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4 July 2023

Dear Convener,

Firstly, please accept my apologies for the delay in responding to your letter of the 9 May. As you will know, on Tuesday I provided an [update to Parliament on the UNCRC \(Incorporation\) \(Scotland\) Bill](#) about progress with the UNCRC (Incorporation) (Scotland) Bill, to explain the reason for the time taken to bring the Bill back to Parliament, and to share how we propose to amend the Bill and the rationale behind that and to confirm next steps to begin the parliamentary process for reconsideration. I wanted to finalise the content of that statement before responding so that I could provide you with as full an update as possible.

My statement set out how we intend to amend section 6 of the Bill, which makes it unlawful for a public authority to act in a way that is incompatible with the UNCRC requirements. In drafting amendments, we have tried to balance three important considerations: protecting children's rights to the maximum effective extent possible; minimising the risk of another Supreme Court referral; and making the law as accessible as possible for users.

Our assessment is that the most *effective* coverage for the compatibility duty is for it to apply only when public authorities are delivering duties under powers conferred by Act of the Scottish Parliament.

Following engagement between UKG lawyers and Scottish Government lawyers we consider that this approach will minimise the risk of a further reference. It will also minimise the complexity of the provisions for users of the legislation, including public authorities and children and young people and their representatives. The impact of the provisions in the Bill will be undermined if they are too complex or uncertain to follow.

This approach will entail a substantial loss of coverage for children's rights compared with our preferred option which was to try and include some UK Acts covering devolved functions.

We knew that the Supreme Court judgment meant we couldn't require public authorities to act compatibly when they're delivering duties under powers in a UK Act in a devolved area and the Act require them to act incompatibly. However, what we were seeking to achieve was for the compatibility duty to apply when a public authority was delivering duties under a UK Act in a devolved area and the Act either required them to act compatibly with the UNCRC or gave them some discretion to act compatibly.

There are many existing Acts of the UK Parliament in devolved areas that impact on children's rights. The extent of that loss will become apparent over time as we explore the legal sources of duties under which rights issues are encountered. This loss is a direct consequence of the complexity of drafting which would have been needed to address the Supreme Court judgment while maintaining our preferred option, within a legislative landscape in which public authorities are still acting under powers within Acts of the UK Parliament in devolved areas.

Even with more limited coverage, however, I consider our proposals will result in a Bill that provides valuable protections for children rights, and will allow Scotland to begin a journey to legislate for children's rights and wider human rights. I also believe that the Bill, and the supports we are already putting in place for its implementation, are creating a wider cultural change that we can continue to foster and build on.

To move forward we need to complete essential checks with Parliamentary Clerks on admissibility of the amendments we will propose. Thereafter our aim is to begin the Parliamentary process as early as possible after summer recess. This will commence with a Parliamentary motion, allowing Parliament to vote on whether to go ahead with the reconsideration process. If this motion is passed, I would anticipate that your Committee will wish the opportunity to scrutinise the amended Bill before a reconsideration debate and vote on the amendments in Parliament later this year.

I would like to thank the Committee for maintaining flexibility in your schedule for prioritising this important piece of legislation.

Yours sincerely,

SHIRLEY-ANNE SOMERVILLE