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# Reconsideration Stage

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This briefing considers the circumstances and procedure under which the Scottish Parliament may hold the Reconsideration Stage of a Bill.



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# Summary

This briefing provides background on the circumstances in which a Bill may be eligible for reconsideration by the Parliament and the parliamentary procedure for reconsidering and making amendments to a Bill at Reconsideration Stage. The Scottish Parliament has never held Reconsideration Stage proceedings before, however recent developments make this a likelihood in the near future.

The Scottish Parliament passed the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill and the European Charter of Local Self-Government (Incorporation) (Scotland) Bill on the 16 March 2021 and 23 March 2021, respectively.<sup>1 2</sup> Both Bills were subsequently referred to the Supreme Court by the Attorney General and the Advocate General for Scotland under section 33(1) of the Scotland Act 1998.<sup>3</sup> The Supreme Court handed down its judgment on 06 October 2021 that certain provisions in each of the Bills were not within the legislative competence of the Parliament.<sup>3</sup>

On 24 May 2022, Deputy First Minister John Swinney MSP announced in the Parliament that both Bills would return to the Parliament for reconsideration.<sup>4</sup>

SPICe will be publishing a specific briefing focusing on the procedure for reconsidering a Bill to address legislative competence problems, that is to say the procedure which would apply to reconsideration of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill and the European Charter of Local Self Government (Incorporation) (Scotland) Bill. This briefing will be published on the [Scottish Parliament Digital Hub](#).

# From Passing a Bill to Reconsideration Stage

In most circumstances, a Bill is introduced to the Scottish Parliament and progresses through the legislative stages as provided for by [section 36 of the Scotland Act 1998](#) and the [Standing Orders of the Scottish Parliament](#). If the Bill is passed, it is subject to a four week period where the Bill may be the subject of a legal challenge by the [Advocate General](#), the [Lord Advocate](#) or the [Attorney General](#) ("the Law Officers"). The four week period after the passing of a Bill is one mechanism that is intended to prevent unlawful legislation from reaching the statute book and ensure the Scottish Parliament is not legislating beyond its competence.<sup>5</sup> If the four weeks pass with no legal challenge to the Bill, it may be submitted for Royal Assent and become an Act of the Scottish Parliament.<sup>6</sup> The Secretary of State for Scotland has a [separate power to challenge the bill during the four week period after the Bill is passed](#). If such a challenge, by the Law Officers, is successful in the Supreme Court, or the Secretary of State makes an order, the Parliament may reconsider the Bill in a [Reconsideration Stage](#).

## Referral to the Supreme Court

[The Scotland Act 1998](#) sets out how legal scrutiny can take place after a Bill is passed by the Parliament. Bill references by the Law Officers happen after the Parliament has completed its scrutiny of a Bill and passed it at Stage 3.<sup>6</sup> The reference to the Supreme Court can take place during the four week period after the passing of the Bill, but before it may be submitted for Royal Assent.<sup>5</sup> The referrer (i.e., one of the Law Officers) in a Bill reference asks the Supreme Court to consider:

- whether the provisions in the Bill relate to a protected subject-matter and thus require that the number of members voting in favour of the Bill at its passing is at least two-thirds of the total number of seats for members of the Parliament (under section 32A of the Scotland Act 1998); or
- whether the provisions in the Bill are within the legislative competence of the Parliament (under section 33 of the Scotland Act 1998).

If the Supreme Court decides one or more provisions relates to a protected subject-matter or is beyond the Parliament's powers, the Bill cannot progress to Royal Assent. Instead, the Parliament may reconsider the legislation to address the legal problems, or withdraw the Bill.<sup>5</sup>

## Section 32A of the Scotland Act 1998: Questions of Protected Subject-Matter

[Section 32A of the Scotland Act 1998](#) provides for consideration of Bills by the Supreme Court on questions of "protected subject-matter". Section 32A allows the Law Officers to refer the question of whether a Bill (or any provision of a Bill) relates to a protected subject-matter to the Supreme Court for a decision. The Law Officers may do this at any time during the period of four weeks following:

- rejection of the Bill, if the Presiding Officer made a statement under [section 31\(2A\) of the Scotland Act 1998](#) that in their view provisions of the Bill relate to a protected subject-matter; or
- passing of the Bill, if the Presiding Officer made a statement under [section 31\(2A\) of the Scotland Act 1998](#) that in their view no provisions of the Bill relate to a protected subject-matter and the number of members voting in favour of the Bill at its passing was less than two-thirds of the total number of seats for members of the Parliament.

The Law Officers are not allowed to make a reference under section 32A if they have already notified the Presiding Officer that they do not intend to make a reference in relation to the Bill. However, a previous notification does not prevent a reference being made following a Reconsideration Stage.

The matters which comprise "protected subject-matter" in [section 31\(5\)](#) of the Scotland Act 1998 are:

“ (a) the persons entitled to vote as electors at an election for membership of the Parliament, (b) the system by which members of the Parliament are returned, (c) the number of constituencies, regions or any equivalent electoral area, and (d) the number of members to be returned for each constituency, region or equivalent electoral area.”

The Scotland Act, 1998<sup>7</sup>

## Section 33 of the Scotland Act 1998: Questions of Legislative Competence

[Section 33 of the Scotland Act 1998](#) provides for consideration of Bills by the Supreme Court on questions of legislative competence. Section 33 allows the Law Officers to refer the question of whether a Bill (or any provision of a Bill) would be within the legislative competence of the Parliament. The Law Officers may do this at any time during the period of four weeks following passing of the Bill (or approval of the Bill at Reconsideration Stage). The Law Officers are not allowed to make a reference under section 33 if they have already notified the Presiding Officer that they do not intend to make a reference in relation to the Bill. Again, this does not apply to previous notifications given prior to a Reconsideration Stage.

The Supreme Court has previously decided on three Scottish Parliament Bill references made under section 33 of the Scotland Act 1998. In each of the judgments for the respective Bills, the Supreme Court ruled that provisions of the Bills were not within the legislative competence of the Scottish Parliament. The references related to the following Scottish Parliament Bills:

- [UK Withdrawal from the European Union \(Legal Continuity\) Bill](#) ("the first Scottish Continuity Bill");
- [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Bill](#) ("the UNCRC Bill"); and
- [European Charter on Local Self-Government \(Incorporation\) \(Scotland\) Bill](#) ("the ECLSG Bill").

The first example of a Bill being referred to the Supreme Court under section 33 of the Scotland Act 1998 was after the passing of the first Scottish Continuity Bill (see [SPICe briefing on the UK Supreme Court Ruling on the first Scottish Continuity Bill](#)). A similar "Continuity Bill" was also passed in the Welsh Senedd and received Royal Assent before the Supreme Court judgment on the first Scottish Continuity Bill. This ruling had the additional consequence of requiring the Senedd to take steps to repeal the [Law Derived from the European Union \(Wales\) Act 2018](#). Although the first Scottish Continuity Bill could have returned to Parliament for reconsideration, the Scottish Government decided to introduce new legislation which received Royal Assent on 29 January 2021 and became the [European Union \(Continuity\) \(Scotland\) Act 2021](#). The Scottish Government also withdrew the UK Withdrawal from the European Union (Legal Continuity) Bill on 10 March 2022. As the UNCRC and ECLSG Bill reference has now been decided, both Bills may return to the Parliament for reconsideration. The Scottish Government announced on 24 May 2022 that it intended to bring the UNCRC and ECLSG Bills back for a Reconsideration Stage. <sup>4</sup>

# Returning the Bill to the Parliament

As mentioned in [Referral to the Supreme Court](#), Bills referred to the Supreme Court on questions of protected subject-matter and legislative competence, may reach Reconsideration Stage if the Supreme Court decides that:

- the Bill (or any part of the Bill) is not within the legislative competence of the Parliament;
- or the Bill relates to a protected subject-matter thereby preventing the Bill from going forward for Royal Assent.

A Bill *rejected* by the Parliament may only reach Reconsideration Stage if the Supreme Court decides on a reference made in relation to a Bill under section 32A(2)(a) of the Scotland Act 1998 that *no provision* subject to the reference relates to a protected subject-matter. This SPICe briefing from this point onwards considers the reconsideration of Bills *passed* by the Parliament.

## Section 35 of the Scotland Act 1998: Secretary of State Powers to Intervene

Bills may also reach Reconsideration Stage if the Secretary of State makes an order under [section 35 of the Scotland Act 1998](#) during the four week period of intimation following the passing of a Bill. This order prohibits the Presiding Officer from submitting the Bill for Royal Assent. The Secretary of State may do this if:

“ a Bill contains provisions— (a) which the Secretary of State has reasonable grounds to believe would be incompatible with any international obligations or the interests of defence or national security, or (b) which make modifications of the law as it applies to reserved matters and which the Secretary of State has reasonable grounds to believe would have an adverse effect on the operation of the law as it applies to reserved matters”

The Scotland Act, 1998<sup>6</sup>

Where the Supreme Court has ruled that a Bill (or any of its provisions) subject to a reference is within the legislative competence of the Parliament or does not relate to a protected subject-matter, the Secretary of State may still make a section 35 order within four weeks of the reference being disposed of by the Supreme Court.

# Reconsideration Stage

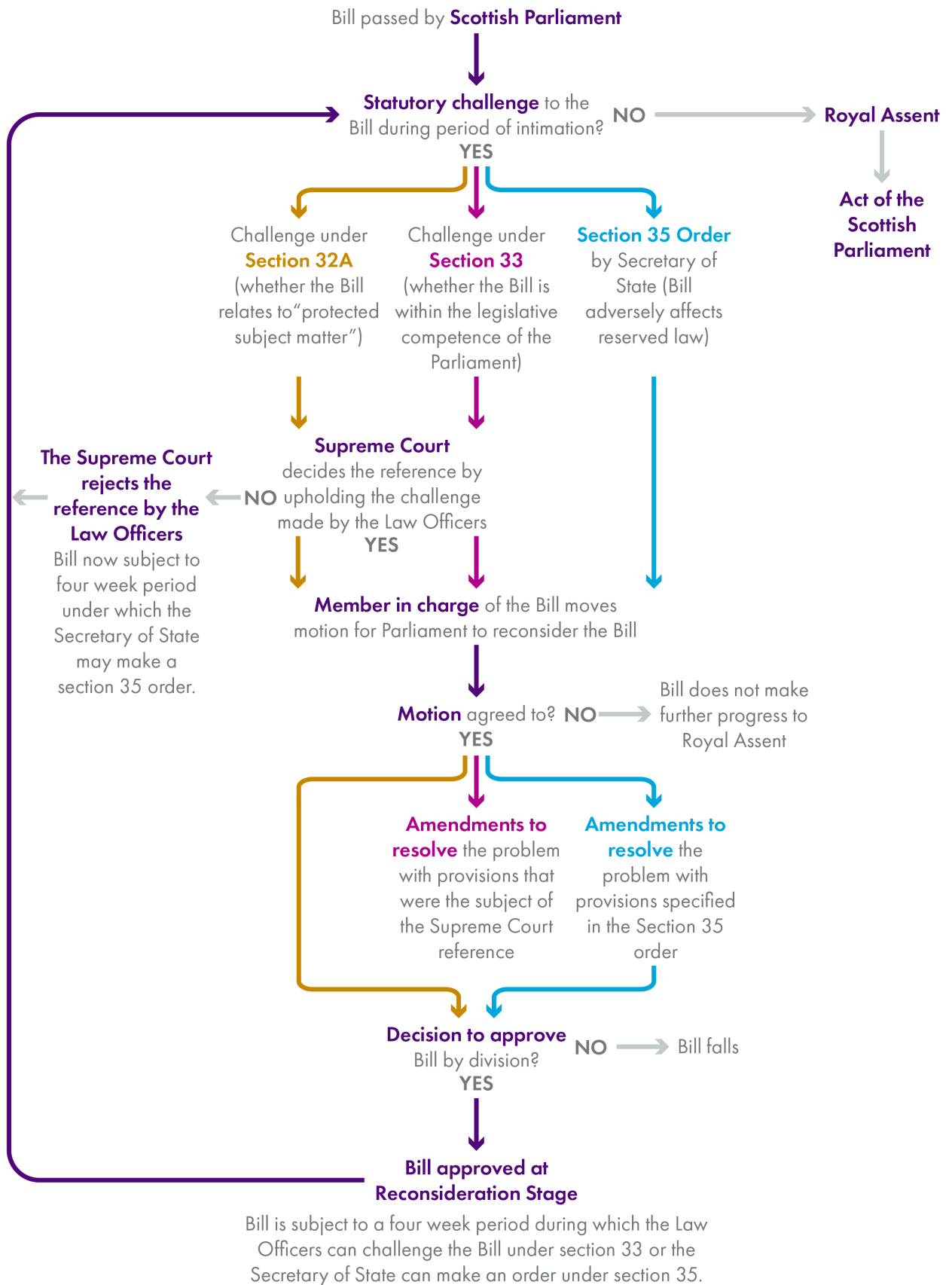
[Section 36 of the Scotland Act 1998](#) outlines the legislative stages of a Bill in the Scottish Parliament. This includes provision for the Parliament's Standing Orders to allow for a Reconsideration Stage after a Bill passing in each of the following circumstances.

- The Supreme Court decides a reference under section 32A that the Bill (or any provisions of the Bill) relates to a protected subject-matter requiring a two-thirds majority in the Parliament to pass the legislation;
- The Supreme Court decides a reference under section 33 (of the Scotland Act 1998) that the Bill (or any provisions of the Bill) would not be within the legislative competence of the Parliament; or
- The Secretary of State makes an order under section 35 to prevent the Presiding Officer from submitting the Bill for Royal Assent because the Bill (or any provisions of the Bill) may adversely affect the operation of reserved law, or may be incompatible with international obligations, defence, or national security interests.

SPICe has produced an [infographic](#) setting out the routes by which Bills passed by the Scottish Parliament may reach and progress through Reconsideration Stage. This section of the briefing will explain the procedure, as described in the [Standing Orders of the Scottish Parliament](#) (and its associated [Guidance](#)), for reconsidering Bills passed by the Parliament.



# Procedure for Reconsidering Bills Passed by the Parliament



SPICE, adapted from the Scotland Act 1998, the Standing Orders of the Scottish Parliament, and the Guidance on the Standing Orders.

## Motion to Reconsider the Bill

The procedures for the reconsideration of a Bill passed are outlined in Rule 9.9 of the Standing Orders.<sup>8</sup> In the event of a statutory challenge to a Bill passed by the Parliament, the Bill cannot make any further progress towards Royal Assent until a Motion to reconsider the Bill has been lodged and agreed to. Rule 9.9.2 of the Standing Orders allows the Member in charge of the Bill to lodge a Motion that the Parliament should reconsider a Bill.<sup>8</sup> Rule 9.9.2 states:

“ 2. The member in charge of a Bill may by motion propose that the Parliament resolve to reconsider the Bill if— (a) the Supreme Court decides that the Bill or any provision of it would not be within the legislative competence of the Parliament; (b) an order is made in relation to the Bill under section 35 (order prohibiting Presiding Officer from submitting Bill for Royal Assent); or (c) the Supreme Court decides on a reference made in relation to the Bill under section 32A(2)(b) that any provision of the Bill relates to a protected subject-matter.”

The Scottish Parliament, 2023<sup>8</sup>

As per Rule 9.9.2, the Parliament cannot move to reconsider or withdraw the Bill of its own accord. The Member in charge of the Bill is the only Member who can initiate Reconsideration Stage proceedings in the Parliament. There is no requirement in the Standing Orders to debate the Motion for reconsideration. However, there are also no provisions in the Standing Orders which preclude a debate on the Motion for reconsideration from taking place.

If the motion is agreed to, the Guidance on Public Bills indicates that the Parliamentary Bureau will propose in a Business Motion a time for Reconsideration Stage on the Bill at a meeting of the Parliament.<sup>9</sup> A Business Motion is expected to provide an outline of the proposed business in the Chamber and a suggested time-frame for Reconsideration Stage.<sup>10</sup>

The Standing Orders do not set out a formal role or requirement for Committees of the Parliament to conduct scrutiny of the Scottish Government's (or the designated Member's) proposals for reconsideration of the Bill. However, there are also no provisions in the Scotland Act 1998 and the Standing Orders which would preclude Committees from considering the proposals for amendments after a Motion to reconsider the Bill has been agreed to.

## Admissibility of Amendments

If the Motion is agreed to by the Parliament, the Bill may enter Reconsideration Stage proceedings. Reconsideration Stage proceedings are taken at a meeting of the Parliament.<sup>8</sup> The Standing Orders of the Scottish Parliament set out how the amendments to the relevant provisions in the Bill may be made and how the final proceedings for approval of the Bill should take place.

Rule 9.10.5, which provides the admissibility criteria for amendments to all Bills, states:

“ An amendment is admissible unless— (a) it is not in proper form; (b) it is not relevant to the Bill or the provisions of the Bill which it would amend; (c) it is inconsistent with the general principles of the Bill as agreed by the Parliament; or (d) it is inconsistent with a decision already taken at the Stage at which the amendment is proposed.”

The Scottish Parliament, 2023<sup>8</sup>

Rule 9.9.4 sets out the procedure for amendments at Reconsideration Stage. For Bills being reconsidered by the Parliament, there is an additional criteria which specifies amendments are only admissible if they are aimed at addressing the legislative competence problems that were the subject of the Supreme Court reference under section 33, or the subject of the order by the Secretary of State under section 35. Amendments are not permitted if the Bill is at Reconsideration Stage because a Supreme Court reference was made under section 32A on a question of whether the Bill (or any of its provisions) relate to a protected subject-matter. In this circumstance, the purpose of Reconsideration Stage is to make another decision to approve the Bill subject to the correct threshold of Members voting in favour.

The Guidance on Public Bills indicates that the Supreme Court judgment or the section 35 order will be used by the clerks to guide the admissibility of amendments.<sup>9</sup> The Guidance on Public Bills also sets out additional details on amendments at Reconsideration Stage and states:

“ Amendments are worded by reference to the “As Passed” version of the Bill. As at Stage 3, amendments are disposed of in the order in which they relate to the Bill, unless the Parliament decides, on a Bureau motion, to follow a different order (Rule 9.9.4). There is no selection of amendments at Reconsideration Stage, so all admissible amendments lodged may be moved.”

The Scottish Parliament, 2022<sup>9</sup>

### **Summary: Additional Admissibility Criteria for Amendments at Reconsideration Stage**

- Only amendments aimed at resolving the problems that were the subject of the Supreme Court reference under section 33, or the section 35 order by the Secretary of State, are admissible.
- If Reconsideration Stage is taking place following a reference to the Supreme Court under section 32A, no amendments can be made, only a fresh decision on whether to approve the Bill.
- There is no selection of amendments at Reconsideration Stage. All admissible amendments tabled may be moved.

## **Proceedings at Reconsideration Stage**

Before the Parliament decides whether to approve the Bill, and after any amendments have been disposed of, the Presiding Officer must make a further statement on whether any of the provisions relate to protected subject-matter as set out in section 31(4) of the Scotland Act 1998 and Rule 9.8.5BA of the Standing Orders. Section 36(5) of the Scotland

Act 1998 requires that a final stage at which the Bill can be approved or rejected is held if the Bill is amended in respect of a Bill subject to a section 33 or 35 challenge, or reconsidered following a section 32 challenge. The Standing Orders of the Scottish Parliament and the associated guidance suggests that a debate on the Bill should happen after the amending stage even when amendments have not been agreed to. Rule 9.9.5 states:

“ The Presiding Officer shall state, after any amendments have been disposed of and before the debate on the motion that the Bill be approved, whether or not in his or her view any provision of the Bill relates to a protected subject-matter within the meaning of section 31(4). This statement may be made orally or in writing, and if made in writing shall be published by the Clerk. The Parliament shall then consider and decide by division, on a motion of the member in charge of the Bill, the question whether to approve the Bill. The result of such a division is valid only if the number of members who voted (whether for the motion, against it, or to abstain) is more than one quarter of the total number of seats for members of the Parliament. If the result is not valid the Bill shall be treated as rejected. Where the statement is that in the Presiding Officer’s view any provision of the Bill relates to a protected subject-matter, the Bill is not approved unless a super-majority is achieved.”

The Guidance on the Standing Orders also indicates that if the Bill has been amended at Reconsideration Stage to include provisions that would require [Crown consent](#) (i.e., the provisions would affect the prerogative, private interests or hereditary revenues of the King, the Prince and Steward of Scotland, or the Duke of Cornwall), consent for those provisions is signified during the debate on whether to approve the Bill.

## Scope for Further Reconsideration

Once a Bill has been approved at Reconsideration Stage, it is subject to a four week period during which the Law Officers and Secretary of State may make a statutory challenge to the Bill under section 33 and section 35 of the Scotland Act 1998, respectively.

If there is no statutory challenge within the four week period, the Bill may be submitted for Royal Assent by the Presiding Officer and become an Act of the Scottish Parliament.

The Law Officers could make a legal challenge to a Bill approved by the Parliament at Reconsideration Stage, and such a Bill could return to a Reconsideration Stage or proceed to Royal Assent following a decision from the Supreme Court.<sup>9</sup> Similarly, the Secretary of State could make an order under section 35 following approval at Reconsideration Stage, and the Bill could return again to the Parliament if the member in charge decides to lodge a further motion for reconsideration. If there is a statutory challenge, then the Bill will progress through the same process of referral to the Supreme Court (if challenged under section 33), or return to the Parliament (if the Secretary of State makes an order under section 35). Where a reference is decided as relating to protected subject-matter or decided as not being within legislative competence, the Bill may return to the Parliament.

Where a reference is disposed of by the Supreme Court and decided as within the legislative competence of the Parliament, the Bill may progress towards Royal Assent. The Bill is still subject to the potential for an additional challenge by the Secretary of State (under section 35) within four weeks of the reference being disposed of by the Supreme

Court. If the Secretary of State does challenge the Bill under section 35, it may return to the Parliament again.

# 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 Scottish Parliament passed the [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Bill](#) (“the UNCRC Bill”) and the [European Charter of Local Self-Government \(Incorporation\) \(Scotland\) Bill](#) (“the ECLSG Bill”) on the 16 March 2021 and 23 March 2021, respectively. The UNCRC Bill<sup>i</sup> and the ECLSG Bill<sup>ii</sup> are intended to incorporate treaties to which the UK is a signatory into Scots law. These treaties are the [United Nations Convention on the Rights of the Child](#) (“the UNCRC”) and the [European Charter of Local Self-Government](#) (“the ECLSG”), respectively.

Both Bills were subsequently referred to the Supreme Court by the Attorney General and the Advocate General for Scotland under section 33(1) of the Scotland Act.<sup>3</sup> The Supreme Court handed down its judgment on 06 October 2021. It concluded that certain provisions in each of the Bills were not within the legislative competence of the Parliament.

<sup>3</sup> The Supreme Court Summary of the judgment states:

“ The Supreme Court unanimously decides that sections 6, 19(2)(a)(ii), 20(10)(a)(ii) and 21(5)(b)(ii) of the UNCRC Bill and sections 4(1A) and 5(1) of the ECLSG Bill would be outside the legislative competence of the Scottish Parliament. This means that the Bills will return to the Scottish Parliament so that these issues can receive further consideration.”

The Supreme Court, 2021<sup>3</sup>

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

On 24 May 2022, Deputy First Minister John Swinney MSP announced in the Parliament that the Scottish Government intended to bring the UNCRC Bill back to the Parliament for a Reconsideration Stage.<sup>4</sup> The Scottish Parliament has never held Reconsideration Stage proceedings before.

The Scottish Government has not yet brought forward its proposals to address the legislative competence problems in the UNCRC Bill. However, in line with [Rule 9.9.4 of the Standing Orders of the Parliament](#), any amendments to the UNCRC Bill at Reconsideration Stage must address the problems with legislative competence in the

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i SPICe produced a [briefing on the Bill, as introduced](#), and an [update blog before Stage 3](#).

ii SPICe produced a [briefing on the Bill, as introduced](#), and an [update blog before Stage 3](#).

provisions identified in the Supreme Court judgment (see [Admissibility of Amendments](#)). Some detail on the necessary changes to the UNCRC Bill were provided in the Deputy First Minister's statement to the Parliament on the 24 May 2022. Deputy First Minister John Swinney MSP stated:

“ To address the judgment in relation to section 6 of the UNCRC bill, it is clear that we need to expressly limit the compatibility duty to devolved functions and devolved bodies. We also need to include in the bill a provision that is equivalent to section 6(2) of the Human Rights Act 1998 so that public authorities cannot be found to have acted incompatibly where the underlying primary legislation cannot be read in a compatible way. To address the judgment on the judicial remedies in both bills, we need to remove UK acts from the application of the interpretative obligation, the strike-down power and the incompatibility declarator power.”

The Scottish Parliament Official Report, 2022<sup>4</sup>

The announcement also noted that the Scottish Government would begin a short period of engagement with stakeholders. Deputy First Minister John Swinney MSP stated:

“ There will now be three weeks of engagement with key stakeholders, including with children and young people and COSLA. For the UNCRC bill, the purpose of that engagement will be to ensure that those who have lobbied passionately for it understand the changes that are being made and why. It will also help us to understand any concerns that need to be aired during Reconsideration Stage... Following that engagement, I will update the relevant parliamentary committees before amendments are lodged. We will liaise with the parliamentary authorities about the timescale for Reconsideration Stage, recognising that we need to make sufficient time to engage with the Parliament on the substance of our proposals.”

The Scottish Parliament Official Report, 2022<sup>4</sup>

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

The ECLSG Bill was a Member's Bill introduced by Andy Wightman MSP (who is no longer in Parliament) on 5 May 2020. Mark Ruskell MSP was designated as the additional member in charge of the Bill. <sup>2</sup> The Deputy First Minister announced on 24 May 2022 that the Scottish Government would support Mark Ruskell MSP, as designated Member, to take forward the ECLSG Bill to a Reconsideration Stage in the Parliament. <sup>4</sup>

## **Reconsideration of Bills Referred to the Supreme Court under Section 33 of the Scotland Act 1998**

The UNCRC and ECLSG Bills were referred to the Supreme Court under section 33 of the Scotland Act 1998 and are expected to return to the Parliament for a Reconsideration Stage. Section 33 of the Scotland Act 1998 allows for legal scrutiny of Bills passed to consider whether the Bill (or any provision of the Bill) would be within the legislative competence of the Parliament.

A summary of the procedure for reconsidering a Bill after the Supreme Court decides that the Bill (or any provisions of the Bill) would not be within the legislative competence of the Parliament is set out below:

1. The Member in charge of the Bill may propose a motion to initiate Reconsideration Stage proceedings.
2. If the motion is agreed, a Reconsideration Stage for the Bill may be held at a meeting of the Parliament.
3. Amendments to the Bill may be made but are only admissible if they are aimed at addressing the legislative competence problems that were the subject of the Supreme Court reference.
4. A final stage to approve or reject the amended Bill.

SPICe is publishing a briefing focusing on the procedure for reconsidering a Bill to address legislative competence problems - this is the procedure which will apply to the UNCRC and ECLSG Bills if they return to the Parliament. The briefing will be published on the [Scottish Parliament Digital Hub](#).



# The Gender Recognition Reform (Scotland) Bill (Prohibition on Submission for Royal Assent) Order 2023

The [Gender Recognition Reform \(Scotland\) Bill \(Prohibition on Submission for Royal Assent\) Order 2023](#) was made under [section 35 of the Scotland Act 1998](#) by the Secretary of State for Scotland Alister Jack MP on 17 January 2023 in the UK Parliament. The order came into force on 18 January 2023. The order prevents the [Gender Recognition Reform \(Scotland\) Bill](#), passed by the Scottish Parliament on 22 December 2022, from being submitted for Royal Assent. SPICe published an [Explainer on the Scotland Act 1998 Section 35](#) on 17 January 2023.

In a statement on the section 35 order to the House of Commons, UK Parliament, the Secretary of State said:

“ It is open to the Scottish Government to bring back an amended Bill for reconsideration in the Scottish Parliament.”

UK Government, 2023<sup>11</sup>

# Bibliography

- 1 The Scottish Parliament. (2021). United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill. Retrieved from <https://www.parliament.scot/bills-and-laws/bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill> [accessed 2 September 2022]
- 2 The Scottish Parliament. (2021). European Charter of Local Self-Government (Incorporation) (Scotland) Bill. Retrieved from <https://www.parliament.scot/bills-and-laws/bills/european-charter-of-local-self-government-incorporation-scotland-bill> [accessed 2 September 2022]
- 3 The Supreme Court. (2021). REFERENCE by the Attorney General and the Advocate General for Scotland - United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill REFERENCE by the Attorney General and the Advocate General for Scotland - European Charter of Local Self-Government (Incorporation) (Scotland) Bill. Retrieved from <https://www.supremecourt.uk/cases/uksc-2021-0079.html> [accessed 2 September 2022]
- 4 The Scottish Parliament Official Report. (2022, May 24). Meeting of the Parliament (Hybrid): European Charter of Local Self-Government (Incorporation) (Scotland) Bill and United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill. Retrieved from <https://www.parliament.scot/chamber-and-committees/official-report/what-was-said-in-parliament/meeting-of-parliament-24-05-2022?meeting=13769&iob=124923#2098> [accessed 2 September 2022]
- 5 The House of Commons Library. (2022, July 4). What happens when a devolved bill is referred to the UK Supreme Court?. Retrieved from <https://commonslibrary.parliament.uk/what-happens-when-a-devolved-bill-is-referred-to-the-uk-supreme-court/> [accessed 2 September 2022]
- 6 The Scotland Act. (1998). Retrieved from <https://www.legislation.gov.uk/ukpga/1998/46/contents> [accessed 2 September 2022]
- 7 The Scotland Act. (1998). Section 31(5). Retrieved from <https://www.legislation.gov.uk/ukpga/1998/46/section/31> [accessed 2 September 2022]
- 8 The Scottish Parliament. (2023, January 4). Standing Orders of the Scottish Parliament. Retrieved from <https://www.parliament.scot/about/how-parliament-works/parliament-rules-and-guidance/standing-orders/chapter-9-public-bill-procedures> [accessed 27 January 2023]
- 9 The Scottish Parliament. (2022, March 15). Guidance on Public Bills. Retrieved from <https://www.parliament.scot/about/how-parliament-works/parliament-rules-and-guidance/guidance-on-public-bills> [accessed 2 September 2022]
- 10 The Scottish Parliament Chamber Office. (2022). Guidance on Motions. Retrieved from <https://www.parliament.scot/-/media/files/chamber-office/guidance-on-motions.pdf> [accessed 2 September 2022]

- 11 UK Government. (2023, January 17). Oral statement by Scottish Secretary Alister Jack to the House of Commons today in relation to the Gender Recognition Reform (Scotland) Bill. Retrieved from <https://www.gov.uk/government/speeches/statement-gender-recognition-reform-scotland-bill> [accessed 26 January 2023]

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