

European Charter of Local Self-Government (Incorporation) (Scotland) Bill - Update

Summary and Recommendations

COSLA has actively supported this Bill (and similarly the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill) throughout its development and the parliamentary stages. We made public our disappointment with the UK Supreme Court judgement which ruled against its competence and have been further frustrated by the delays this has incurred. Recent engagement with the Scottish Parliamentary lead on this Bill and Scottish Government Ministers have secured assurances of their ongoing commitment to the Bill and to developing amendments designed to address the UK Supreme Court concerns. COSLA will be involved in this work.

This paper invites Convention to:

- i. Agree that COSLA continue to engage with the Scottish Government and press for the development of suitable amendments required by the Supreme Court that can be made to both the European Charter and UNCRC Bills so that they can be formally enacted; and
- ii. Agree that a further report be provided at the next meeting of Convention.

References

Previous reports:

- 22-02-25 Item 04 European Charter of Local Self Government

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Purpose

1. To provide COSLA Convention with an update on recent discussions with the Scottish Government regarding the work required on revisions to the European Charter of Local Self-Government (Incorporation) (Scotland) Bill.

Background

2. COSLA provided active support throughout the entire process of development, introduction, and progression through parliamentary phases of the European Charter for Local Self-Government (Incorporation) (Scotland) Bill.
3. As members of Convention will likely be aware, at the point just prior to royal assent of the Bill, and while not contesting the Bill's principles, the UK Government argued that some sections of this Bill (and the similar United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill (UNCRC Bill)) do not *only* concern Scottish devolved powers but also the power of the UK Government and Parliament to legislate and act in Scotland in areas of reserved competence. As a result, the UK Government lodged a case with the UK Supreme Court.
4. On 6 October 2021, the UK Supreme Court announced their decision¹ that various sections² of both the European Charter for Local Self-Government Bill and the UNCRC Bill would be outside the legislative competence of the Scottish Parliament. As a result, royal assent could not be given to the Bills; and the Bills returned to the Scottish Parliament so that these issues could receive further consideration.

Current Position

5. Following the Supreme Court decision, COSLA's President was quick to express, publicly, our disappointment and made a clear statement that COSLA would seek to work with the Scottish Parliament and the Scottish Government to ensure that all the work done around both Bills is not lost.
6. In February this year COSLA President met with Mark Ruskell MSP, who now provides the Parliamentary lead on this Bill, and who provided further assurances of his support for early progress on this work, and that in addition, he was pressing Scottish Government to bring forward the required changes as soon as practicable. At that time, the President stressed that ideally this should be before the end of the 2017-2022 Local Government term.
7. On 24 May 2022, the Deputy First Minister, John Swinney, delivered a Ministerial Statement to Scottish Parliament regarding both the European Charter on Local Self-Government and UNCRC incorporation Bills. The main points we can draw from the statement were: -
 - A reiteration by the Deputy First Minister of the Scottish Government's ongoing support for the European Charter Bill.

¹ <https://www.supremecourt.uk/press-summary/uksc-2021-0079.html>

² Sections 6, 19(2)(a)(ii), 20(10)(a)(ii) and 21(5)(b)(ii) of the European Charter of Local Self-Government (Incorporation) (Scotland) Bill and sections 4(1A) and 5(1) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill.

- The Deputy First Minister indicated his view that efforts to explore pragmatic options with UK Government have now been exhausted (this was in direct reference to UNCRC, with the implication that the same position had been reached regarding the European Charter Bill).
 - The Scottish Government intend to return the UNCRC Bill to Parliament via the reconsideration stage and will seek to make the necessary changes to the Bill to address the Supreme Court judgement. With respect to the European Charter Bill, the DFM committed to engage extensively with Mark Ruskell MSP to support him to take the Bill forward.
 - In order to address the Supreme Court judgement in relation to the UNCRC Bill, the DFM advised that it was necessary to “*expressly limit the compatibility duty to devolved functions and devolved bodies*”, thereby excluding functions which are reserved to the UK Government. He further advised that the Scottish Government intended to include a provision in the UNCRC Bill which is equivalent to section 6(2) of the Human Rights Act 1998. This provision will mean that “*public authorities cannot be found to have acted incompatibly [with UNCRC] where the underlying primary legislation cannot be read in a compatible way*”.
 - With regards to both the European Charter and UNCRC Bills, the Deputy First Minister advised of the “*need to remove UK acts from the application of the interpretative obligation, the strike-down power and the incompatibility declarator power*”, in order to address issues set out in the Supreme Court Judgement.
 - In response to the Deputy First Minister’s statement Mr. Ruskell advised his intention to seek a reconsideration stage for the European Charter Bill and requested a meeting between himself, the DFM, and COSLA to discuss the ‘shape’ of the amendments that might enable the Bill to be passed in compliance of the Supreme Court judgement.
 - The DFM advised that three weeks of engagement with key stakeholders, including COSLA would follow.
8. Subsequent to this announcement, the President and Vice-President met with the Minister for Social Security and Local Government, Mr. Ben Macpherson. Mr. Macpherson reiterated the Government’s intention to see both these Bills passed and a willingness to work with COSLA on the amendments being developed prior to the two Bills’ return to Parliament.
9. We understand that, subject to the Parliamentary timetable, the Bills will be considered in the Scottish Parliament immediately after the summer recess and that the process should be relatively quick.

Next Steps

10. COSLA will continue to engage with the Scottish Government and Scottish Parliament, including through meetings proposed above, to ensure that the Charter Bill retains its integrity except for those sections which, in view of the Supreme Court, affected reserved competence. The matter will continue to be raised with the Cabinet Secretary for Social Justice, Housing and Local Government at the regular meetings held with the Presidential Team. Regular contact will be maintained with Mark Ruskell, on the advice he receives from the Scottish Parliament’s lawyers and next steps.
11. An update on further progress of the Bill will be provided at the next Convention meeting.