

Alister Jack letter to Scottish Government on UNCRC Bill, 24 March 2021

John Swinney MSP
Deputy First Minister
The Scottish Government

By Email

Dear Deputy First Minister,

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION) (SCOTLAND) BILL

I am writing in response to your letter of 9 March regarding the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill (UNCRC Bill).

This is further to my letter of 4 March, which I note you referred to during the Bill's Stage 3 debate on 16 March.

Protecting vulnerable children and protecting children's rights is a priority for the UK Government, and I know that we share these common objectives. We ratified the United Nations Convention on the Rights of the Child almost 30 years ago, in 1991, and have continued to promote and uphold children's rights. We have also ratified the optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography.

We welcome the Scottish Government's support for children's rights and respect the Scottish Parliament's right to legislate in this area. Unfortunately, the legislative competence of specific provisions in the UNCRC Bill is in doubt.

The UK Government has concerns with section 6 of the Bill relating to the legal obligations it could be seen to place on UK Government Ministers in reserved areas.

This in turn means that the effect of the legislation may not be clear to citizens, stakeholders and those who may seek to use the legislation to test that relevant authorities are meeting their duties.

The UK Government also has concerns with regards to sections 19-21 of the Bill. Our concern is that these sections of the Bill would affect the UK Parliament in its power to make laws for Scotland, which would be contrary to the devolution settlement (section 28(7) of the Scotland Act 1998). As I

stated above, the UK Government respects the Scottish Government's right to legislate on this matter in line with its responsibilities under the devolution settlement. What it cannot do is seek to make provision that constrains the UK Parliament's ability to make laws for Scotland.

You asserted during the Bill's Stage 3 debate that in raising these concerns the UK Government was undertaking an "orchestrated and sustained assault" on the powers of the Scottish Parliament. This is in no way the case. Scotland has two governments and parliaments, as voted for in the 1997 devolution referendum and reaffirmed in the 2014 referendum, and it is important legislation is clear on the roles and relationships between the two.

Legislative competence concerns with the UNCRC Bill have been raised several times at official level. Ahead of Stage 3 the UK Government requested a small number of amendments which would have straightforwardly addressed these competence concerns. Unfortunately, such amendments were not tabled by the Scottish Government.

I note that at Stage 3 of the Bill, opposition amendments were tabled which would have removed Acts of Parliament from the effect of sections 19-20. These probing amendments were not voted on.

I have noted that the Scottish Government supported the European Charter of Local Self-Government (Incorporation) (Scotland) Bill which has also passed Stage 3. The UK Government also has concerns that sections 4 and 5 of this Bill as these sections would also affect the power of the UK Parliament to make laws for Scotland, which would be contrary to the devolution settlement (section 28(7) of the Scotland Act 1998).

Given the competence concerns with both of these Bills the UK Government will now use the four week period following Stage 3 consideration to make a decision on whether to use the powers under sections 33 and 35 of the Scotland Act 1998. The Law Officers have only used the section 33 power once before to make a referral to the Supreme Court on legislative competence grounds and we consider using it only as a matter of last resort. The final decisions will be communicated to the Presiding Officer in the normal way.

I am aware that stakeholders in Scotland are keen to see that the UNCRC Bill is given Royal Assent as soon as possible. While the UK Government and Scottish Government have different views on the benefits of incorporating conventions into statute, as set out above we respect Scottish Parliament's ability to legislate on this in devolved areas. However, doubt about the competence of specific provisions in the Bill serves no one.

I would have preferred not to have been in this situation. We do all we can to respect the devolution settlement and resolve disputes. During the passage of the Scottish Government's Continuity Act 2021, the UK Government also engaged with your colleagues in an effort to resolve concerns we had with a provision of that Bill. I was disappointed the Scottish Government was not able to agree a solution with the UK Government on that matter.

Therefore, I have today written to Roseanna Cunningham setting out that in

the UK Government's view, section 101 of the Scotland Act 1998 requires section 14(2) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 to be read down as only applying to Ministers of the Crown when they are making policy which does not relate to reserved matters. This is without prejudice to any other reading down of this or any other legislation. This letter also confirms final ministerial agreement to a Scotland Act Order requested by the Scottish Government to establish the Environmental Standards Scotland governance body as a part of the Scottish Administration, and to ensure its members are added to the House of Commons Disqualification Act 1975. My officials are making the necessary arrangements for the Order to begin the relevant Parliamentary procedure and will ensure that your officials are kept up to date on the process.

It is important that all legislation clearly reflects the competence and roles of Scotland's two parliaments and governments. This need for clarity, not just for us, but for the children the UNCRC Bill is intended to protect and the stakeholders who represent them, is why I think it is essential that both governments respect the devolution settlement and we work collaboratively to resolve issues.

THE RT HON. ALISTER JACK MP SECRETARY OF STATE FOR SCOTLAND