



MINISTERIO
DE ASUNTOS EXTERIORES,
UNIÓN EUROPEA
Y COOPERACIÓN

**TRIBUNAL CALIFICADOR
PRUEBAS PARA EL INGRESO EN EL CUERPO
DE TRADUCTORES E INTÉRPRETES DEL
ESTADO**

*Resolución de 10 de octubre de 2022
(BOE núm. 247, del 14.10.2022)*

TRADUCCIÓN INGLÉS-CASTELLANO

(Perfiles 1, 2, 4, 8 y 13)

SUPREME COURT OF THE UNITED KINGDOM REFERENCE by the Attorney General and the Advocate General for Scotland - United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill

JUDGMENT GIVEN ON 6 October 2021

Heard on 28 and 29 June 2021

On 16 March 2021 the Scottish Parliament passed the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill (“the UNCRC Bill”).

Her Majesty’s Attorney General and Her Majesty’s Advocate General for Scotland have referred to the Supreme Court the question whether certain provisions of that Bill would be within the legislative competence of the Scottish Parliament.

The Bill is designed to give effect to a treaty to which the UK is a signatory: the United Nations Convention on the Rights of the Child (“the UNCRC”). The UNCRC was ratified by the UK in 1991. It is reflected in a number of provisions of domestic law, but has not been incorporated as a whole.

This reference takes issue with the Scottish Parliament’s decision to incorporate the UNCRC. That is recognised to be a matter for the Scottish Parliament. The reference reflects concerns that some of the provisions of the Bill would impinge on matters which lie outside the legislative competence of the Scottish Parliament.

In broad terms, two principal questions of law are raised. The first is whether certain of the provisions would affect the power of Parliament to make laws for Scotland, thereby modifying section 28 of the Scotland Act, in breach of the limitation on the Scottish Parliament’s competence imposed by section 29 of that Act. The second question is whether certain provisions which, on their face, admittedly exceed the legislative competence of the Scottish Parliament, can be interpreted as being within its competence by means of recourse to the interpretative obligation set out in section 101 of the Scotland Act.

The answers to these questions are potentially relevant not only to the Scottish Parliament but also to the other devolved legislatures of the UK. The Counsel General for Wales has therefore been represented in these proceedings and has presented submissions to the court.

The Scottish Parliament is a democratically elected legislature with a mandate to make laws for Scotland. It has plenary powers within the limits of its legislative competence. But it does not enjoy the sovereignty of the Crown in Parliament: rules delimiting its legislative competence are found in section 29 of and Schedules 4 and 5 to the Scotland Act, to which the courts must give effect.

The Scotland Act must be interpreted in the same way as any other statute. The courts have regard to its aim to achieve a constitutional settlement and therefore recognise the importance of giving the Scotland Act a consistent and predictable interpretation, so that the Scottish Parliament has a coherent, stable and workable system within which to exercise its legislative power. That is achieved by interpreting the rules as to competence in the Scotland Act according to the ordinary meaning of the words used.



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Section 29(2) provides, so far as material:

“A provision is outside [the competence of the Scottish Parliament] so far as any of the following paragraphs apply -

(a) it would form part of the law of a country or territory other than Scotland, or confer or remove functions exercisable otherwise than in or as regards Scotland; (...)

According to Schedule 4, “An Act of the Scottish Parliament cannot modify, or confer power by subordinate legislation to modify, the law on reserved matters.”

The meaning of “modify” has already been considered by the court: “Without attempting an exhaustive definition, a protected enactment will be modified by a later enactment, even in the absence of express amendment or repeal, if it is implicitly amended, disappplied or repealed in whole or in part. That will be the position if the later enactment alters a rule laid down in the protected enactment, or is otherwise in conflict with its unqualified continuation in force as before.