



Education, Children and Young People Committee  
By e-mail

7<sup>th</sup> March 2022

Dear Convener and Committee,

### **Coronavirus (Recovery and Reform) (Scotland) Bill**

Thank you for the opportunity to provide further information following my evidence to your committee on the above bill on 2<sup>nd</sup> March.

The emergency powers contained within the Bill have the potential to significantly interfere with the rights of children and young people. We consider that parliamentary scrutiny at the time legislative powers come into force is an important safeguard to ensure that any future use of these powers, by any future government, is compatible with human rights standards. We feel it may be possible that the current bill could be amended to provide for this scrutiny to occur before emergency powers are brought into force, but I would draw your attention to our previous evidence outlining our concerns on the use of the made affirmative procedure<sup>1</sup>.

An alternative, as outlined in our Stage 1 evidence, would be for draft legislation to be kept under regular review as part of resilience planning, with opportunities for participation of children and young people in that review process. Appropriate legislation could then be fine-tuned and introduced to parliament on an emergency basis when required. This would also avoid the risk of legislating for the last emergency, rather than the next one.

What is crucial is that the emergency legislation is subject to parliamentary scrutiny in the context in which it is used and that both parliamentarians and the public are reassured that any human rights interferences are subject to the tests of being lawful, proportionate and necessary in the specific context at the time. Their introduction should also be time-limited with the possibility of additional parliamentary scrutiny when they are extended. As we outlined in our evidence, we feel that the Scottish Parliament is more than capable of meeting that challenge.

The European Court of Human Rights has tended to highlight the importance of robust parliamentary scrutiny. This will increase following the changes agreed at the Brighton Conference, which introduced the principle of subsidiarity and the doctrine of the margin of appreciation into the Pre-ambles of the ECHR<sup>2</sup>. This means that the Court is likely to

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<sup>1</sup> <https://www.cypcs.org.uk/resources/made-affirmative/>

<sup>22</sup> Stanculescu, D. Subsidiarity and the Margin of Appreciation in Protocol 15 of the ECHR: substantial or symbolic change? (2021) <https://www.publicinternationallawandpolicygroup.org/lawyer-justice-blog/2021/7/5/subsidiarity-and-the-margin-of-appreciation-in-protocol-15-of-the-echr-substantial-or-symbolic-change>

provide States' with a greater degree of latitude where interferences with human rights have been subject to robust parliamentary scrutiny.

We remain of the view that the most appropriate way to ensure parliament and public scrutiny of emergency regulations in any future pandemic or other national emergency is for primary legislation to be introduced at that time. However, we also call on the Scottish Government to ensure that children and young people have the opportunity to participate in resilience and emergency planning, so that their rights are not overlooked again.

Yours faithfully,

Megan Farr  
**Policy Officer**