

Supreme Court judgment sends Scottish laws back to Holyrood

The Supreme Court ruled earlier today on a referral by the UK law officers – the Attorney General and the Advocate General – to consider if legislation passed by The Scottish Parliament earlier this year is within the competence of the devolved government. These matters were heard at the Supreme Court in June of this year.

The highest civil court has decided that The Scottish Government breached its legislative competence as set out in the Scotland Act. The bills will now return to the parliament for further consideration.

The court ruled that Section 28 (7) of the Scotland Act

preserves the “unqualified power” to the UK Parliament to make laws for Scotland. Any provision of any act which is passed by the Scottish Parliament which tries to modify S28(7) means that the new laws passed are not within the parliament’s competence.

But the decision delivered by Lord Reed makes it clear that in trying to incorporate the United Nations Convention on the Rights of a Child into Scottish law is not the part which is at issue. It is purely the matter of whether it is competent for the Scottish Parliament to legislate on matters which are only within the competence of the UK Parliament.

There was much cheering at Holyrood in March of this year when this “landmark” Act was passed unanimously. It was held up as a beacon of good practice and Scotland was to become the first devolved nation in the world to directly incorporate UNCRC into domestic law which meant that local authorities would have to comply with children’s rights in the fields of education, health, leisure and play.

The Deputy First Minister said that he is keen for work on the legislation to continue. He said: “While we fully respect the court’s judgment and will abide by the ruling, we cannot help but be bitterly disappointed. It makes plain that we are constitutionally prohibited from enacting legislation that the Scottish Parliament unanimously decided was necessary to enshrine and fully protect the rights of our children.

“The judgment exposes the devolution settlement as even more limited than we all – indeed the Scottish Parliament itself - had understood. It sets out new constraints on the ability of our elected Scottish Parliament to legislate to protect children’s rights in the way it determines.

“There is no doubt that the implications of this judgment are significant from a children’s rights perspective. This Bill will not now become law in the form which our Parliament

agreed, but we remain committed to the incorporation of the UNCRC to the maximum extent possible as soon as practicable. Whilst the judgment means that the Bill cannot receive Royal Assent in its current form, the majority of work in relation to implementation of the UNCRC can and is continuing.

“The UNCRC is the most widely ratified international treaty, but very few countries have committed to take the journey that Scotland so clearly wants to take. To everyone who has walked with us this far on that journey, encouraging us along the way, I want to reassure you that we will reach our destination. This Government remains committed to the incorporation of the UNCRC to the maximum extent possible.

“There is no doubt that we may not yet wholly comprehend all the implications from this judgement – it will require careful consideration and I will keep Parliament updated.”

Children and Young People’s Commissioner Scotland Bruce Adamson said: “Scotland is committed to protecting the rights of children and young people. The Scottish Parliament was unanimous in its support for this law which would ensure that decisions are taken in children’s best interest; that children have a say in decision making; and that all available resources are used to the maximum extent possible to fulfil rights like education, health, and an adequate standard of living – and that there is accountability when things go wrong.

“The last 18 months have shown just how urgent it is to strengthen rights protections for children. We will work with the Scottish Government and the Scottish Parliament in its role as a Human Rights Guarantor to get this done as soon as possible.”

The Supreme Court also ruled that certain provisions in the European Charter of Local Self-Government (Incorporation) (Scotland) Bill are outwith the competence of the Scottish

Parliament. The Bill, which was intended to further strengthen the relationship between The Scottish Government and local government, began as a Member's Bill and was passed unanimously by The Scottish Parliament last March.

Scottish Secretary Alister Jack said: "I welcome the UK Supreme Court's decision, which provides vital legal clarity on these two bills.

"As set out in the Scotland Act 1998, the Scottish Parliament cannot legislate outwith its areas of competence.

"As we have been clear, our concerns were never to do with the policy of the Bills, but about whether they are within the legislative competence of the Scottish Parliament.

"We will continue to work collaboratively with the Scottish Government to address any competence concerns with future Scottish Parliament legislation."

Political response

Scottish Greens human rights spokesperson Maggie Chapman MSP said: "This is a dark day for democracy in the UK. The fact the UK Government has used the courts to overturn a decision by The Scottish Parliament to protect the rights of children reveals their disregard for human rights and their true intentions when it comes to respecting the will of the devolved nations.

"The idea that this UK Government sees international law and human rights as a hindrance to their policy decisions is chilling. On top of this, they want to impose those values on Scotland.

"Boris Johnson's government is rewriting democracy to ensure the Conservatives have an in-built majority across the UK and can ignore the devolved parliaments. It is becoming clearer than ever that Scotland needs a way out, to chart a different

path as a modern progressive nation that respects human rights and looks after our children.”

Scottish Conservative Shadow Cabinet Secretary for the Constitution, Donald Cameron MSP, said: “This unanimous Supreme Court judgement confirms that the SNP shamefully used children’s rights to play nationalist games.

“There was never any dispute over the substance of the policy, only the legality of parts of the Bill. The Scottish Conservatives supported this legislation from the outset whilst pointing out the legal problems.

“But the SNP sought to politicise it from the very beginning. They cynically engineered and manipulated the timing of the Bill to facilitate a pre-election stunt where they provoked a grievance with the UK Government.

“The instant response from John Swinney to this decision was to make it all about nationalism, instead of focusing on children’s rights.

“The SNP’s disgraceful approach has delayed a Bill on children’s rights that every party in the Scottish Parliament supported. We hope they will now hastily apologise for doing so and make the necessary changes immediately so that this legislation, that all MSPs support, can be passed.

“The Scottish Conservatives are building the real alternative to the SNP so we can end this era of divisive nationalism for good.”

Scottish Labour’s Constitution spokesperson Sarah Boyack said: “This court case has been a needless distraction from what really matters.

“This damning verdict makes it clear that the SNP have been playing cynical political games at the expense of children’s human rights.

“This never should have been about petty constitutional bickering – it should have been about putting children’s rights front and centre and empowering our councils to make decisions in their communities.

“It is shameful that both sides have let this fiasco undermine meaningful and progressive legislation. Scotland deserves better.

“The SNP must act urgently to get these laws fit for purpose and in place, so we can focus on how to make these principles a reality.”

Pamela Nash, chief executive of pro-UK campaign group, Scotland in Union, said: “This was nothing but irresponsible gameplaying by the SNP.

“This Bill had cross-party support and could have been implemented with some minor amendments, but the nationalists saw an opportunity for a constitutional fight instead.

“The people of Scotland deserve better than politicians who put grievance ahead of governance.

“This ruling is a reminder to the SNP Government which wants to waste more taxpayers’ money on a court battle over a second referendum that it should instead focus on using its extensive existing powers and stop trying to undermine devolution.”