



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

Briefing for MSPs – Stage 2 – December 2025

Together welcomes the opportunity to brief the Equalities, Human Rights and Civil Justice Committee ahead of Stage 2 consideration of amendments to the [Children \(Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty\) \(Scotland\) Bill](#).

In our [Stage 1 evidence](#) and [MSP briefing](#), we identified several areas where the Bill should be strengthened to ensure children's rights are respected, protected and fulfilled in practice. This briefing sets out our position on the amendments to be considered at Stage 2. It follows the order of the Bill: Part 1 (religious observance and religious education) and Part 2 (UNCRC compatibility duty).

It remains regrettable that Scottish Government has drafted the legislation so that Part 1 falls outwith the scope of the UNCRC (Incorporation) (Scotland) Act 2024. The result is that children do not have a direct legal route to challenge rights breaches under these new measures. We are disappointed that no amendments have been brought forward to address this issue at Stage 2 and call for this amendment to be made at Stage 3.

Part 1: religious observance and religious education

Group 1: Scope of withdrawal rights

Distinguishing religious observance (RO) from religious education (RME)

Amendments 9–17, 19, 44 - We support these amendments.

Together welcomes the Committee's Stage 1 conclusion that withdrawal should apply to RO only, and that RME should remain part of the core curriculum. The Bill as introduced continues the historic conflation of RO and RME, perpetuating ambiguity for schools, families, and children.

Amendments 9–17 and 19 remove the right to withdraw from instruction in religious subjects. This reflects the Curriculum for Excellence position that RME is an academic subject essential for understanding diverse beliefs and values. It also supports Article 29 UNCRC which states education should promote respect for human rights, diversity, and different beliefs.

Amendment 44 provides statutory definitions of RO and RME. This addresses the long-standing absence of clarity in legislation and reflects the evidence given to the Committee that the lack of definition contributes to significant variation in practice.

These amendments strengthen children's rights by creating a coherent, transparent framework and ensuring curriculum entitlements are protected.

Amendment 9A – we oppose this amendment.

Amendment 9A would remove existing parental opt-out rights from religious education in denominational schools, where RE/RERC can be delivered in a confessional manner. The UK Supreme Court's recent judgment in JR87 makes clear that education which is not objective, critical, and pluralist risks amounting to indoctrination, and without any withdrawal rights this amendment could place denominational schools in conflict with that ruling or force them to cease confessional provision altogether. In practice, this change would particularly affect families from other faith traditions who currently rely on opt-out arrangements to avoid their children participating in confessional activities that do not reflect their beliefs.

Amendment 20 - We oppose this amendment.

Amendment 20 would introduce unnecessary procedural duplication without providing any additional rights or safeguards. While we recognise that RO and RME are distinct in form, content, and purpose, it is difficult to envisage that schools would not already take this into account when considering a parental request to withdraw a child. Requiring schools to run separate, parallel processes and hold distinct discussions to seek a pupil's views on withdrawal from RO and RME risks creating procedural complexity, particularly when the distinction between RO and RME may be more effectively and proportionately addressed through Amendments 9–17.

Group 2: Process following receipt of parental withdrawal request

Additional procedural requirements

Amendments 21–24, 26–33, 35–37 - We oppose these amendments.

These amendments introduce:

- a presumption that children under 16 are not mature enough to form views;
- extensive administrative requirements (written confirmations, cooling-off periods); and
- a three-person panel for decisions.

These proposals conflict with the Bill's UNCRC-based presumption of capacity and introduce a formal, legalistic process likely to increase pressure on schools and deter children from expressing their views.

The Committee heard consistent evidence that age-based thresholds were inappropriate and that schools required guidance, not burdensome new structures. These amendments run counter to that evidence and Together's Stage 1 asks.

Amendments restricting children's agency

Amendment 5 - We oppose this amendment.

Amendment 5 would significantly weaken the participation rights the Bill currently provides by replacing its presumption that a pupil is capable of forming a view with a requirement that a pupil is only capable where the school (the "operator") is "satisfied" that the pupil can "meaningfully express a view".

This reverses the central safeguard established by both the UNCRC and the Children (Scotland) Act 2020 ('2020 Act').

The Bill as introduced mirrors the approach taken in the 2020 Act by:

- presuming that pupils are capable of forming a view unless the contrary is shown; and
- requiring schools to give pupils an opportunity to express their views in a manner they prefer, and to give those views due weight based on age and maturity.

This is consistent with Article 12 UNCRC, which obliges duty-bearers to presume capacity, support children to express their views, and respect those views.

Amendment 5 would:

- introduce a school-controlled gatekeeping test;
- make it easier for schools to exclude children's views; and
- shift the burden onto the child to demonstrate capability.

It would reinstate barriers to participation that the 2020 Act intentionally removed, resulting in a lower level of rights protection than children currently enjoy in family courts and children's hearings. It would also undermine coherence across Scotland's post-2020 children's rights framework.

For these reasons, Together does not support Amendment 5.

Amendment 6 - We oppose this amendment.

Under the Bill as introduced, where a pupil objects to a parent's request, the school must not give effect to the parent's request to the extent of that objection. This gives clear legal effect to the child's expressed view and mirrors the 2020 Act's presumption of capacity and respect for children's views.

Amendment 6 would reverse this position by requiring the school to give effect to the parent's request **unless** doing so would be contrary to the child's best interests. This framework:

- makes the parent's position the default;
- reduces the child's view to an advisory factor;

- introduces an undefined “best interests” override; and
- enables schools to disregard a pupil’s objection even where the pupil is demonstrably capable of forming a clear view.

This approach is inconsistent with Article 12 UNCRC and with the direction set by the 2020 Act, which emphasises children’s agency rather than adult-centred override tests. It would significantly diminish the role of the child’s voice in decisions that directly affect them and would fragment the coherence of Scotland’s wider children’s rights landscape.

Together therefore does not support Amendment 6.

Legal aid

Amendment 42 – We oppose this amendment – while we note the intention we do not consider it necessary.

While access to advice is important, this amendment risks portraying the process as adversarial and could over-legalise what should be a child-centred, school-based dialogue. Given the expected low volume of cases and the Bill’s focus on resolving issues through school-level discussion, this amendment is not necessary.

Group 3: Pupil’s right to withdraw from religious observance (RO)

Amendments 1–4 and 18 - We support these amendments.

Together called for an independent statutory right for children and young people to decide whether to participate in religious observance, based on their evolving capacities. The Bill as introduced only gives pupils a right to *object* to parental withdrawal requests; it does not give children agency over their own participation.

Amendments 1–4 and 18 insert a new section 9AA giving pupils a direct right to withdraw (or request withdrawal) from RO. This aligns with Articles 12 and 14 of the UN Convention on the Rights of the Child (UNCRC), clear recommendations from the UN Committee on the Rights of the Child, and with Scotland’s commitment to child-centred decision-making.

These amendments also reflect the views of many stakeholders at Stage 1, and address concerns raised by the Committee around ensuring children’s agency is not dependent on parental action. They preserve proportionality by incorporating a presumption of capacity and a clear process for schools.

We urge members to support these amendments.

Group 4: Reporting on withdrawals

Annual reporting on RO withdrawals

Amendment 38 - We support this amendment.

Amendment 38 requires operators to report annually on RO activity and withdrawals, and obliges Ministers to collate and publish national data. This addresses the significant evidence gap identified at Stage 1 and supports greater transparency and accountability.

Amendment 39 - We support the intention behind this amendment but note that amendment 38 is stronger.

Amendment 39 collects valuable data on objections and partial withdrawals but lacks the Ministerial publication duty. We suggest members support amendment 38 at Stage 2, with consideration at Stage 3 of whether elements of amendment 39 should be incorporated.

Independent review of RO

Amendment 43 - We support this amendment.

This amendment requires periodic independent reporting on RO practice, including compliance with the UNCRC and provision for children who withdraw. While this could improve understanding of RO across Scotland and help ensure consistent rights-respecting practice, we note other stakeholders' views that thematic inspection by HMIE may be a better approach for achieving this.

Group 5: Guidance on withdrawals

Amendments 41 and 57–58 - We oppose these amendments.

We support the underlying intention to refresh guidance on religious observance but do not believe this needs to be placed on a statutory footing in the Bill. Making this a statutory requirement risks unnecessary complexity and delay, rather than improving practice, when a non-statutory approach would be more proportionate and flexible. It is particularly important that children and young people are meaningfully involved in any refresh of guidance.

Part 2: UNCRC compatibility duty

Amendments to the UNCRC (Incorporation) (Scotland) Act 2024

Together welcomes the constructive steps taken by Committee members and Scottish Government to strengthen the safeguards around the new carve-out in section 6B. At Stage 1, both the Committee and Together highlighted the importance of transparency, accountability and ongoing review. The amendments brought forward at Stage 2 represent meaningful progress, and we look forward to working with MSPs to ensure the final framework provides children with the strongest possible protection.

Group 7: Use of exemptions from UNCRC compatibility duty

Narrowing the carve-out and requiring statements from public authorities

Amendments 45–50 and 52–54 - We support the intention behind these amendments, but amendment 51 provides a stronger approach.

These amendments narrow the circumstances where the carve-out applies and introduce new reporting and review duties. They move in the right direction but do not fully address Together's Stage 1 concerns, particularly the need for child-friendly reporting and more systemic transparency.

We prefer amendment 51 (below) as the stronger option for ensuring meaningful scrutiny.

Group 8: Monitoring use of exemptions from UNCRC compatibility duty

Reporting and child-friendly transparency

Amendment 51 - We support this amendment, with further amendment needed at Stage 3.

Amendment 51 requires public authorities relying on the carve-out to notify Ministers and CYPSCS, and requires Ministers to publish and lay an annual report - including a child-friendly version - on the impacts on children's rights. This amendment aligns closely with Together's Stage 1 call for robust reporting and transparency mechanisms. It will improve accountability and provide vital information for scrutiny of the new carve-out.

However, further amendment will be needed at Stage 3 to secure earlier and more proactive identification of incompatibility. In particular, Together considers that public authorities should be under a clear statutory duty to notify the Lord Advocate, CYPSCS and SHRC as soon as they become aware that a provision they are required to apply may be incompatible with the UNCRC requirements. This would bring accountability to the point at which issues first arise, rather than relying on court proceedings initiated by a child.

We would also support a small technical refinement to ensure that public authorities, or relevant bodies acting on behalf of children, can bring proceedings seeking a declarator under the relevant sections of the 2024 Act. These improvements would enhance transparency, reduce the burden on children to initiate litigation, and ensure more effective oversight of section 6B in practice.

Government safeguard amendments

Amendments 7–8 - We support the intention behind these amendments but further changes are needed at Stage 3.

These amendments allow the Lord Advocate, Children and Young People's Commissioner Scotland (CYPSCS) and Scottish Human Rights Commission (SHRC) to intervene in proceedings

where the carve-out is in question. This improves oversight but does not ensure transparency where decisions never reach court.

These amendments represent welcome progress but do not address fundamental concerns about the breadth of section 6B or the need for systemic monitoring. Stronger safeguards will be required at Stage 3.

Group 9: Pre-commencement impact assessment

Impact assessment

Amendment 55 - We oppose this amendment.

Although framed as an evidence-gathering measure, amendment 55 risks delaying commencement by creating additional procedural hurdles. Children's rights have already been subject to extensive scrutiny and impact assessment during the passage of the UNCRC (Incorporation) Bill.

Given the Committee's Stage 1 conclusion that the Bill is targeted and manageable for schools, and the urgency of ensuring children's rights are realised in practice, we do not support measures likely to delay commencement.

Conclusion

Together recommends that the Committee:

- Support amendments creating a clear statutory right for children to withdraw from RO;
- Support amendments that distinguish RO from RME and protect curricular entitlements;
- Support amendments strengthening guidance, monitoring and transparency;
- Oppose amendments that restrict children's agency or undermine the presumption of capacity; and
- Support intention behind safeguards to the UNCRC carve-out while seeking stronger amendments at Stage 3.

Together remains committed to working with the Committee, the Scottish Government and MSPs to ensure this Bill delivers meaningful, practical improvements in the protection of children's rights across Scotland.

About Together (Scottish Alliance for Children's Rights)

Together (Scottish Alliance for Children's Rights) is an alliance that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) and other international human rights treaties across Scotland. We have over 600 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs and interested professionals. The views expressed in this submission are based on wide consultation with our members but may not necessarily reflect the specific views of every one of our member organisations. Views expressed separately should also be taken into account.

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