

Submission from the Law Society of Scotland, European Charter of Local Self-Government (Incorporation) (Scotland) Bill (Reconsideration Stage), 18 February 2026 (via email)

Comments on the Scottish Government draft amendments

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 draft amendments 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 also 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.

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

However, what happens to the original subsection (2)(b)? Is it intended that the proposed subsection (2C)(a) should continue on line 20 so that it reads

”(2C) For the purposes of this section,(a) function ... (b) includes the making of subordinate legislation ...”

If so, there should be an amendment to delete the reference to section 2(b).

Why is there a reference to (a) before the word “function”. Is there any subparagraph (b) to follow subsection(2C)(a)?

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]”

Section 4

Our comment

We agree that the draft 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 draft amendments limit the effect of section 7 to Acts of the Scottish Parliament and Scottish statutory instruments and are essentially consequential in nature.