

**United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill –  
Scottish Government draft Reconsideration Stage amendments (12 September 2023)**

**Section 6**

**Shirley-Anne Somerville**

- 1** In section 6, page 4, line 33, leave out <for a public authority to act> and insert <(subject to subsection (1C)) for a public authority to act, or fail to act, in connection with a relevant function>

**Shirley-Anne Somerville**

- 2** In section 6, page 4, line 34, at end insert—

<(1A) In subsection (1), a “relevant function” means a function that—

(a) it is within the legislative competence of the Scottish Parliament to confer on the authority, and

(b) is conferred by—

(i) an Act of the Scottish Parliament,

(ii) a Scottish statutory instrument originally made wholly under a relevant enabling power,

(iii) a provision in a Scottish statutory instrument originally made partly under a relevant enabling power, provided that the provision itself was either—

(A) originally made under the relevant enabling power, or

(B) inserted into the instrument by an Act of the Scottish Parliament or subordinate legislation made under a relevant enabling power, or

(iv) a rule of law not created by an enactment.

(1B) In subsection (1A), “relevant enabling power” means a power to make subordinate legislation conferred by a provision in an enactment of a kind mentioned in that subsection, unless the provision was inserted by an enactment of a kind that is not mentioned in that subsection.

(1C) But subsection (1) does not make unlawful doing or failing to do something if the 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 subsection (1A)(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 subsection (1A)(b).>

**Shirley-Anne Somerville**

- 3** In section 6, page 4, line 35, leave out subsection (2)

**Section 19**

**Shirley-Anne Somerville**

- 4** In section 19, page 16, line 28, leave out <legislation mentioned in subsection (2)> and insert <the following>

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- 5 In section 19, page 16, line 29, at end insert—
- <( ) words in an Act of the Scottish Parliament to which section 23A applies,
  - ( ) words in subordinate legislation to which section 23B applies.>

**Shirley-Anne Somerville**

- 6 In section 19, page 16, line 30, leave out subsections (2) and (3)

**Shirley-Anne Somerville**

- 7 In section 19, page 17, line 6, leave out <or Act of Parliament>

**Shirley-Anne Somerville**

- 8 In section 19, page 17, line 7, leave out from <enactment> to <“legislation”> in line 9 and insert <subordinate legislation made by virtue of an Act of the Scottish Parliament>

**Shirley-Anne Somerville**

- 9 In section 19, page 17, line 10, leave out <primary legislation> and insert <Act or words in another enactment to which neither section 23A nor 23B apply>

**Section 20**

**Shirley-Anne Somerville**

- 10 In section 20, page 17, line 12, leave out <a provision of relevant legislation is compatible> and insert <any of the following give rise to an incompatibility>

**Shirley-Anne Somerville**

- 11 In section 20, page 17, line 13, at end insert—
- <( ) words—
    - (i) that are in a pre-commencement Act of the Scottish Parliament, and
    - (ii) to which section 23A applies, or
  - ( ) words—
    - (i) that are in subordinate legislation made by virtue of a pre-commencement Act of the Scottish Parliament, and
    - (ii) to which section 23B applies.>

**Shirley-Anne Somerville**

- 12 In section 20, page 17, line 14, leave out <provision is incompatible> and insert <words give rise to an incompatibility>

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**Shirley-Anne Somerville**

- 13 In section 20, page 17, line 15, leave out <the provision ceases> and insert <they cease>

**Shirley-Anne Somerville**

- 14 In section 20, page 17, line 15, leave out <of> and insert <that they give rise to>

**Shirley-Anne Somerville**

- 15 In section 20, page 17, line 17, leave out from <provision> to <legislation”> in line 18 and insert <words are in subordinate legislation>

**Shirley-Anne Somerville**

- 16 In section 20, page 17, line 18, leave out from <an> to <legislation”> in line 19 and insert <a pre-commencement Act of the Scottish Parliament>

**Shirley-Anne Somerville**

- 17 In section 20, page 17, line 19, after <court> insert—  
<( )>

**Shirley-Anne Somerville**

- 18 In section 20, page 17, line 20, leave out <the subordinate legislation> and insert <them>

**Shirley-Anne Somerville**

- 19 In section 20, page 17, line 21, leave out <primary legislation> and insert <Act>

**Shirley-Anne Somerville**

- 20 In section 20, page 17, line 22, at end insert <,  
( ) may not make a strike down declarator in relation to them if the court is satisfied that (disregarding any possibility of revocation) words in another enactment to which neither section 23A nor 23B apply prevent removal of the incompatibility.>

**Shirley-Anne Somerville**

- 21 In section 20, page 17, line 24, leave out <under the provision>

**Shirley-Anne Somerville**

- 22 In section 20, page 17, line 38, at end insert—  
<(9A) In this section, a reference to a pre-commencement Act of the Scottish Parliament—  
(a) means an Act of the Scottish Parliament the Bill for which received Royal Assent before the day on which this section comes into force, and  
(b) refers to such an Act as at the day on which this section comes into force.>

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- 23 In section 20, page 17, line 39, leave out subsections (10) to (12)

**Section 21**

**Shirley-Anne Somerville**

- 24 In section 21, page 18, line 17, leave out <a provision of future legislation is compatible> and insert <any of the following give rise to an incompatibility>

**Shirley-Anne Somerville**

- 25 In section 21, page 18, line 18, at end insert—

<( ) words—

- (i) that are in a post-commencement Act of the Scottish Parliament, and
- (ii) to which section 23A applies,

( ) words—

- (i) that are in a pre-commencement Act of the Scottish Parliament, having been inserted on or after the day section 20 comes into force, and
- (ii) to which section 23A applies,

( ) words—

- (i) that are in subordinate legislation made by virtue of a post-commencement Act of the Scottish Parliament, and
- (ii) to which section 23B applies,

( ) words—

- (i) that are in subordinate legislation made by virtue of a provision that was inserted, on or after the day section 20 comes into force, into a pre-commencement Act of the Scottish Parliament, and
- (ii) to which section 23B applies.>

**Shirley-Anne Somerville**

- 26 In section 21, page 18, line 19, leave out <provision is incompatible> and insert <words give rise to an incompatibility>

**Shirley-Anne Somerville**

- 27 In section 21, page 18, line 21, leave out from <provision> to <legislation”> in line 23 and insert <words are in subordinate legislation>

**Shirley-Anne Somerville**

- 28 In section 21, page 18, line 23, after <court> insert—

<( )>

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**Shirley-Anne Somerville**

**29** In section 21, page 18, line 26, at end insert <

- ( ) may not make an incompatibility declarator in relation to the subordinate legislation if the court is satisfied that (disregarding any possibility of revocation) words in another enactment to which neither section 23A nor 23B apply prevent removal of the incompatibility.>

**Shirley-Anne Somerville**

**30** In section 21, page 18, line 28, leave out <provision> and insert <words>

**Shirley-Anne Somerville**

**31** In section 21, page 18, line 30, at end insert—

<( ) In this section—

a “post-commencement Act of the Scottish Parliament” means an Act of the Scottish Parliament the Bill for which received Royal Assent on or after the day on which this section comes into force,

“pre-commencement Act of the Scottish Parliament” has the meaning given in section 20(9A)(a).>

**Shirley-Anne Somerville**

**32** In section 21, page 18, line 31, leave out subsections (5) to (7)

**After section 23**

**Shirley-Anne Somerville**

**33** After section 23, insert—

**<23A Primary legislation words to which this Part applies**

The words to which this section applies are words that are—

- (a) in an Act of the Scottish Parliament, and
- (b) in the Act as a result of having been—
  - (i) contained in the Bill for the Act,
  - (ii) contained, as part of an amending provision, in the Bill for another Act of the Scottish Parliament, or
  - (iii) inserted by words in subordinate legislation to which section 23B applies.>

**Shirley-Anne Somerville**

**34** After section 23, insert—

**<23B Subordinate legislation words to which this Part applies**

- (1) The words to which this section applies are words that are—

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- (a) in a Scottish statutory instrument originally made, wholly or partly, by virtue of a relevant enabling power, and
  - (b) in the instrument as a result of—
    - (i) the exercise of a relevant enabling power (either to make the provision containing the words, or to make the amending provision that inserted them), or
    - (ii) having been inserted into the instrument by words in an Act of the Scottish Parliament to which section 23A applies.
- (2) In this section, “relevant enabling power” means a power conferred by a provision that is not in, or derived (directly or indirectly) from, an Act of Parliament.
- (3) For the purposes of subsection (2), a provision of an Act of the Scottish Parliament is not to be regarded as derived from section 28 of the Scotland Act 1998.>

**Section 24**

**Shirley-Anne Somerville**

- 35 In section 24, page 19, line 31, leave out <a provision of relevant legislation or future legislation is incompatible> and insert <words in an enactment to which section 23A or 23B applies give rise to an incompatibility>

**Section 25**

**Shirley-Anne Somerville**

- 36 In section 25, page 20, line 13, leave out <a provision of relevant legislation or future legislation is incompatible> and insert <words in an enactment to which section 23A or 23B of the UNCRC Incorporation Act applies give rise to an incompatibility>

**Shirley-Anne Somerville**

- 37 In section 25, page 20, line 16, leave out <United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2021> and insert <UNCRC Incorporation Act>

**Shirley-Anne Somerville**

- 38 In section 25, page 20, leave out lines 19 to 21

**Shirley-Anne Somerville**

- 39 In section 25, page 20, line 22, leave out <that> and insert <the UNCRC Incorporation>

**Shirley-Anne Somerville**

- 40 In section 25, page 20, leave out lines 23 and 24

**Shirley-Anne Somerville**

- 41 In section 25, page 20, line 26, at end insert—

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<“UNCRC Incorporation Act” means the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2023.>

**Section 35**

**Shirley-Anne Somerville**

**42** In section 35, page 26, leave out line 6

**Shirley-Anne Somerville**

**43** In section 35, page 26, leave out line 9