



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

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1. Introduction

Scottish Government recognises the vital role that those providing public services play in delivering improved outcomes for children, young people and their communities. 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 important for all those undertaking relevant public functions to consider children's rights in their work. Consideration of children's rights should be evident across all public service delivery.

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 the 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. Section 6 places a duty on public authorities not to act incompatibly with the 'UNCRC requirements' as defined by section 1 and the schedule of the Act. It 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, including those whose functions are public in nature and those acting under a contract or other arrangement.

The guidance is primarily intended for those with responsibilities within public authorities for implementing and delivering the provisions of the Act. 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.

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 and its [explanatory notes](#). 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 a public authority is unclear on whether the section 6 duty (the compatibility duty) applies to it, it should seek independent legal advice.

The UNCRC Act received Royal Assent on 16 January 2024. Section 6 of the Act came into force on 16 July 2024.

How was the guidance developed?

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

Summary of the contents of this guidance

This guidance consists of the following sections:

1. An introduction to the guidance.
2. An introduction to human rights, children's rights and the UNCRC Act, including the 'UNCRC requirements' as defined by the Act.
3. An explanation of Part 2 of the UNCRC Act including: definitions of key terms in the Act; an explanation of the section 6 duty on public authorities; a flowchart and framework that public authorities may wish to use to review compatibility with the UNCRC requirements included in the Act; and remedies now available to children and their representatives to seek redress through the courts if their view is that their rights have been (or a proposed action would mean that they would be) infringed.

Further information to assist public authorities in applying the section 6 duty is included in the additional documents: '[Clarification of inherent obligations of the UNCRC](#)' and '[Sources to guide interpretation of the Act](#)'.

Section 13(2)(b) of the Act notes that the Scottish Government can promote child rights-respecting practice in relation to guidance supporting the implementation and operation of Part 2 of the Act. This is not included in this guidance. The Scottish Government has published [non-statutory guidance](#) to assist public authorities, including those whose functions are of a public nature, with this.

2. Background and introduction to the UNCRC Act

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.

While all human rights treaties include children, the [UN Convention on the Rights of the Child \(UNCRC\)](#) recognises that specific consideration must be given to ensuring children's rights are upheld. The UNCRC was created to give additional rights and protections to everyone under the age of 18.

Our vision is for Scotland to be a place where children's rights are embedded in all aspects of society and where policy, law, and decision-making take account of children's rights. We want Scotland to be a place where all children can share their views and are empowered to be human rights defenders. This section provides some background and context to the UNCRC Act, which will help us to realise this vision.

2.1 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. However, it is not binding, meaning that it does not create legal obligations for States. From the Declaration [nine core international human rights instruments](#) or treaties were developed, including the UNCRC.

The UNCRC expands on some of the rights found in other international instruments with a specific focus on children, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The UNCRC was adopted by the General Assembly of the United Nations in 1989. 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. It remains to this day a core international human rights treaty.

The UNCRC builds on the [Universal Declaration of Human Rights](#) 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 their 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, as defined under [Article 2 of the UNCRC](#).

Human rights are the basic rights and freedoms which we all have in order 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 in order 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 others)

The UNCRC consists of 54 articles. Articles 1 to 42 contain the substantive rights and obligations which States Parties must uphold and give effect to, and they cover the child's civil, political, economic, social and cultural rights. 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 children's human rights approach. They are:

- non-discrimination (Article 2)
- best interests of the child (Article 3)
- right to life, survival, and development (Article 6)
- right to express a view (Article 12)

The mutually reinforcing nature of human rights means that children's civil, political, economic, social and cultural rights as expressed within the 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 remaining UNCRC articles include:

- freedom from violence, abuse and neglect (Article 19)
- the rights of disabled children (Article 23)
- the right to health and health services (Article 24)
- the right to an adequate standard of living (Article 27)
- right to 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. These articles have not been incorporated within the Act.

Childhood 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 greatly given that most areas of policy affect children to some degree. The UNCRC also protects the rights of parents and carers to provide appropriate guidance to children and to support their rights.

2.2 International human rights - UK context

The [Human Rights Act 1998](#) (HRA) incorporated the [European Convention on Human Rights](#) (ECHR) into UK law. It sets out the human rights that everyone in the UK is entitled to. Scottish Ministers cannot act in a way that is incompatible with those rights. The Scottish Parliament cannot pass legislation that is incompatible with the rights contained in the European Convention on Human Rights because that would fall outwith its law-making powers.

The signature and ratification of international treaties are reserved to the UK Government. The UNCRC was ratified by the UK Government in 1991. This means that the UK as a State Party, including Scotland, has a legal obligation to uphold the treaty. Scottish Government contributes to the UK-wide reports to the CRC which are collated by the UK Government as the State Party.

The UK Government has also ratified the first optional protocol of the UNCRC on the involvement of children in armed conflict and the second optional protocol of the UNCRC on the sale of children, child prostitution and child pornography. Optional protocols are additional treaties to a main treaty, such as the UNCRC, which States Parties can ratify. They expand on an aspect of the original treaty or address an additional issue.

A third optional protocol which allows complaints to be made to the CRC has not yet been ratified by the UK Government, but the UNCRC Act grants the Scottish Government the power to amend the Act if this or any other additional protocols 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.

2.3 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.

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, 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'. The national approach in Scotland to supporting and promoting the wellbeing of children and young people by offering the right help at the right time from the right people is called '[Getting it right for every child](#)' (GIRFEC) and upholds rights-based practice.

Children, young people and adult human rights defenders played a key role in campaigning for the incorporation of the UNCRC in Scotland. As a result, 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 the 16 January 2024 and the section 6 duty came into force on 16 July 2024.

The UNCRC Act makes Scotland the first country in the UK, and the first devolved nation in the world, to directly incorporate the UNCRC into domestic law. It is a landmark piece of legislation in making sure Scotland is the best place to grow up.

2.4 Meaning of the ‘UNCRC requirements’

The term ‘UNCRC requirements’ is defined by section 1(2) of the Act as ‘the rights and obligations from the Convention, the first optional protocol and the second optional protocol that are set out in the [schedule](#).’ References throughout this guidance to the ‘UNCRC requirements’ mean the UNCRC requirements as defined by section 1(2) of the Act.

Some aspects of the UNCRC text have been removed or ‘carved out’ and do not appear in the Act. Scottish Government has provided [a copy of the UNCRC treaty text](#) which indicates which sections have been removed. The elements which have been removed relate to reserved matters under the Scotland Act 1998 that are outwith the legislative competence of the Scottish Parliament.

The removals include, for instance, the second part of [Article 11](#) of the UNCRC which relates to the reserved matter of international relations, and the third part of [Article 38](#) which relates to the reserved matter of defence. In some instances, only a phrase has been affected, for example in [Article 7](#) 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 are within the legislative competence of the Scottish Parliament have been included in the Act.

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. In relation to article 2 of the Convention as set out in the UNCRC requirements, the table also contains a modification so that the reference in that article to States Parties is read as a reference to a more restricted class of public authority, for reasons of legislative competence.

3. Part 2 of the UNCRC Act

This section explains Part 2 of the UNCRC Act.

3.1 Introduction to Part 2 and overview of guidance

This section briefly introduces the intentions of Part 2 of the Act 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 through the requirement (at section 6) for 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 2.4 above). Part 2 of the Act also outlines legal remedies should they fail in their duties, and strengthens the powers of CYPCS and the SHRC to bring or intervene in legal proceedings in relation to potential breaches (further explained in section 3.6 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 and further effect of the rights of children.

This guidance 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 may apply in relation to the public, voluntary and independent sectors and includes a flowchart as well as a compatibility review framework. Both of these resources may be used by public authorities to consider when and how the duty may apply to their services and functions.

Further information is provided in associated documents. '[Clarification of inherent obligations of the UNCRC](#)' includes an overview of some of the inherent obligations of the UNCRC, for example: terms such as 'progressive realisation' and 'evolving capacities' and how these can be understood in relation to the UNCRC requirements as defined by the Act. '[Sources to guide interpretation of the Act](#)' highlights potential sources for interpretation of the UNCRC and its Optional Protocols in their international form, such as the General Comments and Days of General Discussion organised by the UN Committee on the Rights of the Child (CRC).

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 children's 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.

3.2 Definition of key terms

This section shares the definitions of key terms in the Act, to support organisations to determine whether the section 6 duty is applicable to them. The section 6 duty applies to those who meet the definition of a 'public authority'. Importantly, this definition includes those delivering 'functions of a public nature' and so can extend to private, voluntary and independent (PVI) organisations in certain circumstances. This section outlines the definitions of these key terms and the application of the section 6 duty to the private, voluntary and independent sector.

3.2.1 Definition of public authority

When one thinks of a public authority, typically what comes to mind is likely to be what might commonly be considered a ‘core’ public authority. These public authorities carry out functions which are clearly of a public nature (such as social care, housing, health and education, which are publicly funded). Many of these are listed authorities under [section 19 of the Act](#) and examples include local authorities, the police and health boards.

Section 6 (5)(a) states that, for the purposes of that section, the term ‘public authority’ includes, in particular:

- (i) the Scottish Ministers,
- (ii) a court or tribunal,
- (iii) any person certain of whose functions are functions of a public nature’

The term ‘person’ in this instance takes its meaning from [section 25\(1\) of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#), and includes a body of persons corporate or unincorporated and a partnership constituted under the law of Scotland.

A ‘public authority’ therefore includes ‘persons’ who deliver functions of a public nature – as described below, this might include organisations one might not automatically think of as a public authority, e.g. private, voluntary and independent bodies (PVI).

As noted above, in relation to article 2 of the Convention as set out in the UNCRC requirements, the table in section 2(3) of the Act contains a modification so that the reference in that article to States Parties is read as a reference to a more restricted class of public authority (modelled on the Scotland Act 1998), for reasons of legislative competence. This means Article 2, as contained in the UNCRC requirements, must be read and considered with that narrower application to a more restricted class of public authority.

It is important to note that public authorities act unlawfully if they act or fail to act in a way that is incompatible with the UNCRC requirements in connection with a relevant function (apart from specific exemptions).

There is extensive jurisprudence, such as in [Regina v. Lambert \[2002\]](#), under paragraph 114, on the meaning of ‘act’ in the context of the HRA which clarifies that it should be given a ‘broad and purposive meaning’. 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. While it may be useful to consider case law on the HRA, it is not necessarily authoritative as it ultimately relates to different legislation and a different human rights treaty.

3.2.2 Definition of ‘functions of a public nature’

Public functions are generally understood to be functions performed for the collective benefit of the general public. The [International Journal of Constitutional Law](#) explains that an activity is public in nature ‘if it is something that a private individual or organisation would not normally do.’ For example, policing, social work, local council planning services and government policy making.

Section 6(6) of the Act clarifies that ‘functions of a public nature’ includes, in particular, functions carried out under a contract or other arrangement with a public authority. 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 the determining factor in deciding whether a function is public or private in nature. 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.

Broadly speaking there will be:

- ‘Core’ public authorities, (in other words, bodies all of whose functions are public and therefore do not fall under section 6(5)(a)(iii));
- Bodies who ‘become’ public authorities for the purposes of section 6 because ‘certain of’ their functions are of a public nature (in accordance with section 6(5)(a)(iii)) - and their ‘private acts’ are excluded; and
- Bodies that are not public authorities at all and are not, therefore, subject to the Act.

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 as defined by the Act does not apply to a body that would otherwise be a public authority by virtue of section 6(5)(a)(iii). Private acts are generally understood to be acts that are conducted by individuals for their own interests or profits and are therefore not under government control. 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 consideration.

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

Application to Private, Voluntary and Independent (PVI) Sector

As noted above, the Act specifies (in section 6 (6)) that functions carried out under contract or any other arrangement 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, section 6(6) of the Act makes clear that where a person or body is (subject to section 6(8)) undertaking a relevant function, of a public nature, pursuant to a contract or other arrangement with a public authority, that person or body is a public authority for the purposes of the Act and therefore required to act compatibly with the duty at section 6(1) not to act in a way which is incompatible with the UNCRC requirements as defined by the Act. This is subject to the exclusion of private acts under section 6(8), as described above.

However, it should be noted that public authorities are not exempt from their section 6(1) duty not to act incompatibly with the UNCRC requirements as defined by the Act by virtue of ‘contracting-out’. Both the privately contracted person or body and the contracting public authority must

comply with the section 6(1) duty in respect of any relevant functions delivered under that contract or arrangement.

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 any relevant function included in the contract, act in accordance with relevant UNCRC requirements as defined by the Act.

Private, voluntary or third sector organisations may also carry out relevant functions of a public nature which are not publicly funded. Section 6(7) of the Act explains:

“Functions are not excluded from being functions of a public nature for the purposes of [subsection \(5\)\(a\)\(iii\)](#) solely because they are not publicly funded.”

It will be for PVI organisations to consider whether their functions may be ‘relevant functions’ for the purposes of section 6 of the Act. It is recommended that such organisations seek their own independent legal advice if in doubt.

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

The Act places a duty on public authorities not to act incompatibly with the UNCRC requirements as defined by the Act only in relation to ‘relevant functions’ as defined in [section 6\(2\) of the Act](#). As the UK has ratified the UNCRC, compliance is expected under international law obligations.

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\(1\)](#) places a duty on public authorities not to act incompatibly with the UNCRC requirements in schedule 1 of the Act in connection with a relevant function. This includes failures to act, that would result in an incompatibility with the UNCRC requirements as defined by the Act. The UNCRC requirements are explained in [section 2.4](#) of this guidance.

This means that where a public authority has acted, or proposed to act in a way which is incompatible with the UNCRC requirements in connection with a relevant function, a court could find that it has acted unlawfully by breaching the section 6 duty under the Act.

Relevant Functions

Section 6 (2) defines ‘relevant function’:

“(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.”

It sets out two tests, both of which need to be satisfied in order for a function to be a ‘relevant function’.

Legislative Competence – section 6(2)(a)

The first test, set out in subsection (2)(a), is that the function could competently be conferred on the public authority in question by the Scottish Parliament (the limits of the Parliament’s legislative competence are set out in [section 29 of the Scotland Act 1998](#)). To be within the competence of the Scottish Parliament, a function must not relate to a reserved matter. The UNCRC requirements in schedule 1 to the Act, as detailed at section 2.4 of this guidance, are of assistance here. The aspects of the articles of the UNCRC which are reserved are not included in the UNCRC requirements in the Act. The legal duty therefore does not apply to any reserved functions, but public authorities are encouraged to act compatibly unless the source of the reserved function prevents them from doing so.

Legislation – section 6(2)(b)

The second test, is that the ‘relevant function’ must be conferred by legislation or a rule of law of a type mentioned in subsections (2)(b)(i) to (iv) (legislation being the more usual way in which functions are conferred on public authorities). Essentially, the types of legislation listed in subsection (2)(b)(i) to (iii) are those enacted by the Scottish Parliament, or enacted by virtue of the Scottish Parliament delegating its power to make legislation – so Acts of the Scottish Parliament (ASPs), Scottish statutory instruments (SSIs) made entirely under a power conferred by an ASP, and SSIs made partly under a power conferred by an ASP and partly under a power conferred by an Act of the UK Parliament. In the latter case, only functions conferred by provisions in the instrument which were made solely by virtue of the power conferred by the ASP, plus provisions subsequently inserted directly into the instrument by an ASP (or other subordinate legislation made under a power conferred by an ASP), are subject to the subsection (1) of the section 6 duty.

Functions conferred by common law – section 6(2)(b)(iv)

A ‘rule of law not created by an enactment’ means 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. Public authorities should seek their own independent legal advice in relation to how common law may impact upon how they should carry out their functions. When a public authority is carrying out a function derived from common law, which is also within the legislative competence of the Scottish Parliament, they will be required to not act incompatibly with UNCRC requirements as defined by the Act.

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 section 6 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 an ASP into UK 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 (as defined under [Section 6\(4\)](#)).

Secondary legislation

SSIs made using powers solely from ASPs are also covered by the duty.

SSIs made partly under a power conferred by an ASP 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 ASP, plus provisions inserted directly into the instrument by an ASP, 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 the UK Parliament, and
- provisions of SSIs made under a power conferred by an Act of the UK Parliament are not subject to the duty

As functions in reserved areas are already excluded, the definition of 'relevant function' in relation to SSIs 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 acting compatibly under all or any of their devolved functions, unless any UK enactment makes it unlawful to do so (in accordance with section 6(4)).

Acting compatibly under section 6

To meet the section 6 duty means not to act incompatibly with the UNCRC requirements as defined by the Act. Additional documents on the [clarification of inherent obligations of the UNCRC](#) and [sources to guide interpretation of the Act](#) provide assistance in how to approach this.

3.4 Flowchart and framework for reviewing compatibility with UNCRC requirements (section 6 duty)

Public authorities may choose to use these optional tools to support them to meet the section 6 duty:

- a) The flowchart is to support understanding of application of the section 6 duty to your organisation and any particular function that you carry out. It can help guide public authorities to consider when carrying out a framework review might be particularly

optimal/beneficial. It should not be used as a substitute for legal advice, which should be sought when seeking a legal view about application of the duty; and

- b) The framework is to support public authorities to review the compatibility of any proposed or existing action/inaction with the UNCRC requirements as defined by the UNCRC Act

Please note that these tools do not assess the impact of decision-making on children's rights; a child rights and wellbeing impact assessment (CRWIA) should be used for that purpose.

Only the Scottish Ministers have a duty to undertake CRWIA, under section 14 of the Act. However, the Scottish Government has published [CRWIA guidance](#) for public authorities to support good practice and better or further effect of children's rights.

3.4.1 Flowchart

The purpose of the flowchart is to support understanding of application of the section 6 duty to your organisation and any particular function that you carry out. It can help guide organisations to consider when carrying out a framework review might be particularly optimal/beneficial.

Specifically, it will aid you in considering whether:

- 1) Your organisation is a public authority as per the Act;
- 2) The functions or acts undertaken by your organisation are 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 likely to be a 'relevant function' within the scope of section 6 of the Act.

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

There are three possible final outcomes from this flowchart:

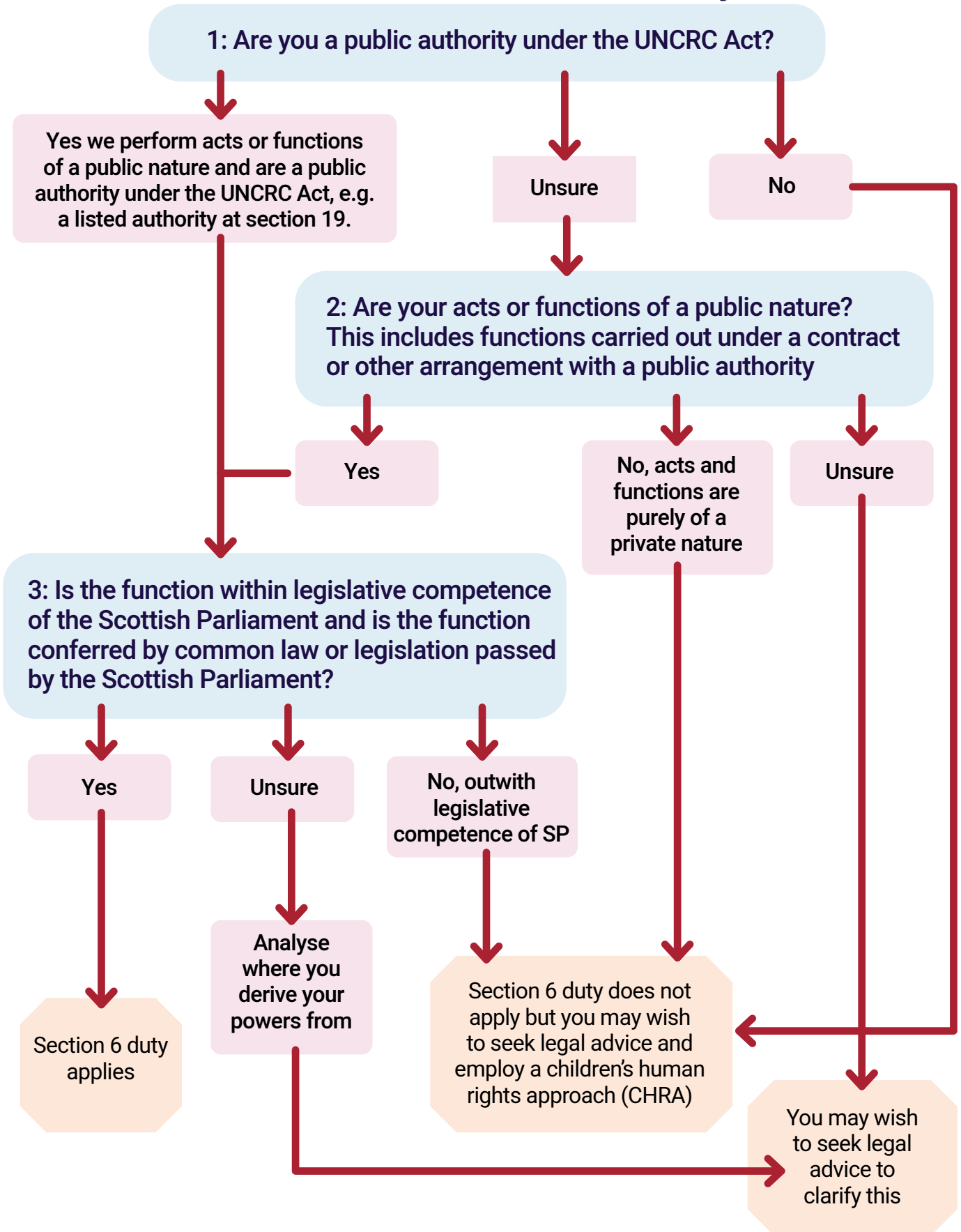
- 1) Yes, the section 6 duty is likely to apply and the function, service or act needs to be compatible with the UNCRC requirements as defined by the Act.
- 2) No, the section 6 duty is not likely to apply. However, given the UK has ratified the UNCRC and as such it sets out obligations in international law, public authorities 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.

Using the decision-making flowchart

Refer to sections [3.2.1](#), [3.2.2](#) and [3.3](#) respectively to determine whether:

- 1) You are a public authority under the Act.
- 2) Your acts or functions are of a public nature.
- 3) A function is relevant in accordance with the wording of section 6 of the Act.

Flowchart to aid decision-making in relation to the section 6 duty



If the outcome of the flowchart indicates that the section 6 duty applies, users are encouraged to use the framework in relation to the function, policy or act against all of the UNCRC requirements as defined by the Act.

3.4.2 Framework

The framework consists of a three stage process:

- Stage 1 - Preparation phase;
- Stage 2 - The review; and
- Stage 3 - Outcomes and actions.

Each step contains a number of suggestions and prompts for public authorities; these should be utilised and adapted as may suit each type of body and each type of function under review. Whilst at the discretion of each public authority, some element of legal advice may be required before, during or after the process.

Framework - Summary of steps public authorities may wish to consider

Stage 1 – Preparation

- Are required resources and planning in place for undertaking the review?
- Do you have sufficient data and relevant information available to complete the review?
- Have you determined that the proposed or existing action/inaction is or would be in relation to a relevant function?

Stage 2 – The review

- Reviewing the proposed or existing action/inaction against the UNCRC requirements in the Act.

Stage 3 - Outcomes and actions

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 functions, services, or policies that you deliver?
- Has there been new information from the Committee on the Rights of the Child (CRC) that relates to functions 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 functions, how is this being communicated to the people who need to know?

Who are these tools for?

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

Please refer to section 3.2 of this guidance for definitions of key terms in the UNCRC Act, including, ‘functions of a public nature’ and ‘public authority’.

The flowchart is a supplementary tool to help aid understanding of the section 6 duty and its application. This should not be used as a substitute for legal advice, which should be sought when seeking a legal view about application of the duty.

When deciding who is best placed to use these tools, a public authority may wish to consider the following:

- 1) Those using the framework to carry out a review have an understanding of child rights and the UNCRC requirements as defined by the Act (see [section 2.4](#) of this guidance);
- 2) In the process of awarding a contract or other arrangement, both bodies collaborate to use the framework, 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 insight about the function, service or policy area under consideration;
- 4) It will be beneficial to work 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 or individuals within the public authority are undertaking separate reviews, they communicate frequently to ensure consistency of application and understanding; and
- 6) Upon completion of a review, it would be beneficial to agree how the public authority and provider will routinely revisit it once operational delivery of the service begins.

These steps may help ensure that the framework is used to its maximum potential. The skills required to carry out an effective review will be further developed within and across public authorities as the processes becomes embedded and familiar.

3.4.3 What does ‘compatibility with the UNCRC requirements’ mean?

The UNCRC requirements as defined by the Act are explained at [section 2.4](#) 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 as defined by the Act.

Compatibility, in a legal context, means interpreting and giving effect to the law in a way which is as close to the UNCRC requirements as defined by 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 UNCRC within their context and in light of the purpose of the UNCRC¹. A ‘common sense meaning’ of a term can refer to the usual understanding based on the original language used in the text, but can also be adapted and interpreted by the courts to include current meanings that fulfil the intention of the UNCRC².

Points to note

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 Scottish Government to ensure that legislation in devolved areas is compliant with the UNCRC requirements as defined by the Act.

The section 6 duty is to ensure that public authorities comply with the UNCRC requirements included in the 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 Scottish Government by raising this with Scottish Government policy team with whom they usually engage as well as alerting the Scottish Government’s Children’s Rights Unit by emailing UNCRCIncorporation@gov.scot.

3.4.4 Stage 1: Preparation

When deciding whether to undertake a compatibility review you may wish to use the flowchart at 3.4.1 and consider the following questions. This list is not exhaustive; there may be other questions that apply in individual circumstances:

1. Is the function in relation to a reserved matter in accordance with the Scotland Act 1998?
2. Is the function conferred on a public authority by common law or by legislation enacted by the Scottish Parliament?
3. When is the best time to conduct the review? Ideally, and particularly in regard to a proposed function, a review would be carried out as early as possible and fully embedded during the decision-making process. This will allow for early identification and addressing of problems, for example by modifying proposals.
4. What information and evidence do you need in order to conduct the review thoroughly?
5. Who else should be involved in conducting the review?
6. How will you secure specific expertise on policy-related issues, or in relation to legal matters in order to conduct the review?

1 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’.

2 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.

Gathering evidence and data that supports your review

Once public authorities have determined whether the function is in relation to a reserved matter in accordance with the Scotland Act 1998 or conferred by common law or by Scottish legislation, they will need to gather evidence which will inform a compatibility review. This section covers two steps required to gather appropriate evidence and data. When considering these steps, please note that children merit [special protections under UK General Data Protection Regulation](#) (GDPR):

“Children require specific protection with regard to their personal data as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data.”

Therefore, it will be especially important for public authorities to consider data protection law when collecting children’s data. In particular, whether data can be processed lawfully, fairly and transparently. Public authorities must consider all of the data protection principles, but particularly data minimisation and purpose limitation. If public authorities intend to process personal data as part of this work, they will need to refer to the [guide to lawful basis](#), to identify a lawful basis to do so in advance.

When considering how to collect data on different groups of children, please refer to [guidance on special category data](#). Categories for disaggregating data such as race, religion, sex and sexual orientation are classed as ‘special category data’ under data protection law. Data controllers in public authorities will need to collect this data carefully, manage any risks associated with it and ensure they can identify appropriate additional conditions for processing any special category data collected.

The Information Commissioner’s Office provides [guidance on the principles of lawfulness, fairness and transparency](#). Fairness and transparency will be key for authorities to consider when processing or deciding to process children’s data. A public authority should consider how it will explain to children why they need to collect additional personal data, and what they will do with it, in a way which children can understand.

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

To conduct the review, it will be necessary to identify what evidence is required in order to assess the compatibility of any proposed or existing action/inaction with the UNCRC requirements as defined by the UNCRC Act, and whether or not that evidence is accessible. Public authorities must also consider [guidance on the principle of data minimisation](#) and determine in advance how much data is needed to fulfil the purpose data is collected for. Any data that a public authority processes (or intends to process) must be adequate, relevant, and limited to what is necessary.

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. However, please note that while a public authority may collect data from all stages of children’s lives for specific purposes, using this data to ascertain how well it is complying with the UNCRC is a new purpose. Therefore, public authorities may need to undertake a certain amount of analysis around whether the data currently being collected can be used for this. The [guide to purpose limitation](#) in data protection law, explains that data controllers can only use personal data for a new purpose if this is compatible with the original purpose it was collected for, the controller gets consent, or the authority has a clear obligation or function set out in law. Controllers will need to ensure the new purpose is either compatible with the original

purpose data was collected for, or it has a clear obligation or a function set out in law to re-purpose any data that it has collected.

Questions that could guide this process are:

1. What information do you need to understand how the proposed or existing action/inaction relates to child rights?
2. What information do you need to know whether this action/inaction is compatible with the UNCRC requirements as defined by the Act?
3. Where is the information held, can it be accessed and is there a lawful basis for its use e.g., anonymised data from other public authorities, Scottish Government, non-governmental organisations (NGOs) or civil society groups, academic researchers. Has the UN Committee on the Rights of the Child (CRC) published reports about these issues on their websites or through other means?

Step 1.B: 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 whilst applying [purpose limitation](#) in data protection law. The following questions may help guide you in ensuring that you capture as much of the available and appropriate data as possible:

1. Is there relevant qualitative and quantitative data that can be lawfully used on the policy area and/or the specific child rights that are affected?
2. What data is missing that may need to be collected to complete the review and how will you ensure you have informed consent for its use?

Once the data has been collected and analysed in line with the [special protections children merit under UK GDPR](#), it will be possible to advance the review as described in the step below.

3.4.5 Stage 2: The review

Public authorities may wish to use the following table as a guide when carrying out a review. It sets out, in a hyperlinked list, all the articles and Optional Protocols that form part of the UNCRC requirements as defined by the Act (Annex A). Summary titles for each Article have been added to aid the user:

	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			

	Compatible	Not compatible	Unsure
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 public authorities in relation to child rights. Some of the provisions are clear, for example, Article 7 which refers to every child's right to have a birth certificate. In other instances, you may need to consider the implications of the meaning or intention behind the wording (for example Articles 5 and 14 refer to the 'evolving capacities of the child'). Section 3.4.3 of this guidance, and additional documents on the [clarification of inherent obligations of the UNCRC](#) and [sources to guide interpretation](#) provide some explanations which may be helpful in this regard. You may also wish to seek independent legal advice.

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 in/action is compatible with the UNCRC requirements as defined by the Act, 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. 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. 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 considering whether a proposed or existing action/inaction is compatible with the UNCRC requirements as defined by the Act, 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 UNCRC 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 interfere less with a UNCRC 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 UNCRC right and what you are trying to achieve

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 the UNCRC requirements included in the Act. However, under the Human Rights Act 1998, 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 rights. The information below is based on the Equality and Human Rights Commission’s advice on [What are Human Rights](#) and the Citizen’s Advice guidance, [When can a public authority interfere with your human rights?](#):

- 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 as defined by 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.

Stage 3: Outcomes and Actions

The final step in the framework 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.

Step 3.A: Mitigation and action plans: what to do if review identifies concerns

If you have undertaken Stage 2 above and there are concerns about the compatibility of the proposed or existing action/inaction with the UNCRC requirements as defined by the Act, 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 as defined by the Act. This may be due to a lack of sufficient information or evidence and it may be necessary to seek this out in order to assess whether this lessens 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.

Summary questions

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

- Is the proposed or existing action/inaction 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?

- 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 Stage 2 above)?
- Are there any barriers to acting compatibly with the UNCRC requirements as defined by the Act?

Step 3.B: Keeping your measures under review: new case law and 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 in order 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
- 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

3.5 Remedies for unlawful acts (sections 7 to 10)

Section 7(1)(a) of the Act enables a person who believes that a public authority has acted, or proposes to act, in a way that is incompatible with the UNCRC requirements as included by the Act, 'to bring proceedings against the authority under this Act in any civil court or tribunal'. This includes failures to act which result in an incompatibility with the UNCRC requirements as defined by the Act. It should be noted that, as explained in 3.2.1 of this guidance, 'public authority' includes 'any person certain of whose functions are functions of a public nature.'

This will enable children and their representatives who believe that a public authority's action, proposed act or failure to act is incompatible with the UNCRC requirements as defined by the Act, to seek legal redress through the courts. It 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. This may be particularly difficult for children whose rights are at risk, including but not limited to female children; disabled children; minority ethnic children, particularly Gypsy/Traveller children; children living in poverty (including those with entitlement to free school meals); LGBTI children; children with care experience or 'on the edge of care'; children with a parent/carer in the armed forces; child migrants, asylum seekers and refugees; children at risk of significant harm, with a child protection plan; children with additional support needs; children (and/or their parents) who are experiencing poor physical or mental health; children experiencing disadvantages, particularly problem alcohol or drug use amongst family members, domestic abuse or bereavement; children who require support at times of key transitions; children affected by parental imprisonment; and children in the justice system or in conflict with the law.

The [child friendly complaints handling process guidance](#) of the Scottish Public Services Ombudsmen (SPSO) gives consideration to how best to support children and their caregivers to potentially resolve complaints before these are lodged through the judicial system. However, there is no requirement for a child to undertake or complete a complaints process before accessing the courts.

It is important to be aware that, once a child has turned 18, the clock will start in relation to the Judicial Review time limits (see Proceedings for unlawful acts (section 7) below).

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

1. section 7 ('Proceedings for unlawful acts')
2. section 8 ('Judicial remedies')
3. section 9 ('Child's view on the effectiveness of reliefs etc.')
4. section 10 ('Restriction on proceedings in respect of judicial acts')

Each section will now be explained in turn with an emphasis on the implications this may have for public authorities.

Proceedings for unlawful acts (section 7)

A person can challenge actions, proposed actions or failures to act that breach the UNCRC requirements as defined by the Act through the courts in respect of such acts that take place after 16 July 2024.

Under section 7(1)(b), when read with section 7(4), the UNCRC requirements may be relied upon by a person in proceedings brought by a public authority whenever the act took place, even if the alleged incompatible act took place before 16 July 2024. In other words, the UNCRC requirements can be relied upon in a 'defensive' capacity, but only in these circumstances.

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 whose rights are at risk, including those with additional needs or those experiencing violence, abuse and trauma.

Judicial Review proceedings, which may be used to raise a challenge about a public authority being alleged to have acted incompatibly with the UNCRC Act are generally subject to a three month 'time bar' – i.e. proceedings must be raised within three months from the date on which the grounds giving rise to the application first arose, per section 27A(1)(a) of the Court of Session Act 1988. This law has been amended in respect of challenges raised under section 7(1)(a) of the UNCRC Act to provide that "any time during which the person by or on whose behalf the application was made was under the age of 18 is to be disregarded". This means a claimant who wishes to bring proceedings for a breach under the UNCRC Act can do so at any point during their childhood.

Once a child turns 18, the usual three month time bar for raising Judicial Review proceedings will stand, although section 27A(1)(b) can allow a court to exercise some discretion in that respect – in that it can consider an application received after that date, within "such longer period as the Court considers equitable having regard to all the circumstances".

Section 7(9) provides that the proceedings must be brought within a year of the act complained of taking place (although, in accordance with section 7(11), in calculating that one year period, any time during which the child was under 18 is to be disregarded). But - this is also subject to section 7(10), which says that if the court proceedings require any stricter time limit to be met, then the proceedings must be brought within that shorter time period. (This would include Judicial Review proceedings and their time limit of three months).

Finally, section 7(12) provides some further discretion for the court, by allowing it to disregard the year time limit at section 7(9) if it considers it equitable to do so.

As actions can be brought during the period whilst a claimant is a child, this means that proceedings could be brought against public authorities for a lengthy period of time after an alleged unlawful act 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 in a way that is compatible with children's [special protections under UK General Data Protection Regulation](#) and the UNCRC requirements as defined by the Act.

Judicial remedies (section 8)

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, or proposed to act, incompatibly with the UNCRC requirements as defined by the Act (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 of Session](#) (which is Scotland's highest civil appeal court) has unlimited jurisdiction in respect of claims.

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)

In so far as it is practicable to do so, 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 duty not to act incompatibly with the UNCRC requirements as defined by the Act. 'Judicial act' is defined by section 10(4) as a judicial act of a court or tribunal, including an act done on the instructions, or on behalf, of a judge or a member

of a tribunal. Judicial acts may be challenged on the basis of an alleged section 6(1) unlawful act 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)).

3.6 Powers for the Commissioner for Children and Young People 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 Children and Young People’s Commissioner Scotland (the ‘CYPCS’) and the Scottish Commission for Human Rights (the ‘SHRC’) to enable them to raise or intervene in proceedings under the Act.

This is to strengthen the SHRC’s and CYPCS’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 CYPCS 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. Section 12 amends the Scottish Commission for Human Rights Act 2006 to give the SHRC the same powers to intervene in such proceedings.

Annex A UNCRC requirements as defined by the UNCRC Act

The text below details the articles and optional protocols as defined by the Act, not the full UNCRC articles and optional protocols.

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

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

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

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized 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 ([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 recognized in the present Convention.

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

1. States Parties recognize 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 ([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 ([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 recognized 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 ([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.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

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

2. 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 ([Return to table](#))

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

Article 12 ([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 ([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 ([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 ([Return to table](#))

1. States Parties recognize 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 ([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 ([Return to table](#))

States Parties recognize 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 ([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 ([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 ([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 ([Return to table](#))

States Parties that recognize 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) Recognize 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 ([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 in order 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 ([Return to table](#))

1. States Parties recognize 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 recognize 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 ([Return to table](#))

1. States Parties recognize 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 20 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 realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25 ([Return to table](#))

States Parties recognize 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 ([Return to table](#))

1. States Parties shall recognize for every child the right to benefit from social security and shall take the necessary measures to achieve the full realization 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 ([Return to table](#))

1. States Parties recognize 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 ([Return to table](#))

1. States Parties recognize 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 ([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 civilizations 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 ([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 ([Return to table](#))

1. States Parties recognize 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 ([Return to table](#))

1. States Parties recognize 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 ([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 ([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 ([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 ([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 ([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 ([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.
4. 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 ([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 ([Return to table](#))

1. States Parties recognize the right of every child alleged as, accused of, or recognized 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 recognized 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 recognized 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 ([Return to table](#))

Nothing in the present Convention shall affect any provisions which are more conducive to the realization 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 ([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 realization 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 cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with concerned States Parties and relevant international organizations.

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 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 organized 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) Recognizing the vulnerability of child victims and adapting procedures to recognize 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 in order to protect the safety and integrity of those persons and/or organizations 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 realization 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 B List of links

1. Introduction

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

2.1 Children's rights are human rights

- [Universal Declaration of Human Rights](#)
- [Nine core international human rights instruments](#)
- [UN Convention on the Rights of the Child \(UNCRC\)](#)
- [Charter of the United Nations](#)

2.2 International human rights – UK context

- [Human Rights Act 1998](#)
- [European Convention on Human Rights \(ECHR\)](#)
- [Recommendations of the National Taskforce for Human Rights Leadership](#)
- [Public Consultation on a Human Rights Bill for Scotland](#)

2.3 Incorporation history in Scotland

- [National Performance Framework](#)

2.4 Meaning of the 'UNCRC requirements'

- [Schedule of the UNCRC Act](#)
- [Copy of the UNCRC treaty text, which indicates which sections have been removed for the UNCRC requirements included in the Act](#)

3.1 Introduction to Part 2 and overview of guidance

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

3.2.2 Definition of functions of a public nature

- [Definition of a public function](#)
- [Section 6\(5\)\(a\)\(iii\) of the Act](#)

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

- [Section 6\(2\) of the Act](#)
- [Non-statutory guidance on taking a children's human rights approach](#)
- [Section 6\(1\) of the Act](#)
- [Section 29 of the Scotland Act 1998](#)
- [Section 6\(2\)\(b\)\(iv\) of the Act](#)
- [Section 6\(4\) of the Act](#)

3.4.4 Stage 1: Preparation

- [Guidance on UK General Data Protection Regulation \(GDPR\)](#)
- [Children’s special protections under UK GDPR](#)
- [A guide to lawful basis for processing personal data](#)
- [A guide to special category data](#)
- [A guide to fairness and transparency](#)
- [A guide to data minimisation](#)
- [A guide to purpose limitation](#)
- [A guide to special protections for children merit under UK GDPR](#)

3.4.5 Stage 2: The Review

- [Judge Over Your Shoulder \(JOYS\) - A guide to the legal environment in which decisions in public bodies are made](#)
- [What are Human Rights?](#)
- [When can a public authority interfere with your human rights?](#)

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

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



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