SCOTTISH STATUTORY INSTRUMENTS

2024 No. 174

HIGH COURT OF JUSTICIARY

SHERIFF APPEAL COURT

SHERIFF COURT

JUSTICE OF THE PEACE COURT

Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024) 2024

Made - - - -	*14th June 2024*
Laid before the Scottish Parliament	*17th June 2024*
Coming into force - -	*16th July 2024*

The High Court of Justiciary makes this Act of Adjournal under the powers conferred by section 305(1) of the Criminal Procedure (Scotland) Act 1995(**a**) and section 44(2)(b) and (c) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024(**b**) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024) 2024.

(2) It comes into force on 16th July 2024.

(3) A certified copy is to be inserted in the Books of Adjournal.

Amendment of the Criminal Procedure Rules 1996

2.—(1) The Criminal Procedure Rules 1996(**c**) are amended in accordance with this paragraph.

(2) In Chapter 6 (proceedings involving children)(**d**)—

(**a**) 1995 c. 46. Section 305 was last amended by section 111(1) of the Criminal Justice (Scotland) Act 2016 (asp 1) and by S.S.I. 2015/338, and was extended by section 386(3)(a) of the Proceeds of Crime Act 2002 (c. 29), section 36A(4) of the Serious Crime Act 2007 (c. 27) and section 32(5) of the Psychoactive Substances Act 2016 (c. 2).

(**b**) 2024 asp 1.

(**c**) The Criminal Procedure Rules 1996 are in schedule 2 of the Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1996/513), last amended by S.S.I. 2024/159.

(**d**) Chapter 6 was last amended by S.S.I. 2010/418.

(a) in rule 6.1 (interpretation of this chapter), after the definition of "court" insert—

""UNCRC requirements" have the meaning given by section 1(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024(**a**).";

(b) after rule 6.1 insert—

"**Keeping a child participant in proceedings informed**

6.1A. Where a child is participating in proceedings, the court shall keep the child informed as to what is happening in simple language suitable to the child's age and understanding.".

(3) In Chapter 40 (compatibility issues and devolution issues)(**b**)—

(a) in the Chapter heading, for "AND DEVOLUTION ISSUES" substitute ", DEVOLUTION ISSUES AND INTERVENTIONS";

(b) in rule 40.1 (interpretation)—

(i) in the definition of "compatibility issue", at the end insert "or a UNCRC compatibility issue";

(ii) after the definition of "Schedule 6" insert—

""UNCRC compatibility issue" has the meaning given by section 288AB(1) (references of UNCRC compatibility issues to the High Court or Supreme Court) of the Act of 1995(**c**).";

(iii) omit the definition of "the 2010 Act";

(c) in rule 40.6 (time for raising compatibility issue or devolution issue), after paragraph (2) insert—

"(3) Where the court determines that a UNCRC compatibility issue may be raised as mentioned in paragraph (1), it shall order that intimation of the UNCRC compatibility issue is given in writing to the Commissioner for Children and Young People in Scotland and the Scottish Commission for Human Rights.";

(d) in rule 40.7 (intimation of compatibility issues and devolution issues to the Advocate General), in the heading omit "**compatibility issues and**";

(e) after rule 40.8 (participation of Advocate General in proceedings), insert—

"UNCRC compatibility issue – intimation and intervention

40.8A.—(1) Where a party raises a UNCRC compatibility issue in accordance with rules 40.2, 40.3 or 40.4 a copy of the document in which it is raised shall be intimated to the Commissioner for Children and Young People in Scotland and the Scottish Commission for Human Rights.

(2) An intervention by any of those receiving intimation under paragraph (1) shall be by succinct written submission which (including any appendices) does not exceed 2000 words.

(3) The written submission shall be lodged with the clerk of court and served on the other parties, no later than 48 hours before the hearing or diet at which the UNCRC compatibility issue is to be considered by the court, except on cause shown.

(4) The court may in exceptional circumstances—

(a) allow a longer written submission to be made;

(b) direct that an oral submission is to be made.";

(f) in rule 40.9 (appeals to the Supreme Court)—

(**a**) 2024 asp 1.
(**b**) Chapter 40 was inserted by S.I. 1999/1346, substituted by S.S.I. 2013/72 and amended by S.S.I. 2013/198.
(**c**) Section 288AB was inserted by section 32 of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (asp 1).

(i) in paragraph (1), after "compatibility issues)" insert ", section 288AC(4) of that Act (appeals to the Supreme Court: UNCRC compatibility issues)(**a**)";

(ii) after paragraph (2) insert—

"(3) Paragraph (2) does not apply to an application under section 288AC(4) of the Act of 1995.";

(g) in rule 40.10 (reference of compatibility issues and devolution issues to the High Court), in paragraph (1)(a), after "(2)" insert "or section 288AB(3) or (4)";

(h) in rule 40.11 (reference of compatibility issues and devolution issues to the Supreme Court)—

(i) in paragraph (1)(a), after "(5)" insert "or section 288AB(5), (6) or (7)";

(ii) after paragraph (2), insert—

"(2A) Paragraph (2)(c) does not apply to a reference made under section 288AB(5), (6) or (7) of the Act of 1995.";

(i) in rule 40.14 (procedure following determination of an appeal by the Supreme Court), in paragraph (1)(a), after "288AA(3)" insert "or section 288AC(3)".

(4) In Chapter 41 (Human Rights Act 1998)(**b**)—

(a) for the chapter heading substitute "DECLARATIONS AND DECLARATORS";

(b) for rule 41.1 (application and interpretation) substitute—

"Application and interpretation

41.1.—(1) This Chapter deals with various matters relating to—

(a) the Human Rights Act 1998;

(b) the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.

(2) In this Chapter—

"the 1998 Act" means the Human Rights Act 1998(**c**);

"the 2024 Act" means the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024(**d**);

"declaration of incompatibility" has the meaning given by section 4 (declaration of incompatibility) of the 1998 Act;

"incompatibility declarator" has the meaning given by section 26(2) of the 2024 Act;

"strike down declarator" has the meaning given by section 25(2) of the 2024 Act.";

(c) in rule 41.3 (declaration of incompatibility)—

(i) for the heading substitute "**Declarations and declarators**";

(ii) in paragraph (1), after "declaration of incompatibility" insert ", incompatibility declarator or strike down declarator";

(iii) in paragraph (1), after "declaration", other than where it first occurs, insert "or declarator";

(iv) after paragraph (2) insert—

"(3) Where any of—

(a) the Commissioner for Children and Young People in Scotland;

(**a**) Section 288AC was inserted by section 32 of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (asp 1).

(**b**) Chapter 41 was inserted by S.S.I. 2000/315 and amended by S.S.I. 2006/436.

(**c**) 1998 c. 42. This Act was last amended by section 11 of the Overseas Operations (Service Personnel and Veterans) Act 2021 (c. 23).

(**d**) 2024 asp 1.

(b) the Scottish Commission for Human Rights,

wishes to take part as a party to proceedings in relation to which it is entitled to receive intimation under section 27(1) of the 2024 Act, it shall serve notice in Form 41.3-B to that effect on the Deputy Principal Clerk of Justiciary and shall serve a copy of the notice on all other parties to the proceedings.";

(d) in rule 41.4, after "rule 41.3(2)" insert "or (3)".

(5) In the appendix—

(a) in Forms 40.2 (form of minute of notice of intention to raise a compatibility issue or devolution issue – solemn proceedings)(**a**) and 40.3 (form of minute of notice of intention to raise a compatibility issue or devolution issue – summary proceedings)—

(i) in paragraph 2, after "section 288ZA(2)" insert "[*or* section 288AB(1)]";

(ii) in paragraph 3, after "Advocate General for Scotland]" insert "[and, in relation to a UNCRC compatibility issue, to the Commissioner for Children and Young People in Scotland and the Scottish Commission for Human Rights]";

(b) in Form 40.9 (form of application under section 288AA(5) of the Criminal Procedure (Scotland) Act 1995 or paragraph 13 of Schedule 6 to the Scotland Act 1998)—

(i) after "section 288AA(5)" where it first occurs insert "or section 288AC(4)";

(ii) after "section 288AA(5)" where it second occurs insert "[*or* section 288AC(4)]";

(c) in Form 41.3-A (form of notice to Crown under section 5(1) of the 1998 Act)(**b**)—

(i) for the heading substitute "**Form of notice in respect of declarations and declarators**";

(ii) after "Human Rights Act 1998" insert "[*or* an incompatibility declarator under section 26(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024] [*or* a strike down declarator under section 25(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024]";

(iii) after "*proposed declaration*" insert "*or declarator*";

(iv) after "*Convention right*" insert "*under the Human Rights Act 1998 or the UNCRC requirement under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024*";

(d) in Form 41.3-B (form of notice to court under section 5(2) of the 1998 Act)—

(i) for the heading substitute "**Form of notice to court for declarations or declarators**";

(ii) after "join" insert "[*or* take part]";

(iii) after "proceedings" insert "under section 5(2) of the Human Rights Act 1998 [*or* section 27(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024]";

(iv) in the signing docquet for "of" substitute "or";

(e) in Form 41.4 (form of minute under rule 41.4)—

(i) in paragraph 1, after "1998" insert "[*or* section 27(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024]";

(**a**) Forms 40.2 and 40.9 were substituted for Forms 40.2A to 40.12 by S.S.I. 2013/72. Form 40.2 was thereafter substituted by S.S.I. 2020/27.

(**b**) Forms 41.3-A, 41.3-B and 41.4 were inserted by S.S.I. 2000/315. Form 41.3-A was amended, and Form 41.4 substituted, by S.S.I. 2006/436.

(ii) in paragraph 2, after "incompatibility" insert "[*or* incompatibility declarator] [*or* strike down declarator]".

CJM SUTHERLAND
Lord Justice General
I.P.D.

Edinburgh
14th June 2024

EXPLANATORY NOTE

(This note is not part of the Act of Adjournal)

This Act of Adjournal makes amendments to the Criminal Procedure Rules 1996. Chapters 6, 40 and 41 of those Rules are amended in consequence of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 ("the 2024 Act").

Chapter 6 is amended so that, where a child is participating in proceedings, that child is kept informed of what is happening in simple language suitable to the child's age and understanding.

Chapter 40 is amended to facilitate the raising of UNCRC incompatibility issues under the 2024 Act in the criminal courts. It is also amended to include provision about interventions in criminal proceedings by the Commissioner for Children and Young People in Scotland and the Scottish Commission for Human Rights.

Chapter 41 is amended to facilitate the introduction of incompatibility declarators and strike down declarators by the 2024 Act.

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