

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

Summary and Recommendations

This paper provides a further update on the incorporation of the European Charter on Local Self-Government into Scottish legislation.

This paper invites Convention:

- i. to note the lack of apparent progress through the Scottish Parliament since the last meeting of either of the Bills to incorporate the UNCRC and the European Charter of Local Self-Government into Scots law;
- ii. to agree that COSLA continue to engage with Mark Ruskell MSP, on expediting the development and progress of the European Charter Bill; and
- iii. to agree to seek an early meeting with the relevant Scottish Government Ministers once the composition of the new Administration is known, to reinforce the need to progress these Bills.

References

Previous reports:

- 28-10-2022 Item 06 European Charter of Local Self Government
- 22-06-2017 Item 11 European Charter of Local Self-Government (Incorporation) (Scotland) Bill - Update

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Purpose

1. The purpose of this report is to provide Convention with a further update on COSLA's understanding, as it has developed since Convention last October, on work being done to secure amended European Charter of Local Self-Government (Incorporation) (Scotland) and UNCRC (Incorporation) (Scotland) Bills, such that they comply with the requirements detailed by the Supreme Court of Justice necessary for them to receive Royal assent and be passed into Scots Law. The Scottish Government has been clear that it will not seek to progress the European Charter Bill until the UNCRC Bill is passed.

Background

2. Members of Convention will be fully aware that COSLA has supported the European Charter of Local Self-Government (Incorporation) (Scotland) Bill throughout the entire process of consultation, development, introduction, and progression through all parliamentary phases to date. Previous reports have detailed the following key milestones which are bulleted for brevity below.
 - UK Government lodged a case with the UK Supreme Court arguing that some of the sections of this (and the UNCRC) Bill relate to the power of the UK Government and Parliament to legislate and act in Scotland in areas of reserved competence.
 - In October 2021, the UK Supreme Court announced the decision that various sections of the Bills would be outside the legislative competence of the Scottish Parliament. So, royal assent could not be given to the Bills which were returned to the Scottish Parliament for further consideration.
 - 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.
 - The Deputy First Minister advised that the Scottish Government intended to return the UNCRC Bill to Parliament via the reconsideration stage and would seek to make the necessary changes to the Bill to address the Supreme Court judgement.
 - The Deputy First Minister advised that the Scottish Government would engage with Mark Ruskell MSP, the member now leading the European Charter Bill, to support him in taking the Bill forward; Mr. Ruskell confirmed his intention to seek reconsideration for this Bill.
 - In the 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 it back for the Reconsideration Stage."
 - Prior to Convention in October, the President wrote to 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.
3. Convention will also have 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 that 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.

4. Following Convention in October, on 19 December the COSLA Vice President met with Ben Macpherson MSP, Minister for Social Security and Local Government and Mark Ruskell MSP to reiterate COSLA's support for the Bill and Convention's strongly expressed concerns regarding the lack of progress made toward reconsideration of an amended Bill. Discussion also focussed on establishing a timetable for expediting this work and bringing an amended version of the Bill forward via the Reconsideration Stage.
5. The main points established through that discussion – in December – are set out below.
 - Scottish Government remains committed to supporting a revised Bill as stated in the Programme for Government, but we have seen little tangible positive action.
 - Mr Macpherson has reiterated the Scottish Government's commitment to the Bill but advises that the UK Supreme Court judgements on both the European Charter Bill and the UNCRC Bill are complex, and that, in order to ensure any amendments to these Bills do not attract further challenge, the work cannot be rushed.
 - Mr Macpherson also stated that the European Charter Bill "should take place" after the UNCRC Bill has been Reconsidered and passed thereby benefitting from the experience gained from the Reconsideration process for the UNCRC Bill and ensuring that any lessons learned can be applied, to ensure a seamless progression and passing of the European Charter Bill.
 - Officials had indicated separately that, ideally, Ministers would have liked the UNCRC Bill to be passed before the end of 2022 – clearly this has been delayed.
 - The intention then was that Mr Ruskell commence the Reconsideration Stage for the European Charter Bill "early in the new year" – again this has been delayed.
 - Mr Macpherson indicated that he would welcome further tripartite meetings with Mr Ruskell and ourselves (see attached letter).
 - The Vice President reiterated the Convention's disappointment with the lack of progress in taking forward suitable amendments to enable the Bill. He also sought clarification on why the Government could not proceed meantime on the basis that the principles of the Bill were in operation.
6. The matter was further discussed at the recent combined Strategic Review Group/Monthly Relationship meeting, between the COSLA Presidential Team and Shona Robison, Ben Macpherson and Tom Arthur, Minister for Public Finance, Planning and Community Wealth, on 22 February 2023.
7. During this meeting, the Scottish Government reiterated a strong commitment to the Bill. In addition, there was general acknowledgement that the timescales for the European Charter Bill progressing through the Parliament were not solely in the gift of the Scottish Government, albeit that progress could not even start until the Government indicated it and Mr Ruskell were ready to do so. COSLA's Presidential Team stressed that COSLA was prepared to do all that we could do to assist (e.g., in a lobbying role). Mr Macpherson confirmed a number of the points discussed during the meeting in a letter to Cllr Heddle (Appendix I).

Current Position

8. Securing the adoption of the European Charter for Local Self-Government into Scots law remains a priority area for COSLA, as stated in the COSLA Plan 2022-2027. COSLA's President and Vice President and 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. Convention remains strongly committed to incorporating the provisions of the European Charter for Local Self Government into Scots Law and, once the new Scottish Government Administration is in place, we will seek an early meeting with the relevant Ministers expediting the resolution of this matter to bring amended Bills forward via the Reconsideration Stage as soon as possible.

Next Steps

10. Following this meeting, COSLA will continue to engage with Scottish Government and Mark Ruskell MSP, on expediting the development and completion of the European Charter Bill approval process. Similarly, representations will be made around completing the UNCRC Bill.

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