

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT (INCORPORATION) (SCOTLAND) BILL

SUBMISSION FROM WEST LOTHIAN COUNCIL

- Q1 The main aim of the Bill is to make the European Charter of Local Self-Government directly enforceable in Scots law and to require the Scottish Government to act in a way that agrees with the Charter [section 1 and 2]. Do you agree with this?
- A1 Yes. The council has been consistent with its support for incorporation since the Commission for Strengthening Local Democracy (August 2014) through to Mr Wightman's pre-Bill consultation (September 2018).
- Q2 Section 3 of the Bill puts a general duty on the Scottish Government to support local government. The Scottish Government must also report to the Scottish Parliament about what it has done to support local government at least once every 5 years. Do you support section 3?
- A2 Yes. A need to report to Parliament on its actions and its compliance and performance record will help maintain momentum and keep Ministers focussed on their duties. A report each Parliamentary term should be the minimum requirement but makes sense in relation to the five-year life of each administration recently enacted in the Scottish Elections Reform Act 2020.
- Q3 Section 4 of the Bill says all legislation must be interpreted in line with the Charter whenever possible. Section 5 allows a court to make a "declaration of incompatibility". This is a statement that a provision in a piece of legislation is not in line with the Charter. Where this declaration has been made, section 6 gives the Scottish Government power to take action to fix this provision so that it is line with the Charter (section 6). Do you agree with these sections?
- A3 Yes. The power may be exercised by regulations which makes a resolution more quickly and more readily achievable. The proposed secondary legislation will be subject to the Parliament's affirmative procedure and so formal Parliamentary approval will be required to any corrective legislation made using this power.
- Q4 Section 7 allows a court to limit the consequences of a ruling that the Scottish Government has not complied with a duty set out elsewhere in the Bill. For instance, the court could provide that the effects of the ruling don't reach back in time. It can also give the Scottish Government some time to take corrective action to address the ruling. Do you agree with section 7?

- A4 Yes. This provides a realistic constraint on the consequences of a successful legal challenge. A declaration of incompatibility opens the door to its back-dating to catch other decisions made and actions taken, sometimes, long before. The overall intention should be to cure defects and faults and facilitate corrective action and mitigation.
- Q5 Do you have thoughts on anything else about the Bill, for example, how quickly it should become law after it's passed (section 10 says this should happen almost immediately); what financial impact it will have if it becomes law; if it will have any positive or negative impact on equality or human rights.
- A5 The Bill should be taken through the legislative process as quickly as allowed by Parliamentary procedures, with a view to it being enacted before the end of this parliamentary term. Thereafter it should and can be brought into effect very quickly. The Bill provides for the use of an existing court structure and court procedure so there should be no delay required to establish a new regulatory regime. Parliamentary procedure for pre-legislative certification on devolved competence and Human Rights Act compliance can be adapted for the Bill's purposes. The Scottish Government should be able to adapt existing procedures on equality and socio-economic assessments, islands-proofing and human rights compliance to design a process to ensure compatibility of executive actions and decisions. There are unlikely to be financial impacts beyond the financial consequences in any particular case and the potential liability for judicial costs.