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Joe FitzPatrick
Convener
Equalities, Human Rights and Civil Justice Committee
Scottish Parliament

Copied to the Education, Children and Young People Committee

16 March 2023

Dear Joe,

16 March marks the two year anniversary of the UNCRC (Incorporation) (Scotland) Bill being unanimously passed by the Scottish Parliament. I did not want this date to pass without acknowledging this and providing the Committee with an update on progress in refining the amendments to the Bill and planning for the parliamentary Reconsideration Stage, should Parliament agree to move to reconsideration of the Bill.

I understand and share the frustration that we have not yet been able to start that process. I want to reassure you that this does not mean that the Scottish Government's commitment to the Bill has diminished.

I explained on 7 February in my closing speech in the [members debate on the Bill](#) that we are engaging with the UK Government on amendments. The focus of our engagement is on how the compatibility duty can apply when a public authority is acting under powers conferred by a UK Act in a devolved area.

We have been clear, since May last year, that the Supreme Court judgment means that the compatibility duty cannot apply when a public authority is acting under powers conferred by a UK Act and that Act requires them to act in a way that is incompatible, even where the Act relates to a devolved power. However, we hoped that, where a UK Act in a devolved area gives public authorities some discretion about whether or not to act in a way that is incompatible, the Bill could require a public authority to do so. Discussions with UKG have been focused on whether the Supreme Court Judgment does indeed enable us to achieve this or whether this is an impermissible modification of section 28(7) of the Scotland Act 1998, which protects the UK Parliament's unqualified power to legislate for Scotland.

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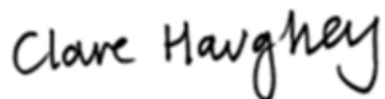


On 9 March, we shared a revised set of amendments with lawyers in the UK Office of the Advocate General that deliver the intentions of Scottish Ministers, whilst taking into account the comments that UK Government lawyers have provided during our period of engagement. While we do think it is arguable that the section 6 duty is capable of applying to UK Acts in the way that we hoped, we have nonetheless adjusted the provision to demonstrate compromise so that the compatibility duty applies to existing legislation in devolved areas but not to future legislation. We have also redrafted the amendments to add in a power under which the Scottish Ministers will, with the approval of the Scottish Parliament, be able to , extend the compatibility duty to devolved functions created in the future under UK Acts on a case by case basis, should they consider this desirable or necessary.

We have made clear to the UK Government that we intend to move towards reconsideration of the Bill soon. We have asked that if they have any new and material concerns about these revised amendments, they advise us of this within the next few weeks.

Assuming that the UK Government meet this deadline and do not express any new and material concerns, we hope to be able to progress to Reconsideration Stage ahead of summer recess. We understand that the Committee may wish to take evidence on the amendments and we will keep your clerk updated on the timetable for reconsiderations to help you plan your business. In the meantime I hope this update is helpful.

Yours sincerely,



CLARE HAUGHEY

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