



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

February 2026



Introduction

The Law Society of Scotland is the professional body for over 13,500 Scottish solicitors. We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful, and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society. The Society's Constitutional Law and Human Rights Sub-committee has the following comments to make.

The amendments to the European Charter of Local Self-Government (Incorporation) (Scotland) Bill: <https://www.parliament.scot/-/media/files/legislation/bills/s5-bills/european-charter-of-local-self-government-incorporation-scotland-bill/stage-3/bill-as-passed.pdf> are complicated and illustrate the way in which provisions must be drafted to address the Supreme Court's interpretation of the effect of section 28(7) of the Scotland Act 1998. The effect of the amendments is to narrow the scope of the Bill and accordingly limit its practical impact.

We are concerned at the time it has taken to bring the Bill back for reconsideration. Future Bills which are determined by the UK Supreme Court to be outside the competence of the Scottish Parliament should not have reconsideration delayed beyond two years from the date of the decision. The Supreme Court gave its judgment on 6 October 2021. It is not in the interest of good law making that reconsideration has been delayed by more than 4 years.

Specific comments on the bill

Section 2

Our comment

We agree that if section 2 is amended to exclude functions in UK legislation from the scope of the Bill that will decrease the likelihood of another referral to the UK Supreme Court.

We appreciate that these amendments are intended to make section 2 of the Bill similar in effect to section 6 of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 <https://www.legislation.gov.uk/asp/2024/1/notes/contents> but it is difficult to follow the notation of the amendment and how it is intended that this amendment should be read.

We focus on amendments to section 2, page 1, line 19. It would seem that it is intended that subsection (2) should terminate at the end of the inserted

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paragraph (aa) after the words “rule of law not created by an enactment” because the amendment proceeds to insert subsections (2A),(2B) and (2C).

There is a lack of clarity in section 2 as much as there are two definitions of functions. Subsection (2) commences “In subsection (1), functions means...” and then the proposed subsection (2C) (a) provides “for the purposes of this section,(a) function...[includes etc]”

In relation to amendments of Acts of the Scottish Parliament by UK legislation these may not be within the scope of the interpretive/remedial duties under sections 4 and 5, but they will be within the scope of the duty on the Scottish Ministers under section 2 unless the amendments create an unavoidable breach of the Charter.

Section 4

[Our comment](#)

We agree that the amendments will reduce the scope of the Bill to legislation contained in an Act of the Scottish Parliament or relative subordinate legislation. That will decrease the likelihood of another referral to the UK Supreme Court.

Section 5

[Our comment](#)

These amendments are essentially consequential on the earlier ones.

Section 7

[Our comment](#)

Section 7 applies where a court decides that the Scottish Ministers have breached a statutory duty under the Bill. The amendments limit the effect of section 7 to Acts of the Scottish Parliament and Scottish statutory instruments and are essentially consequential in nature.



For further information, please contact:

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