

## CHAPTER 82

### INCOMPATIBILITY DECLARATIONS AND INCOMPATIBILITY AND STRIKE DOWN DECLARATORS

#### Application and interpretation

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**82.1.—(1)** This Chapter deals with various matters relating to—

- (a) the Human Rights Act 1998;
- (b) the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.

(2) In this Chapter—

“the 1998 Act” means the Human Rights Act 1998;

“the 2024 Act” means the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024;

“declaration of incompatibility” has the meaning given by section 4 of the 1998 Act;

“incompatibility declarator” has the meaning given by section 26(2) of the 2024 Act;

“strike down declarator” has the meaning given by section 25(2) of the 2024 Act.

#### Evidence of judgments etc

**82.2-** (1) Evidence of any judgment, decision, declaration or opinion of which account has to be taken by the court under section 2 of the 1998 Act shall be given by reference to any authoritative and complete report of the said judgment, decision, declaration or opinion and may be given in any manner.

(2) Evidence given in accordance with paragraph (1) shall be sufficient evidence of that judgment, decision, declaration or opinion.

#### Declarations and declarators

**82.3-** (1) Where in any proceedings a party seeks a declaration of incompatibility, incompatibility declarator or strike down declarator or the court is considering whether to make such a declaration or declarator at its own instance -

- (a) notice in Form 82.3-A shall be given as soon as reasonably practicable to such persons as the Lord President may from time to time direct -
  - (i) by the party seeking the declaration; or
  - (ii) by the clerk of court,as the case may be, provided that there shall be no requirement to give such notice to a party or to the representative of a party; and
- (b) where notice is given by the party seeking the declaration, the party shall lodge a certificate of notification in process;

(2) Where any –

- (a) Minister of the Crown (or person nominated by him);
- (b) member of the Scottish Executive;
- (c) Northern Ireland Minister;
- (d) Northern Ireland department.

wishes to be joined as a party to proceedings in relation to which the Crown is entitled to receive notice under section 5 of the 1998 Act he or, as the case may be, it shall serve notice in Form 82.3-B to that effect on the Deputy Principal Clerk of Session and shall serve a copy of the notice on all other parties to the proceedings.

- (3) Where any of—
  - (a) the Commissioner for Children and Young People in Scotland;
  - (b) the Lord Advocate;
  - (c) the Scottish Commission for Human Rights.

wishes to take part as a party to proceedings in relation to which it is entitled to receive intimation under section 27(1) of the 2024 Act, it must serve notice in Form 82.3-B to that effect on the Deputy Principal Clerk and must serve a copy of the notice on all other parties to the proceedings.

**82.4** Within 14 days after the date of service of the notice under rule 82.3(2) or (3), the person serving the notice shall lodge a minute in the proceedings in Form 82.4 and shall serve a copy of that minute on all other parties to the proceedings.

**82.5** The court may fix a diet for a hearing on the question of incompatibility as a separate hearing from any other hearing in the proceedings and may sist the proceedings if it considers it necessary to do so while the question of incompatibility is being determined.”