

REFERENCE by the Attorney General and the Advocate General for Scotland – United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill

Case ID: 2021/0079

Case summary

Issue

Whether certain provisions of two Bills passed by the Scottish Parliament in March 2021 (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 outside the legislative competence of the Scottish Parliament.

Facts

S 33(1) of the Scotland Act 1998 permits the Attorney General and HM Advocate General for Scotland (the "UK Law Officers") to refer to the Supreme Court the question of whether a Bill that has been passed by the Scottish Parliament, or any provision of such a Bill, would be within the legislative competence of the Scottish Parliament.

Pursuant to s 33(1), in the present application the UK Law Officers make references to the Supreme Court in respect of specific provisions in two Bills: ss 6, 19(2)(a)(ii), 20(10)(a)(ii) and 21 (5)(b)(ii) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill (the "UNCRC Bill") and ss 4(1A) and 5(1) of the European Charter of Local Self-Government (Incorporation) (Scotland) Bill (the "ECLSG Bill"). The UNCRC Bill was passed on 16 March 2021 and the ECLSG Bill was passed on 23 March 2021. The Counsel General for Wales has given notice of his intention to participate in the references as a relevant UK Law Officer.

Both Bills incorporate into Scots law international treaties to which the UK is a signatory. The UNCRC was ratified by the UK in 1991, but it has not been directly incorporated into domestic law across the UK as a whole. The UNCRC Bill would incorporate a version of the UNCRC as scheduled to the Bill, with various textual amendments which are designed to reflect the Scottish Parliament's competence limitations. The ECLSG was ratified by the UK in 1998. Articles 2-11 of the ECLSG have not been directly incorporated into domestic law. The ECLSG Bill will incorporate those Articles which are listed in the schedule to the Bill. The Law Officers do not take issue in either of the references with the legislative competence of the Scottish Parliament to incorporate versions of these treaties in Scotland. Rather, the legislative competence questions that the Law Officers refer to the Supreme Court concern two issues. The first issue is that both Bills would bestow upon the Scottish courts extensive powers to interpret and scrutinise primary legislation passed by the sovereign UK Parliament. The UK Law Officers consider that these provisions modify s 28(7) of the Scotland Act 1998 and are therefore outside the legislative competence of the Scottish Parliament. The second issue is that certain provisions of both Bills require "reading down" in order to come within the legislative competence of the Scottish Parliament. Guidance is sought by the Law Officers on the proper application of s 101(2) of the Scotland Act 1998 to the referred provisions of the Bills (s 101(2) requires that a provision that could be read in such a way as to be outside the competence of the Scottish Parliament must be read as narrowly as is required for it to be within legislative competence, if such a reading is possible).

Parties

Appellant(s)

Her Majesty's Attorney General and Her Majesty's Advocate General for Scotland

Respondent(s)

1. Lord Advocate
2. Counsel General for Wales

Appeal

Justices

Lord Reed, Lord Hodge, Lord Lloyd-Jones, Lord Sales, Lord Stephens

Hearing start date

28 June 2021

Hearing finish date

29 June 2021

Watch hearing

28 June 2021 [Morning session](#) [Afternoon session](#)

29 June 2021 [Morning session](#) [Afternoon session](#)

Judgment details

Judgment date

6 October 2021

Neutral citation

[2021] UKSC 42