

Document 1: Letter from SoSfS to DFM regarding United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill (UNCRC Bill) – 04.03.21

Dover House, Whitehall, London SW1A 2AU www.gov.uk/scotland

John Swinney MSP
Deputy First Minister
The Scottish Government
By Email

4 March 2021

Dear Deputy First Minister,

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

I write regarding the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill (UNCRC Bill).

Protecting vulnerable children is an absolute priority for the UK Government. Across the UK the different legal protections in place for children are recognised as being amongst the strongest in the world and measures are integrated in our respective legislation. I know that both of our governments share the common objective of protecting children's rights. I note that the Bill has cross-party support in the Scottish Parliament; I also note that MSPs during Stage 1 of the Bill have asked questions about how the Bill will work with reserved legislation.

Our shared commitment to protecting children is not in doubt but I am sure you would agree that we also have a responsibility as lawmakers to pass legislation that is clear and unambiguous. It is from this perspective that I should be grateful if the Scottish Government could look again at specific elements of the Bill to ensure a lack of clarity does not undermine our shared objectives.

We are both anxious to ensure the respective competences of our parliaments are well understood. Co-operation between us is vital to serving all Scotland's, and indeed the UK's, children but that work is easier if we are clear about where administrative and legal boundaries lie. I am open to exploring any avenue to provide clarity and a solid basis for co-operation but, until we can resolve those issues I request that an amendment is made to the Bill at Stage 3 of its passage to make it clear that section 6 does not apply to Ministers of the Crown when exercising

reserved functions in Scotland. This would be helpful for stakeholders so they know where the Bill applies.

I would also request that the Scottish Government table an amendment that makes it clear that Westminster legislation is removed from the scope of sections 19-21.

Making these amendments will ensure that there is full legal clarity as a sound basis for joint working. I understand my officials have already highlighted these high-level concerns to your officials and I should like to see these conversations continue. I would be happy to meet you to discuss further.

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

Document 17 – Email Chain Officials to PCO – Letter from Secretary of State for Scotland - 05.03.21

From: [redacted]
Sent: 05 March 2021 09:23
To: [redacted]
Subject: RE: UNCRC bill - Letter from Secretary of State for Scotland.

[redacted]

[redacted]
Parliamentary Counsel
email: [redacted]
mobile: 0777 503 0319



From: [redacted]
Sent: 05 March 2021 09:16
To: [redacted]
Subject: RE: UNCRC bill - Letter from Secretary of State for Scotland.

[redacted].

From: [redacted]
Sent: 04 March 2021 22:56
To: [redacted]
Subject: RE: UNCRC bill - Letter from Secretary of State for Scotland.

[redacted]

[redacted]

[redacted]

[redacted]
Parliamentary Counsel
email: [redacted]



From: [redacted]
Sent: 04 March 2021 19:28
To: [redacted]

Cc: [redacted] Sheppard L (Lesley; Director for Children and Families [redacted])
Subject: FW: UNCRC bill - Letter from Secretary of State for Scotland.

[redacted]

You will have seen that the Secretary of State for Scotland has now written to the DFM querying the legislative competence of the Bill and seeking amendments.
[redacted]

If this is the case I will draft an appropriate letter tomorrow indicating that DFM is not minded to amend the Bill. I will share a draft of this for your consideration as soon as I can.

Thanks

[redacted]

From: [redacted] > **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
Sent: 04 March 2021 16:45
To: [redacted] >; Minister for Children and Young People <MinisterCYP@gov.scot>
Cc: [redacted] >; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Subject: RE: UNCRC bill - Letter from Secretary of State for Scotland.

Folks,

Please find attached a letter received from the Secretary of State for Scotland for your attention.

Thanks

[redacted]

Document 16 – Email – Officials to PCO - UNCRC bill - Letter from Secretary of State for Scotland. – 05/03/21

From: [redacted]
Sent: 05 March 2021 10:35
To: [redacted]
Cc: [redacted]; McKay D (Denise)
Subject: FW: UNCRC bill - Letter from Secretary of State for Scotland.

[redacted]

From: Director for Children and Families<DirectorforChildrenandFamilies@gov.scot>
Sent: 05 March 2021 10:30
To: [Redacted]; Rogers D (David) (Constitution and Cabinet Director)
Cc: [Redacted]
Subject: RE: UNCRC bill - Letter from Secretary of State for Scotland.

Scope of the concern seems pretty narrow - i.e. legal certainty. Yes, it would be helpful anyway if I could have our legal position on that in advance of any discussion (for s6, is it any more nuanced than the provisions apply to the extent of SP's competence and we don't need to draft that in? for ss 19-21, isn't it already explicit that "Westminster legislation" is within scope? [Redacted])

I'll let you know once they're in touch.

Michael

Michael Chalmers
Director for Children and Families
Scottish Government

Document 9: Email Chain – advice on Letter from SoSfS – 05/03/21

From: [Redacted]

Sent: 05 March 2021 12:39

To: Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; [Redacted] >; Rogers D (David) (Constitution and Cabinet Director)

Cc: [Redacted]; McKay D (Denise) <Denise.McKay@gov.scot>; [Redacted]

Subject: UNCRC bill - Letter from Secretary of State for Scotland - [Redacted] advice

[Redacted]

From: Director for Children and Families<DirectorforChildrenandFamilies@gov.scot>

Sent: 05 March 2021 10:30

To: [Redacted]; Rogers D (David) (Constitution and Cabinet Director)

Cc: [Redacted]

Subject: RE: UNCRC bill - Letter from Secretary of State for Scotland.

Scope of the concern seems pretty narrow - i.e. legal certainty. Yes, it would be helpful anyway if I could have our legal position on that in advance of any discussion (for s6, is it any more nuanced than the provisions apply to the extent of SP's competence and we don't need to draft that in? for ss 19-21, isn't it already explicit that "Westminster legislation" is within scope? [Redacted])

I'll let you know once they're in touch.

Michael

Michael Chalmers

Director for Children and Families

Scottish Government

From: [Exempt 38(1)(b)] Sent: 05 March 2021 09:48

To: Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>

Cc: [redacted]

Subject: RE: UNCRC bill - Letter from Secretary of State for Scotland.

Copying to [redacted]

Michael can you let us know when you have a meeting set up. I have asked [redacted] for advice to enable us to draft a response today but imagine you'll need this for this discussion.

Thanks

[redacted]

From: Director for Children and Families
<DirectorforChildrenandFamilies@gov.scot>
Sent: 05 March 2021 09:23
To: Rogers D (David) (Constitution and Cabinet Director) [redacted]
Cc: [redacted]
Subject: RE: UNCRC bill - Letter from Secretary of State for Scotland.

That's fine David thanks.

M

Director for Children and Families
Scottish Government

From: Rogers D (David) (Constitution and Cabinet Director)
Sent: 05 March 2021 08:04
To: Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>
Cc: [redacted]
Subject: RE: UNCRC bill - Letter from Secretary of State for Scotland.

[redacted], Michael – the director of the Scotland Office has been touch wanting to speak to someone about this and to set up an officials discussion. I will refer him to you.

David

From: [redacted]
Sent: 04 March 2021 21:25
To: Rogers D (David) (Constitution and Cabinet Director)
Cc: [redacted]
Subject: FW: UNCRC bill - Letter from Secretary of State for Scotland.

David

For awareness.

[redacted]

From: [redacted]

Sent: 04 March 2021 19:28

To: [redacted]; Sheppard L (Lesley); Director for Children and Families
<DirectorforChildrenandFamilies@gov.scot>; [redacted]

Subject: FW: UNCRC bill - Letter from Secretary of State for Scotland.

[redacted]

You will have seen that the Secretary of State for Scotland has now written to the DFM querying the legislative competence of the Bill and seeking amendments.

[redacted]

If this is the case I will draft an appropriate letter tomorrow indicating that DFM is not minded to amend the Bill. I will share a draft of this for your consideration as soon as I can.

Thanks

[redacted]

From: [redacted] On Behalf Of Deputy First Minister and Cabinet Secretary for Education and Skills

Sent: 04 March 2021 16:45

To: [Exempt 38(1)(b)]; Minister for Children and Young People
<MinisterCYP@gov.scot>

Cc: [redacted]; Deputy First Minister and Cabinet Secretary for Education and Skills
<DFMCSE@gov.scot>

Subject: RE: UNCRC bill - Letter from Secretary of State for Scotland.

Folks,

Please find attached a letter received from the Secretary of State for Scotland for your attention.

Thanks

[redacted]

Document 15: Email to UNCRC Policy colleague re SoSfS Letter – 05/03/21

From: Rogers D (David) (Constitution and Cabinet Director)
Sent: 05 March 2021 13:23
To: Laurence Rockey
Cc: Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; [redacted]
Subject: RE: UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION) (SCOTLAND) BILL

Laurence – you got in touch suggesting a discussion. My colleague Michael Chalmers (contact details below), director for children and families and erstwhile head of OAG is the best contact point and would be happy to speak.

Michael Chalmers
Director for Children and Families
Scottish Government

[redacted]

David

From: [redacted] **On Behalf Of** SO Min Corr Mailbox
Sent: 04 March 2021 16:05
To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: SO Min Corr Mailbox <somincorr@ukgovscotland.gov.uk>
Subject: UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION) (SCOTLAND) BILL

Please see attached letter from The Rt Hon Alister Jack MP, Secretary of State for Scotland.

Document 3C – Draft response from Scottish Government to SOSfS

Deputy First Minister and Cabinet Secretary for Education and Skills

John Swinney BPA/MSP



Cabinet Secretary for Communities and Local Government

Aileen Campbell MSP

F/T: 0300 244 4000

E: scottish.ministers@gov.scot

The Rt Hon. Alister Jack MP
Secretary of State for Scotland
UK Government

By email

DD Month 2021

Thank you for your letter of 24 March.

On 1 September 2020, as is the position for all Scottish Government Bills, the Deputy First Minister gave a statement, cleared with the Lord Advocate, (as is acknowledged in the Scottish Ministerial Code) that the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill was, on introduction, within the legislative competence of the Scottish Parliament. The Presiding Officer of the Scottish Parliament also gave such a statement. On 5 May 2020, Andy Wightman MSP (the Member in charge) and the Presiding Officer gave similar statements in relation to the European Charter of Local Self-Government (Incorporation) (Scotland) Bill.

As we previously indicated, the Scottish Government remains of the view that the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill and the European Charter of Local Self-Government (Incorporation) (Scotland) Bill are within legislative competence. Both Bills were passed unanimously by the Scottish Parliament.

We do not see a case for delaying these important pieces of legislation proceeding to Royal Assent.

The Scottish Government continues to work with partners to progress planning for implementation of both Bills.

The Cabinet Secretary for Environment, Climate Change and Land Reform will provide a separate response in relation to your comments on the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

JOHN SWINNEY

AILEEN CAMPBELL

Document 4a: Response from DFM to the Secretary of State for Scotland, 7th April 2021

Leas Phrìomh Mhinistear agus Rùnaire a' Chaibineit airson
Foghlam agus Sgilean
Deputy First Minister and Cabinet Secretary for Education
and Skills



John Swinney BPA/MSP
F/T: 0300 244 4000
E: dfmcse@gov.scot

The Rt Hon. Alister Jack MP
Secretary of State for Scotland
UK Government

By email

7 April 2021

Dear Alister

Thank you for your letter of 24 March.

On 1 September 2020, as is the position for all Scottish Government Bills, the Deputy First Minister gave a statement, cleared with the Lord Advocate, (as is acknowledged in the Scottish Ministerial Code), that the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill was, on introduction, within the legislative competence of the Scottish Parliament.

The Presiding Officer of the Scottish Parliament also gave such a statement. On 5 May 2020, Andy Wightman MSP (the Member in charge) and the Presiding Officer gave similar statements in relation to the European Charter of Local Self-Government (Incorporation) (Scotland) Bill.

As we previously indicated, the Scottish Government remains of the view that the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill and the European Charter of Local Self-Government (Incorporation) (Scotland) Bill are within legislative competence.

Both Bills were passed unanimously by the Scottish Parliament. We do not see a case for delaying these important pieces of legislation proceeding to Royal Assent.

The Scottish Government continues to work with partners to progress planning for implementation of both Bills.

The Cabinet Secretary for Environment, Climate Change and Land Reform will provide a separate response in relation to your comments on the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

JOHN SWINNEY

AILEEN CAMPBELL

Document 4: Email chain - Response in re to the Letter from Secretary of State for Scotland – 07/04/21

From:[redacted]> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills

Sent: 07 April 2021 10:55

To: [redacted]> Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>; Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>; Cabinet Secretary for Communities and Local Government <CabSecCLG@gov.scot>; Cabinet Secretary for the Environment, Climate Change and Land Reform <CabSecECCLR@gov.scot>; Solicitor General <SolicitorGeneral@gov.scot>; Minister for Children and Young People <MinisterCYP@gov.scot>; Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>

Cc: Permanent Secretary <PermanentSecretary@gov.scot>; [redacted]>; DG Communities <DGCommunities@gov.scot>; [redacted]>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; McKay D (Denise) <Denise.McKay@gov.scot>; Swanson DA (Denise) <Denise.Swanson@gov.scot>; Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; Cameron DA (Donald) (Constitution and UKR) <Donald.Cameron@gov.scot>; [redacted]> >; Head SFIO <HeadSFIO@gov.scot>; [redacted]> Director of Environment & Forestry <director.enfor@gov.scot[redacted]>

Subject: RE: FOR CONSIDERATION: Advice and Draft Response in re to the Letter from Secretary of State for Scotland - UNCRC Bill and European Charter of Local Self-Government Bill

Hi [redacted]

I have issued the response and attach here for your records.

Many thanks

[redacted]

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

From: [redacted]

Sent: 06 April 2021 14:03

To: [Exempt 36(1)] Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>; Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>; Cabinet Secretary for Communities and Local Government <CabSecCLG@gov.scot>; Cabinet Secretary for the Environment, Climate Change and Land Reform <CabSecECCLR@gov.scot>; [Exempt 36(1)], Minister for Children and Young People <MinisterCYP@gov.scot>; Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>

Cc: Permanent Secretary <PermanentSecretary@gov.scot>; [redacted]DG Communities <DGCommunities@gov.scot>; [redacted]; Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; Cameron, [redacted];
; Director of Environment & Forestry <director.enfor@gov.scot>; [redacted];
Subject: RE: FOR CONSIDERATION: Advice and Draft Response in re to the Letter from Secretary of State for Scotland - UNCRC Bill and European Charter of Local Self-Government Bill
Importance: High

DFM and Cabinet Secretary for Communities and Local Government PO,

Please see the revised letter as per the comments below. Also attached is the advice.

Grateful for your consideration and a steer on next steps.

Officials to note this email for information.

Thank you.

[redacted];

From: [redacted];

Sent: 06 April 2021 13:50

To: [Exempt 38(1)(b)]; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>; Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>; Cabinet Secretary for Communities and Local Government <CabSecCLG@gov.scot>; Cabinet Secretary for the Environment, Climate Change and Land Reform <CabSecECCLR@gov.scot>; [redacted]; Minister for Children and Young People <MinisterCYP@gov.scot>; Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>

Cc: Permanent Secretary <PermanentSecretary@gov.scot>; [redacted]; DG Communities <DGCommunities@gov.scot>; [redacted]; Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; [[redacted]
; Spads Admin <Spads_Admin@gov.scot>; [redacted];

Subject: RE: FOR CONSIDERATION: Advice and Draft Response in re to the Letter from Secretary of State for Scotland - UNCRC Bill and European Charter of Local Self-Government Bill

Good Afternoon [redacted];

[redacted] is content with the draft response subject to the opening paragraph being adjusted to read:

“On 1 September 2020, as is the position for all Scottish Government Bills, the Deputy First Minister gave a statement, [redacted], (as is acknowledged in the Scottish Ministerial Code) that the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill was, on introduction, within the legislative competence of the Scottish Parliament. The Presiding Officer of the Scottish Parliament also gave such a statement. On 5 May 2020, Andy Wightman MSP (the Member in charge) and the Presiding Officer gave similar statements in relation to the European Charter of Local Self-Government (Incorporation) (Scotland) Bill.”

Kind Regards

[redacted];

From:

[Exempt 38(1)(b)]

Sent: 30 March 2021 16:59

To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>; Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>; Cabinet Secretary for Communities and Local Government <CabSecCLG@gov.scot>; Cabinet Secretary for the Environment, Climate Change and Land Reform <CabSecECCLR@gov.scot>; [redacted]; Minister for Children and Young People <MinisterCYP@gov.scot>; Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>

Cc: Permanent Secretary <PermanentSecretary@gov.scot>;

[redacted]; Director for Children and Families

<DirectorforChildrenandFamilies@gov.scot>; Head SFIO <HeadSFIO@gov.scot>;

[[redacted]; Director of Environment & Forestry <director.enfor@gov.scot>;

Subject: FOR CONSIDERATION: Advice and Draft Response in re to the Letter from Secretary of State for Scotland - UNCRC Bill and European Charter of Local Self-Government Bill

Importance: High

DFM and Cabinet Secretary for Communities and Local Government PO,

With thanks to those in the copy, please find attached advice and draft response for your consideration to the letter from the Secretary of State for Scotland in relation to the UNCRC Bill.

The advice sets out [redacted]. Other MPOs are copied in for their portfolio interests.
Grateful for your steer on next steps.

Advice: <https://erdm.scotland.gov.uk:8443/documents/A32648395/details>

Letter: <https://erdm.scotland.gov.uk:8443/documents/A32645219/details>

Officials, please copy to colleagues I may have missed.

Thank you.

[redacted];

5: Response from DFM to the Secretary of State for Scotland, 8th March 2021

Leas Phrìomh Mhinistear agus Rùnaire a' Chaibineit airson
Foghlam agus Sgilean
Deputy First Minister and Cabinet Secretary for Education
and Skills



John Swinney BPA/MSP
F/T: 0300 244 4000
E: dfmcse@gov.scot

The Rt Hon. Alister Jack MP
Secretary of State for Scotland
UK Government

By email

March 2021

Thank you for your letter of 4 March.

The Scottish Government is committed to fully realising the human rights of all people in Scotland. It is committed to building a Scotland where respect for human rights forms the bedrock of society and the institutions which govern and deliver public services for the people of Scotland. The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill represents a significant step on the road to fully realising that future for Scotland: a future based on tolerance, equality, shared values and respect for the worth and human dignity of all people.

The Scottish Government is committed to the full and direct incorporation of the United Nations Convention on the Rights of the Child (UNCRC), the first optional protocol on the involvement of children in armed conflict and the second optional protocol on the sale of children, child prostitution and child pornography, to the maximum extent possible within the powers of the Scottish Parliament.

The Bill delivers on this ambition. It will ensure that there is a proactive culture of everyday accountability for children's rights across public services in Scotland. It will require public authorities to take proactive steps to ensure compliance with children's rights in their decision-making and service delivery. This will mean that the structures within which decisions are made in Scotland will enable children and young people to be heard and take an active role in their own lives and communities.

The Bill will mean that children, young people and their families will experience public authorities consistently acting to uphold the rights of all children in Scotland. Public authorities, including the Scottish Ministers, will be legally obliged to respect

children's rights and rights-holders will be able to challenge public authorities in the courts for breaches of their rights.

The Scottish Government wants a Scotland where policy, law and decision-making take account of children's rights and where all children have a voice and are empowered not just to know and understand their rights, but also to assert and defend those rights and the rights of others. Fully realising the fundamental human rights of children and young people is essential to building the more prosperous, equal future which the Scottish Government wants for Scotland. Only by respecting and fully realising the rights of all children and young people can all of Scotland flourish.

The approach which the Bill takes is 'maximalist'. It will ensure that children's rights are protected, respected and fulfilled in Scotland to the maximum extent of the Scottish Parliament's powers. Scotland's children deserve no less.

It is a matter of public record that, at introduction, the Scottish Government and the Presiding Officer were of the view that the Bill would be within the legislative competence of the Scottish Parliament. I consider that the Bill takes full and proper account of the respective competencies of the Scottish and UK Parliaments. I believe that the Bill's provisions are clear and will ensure that children's rights in Scotland are protected, respected and fulfilled to the maximum extent permitted by the Scotland Act 1998.

I regret that the powers of the Scottish Parliament, at this time, mean that the Bill cannot require compliance with all of the rights and obligations under the UNCRC and optional protocols. The Bill cannot, and does not seek to, incorporate those provisions which relate to reserved matters. The Bill addresses this by excluding relevant articles, or parts of articles, from the schedule.

You refer specifically to section 6 and sections 19 to 21 of the Bill and request amendments to those provisions. I am surprised that this request is being made at such a late stage when my officials have responded, in the usual way, to questions from your officials about the effect of the Bill, all of which were asked around the time of introduction in September 2020. At no time during this official correspondence has a request to amend the Bill been made. My officials have today spoken with your officials to explore the questions raised in your letter.

As the responses to questions from your officials outlined, and as was explained again today, it is not the Scottish Government's view that it is necessary for the Bill to exclude Ministers of the Crown or Westminster legislation from the scope of these provisions. That would not deliver the policy intention described above.

The powers of the Scottish Parliament are set out in the Scotland Act 1998. It is not necessary for any limits on those powers to be repeated.

In relation to section 6, any limit on the face of the Bill which precluded the compatibility duty from applying to the exercise of reserved functions would not deliver the policy intention. My officials have acknowledged in the correspondence with your officials that the duty could not apply to reserved functions to the extent

that it would modify the law on reserved matters. However, the Scottish Government does not consider that it can be stated in the abstract that this will necessarily be the case in relation to the application of each of the UNCRC requirements in respect of all exercises of reserved functions. The question would require to be specifically analysed in the particular context in which the relevant reserved function falls to be exercised. It follows that it would not be appropriate to 'carve out' UK Ministers' (or any) reserved functions from the scope of section 6. In the Scottish Government's view, such an approach would be inappropriate even if the duty could never apply to the exercise of any reserved function. Even if that were the position, section 6 would still fall to be read in line with the legislative competence constraints set out in the Scotland Act 1998.

This is, in my view, the approach which will ensure that children's rights are respected, protected and fulfilled to the maximum extent permitted by the Scottish Parliament's powers and is the approach which best and fully recognises the competencies of our respective Parliaments.

Similarly, I do not consider that it is necessary – or indeed appropriate – to exclude Westminster legislation from the scope of sections 19 to 21 of the Bill. This would mean that Westminster legislation which falls within the competence of the Scottish Parliament would be excluded from the protections afforded by the Bill. That would also be contrary to the policy intention outlined above and entirely at odds with the devolution settlement.

I trust that the explanation provided above responds to your questions.

I welcome the commitment expressed in your letter to the common objective of protecting children's rights and hope that the steps being taken by the Scottish Government to incorporate the UNCRC will inspire the UK Government to follow suit.

JOHN SWINNEY

Document 13: Email Chain: Policy to DFM - UNCRC Bill, draft response from, DFM to SoSfS – 08/03/21

From: [redacted] **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills

Sent: 09 March 2021 08:43

To: Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; [redacted]; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>

Cc: [redacted] >; Minister for Children and Young People <MinisterCYP@gov.scot>; Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) [redacted]; Sheppard L (Lesley); [redacted] McKay D (Denise) [redacted]; DG Education & Justice <dgej@gov.scot>

Subject: RE: UNCRC Bill - letter from the Secretary of State for Scotland -UNCRC Bill - 08.08.21

PS/[redacted]
Michael,

Thank you for your emails the DFM has read all of the traffic on this issue along with the draft reply to the Secretary of State.

He is entirely content with the draft reply and will not make any changes to the Bill to address the issues put forward by the SoS.

On the advice available. The DFM is satisfied the Bill is within legislative competence.

I have issued the letter and attached for your records.

Thanks

[redacted]

From: Director for Children and Families

Sent: 08 March 2021 22:20

To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>

Subject: FW: UNCRC Bill - letter from the Secretary of State for Scotland -UNCRC Bill - 08.08.21

Grateful if this could be brought to DFM's attention early on Tuesday. Apologies it has come up at the 11th (or perhaps 12th) hour - he may want to seek a word with the [redacted] in the margins of Cabinet? I'm happy to discuss - as ever you can get me on the mobile number below.

(I've also spoken to the [redacted] in the course of the day on the back of [redacted] call to me last evening on all this).

Michael

Michael Chalmers

Director for Children and Families
Scottish Government

From: Director for Children and Families

<DirectorforChildrenandFamilies@gov.scot>

Sent: 08 March 2021 22:17

To: [redacted]>; Deputy First Minister and Cabinet Secretary for Education and Skills
<DFMCSE@gov.scot>

Cc: [redacted] >; Minister for Children and Young People <MinisterCYP@gov.scot>;
Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; Rogers
D (David) (Constitution and Cabinet Director); [redacted] [redacted]; DG Education &
Justice <dgej@gov.scot>

Subject: RE: UNCRC Bill - letter from the Secretary of State for Scotland -UNCRC
Bill - 08.08.21

PS/DFM,

[redacted]

Michael

Michael Chalmers

Director for Children and Families
Scottish Government

From: [Redacted];

Sent: 08 March 2021 16:28

To: Deputy First Minister and Cabinet Secretary for Education and Skills
<DFMCSE@gov.scot>

Cc: [Redacted]; Minister for Children and Young People <MinisterCYP@gov.scot>;
Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>;
Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>;
Rogers D (David) (Constitution and Cabinet Director) [Redacted]; ; Sheppard L
(Lesley [Redacted]; >; McKay D (Denise); [Redacted];

Subject: RE: UNCRC Bill - letter from the Secretary of State for Scotland -UNCRC
Bill - 08.08.21

PO DFM,

Please find attached a draft response for DFM's consideration to the letter from the
Secretary of State for Scotland in relation to the UNCRC Bill.

<https://erdm.scotland.gov.uk:8443/documents/A32364677/details>

The letter refers to engagement between officials around the time of introduction [Redacted]. These questions were answered in the normal way and not further correspondence was received.

It would be helpful if this letter could issue today.

Thanks
[Redacted];

From: [redacted] **On Behalf Of** Minister for Children and Young People
Sent: 05 March 2021 19:10
To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>; [Exempt 38(1)(b)]; Minister for Children and Young People <MinisterCYP@gov.scot>
Cc: Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>;
Subject: RE: UNCRC Bill - letter from the Secretary of State

Ms Todd is fine with this too.

[Redacted];

From: [Exempt 38(1)(b)] **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
Sent: 05 March 2021 18:51
To: [Redacted]; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>; Minister for Children and Young People <MinisterCYP@gov.scot>
Cc: Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; [Redacted];
Subject: RE: UNCRC Bill - letter from the Secretary of State

[Redacted];

DFM is okay with this.

Many thanks

[Redacted];
[Deputy Private Secretary to John Swinney MSP | Deputy First Minister of Scotland and Cabinet Secretary for Education & Skills | Scottish Government | St Andrew's House | Edinburgh | EH1 3DG | E: DFMCSE@gov.scot

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From: [Redacted];

Sent: 05 March 2021 17:07

To: Deputy First Minister and Cabinet Secretary for Education and Skills
<DFMCSE@gov.scot>; Minister for Children and Young People
<MinisterCYP@gov.scot>

Cc: Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>;
Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>;
[Redacted];

Subject: UNCRC Bill - letter from the Secretary of State

PO DFM/ Ms Todd

Due to other pressures on the stage 3 amendments today I have not been able to bring together advice and a draft letter for Ministers yet. I have spoken to [Redacted] who has said that he understands Ministers would be comfortable receiving advice and a draft response early on Monday morning.

Grateful if you can confirm that that is ok?

Thanks

[Redacted];

UNCRC Incorporation Bill Team Leader

Creating Positive Futures Division: Directorate for Children and Families

My working pattern is Monday to Thursday. I do not work on a Friday.

Document 10/11 Chain discussing draft letter from DFM to SoSfS – 08/03/21

From: [redacted]

Sent: 08 March 2021 10:10

To: [redacted]

Cc: [redacted] Director for Children and Families

<DirectorforChildrenandFamilies@gov.scot>; Sheppard L (Lesley)

Subject: RE: UNCRC Bill - draft response to the letter from the Secretary of State for Scotland

[redacted]

[redacted] – think we just need to get down to business here so suggested tightening throughout, for a host of reasons. But fine if others disagree

[redacted]

[redacted]

From: [redacted]

Sent: 08 March 2021 08:48

To: [redacted];

Cc: [redacted]; Director for Children and Families

<DirectorforChildrenandFamilies@gov.scot>; Sheppard L (Lesley)

<Lesley.Sheppard@gov.scot>

Subject: UNCRC Bill - draft response to the letter from the Secretary of State for Scotland

Colleagues,

I would welcome your urgent consideration of the draft letter attached which is a draft response to the letter from the Secretary of State received last week
<https://erdm.scotland.gov.uk:8443/documents/A32364677/details>

In terms of sending this to the DFM, I thought a short covering email along the lines of the following would suffice. Grateful for views on this also.

The DFM has requested that we send this up this morning so I would be grateful for responses by 10am. [redacted]

L

Thank you

[redacted]

"PO DFM,

Please find attached a draft response for DFM's consideration to the letter from the Secretary of State for Scotland in relation to the UNCRC Bill. [redacted].

The letter refers to engagement between officials around the time of introduction. [redacted] These questions were answered in the normal way and not further correspondence was received.

It would be helpful if this letter could issue today.

Thanks

[redacted]

Document 2: Email from Interim Private Sec to [Exempt 38(1)(b)], regarding SofSS to DFM Letter, 24th March 2021

From: [redacted] **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
Sent: 24 March 2021 18:16

To: [redacted]

Cc: Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; [redacted]; DG Communities <DGCommunities@gov.scot>; Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; Sheppard L (Lesley) <Lesley.Sheppard@gov.scot>; [redacted]; Head SFIO <HeadSFIO@gov.scot>; [redacted] **Subject:** FW: UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION) (SCOTLAND) BILL

Hi [redacted]

Please find attached a letter from the Secretary of State for Scotland. Can you please provide advice on this.

Many thanks

[redacted]

From: [Exempt 38(1)(b)] > **On Behalf Of** SO Min Corr Mailbox

Sent: 24 March 2021 17:43

To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>

Cc: SO Min Corr Mailbox <somincorr@ukgovscotland.gov.uk>

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

Please see attached response from The Rt Hon Alister Jack MP, Secretary of State for Scotland.



[Exempt 38(1)(b)]

Correspondence Manager

Office of the Secretary of State for Scotland

[Exempt 38(1)(b)] | [@UKGovScotland](#)

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Document 14: Email chain regarding SoSfS Letter response – 26/03/21

From: [redacted]
Sent: 26 March 2021 09:57
To: [redacted]
Cc: [redacted] McKay D (Denise); Sheppard L (Lesley)[redacted]
Subject: RE: STEER: Letter to Secretary of State for Scotland

Hi [redacted], Lesley

Yes, that's right. [redacted]

[redacted]

From: [redacted]
Sent: 26 March 2021 09:49
To: [Redacted]
Cc: [redacted]
Subject: FW: STEER: Letter to Secretary of State for Scotland

Hi [redacted]

Please see the query from [redacted]

Grateful for some advice.

Thank you.

[redacted]

From: [Exempt 38(1)(b)]
Sent: 26 March 2021 09:44
To: [Exempt 38(1)(b)]
Subject: RE: STEER: Letter to Secretary of State for Scotland

Thanks both, I'll look at this after 2pm when everyone else should have made their contributions.

I just wondered though, and this shows my lack of Bill knowledge, my assumption is that SG couldn't do anything to change the bill now even if we wanted to (which we don't) given it has completed its passage through Parliament. The only way changes could be made is through failing to get Royal Assent (not precedent for that I don't think) or by being referred to the Supreme Court.

Could you confirm with [redacted] that is correct?

L

Deputy Director: Care, Protection and Justice
Scottish Government, Children and Families Directorate

From: [redacted]
Sent: 26 March 2021 09:37
To: [redacted]
Cc: [redacted]
Subject: RE: STEER: Letter to Secretary of State for Scotland

Great job [redacted] to get this lot going – I've made a couple of suggestions in relation to the holding lines – just a reassurance to stakeholders that work is continuing. [redacted] gave that assurance to [redacted] yesterday

[redacted]

From: [redacted]
Sent: 25 March 2021 18:49
To: [redacted] DG Communities <DGCommunities@gov.scot>; Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; [redacted]
Subject: RE: STEER: Letter to Secretary of State for Scotland
Importance: High

Thanks [redacted]

Removed Human Rights and Justice colleagues from the list. Copying in Local Govt colleagues into the chain.

For awareness, [redacted] and I met with colleagues from Local Govt. I agreed to circulate drafts for comment.

Please see the following attachments:

1. Holding Narrative – FMQ Style briefing. **(Document 3a)**
<https://erdm.scotland.gov.uk:8443/documents/A32645218/details>.
Grateful for your comments by 2 PM tomorrow, with a view to agree holding lines with SPADs by close tomorrow.
2. Draft Advice to DFM **(Document 3b)**– It provides an outline, includes lines from P&E notes used for Stage 3, and summarises previous communications with the Secretary of State for Scotland.
<https://erdm.scotland.gov.uk:8443/documents/A32648395/details>
Grateful for your comments by 2 PM tomorrow, this can be sent along with the draft response.
3. Draft Response **(Document 3c)**– – *for now it is just a very basic outline.* I will work on it tomorrow.
<https://erdm.scotland.gov.uk:8443/documents/A32645219/details>
Grateful for any initial comments by close on Monday 29 March.

[redacted] grateful if you can add your lines across three documents.

Please note the deadline to get the response to DFM's office is 5 PM, 30 March.

Thank you.

[redacted]

**Document 3: Email chain from Interim Private Sec to [Exempt 38(1)(b)],
regarding SofSS to DFM Letter, 26th March 2021**

From: [redacted]

Sent: 26 March 2021 13:53

To: McKay D (Denise) <Denise.McKay@gov.scot>; [redacted]; Sheppard L (Lesley) <Lesley.Sheppard@gov.scot>; [redacted]; DG Communities <DGCommunities@gov.scot>; Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; [redacted]

Cc: [redacted] >; [redacted]

Subject: RE: STEER: Letter to Secretary of State for Scotland

Adding [redacted]

[redacted]

From: McKay D (Denise) <Denise.McKay@gov.scot>

Sent: 26 March 2021 13:33

To: [redacted]; DG Communities <DGCommunities@gov.scot>; Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; [redacted] >

Cc: [redacted]; [redacted]

Subject: RE: STEER: Letter to Secretary of State for Scotland

[redacted]

Many thanks indeed for your email – it makes perfect sense to me. I wanted to let you and others know that [redacted] with an interest have discussed the general [redacted] handling of these potential challenges and correspondence. [redacted]. On that basis I strongly agree with your highlighted point below that “*there is a need to coordinate with the Continuity bill aspects, and I think that [redacted] are making those connections as CUKR and PLU are*”.

[redacted]

Thanks

[redacted]

From: [redacted]

Sent: 26 March 2021 13:09

To: [redacted] DG Communities <DGCommunities@gov.scot>; Director for Children and Families <DirectorforChildrenandFamilies@gov.scot> [redacted]

Cc: [redacted]; McKay D (Denise) [redacted] >

Subject: RE: STEER: Letter to Secretary of State for Scotland

Colleagues

I have had some involvement with the UNCRC Bill, but none with the Charter of Local Self Government Bill, so forgive me if I get anything about that wrong.

I think that the main point of this letter is that UKG is giving consideration to a UKSC reference on legislate competence on the 28(7) argument, and that this applies

equally to both bills. If there is a reference we would want to coordinate internally on the conduct of that litigation, which would also raise underlying constitutional issues in which CUKR and PLU have an interest

On the advice, I think it will be very helpful to bring together in one place some detailed background on both Bills. It might be easier for the structure if that detail were in annexes so the body of the submission can be focused on the main points of advice. On one point of detail, it strikes me as important that the bills not only do not, and do not purport to, constrain Westminster's competence to legislate for Scotland, but also do not, and do not purport to, curtail the Scottish parliament's competence. Indeed we spend a faint amount of space in the supporting documents lamenting that we cannot do that within our legislative competence.

On a reply, I can see the argument for no reply. [redacted]. As the threat is to both bills, I think it would look odd to have a reply that rehearses at length our position on the UNCRC Bill, including our policy objectives, but says little on the other bill. Perhaps something that says "Thanks for your letter. The PO, SG and member in charge have given statements on legislative competence as required under the Scotland Act. The Bills were passed unanimously by the SP. SG remains firmly of the view the Bills are within leg comp and can see no case for delay in proceeding to RA for this important legislation, to allow implementation to commence". IF there are other points to make in response to the S of S on children's rights they could perhaps be made elsewhere.

Also this does feel like a sort of "letter before action" [redacted]

Finally, as [redacted] says, there is a need to coordinate with the Continuity bill aspects, and I think that [redacted] are making those connections as CUKR and PLU are.

[redacted]

From: [redacted]

Sent: 26 March 2021 12:58

To: [redacted]; DG Communities <DGCommunities@gov.scot>; Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; [redacted]

Cc: [redacted]

Subject: RE: STEER: Letter to Secretary of State for Scotland

[redacted]

No comments from PLU on the material as currently drafted. We would be inclined to agree with [redacted] suggestion that the less said the better given no new questions are being asked here and the position of the SG on the provisions in both Bills hasn't changed.

I have separately contacted Environment colleagues regarding reference to the Continuity Act and correspondence with Ms Cunningham. They have confirmed that they are preparing separate advice for the Cabinet Secretary for Environment alongside a draft response to that letter with input from [redacted]

[redacted]

From: [redacted]
Sent: 26 March 2021 12:32
To: [redacted] >; DG Communities <DGCommunities@gov.scot>; Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; [redacted] >
Cc: [redacted]; McKay D (Denise) [redacted]
Subject: RE: STEER: Letter to Secretary of State for Scotland
Importance: High

Thanks [redacted] comments.

I am content with changes made to the Holding Narrative. I agree it would be good to include an option to not respond at all, I amended the brief accordingly.

Local Gov colleagues, grateful for your comments on the narrative and the brief by 2 PM.

Thank you.

[redacted]

From: [redacted]
Sent: 26 March 2021 11:28
To: [redacted] Sheppard L (Lesley) <Lesley.Sheppard@gov.scot>; [redacted] >; DG Communities <DGCommunities@gov.scot>; Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; [redacted]
Cc: [redacted]; McKay D (Denise) <Denise.McKay@gov.scot>; [redacted]
Subject: RE: STEER: Letter to Secretary of State for Scotland

[redacted]

We've added some comments on the holding narrative and briefing, for [redacted] UNCRC interests. We'd be happy to look again once you've considered these and any other changes.

You'll see that one question we've raised is whether it is necessary to respond at all. I appreciate that there will be various factors in play in reaching that decision.
[redacted]

[redacted]

From: [redacted]
Sent: 25 March 2021 18:55
To: [redacted]
DG Communities <DGCommunities@gov.scot>; Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; [redacted]
Subject: RE: STEER: Letter to Secretary of State for Scotland

Thanks [redacted]

Also adding the [redacted]
inbox for our DDs [redacted]who share a inbox.

Best wishes

[redacted]

From: [Exempt 38(1)(b)]

Sent: 25 March 2021 18:54

To: [Exempt 38(1)(b)]

DG Communities <DGCommunities@gov.scot>; Director for Children and Families
<DirectorforChildrenandFamilies@gov.scot>; [redacted]

Subject: RE: STEER: Letter to Secretary of State for Scotland

Thanks [redacted]removed duplicates and added in comms.

Thank you.

[redacted]

From: [Exempt 38(1)(b)]

Sent: 25 March 2021 18:51

To: [Exempt 38(1)(b)]; DG Communities <DGCommunities@gov.scot>; Director for
Children and Families <DirectorforChildrenandFamilies@gov.scot>; [Exempt 38(1)(b)]

Subject: RE: STEER: Letter to Secretary of State for Scotland

Adding Denise Mckay to the copy list. Please ensure that Denise
is copied to all future correspondence on this.

Thanks.

[redacted]

From: [redacted]

Sent: 25 March 2021 18:49

To: [redacted]; DG Communities <DGCommunities@gov.scot>; Director for Children
and Families <DirectorforChildrenandFamilies@gov.scot>; [redacted]

Subject: RE: STEER: Letter to Secretary of State for Scotland

Importance: High

Thanks [redacted]

Removed Human Rights and Justice colleagues from the list. Copying in Local Govt colleagues into the chain.

For awareness, Lesley, [redacted] and I met with colleagues from Local Govt. I agreed to circulate drafts for comment.

Please see the following attachments:

1. Holding Narrative – FMQ Style briefing.

<https://erdm.scotland.gov.uk:8443/documents/A32645218/details>.

Grateful for your comments by 2 PM tomorrow, with a view to agree holding lines with SPADs by close tomorrow.

2. Draft Advice to DFM (**Document 3b**) – It provides an outline, includes lines from P&E notes used for Stage 3, and summarises previous communications with the Secretary of State for Scotland.

<https://erdm.scotland.gov.uk:8443/documents/A32648395/details>

Grateful for your comments by 2 PM tomorrow, this can be sent along with the draft response.

3. Draft Response – for now it is just a very basic outline. I will work on it tomorrow.

<https://erdm.scotland.gov.uk:8443/documents/A32645219/details>

Grateful for any initial comments by close on Monday 29 March.

[redacted] grateful if you can add your lines across three documents.

Please note the deadline to get the response to DFM's office is 5 PM, 30 March.

Thank you.

[redacted]

From: [Exempt 38(1)(b)]

Sent: 25 March 2021 18:30

To: DG Communities <DGCommunities@gov.scot>; Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; [Exempt 38(1)(b)] ; Head SFIO <HeadSFIO@gov.scot>; [redacted]

Cc: [redacted]

Subject: RE: STEER: Letter to Secretary of State for Scotland

Hello All

Removing Ministers from the copy list for the moment.

Please note that our immediate next steps are:

- Development of a holding narrative to support comms. colleagues with media approaches and conversations with stakeholders. Draft will be circulated for contributions this evening with a view to reaching an agreed narrative before the weekend. Essentially our position unchanged – remain of the view within leg comp
- Draft briefing for Ministers to be kicked off and circulated for comments hopefully this evening. On the brief – this would likely be drawn from our existing material (P&E notes, Con amendments, Stage 3 debate etc).
- Circulation of a draft response to SofS for others to feed into by close Friday.

The UNCRC team will put round initial drafts and I would really appreciate your contribution which will, inevitably, be with really short deadlines.

Thanks

Lesley Sheppard

Deputy Director: Care, Protection and Justice
Scottish Government, Children and Families Directorate

From: [redacted]; On Behalf Of Deputy First Minister and Cabinet Secretary for Education and Skills

Sent: 25 March 2021 13:02

To: [redacted]; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>

Cc: Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; [redacted]; DG Communities <DGCommunities@gov.scot>; Director for Children and Families <DirectorforChildrenandFamilies@gov.scot>; [redacted]; Head SFIO <HeadSFIO@gov.scot>; [redacted]

Subject: RE: STEER: Letter to Secretary of State for Scotland

Hi [redacted]

Can I get advice and a response by 17:00 Tuesday please.

Thanks

[redacted]

From: [redacted]

Sent: 25 March 2021 09:04

To: Deputy First Minister and Cabinet Secretary for Education and Skills
<DFMCSE@gov.scot>

Cc: Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>;
[redacted]; DG Communities <DGCommunities@gov.scot>; Director for Children and
Families <DirectorforChildrenandFamilies@gov.scot>; [redacted]; Head SFIO
<HeadSFIO@gov.scot>; [redacted]

Subject: STEER:Letter to Secretary of State for Scotland

Importance: High

Hi [redacted]

Apologies [redacted] is on leave. I can confirm we will pick this up.

I will also get in touch with the team supporting/advising on the European Charter of
Local Self-Government (Incorporation) (Scotland) Bill.

May I know when DFM would like to send a response by?

Thank you.

[redacted]

From: [redacted]On Behalf Of Deputy First Minister and Cabinet Secretary for
Education and Skills

Sent: 24 March 2021 18:16

To: [redacted]

Cc: Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>;
[redacted]; DG Communities <DGCommunities@gov.scot>; Director for Children and
Families <DirectorforChildrenandFamilies@gov.scot>; [redacted]Head SFIO
<HeadSFIO@gov.scot>; [Exempt 38(1)(b)]

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

Hi [redacted]

Please find attached a letter from the Secretary of State for Scotland. Can you please
provide advice on this.

Many thanks

[redacted]

From: [Exempt 38(1)(b)]

On Behalf Of SO Min Corr Mailbox

Sent: 24 March 2021 17:43

To: Deputy First Minister and Cabinet Secretary for Education and Skills
<DFMCSE@gov.scot>

Cc: SO Min Corr Mailbox <somincorr@ukgovscotland.gov.uk>

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

Please see attached response from The Rt Hon Alister Jack MP, Secretary of State for Scotland.

[redacted]

Correspondence Manager

Office of the Secretary of State for Scotland

[redacted]

| @UKGovScotland

Document 3b: Advice to DFM: Response to SOSfS

From: [redacted]
Children and Families
& Local Government and Communities

30 March 2021

Deputy First Minister and Cabinet Secretary for Education and Skills
Cabinet Secretary for Communities and Local Government
Minister for Children and Young People

LETTER FROM SECRETARY OF STATE FOR SCOTLAND

Purpose

1. To provide you with advice on the letter received from the Secretary of State for Scotland about the UNCRC Bill and the European Charter of Local Self-Government Bill.
2. To ask you whether you wish to respond to this letter, or not. If you would prefer to respond, please see the draft attached separately.

Priority

3. Routine – the letter does not seek a response.

United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill

4. On 4 March, the Secretary of State for Scotland wrote to you expressing his concerns around the legislative competence of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill (the Bill). In particular, he raised concerns with sections 6, 19, 20 and 21 of the Bill and he proposed amendments ahead of Stage 3 to (a) make it clear that section 6 does not apply to Ministers of the Crown when exercising reserved functions in Scotland and (b) remove Westminster legislation from the scope of sections 19-21. Your previous response of 9 March stated that you considered that the Bill takes full and proper account of the respective competencies of the Scottish and UK Parliaments and that the proposed changes would be contrary to the policy intention behind the Bill.
5. Whilst amendments, drafted by the Law Society of Scotland were lodged by the Conservatives at Stage 3 in respect of sections 19 and 20 (but not sections 6 or 21), these amendments were not pressed.
6. On 24 March, the Secretary of State for Scotland wrote to you again regarding these concerns. He also noted that the UK Government will now use the four week

period following Stage 3 to make a decision on whether to use the powers under sections 33 and 35 of the Scotland Act 1998. On the same day, his office released a press notice indicating they had raised concerns around legislative competence ahead of Stage 3 and that the Scottish Government had declined to make changes.

Section 6 (the duty on public authorities not to act incompatibly with the UNCRC requirements)

7. The Secretary of State for Scotland raised concerns around the legal obligations that section 6 could be seen to place on UK Government Ministers in reserved areas. He states 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”. [redacted]

8. Further, the Bill places duties on Scottish Ministers to produce statutory guidance on Part 2 of the Bill (Duties on Public Authorities). It is intended that this guidance will help address the concern around legal certainty and clarity, and will ensure the intention and effect of the Bill is better understood by rights-holders as well as duty-bearers.

Sections 19-21 (interpretation of legislation; strike down declarators; incompatibility declarators):

9. The Secretary of State for Scotland also raised concerns with regards to sections 19-21 of the Bill. He is concerned that these sections of the Bill would constrain the UK Parliament’s ability to make laws for Scotland as provided for under section 28(7) of the Scotland Act 1998.

10. It is within legislative competence for the Scottish Parliament to amend or repeal Westminster Acts, insofar as such provision is within legislative competence. We therefore disagree with this position, and believe these changes would mean that crucial provisions in the Bill would not apply to major pieces of legislation that fall within the legislative competence of the Scottish Parliament and which are key in relation to children’s rights. This would include the Children (Scotland) Act 1995, the Education (Scotland) Act 1980 and the Children and Young Persons (Scotland) Act 1937.

11. [redacted]

12. We understand that this letter may create some uncertainty among public authorities and children’s rights organisations. We wrote to the Cabinet Secretariat seeking advice on engaging with stakeholders during the pre-election period. They advised that we can point concerned stakeholders to published information about the Bill that outlines the Scottish Government position in relation to competence. However, they recommended that we should not proactively approach stakeholders on this point during the pre-election period. Therefore, we will continue to respond to stakeholders who write to us with assurance that both legislation are within the legislative competence of the Scottish Parliament, and that the Scottish Government will continue to plan for implementation.

European Charter of Local Self-Government (Incorporation) (Scotland) Bill

13. On 15 March, the Scotland Office made contact at official level advising that they had significant concerns with the European Charter of Local Self Government Bill. Similar to the UNCRC Bill, they were of the view that sections 4 and 5 were outwith the legislative competence of the Scottish Parliament and would therefore welcome amendments to state that they don't apply to Acts of Parliament.

14. This was the first time that the UK Government had raised any concerns. A conference call with Scotland Office officials was quickly arranged that day. During the call the Scottish Government officials asked for more detail on their concerns but they weren't able to provide any more detail on the reasons for the Bill being outwith legislative competence and why there was a need for the amendments to exclude Acts of Parliament. The Scotland Office agreed to urgently provide more information in writing.

15. The Director of the Scotland Office subsequently wrote to officials with slightly more details that evening and advised:

“We recognise that sections 4 and 5 of the European Charter Bill could only affect Acts of Parliament insofar as the provisions in question would also have been within the legislative competence of the Scottish Parliament. We are not suggesting that the Acts which might be affected by sections 4 and 5 would relate to reserved matters in terms of Schedule 5 of the Scotland Act. The concern is that these sections put the UK Parliament into a position whereby it is effectively being required to draft its legislation taking into account the requirements of the European Charter, and so constrain its power to make laws for Scotland contrary to section 28(7) of the Scotland Act”.

16. Having considered the points raised by the Scotland Office, it was agreed not to make any amendments on this to the Bill. Officials also replied to the Scotland Office in the following terms:

“Thank you for clarifying your position. The European Charter Bill does not impose any duties on the UK Government or Westminster in relation to legislation. Only the Scottish Ministers have duties imposed on them in the Bill and only in respect of the exercise of their functions. There is no requirement that legislation passed by the UK Parliament in the future in devolved areas must be compatible with the Charter”.

UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (“the Continuity Act”)

17. Cabinet Secretary for Environment, Climate Change and Land Reform is currently considering separate advice regarding the points raised in relation to the Continuity Act. And will be issuing a response separately. You will be copied into this shortly.

Options

- [redacted]

Recommendations

[redacted]

[redacted] Children and Families
& Local Government and Communities

30 March 2021

1. Copy List:
Deputy First Minister and Cabinet Secretary for Education and Skills Minister for Children and Young People Cabinet Secretary for Communities and Local Government Cabinet Secretary for Environment, Climate Change and Land Reform Cabinet Secretary for the Constitution, Europe and External Affairs [redacted]

For Action	For Comments	For Information		
		Portfolio Interest	Constitution Interest	General Awareness
X				
X		X		
		X		
		X		
		X		
		X		

Officials for awareness as per covering email

Document 3a: Holding Narrative

BACKGROUND:

On 4 March, the Secretary of State for Scotland wrote to the Deputy First Minister expressing concerns that sections 6, 19, 20 and 21 of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill are unclear and requesting that amendments be made to them to (a) make it clear that section 6 does not apply to Ministers of the Crown when exercising reserved functions and (b) remove Westminster legislation from the scope of sections 19-21. On 9 March, Deputy First Minister in his reply stated that these changes would be contrary to the policy intention and were not considered necessary or appropriate.

On 15 March, officials at the Scotland Office wrote to Scottish Government officials with a concern that section 4 and 5 of the European Charter of Local Self-Government (Incorporation) (Scotland) Bill put the UK Parliament into a position whereby it is effectively being required to draft its legislation taking into account the requirements of the European Charter, and so constrain its power to make laws for Scotland contrary to section 28(7) of the Scotland Act. Scottish government officials responded on 17 March, stating that we did not have any concerns on the legislative competence of sections 4 and 5 of the Bill.

On 24 March, the Secretary of State for Scotland again wrote to the Deputy First Minister and issued a press release which set out these concerns. He stated that the UK Government is considering whether the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill is outside legislative competence and should therefore be referred to the Supreme Court under section 33 of the Scotland Act, or whether to make an order under section 35 of the Scotland Act. He also expressed similar concerns about the European Charter of Local Self-Government (Incorporation) (Scotland) Bill.

Stakeholders, including children and young people are understandably concerned about what this means in relation to incorporation of the UNCRC.

Holding Positions

UNCRC Bill

- All parts of the UNCRC Bill are within the legislative competence of the Scottish Parliament. Some of the changes proposed by the UK Government would significantly undermine the protection for children's rights in Scotland that the Bill seeks to put in place, threatening to undercut both the important measures contained in the legislation and key principles of devolution.
- These changes would mean that crucial provisions in the Bill would not apply to major pieces of legislation that fall within the legislative competence of the Scottish Parliament and which are key in relation to children's rights. This would include the Children (Scotland) Act 1995, the Education (Scotland) Act 1980 and the Children and Young Persons (Scotland) Act 1937.

- The possibility of legal challenge has not halted planning for implementation and the Scottish Government continues to work with partners to progress this work

European Charter of Local Self-Government Bill

- We do not have any concerns on the legislative competence of sections 4 and 5 of the European Charter of Local Self-Government Bill. The Bill does not impose any duties on the UK Government or Westminster in relation to legislation.
- Only the Scottish Ministers have any significant duties imposed on them in the Bill and only in respect of the exercise of their functions.
- There is no requirement that legislation passed by the UK Parliament in the future in devolved areas must be compatible with the Charter.

Top lines

UNCRC Bill

- This is landmark legislation that will see the biggest shift in power since devolution, helping to make Scotland the best place in the world to grow up.
- The Bill will deliver a fundamental shift in the way children's rights are respected, protected and fulfilled in Scotland.
- The Bill will deliver a proactive culture of everyday accountability for children's rights across public services in Scotland.

European Charter of Local Self-Government Bill

- The Scottish Government value and respect the unique role of local government which is why we committed to supporting this Bill and welcome its passage.
- The Bill strengthens the status and standing of local government in the democratic governance of Scotland.
- The Bill will ensure a culture of partnership and participation is enshrined in Scots Law building on our strong platform of collaboration with local government.