

COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 5: United Nations Convention and equal opportunities

27. [Section 5](#) places a duty on the Commissioner to have regard to the relevant provisions of UNCROC and also to act in a manner which encourages equal opportunities.
28. UNCROC gives an international framework to the concept of children’s rights. It covers a very broad range of issues many of which relate to devolved areas. The key principles include the importance of children’s views, non-discrimination and the need to consider children’s best interests as a primary consideration. UNCROC was ratified by the UK on 16 December 1991 and places obligations on the UK government. These obligations are monitored through reports by the UK government to the UN Committee on the Rights of the Child. Section 16 makes it clear that the Commissioner will not have regard to articles on which the UK government has entered reservations. It also makes clear that the Commissioner must interpret UNCROC in accordance with the declared interpretation of the UK government. At present, in relation to devolved matters, the UK has reservations entered against article 37(c) concerning young offenders. The UK government has also declared that the Convention applies only following a live birth and that “parent” is to be interpreted according to national law. Any change in reservations or interpretation made by the UK government will also apply to the Commissioner’s interpretation of UNCROC.
29. Although the Commissioner must have regard to the relevant provisions of UNCROC, subsection (3)(a) provides that the Commissioner must, in particular, regard and encourage others to regard the best interests of children and young people as a primary consideration. This specific requirement mirrors Article 3(1) of UNCROC which provides that:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of children and young people shall be a primary consideration.
30. In a similar way, subsection (3)(b) imposes an obligation on the Commissioner to have regard to and encourage others to have regard to the views of children and young people. This reflects Article 12(1) of UNCROC which provides that:

“States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
31. Subsection (4) reflects the key principle of non-discrimination which is set out in Article 2 of UNCROC by imposing an obligation upon the Commissioner to act in a manner which promotes equal opportunities. Section 16 defines “equal opportunities” by reference to Section L2 of Part II of Schedule 5 to the Scotland Act. Equal

*These notes relate to the Commissioner for Children and Young People
(Scotland) Act 2003 (asp 17) which received Royal Assent on 1 May 2003*

opportunities generally is reserved and the definition used follows the exception to the reservation set out in the Scotland Act. The effect of the provision is to require the Commissioner to encourage non-discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions such as religious beliefs or political opinions.