

Submission from Andy Wightman, European Charter of Local Self-Government (Incorporation) (Scotland) Bill, 19 February 2026

I was the MSP who introduced this Bill to Parliament.

Thank you for the opportunity to provide evidence on the Reconsideration Stage amendments lodged to the European Charter of Local Self-Government (Incorporation) (Scotland) Bill lodged by Shona Robison MSP. Thank you also for sight of the correspondence to the Convenor from the Minister of 17 February 2026 which are necessary to properly understand and comment on the amendments. Thank you also for sight of the letter of 15 January from the Minister to Mark Ruskell MSP, the member in charge of the Bill.

I understand the difficulties associated with deciding how the Bill needs to be amended in order to not only address the explicit points in law raised by the Supreme Court ruling but also the possibility of further referral on similar grounds which did not form part of the ruling.

I have no detailed comments on the amendments other than to say that I agree with the Minister and (it appears) COSLA and Mr Ruskell, that it is desirable to get the Bill on the statute book and to avoid another Supreme Court referral. In that context, I am disappointed that agreement could not be reached with the UK Government as to that possibility though I understand the procedural niceties of the process.

In light of the above, I support the amendments that have been lodged and hope that Parliament can agree them and pass the Bill at Reconsideration Stage before dissolution.

It would be remiss of me, however, not to put on the record some wider observations that are relevant to the situation that Parliament now finds itself in in relation to this Bill.

Drafting

I can state categorically that this Bill was drafted with the utmost care. My instructions included that the Bill should not risk doing anything that may be outwith the legislative competence of the Scottish Parliament. Given that the core subject matter (incorporation of an international treaty) had not been undertaken before and that this was the first Bill to attempt to do so (introduced on 5 May 2020), there was some uncertainty around some of the original provisions.

For example, I wanted to incorporate a power for the courts to strike down any legislation found to be incompatible with the Charter on a similar basis to which they can do so with any Act of the Scottish Parliament found to be incompatible with the Scotland Act. Upon further exploration, discussion and advice, I agreed to exclude this from the Bill due to the perceived risk of challenge.

The Bill was drafted by Christine O'Neill KC, one of the then panel of legislative drafters retained by the Scottish Parliament. She is a pre-eminent constitutional lawyer and provided sound advice as well as exemplary drafting skills.

I note all of this to underscore that this Bill did not fall foul of the Scotland Act because of any errors in the drafting. I and the team advising me went to considerable lengths to try to understand and apply the provisions of the devolution settlement in the way we understood them to mean.

Supreme Court ruling and the Scotland Act

At the end of the day, the Bill was challenged successfully on the basis of an unanticipated and (to some extent) surprising interpretation of section 28(7) of the Scotland Act 1998. Section 28 confers on the Scottish Parliament the right to make laws to be known as Acts of the Scottish Parliament. Section 28(7) states that;

This section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland.

The ordinary understanding of that provision was that the UK Parliament could, if it wished, legislate on devolved matters such as local government, policing, health and education.

The current legal position, however, goes well beyond that and in effect prevents the Scottish Parliament interfering in any way at all with UK legislation in devolved areas (such as the declaration of incompatibility provisions in section 5 of the Bill).

What is surprising about this interpretation of the Scotland Act is that whilst it is not within the legislative competence of the Scottish Parliament to give the Courts the power to issue declarations of incompatibility with (for example) a provision of the Local Government (Scotland) Act 1973 on the basis that it violates an Article of the Charter, it is within legislative competence to repeal the 1973 Act in its entirety.

It is hard to square the logic within the Scotland Act of it being lawful to repeal acts of the UK Parliament within devolved competence but at the same time being unable to provide modest powers to Courts on matters of interpretation in relation to compatibility with international treaties incorporated into Scots law.

As things stand, the Bill when amended will be unable to bring the 1973 Act within its scope but if the Scottish Parliament were to repeal and then re-enact the 1973 Act as an Act of the Scottish Parliament then the exact same provisions that are currently beyond the scope of the Bill would come fully within the scope of the Bill. This is not sensible.

I thus welcome the statement in the letter from the Minister to Mark Ruskell, that;

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.

I would invite the Committee to reflect on this and agree that if the illogicality of s.28(7) cannot be addressed, then the Scottish Parliament should consider the repeal and re-enactment of relevant legislation such as the 1973 Act to bring it within the scope of the Bill.

Conclusion

I am grateful to Mark Ruskell MSP and Ministers for their efforts to enact this Bill which will provide (even as amended) significant new protections to local self-government. The 2022 Monitoring Report of the Council of Europe noted and welcomed the attempt to incorporate the Charter¹. But as matters stood when they reported in 2022, the UK was not in compliance with Article 2 of the charter². Enacting the Bill will mean that at least one jurisdiction in the UK is compliant.

¹ See <https://rm.coe.int/cg-2022-42-18-en-monitoring-of-the-application-of-the-europeancharter/1680a5b483>

² See para 67 of the Monitoring Report <https://rm.coe.int/0900001680a5b483>.