

Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Act 2026

2026 asp 9

Explanatory Notes have been produced to assist in the understanding of this Act and are available separately

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The Bill for this Act of the Scottish Parliament was passed by the Parliament on 17th February 2026 and received Royal Assent on 2nd April 2026

An Act of the Scottish Parliament to make provision about the involvement of a pupil in a decision to withdraw the pupil from religious observance in schools; and to make provision about circumstances where incompatibility with the requirements of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 is not unlawful.

PART 1

WITHDRAWAL OF PUPILS FROM RELIGIOUS INSTRUCTION OR RELIGIOUS OBSERVANCE IN SCHOOLS

1 Withdrawal of pupils from religious instruction or religious observance in schools

(1) The Education (Scotland) Act 1980 is modified as follows.

(2) In section 8 (religious instruction), after subsection (1) insert—

"(1A) With effect from the day on which section 1(2) of the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Act 2026 comes into force, the continuation of the custom described in subsection (1) is to be read so as not to include any right for parents to elect that their children should not receive instruction in religion.".

(3) In section 9 (conscience clause)—

(a) the words "from any instruction in religious subjects and" are repealed,

(b) for the words "his being withdrawn from any instruction in religious subjects" substitute "withdrawal from any such religious observance",

(c) the existing text becomes subsection (1),

(d) after that subsection insert—

"(2) The exercise of the right under subsection (1) for a parent to withdraw a pupil from religious observance in a school is subject to section 9A.

(3) Where a pupil is withdrawn from religious observance, the education authority or, in the case of a grant-aided school, the managers, must ensure that the pupil is provided with suitable and purposeful educational activity during that period.".

(4) After section 9 insert—

"9A Pupil's involvement in decision about withdrawal from religious observance

(1) This section applies if a parent has made a request to withdraw a pupil from religious observance in a school under section 9(1).

(2) The operator of the school must—

(a) provide the parent with written information setting out the process for considering a request for withdrawal,

(b) tell the pupil about the request and the pupil's right to object to withdrawal,

(c) give the pupil an opportunity to express the pupil's views about the request in—

(i) the manner that the pupil prefers, or

(ii) a manner that is suitable to the pupil if the pupil has not indicated a preference or it is not reasonable to accommodate the pupil's preference, and

(d) have regard to any views expressed by the pupil about the request, taking into account the pupil's age and maturity.

(3) The operator is not required to comply with subsection (2) if satisfied that the pupil is not capable of forming a view.

(4) The pupil is to be presumed to be capable of forming a view unless the contrary is shown.

(5) If, after the operator has complied with subsection (2), the pupil objects to the parent's request, the operator must—

(a) seek to discuss the pupil's objection with the pupil and the parent, and

(b) have regard to any views expressed during any discussion.

(6) If the pupil objects to the parent's request, after the operator has complied with subsection (5) the operator is not to give effect to the parent's request.

(7) In carrying out its functions under this section, an operator must—

(a) act impartially, and

(b) not seek to influence the views of the pupil in relation to a request for withdrawal.

(8) In this section and section 9B, "operator" means—

(a) where the school is a public school, the education authority by which it is managed,

(b) where the school is a grant-aided school, the managers.

9B Guidance to operators on section 9A

(1) The Scottish Ministers must issue guidance to operators about the carrying out of functions under section 9A.

(2) The guidance must, in particular, include information about—

(a) the process for considering a request for withdrawal from religious observance,

(b) support available to pupils and parents about the process,

(c) assessing whether a pupil is capable of forming a view about a request,

(d) handling of discussion between pupils and parents about a request.

(3) Before issuing guidance under subsection (1), the Scottish Ministers must consult—

(a) operators of schools,

(b) persons appearing to the Scottish Ministers to represent the interests of—

(i) teachers,

(ii) parents,

(iii) children and young people,

(iv) denominational schools.

(4) An operator must, in carrying out functions under section 9A, have regard to guidance issued under subsection (1).

(5) The Scottish Ministers must publish guidance issued under subsection (1)—

(a) within the period of 12 months beginning with the day on which this section comes into force,

(b) in such manner as they consider appropriate.

9C Power to introduce independent right of withdrawal from religious observance

(1) The Scottish Ministers may by regulations provide for pupils to have a right to request withdrawal from any religious observance in a public or grant-aided school.

(2) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.

9D Guidance on meaning of religious observance

(1) The Scottish Ministers must issue guidance to operators about the meaning of religious observance for the purposes of sections 8, 9 and 9A.

(2) In preparing guidance under subsection (1), the Scottish Ministers must have regard to the importance of inclusiveness in the content and delivery of religious observance in schools.

(3) Before issuing guidance under subsection (1), the Scottish Ministers must consult—

(a) operators of schools,

(b) persons appearing to the Scottish Ministers to represent the interests of—

(i) teachers,

(ii) parents,

(iii) children and young people,

(iv) denominational schools.

(4) An operator must, in carrying out functions under sections 8, 9 and 9A, have regard to guidance issued under subsection (1).

(5) The Scottish Ministers must publish guidance issued under subsection (1)—

(a) within the period of 12 months beginning with the day on which this section comes into force,

(b) in such manner as they consider appropriate.

9E Reporting on withdrawal from religious observance

(1) The Scottish Ministers must, as soon as reasonably practicable after the end of each school year, prepare and publish a report setting out the number of pupils who have been withdrawn from religious observance in schools during that school year.

(2) In this section, "school year" means the period of 12 months beginning on 1 August.".

(5) In section 133 (regulations, etc.), after subsection (2XA) insert—

"(2XAA) Subsection (2) does not apply to any regulations under section 9C; and such regulations are subject to the affirmative procedure.".

2 Review of modifications made by section 1

(1) The Scottish Ministers must—

(a) undertake a review of the operation of the provisions of the Education (Scotland) Act 1980 which are modified by section 1, and

(b) prepare and publish a report on that review.

(2) The report prepared under subsection (1)(b) must be published no later than the end of the period of 3 years beginning with the day on which section 1(4) comes into force.

(3) The report must, in particular, contain—

(a) information about how religious observance has been delivered in schools during the period covered by the review,

(b) an assessment of the inclusiveness of the content and delivery of religious observance during that period.

(4) The report must include—

(a) a statement of any actions the Scottish Ministers intend to take following the report (including, in particular, actions to enable children to withdraw from religious observance), or

(b) where the Scottish Ministers do not intend to take any actions, their reasons for not taking actions.

(5) The Scottish Ministers must lay a copy of the report before the Scottish Parliament.

PART 2

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION) (SCOTLAND) ACT 2024: CIRCUMSTANCES WHERE INCOMPATIBLE ACTION OR FAILURE TO ACT IS NOT UNLAWFUL

3 United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024: circumstances where incompatible action or failure to act is not unlawful

(1) The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 is modified as follows.

(2) In section 6 (acts of public authorities to be compatible with the UNCRC requirements)—

(a) in subsection (1), for "subsection (4)" insert "sections 6A and 6B",

(b) subsection (4) is repealed.

(3) After section 6 insert—

"6A No unlawfulness where incompatible action or failure to act relies on UK enactment

Section 6(1) does not make unlawful doing or failing to do something if the public authority was required or entitled to act in that way by words that—

(a) are not contained in an enactment of a kind mentioned in section 6(2)(b), or

(b) are contained in such an enactment having been inserted into it by an enactment of a kind that is not mentioned in section 6(2)(b).

6B No unlawfulness where incompatible action or failure to act relies on Scottish enactment

(1) Section 6(1) does not make unlawful doing or failing to do something if the public authority was required to act in that way by words in an Act of the Scottish Parliament to which section 29 applies.

(2) Section 6(1) does not make unlawful doing or failing to do something if—

(a) the public authority was required to act in that way by words in a Scottish statutory instrument to which section 30 applies, and

(b) (disregarding any possibility of revocation) the Act of the Scottish Parliament under which the Scottish statutory instrument was made prevents removal of the incompatibility with the UNCRC requirements.".

(4) In section 16 (reviewing and reporting on the Scheme), in subsection (3)—

(a) after paragraph (a) insert—

"(aa) a summary of—

(i) any notifications relating to the application of section 6B received by the Scottish Ministers under section 18A(1), and

(ii) any intimations relating to the application of section 6B received by the Lord Advocate under section 34A(1),",

(b) in paragraph (c), after "period" insert ", including any actions that they intend to take in relation to the notifications and intimations mentioned in paragraph (aa)".

(5) After section 18 insert—

"18A Notification by listed authorities of application of section 6B

(1) Where a listed authority is of the view that, in relation to the exercise of a relevant function—

(a) it is not possible to comply with the section 24 requirement, and

(b) as a result, section 6B applies in connection with the exercise, or potential exercise, of that relevant function,

it must notify the Scottish Ministers, the Commissioner for Children and Young People in Scotland and the Scottish Commission for Human Rights of that view as soon as reasonably practicable.

(2) In this section—

"listed authority" means an authority listed in section 19,

"relevant function" has the meaning given in section 6(2),

"section 24 requirement" is the requirement in section 24(1) to read and give effect to the words mentioned in paragraphs (a) and (b) of that subsection in a way which is compatible with the UNCRC requirements.".

(6) In section 19 (listed authorities), in subsection (1), for "section 18(1)" substitute "sections 18(1) and 18A(1)".

(7) After section 34 insert—

"34A Power to intervene in proceedings where section 6B is raised

(1) Where a question arises in any proceedings before a court or tribunal as to whether section 6B applies to the way in which a public authority has acted (or proposed to act), intimation of that is to be given to the Lord Advocate, the Commissioner for Children and Young People in Scotland and the Scottish Commission for Human Rights (unless the person to whom the intimation would be given is a party to the proceedings).

(2) A person to whom intimation is given under subsection (1) may, on giving notice, take part as a party in the proceedings so far as the proceedings relate to that question.".

(8) In section 38 (additional expenses), in subsection (3), for "or 34(2)" substitute ", 34(2) or 34A(2)".

PART 3

FINAL PROVISIONS

4 Ancillary provision

(1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with, or for giving full effect to this Act.

(2) Regulations under this section may—

(a) modify any enactment (including this Act),

(b) make different provision for different purposes.

(3) Regulations under this section—

(a) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure, but

(b) otherwise, are subject to the negative procedure.

5 Commencement

(1) This section and sections 4 and 6 come into force on the day after Royal Assent.

(2) Sections 1 and 3 come into force on such day as the Scottish Ministers may by regulations appoint.

(3) Regulations under subsection (2) may—

(a) include transitional, transitory or saving provision,

(b) make different provision for different purposes.

6 Short title

The short title of this Act is the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Act 2026.

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