

# Submission from Prof. Chris Himsworth, 13 February 2026

## European Charter of Local Self-Government (Incorporation) (Scotland) Bill – Reconsideration Stage

### Some Comments

1. I am grateful for the invitation from the Parliament's Local Government, Housing and Planning Committee to comment at this new Stage of this Bill's progress. I did make a written submission at Stage One and appeared (online, in the conditions of the time) before the then Local Government and Communities Committee on 18 November 2020.
2. I am, therefore, very pleased to see that, in the light of all that has happened since the final passing of the Bill, it has been revived and is now once again on track to reach the statute book. My own interest in the Bill derives from a quite long-standing interest in Scottish local government<sup>1</sup> and in the European Charter<sup>2</sup>. Although I did, at the earlier stage on the Bill, have some thoughts about how the Bill might be modified (e.g. in the direction of expanding its coverage beyond application to the Scottish Ministers) I was also in favour of the Bill's passing as it stood. Local government operates under a constant threat of control from above and, although the Bill offers no silver bullet, it has the capacity to contribute to better central-local relationships<sup>3</sup>.
3. Coming to this new stage on the Bill, I have first to repeat my expression of total dismay at what has resulted from the UK Supreme Court's decision in the case on the two Incorporation Bills<sup>4</sup>. It was, for most commentators, I believe, wholly unexpected and constitutionally shocking. At the very least, it has given rise to great uncertainty<sup>5</sup>. I have been pleased to see, in the Cabinet Secretary's letter of 15 January 2026 and during the debate on 4 February 2026 on the Bill Reconsideration Motion<sup>6</sup>, that, in the preparation of the Bill amendments now proposed, there has been a degree of co-operation with the UK Departments that was wholly lacking at the point when amendments for the Rights of the Child Bill were being prepared.

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<sup>1</sup> See e.g. CMG Himsworth, *Local Government Law in Scotland* (T&T Clark, 1995); CMG Himsworth, CM O'Neill, DR Blair, *Scotland's Constitution: Law and Practice* (5th edn, Bloomsbury, 2026) Ch 7.

<sup>2</sup> CMG Himsworth, *The European Charter of Local Self-Government: A Treaty for Local Democracy* (Edinburgh University Press, 2015).

<sup>3</sup> See e.g. C Himsworth, 'Charter Incorporation in Scotland to the Rescue of Central-Local Relations?' [2024] *Costituzionalismo Britannico e Irlandese* 215-229.

<sup>4</sup> United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill European Charter of Local Self-Government (Incorporation) (Scotland) Bill [2021] UKSC 42; 2022 SC (UKSC) 1.

<sup>5</sup> C Himsworth, 'Incorporation Bills in the Scottish Parliament: The Theoretical and Practical Consequences of Uncertainty' [2024] *Public Law* 674-694

<sup>6</sup> SPOR 4 Feb 2026 cols 78-87 and 117.

4. Such co-operation has plainly assisted work on the Charter Bill, although there are references in the documentation and the debate to the need for what amounts to a highly precautionary approach in the preparation of amendments in order to avoid the threat of a further Supreme Court reference. What is not referred to, however, is any sign that there might be a willingness on the part of the UK Government to provide a legislative remedy to the situation created by the Supreme Court. It has to be assumed that the Supreme Court is not soon going to change its own mind on the interpretation of s 28(7) of the Scotland Act 1998 and that, for the time being, some route to the amendment of the Act will have to be sought<sup>7</sup>.
5. It may be hoped that, at some early point, such a strategy for the future solution of the problem may be found not just for the sake of all future lawmaking in the Scottish and other devolved Parliaments but also, as Aileen McHarg (see note 7) and her co-authors have pointed out, for the sake of securing the validity of many existing Acts whose own validity may now be under question. In the meantime, however, it seems that, as with the Rights of the Child Bill<sup>8</sup>, the only permissible route to validity is by the device of, in effect, limiting the Bill's scope to functions conferred by ASPs and not Acts of the UK Parliament – followed, in due course, by imaginative follow-up amendments to the statute book, as already mentioned in the published discussion of the Bill. The absurdity of having to go down this track, measured in terms both of the constitutional design of devolution and of the achievement of sound policy implementation, has been mentioned frequently throughout this saga but there really does seem to be no other way. It has been interesting, in this context, to note in the Bill discussions the relevance of the Charter obligations under the Verity House Agreement (2023).
6. For myself, therefore, I entirely accept, within these parameters, the logic (and indeed the detail) of the amendments now proposed by the Government. I also recognise that Rule 9.9.4 of the Standing Orders denies me the opportunity to speculate at this stage about the possibility of broader amendments to the Bill.

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<sup>7</sup> See N McEwen, A McHarg, J Hunt and C McCorkindale, *Conditioning Power: Devolved Law-Making after the Supreme Court's s 28(7) Rulings*, Centre for Public Policy, University of Glasgow, February 2026.

<sup>8</sup> The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 is already being invoked in the Scottish courts.