

Mark Ruskell MSP

C.c: Principal Clerk – Non-Government Bills Unit
COSLA Presidential Team
COSLA Corporate Policy Team
Local Government, Housing and Planning Committee
Secretary of State for Scotland
Advocate General for Scotland

15 January 2026

Dear Mark

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

Firstly, I would like to thank you for your patience – I appreciate it has been some time since our last tripartite meeting on 29 July 2025 with the COSLA Presidential Team.

Following the referral of the Bill by the Attorney General and the Advocate General for Scotland to the Supreme Court, the Scottish Government confirmed that we remain committed to doing all we can to support you to progress this member's bill to reconsideration as soon as practicable. As such, I formally confirmed in writing on 1 October 2024 that the Scottish Government would lodge and speak to the necessary amendments given our experience with the first Bill to proceed to Reconsideration Stage.

With your agreement, Scottish Government officials shared our proposed amendments in draft with UK Government officials in March 2024, and have been engaged in a cooperative dialogue since then, particularly on whether section 2 (duty on Scottish Ministers to act compatibly with the Charter) also requires amendment alongside sections 4 and 5.

Section 2 of the Bill, as originally passed, is confined in its application to functions of the Scottish Ministers that are within devolved competence, including those that derive from pre-devolution UK legislation. This was not one of the sections that the UK Law Officers referred to the Supreme Court, nor was it mentioned in the Court's judgment. However, I understand that, on one interpretation, the Supreme Court's judgment also affects this section.

If section 2 were to be amended to exclude functions in UK legislation from its scope, it would significantly reduce the reach and effect of the Bill (as the Scottish Ministers' functions under pre-devolution UK enactments would not be subject to the section 2 duty to exercise them compatibility with the Charter). I was keen to avoid limiting the effect of the Bill in this way however, it is in no one's interests that the Bill be referred to the Supreme Court a second time. I therefore wrote to the previous Secretary of

State for Scotland, the Rt Hon Ian Murray MP, on 10 April 2025 seeking cooperation between the Scottish and UK Government to provide clarity on the UK Government's position in relation to the legislative competence of section 2 of the Member's Bill.

Despite extensive engagement, we have not been able to rule out the possibility of another Supreme Court referral if section 2 is not amended during Reconsideration Stage which perhaps reflects the uncertainty around section 28(7) of the Scotland Act 1998 generally.

With limited parliamentary time now available, I confirmed during our meeting on 29 July that, whilst the Scottish Government remains of the view that section 2 is within the legislative competence of the Scottish Parliament, seeking to amend section 2, to limit its effect, as well as sections 4 and 5, would ensure the Bill proceeds to reconsideration as soon as possible whilst likely avoiding a second referral to the Supreme Court.

The amendments proposed to section 2 are similar to amendment that were made to section 6 of the UNCRC (Incorporation) (Scotland) Bill at Reconsideration Stage – section 6 of that Bill, as originally passed, had similarities with section 2 of this Bill and was the subject of the original Supreme Court reference and judgment. The amendments would carve out functions of the Scottish Ministers within UK legislation from the scope of the section 2 duty to act compatibly with the Charter, reducing the reach of the Charter provisions as devolved functions of Scottish Ministers under UK Acts would not be covered by the compatibility duty.

Whilst not legally binding, the Verity House Agreement already commits Ministers to act consistently with many of the Charter's principles though, such as subsidiarity and a presumption in favour of local flexibility. That includes in relation to the exercise of powers contained in pre-devolution legislation. In time, it may also be possible to bring more of Ministers' functions within the scope of the section 2 compatibility duty, for example, if UK Act provisions in devolved areas are re-enacted in Acts of the Scottish Parliament or a mutually acceptable solution can be found to the issues around s.28(7) of the Scotland Act.

Following our discussion on 29 July, both you and COSLA Leaders confirmed that seeing the Bill pass Reconsideration Stage within this Parliament and avoiding a further Supreme Court referral remained a key priority. As such, you confirmed your support for my proposed approach to reconsideration - seeking to amend section 2 as well as section 4 and 5 of the Bill during Reconsideration Stage. During this meeting I confirmed that amendments will largely mirror those taken forward during reconsideration of the UNCRC Act 2025 and, that section 2 would only be amended should we be unable to reach a position where the risk of a further Supreme Court referral could be ruled out prior to reconsideration.

As limited time is now available for reconsideration to be completed within this Parliament, I am pleased to share the draft amendments to section 2, 4 and 5 and

consequential amendments to section 7 that the Scottish Ministers intend to take forward once you have lodged your motion to move the Bill to Reconsideration Stage and Parliament has agreed to reconsideration being undertaken. The proposed consequential amendments are intended to bring the language of section 7 (power to remove or limit retrospective effect of decisions) in line with the section 4 and 5 amendments. Should you have any questions about the amendments, my officials will be happy to provide further clarification.

Yours sincerely,

Shona Robison
Cabinet Secretary for Finance and Local Government

European Charter of Local Self-Government (Incorporation) (Scotland) Bill —
draft amendments for Reconsideration Stage

[PCO2]

Shona Robison

In section 2, page 1, line 15, leave out <the exercise of their functions> and insert <exercise of a relevant function>

[PCO1]

Shona Robison

In section 2, page 1, line 16, at end insert <(but see subsection (2B)).>

[PCO3]

Shona Robison

In section 2, page 1, line 17, leave out from <“functions”> to <are> in line 18 and insert <a “relevant function” means a function that—

(a) is>

[PCO4]

Shona Robison

In section 2, page 1, line 19, at end insert <and

(aa) is conferred by—

- (i) an Act of the Scottish Parliament,
- (ii) a Scottish statutory instrument originally made wholly under a relevant enabling power,
- (iii) a provision in a Scottish statutory instrument originally made partly under a relevant enabling power, provided that the provision itself was either—
 - (A) originally made under the relevant enabling power, or
 - (B) inserted into the instrument by an Act of the Scottish Parliament or subordinate legislation made under a relevant enabling power, or
- (iv) a rule of law not created by an enactment.

- (2A) In subsection (2), “relevant enabling power” means a power to make subordinate legislation conferred by a provision in an enactment of a kind mentioned in that subsection, unless the provision was inserted by an enactment of a kind that is not mentioned in that subsection.
- (2B) The Scottish Ministers do not fail to comply with subsection (1) by taking an action in exercise of a relevant function which is incompatible with the Charter Articles if they were required or entitled to take the incompatible action by words that—
 - (a) are not contained in an enactment of a kind mentioned in subsection (2)(aa), or
 - (b) are contained in such an enactment having been inserted into it by an enactment of a kind that is not mentioned in subsection (2)(aa).
- (2C) For the purposes of this section—
 - (a) “function”>

[PCO5] Shona Robison

In section 2, page 1, line 22, leave out from <Parliament.> to <(1),> in line 23 and insert <Parliament,

(b) a function conferred by words inserted by one enactment into another enactment (“the modified enactment”) is to be regarded as conferred only by the modified enactment,

(c)>

[PCO6] Shona Robison

In section 4, page 2, line 24, leave out <legislation mentioned in subsection (1A)> and insert <the following>

[PCO7] Shona Robison

In section 4, page 2, line 25, at end insert—

<() words in an Act of the Scottish Parliament to which section 5A applies,
() words in subordinate legislation to which section 5B applies.>

[PCO8] Shona Robison

In section 4, page 2, line 26, leave out subsection (1A)

[PCO9] Shona Robison

In section 4, page 2, line 29, after <legislation> insert <made by virtue of an Act of the Scottish Parliament>

[PCO20] Shona Robison

In section 4, page 2, line 30, leave out <primary legislation> and insert <the Act or words in another enactment to which neither section 5A nor 5B apply>

[PCO10] Shona Robison

In section 5, page 2, line 32, leave out <a provision of an Act is compatible> and insert <the following give rise to an incompatibility>

[PCO11] Shona Robison

In section 5, page 2, line 33, at end insert—

<() words in an Act of the Scottish Parliament to which section 5A applies,
() words in subordinate legislation to which section 5B applies.>

[PCO12] Shona Robison

In section 5, page 2, line 34, leave out <provision is incompatible> and insert <words give rise to an incompatibility>

[PCO13] Shona Robison

In section 5, page 2, line 35, leave out <of that incompatibility> and insert <stating that incompatibility (“a declaration of incompatibility”)>

[PCO14] Shona Robison

In section 5, page 2, line 36, leave out subsections (3) and (4) and insert—

<() Where the incompatible words are in subordinate legislation, the court—

- (a) may make a declaration of incompatibility in relation to the subordinate legislation only if the court is satisfied that (disregarding any possibility of revocation) the Act of the Scottish Parliament by virtue of which the subordinate legislation is made prevents removal of the incompatibility,
- (b) may not make a declaration of incompatibility in relation to the subordinate legislation if the court is satisfied that (disregarding any possibility of revocation) words in another enactment to which neither section 5A nor 5B apply prevent removal of the incompatibility.>

[PCO15] Shona Robison

In section 5, page 3, line 5, leave out <under this section (“a declaration of incompatibility”)> and insert <of incompatibility>

[PCO16] Shona Robison

In section 5, page 3, line 6, leave out <provision> and insert <words>

[PCO17] Shona Robison

In section 5, page 3, line 8, leave out subsection (7)

[PCO18] Shona Robison

After section 5, insert—

<Primary legislation words for purposes of sections 4 and 5

The words to which this section applies are words that are—

- (a) in an Act of the Scottish Parliament, and
- (b) in the Act as a result of having been
 - (i) contained in the Bill for the Act,
 - (ii) contained, as part of an amending provision, in the Bill for another Act of the Scottish Parliament, or
 - (iii) inserted by words in subordinate legislation to which section 5B applies.>

[PCO19] Shona Robison

After section 5, insert—

<Subordinate legislation words for purposes of sections 4 and 5

- (1) The words to which this section applies are words that are—
 - (a) in a Scottish statutory instrument originally made, wholly or partly, by virtue of a relevant enabling power, and
 - (b) in the instrument as a result of—
 - (i) the exercise of a relevant enabling power (either to make the provision containing the words, or to make the amending provision that inserted them), or
 - (ii) having been inserted into the instrument by words in an Act of the Scottish Parliament to which section 5A applies.
- (2) In this section, “relevant enabling power” means a power conferred by a provision that is not in, or derived (directly or indirectly) from, an Act of Parliament.
- (3) For the purposes of subsection (2), a provision of an Act of the Scottish Parliament is not to be regarded as derived from section 28 of the Scotland Act 1998.>

[PCO22] Shona Robison

In section 7, page 4, line 15, leave out <subordinate legislation made> and insert <words in subordinate legislation to which section 5B applies and which were enacted>

[PCO23] Shona Robison

In section 7, page 4, line 15, leave out <is> and insert <are>

[PCO24] Shona Robison

In section 7, page 4, line 17, leave out <primary legislation does not prevent>

[PCO25] Shona Robison

In section 7, page 4, line 18, at end insert <is not prevented by—

- (A) the Act of the Scottish Parliament by virtue of which the subordinate legislation was made, or
- (B) words in another enactment to which neither section 5A nor 5B apply.>

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

Sections 2, 4, 5 and 7 as proposed to be amended at Reconsideration Stage (plus new sections 5A and 5B)

2 Duty to act compatibly with the Charter Articles

- (1) The Scottish Ministers must ensure that any action they take in exercise of a relevant function is compatible with the Charter Articles (but see subsection (2B)).
- (2) In subsection (1), a “relevant function” means a function that—
 - (a) is within devolved competence (within the meaning of section 54 of the Scotland Act 1998), and
 - (aa) is conferred by—
 - (i) an Act of the Scottish Parliament,
 - (ii) a Scottish statutory instrument originally made wholly under a relevant enabling power,
 - (iii) a provision in a Scottish statutory instrument originally made partly under a relevant enabling power, provided that the provision itself was either—
 - (A) originally made under the relevant enabling power, or
 - (B) inserted into the instrument by an Act of the Scottish Parliament or subordinate legislation made under a relevant enabling power, or
 - (iv) a rule of law not created by an enactment.
- (2A) In subsection (2), “relevant enabling power” means a power to make subordinate legislation conferred by a provision in an enactment of a kind mentioned in that subsection, unless the provision was inserted by an enactment of a kind that is not mentioned in that subsection.
- (2B) The Scottish Ministers do not fail to comply with subsection (1) by taking an action in exercise of a relevant function which is incompatible with the Charter Articles if they were required or entitled to take the incompatible action by words that—
 - (a) are not contained in an enactment of a kind mentioned in subsection (2)(aa), or
 - (b) are contained in such an enactment having been inserted into it by an enactment of a kind that is not mentioned in subsection (2)(aa).
- (2C) For the purposes of this section—
 - (a) “function” includes the making of subordinate legislation but does not include the preparation or introduction of, or the exercise of other functions in relation to, a Bill for an Act of the Scottish Parliament,
 - (b) a function conferred by words inserted by one enactment into another enactment (“the modified enactment”) is to be regarded as conferred only by the modified enactment,

- (c) a failure to act (including a failure to make subordinate legislation) is to be treated as the taking of action.

4 Interpretation of legislation

- (1) So far as it is possible to do so, the following must be read and given effect in a way which is compatible with the Charter Articles—
 - (a) words in an Act of the Scottish Parliament to which section 5A applies,
 - (b) words in subordinate legislation to which section 5B applies.
- (2) This section does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation made by virtue of an Act of the Scottish Parliament if (disregarding any possibility of revocation) the Act or words in another enactment to which neither section 5A nor 5B apply prevents removal of the incompatibility.

5 Declaration of incompatibility

- (1) Subsection (2) applies in any proceedings in which a court determines whether the following give rise to an incompatibility with the Charter Articles—
 - (a) words in an Act of the Scottish Parliament to which section 5A applies,
 - (b) words in subordinate legislation to which section 5B applies.
- (2) If the court is satisfied that the words give rise to an incompatibility with the Charter Articles, it may make a declaration stating that incompatibility (“a declaration of incompatibility”).
- (3A) Where the incompatible words are in subordinate legislation, the court—
 - (a) may make a declaration of incompatibility in relation to the subordinate legislation only if the court is satisfied that (disregarding any possibility of revocation) the Act of the Scottish Parliament by virtue of which the subordinate legislation is made prevents removal of the incompatibility,
 - (b) may not make a declaration of incompatibility in relation to the subordinate legislation if the court is satisfied that (disregarding any possibility of revocation) words in another enactment to which neither section 5A nor 5B apply prevent removal of the incompatibility.
- (5) In this section “court” means—
 - (a) the Supreme Court of the United Kingdom, or
 - (b) the Court of Session.
- (6) A declaration of incompatibility does not affect the validity, continuing operation or enforcement of the words in respect of which it is given.

5A Primary legislation words for purposes of sections 4 and 5

The words to which this section applies are words that are—

- (a) in an Act of the Scottish Parliament, and
- (b) in the Act as a result of having been—

- (i) contained in the Bill for the Act,
- (ii) contained, as part of an amending provision, in the Bill for another Act of the Scottish Parliament, or
- (iii) inserted by words in subordinate legislation to which section 5B applies.

5B Subordinate legislation words for purposes of sections 4 and 5

- (1) The words to which this section applies are words that are—
 - (a) in a Scottish statutory instrument originally made, wholly or partly, by virtue of a relevant enabling power, and
 - (b) in the instrument as a result of—
 - (i) the exercise of a relevant enabling power (either to make the provision containing the words, or to make the amending provision that inserted them), or
 - (ii) having been inserted into the instrument by words in an Act of the Scottish Parliament to which section 5A applies.
- (2) In this section, “relevant enabling power” means a power conferred by a provision that is not in, or derived (directly or indirectly) from, an Act of Parliament.
- (3) For the purposes of subsection (2), a provision of an Act of the Scottish Parliament is not to be regarded as derived from section 28 of the Scotland Act 1998.

7 Power to remove or limit retrospective effect of decisions etc.

- (1) This section applies—
 - (a) where a court decides that the Scottish Ministers have breached a duty imposed on them by this Act, or
 - (b) where a court decides that—
 - (i) words in subordinate legislation to which section 5B applies and which were enacted prior to the coming into force of section 2 are incompatible with the Charter Articles, and
 - (ii) (disregarding any possibility of revocation), removal of the incompatibility is not prevented by—
 - (A) the Act of the Scottish Parliament by virtue of which the subordinate legislation was made, or
 - (B) words in another enactment to which neither section 5A nor 5B apply.
- (2) The court may make an order—
 - (a) removing or limiting any retrospective effect of the decision, or
 - (b) suspending the effect of the decision for any period and on any conditions to allow the breach or incompatibility to be addressed.
- (3) In deciding whether to make an order under this section, the court shall (among other things) have regard to the extent to which persons who are not parties to the proceedings would otherwise be adversely affected.