies from the private, voluntary and independent sector. Their functions will only fall within the scope of the Bill in relation to their functions which are of a public nature. “Hybrid” public authorities who carry out a mixture of public and private functions will need to assess when and how the duty applies to their functions.

State Party

For the purpose of this guidance, the references to “State Party” or “States Parties” are to be read as “Any Scottish public authority or cross border public authority carrying out Scottish functions other than any function that relates to the inclusion of persons in non-executive posts on boards of Scottish public authorities with mixed functions or no reserved functions”⁵⁰

⁴⁹ [Rules of procedure and working methods | OHCHR](#)

⁵⁰ [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#) - section 2(3) first row of table

UNCRC

This refers to the United Nations Convention on the Rights of the Child. This is the international treaty which sets out the civil, political, economic, social and cultural rights to which all children are entitled.



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