



GUIDANCE TO TRIBUNAL MEMBERS No 01/2025

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION) (SCOTLAND) ACT 2024 (2024 Act)

A. General

Purpose of this Guidance

1. The [2024 Act](#) was given Royal Assent on 16 January 2024 and came into force on 16 July 2024. The Act incorporates the relevant Articles of the UNCRC which are referred to in the Schedule into Scots law. This makes Scotland the first country in the UK and the first devolved nation in the world to directly incorporate the UNCRC into domestic law.
2. This Guidance is to assist members with their application and interpretation of the 2024 Act in tribunal proceedings. The views of children have been considered in the drafting of this Guidance and a sample of their views can be found in the Appendix.
3. The 2024 Act does not create any liability before the commencement date. Continuing acts or omissions which began before and continue after the commencement date may be considered.
4. The UNCRC contains no interpretation section and many of its terms are set out broadly. This may well be a strength of the UNCRC as it allows for interpretations that can accommodate the changing needs and circumstances of children and address matters that may not have been addressed at the time of drafting.¹ However, there is a need to have in place a suitable framework for interpretation and sections F and G of this Guidance provide principles of interpretation to assist here.

The child

5. The term 'child' is used throughout this Guidance and is taken to mean every human being below the age of 18 years.²

¹ Laura Lundy and Ursula Kilkelly, 'Children's Rights in Action: Using the UN Convention on the Rights of the Child as an Auditing tool' (2006) 18 Child and Family Law Quarterly 331.

² Consistent with Article 1.

B. The 2024 Act

Meaning of the UNCRC requirements

6. The 'UNCRC requirements' are those set out in the Schedule to the 2024 Act.³ These are the rights set out in Articles 1 to 42, with some minor wording amendments.⁴ It is important to only use the Schedule to the 2024 Act when considering the wording of a UNCRC article, due to these amendments.
7. Also included are some of the provisions in the first optional protocol (children in armed conflict, Schedule, Part 2) and those in the second optional protocol (sale of children, prostitution and pornography, Schedule, Part 3).⁵

Acts of public authorities to be compatible with the UNCRC requirements

8. Where a 'public authority' acts or fails to act in connection with a 'relevant function' in a way that is incompatible with the UNCRC requirements, that act (or failure) is unlawful.⁶ A 'relevant function' refers to a function that is within the legislative competence of the Scottish Parliament to confer on the authority and that is conferred by:
 - (a) an Act of the Scottish Parliament (**ASP**); or
 - (b) a Scottish statutory instrument (**SSI**) originally made wholly under a relevant enabling power;⁷ or
 - (c) a provision in an SSI originally made partly under a relevant enabling power, provided that the provision itself was originally made under the relevant enabling power or was inserted into the instrument by an ASP or subordinate legislation made under a relevant enabling power;⁸ or
 - (d) a rule of law not created by an enactment.

Public authority

9. 'Public authority' is not fully defined and concentrates on the nature of the functions of the body, rather than on the nature of the body itself.⁹ An education authority is a public authority under the 2024 Act. A body that performs certain functions of a public nature may be a public authority even although not all of its

³ s.1(2).

⁴ Set out in the table in s.2(3) - Articles 2, 7, 22, 27 and 38 of the Convention; Article 6 of the first optional protocol; Article 4 of the second optional protocol.

⁵ s.1(1).

⁶ s.6(1).

⁷ 'Relevant enabling power' is defined in s.6(3) as a power in an ASP or an SSI, the latter of a type mentioned in s.6(2)(b)(ii) or (iii) to make subordinate legislation, unless the provision conferring the power was not one of any of these kinds. The definition is a complex one and should be considered carefully where any doubt exists.

⁸ s.6(2).

⁹ s.6(5).

functions are public ¹⁰ and even where the functions of the body are not publicly funded. ¹¹

10. Where a body carries out public functions under a contract or other arrangement with a public authority, the work of that body under the contract/arrangement is treated as carried out by a public authority. ¹² This means that where there is input by a private organisation into the education of a child under a contract/arrangement with an education authority (such as an independent school whose fees are paid by the education authority), the input of that organisation is treated, for the purposes of the 2024 Act, as the work of a public authority.
11. In relation to a particular act a person is not a public authority by virtue only of section 6(5)(a)(iii) (any person whose functions are of a public nature) if the nature of the act is private. For example, parents providing private funding for an independent school.
12. A court or tribunal is a public authority. ¹³ This is also the case under the Human Rights Act 1998, and so case law and commentary on that provision may be applicable to that part of the public authority definition under the 2024 Act.

Proceedings for unlawful acts (section 7)

13. A person who claims that a public authority has acted or proposes to act in a way which is made unlawful by the 2024 Act ¹⁴ may:
 - a) **Bring** proceedings against the authority in any tribunal which has the jurisdiction to grant the remedy sought. The party here is *bringing* proceedings, which means that they do not attach to existing proceedings. ¹⁵
 - b) **Rely** on the UNCRC requirements concerned in any legal proceedings. The party here is relying on the 2024 Act in a reference or claim. ¹⁶

Scottish Government Guidance

14. The Scottish Government has published statutory guidance to support public authorities in the implementation and operation of their duties under Part 2 Duties on Public Authorities. ¹⁷ These can be found here:

¹⁰ s.6(5)(a)(iii).

¹¹ s.6(7).

¹² s.6(6).

¹³ s.6(5)(a)(ii).

¹⁴ s.6(1) Acts of public authorities to be compatible with the UNCRC requirements.

¹⁵ s.7(1)(a).

¹⁶ s.7(1)(b).

¹⁷ s.13. Also on Part 3 (section 18) of the Act but this has no relevance for Tribunal proceedings.

[Statutory guidance on Part 2 of the UNCRC \(Incorporation\) \(Scotland\) Act 2024](#)

[Clarification of inherent obligations of the United Nations Convention on the Rights of the Child \(UNCRC\)](#)

[Sources to guide interpretation of the United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#)

15. Other existing UNCRC resources ¹⁸ include:

- a) [Non-statutory guidance](#) to support public authorities and other organisations to take a children’s human rights approach.
- b) The [children’s rights guide](#) provides an introduction to the UNCRC.

C. The UNCRC and the HEC

16. The HEC has a duty not to act in a way which is incompatible with the UNCRC. This means we have to ensure that our own processes and procedures are consistent with the UNCRC. This is reflected in our practices, our member training and in President’s Guidance to members, President’s Guidance to the administration and to parties and President’s Information Notes.

HEC (Additional Support Needs) substantive jurisdiction

17. A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) of the 2024 Act may bring proceedings against the public authority in the HEC provided the remedy sought is within our jurisdiction.
18. A relevant function is a function that is within the legislative competence of the Scottish Parliament to confer on the authority (see paragraph 7 above). For HEC purposes, this includes the Education (Additional Support for Learning)(Scotland) Act 2004 (**2004 Act**), the Equality Act 2010 (**2010 Act**), the Standards in Scotland’s Schools etc. Act 2000 and parts of the Education (Scotland) Act 1980.

Equality Act 2010 (2010 Act)

19. Although the 2010 Act is not an ASP, our jurisdiction comes from Schedule 17, Part 3 and the power to make rules around the procedure for claims is detailed in Schedule 17 paragraph 10. The power to make these rules is explicitly conferred on the Scottish Ministers and the rules (SSI 2017/366) are rooted in the Tribunals (Scotland) Act 2014 as the enabling power. This means that the power of the HEC to decide a claim is a power that is in a SSI, with a Scottish parent Act and

¹⁸ See the Scottish Government UNCRC Implementation Programme Update (July 2024).

where the power to make the rules of procedure are devolved by the UK Parliament to the Scottish Ministers.

20. The fact that the vehicle for the section 6(1) argument of an unlawful act or failure to act is a claim under (in its origin) a UK statute (2010 Act) is not relevant. The vehicle is not relevant, only the substantive basis for the act or failure. This means that a UNCRC section 6(1) argument can be made in a reference or claim, as long as the relevant function in question is one which falls within an ASP or a relevant SSI.
21. The reason this is possible is that conduct argued within the same case can give rise to 2004 or 2010 Act and UNCRC 'liability'. This arises from the wording of section 7(1)(b) of the 2024 Act, which provides that a section 6(1) 'claim' under the 2024 Act (not a 2010 Act claim) may be made 'in any legal proceedings'.¹⁹ This phrase is not restricted in its meaning.

Standards in Scotland's Schools etc. Act 2000 (2000 Act)
Education (Scotland) Act 1980 (1980 Act)

22. The relevant provisions in the 2000 Act (such as sections 1 (right of child to school education), 2 (duty of education authority in providing education) and 15 (requirement that education be provided in mainstream schools)) may give rise to unlawfulness under section 6(1) of the 2024 Act. This also applies to (for example) section 14 (education for children unable to attend school etc.) of the 1980 Act since that provision was inserted into the 1980 Act by the 2000 Act and so is 'conferred by an ASP' under the 2024 Act.
23. The 1980 Act was made before the creation of the Scottish Parliament and is therefore UK legislation, although only applicable in Scotland. Since any duties under the 1980 Act (although now within the competence of the Scottish Parliament) are not conferred by one of the three types of instrument listed under section 6(2)(b)(i)-(iii) of the 2024 Act, they are not relevant functions and so cannot be used as the basis for unlawfulness under section 6(1).
24. The definitions of terms imported from section 135 of the 1980 Act into the 2004 Act are covered by section 6(1), since the importation is under section 29(2) of the 2004 Act, which is an ASP.

UNCRC Articles most likely to have relevance for the HEC

Article	Type
Article 1	Definition of a 'child' (see section D of this Guidance)
Article 2	Prohibition of discrimination
Article 3	Best interests of the child
Article 6(2)	Right to development of the child

¹⁹ s.7(1)(b).

Article 12	Right to participate and to have views taken into account
Article 13	Right to seek, receive and impart information and ideas
Article 16	Right to privacy, family, home and correspondence and not to have honour or reputation attacked
Article 18	Recognition of parents' right to raise and develop their children
Article 23	Right of mentally or physically disabled child to enjoy a full and decent life
Article 24	Right to good quality healthcare
Article 27	Right of access to standard of living
Article 28	Right to an education
Article 29	Right to an education which develops personality, respect for others' rights and the environment
Article 30	Right to belong to a minority group
Article 31	Right to leisure and recreation
Article 37	Right not to be treated cruelly, inhumanly or in a degrading way and right not to be deprived of liberty

Right to an education (Articles 28 and 29)

25. Article 28 recognises the right of the child to education, which includes taking measures to encourage regular attendance at school and the reduction of drop-out rates. ²⁰ Article 29(1) sets out five aims of education. These aims can be summarised as:

- a) The development of the full potential of the child.
- b) The development of respect for human rights.
- c) The development of respect for the child's parents, an enhanced sense of the child's cultural identity; and of others different from their own.
- d) The preparation of the child for socialisation and interaction with others.
- e) The development of respect for the natural environment.

26. Article 29 is of far reaching importance. It adds a *qualitative* dimension to the right to education and insists on the need for education to be child-centred and tailored to the needs of the child. ²¹

The goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. "Education" in this context goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable

²⁰ Article 28(1)(e).

²¹ See United Nations Educational, Scientific and Cultural Organisation, *The Salamanca Statement and Framework for Action and Special Needs Education*, 1994, proclamation.

children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society.²²

27. Section 1(2) of the 2004 Act defines school education as ‘such education directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential’, which is consistent with Article 29(1)(a).

Representation

28. There is provision in our rules for parties to have a representative.²³ There is no such provision for a child who is not a party. Article 12(2) provides the child with a right for their views to be heard in any judicial proceedings affecting the child, either directly, or through a representative, or an appropriate body. This means that a child who is not a party may have a representative with them in our proceedings.

Intimation and Power to intervene (section 34)

29. There is a section in reference and claim forms to allow parties to intimate if they intend to rely on the UNCRC requirements and raise a compatibility question in our proceedings.²⁴ Where a compatibility question arises, intimation of that is given by the caseworker to the Lord Advocate, Commissioner for Children and Young People in Scotland and the Scottish Commission for Human Rights.
30. If a party intimates their intention to rely on the UNCRC requirements later in the process (after the case has been allocated to a legal member), the legal member shall advise the caseworker immediately. The caseworker will then follow the steps set out in paragraph 29.
31. A person to whom intimation is given may, on giving notice, take part as a party in the proceedings so far as the proceedings relate to a compatibility question.²⁵

Remedies (section 8)

32. There is no requirement that the person relying on the 2024 Act is the ‘victim’ of the unlawful act; they need only have the status of a party to proceedings to seek a remedy within the 2024 Act.
33. The 2024 Act does not create any new remedies, just another way to access remedies that already exist. This means that we may only grant a remedy which the 2004 Act or the 2010 Act already provides. However, a party could base a

²² UNCRC General Comment 1 (2001) Article 29(1) *The aims of education*, para 2.

²³ r.4.

²⁴ s.7(1)(b).

²⁵ s.34(2).

case for such a remedy partly or wholly on an allegation of unlawfulness arising from an act (or failure) which is incompatible with the UNCRC requirements.²⁶ This could mean that an appellant or claimant could raise a reference or claim based on an allegation of an act or omission that is unlawful under section 6 of the 2024 Act without relying on the substantive provisions of the 2004 or 2010 Acts at all (only the remedy powers under those Acts).²⁷

34. In order to be able to rely on the UNCRC requirements, a party must be able to seek a declarator (finding) from the Tribunal that a public authority has acted (or failed to act) in a way which is incompatible with those requirements. The Tribunal's duty is to grant relief, remedy or order that is effective, just and appropriate.²⁸

Child's view on the effectiveness of relief, remedy or order (section 9)

35. The child is presumed to be capable of forming a view unless the contrary is shown.²⁹ Where the tribunal is considering what relief or remedy to grant or what order to make it must, in so far as it is practicable to do so, give the child an opportunity to express their views about the effectiveness of that relief, remedy or order and have regard to any such view,³⁰ unless the tribunal is satisfied that the child is not capable of forming a view, in which case it need not comply with the section 8(1) requirement.³¹
36. The reference or claim form provides an opportunity for a child's views on the relief, remedy or order being sought to be recorded. However, this will be revisited by the tribunal at the end of the hearing before they begin their deliberations.
37. If, after deliberations, a tribunal is considering a different relief, remedy or order than that which is sought, they must invite the views of the child on the effectiveness of this before reaching a decision.

The overriding objective and regulating our own procedure

First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018

38. Our overriding objective at rule 2 provides the necessary latitude and boundaries for all tribunal proceedings. As do rules 50(1) for references and 96(1) for claims, both of which allow tribunals to regulate their own procedure. This allows us to take steps to ensure that our tribunal processes are tailored to the child, which

²⁶ s.7(1).

²⁷ s.7(1)(a).

²⁸ s.8(1).

²⁹ s.9(3).

³⁰ s.9(1).

³¹ s.9(2).

increases choice, control, accessibility and trust while reducing the potential for our proceedings to cause re-traumatisation.

39. Our trauma informed principles are: [Safety, Relationship, Choice, Control, Collaboration and Kindness](#).

Before a hearing – judicial case management

40. The legal member must be familiar with the terms [of President's Guidance 01/2021: The Child, Young Person and the Tribunal](#).
41. The duty to seek the views of the child is consistent with our obligation under Articles 12 and 13 of the UNCRC. In practice, this is usually undertaken by the legal member at the case management hearing (**CMH**) stage. Independent advocacy reports are then instructed. This can take the form of conventional advocacy or non-instructed advocacy.
42. Where the child is a party, they attract full party rights including the right to present their case. While Articles 12 and 13 continue to apply, it does not mean that the legal member has to instruct independent advocacy to obtain the child party's views, as these will be known.
43. The legal member will consider how to make the hearing accessible when conducting the CMH. This will include the type of hearing. Whether in-person, remote or hybrid, the legal member will consider which environment is most suited to the child's needs. Where an in-person or hybrid hearing is conducted the legal member will record any specification for the layout of the hearing room in the Child Engagement Plan section of the CMH note.
44. The legal member will consider whether the following would be useful before the hearing takes place:
- a) A familiarisation visit to the hearing venue.
 - b) A test before an online hearing.
 - c) A social story.
 - d) A visual guide to the GTC.
 - e) Any other support which the child may benefit from.
45. The legal member will consider whether any of the following would be helpful at the hearing:
- a) Bringing a pet animal for comfort.
 - b) Use of the sensory wall with an image or colour of the child's choosing.
 - c) Use of the 1:2:1 room.

- d) Use of the sensory room to self-regulate or de-stress.
 - e) Any other support which the child may benefit from.
46. The legal member will prepare a note of any relevant factors for the clerk in the case using the *Child Engagement Plan* in the CMH template. The clerk will use this information to support the child when they attend the hearing. Wherever possible, the same clerk will be present during each day of the hearing to provide consistency for the child.

At the hearing

47. All Tribunal members must be familiar with the terms of [President's Guidance 01/2021: The Child, Young Person and the Tribunal](#), including the following:
- a) Part 2: How to take the views of the child young person and in particular:
 - Methods of communication (paragraph 28)
 - Appendix B – what works/doesn't
 - b) Part 3: How to ask questions of a child or young person.
 - c) Part 4: The child or young person as a party, witness or giving views and in particular:
 - The use of an agreed list of questions for a child or young person who is giving evidence as a witness (paragraphs 50-52);
 - The use of 'stop and go' cards (paragraph 68); and
 - Using specialist hearing rooms (paragraphs 72-75).

After the hearing

48. When drafting their decision, all Tribunal members must be familiar with the terms of [President's Guidance 01/2021: The Child, Young Person and the Tribunal](#), including the following:
- a) The decision (paragraphs 80-81); and
 - b) The letter to the child or young person (paragraphs 83-86).
49. The tribunal will consider whether a letter to the child should be issued as a visual letter, consistent with [President's Guidance 02/2024: Drafting a Letter to the Child or Young Person](#).

D. Definition of a child

50. Article 1 of the UNCRC is the first international human rights instrument to provide a definition of a child. This determines who is entitled to the rights listed in the UNCRC. A child means every human being below the age of eighteen years. Article 1 is silent on when childhood begins.

HEC (Additional Support Needs)

51. References or claims may be made to the HEC for children as young as 2 years and young people from 16 years and above – including those who remain in school education who are over the age of eighteen years.

Education (Additional Support for Learning)(Scotland) Act 2004 (2004 Act)

52. For the purpose of the 2004 Act, the definition of a child takes us on a complex journey across the 2004 Act,³² the 1980 Act³³ and the Children and Young People (Scotland) Act 2014 (2014 Act).³⁴ In short, a child means a person who is not over school age. School age means a person who is between the age of five (or who will reach the age of five years within the appropriate period of the date of commencement of school attendance) and fifteen years.
53. School education includes early learning and childcare,³⁵ which means a service consisting of education and care for children who are under school age.³⁶ There is a duty to secure early learning and childcare for children who are looked after, aged two or over.³⁷
54. The 2004 Act defines a young person as a person who is aged 16 years or over, is pupil at a school and has, since attaining the age of 16 years or over, remained a pupil at that or another school.³⁸

Limits of Article 1

55. Article 1 can be presumed to apply from birth to (and including) the age of seventeen years. This means that in a reference or claim for a young person aged eighteen years and over, the 2024 Act will usually not apply unless the reference or claim is made before the young person turns 18 years. An exception to this may be a reference or claim lodged on or after the person's 18th birthday alleging an unlawful act that took place before they turned 18 years old.

E. United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

³² 2004 Act, s.29.

³³ 1980 Act, ss.135 and 31.

³⁴ 2014 Act, s.97.

³⁵ 1980 Act, s.1(5)(a)(i).

³⁶ 2014 Act, Part 6, s.46.

³⁷ 2014 Act, s.47(3).

³⁸ 2004 Act, s.29.

56. Children's rights under other international treaties complement the UNCRC. A treaty which has been signed and approved by a state, although binding on the government, has to be enacted into the domestic law of the UK or Scotland by legislation before it has legal force. This means that before a treaty signed by the UK government can be directly relied upon in tribunals, it has to first be enacted by a UK or Scottish Act of Parliament.
57. Treaties which are signed and ratified by the UK government but not enacted into UK or Scots law technically have no legal effect. This includes the UNCRPD. However, tribunals and courts do sometimes consider the terms of ratified treaties when interpreting UK law. In other words, they can be relevant as a factor, but they are not binding, which means that they do not have to be followed.
58. The UK courts (in Scotland, England and Wales) have decided that when a court or tribunal is considering how to apply the European Convention on Human Rights (**ECHR**), it should have regard to the terms of relevant treaties signed by the UK government. This means that in ECHR cases the UNCRPD may be considered. In some cases a party may argue that multiple Articles from the three treaties (ECHR, UNCRC and UNCRPD) are relevant to their case.

F. General principles of treaty interpretation

59. The 2024 Act makes detailed provision on how to interpret the UNCRC, as enacted.³⁹ Sources include the Convention itself (including the preamble), General Comments, concluding observations, recommendations following days of general discussion and other international and comparative law.⁴⁰
60. The reference to 'other international law'⁴¹ ushers in the general principles of interpretation of domestic law based on treaty obligations.⁴² Of primary importance here is the Vienna Convention on the Law of Treaties (**VC**) which provides as follows:
- a) A treaty is to be interpreted in good faith in accordance with the ordinary meaning of its terms in their context and in light of the object and purpose of the treaty;⁴³
 - and

³⁹ s.4.

⁴⁰ s.4(2) and (except the final source) defined in s.4(3).

⁴¹ s.4(2)(g).

⁴² Although the relevant UNCRC provisions are incorporated into Scots Law by the 2024 Act, it is clear from the meaning of 'the UNCRC requirements' in s.1 (a term carried into s.4) that the requirements come from the Convention. This means that the principles around the interpretation of treaties comes within 'other international law'.

⁴³ VC, Article 31.

- b) Recourse may be had to the preparatory work of the treaty in order to confirm a meaning reached from applying the principle in a) above,⁴⁴ where that interpretation leaves the meaning ambiguous or obscure⁴⁵ or where that interpretation leads to a result which is manifestly absurd or unreasonable.⁴⁶
61. In addition, general principles of interpretation of human rights treaties have been developed by the European Court of Human Rights under the ECHR. Some commentators⁴⁷ take the view that these principles apply to the interpretation of the UNCRC. These principles encourage the following approaches to interpretation:
- a) Interpreting to take into account appropriateness to the aim and objective of the treaty, not taking a restrictive approach;
 - b) Interpreting to make the treaty safeguards practical;
 - c) Interpreting to make the treaty safeguards effective; and
 - d) Interpreting dynamically, responding to evolving standards.
62. The reference in the 2024 Act to ‘comparative law’ means that the interpretation of UNCRC provisions in other countries may be taken into account in considering the correct interpretation under Scots law.⁴⁸
63. The reference in the VC to the ‘preparatory work of the Treaty’ is a reference to a body of documents sometimes referred to as the *travaux préparatoires*.⁴⁹ These are drafts and other documents drawn up in the course of preparing the final legal text of a treaty. They reflect the substance of the discussions and views of those who drafted the treaty.⁵⁰ The main *travaux préparatoires* documents for the UNCRC can be found online.⁵¹

G. The use of UNCRC interpretative material

64. In addition to the general principles mentioned above (covered under ‘other international law’),⁵² the 2024 Act makes reference to certain specific UNCRC interpretative material.

⁴⁴ VC, Article 32.

⁴⁵ VC, Article 32(a).

⁴⁶ VC, Article 32(b). There are other general principles in Articles 31-32, but these are the main ones.

⁴⁷ In particular, see Tobin, J. (2nd ed) in *The UN Convention on the Rights of the Child: A Commentary*, 2019, OUP, p.12 (in the chapter *Introduction: The Foundation for Children’s Rights*).

⁴⁸ s.4(2)(g).

⁴⁹ The English meaning of this term is ‘preparatory works’.

⁵⁰ Definition adapted from the *Glossary of Scottish and European Union Legal Terms and Latin Phrases*, 2003 (2nd ed), LesisNexis, page 170.

⁵¹ These can be found in the [UN Audiovisual Library of International Law UNCRC](#) page, under the ‘Documents’ tab.

⁵² s.4(2)(g) of the 2024 Act.

65. Suggestions and general recommendations made under Article 45(d) of the UNCRC are referred to as ‘concluding observations’ under the 2024 Act.⁵³ The Committee on the Rights of the Child (**CRC**) produce such observations at the end of every session for every State under review.⁵⁴ The concluding observations are published on the [UN Treaty Body Database](#). The concluding observations relating to the UK are of most relevance.
66. Recommendations following Days of General Discussion (**DGD**) are listed as an interpretative aid under the 2024 Act.⁵⁵ Accounts of DGDs are published on the website of the [UN Human Rights Office of the High Commissioner](#) on a database organised by date and subject matter. It is only the recommendations that are relevant for the purposes of section 4.
67. The provisions of Part 1 of the UNCRC, and the first and second optional protocols that are not set out in the schedule to the 2024 Act are also relevant for interpretation purposes, as are the preambles to all three documents.⁵⁶ Views and findings under the third optional protocol (those adopted by the UN Committee on the Rights of the child under paragraph 5 of article 10 or paragraph 4 of article 13 of the third optional protocol) may also be used in the interpretation task, even although the third optional protocol is not part of the UNCRC requirements in section 1(2) of the 2024 Act.⁵⁷
68. Finally, General Comments (**GCs**) can be used to interpret a provision in the UNCRC. GCs are the CRC’s comments on the proper interpretation of the provisions of the UNCRC. They are not binding, but may be taken into account. The GCs are published on the website of the [UN Human Rights Office of the High Commissioner](#) on a searchable database.⁵⁸ GCs are the most authoritative of the treaty interpretative sources available (aside from the wording of the UNCRC and the VC principles) since they represent (unlike *travaux préparatoires*) post-treaty interpretations of provisions by the body that produced the treaty. The Scottish courts have already applied a GC in the context of permanence orders, explaining that the impact of the best interests test changes as the child ages.⁵⁹

May Dunsmuir
Chamber President
May 2025

⁵³ s.4(2)(d) and 4(3) of the 2024 Act.

⁵⁴ A more detailed explanation of ‘concluding observations’ is found [here](#).

⁵⁵ s.4(2)(f) and 4(3) of the 2024 Act.

⁵⁶ s.4(2)(a) and (b) of the 2024 Act.

⁵⁷ s.4(2)(e), 4(3) and 4(4) of the 2024 Act.

⁵⁸ See the left hand menu, menu choice ‘General Comments’.

⁵⁹ *Glasgow City Council v MM* [2025] CSIH 3, 2025 SLT 178 at paragraph 25, Inner House.

Appendix

Child Expert Consultants

As part of the preparatory work for this guidance, the President met with children to ask them for their views, using the questions in the introductory letter. Letters of thanks were issued to children following these meetings. Extract samples of these are attached. The basis for the meeting was set out in advance with no more than 3 questions.

Sample Introductory letter

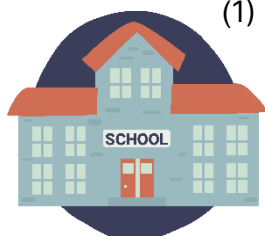
(Adapted for age and circumstances, visuals removed when appropriate)



Thank you for letting me come and talk to you about school. The law in Scotland has changed and it means we have to listen to children and take their views into account before we make decisions about them. This is what I would like to talk about.



I would like to ask you some questions. This will help me to make sure we are doing things right. Here are the questions –



(1) You attend school/are home schooled [select]. [Discuss preference or what works].

(2) What helps you to talk about school? What doesn't help?

(3) Did you feel adults who make decisions about your school education listened to you when you attended school? How do you feel when you are not listened to?



I will bring some coloured pens and paper and post-it notes when I visit and you can use these if you want when we talk.

I am excited to see you. If you have any questions, [name] will let me know, or you can speak to me.

Sample letter of thanks to primary school child attending mainstream school



Thank you very much for spending time with me today.



You told me how you feel when you are not listened to (sad, angry and sometimes happy). You told me how you feel when you are listened to (happy). We talked about a 'Feeling Space' and you drew me a great picture of what this would look like. You said it shouldn't be too hot or warm, so that you can be calm.



You told me that it is really, really, really, really bad when you have to pretend that you are ok when you are feeling sad. Sometimes it is really bad. You told me that you mask a lot in school if you want to fit in. You like to fit in but you also like to be different.



You like drawing to share your views. Sometimes you like to go under the table to sit. This makes you more comfortable. You wouldn't mind if I sat with you under the table to talk to you.



You told me that the school didn't know about dyslexia at first. They are going to give you a computer to help you. You feel a bit in the middle about that. You drew me a great picture using 2 post it notes to show me how that feels.

Here is what I am going to do now:

1. I am going to use your 'Feeling Room' to help children to know that they have a safe space to use in our hearing room to help them with their feelings.
2. I am going to use your views to help my tribunal members to understand how important it is to listen to children and to use post-it notes when a child likes this.

Sample letter of thanks to primary school/home schooled child



Thank you very much for spending time with me today. You shared lots of things with me, which I will use to help make our tribunal hearings better. I will also use what you have taught me to share guidance with others about how to listen to children.



You told me about your experiences at 'people school' and the difference between this and home school. You explained that sometimes you pretended to be happy when you were sad. You also helped me to understand the importance of having a teacher who will listen. When you are not listened to this makes you very upset. You drew me a picture with a cross looking adult who you said is the teacher - and a child lying on the floor crying. You said this is you and this is how you feel when the teacher doesn't listen to you.

You told me that at home school, you are not nervous anymore. You feel you are listened to more.



You told me that you struggled to go through the gates at school and you felt different from others. You also felt you were trying to please other people so that you didn't get into trouble. You told me that when you are sharing your views, drawing really helps.

You said teachers should pay more attention to friendships – these are very important. You also said:

- Choosing your seat can make you nervous in case you are not going to be able to sit beside someone you want.
- A space to go when you are feeling sad (a sad space) is important.



You like having an advocate (someone to speak for you) and you asked your mum and dad to do this for you when you were at people school.

Here is what I am going to do now:



1. I am going to buy some ear defenders for our hearing rooms.
2. I am going to use your views to help my tribunal members to understand how important it is to listen to children and how much energy it takes to try to please other people.

Sample letter of thanks to secondary school child attending mainstream school (limited visuals)



Thank you very much for spending time with me today.

You told me how you feel when you are not listened to (annoyed, stressed, frustrated). You told me how you feel when you are listened to (good). You said that having a space to use at school that was yours and that you didn't need to be timetabled into would be good. You told me the break out space in the tribunal hearing room was good.

You thought the smaller 1:2:1 tribunal hearing room was nice. After visiting today you thought you were a "maybe" rather than a "no" about possibly attending your hearing to tell the tribunal what you think. You don't have to decide this just now.

You told me that your transition to secondary school has been tough. You said that there is one teacher who comes and talks to you in the support area and that this is casual, which you like.

You didn't feel school listened enough to you or asked you how you felt about things. First year has been tough and you hope second year will be better.

Here is what I am going to do now:

1. I am going to use your words to help train our tribunal members so that they understand what it feels like to be listened to and what it feels like not to be listened to.
2. I am going to remind them of the importance of planning. So that children know what to expect when they come to a tribunal hearing. You told me it is important to know what is going to happen rather than it happening suddenly.
3. I am going to remind our tribunal members how important advocacy is. You told me this is great.