

EXPLANATORY NOTES

Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Act 2026 (asp 9)

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CHILDREN (WITHDRAWAL FROM RELIGIOUS EDUCATION AND AMENDMENT OF UNCRC COMPATIBILITY DUTY) (SCOTLAND) ACT 2026

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Act 2026. They do not form part of the Act and have not been endorsed by the Parliament.

2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

3. In these Notes, the Education (Scotland) Act 1980 is referred to as "the 1980 Act" and the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 is referred to as "the 2024 Act".

CROWN APPLICATION

4. Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 ("ILRA") provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish statutory instrument unless the provision expressly exempts it. As such, technically this Act applies to the Crown in the same way as it applies to everyone else. Section 1 of the Act amends the 1980 Act, which predated ILRA and did not bind the Crown when enacted – and so the amendments of it made by the Act will also not bind the Crown. Section 3 of the Act amends the 2024 Act, which binds the Crown, and the Act does not change that.

OVERVIEW OF THE ACT

5. The purpose of the Act is twofold, with both purposes relating to the United Nations Convention on the Rights of the Child ("UNCRC").

6. The first purpose of the Act is to amend the 1980 Act to require that a pupil's views are considered when parents or carers are exercising their existing right to withdraw the pupil from religious observance, in order to support compliance of the 1980 Act with the UNCRC.

7. The second purpose of the Act is to amend the 2024 Act in order to add an exception to the duty on public authorities under section 6 to act compatibly with the UNCRC requirements, in circumstances where the authority is compelled to act incompatibly in reliance on another

Act of the Scottish Parliament. This is intended to remove the potential for public authorities to have to decide whether to act in a way that puts them in breach of the compatibility duty in the 2024 Act or to act in a way that puts them in breach of another statutory duty.

COMMENTARY ON PROVISIONS

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

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

8. Section 1 modifies the 1980 Act to alter the provision it makes about religious instruction and religious observance in public schools and grant-aided schools, and parental rights of withdrawal from such religious instruction and religious observance.

9. Section 1(2) inserts a new section 8(1A) into the 1980 Act. Section 8(1) sets out the historic basis for the provision of religious instruction and religious observance in schools. The new subsection provides that the continuation of this is not to include any right for parents to withdraw pupils from religious instruction.

10. Section 1(3) amends section 9 of the 1980 Act, which previously gave parents the right to withdraw pupils from religious instruction and religious observance. Section 1(3) removes the right for parents to withdraw pupils from religious instruction and provides that pupils are not to be disadvantaged by reason of being withdrawn from religious observance. It also inserts a new subsection (2) introducing a new process for involving the pupil in a decision about withdrawal from religious observance and a new subsection (3) requiring that pupils withdrawn from religious observance are provided with suitable and purposeful educational activity during that period. The materials for use during that activity could be provided by the school or someone else, for example, the pupil's parents.

11. Section 1(4) inserts new section 9A into the 1980 Act to provide for the new process of involving the pupil in a decision about withdrawal from religious observance. Under section 9A(2), when a withdrawal request is received from a parent, the operator of the school (as defined in new section 9A(8)) must provide the parent with written information about the process and must tell the pupil that the request has been made and also that the pupil has the right to object to withdrawal. The operator must give the pupil the opportunity to express the pupil's views about the withdrawal request. The pupil should be able to offer views in the manner that the pupil prefers. If the pupil has not expressed a preference, or it is not reasonable to accommodate the pupil's preference, then the manner of expressing views should be one that is suitable to the pupil.

12. An operator does not need to comply with section 9A(2) if the operator is satisfied that the pupil is not capable of expressing a view – but must presume that the pupil is capable of doing so unless the contrary is shown.

13. If, once the operator has complied with subsection (2), the pupil objects to the withdrawal request, the operator must seek to discuss the objection with the pupil and the parent. The operator must have regard to any views expressed during any discussion which takes place. The Act does not require a parent or pupil to take part in a discussion.

14. If the pupil objects to the withdrawal request, the operator is not to give effect to the withdrawal request and so it will not be granted. Conversely, if a pupil does not object to the request, the withdrawal request will be granted.

15. In carrying out functions under new section 9A the operator of the school must act impartially and not seek to influence the views of the pupil about the withdrawal request.

16. Section 1 also inserts a new section 9B into the 1980 Act. Section 9B requires the Scottish Ministers to issue guidance to operators about the carrying out of functions under new section 9A. Subsection (2) lists information which must be included in the guidance. The Scottish Ministers must consult the persons mentioned in subsection (3) before issuing the guidance. In carrying out functions under new section 9A, operators must have regard to guidance issued under section 9B(1).

17. Section 1 also inserts a new section 9C into the 1980 Act. Section 9C gives the Scottish Ministers the power to make regulations to provide for pupils to have a right to request withdrawal from religious observance in a public or grant-aided school. The Scottish Ministers must consult such persons as they consider appropriate before making regulations. Regulations under section 9C are subject to the affirmative procedure by virtue of section 1(5) of the Act.

18. Section 1 also inserts a new section 9D into the 1980 Act. Section 9D requires the Scottish Ministers to issue guidance to operators about the meaning of religious observance for the purposes of sections 8, 9 and 9A of the 1980 Act. The Scottish Ministers must have regard to the importance of inclusiveness in the content and delivery of religious observance in schools when they are preparing the guidance. The Scottish Ministers must consult the persons mentioned in subsection (3) before issuing the guidance. In carrying out functions under sections 8, 9 and 9A, operators must have regard to guidance issued under section 9D(1).

19. Finally, section 1 also inserts a new section 9E into the 1980 Act. Section 9E requires the Scottish Ministers, as soon as practicable after the end of each school year, to prepare and publish a report setting out the number of pupils who have been withdrawn from religious observance in schools during that school year.

Section 2: Review of modifications made by section 1

20. Section 2 of the Act requires the Scottish Ministers to undertake a review of the operation of the provisions of the 1980 Act that are modified by section 1 of the Act and to prepare and publish a report on the review. A copy of the report must be laid before the Scottish Parliament.

21. The report must be published no later than the end of the period of 3 years beginning with the day on which section 1(4) (the provision that creates the new process for pupils' involvement in decisions about withdrawal) comes into force. The report must contain information about how religious observance has been delivered in schools during that period and an assessment of the inclusiveness of the content and delivery of religious observance during that period.

22. The report must include a statement of any actions the Scottish Ministers intend to take following the report, including any actions they intend to take to enable children to withdraw from religious observance. Where the Scottish Ministers do not intend to take actions, the report must include their reasons for not taking actions.

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

Section 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

23. The 2024 Act incorporates the UNCRC into Scots law. Section 6(1) of the 2024 Act provides that public authorities act unlawfully if they act, or fail to act, in connection with a relevant function in a way that is incompatible with the UNCRC requirements – i.e. the rights and obligations from the convention set out in the schedule of the 2024 Act. Effectively, therefore, it imposes a duty on public authorities to act compatibly with the UNCRC requirements when exercising relevant functions.

24. Even where a relevant function is being carried out, however, an incompatible action or failure to act is not unlawful in certain, limited circumstances. See section 6(4), which provides that an incompatible action or failure by a public authority in connection with a relevant function is not unlawful if the public authority was required or entitled to act in the way it did (that is, incompatibly) by words which are not contained in an enactment of a type listed in section 6(2)(b) – that is, by words contained in enactments made by, or by virtue of powers conferred by, the UK Parliament rather than by, or by virtue of powers conferred by, the Scottish Parliament.

25. Further, section 6(4)(b) provides that the public authority does not act unlawfully if it was required or entitled to act incompatibly by words contained in an enactment that is made by, or by virtue of powers conferred by, the Scottish Parliament if the particular words in question were inserted by an enactment made by, or by virtue of powers conferred by, the UK Parliament.

26. Therefore under section 6(4) any requirement or entitlement to act incompatibly which emanates from the UK Parliament will result in a public authority, which is acting in accordance with such a requirement or entitlement, not acting unlawfully.

27. Section 3 of the Act takes the existing text of section 6(4) of the 2024 Act and replicates it, with no changes to legal effect, as section 6A.

28. Section 3 of the Act then adds, as section 6B of the 2024 Act, a further exception to the general duty in section 6(1) of the 2024 Act for public authorities to act compatibly with the UNCRC requirements. The effect of section 6B is that an incompatible action or failure by a public authority in connection with a relevant function is not unlawful if, as the result of words in an Act of the Scottish Parliament or in Scottish subordinate legislation which are not derived from a UK enactment, the public authority was required to act in that way – that is, the authority was compelled to act incompatibly by another statutory duty placed upon it. However, the exception only applies to subordinate legislation where the Act of the Scottish Parliament under which it was made prevents removal of the incompatibility – in other words, the incompatibility with the UNCRC requirements is mandated by the parent Act.

29. Section 24(1) of the 2024 Act still requires words in an Act of the Scottish Parliament or in Scottish subordinate legislation which are not derived from a UK enactment to be read and given effect in a way which is compatible with the UNCRC requirements so far as it possible to do so. The legal purpose of section 6B is thus to remove the potential for public

authorities to have to decide whether to act in a way that puts them in breach of the compatibility duty in the 2024 Act, or to act in a way that puts them in breach of another legal duty in devolved legislation, in cases where it is not possible to read and give effect to legislation in compliance with section 24(1).

30. The references to the definition of "words" in sections 29 and 30 of the 2024 Act have the effect of excluding from the scope of the new exception words in Acts of the Scottish Parliament or in Scottish subordinate legislation which are inserted by UK enactments – this is in order to avoid duplicating the effect of section 6A(b).

31. Section 3(5) adds, as section 18A of the 2024 Act, a requirement for authorities listed in section 19 of the 2024 Act to notify the Scottish Ministers, the Commissioner for Children and Young People in Scotland and the Scottish Commission for Human Rights where the listed authority is of the view that it is not possible for the authority to comply with the requirement in section 24 of the 2024 Act (described in subsection (2) of new section 18A) in relation to a relevant function and that, as a result, section 6B of the 2024 Act applies in relation to the exercise (or potential exercise) of that function. Notifications under section 18A are to be given as soon as reasonably practicable.

32. Section 3(7) adds, as section 34A of the 2024 Act, a requirement that the Lord Advocate, the Commissioner for Children and Young People in Scotland and the Scottish Commission for Human Rights are to be given intimation of any question before a court or tribunal as to whether the new section 6B applies to the way a public authority has acted or proposed to act (unless they are already party to the proceedings, as in that case they would already be aware of the question). They may then give notice to take part as a party in the proceedings so far as the proceedings relate to that question. This ensures that the Lord Advocate, the Commissioner for Children and Young People in Scotland and the Scottish Commission for Human Rights are aware of every case in which the new section 6B is relied on in a court or tribunal and can choose to intervene.

33. Section 3(8) adds reference to the new section 34A(2) to section 38 of the 2024 Act so that any additional expenses incurred by any party to the proceedings as a result of such participation can be taken into account by a court or tribunal.

34. Section 3(4) amends section 16 of the 2024 Act, about reviewing and reporting on the Children's Rights Scheme, to require reports to contain a summary of any notifications received by the Scottish Ministers under new section 18A and any intimations received by the Lord Advocate under new section 34A. The Scottish Ministers' existing duty under section 16 to provide a summary of any actions they intend to take is expanded to add any actions that they intend to take in relation to those notifications and intimations.

Part 3 – Final provisions

Section 4: Ancillary provision

35. This section gives the Scottish Ministers a freestanding regulation-making power to make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, in connection with, or for giving full effect to, the Act.

36. Subsection (2) allows such regulations to modify any legislation, including the Bill itself once it is enacted: if doing so the regulations would be subject to the affirmative procedure. Otherwise they will be subject to the negative procedure.

Section 5: Commencement

37. This section provides that sections 4 to 6 of the Act come into force on the day after Royal Assent.

38. Sections 1 and 3 of the Act come into force on a day appointed by regulations made by the Scottish Ministers. These regulations may make transitional, transitory or saving provision related to commencement and may make different provision for different purposes. These regulations are also required to be laid before the Parliament under section 30 of ILRA, but they are not otherwise subject to any Parliamentary procedure.

39. Section 2 of the Act comes into force on the day after Royal Assent, as provided for in section 2 of ILRA.

Section 6: Short title

40. This section provides that the Bill, once enacted, will be referred to as the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Act 2026.

PARLIAMENTARY HISTORY

41. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill's parliamentary passage.

Proceedings and reports	**Reference**
Bill as introduced	SP Bill 66 Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill [as introduced] Session 6 (2025)
Explanatory Notes	SP Bill 66 Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill [explanatory notes] Session 6 (2025)
Policy Memorandum	SP Bill 66 Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill [policy memorandum] Session 6 (2025)
Financial Memorandum	SP Bill 66 Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill [financial memorandum] Session 6 (2025)
Delegated Powers Memorandum	SP Bill 66 Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill [delegated powers memorandum] Session 6 (2025)

Proceedings and reports	Reference
Stage 1	
Equalities, Human Rights and Civil Justice Committee, 17 June 2025	SP OR Equalities, Human Rights and Civil Justice Committee 17 June 2025
Delegated Powers and Law Reform Committee, 24 June 2025	SP OR Delegated Powers and Law Reform Committee 24 June 2025
Delegated Powers and Law Reform Committee report	Delegated Powers and Law Reform Committee 55th report, 2025, Delegated Powers in the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill (SPP 842)
Equalities, Human Rights and Civil Justice Committee, 30 September 2025	SP OR Equalities, Human Rights and Civil Justice Committee 30 September 2025
Equalities, Human Rights and Civil Justice Committee, 7 October 2025	SP OR Equalities, Human Rights and Civil Justice Committee 7 October 2025
Equalities, Human Rights and Civil Justice Committee, 28 October 2025	SP OR Equalities, Human Rights and Civil Justice Committee 28 October 2025
Equalities, Human Rights and Civil Justice Committee, 18 November 2025	SP OR Equalities, Human Rights and Civil Justice Committee 18 November 2025
Equalities, Human Rights and Civil Justice Committee report	Equalities, Human Rights and Civil Justice Committee 7th report, 2025, Stage 1 report on the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill (SPP 912)
Chamber, 25 November 2025	SP OR 25 November 2025
Stage 2	
Marshalled List of Amendments for Stage 2	SP Bill 66 Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill [marshalled list of amendments for stage 2] Session 6 (2025)
Groupings of Amendments for Stage 2	SP Bill 66 Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill [groupings of amendments for stage 2] Session 6 (2025)
Equalities, Human Rights and Civil Justice Committee, 16 December 2025	SP OR Equalities, Human Rights and Civil Justice Committee 16 December 2025

Proceedings and reports	**Reference**
Bill as amended at Stage 2	SP Bill 66A Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill [as amended at Stage 2] Session 6 (2025)
Revised Explanatory Notes	SP Bill 66A Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill [revised explanatory notes] Session 6 (2026)
Stage 3	
Marshalled List of Amendments for Stage 3	SP Bill 66A Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill [marshalled list of amendments for stage 3] Session 6 (2026)
Timed Groupings of Amendments for Stage 3	SP Bill 66A Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill [timed groupings of amendments for stage 3] Session 6 (2026)
Chamber, 17 February 2026	SP OR 17 February 2026
Bill as passed	SP Bill 66B Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill [as passed] Session 6 (2026)
Post passage	
Royal Assent, 2 April 2026	2026 asp 9

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