

# Briefing to Parliament on Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill 2025

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Proceedings: Stage 2

Deadline to submit amendments: 12 noon on 10 December 2025

Meeting: 16 December 2025

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## 1. Introduction

The purpose of this briefing is to assist MSPs with their consideration of potential Stage 2 amendments by setting out the SHRC's view on how to improve compliance with human rights and reduce the risks to access to justice.

The SHRC raised significant concerns about the Bill at Stage 1. Substantial amendments are necessary at Stage 2 to address these concerns.

## 2. Proposed amendments to Part 1

As set out in the SHRC's earlier evidence, in circumstances where Part 1 maintains religious observance as a mandatory part of the curriculum subject to parental withdrawal, we support amending Part 1 to provide children with a right to withdraw from religious observance in line with their evolving capacities.

The SHRC maintains that it is regrettable that the Scottish Government has chosen to progress drafting the legislation so that Part 1 is out of scope of the compatibility duty in the UNCRC (Incorporation) (Scotland) Act 2024. This undermines the ability of UNCRC incorporation to promote and protect children's rights in Scotland. The SHRC notes that the Stage 1 report of the Equalities, Human Rights and Civil Justice Committee considers it is unlikely that this can be remedied at Stage 2. If that is indeed the case, the SHRC sincerely hopes that the Scottish Government reflects on the serious concerns raised about its approach and takes steps to ensure this issue does not arise again. The SHRC is ready and willing to support the Scottish Government in future legislative efforts to ensure UNCRC incorporation can achieve its full potential.

### 3. Proposed amendments to Part 2

The SHRC maintains the serious concerns we have raised about the impact that Part 2 could have on access to justice for children. To mitigate these concerns, the SHRC believes it is essential that amendments are made to increase transparency and accountability in relation to potential legislative incompatibilities. The SHRC therefore suggests that the following duties should be added to Part 2:

#### 3.1. Notification of potential legislative incompatibilities

Public authorities must regularly notify the Scottish Government, the Commissioner for Children and Young People in Scotland ("CYPCS") and the SHRC of any legislation which they consider may be incompatible with the UNCRC.

The Scottish Government has stated that it considers it is sufficient that public authorities are already advised to do so in statutory guidance and that there is a mechanism in the draft Children's Rights Scheme for the Scottish Government to request this information. However, the SHRC believes this should be a legal duty. For instance, where a public authority seeks to rely on the additional carve out created by Part 2 to the duty on public authorities to act compatibly with the UNCRC, by way of a defence to a legal challenge, if the public authority has not already notified the potential legislative incompatibility to the Scottish Government this will call into question compliance with its notification duty. Without this, the SHRC is concerned that public authorities may be less likely to proactively notify the Scottish Government of potential incompatibilities since they would no longer be subject to the compatibility duty when the additional carve out in Part 2 is engaged.

#### 3.2. Response to notifications

The Scottish Government must regularly publish potential legislative incompatibilities of which it has been notified, together with confirmation of whether it intends to take any action to change the legislation and, if so, what and by when. Where the Scottish Government does not intend to take any action, it must explain why it assesses the legislation to be compatible with the UNCRC.

The SHRC has repeatedly voiced concern that Part 2 has been advanced without Parliament being fully informed of the work the Scottish Government has done to audit current legislation for UNCRC compliance.

An amendment to this effect would increase transparency and accountability in relation to the action the Scottish Government is taking to limit the prospects of the additional carve out in Part 2 being engaged and the consequent risks to access to justice materialising.

In addition, the SHRC notes the amendments proposed by the CYPSCS, which also seek to mitigate the concerns that have been raised about the potential for Part 2 to restrict access to justice for children. The SHRC believes these proposals merit further consideration and encourages MSPs to engage with these at Stage 2.

#### 4. For more information

Read our [Stage 1 briefing to MSPs on our website](#).

Read our [detailed written evidence on the Bill on our website](#).

Read the [report of our oral evidence to the EHRCJ Committee on our website](#).

Read our [follow up letter to the Convenor of the EHRCJ Committee on our website](#).

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