Local Government and Communities Committee

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

Submission from Orkney Islands Council

The Local Government and Communities Committee of the Scottish Parliament has called for views on the following five questions relating to the European Charter of Local Self-Government (Incorporation) (Scotland) Bill.

1. The main aim of the Bill is to make the European Charter of Local Self-Government directly enforceable in Scots law and to require the Scottish Government to act in a way that agrees with the Charter [section 1 and 2]. Do you agree with this?

Yes.

The UK ratified the Charter on 24 April 1998 and it came into force on 1 August 1998 which not only determines the rationale and necessity for the Bill but also indicates that compliance with Charter obligations is long overdue. The intention behind the Charter was to impose enforceable obligations on ratifying states. In particular, Article 2 sets out that “the principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.” As the UK has no written Constitution, the concept of local self-government is not recognised anywhere in legislation. In view of this we consider that incorporation into Scots law is sensible. It is incongruous to be a signatory to a Charter without having any means to bring the relevant rights into effect.

We endorse the rationale given by COSLA that the key reasons why the European Charter of Local Self-Government should be incorporated into law in Scotland are as follows:

- It would strengthen local and national government’s ability to work jointly to improve outcomes in communities across Scotland.
- It would strengthen Scotland’s democracy by ensuring that communities enjoy the same local democratic rights that are already commonplace across Europe and beyond.
- It would ensure the partnership between national and local government is built into Scotland’s system of democratic governance, and reflected in its day to day culture and practice.
- It would ensure that Scotland fully complies with international treaty obligations.

2. Section 3 of the Bill puts a general duty on the Scottish Government to support local government. The Scottish Government must also report to the Scottish Parliament about what it has done to support local government at least once every 5 years. Do you support section 3?
Yes.

A general duty on the Scottish Government to support local government would be helpful in ensuring that national and local government work together. However, we think that there would need to be clarity and active support on the new way of working to ensure that the Charter is in fact upheld, clarifying the competencies of national and local government in the ways set out in the Charter. Both spheres of government would need to commit to a new level of consensus and partnership working, and consider the outcomes that they can deliver together.

A requirement for a five-yearly report on the steps that the Scottish Government has taken to safeguard and reinforce local self-government and increase the autonomy of local authorities would be useful in terms of monitoring, although we note it would not provide any obligation to follow through on any particular details.

3. **Section 4 of the Bill says all legislation must be interpreted in line with the Charter whenever possible. Section 5 allows a court to make a “declaration of incompatibility”. This is a statement that a provision in a piece of legislation is not in line with the Charter. Where this declaration has been made, section 6 gives the Scottish Government power to take action to fix this provision so that it is line with the Charter (section 6). Do you agree with these sections?**

Yes.

It is important that there is a remedy so that there is an imperative to comply with the principles of the Charter. A judicial remedy through the courts for potential breaches of the Charter would seem to be sufficient, and we agree that, following a declaration of incompatibility, an action should be capable of being overturned. Simply declaring the action unlawful would not have the effect of upholding the Charter’s principles in practice.

4. **Section 7 allows a court to limit the consequences of a ruling that the Scottish Government has not complied with a duty set out elsewhere in the Bill. For instance, the court could provide that the effects of the ruling do not reach back in time. It can also give the Scottish Government some time to take corrective action to address the ruling. Do you agree with section 7?**

Yes.

It is a fundamental principle of administrative law that the courts should have the power to hold the Scottish Government to account and require action to remedy any breaches and to strike down any incompatible legislation. However, any corrective action required would need to include consideration of the scope and timescales permitted therefor.

5. **Do you have thoughts on anything else about the Bill, for example:**
   - how quickly it should become law after it is passed (section 10 says this should happen almost immediately)
Ratification of the Charter in Scotland is long overdue and we do not see any need to delay it further.

- **what financial impact it will have if it becomes law**

We do not see that there would be major costs involved, but any costs would need to be weighed up against the wider efficiencies that we would hope would be achievable.

- **if it will have any positive or negative impact on equality or human rights.**

We do not anticipate that the proposed Bill would have any negative impact on any groups with protected characteristics under the Equality Act 2010.