

**UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION)
(SCOTLAND) BILL**

AMENDMENTS TO BE MOVED AT STAGE 2

Section 3, page 3, line 26

add at end < (7) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.>

Effect

This amendment ensures that the Scottish Ministers will consult on regulations under section 3.

Reason

Regulations under section 3 may be used to amend the schedule to take account of amendments to the Convention and of any optional protocol.

Such a wide-ranging power to amend the UNCRC requirements should be consulted upon to ensure that the Scottish Ministers are aware of all points of view before making such amendments.

**UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION)
(SCOTLAND) BILL**

AMENDMENTS TO BE MOVED AT STAGE 2

Section 4 page 3, line 30

leave out <may> and insert <must>

Effect

This amendment ensures that a court or tribunal must consider the texts of the UNCRC and the optional protocols which have not been incorporated when determining a case.

Reason

This amendment ensures that courts or tribunal must consider additional treaty sources when determining cases under the convention. The Equality and Human Rights Committee Stage 1 Report noted that “the Committee shared strong views from many witnesses that section 4 should be amended to include additional sources“ .

The Committee recommended that the “Scottish Government amend the bill so that courts and tribunals “must” rather than “may” take into account all of the text to the UNCRC and the two optional protocols, when determining the case”(Stage 1 Report page 2). We agree with that recommendation and this amendment achieves that objective.

**UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION)
(SCOTLAND) BILL**

AMENDMENTS TO BE MOVED AT STAGE 2

Section 5, page 4, line 11

at end insert:

< 6 A court or tribunal which is determining a question in connection with the UNCRC requirements under Section 4(1) above may take into account: –

(a) treaty bodies decisions,

(b) general comments (including those under the third optional protocol), observations and recommendations; and

(c) reports resulting from days of general discussion.>

Effect

This amendment ensures that courts or tribunals will be able to consider other sources of interpretation.

Reason

The Equality and Human Rights Committee Stage 1 report recommends that other sources of interpretation should be available and may be used by courts and tribunals. We agree with this recommendation. The Committee considered that this would lead to a better understanding of the culture change required when dealing with UNCRC rights. Decisions under optional protocol 3 are increasing and provide amplification of what the CRC Committee believes the Convention requires. The Scottish courts and tribunals should be able to gain from that amplification.

**UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION)
(SCOTLAND) BILL**

AMENDMENTS TO BE MOVED AT STAGE 2

Section 6, page 4, line 21

at end insert < (ii) The Scottish
Parliament >

Effect

This amendment ensures that the Scottish Parliament is included in the definition of “public authority”.

Reason

The Equalities and Human Rights Committee noted in its Stage 1 Report that “in principle, the committee would like to see the Scottish Parliament included within the definition of a public authority.” We note the Government’s response to the Committee that it is supportive of provisions which would bring “the Parliament within the framework of the Bill insofar as possible”. We acknowledge that there are complexities around this proposal but this probing amendment will enable Scottish Ministers to set out in full their policy and legal position on inclusion of the Parliament within the definition of “public authority” in the Bill.

**UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION)
(SCOTLAND) BILL**

AMENDMENTS TO BE MOVED AT STAGE 2

Section 6, page 4, line 25

leave out subsection (3)(b)

Effect

This amendment is consequential upon the previous amendment.

**UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION)
(SCOTLAND) BILL**

AMENDMENTS TO BE MOVED AT STAGE 2

Section 7, page 5, line 6

leave out <may> and insert <must>

Effect

This amendment ensures that the Scottish Ministers must make regulations under section 7 (5) if they consider such regulations to be necessary.

Reason

Section 7 (5) provides that the Scottish Ministers “may, if they consider it necessary to ensure that a particular tribunal can provide an appropriate remedy... by regulations add to the relief or remedies which the tribunal may grant...”

We take the view that if the Scottish Ministers consider that it is necessary for regulations to be made then that matter should not be one of ministerial discretion. The *necessity* for the regulations implies that it should be mandatory for Ministers to make those regulations. This amendment will clarify the terms of section 7 accordingly.

**UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION)
(SCOTLAND) BILL**

AMENDMENTS TO BE MOVED AT STAGE 2

Section 7 page 5, Line 12

at end insert —

< (6) The Scottish Ministers must consult with such persons as they consider appropriate before making regulations under subsection (5).>

Effect

This amendment ensures that Scottish Ministers must consult with such persons as they consider appropriate before making regulations under section 7 (5).

Reason

We take the view that good lawmaking requires proper consultation with those affected by the proposed legislation and those who have to implement it. This amendment will ensure that Scottish Ministers have the full range of views before making regulations under section 7.

**UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION)
(SCOTLAND) BILL**

AMENDMENTS TO BE MOVED AT STAGE 2

Section 7, page 5, line 18

leave out subsection (9).

Effect

This amendment deletes subsection (9).

Reason

We have highlighted practical issues around the operation of section 7 and, in particular, around subsection (9) which provides for the disregard of any time period before a person reached the age of 18 in terms of the calculation of time limits for an action brought under this section.

At its extreme, this could involve litigation almost two decades later, where the issue in question may no longer be relevant. Early action allows for effective remedy, both in the individual case and for children more generally. The Bill contains, at section 7(10), the power for a court or tribunal to disapply the one-year time period where it is equitable to do so. This discretionary approach on a case-by-case basis is in our view, preferable to a situation in which any time before a person reaches the age of 18 can be disregarded for the purposes of bringing action. If accepted this amendment will require further amendment to section 7 (10).

**UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION)
(SCOTLAND) BILL**

AMENDMENTS TO BE MOVED AT STAGE 2

Section 7, page 5, line 21

after <may> insert <having taken
account of:

- (i) any delay in the person
becoming aware of the act; and
- (ii) the person's age at the date of
the act.>

Effect

This amendment ensures that the court or tribunal is required to consider any delay in the person becoming aware of the act and the person's age at the date of the act when assessing if it is equitable that the person can be allowed to bring the judicial review.

Reason

This amendment is consequential upon the preceding amendment which deletes section 7(9). It allows for factors such as delay in becoming aware of a breach of the Convention which affects the person and the age of the person at the that date to be taken into account when the court is considering whether it is equitable for an action of judicial review to proceed.

**UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION)
(SCOTLAND) BILL**

AMENDMENTS TO BE MOVED AT STAGE 2

Section 8 page 5 line 34

after <just> insert <effective>

Effect

This amendment ensures that any relief or remedy granted by the court or tribunal must be effective as well as just and appropriate.

Reason

Effectiveness of the remedy to be granted by the court is a key component in ensuring that the statute is working for the benefit of the children in Scotland. Under the European Convention on Human Rights Article 13 provides that there is a “right to an effective remedy” . Article 13 however is excluded from the terms of schedule 1 to the Human Rights Act 1998. Many commentators have criticised the Human Rights Act for this omission. It is important for the UNCRC (Incorporation) (Scotland) bill to ensure that the remedies granted under the legislation are in fact effective. We agree with the Equality and Human Rights Committee Stage 1 report (page 4) that section 8 should be amended in this way.

**UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION)
(SCOTLAND) BILL**

AMENDMENTS TO BE MOVED AT STAGE 2

Section 8, page 5, line 42

add at end < (4) In considering whether or not to make =an order under subsection (3) and what order to make the court or tribunal must —

(a) as so far as practicable give the child an opportunity to indicate whether the child wishes to express views,

(b) if the child wishes to do so, give the child an opportunity to express them; and

(c) have regard to such views as the child may express, taking into account the child's age and maturity.>

Effect

This amendment ensures that the court or tribunal must take into account the child's views on what would constitute an effective remedy.

Reason

It is in keeping with current child law in Scotland and the provisions of the convention that the views of the child should be taken into account when a court or tribunal is considering whether or not to make an order concerning the child. This amendment achieves that objective.

**UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION)
(SCOTLAND) BILL**

AMENDMENTS TO BE MOVED AT STAGE 2

Section 11, page 7, line 11

leave out <may> and insert <must>

Effect

This amendment ensures that section 11 (3) is amended to ensure that the Children's Rights Scheme requires to include certain obligations on the Scottish ministers regarding the rights of children

Reason

Section 11 requires Scottish Ministers to make a Children's Rights Scheme setting out the arrangements to ensure that Scottish Ministers comply with their duties under section 6.

Section 11(3) provides that the Scheme may include arrangements for the Scottish Ministers to ensure, for example that children are able to participate in making decisions that affect them and that Ministers raise awareness of and promote the rights of children. The Equalities and Human Rights Committee noted that many responses to the call for views and oral evidence suggested that the permissive language in section 11(3) needs to be strengthened. We agree with that proposal and this amendment achieves that objective.

**UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION)
(SCOTLAND) BILL**

AMENDMENTS TO BE MOVED AT STAGE 2

Section 11, page 7, line 22

after <13> insert <(b) that date shall be
no later than two years from the date of
commencement of this section,>

Effect

This amendment ensures that there is a time limit on the publication of the first report on the first Children's Rights Scheme.

Reason

In our view it is important for the Children's Rights Scheme to be in force quickly and that there is adequate Parliamentary scrutiny of the operation of the first Scheme. Under section 11(4) the first Scheme must specify the date on which the first report is to be published. However, there is no indication of the timeframe for publication. This amendment proves the Government's intention regarding the approach to creation of the Children's Rights Scheme and when it should report to Parliament about it.

**UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION)
(SCOTLAND) BILL**

AMENDMENTS TO BE MOVED AT STAGE 2

Section 14, page 10, line 10

leave out <as they consider
appropriate>

Effect

This amendment ensures Scottish Ministers are under a direct obligation to publish the child rights and well-being impact assessment.

Reason

Section 14 (3) obliges to Scottish Ministers to provide a child rights and well-being impact assessment in relation to “such decisions...in relation to the rights and well-being of children as they consider appropriate”. We take the view that this affords Scottish Ministers significant discretion regarding what is considered “appropriate”. Scottish Ministers should be under an obligation to provide a child rights and well-being impact assessment on all strategic decisions affecting children.

**UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION)
(SCOTLAND) BILL**

AMENDMENTS TO BE MOVED AT STAGE 2

Section 40, Page 23 line 6

leave out <on such day as the Scottish
Ministers made by regulations appoint>
and insert <no later than six months
from the grant of Royal Assent.>

Effect

This amendment ensures that the Act will come into effect six months after it receives the Royal Assent.

Reason

When the bill was considered at stage one there were diverging views from witnesses as to whether the bill should come into effect when Royal assent or whether it should include some “breathing space“ for public authorities and other agencies to become informed about its provisions and effect. This is a probing amendment designed to ascertain the Government’s intentions regarding implementation of the Bill.