

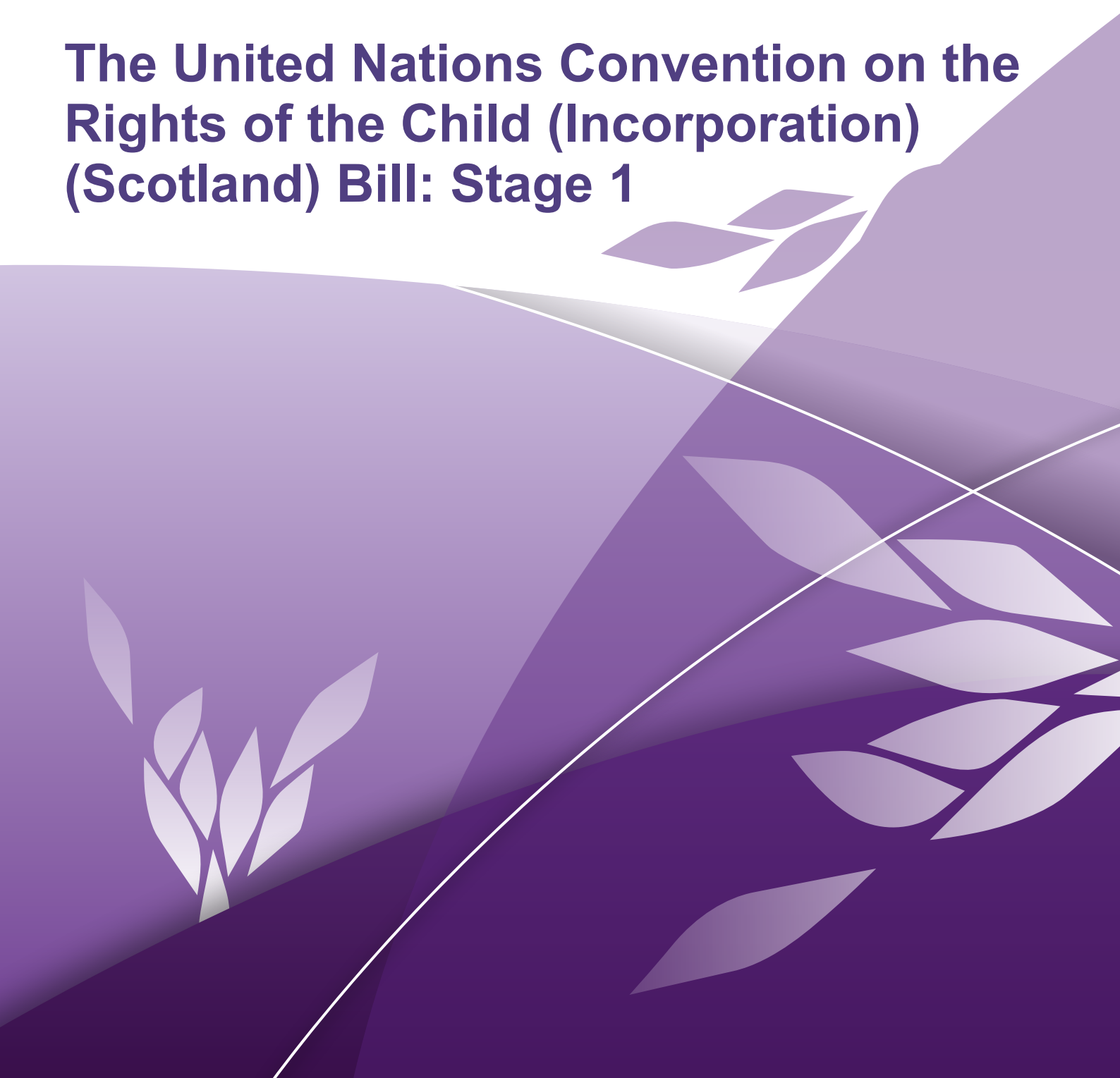


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Pàrlamaid na h-Alba

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**Delegated Powers and Law Reform Committee  
Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh  
Lagh**

**The United Nations Convention on the  
Rights of the Child (Incorporation)  
(Scotland) Bill: Stage 1**



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# Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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# Committee Membership



**Convener**  
**Bill Bowman**  
Scottish Conservative  
and Unionist Party



**Deputy Convener**  
**Stuart McMillan**  
Scottish National Party



**Mary Fee**  
Scottish Labour



**Gil Paterson**  
Scottish National Party



**Michelle Ballantyne**  
Scottish Conservative  
and Unionist Party

# Introduction

1. At its meeting on 8 December 2020, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill ("the Bill") at Stage 1.
2. The Committee submits this report to the lead Committee for the Bill under Rule 9.6.2 of Standing Orders.

# Overview of the Bill

3. This Scottish Government Bill was introduced by the Deputy First Minister and Cabinet Secretary for Education and Skills, John Swinney MSP, on 1 September 2020.<sup>i</sup> The lead Committee is the Equalities and Human Rights Committee.
4. The Bill incorporates the United Nations Convention on the Rights of the Child (“UNCRC”) into Scots law. The UNCRC is an international human rights treaty that covers all aspects of children’s lives. It encompasses civil, political, economic and cultural rights.
5. The Bill provides for rights and obligations derived from the Convention, and its first 2 optional protocols, to be given effect in Scots law in the following ways:
  - it places public authorities under a duty not to act incompatibly with “the UNCRC requirements” (as defined in section 1), and provides legal remedies should they fail to do so (Part 2);
  - it places the Scottish Ministers under a duty to produce, and periodically report against, a scheme setting out what it is doing to comply with its duty in relation to the UNCRC requirements, and places a duty on certain other public authorities to produce periodic reports on their compliance with those requirements (Part 3);
  - it obliges the Scottish Ministers, when bringing forward any new legislation, to make a statement about its compatibility with the UNCRC requirements (Part 4, section 18);
  - it requires that legislation be read wherever possible in a way that is compatible with the UNCRC requirements and, where a compatible reading is not possible, it allows the courts to strike down such incompatible legislation or make a declaration of its incompatibility (Part 4, sections 19 to 21);
  - it makes provision for a system for the courts to consider UNCRC compatibility questions in civil proceedings and UNCRC compatibility issues in criminal proceedings (Part 5); and
  - it enables the Scottish Ministers to change the law, by regulations, to cure incompatibilities (or possible incompatibilities) with the UNCRC requirements (Part 6).

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<sup>i</sup> The Bill as introduced is available [here](#)

## Delegated Powers

6. The Bill confers several powers to make subordinate legislation on the Scottish Ministers. The Government has prepared a Delegated Powers Memorandum which sets out the reasons for taking the delegated powers in the Bill and the parliamentary scrutiny procedure that has been chosen.<sup>ii</sup>
7. The Committee considered each of the delegated powers provisions in the Bill. It determined that it did not need to draw the attention of the Parliament to the delegated powers provisions provided in the following sections:
  - Section 3 – Power to modify the schedule;
  - Section 5 – Power to modify section 4 on ratification of the third optional protocol to the Convention;
  - Section 7(5) – Power to add to the powers of a tribunal to ensure an appropriate remedy;
  - Section 16(2) – Power to add to the listed authorities to which the section 15 duty applies;
  - Section 32 – Power to make remedial regulations;
  - Section 39 – Power to make ancillary provision; and
  - Section 40(2) – Commencement.

8. **The Committee therefore reports that it is content with the delegated powers provisions contained in the Bill and with the choice of procedure applicable in each case.**

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<sup>ii</sup> The Delegated Powers Memorandum is available [here](#)



