

**From:** [REDACTED]  
**Sent:** 28 November 2021 10:22  
**To:** [REDACTED]  
**Cc:** John Swinney, Ash Denham, Shirley-Anne Somerville, Humza Yousaf  
**Subject:** Media digest - 28 November

## **Press Summary For Scottish Government**

28 November 2021

### **Compiled By Precise**

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11. CONSTITUTION, EXTERNAL AFFAIRS AND CULTURE

### **1. FIRST MINISTER**

The National (Scotland) 7 **Call for swift action on children's rights** THE Scottish Government has been told to "quickly" make relevant changes to the UN Convention on the Rights of the Child Bill so that it can pass through Holyrood. SNP members debated and passed a resolution on children's rights during yesterday's conference session. In October, the Supreme Court ruled that the UNCRC Bill was "outside the competence" of the Scottish Parliament. Now, SNP members have urged MSPs in Holyrood to

**From:** [REDACTED]  
**Sent:** 06 October 2021 08:59  
**To:** [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
**Subject:** Supreme Court ruling - UNCRC, European Charter Bills

Hello all

The Supreme Court judgment on UK challenges to the UNCRC and European Charter Bills will be published at 09:45 today. We will issue the pro-active statement below shortly afterwards and DFM will address Parliament later (pencilled in for 14:50). As you have Ministers out and about today, it may be useful to have as it raises constitutional issues.

[REDACTED]

**Pro-active statement – embargoed until 09:50 6 October**

Deputy First Minister John Swinney has responded to the Supreme Court judgment on the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill and the European Charter of Local Self-Government (Incorporation) (Scotland) Bill.

The Supreme Court has ruled that certain parts of both Bills are not within the legislative competence of the Scottish Parliament.

Mr Swinney said:

“While we fully respect the court’s judgment, it lays bare the weakness of, and the limits in, the devolution settlement. The ruling means it is outwith the power of the Scottish Parliament to pass legislation it considers necessary to fully ensure the rights of Scotland’s children are protected.

“The UNCRC Bill was created to deliver a revolution in children’s rights, making sure children and young people are involved in decisions that affect their lives. The Bill was backed unanimously by the Scottish Parliament and celebrated as a landmark by campaigners across the country.

“The European Charter of Local Self-Government Bill strengthens local government by incorporating the Charter into Scots law. Starting as a Member’s Bill, it, too, was passed unanimously by the Scottish Parliament and it was supported by local government and COSLA.

“Today’s judgment will require careful consideration. I will update Parliament further later today, but one thing is already crystal clear: the devolution settlement does not give Scotland the powers it needs.”

[REDACTED]

**From:** [REDACTED]

**Sent:** 05 November 2021 13:26

**To:** [REDACTED]

**Subject:** SG response: UNCRC - Labour criticism

Hi [REDACTED],

Please see our response below:

SG Spokesperson said:

“We remain committed to the incorporation into law of the United Nations Convention on the Rights of the Child to the maximum extent possible as soon as practicable.

“We are urgently and carefully considering the implications of the Supreme Court judgment and how best to take forward incorporation. We are undertaking engagement with stakeholders, and the Deputy First Minister will come back to the Parliament in due course with our proposals in light of UK Supreme Court decision.

“While the judgement means that the UNCRC (Incorporation) (Scotland) Bill cannot receive Royal Assent in its current form, the majority of work in relation to implementation of the UNCRC can and is continuing.”

Thanks

[REDACTED]

**From:** [REDACTED]  
**Sent:** 05 November 2021 10:28  
**To:** [REDACTED]  
**Subject:** UNCRC - Labour criticism

Hi [REDACTED]

As mentioned, I've had the below lines through from Labour on the lack of movement on the UNCRC bill since the Supreme Court ruling.

Will need an SG line - deadline 4pm.

Cheers,  
[REDACTED]

Scottish Labour's Constitution spokesperson Sarah Boyack MSP said:

"It's now been a month since the Supreme Court made their ruling. In that time we've heard plenty of sniping and political attacks from the SNP – but not a word on when they will bring the Bill back to Parliament.

"It is not acceptable that after so much talk, we're still waiting for action.

"The more they drag their feet the more it confirms suspicions that this was little more than an exercise in grievance stoking.

"As the SNP and the Tories focus on playing political games it is children who are losing out.

"The SNP must drop the shameful posturing and prioritise fixing and implementing this crucial legislation as a matter of urgency."

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Best wishes,  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**From:** [REDACTED]  
**Sent:** 07 October 2021 07:42  
**To:** [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED], David Rogers, Colin McAllister,  
John McFarlane, Kate Higgins, Callum McCaig, Ewan Crawford, Ross Ingebrigtsen, Stuart  
Nicolson [REDACTED]  
**Subject:** RE: Transcript request - Alan Trench on BBC Radio Scotland GMS - c06:48

Good morning,

Please find the transcript attached.

Best wishes,  
[REDACTED]

**Alan Trench**  
**Supreme Court ruling**  
**GMS**  
**Thursday 07 October 2021**  
**6m30**

*Presenter*

*Well for more on what the ruling means, let's talk to the constitutional expert Alan Trench. Morning to you, Alan.*

Alan Trench  
Good morning, Laura.

*Presenter*

*I suppose for those who haven't been following this, it's pretty complex so just take us back to what exactly the Supreme Court was being asked to rule on.*

Alan Trench

The Supreme Court's been asked to look at two bills that were passed by Holyrood but haven't yet received royal assent. One concerned the implementation of, in Scotland, of the UN Convention on the Rights of the Child. The second concerned a European... a Council of Europe document on rights of local government. Both of them have long been signed by the UK Government and are, to an extent, part of UK law though not directly. So this was an attempt to bring both directly into UK law in the way that, for example, the European Convention on Human Rights was through the Human Rights Act.

*Presenter*

*And we're trying to bring it into Scots law but what was the problem with that?*

Alan Trench

Well the problem with what happened doesn't relate, as the UK Government says, to the principle of incorporating either of those international agreements into Scots law. It's the way that it sought to do so and to assert the control of the Scottish Parliament and the Scottish ministers, the Scottish Government, over provisions passed by the UK Government that might relate to the matters that are governed by that. In other words, does the fact that there's a UK Government... that there's a treaty, an international treaty, that UK has signed up to that says you can't do something mean that the Scottish Government, in pursuit of enforcing that, can stop the UK Parliament, as the sovereign parliament, giving effect to something that's contrary to that international obligation.

*Presenter*

*And the Supreme Court's ruling was fairly clear cut.*

Alan Trench

It's fairly clear cut. I mean I think that it said in fairly forceful terms that certain, quite detailed aspects of the mechanism by which the Scottish Government and Parliament were trying to achieve this are beyond the powers of the Scottish Government because they crossed the line that divides reserved from devolved matters. So it's an attempt to expand the competence of the Scottish Parliament that the Supreme Court has said is not acceptable.

*Presenter*

*But the Deputy First Minister John Swinney said that this showed the limits of devolution.*

Alan Trench

I should think John Swinney is rather a happy man this morning. That's, I suspect, exactly the response they wanted. That proving the limits of devolution in this way, that proving that the Scottish Parliament has limits that are effective and enforced by the courts that arise from the devolution settlement is part of building a narrative that says devolution is inadequate, Scotland needs to be independent. So he's got exactly what he wanted and I suspect that the legislation was designed in the first place precisely to probe those limits in the hope of getting that response.

*Presenter*

*You say that he's got exactly what he wanted but could this not throw up issues for other legislation that the Scottish Government might want to rule upon, perhaps the second independence referendums?*

Alan Trench

Oh, yes, I mean, there were two issues that I think lurk in the background to all this. One is the questions of legal competence that are inevitably going to arise if the Scottish Parliament has to consider legislation about another independence referendum without there being a Section 30 order in place to expand its powers as happened for the 2014 referendum. The other one that's much more pressing, I suspect, following the Conservative Party conference, are the ambitions of Dominic Raab and the Ministry of Justice to reform the Human Rights Act, which is shot through the devolution settlement. And in a similar sort of way, is an international treaty to which the UK has signed up, which, unlike those two agreements that were subject to these cases, is one that's also implemented directly through Westminster legislation, and so, simply to alter the Westminster framework also involves altering the devolution settlement.

*Presenter*

*So when opposition politicians claim that the Scottish Government... that this was... they say that this was cynical political game-playing, that makes it sound less cynical then if there are issues currently going through the UK Government... plans from the UK Government which could have implications here in Scotland.*

Alan Trench

Well, it's part of an ongoing process or dialogue. I mean, I have to say, I had sort of expected a case like this to come up about five or six years ago. I suspect that it was the effect of the 2014 referendum that knocked that particular strategy back somewhat from the SNP's point of view. But probing the limits of the devolution settlement has always been one of the tactics that sub-state nationalist parties like the SNP would use to probe the limits of the settlement and to prove its inadequacies. We've seen that happen in Catalonia, we've seen that happen in Quebec, so it's not a new tactic. The SNP has learned how to apply it very well.

*Presenter*

*Why have previous UK governments never pushed back before though? Is it down to this specific government?*

Alan Trench

It's partly the overall politics, but I think it's much more that no... that Scottish legislation has very seldom challenged those limits in quite the same way, and so we've never really seen it explored. In fact, slightly oddly, it's been Welsh legislation rather than Scottish legislation from the devolved legislatures that's been more likely to challenge it up till now.

*Presenter*

*I have to ask, Alan, outside political and legal bubbles, does this make any difference to anybody on the ground, in real life?*

Alan Trench

I doubt it very much. I doubt anyone will have noticed, albeit it will have a huge amount of practical effect. The judgement points out that a couple of quite small amendments to the Holyrood legislation will bring it within compliance and will ensure that those treaties can be directly enforced by people in Scotland, certainly so far as devolved matters are concerned.

*Presenter*

*Alan, thank you very much indeed. Constitutional expert Alan Trench there.*

**[END]**

**From:** [REDACTED]

**Sent:** 07 October 2021 06:57

**To:** [REDACTED]

**Cc:** **To:** [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED], David Rogers, Colin McAllister, John McFarlane, Kate Higgins, Callum McCaig, Ewan Crawford, Ross Ingebrigtsen, Stuart Nicolson [REDACTED]

**Subject:** Transcript request - Alan Trench on BBC Radio Scotland GMS - c06:48

Good morning MMU colleagues,

Please can we get a transcript of Alan Trench, on BBC Radio Scotland *GMS*, just finished a moment ago, discussing yesterday's Supreme Court judgement.

Thx

[REDACTED]

**From:** [REDACTED]

**Sent:** 07 October 2021 10:20

**To:** [REDACTED]

**Cc:** [REDACTED] [REDACTED] [REDACTED]

**Subject:** Post FMQ note - Supreme Court/UNCRC

Hi [REDACTED]

Note attached on Supreme Court ruling. Next steps are very much to be decided.  
[REDACTED]

[REDACTED]

**Media Briefing Note – Thursday 7 October**

**ISSUE**

Supreme Court ruling on UNCRC and European Charter Bills

LINES

- The full implications of the judgment need to be considered carefully and we will update Parliament in due course.
- We remain absolutely committed to the incorporation of the UNCRC into Scots law to the maximum extent possible.
- The European Charter Bill was a non-government Bill. Mark Ruskell MPS is now in charge of this and we will work with him to discuss next steps.

#### BACKGROUND

Following a challenge by UKG law officers, the Supreme Court found parts of the UNCRC and European Charter Bills were outwith SG's legislative competence.

**Press Desk Contact:** [REDACTED]

**Contact Number:** [REDACTED]

**Date:** 20/12/2021