

## Briefing to MSPs on Stage 3 Proceedings: Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill

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Debate: Stage 3

Motion reference: S6M-20813

Date: 17th February 2026 from 2pm

Proposed by: Jenny Gilruth, Cabinet Secretary for Education and Skills

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### 1. Summary

The purpose of this briefing is to assist MSPs with their consideration of Stage 3 amendments. The SHRC has previously raised significant concerns about both Part 1 and Part 2 of the Bill with respect to their implications for the protection of the rights of children under the UNCRC (Incorporation) (Scotland) Act 2024 ("2024 Act"). Further information about these concerns is available in our [detailed written evidence](#) and in the other links below. While the Stage 3 amendments proposed would not alleviate our concerns entirely, some of those proposed would, in our view, improve compliance with human rights requirements and reduce the likelihood of the risks of children being unable to obtain an effective remedy when their rights are breached materialising.

We therefore encourage MSPs to support in particular (but not exclusively) the following amendments:

#### **Part 1**

Amendment 17 (and the other consequent amendments) - this would introduce a right for pupils to request withdrawal from religious observance pursuant to the recommendation from the UN Committee on the Rights of the Child.

#### **Part 2**

All of the Group 6 amendments as essential mitigations to our concerns about the impact of Part 2 on access to justice. We encourage MSPs to view Group 6 as an interdependent package of amendments.

In respect of Part 1, we also welcome amendment 10 insofar as we understand the intention of this amendment to be to bring the new process for obtaining and giving effect to pupils' views in relation to a parental withdrawal request in scope of the compatibility duty in the 2024 Act. We encourage MSPs to consider whether this could be implemented alongside amendment 17.

## 2. Key considerations for part 1

Children have a right to be educated in a way which respects their right to freedom of religion under both the UNCRC and the ECHR. Parents also have a right to respect for their religious convictions during their child's education. This requires the school curriculum to be conveyed in an objective, critical and pluralistic manner.

Regardless of any amendments made at Stage 3, if enacted, Part 1 would maintain religious observance as a mandatory part of the curriculum subject to a parental right to withdraw their child and a new process for obtaining and giving effect to pupils' views on the withdrawal request. In these circumstances, the SHRC supports amendment 17 (and the consequent amendments) proposed by Maggie Chapman to also provide children with a right to withdraw from religious observance in line with their evolving capacities. The UN Committee on the Rights of the Child has twice recommended this in order to guarantee children's right to freedom of religion.

The SHRC has previously raised serious concerns that the Scottish Government has knowingly declined to maximise the coverage of UNCRC incorporation by drafting Part 1 to be outside the scope of the compatibility duty in the 2024 Act. This is because the current version of Part 1 would amend the Education (Scotland) Act 1980, which is a pre-devolution Act of the UK Parliament. We therefore welcome where amendments have been drafted as freestanding provisions instead, such as amendment 10 proposed by Maggie Chapman. We consider it to be of the utmost importance that the Scottish Government takes steps to ensure this approach to drafting is not repeated in respect of future Bills. We have indicated to the Scottish Government our willingness to provide advice and to support drafting guidance to mitigate this. We encourage MSPs to continue to closely scrutinise the Scottish Government's actions in this regard.

## 3. Key considerations for part 2

The SHRC maintains the concerns we have raised about the impact that the new section 6B exemption to the UNCRC compatibility duty could have on access to justice for children and therefore the protection of children's rights - namely by limiting options for timely and effective redress for a child whose rights have been violated, as well as by adding complexity and cost to litigation.

If the section 6B exemption is enacted, we believe it is essential that this is accompanied by a package of mitigations which increase transparency and accountability in relation to the use of the exemption. In our view, the amendments advanced at Stage 3 in respect of Part 2 (Group 6) would provide three key categories of mitigations. The SHRC wishes to highlight the following points in relation to each of these:

### **3.1. Notifications by public authorities (amendments 13 and 13A)**

The SHRC believes that early-stage notification of potential reliance on the section 6B exemption is essential. We consider that amendment 13A is likely to be better able to facilitate this than amendment 13. For example, "potential exercise" should cover when public authorities are in the process of developing policy and have not yet decided how to act. Since the proposals for a notification duty would only apply to listed authorities, it is important that the notification expectation set out in guidance is maintained for other public authorities.

### **3.2. Reporting by the Scottish Government (amendments 15 and 25):**

It is also essential that the Scottish Government takes prompt and effective action in response to notifications. Amendments 15 and 25 set out different reporting procedures. However, we do not consider these to be mutually exclusive.

The SHRC has repeatedly called on the Scottish Government to proactively audit its current statute book for compatibility with the UNCRC. We are concerned that such an audit was not undertaken prior to introducing the Bill, or even during the course of Bill proceedings, in order to inform Parliament's scrutiny of the Bill. We therefore welcome the requirement set out in amendment 15 for an annual audit going forwards. Moreover, the procedure set out in amendment 15 not only covers the section 6B exemption, but also the section 6A exemption. This is important given the ongoing issue with significant legislation impacting children, such as the Education (Scotland) Act 1980, being pre-devolution Acts of the UK

Parliament, which are out of scope of the UNCRC compatibility duty, and therefore would fall under the section 6A exemption instead.

However, we are concerned that both of the proposals for annual reporting still leave open the possibility of incompatibilities being unaddressed for a significant length of time. Our concerns about the impact that the new exemption would have on access to justice are particularly acute in relation to urgent cases. For this reason, we believe the power set out below is even more important.

### **3.3. Powers of the SHRC and the CYPCS (amendment 14):**

The SHRC believes that the power set out in amendment 14 would ensure there is a clear and straightforward route for the SHRC and the CYPCS to seek declarators in respect of legislation which we consider engages the section 6B exemption. We understand the Scottish Government's position to be that there is already a sufficient power to do so. We would respectfully urge Parliament to exercise some caution before accepting this position. Amendment 14 would put this beyond any doubt.

The Scottish Government has often referenced the powers of the SHRC and the CYPCS as a mitigation to the difficulties faced by children in accessing justice. Given that the SHRC is concerned that the section 6B exemption could exacerbate such difficulties, we consider amendment 14 to be an important mitigation step. This is also a logical consequence of the premise of the new exemption being to re-direct liability away from the acts of public authorities and on to the legislation which is compelling public authorities to act incompatibly with the UNCRC.

We encourage MSPs to view these as an interdependent package of amendments.

## **4. For more information**

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

Read the [report of our oral evidence](#).

Read our [letter to the Equalities, Human Rights and Civil Justice Committee](#).

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

Read our [Stage 2 briefing to MSPs](#).

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