

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

Summary and Recommendations

Convention is provided with a further update regarding the European Charter of Local Self-Government (Incorporation) (Scotland) Bill and seeks Convention's agreement that COSLA continue to engage with the Scottish Government, and with Mark Ruskell MSP, to press for the development of suitable amendments to enable the Bill, and also separately the UNCRC (Incorporation) Bill, to pass in compliance with the Supreme Court judgement.

This paper invites Convention to agree that COSLA demand an early meeting with both Shona Robison, Cabinet Secretary for Social Justice, Housing and Local Government, and Mark Ruskell MSP in order to agree the timetable for expediting the Scottish Government's Programme for Government commitment to bringing an amended Bill forward via the Reconsideration Stage.

References

Previous reports:

- 22-06-17 Item 11 European Charter of Local Self-Government (Incorporation) (Scotland) Bill - Update

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

Purpose

1. The purpose of this report is to provide Convention with such information as is available to for an update on the progress being made toward securing an amended European Charter of Local Self-Government (Incorporation) (Scotland) Bill, such that it complies with the requirements detailed by the Supreme Court of Justice necessary to it to receive Royal assent and be passed into Scots Law.

Background

2. As members of Convention will be aware, COSLA has supported the European Charter of Local Self-Government (Incorporation) (Scotland) Bill throughout the entire process of its development, introduction, and progression through all parliamentary phases.
3. Subsequently the UK Government lodged a case with the UK Supreme Court arguing that some of the sections of this Bill (and the similar United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill (UNCRC Bill), relate to the power of the UK Government and Parliament to legislate and act in Scotland in areas of reserved competence.
4. In October 2021, the UK Supreme Court announced the decision that various sections of both the European Charter for Local Self-Government Bill and the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill would be outside the legislative competence of the Scottish Parliament. As a result, royal assent could not be given to either Bill; the Bills were returned to the Scottish Parliament so that these issues could receive further consideration.
5. In 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.
6. In this statement, the Deputy First Minister advised that 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.
7. In terms of the European Charter Bill, the Deputy First Minister advised that the Scottish Government would engage with Mark Ruskell MSP, the member leading this Bill, in order to support him in taking the Bill forward; Mr Ruskell then confirmed his intention to seek reconsideration for this Bill.

Current Position

8. Securing the adoption of the European Charter for Local Self-Government into Scots law remains a priority area for COSLA. COSLA's President and Vice President as well as COSLA's officers have, repeatedly and at every opportunity, stated our willingness to work with the Scottish Parliament and the Scottish Government to press forward on drafting the amendments required to enable the Bill to pass in compliance with the UK Supreme Court judgement.

9. Scottish Government Ministers have committed to engaging with COSLA, and with Mr. Ruskell, on the progress of the European Charter Bill. However, in the period following the Deputy First Minister's statement, there has been no substantive movement by Scottish Government or Scottish Parliament on this issue. Other than, in their Programme for Government published in September 202, the Scottish Government committed to *“supporting the European Charter Bill”* and to *“work closely with Mark Ruskell MSP, as the designated member in charge of that Bill, to support him in bringing back for Reconsideration Stage.”*
10. In further efforts to initiate progress on this matter the President has written to Ms Shona Robison, Cabinet Secretary for Social Justice, Housing and Local Government, copied to Mr Ruskell, emphasising our concerns and requesting a meeting to agree a timetable for an acceleration of progress on this matter.
11. It is noted that the processes and competencies associated with submitting a Bill for Reconsideration are 'uncharted territory' for the Scottish Parliament and Government. Further, it is appreciated that the work required likely extends beyond the simple deletion of the sections in question and requires ensuring there are no unintended consequences through impacts on links to related legislation/sections. Nevertheless, the extended delay to progress is a significant concern and disappointment.

Next Steps

12. Following this meeting COSLA will engage again with Scottish Government, and with Mark Ruskell MSP, on the development and progress of the European Charter Bill and we will work to hold Scottish Government to its commitment to support Mr. Ruskell in bringing the Bill forward via the Reconsideration Stage. Similarly, representations will be made around progressing the UNCRC Bill.
13. Should a response be received meantime to the President's written representations, then the detail of that will be shared at the Convention meeting.

October 2022