

UK Government writes to Scottish Government on UNCRC Bill

In his [letter to the Scottish Government's Deputy First Minister](#), Mr Jack restates the UK Government's legal concerns with the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill.

Concerns were also raised about the European Charter of Local Self-Government (Incorporation) (Scotland) Bill. As with every Bill passed by the Scottish Parliament, there is now a four week period where the UK Government can consider whether to use powers in the Scotland Act 1998. For the UNCRC Bill, the four week period ends on 12 April 2021.

The UK Government is deeply committed to protecting children's rights. The legal protection for vulnerable children in England is frequently recognised as being amongst the strongest in the world. And the UK Government's commitment to the UNCRC is already reflected in legislation. For example, The Children Act 1989 and Children Act 2004 set out a range of duties to safeguard and promote the welfare of children.

The UK Government's concerns with the UNCRC Bill are not about policy in areas devolved to the Scottish Parliament. They are about the fact that, as currently drafted, the Bill may be seen to place legal obligations on UK Government ministers in reserved areas, and would impact UK Parliament legislation. That would be outwith the legislative competence of the Scottish Parliament. The Charter Bill also contains provisions which could impact on UK Parliament legislation.

Scottish Secretary Alister Jack said:

Our concerns with these Bills are not based on policy. They have nothing whatsoever to do with the substance of the Bills.

It is for the Scottish Government to set policies in devolved areas, but the Scottish Parliament does not have the power to constrain the UK Parliament in the way that it legislates for Scotland. Nor can it place legal obligations on UK Government ministers acting in reserved areas.

We have concerns that certain provisions in these Bills are outwith the competence of the Scottish Parliament, and I have written to the Deputy First Minister to reiterate my concerns and set out the process going forward.

The UK Government has previously asked the Scottish Government to make the following changes to the UNCRC Bill to bring it within competence:

- Ensure that the Bill does not apply to any legislation passed by the UK Parliament.
- Amend the duties set out in the Bill so that they do not apply to UK Government ministers when exercising reserved functions in Scotland.

The Scottish Government has declined to make changes.

In accordance with the Scotland Act 1998, the UK Government is following the same approach as it would for any other Scottish Parliament legislation. UK Government Law Officers have four weeks at the end of a Bill's process (once it has completed its Parliamentary passage and before it progresses to Royal Assent) to formally consider the legislation on legislative competence grounds.

If UK Government Law Officers consider a piece of legislation to be outwith the competence of the Scottish Parliament Section 33 of the Scotland Act 1998 allows them to refer the legislation to the Supreme Court for a ruling.