

# Agenda – Equality, Local Government and Communities Committee

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Meeting Venue:

Committee Room 3 – Senedd

Meeting date: 6 February 2019

Meeting time: 10.00

For further information contact:

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Committee Clerk

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## 1 Introductions, apologies, substitutions and declarations of interest

10:00

## 2 Papers to note

### 2.1 Response from the Equalities and Human Rights Committee in relation to their inquiry: Getting Rights Right – Inquiry into Human Rights and the Scottish Parliament

(Pages 1 – 109)

## 3 Motion under Standing Order 17.42 (vi) to resolve to exclude the public from the remainder of the meeting

## 4 Inquiry into diversity in local government: consideration of the key issues

(10:00–10:45)

(Pages 110 – 137)



# Agenda Item 2.1

## Equality, Local Government and Communities Committee

6 February 2019 – papers to note cover sheet

Paper no.	Issue	From	Action point
ELGC(5)-05-19 Paper	Inquiry into Human Rights in Wales	Ruth Maguire Convener, Scottish Parliament	Response from the Equalities and Human Rights Committee in relation to their inquiry: Getting Rights Right – Inquiry into Human Rights and the Scottish Parliament

John Griffiths AM  
Chair  
Equality, Local Government and  
Communities Committee  
National Assembly for Wales  
Cardiff  
CF99 1NA

[Via email only](#)

28 January 2018

Dear John Griffiths AM,

### **Getting Rights Right - Inquiry into Human Rights and the Scottish Parliament**

Last year the Equalities and Human Rights Committee held an inquiry into human rights within the Scottish Parliament. This inquiry fulfils recommendation 30 of the independent Commission on Parliamentary Reform's [Report](#), which asked the Committee to investigate how the Scottish Parliament's role as a human rights guarantor could be strengthened.

Our [Report](#) sets out a road map for human rights in the Scottish Parliament. It addresses how the Committee will approach the subject of human rights within its remit and identifies further areas for inquiry. We have asked for Standing Orders to be amended to make human rights a mandatory subject matter.

The Committee also makes a number of recommendations directed at the Scottish Parliament, its Parliamentary Committees, the Scottish Government and the Scottish Human Rights Commission as you'll see from our Summary of Recommendations.

I also draw to your attention the [Report](#) of the First Minister's independent Advisory Group on Human Rights Leadership, published 10 December, which recommends an Act of the Scottish Parliament to provide a framework for human rights. This Bill is anticipated to be introduced in the next session of the Parliament.

The Committee also held an event "Human Rights Take Over!", which launched the Committee's Report in December 2018. I've included a [link](#) to the video of the event where you can listen to the speeches and panel session, which set out progress in Scotland and current human rights concerns.

We believe implementing the recommendations in our Report will put the Scottish Parliament at the forefront of international best practice on human rights.

I'd be happy to discuss any of the recommendations set out in our Report in more detail.

Yours sincerely,

A handwritten signature in black ink that reads "Ruth Maguire". The signature is written in a cursive, flowing style.

Ruth Maguire MSP  
Convener  
Equalities and Human Rights Committee

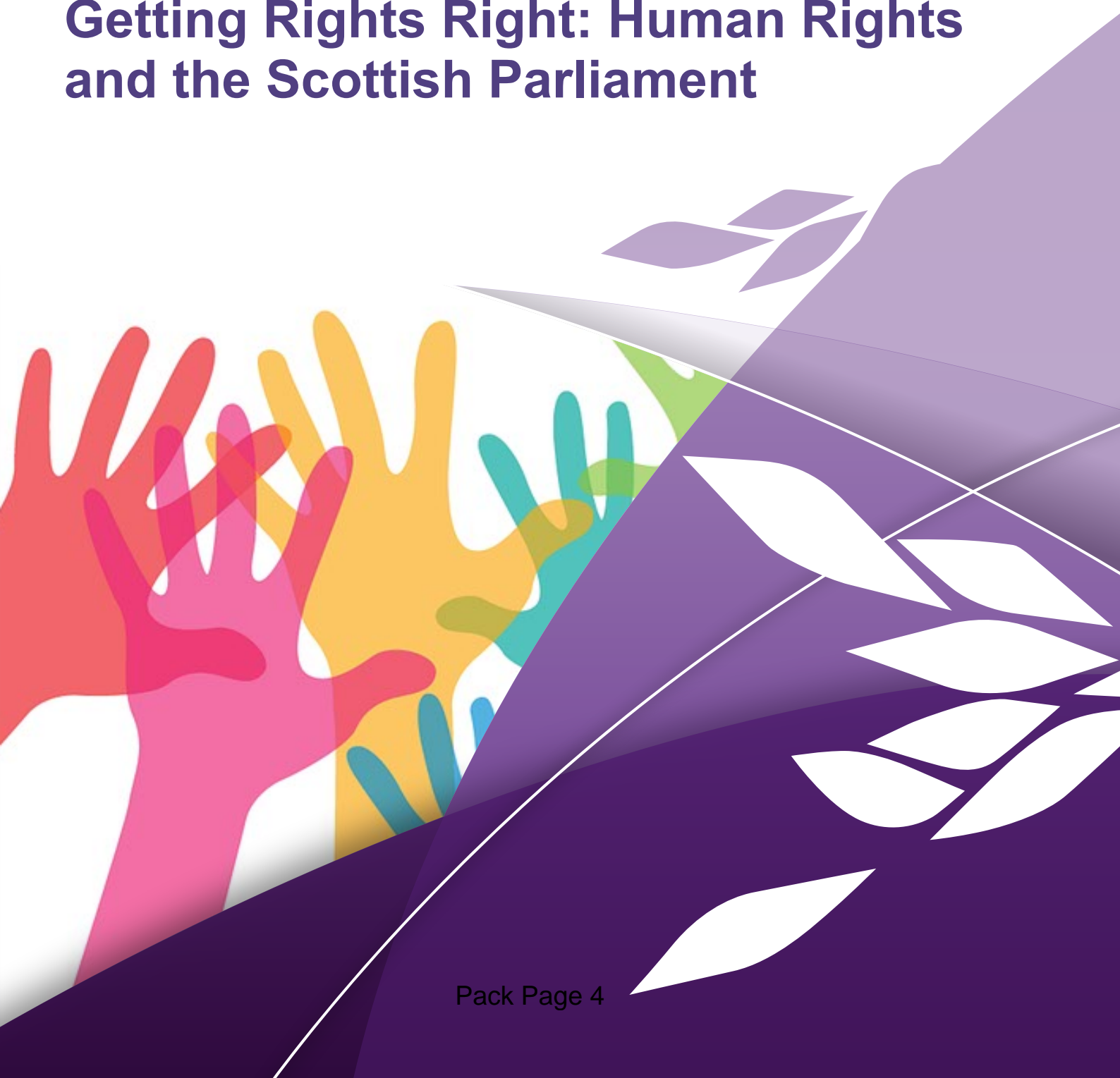


The Scottish Parliament  
Pàrlamaid na h-Alba

Published 26 November 2018  
SP Paper 431  
6th Report, 2018 (Session 5)

**Equalities and Human Rights Committee**  
**Comataidh Co-ionannachd agus Còraichean Daonna**

**Getting Rights Right: Human Rights  
and the Scottish Parliament**



**Published in Scotland by the Scottish Parliamentary Corporate Body.**

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# Contents

<b>Foreword from the Convener</b>	<b>1</b>
<b>Summary of Key Recommendations</b>	<b>5</b>
<b>Introduction</b>	<b>8</b>
Background	8
The need for an inquiry	8
Our approach	8
Commission on Parliamentary Reform	9
Appointment of an adviser	10
Human rights development	10
Evidence gathering and engagement activities	10
<b>Human rights challenges facing Scotland</b>	<b>14</b>
The UK's withdrawal from the European Union	14
Need for monitoring for EU human rights protections	15
Keeping pace with EU human rights protection	16
Perceived threat to the European Convention on Human Rights	16
Conclusion	16
Austerity	17
Socio-economic disadvantage	18
Human rights-based approach to budgeting	18
Scottish Government approach to tackling poverty	18
Barriers faced by protected characteristics groups and other vulnerable groups	19
Rights for people experiencing mental health problems	20
Children's rights	20
The need for rights' advocacy support	20
Conclusion	21
<b>Leadership in Human Rights</b>	<b>22</b>
Civic society	22
The Scottish Government	22
The Scottish Parliament	23
Conclusion	23
The Human Rights 'Voice' in the Parliament	24
Conclusion	24
<b>The human rights framework</b>	<b>25</b>
Background	25

Understanding the human rights framework _____	26
International human rights framework _____	26
International treaty monitoring _____	28
The Universal Periodic Review _____	29
Scottish Government accountability against international human rights standards _____	29
Parliaments' engagement with the United Nation _____	30
Conclusion _____	31
A Scottish mechanism for implementation, reporting and follow up _____	32
Scotland's National Action Plan for human rights _____	33
Conclusion _____	33
Third sector involvement in UN rights treaty monitoring _____	34
Conclusion _____	34
<b>European human rights protections _____</b>	<b>36</b>
The European Convention on Human Rights _____	36
EU Charter of Fundamental Rights _____	36
<b>Access to justice for human rights breaches _____</b>	<b>38</b>
Routes for legal redress _____	38
Roles of inspection, regulatory and complaints bodies _____	38
Improving current enforcement and remedies _____	39
Conclusion _____	40
Incorporation of international human rights law into Scots Law _____	40
Alternatives to incorporation _____	42
Conclusion _____	43
<b>Building a culture of human rights _____</b>	<b>44</b>
Embedding human rights across the Scottish Parliament _____	44
National human rights institution _____	45
The equalities and human rights remit _____	46
Conclusion _____	48
Permanency of the human rights remit _____	48
Conclusion _____	49
<b>Human rights scrutiny _____</b>	<b>51</b>
Human rights and legislative competence _____	51
The Scotland Act 1998 _____	51
Statements on legislative competence _____	51
Conclusion _____	52
Availability of human rights information to inform parliamentary scrutiny _____	53

Human rights memorandums _____	54
Conclusion _____	55
Legislative and policy impact assessments _____	56
Human rights impact assessment _____	56
Conclusion _____	57
Joint equalities and human rights impact assesment _____	58
Conclusion _____	58
Systematic legislative scrutiny _____	59
Conclusion _____	60
Potential further areas _____	61
Implementation of delegated powers _____	61
Post-legislative scrutiny _____	62
Conclusion _____	62
<b>A human rights-based approach to conducting scrutiny _____</b>	<b>64</b>
Balancing rights _____	64
Human rights-based approaches _____	65
Participation and engagement _____	68
Conclusion _____	68
Childrens and young people's participation _____	69
Conclusion _____	70
Increasing awareness about human rights _____	71
Conclusion _____	71
Building capacity _____	71
Human rights professional development _____	72
Conclusion _____	72
Human rights Champions _____	73
Conclusion _____	73
<b>Implementation and resourcing _____</b>	<b>75</b>
<b>Annex A - Gypsy Travellers in Scotland - A Human Rights Case Study _____</b>	<b>76</b>
Acronyms used in this Annex _____	80
<b>Annex B - Extract from Minutes _____</b>	<b>81</b>
<b>Annex C - Glossary of terms and acronyms _____</b>	<b>82</b>
<b>Annex D - Written Evidence _____</b>	<b>85</b>
<b>Bibliography _____</b>	<b>86</b>

# Equalities and Human Rights Committee

To consider and report on matters relating to equal opportunities and upon the observance of equal opportunities within the Parliament (and any additional matter added under Rule 6.1.5A). In these Rules, “equal opportunities” includes the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds or on grounds of disability, age, sexual orientation, language or social origin or of other personal attributes, including beliefs or opinions such as religious beliefs or political opinions. Human rights, including Convention rights (within the meaning of section 1 of the Human Rights Act 1998) and other human rights contained in any international convention, treaty or other international instrument ratified by the United Kingdom.



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/Equalities-Human-Rights-Committee.aspx>



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# Committee Membership



**Convener**  
**Ruth Maguire**  
Scottish National Party



**Deputy Convener**  
**Alex Cole-Hamilton**  
Scottish Liberal  
Democrats



**Mary Fee**  
Scottish Labour



**Fulton MacGregor**  
Scottish National Party



**Oliver Mundell**  
Scottish Conservative  
and Unionist Party



**Gail Ross**  
Scottish National Party



**Annie Wells**  
Scottish Conservative  
and Unionist Party

# Foreword from the Convener



Where, after all, do **universal human rights** begin? In small places, **close to home** - so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the **individual person**; the **neighbourhood** he lives in; the school or college he attends; the factory, farm, or office where he works. **Such are the places** where every **man, woman, and child** seeks **equal justice**, equal opportunity, equal dignity **without discrimination**. Unless these rights have meaning there, they have little meaning anywhere. Without concerted **citizen action** to uphold them close to home, we shall look in vain for progress in the larger world.

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**Eleanor Roosevelt**

Source: Eleanor Roosevelt, speech to the United Nations, 1948

2018 is an extraordinary year for human rights. Monday 10 December 2018 will mark the 70th anniversary of the Universal Declaration of Human Rights (UDHR). The UDHR, which set out for the first time fundamental human rights to be universally protected, shows what we can achieve when we work together on a shared vision for humanity. It remains as relevant today as it was on the day in 1948 that it was adopted by the United Nations General Assembly.

This year also sees the 20<sup>th</sup> anniversary of the Declaration on Human Rights Defenders. That Declaration emphasises that we all have a role to fulfil as human rights defenders in a global human rights movement.

Domestically, the Human Rights Act 1998 and the Scotland Act 1998 are 20 years old too. The Human Rights Act brings the substantive articles of the European Convention on Human Rights (ECHR) into UK law and the Scotland Act 1998 ensures that Scottish legislation must be compatible with ECHR and EU law.

The Scottish Parliament is therefore rooted in human rights. Human rights are at its very foundation, its core. They are expressed through the founding principles of the Parliament: power sharing, accountability, accessibility and equal opportunities. Caring about human rights opens the potential to deliver dignity, fairness, equality, and respect for all.

Over the last two decades the Parliament has been at the forefront in developing a culture of human rights. This is demonstrated by the establishment of the Children's and Young People's Commissioner for Scotland and the Scottish Human Rights Commission. Most recently the creation of the Equalities and Human Rights Committee has again shown the Parliament's continued commitment to leadership in human rights.

Internationally, the role of national parliaments has been increasingly recognised in recent years as crucial for two reasons. The first is to achieve more effective implementation at

national level of the international human rights obligations voluntarily undertaken by states. The second is to ensure that elected politicians are involved in implementation and thereby democratically legitimise the national measures taken to implement the international obligations. The United Nations <sup>1</sup>, Council of Europe <sup>2</sup>, European Union <sup>3</sup> and the Commonwealth <sup>4</sup> have all recently focused attention on the role of national parliaments as the ‘guarantors’ of human rights.

António Guterres, Secretary General to the United Nations, said in his Report to the General Assembly last year—

” At the national level, Parliaments play a crucial role in the promotion and protection of human rights as legislators and as overseers. They lay the foundation for the rule of law and the respect for and protection of human rights

Source: Equalities and Human Rights Committee 21 June 2018, Gianni Magazzeni (Office of the United Nations High Commissioner for Human Rights), contrib. 2<sup>1</sup>

At the national level, parliaments play a crucial role in the promotion and protection of human rights as legislators and as overseers. They lay the foundation for the rule of law and the respect for and protection of human rights. <sup>5</sup>

He also emphasised the important role of parliaments in ensuring transparency and accountability for states’ performance of their human rights obligations and in following up and ensuring the implementation of recommendations from regional and international human rights mechanisms.

On 26 October 2016, an independent Commission on Parliamentary Reform was established by the Presiding Officer to look at how the Scottish Parliament can engage better with the people of Scotland and how its work can be improved to deliver better scrutiny. The Commission for Parliamentary Reform received calls for the Parliament to be a ‘human rights guarantor’ from the Scottish Human Rights Commission and some civic society groups. This subsequent inquiry provides a real opportunity for the Scottish Parliament to lead the way over the next decade in developing and modelling good practice, both at home and globally.

Members of national parliaments are the closest representatives of the people, and have a unique power, and responsibility, to:

- have a legislative framework that promotes and protects human rights
- ensure implementation of international human rights obligations
- ensure adequate funding for the effective protection of human rights through the budgetary process
- scrutinise the Government’s performance of its human rights obligations, and
- raise awareness of human rights issues in Scotland

Our Report sets out a human rights’ ‘road map’ for the Parliament. As we leave the EU our human rights framework in Scotland will change significantly. <sup>6</sup> Our recommendations present an opportunity to be bolder and to strengthen our existing procedures and processes, to make human rights more central to our work and how we undertake our scrutiny function and to be an exemplar of international best practice to other parliaments.

Taking a human rights-based approach to scrutiny will ensure the Parliament is aware of any decline of human rights protections and is able to identify opportunities to advance human rights to help build a fairer, more just society. We look to develop this approach.

Increased Parliamentary literacy in human rights will, we believe, provide the necessary leadership for the Parliament to drive forward a culture of human rights in Scotland alongside the Government, the courts, our NHRIs, civil society and, importantly, with the people of Scotland.

In becoming a stronger human rights guarantor, the Scottish Parliament will be alert and prepared to respond and act upon whatever human rights' challenges lie before it.

**Ruth Maguire MSP**

**Convener of the Equalities and Human Rights Committee**

Key recommendations from the report



Source: Scottish Parliament

# Summary of Key Recommendations

TIMESCALE	RECOMMENDATIONS FOR THE EQUALITIES AND HUMAN RIGHTS COMMITTEE (22)
Ongoing	<b>Recommendation 3: Budgetary matters</b> -Develop scrutiny of human rights through the Scottish budget process.
Ongoing	<b>Recommendation 6: Leadership in Human Rights</b> - Develop the human rights 'voice' of the Committee.
Ongoing	<b>Recommendation 7: International treaty monitoring</b> - Engage with treaty bodies and UN Human Rights Council.
Ongoing	<b>Recommendation 20 : Equalities and Human Rights Committee</b> - Provide human rights leadership in the Parliament, through a 'road map' for progress.
When Available	<b>Recommendation 16 : First Minister's Advisory Group</b> - Scrutinise the method chosen to incorporate the UN Convention on Rights of the Child.
Immediate priority	<b>Recommendation 2 : The UK's withdrawal from the European Union</b> – Increase Scottish human rights 'voice' in the UK through Joint Committee on Human Rights and the Women and Equalities Committee at Westminster.
Immediate priority	<b>Recommendation 40: Implementation</b> – Create a detailed action plan to support the implementation of the Report recommendations.
Immediate priority	<b>Recommendation 11: International treaty monitoring</b> – Create a Scottish mechanism for implementation, reporting and follow up, modelled on the NMIRFs recommended by the UN.
Implementation within the next 12 months	<b>Recommendation 5: Leadership in Human Rights</b> – Receive a Scottish Government Annual Human Rights Report and scrutinise it annually
Start 1-3 years	<b>Recommendation 4 : Equalities and Human rights advocacy support</b> – Investigate the capacity and resourcing of civic society equalities and human rights advocacy.
Start 1-3 years	<b>Recommendation 12: International treaty monitoring</b> – Develop a systematic approach to sharing with Committees international monitoring information whilst waiting on the creation of a database.
Start 1-3 years	<b>Recommendation 13: Scotland's National Action Plan for Human Rights</b> – Hold an annual evidence session on Scotland's National Action Plan and Parliamentary debate.
Start 1-3 years	<b>Recommendation 13: Scotland's National Action Plan for human rights</b> - Develop a plan in the Parliament to engage with Scotland National Action Plan
Start 1-3 years	<b>Recommendation 15: Enforcement and remedies</b> – Investigate strengthening powers of the Scottish Human Rights Commission. Also, consider human rights and regulatory or inspection regimes.
Start 1-3 years	<b>Recommendation 19: Equalities and Human Rights Committee</b> – Integrate approach to equalities and human rights in the Parliament and Scotland.
Start 1-3 years	<b>Recommendation 22: Equalities and Human Rights Committee</b> – Produce guidance to embed and support human rights in the work of the Parliaments and its Committees.
Start 1-3 years	<b>Recommendation 31: Post-legislative scrutiny</b> – Identify Acts with significant human rights impact and prioritise for post-legislative scrutiny.
Start 1-3 years	<b>Recommendation 31: Post-legislative scrutiny</b> – Develop guidance with the Public Audit and Post-Legislative Scrutiny Committee for Committees when conducting such post-legislative human rights scrutiny.
Start 1-3 years	<b>Recommendation 32: A human rights-based approach to scrutiny</b> – Develop an approach to scrutiny. (Jointly with Scottish Human Rights Commission)
1 year after operation	<b>Recommendation 38 : Building capacity</b> - Review operation of human rights Champions approach after one year.
Before the end of the Parliamentary session in 2021	<b>Recommendation 39: Implementation</b> – Review operation of the Human Rights Action Plan annually and report more fully on progress before the end of Parliament.
Start 3-6 years	<b>Recommendation 10: International treaty monitoring</b> – Hold Parliamentary debate one per Universal Periodic Review cycle.

TIMESCALE	RECOMMENDATIONS FOR OTHER SCOTTISH PARLIAMENT COMMITTEES (7)
Ongoing	<b>Recommendation 36: Building capacity</b> - Commission human rights training (relevant to remit) to assist with their work programme.
Start 1 year	<b>Recommendation 37: Building capacity</b> - Identify a human rights Champion for each Committee.
Start 1-3 years	<b>Recommendation 9: International treaty monitoring</b> - Scrutiny of Universal Periodic Review by other Committees.
Start 1-3 years	<b>Recommendation 17: First Minister's Advisory Group</b> - Engagement with Advisory Group recommendations.
Start 1-3 years	<b>Recommendation 18: Scottish Human Rights Commission</b> - Strengthen relationship with Scotland's national human rights institute - the Scottish Human Rights Commission.
Start 1-3 years	<b>Recommendation 30: Systematic legislative scrutiny</b> - Consider outstanding subordinate legislation/delegated powers to be brought into force with a view to make rights more effective.
Start 1-3 years	<b>Recommendation 31: Post-legislative scrutiny</b> - Develop post-legislative scrutiny Committee guidance for Committees when conducting post-legislative human rights scrutiny. (Public Audit and Post-Legislative Scrutiny Committee and the Equalities and Human Rights Committee)

TIMESCALE	RECOMMENDATIONS FOR THE SCOTTISH PARLIAMENT (8)
Ongoing	<b>Recommendation 40: Resourcing</b> - Resource initiatives, such as work with the international human rights system, legal support to systematise scrutiny of human rights, and the development and delivery of human rights induction and training.
Start 1-3 years	<b>Recommendation 29 : Systematic legislative scrutiny</b> - Pilot systematic human rights scrutiny of Government Bills with a dedicated legal adviser, who would also support international work.
Start 1-3 years	<b>Recommendation 21 : Equalities and Human Rights Committee</b> - Amend Standing Orders to make the Equalities and Human Rights Committee a mandatory Committee of the Parliament.
Start 1-3 years	<b>Recommendation 23: Legislative competence</b> - Expand, as possible, the Presiding Officer's statement of legislative competence to inform debate on human rights.
Start 1-3 years	<b>Recommendation 33: A human rights-based approach to scrutiny</b> - Undertake an investigation to ensure younger children's voices, and children's voices in general, are heard by the Parliament across subject areas and that they are engaged appropriately with work of MSPs and the Parliament.
Start 1-3 years	<b>Recommendation 35: Building capacity</b> - Develop and deliver tailored induction and training on human rights for Members and staff who support committees. (With the Scottish Human rights Commission)
Start 3-6 years	<b>Recommendation 12: International treaty monitoring</b> - Establish international treaty monitoring database system for Scotland. (With Scottish Government and the Scottish Human Rights Commission).
Start 3-6 years	<b>Recommendation 34: A human rights-based approach to scrutiny</b> - Develop a monitoring mechanism to measure the effectiveness of the Parliament's human rights participation work to inform future action and to encourage a range of views, including those of marginalised groups.

## Equalities and Human Rights Committee

Getting Rights Right: Human Rights and the Scottish Parliament, 6th Report, 2018 (Session 5)

TIMESCALE	RECOMMENDATIONS FOR THE SCOTTISH GOVERNMENT (10)
Immediate priority	<b>Recommendation 1: The UK's withdrawal from the European Union</b> - Develop a post-Brexit monitoring mechanism to report developments and divergences in UK and EU human rights protections.
Implementation within the next 12 months	<b>Recommendation 5: Leadership in human rights</b> - Provide a Scottish Government annual human rights report for the Equalities and Human Rights Committee to scrutinise.
Immediate priority	<b>Recommendation 11: International treaty monitoring</b> - Create a Scottish mechanism for implementation, reporting and follow up, as recommended by the United Nations. (Input from Equalities and Human Rights Committee)
Immediate priority	<b>Recommendation 16 : First Ministers Advisory Group</b> - Identify timescale for incorporation of the United Nations Convention on the Rights of the Child
Start 1-3 years	<b>Recommendation 9: International treaty monitoring</b> - Provide a timetable for Scottish Government Universal Periodic Review actions; within 2 years add recommendations/actions for other UN treaty bodies and Special Rapporteurs.
Start 1-3 years	<b>Recommendation 14: Third sector UN rights treaty monitoring</b> - Resourcing of civic society to improve engagement with the United Nations.
Start 1-3 years	<b>Recommendation 14: Third sector UN rights treaty monitoring</b> - Develop an approach to up-skill civic society on UN treaty monitoring.
Start 1-3 years	<b>Recommendation 24: Availability of human rights information</b> - Provide a Human Right Memorandum to increase engagement of stakeholders with human rights issues.
Start 1-3 years	<b>Recommendation 25: Availability of human rights information</b> - Human rights Memorandum should include compatibility with relevant human rights obligations (including UN treaties obligation) as well as ECHR, and opportunities to advance human rights, as well as an assessment of the Bill's impact on those rights.
Start 1-3 years	<b>Recommendation 30: Systematic legislative scrutiny</b> - Human rights consideration of outstanding subordinate legislation/delegated powers to be brought into force to make rights more effective.
Start 3-6 years	<b>Recommendation 12: International treaty monitoring</b> - Establish an accessible international treaty monitoring database system for Scotland. (With the Scottish Human Rights Commission and the Parliament)
Start 3-6 years	<b>Recommendation 26: Legislative and policy impact assessment</b> - Develop and agree a template for an 'impact and opportunity assessment'. (With the Scottish Human Rights Commission and the Equalities and Human Rights Commission)
Start 3-6 years	<b>Recommendation 27: Legislative and policy impact assessment</b> - Improve pre-legislative consultations to encourage stakeholder discussion of human rights issues.
Start 6-9 years	<b>Recommendation 28: Legislative and policy impact assessments</b> - Identify and report on what measures need to be taken to enable joint Equalities and Human Rights Impact Assessments. Consider training requirements to carry out joint Equalities and Human Rights Assessments.

TIMESCALE	RECOMMENDATIONS FOR THE SCOTTISH HUMAN RIGHTS COMMISSION (4)
Start 1-3 years	<b>Recommendation 13: Scotland's National Action Plan for Human Rights</b> - Develop a Parliamentary engagement plan for Scotland's National Action Plan (Scottish Human Rights Commission joint lead with the Equalities and Human Rights Committee)
Start 1-3 year	<b>Recommendation 32: A Human Rights-Based Approach to Scrutiny</b> - Develop an approach to scrutiny. (Jointly with Scottish Human Rights Committee)
Start 1-3 years	<b>Recommendation 35: Building capacity</b> - Develop and deliver tailored induction and training on human rights for members and staff who support Committees. (With the Parliament)
Start 3-6 years	<b>Recommendation 12: International treaty monitoring</b> - Establish accessible international treaty monitoring database system for Scotland. (With the Scottish Government and the Parliament)
Start 3-6 years	<b>Recommendation 26: Legislative and policy impact assessment</b> - Develop and agree a template for an 'impact and opportunity assessment'. (With the Scottish Government and the Equalities and Human Rights Commission)

TIMESCALE	RECOMMENDATION FOR OTHER BODIES (1)
Start 1-3 years	<b>Recommendation 14: Third sector UN rights treaty monitoring</b> - Resource of civic society to improve engagement with the United Nations. (Public authorities)

# Introduction

## Background

### The need for an inquiry

1. On 28 September 2016<sup>7</sup>, the Equal Opportunities (Equalities) Committee's remit was extended to explicitly include human rights. Prior to this, the Justice Committee took overall responsibility for the subject matter of human rights.
2. The addition of human rights to our remit gave us the locus to look strategically at human rights within the Scottish Parliament.
3. Additionally, we were aware the human rights landscape was changing with the UK leaving the European Union, and the potential for a UK Bill of Rights which would supersede the Human Rights Act 1998. This highlighted the need to review the Parliament's approach to human rights to ensure it was ready to cope with any significant changes that could impact on human rights in Scotland.
4. We saw this inquiry also as an opportunity for the Parliament to strengthen its approach to human rights more generally and to develop a robust framework that would work to hold the Scottish Government to account for its implementation of its international human rights obligations. Such a framework would better enable scrutiny of the Scottish Government's decision-making on human rights, and would enable the Parliament to convey its views on human rights more widely e.g. to the public whose rights are at stake, to the UK Parliament and Government and internationally, on matters that affect Scotland.
5. Closely related to these reasons was our ambition for the Scottish Parliament to be at the forefront of international best practice on human rights.
6. Sitting alongside all of these objectives was our aim to demonstrate outwardly the Parliament's commitment to human rights and to help make human rights more accessible and transparent to the people of Scotland.

### Our approach

7. All parliamentary committees are responsible for promoting and protecting the human rights that fall within their remit.
8. In September 2016 we wrote<sup>8</sup> to the Convener of the Standards, Procedures and Public Appointments Committee during its inquiry into the remits of mandatory committees<sup>9</sup>, to set out our views on what should be included in the human rights part of our remit. We wanted to ensure our ability to undertake work in relation to the international human rights framework would not be restricted in any way. The human rights subject matter was added to our remit in the following terms—

” “Human rights, including Convention rights (within the meaning of section 1 of the Human Rights Act 1998) and other human rights contained in any international convention, treaty or other international instrument ratified by the United Kingdom”.

9. We took the decision to ensure we were fully informed about the best UK and international practice in promoting and protecting human rights as a legislature. As such, we agreed on 6 October 2016 to conduct a two-part inquiry.
10. Phase one sought written briefings on the scrutiny of human rights and equalities by other legislatures in the UK and international comparisons of best practice in the monitoring and scrutiny of human rights <sup>10</sup>. This information was fundamental to informing the second phase of our inquiry, which was gathering evidence from the public, academics and experts. This information also helped to shape our engagement activities.

## Commission on Parliamentary Reform

11. On 26 October 2016, the independent Commission on Parliamentary Reform was established by the Presiding Officer to look at how the Scottish Parliament could engage better with the people of Scotland and how its work could be improved to deliver better scrutiny. We submitted a response <sup>11</sup> to the Commission’s call for views. In that letter we advised that we had commenced preliminary work on our inquiry into human rights as a consequence of human rights being added to our remit.
12. The Scottish Human Rights Commission (SHRC) and civic society groups made representations to the Commission for the Parliament to have a strengthened role in the promotion and protection of human rights in Scotland and for it to become a ‘guarantor’ of human rights, a role increasingly recognised in international standards (such as the Belgrade Principles on the relationship between parliaments and national human rights institutions) <sup>12</sup>. The Commission recognised that in the time available to it could not do justice to the important issues raised about the Parliament becoming an effective human rights guarantor, and so the Commission recommended—

” R30 We refer the proposals raised with us on the Parliament’s role as a human rights guarantor to the Equalities and Human Rights Committee to inform its inquiry work on this matter. We recognise the importance of the proposals made to us and consider that some of our other recommendations may also promote the delivery of a stronger human rights role for the Scottish Parliament.

Source: [Commission on Parliamentary Reform, Page 35, Recommendation 30](#)

## Appointment of an adviser

13. On 21 December 2017, we agreed to appoint an adviser with the relevant parliamentary and legal expertise to assist us with our inquiry. We appointed Murray Hunt, Director of the Bingham Centre for the Rule of Law. He was formerly the Legal Adviser to the Joint Committee on Human Rights of the UK Parliament between 2004 and 2017. He is a Visiting Professor in Human Rights Law at the University of Oxford where he leads a research project on parliaments, the rule of law and human rights. The project has worked closely with the UN Office of the High Commissioner for Human Rights and the Inter-Parliamentary Union to develop some international principles to help parliaments develop their role in human rights. The adviser's role was to provide us with detailed advice on the human rights frameworks, (including international and domestic processes); the practical arrangements necessary for a parliament to deal effectively with the scrutiny and advancement of human rights, particularly following Brexit; and international best practice in parliamentary protection and promotion of human rights.

## Human rights development

14. To build our expertise in human rights, we undertook development on 15 March 2018 covering the domestic and international human rights framework. This was followed by a further development session on 17 May 2018 that focused on taking a human rights-based approach to parliamentary scrutiny. We would like to thank the Scottish Human Rights Commission for providing these comprehensive sessions.

## Evidence gathering and engagement activities

15. Our call for views <sup>13</sup> was issued on 21 January 2018 and ran until 16 March 2018. In broad terms the inquiry explored human rights under three main headings: participation and engagement, parliamentary procedure and process, and accountability. Three overarching questions were posed—
  - What more could the Scottish Parliament do to empower people to make them more aware of their rights under domestic and international human rights law and to build a strong human rights culture in Scotland?
  - What further steps could the Scottish Parliament take to ensure that people's human rights are being taken into consideration when the Scottish Government and public authorities are creating policies and laws?
  - How could the Scottish Parliament do more to ensure that international human rights treaties, for example, the United Nations Convention on the Rights of the Child (UNCRC) and other international human rights obligations are being followed in Scotland?
16. Between January and June 2018, the inquiry considered 41 written submissions <sup>14</sup> from a range of interested parties covering national human rights institutions (NHRIs), human rights advocacy groups, young people's organisations, legal and

academic professionals and individuals with personal experience of fighting for their rights or the rights of others.

17. As our primary interest was the operation of the Parliament, we were also keen to gather views from those who would be responsible for implementing the recommendations made. We therefore wrote to all Parliamentary Committees, the Presiding Officer, and the Scottish Parliamentary Corporate Body,<sup>15</sup> alerting them to the inquiry and asking for their views. The Justice Committee said in its response to us that human rights underpins and runs through all of its work and that human rights should not be seen as a ‘box-ticking’ exercise, but fundamental to all work undertaken.<sup>16</sup>
18. Additionally, we drew our inquiry to the attention of the Joint Committee on Human Rights and the House of Commons Women and Equalities Committee in the UK Parliament, and the Welsh National Assembly’s Equality, Local Government and Communities Committee, so we could learn from their recent experience of scrutinising human rights issues.
19. In addition to an evidence session we held on the Universal Periodic Review on 18 January 2018, we held a further six oral evidence sessions on 29 March, 19 April, 26 April, 3 May, 10 May and 21 June, where we heard from 47 witnesses. These included academics, human rights experts, NHRIs, human rights and equalities groups (covering care, health, housing, poverty, race, religion, belief, and gender), the legal profession, the health and social care sector, local government, children and young people, a trade union and individuals. At the end of our inquiry, we took evidence from Angela Constance MSP, the Cabinet Secretary for Communities, Social Security and Equalities (the Cabinet Secretary). For more information on witnesses please refer to the extracts of Minutes attached at [Annex B](#).
20. Central to our inquiry, and to our engagement activities, was the need to hear from people with lived experience of fighting for their rights. We believed this would enable us to better understand current rights issues, learn from individual experiences, and hear from the public how they would like to see the Parliament develop its approach to human rights.
21. Four focus groups were held: [Leith \(26 March 2018\)](#), [Inverness \(20 April 2018\)](#), [Clydebank \(11 May 2018\)](#) and [Galashiels \(14 May 2018\)](#). There were around 100 participants, including individuals with personal experiences of trying to protect their rights and those representing civil society organisations. Topics discussed were wide ranging, but there were also several common themes including: mental health issues, the need for better inclusion, lack of access to justice, lack of advocacy support, disability rights, poverty, barriers faced accessing the benefits and welfare systems.
22. We also undertook two community visits. On 26 March 2018 we met with residents of Persevere Court in Leith, who had used a human rights-based approach to seek improvements to their housing conditions and realise their human right to an adequate standard of housing.<sup>17</sup> The community developed a set of human rights indicators to gain action from the local council. While in Inverness on 20 April 2018 we met with HUG Spirit Advocacy<sup>18</sup>, a collective advocacy group that represents the interests of users of mental health services across the Highlands, and heard about the difficulties accessing the welfare and benefits system.

23. We were also keen to establish links with the principal European human rights institutions to gather information about the international human rights framework and to assist us in developing longer term relationships with core European human rights bodies. To fulfil this aim we undertook a fact-finding visit to Strasbourg between 22 and 24 April 2018 where we met with:
- representatives of the European Court of Human Rights (ECHR);
  - Dunja Mijatović, the Council of Europe’s Commissioner for Human Rights;
  - representatives of the Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe (PACE);
  - Jari Vilen, the EU Ambassador, the Permanent Delegation of the European Union to the Council of Europe;
  - the Office of the European Ombudsman; and
  - the Renee Cassin International Institute of Human Rights.
24. A note of our visit can be found on our [website](#) .
25. To gather further information on international human rights, we also held a video evidence session on 21 June 2018 with Gianni Magazzeni, the Head of the UPR Branch of the UN from the Office of the High Commissioner for Human Rights (UNOHCHR) and Rogier Huizenga, the Head of Human Rights at the Inter-Parliamentary Union (IPU), the global organisation representing the world’s parliaments.
26. The High Commissioner’s Office, working closely with the IPU, has produced some draft Principles <sup>19</sup> on Parliaments and human rights (draft Principles) which are intended to guide parliaments in the effective performance of their crucial role in relation to human rights. Those draft Principles encourage the establishment of human rights committees in parliaments to lead and co-ordinate the parliament’s oversight of governments’ responsibility for the promotion and protection of human rights, in line with their legal obligations resulting from the ratification of international human rights treaties.
27. They are also intended to guide parliaments to ensure the effective functioning of human rights committees where they already exist, and to that end they also cover areas such as committees’ terms of reference, transparency, composition, and working methods. The draft Principles were considered by the Human Rights Council during its recent session in June.
28. We are very grateful to Gianni Magazzeni and Rogier Huizenga for sharing their expertise on the role of parliaments in relation to human rights. The draft Principles have been influential in our Report and we refer to them where they have helped to inform our thinking. We hope the Parliament will share our aspiration to be the first parliament in the world to exemplify the draft Principles in practice.
29. During this Parliamentary session we hope to find further opportunities to strengthen these new international relationships.

30. We would like to express our sincere thanks to all those who met with us, provided written evidence, participated in our evidence sessions and took time out of their day to attend the focus groups and share their lived experiences with us. We have benefited enormously from your frank comments. Your views have helped to put into perspective the importance of the Parliament developing its focus on human rights. As we take forward the actions we set for ourselves, and the Parliament, in this Report, we hope to maintain and strengthen these important connections.

# Human rights challenges facing Scotland

31. Before considering the international and domestic human rights framework and how the Parliament can enhance its role, it's helpful to consider the political and social context to our inquiry.
32. Evidence presented to us identified some significant challenges for the promotion and protection of human rights in Scotland. Two major cross-cutting issues - Brexit, and the impact of economic pressures - were the most significant. Another substantial theme was the 'structural' barriers faced by vulnerable or marginalised groups in accessing their rights.

## The UK's withdrawal from the European Union

33. We have maintained a watching brief on Brexit and its implications for equalities and human rights. To support this activity, we held evidence sessions on 3 November 2016<sup>20</sup>, 27 April 2017<sup>21</sup>, and 30 November 2017<sup>22</sup>. We also took evidence on the Scottish Government's UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill on 8<sup>23</sup> and 15<sup>24</sup> March 2018.
34. In summary, while we remain a member of the European Union (EU), human rights in EU law provide additional protections. This include the Charter of Fundamental Rights of the European Union (the Charter). The Charter brings together the essential human rights of everyone living in the EU and binds Member States when they are implementing, derogating from or acting within the scope of EU law (it does not apply to situations involving only domestic law). Where they apply, Charter rights override conflicting UK legislation. This is not the case with Convention rights. There are also specific areas where the Charter has broader protections than Convention rights, for example in its inclusion of a specific right to the protection of personal data. The Charter also includes certain social and economic rights which the UK has already agreed to guarantee either in EU law or in other international human rights treaties. The Charter was also designed to permit development of new rights and new means of protecting rights.
35. These benefits will be lost if the Charter can no longer be relied on in UK courts. Amendments to the UK Withdrawal from the European Union Bill, which would have seen the Charter retained, were defeated in the UK Parliament.<sup>25</sup>
36. The Scottish Government's UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill<sup>26</sup> sought to retain the Charter in Scots law after withdrawal from the EU, including the right of the courts to strike down legislation incompatible with the Charter and EU general principles. The Bill highlighted the uncertainty around other routes to remedy, such as access to the Court of Justice of the European Union. On 21 March 2018, the Bill completed its passage through the Parliament, but at the time of writing this Report, the Act was being judicially reviewed by the UK Supreme Court.
37. Brexit does not directly affect the UK's relationship to the European Convention on Human Rights; however, concerns were raised with us that it would make it easier for the UK to withdraw from the Convention in the future. There had been a

suggestion that a British Bill of Rights would replace the Human Rights Act (HRA)<sup>27</sup>. We believe this would not be a welcome move. It is likely that any repeal of the HRA and its replacement with a British Bill of Rights would invoke a Legislative Consent Motion.<sup>28</sup>

38. Professor Alan Miller explained that the First Minister had established a standing council on Europe in response to Brexit. One of its first actions was to agree three principles—

- ” • Scotland should find ways and means to ensure no regression from the current protection of rights provided by EU membership
- Scotland should explore the ways and means of keeping pace with progressive developments in the EU once we’ve left the EU, and
- Scotland should show leadership in human rights, as it has done over the past 20 years since devolution.

Source: [Official Report, 3 May 2018, Cols 1-3](#)

39. There was substantial concern amongst experts, academics and those working in the rights field that our human rights would be weakened post-Brexit.

40. Judith Robertson, Chair of the Scottish Human Rights Commission (SHRC), considered there was a risk to existing rights on leaving the EU. She said, “the UK Government will have the authority to row back on those rights in future”<sup>29</sup>. Carole Ewart, Public Policy and Human Rights Consultant, described “Brexit as a human rights issue”<sup>30</sup>, whilst Mhairi Snowden, Human Rights Consortium Scotland (HRC Scotland) believed Brexit was a “fundamental threat to the progression of rights in the future”.<sup>31</sup>

## Need for monitoring for EU human rights protections

41. Witnesses believed there was a greater need for vigilance about the effect of Brexit on the level of rights protection in Scotland because EU law provided additional protection for human rights, both in the scope of the rights it protected and in the remedies available if those rights were breached. Dr Katie Boyle, Senior Lecturer, School of Law, University of Roehampton argued “supervision and reflection on the potential impact remains an ongoing necessity”.<sup>32</sup>

42. Ensuring EU human rights would be adequately protected by UK domestic law in the years following Brexit would be crucial, said CARE (Christian Action, Research and Action). They were concerned about ensuring Brexit did not become “the highway to restriction of human rights”.<sup>33</sup>

43. Sanchita Hosali from the British Institute of Human Rights emphasised that we were not only losing rights but the mechanisms to enforce them<sup>34</sup>, for example, the European Court of Justice.

## Keeping pace with EU human rights protection

44. Concerns were raised around how Scotland would keep pace with EU developments in human rights protections.
45. Dr Boyle said, “one of our greatest losses in exiting the EU relates to the potential for where the EU might go in furthering rights protections”<sup>35</sup>. She explained that the relevant EU body of human rights law was wider than just the EU Charter, saying that “all parts of EU law engage with different aspects of rights, some of which go beyond what we already have”. On existing rights, for example, Dr Boyle said, “the right to access to justice under article 47 of the EU charter is much broader than the equivalent right under article 6 of the ECHR, and it allows people to access justice more easily”.<sup>36</sup>

## Perceived threat to the European Convention on Human Rights

46. Professor Alan Miller, Chair of the First Minister’s Advisory Group on Human Rights Leadership, said that in terms of human rights, the closest thing to a constitution in Scotland are the ‘two pillars’ in the Scotland Act. These pillars required compliance with EU legislation and the ECHR. He said removal of one pillar, EU compliance, “imperils our continuing adherence to the European Convention on Human Rights”<sup>37</sup>. Professor Miller considered a new framework would be needed post-Brexit and the First Minister had tasked his Group to look at this.

## Conclusion

47. Most Members believe it is clear that Brexit poses significant challenges to the promotion and protection of human rights in Scotland. First, there is a risk of regression in human rights protection, as important EU protections such as the Charter are removed from our law and as Westminster acquires the power to diverge, if it chooses, from those EU protections, in areas such as immigration, equality and data protection, which are reserved matters under the devolution settlement. Second, Scotland risks being left behind by progressive developments in the EU’s protection of human rights which will no longer automatically apply in Scotland because EU law will no longer be part of our law.
48. Most Members recognise that to counteract these risks both the Scottish Government and the Parliament will have to increase their monitoring: of threats of regression in rights protection at Westminster, and of progressive developments in the EU with which Scotland may wish to keep pace. The time between now and Brexit day should therefore be used to put in place a robust and comprehensive monitoring system capturing relevant developments in rights protection both at Westminster and in the EU. Such monitoring will need to be properly resourced and should therefore be led by the Scottish Government with appropriate participation of other relevant actors, including the Parliament, NHRIs and civic society. Detailed information about the results of such monitoring should be provided to the Parliament to enable it to scrutinise whether the Government is doing enough to

mitigate any relevant regressions in UK rights protection and to keep up with any relevant progressive developments in EU rights protection.

49. **Recommendation 1:** We ask the Scottish Government to establish a mechanism for monitoring relevant developments in both UK and EU human rights protections post-Brexit, reporting relevant progressive developments in EU rights protection to the Parliament and identifying divergences between EU law and UK law in the field of human rights. We ask the Scottish Government to return to the Committee with a proposal for how this will work. Short term: implementation immediately.
50. **Recommendation 2:** Post-Brexit, most Members believe the risk of regression in human rights protections at Westminster means that interaction with sister institutions in the UK Parliament will be even more important. We therefore intend to deepen our interactions with the Joint Committee on Human Rights and the Women and Equalities Committee at Westminster to ensure that the distinctively Scottish voice on human rights and equalities is heard there and to seek to ensure that current protections for human rights in UK law are maintained. Short term 1-3 years.

## Austerity

51. Witnesses told us the effect of austerity has impacted on the delivery of public services and on the groups who are most in need of services. One of the main concerns raised in the focus group discussions was the impact of budget reductions for public bodies providing services. Participants felt that more reliance was being placed on civic society to fill service provision gaps, while advocacy services were the most likely services to be detrimentally affected in times of budgetary constraint. They considered this situation was unsustainable and described projects as ‘folding’ because they couldn’t attract sufficient funding in the current economic climate.
52. Patricia Rodgers felt advocacy was being provided through the goodwill of people –
- ” the very people who are defending the rights of the most vulnerable in Scottish society were, themselves, in financially precarious situations with their own rights being undermined.
- Source: Patricia Rodgers (individual), Written Submission
53. Audit Scotland stated—
- ” Ineffective governance or service delivery could be detrimental to the enjoyment of human rights across Scotland where they, for example, reduce the amount of public facilities available to individuals who rely on them, or where they impact on resources and staff, which could slow down the delivery of crucial services such as healthcare provision, housing and benefits.

Source: Audit Scotland, Written Submission, para 15

## Socio-economic disadvantage

54. In addition to the effect of austerity on the enjoyment of human rights, those experiencing poverty were identified as a group likely to encounter significant barriers in accessing their human rights. Poverty meant not being able to heat your home, pay your rent or buy essentials. People suffering poverty faced insecurity, uncertainty and making impossible financial decisions. Poverty could marginalise people and exacerbate, or even be a source of, discrimination.
55. Audit Scotland, stated poverty was a “key threat” to the enjoyment of human rights in Scotland. Poverty had a detrimental effect on health, access to education, housing and employment and therefore an individual's ability to live safely and in dignity. Addressing economic and other inequalities, Audit Scotland advised, was therefore a top priority for many of its audited bodies.<sup>38</sup>
56. Peter Kelly of the Poverty Alliance told us about the Alliance delivering training on poverty awareness, which certainly has a relationship to the human rights agenda.<sup>39</sup>

## Human rights-based approach to budgeting

57. Currently, the Scottish Government is mandated to develop and implement equality budgeting. This approach seeks to more effectively challenge discriminatory practices and further equality. The Scottish Government produces an annual Equality Statement that accompanies the budget. Most public authorities also incorporate equalities consideration into their budget processes.<sup>40</sup>
58. Glasgow Council for the Voluntary Sector (GCVS), Scottish Council on Deafness (SCoD), Voluntary Action Scotland (VAS) and Volunteer Glasgow (VG) considered human rights budgeting had not progressed despite action on equality budgeting. They advised human rights budgeting was understood internationally as a key driver for reform.<sup>41</sup>
59. Councillor Whitham, Convention of Scottish Local Authorities (COSLA), advised that in the past year quite a few local authorities, in setting their budgets, had looked at them through a human rights lens. She told us, “COSLA is quite keen to take evidence from its member authorities and start to look at that”.<sup>42</sup>

## Scottish Government approach to tackling poverty

60. The Cabinet Secretary highlighted to us some of the Scottish Government’s work on poverty. She spoke in particular about the Poverty Truth Commission’s contribution to the Scottish Government’s Fairer Scotland action plan and in the delivery of social security.<sup>43</sup> Child poverty delivery plans, as provided for under the Child Poverty (Scotland) Act 2017, would, the Cabinet Secretary said, “demonstrate the way in which we are trying to make real and meaningful the right of children to live free of poverty”.<sup>44</sup>

61. For the first time, the Scottish Government’s National Performance Framework<sup>45</sup> includes an explicit human rights outcome “we respect, protect and fulfil human rights and live free from discrimination”. We note that work is ongoing to develop indicators to support this objective and that this work is crucial to the Scottish Government setting its budget.
62. We note that the draft Principles on Parliaments and Human Rights recognise in its preamble, parliament’s “fundamental role ... in considering and approving national budgets bearing in mind human rights implications” and recommend that a parliamentary human rights committee’s responsibilities should include reviewing draft budgets from the perspective of the implications for the enjoyment of human rights.<sup>46</sup>
63. **Recommendation 3:** We already scrutinise the Scottish Government’s budget for its implications for equality through the Scottish Government’s Equality Budget Statement and our work programme. We intend to develop and broaden that budget scrutiny to include scrutiny for human rights implications. We will look for good examples of such human rights budget scrutiny in other jurisdictions as we develop the practice and we would welcome the input of other relevant committees in the Parliament.

## Barriers faced by protected characteristics groups and other vulnerable groups

64. Graham O’Neill from the Scottish Refugee Council, explained the power imbalance between vulnerable groups and duty bearers<sup>47</sup>. He said
- ” asking what we can do about human rights inherently includes the need for an analysis of power relationships. That is inherent in human rights because, if rights are not practically accessible to people, they are not rights at all.
- Source: Equalities and Human Rights Committee 19 April 2018, Graham O’Neill (Scottish Refugee Council), contrib. 91<sup>2</sup>
65. Protected and vulnerable groups, such as people with disabilities or those experiencing mental health difficulties, were most likely to have their rights denied or abused. This view came out very strongly through our focus groups. Participants commented that vulnerable people had a continuous battle to access benefits and accommodation and needed a lot of assistance to access services. Also, there appeared to be inconsistency with the way people were treated or received assistance from public bodies. Participants said access relied on people knowing their way around the system and that the system was set up to fail people.
66. We received powerful lived-experience evidence and evidence from those organisations which represent people with disabilities, mental health issues etc. that demonstrated much more needs to be done to tackle this power imbalance and that the Parliament, Scottish Government and public authorities must drive this forward.

## Rights for people experiencing mental health problems

67. People First commented on the legislative barriers to accessing rights. They referred to legislative provisions under the Mental Health (Care and Treatment) Act (Scotland) 2003, the Criminal Procedures (Scotland) Act 1995 and the Adults with Incapacity (Scotland) Act 2000, which allowed withdrawal or withholding of rights on the grounds of the intellectual impairment itself and nothing more.<sup>48</sup>
68. SAMH supported the Rights for Life Declaration<sup>49</sup>, created by See Me and other organisations through extensive engagement with people with lived experience of being affected by mental health. The Declaration combined the rights, principles and standards set out in international human rights laws to clearly set out the rights of someone affected by mental health.
69. Cath Denholm, NHS Scotland said physical problems of people who present with mental health issues are often ignored. She said it was necessary to apply the international principles of AAAQ (Availability, Accessibility, Acceptability and Quality<sup>50</sup>), so services were genuinely accessible to people, including people experiencing mental health issues. Cath Denholm commented there was “quite a long way to go in working with people who deliver health and social care services so that they understand that”.<sup>51</sup>

## Children's rights

70. Children are particularly vulnerable to having their rights infringed.
71. We are especially grateful to Callum Lynch from Who Cares? Scotland, who courageously shared his early life experience, and the impact this had on his rights—  

” As a child, I was a victim of extreme violence, abuse and neglect. My home was not a safe place. There was drug and alcohol misuse around me consistently, which led to me taking drugs at the age of 10. The fridge was bare and my siblings and I had to steal for food, so my initial start to life was rough and I guess that my parent was not adhering to a lot of my rights.

Source: Equalities and Human Rights Committee 10 May 2018, Callum Lynch, contrib. 63<sup>3</sup>
72. Khaleda Noon, Action for Children, spoke of the right to be educated, and explained often minority ethnic young people were excluded from school because of a lack of awareness from education providers of the young people’s barriers.<sup>52</sup>
73. We note the impact that adults’ decisions can have on children both in a private setting, such as the home or a public environment e.g. a school.

## The need for rights' advocacy support

74. Many of the contributions we heard focused on the increasing reliance on, and need for, advocacy support to access rights. Advocacy support was essential to enable

some protected groups and vulnerable people to express their views, to access information, to make informed choices and to have control over as many aspects of their lives as possible. Speaking about the need for advocacy support, Callum Lynch said—

” As a child, you are presented with so many professionals who remind you that they adhere to the rules from above, so it was important to have someone there who was able to contest against what other people wanted to say for me.

Source: Equalities and Human Rights Committee 10 May 2018, Callum Lynch, contrib. 63<sup>3</sup>

75. In common with other protected groups, rights advocacy was important for older people. Delia Henry, Age Scotland, explained that people in Scotland had access to free personal care, but when that didn't work it was important Age Scotland were able to respond on their behalf. <sup>53</sup>
76. Lucy Mulvagh, Health and Social Care Alliance Scotland, considered access to independent advocacy services was a “live issue” for the implementation of the Social Security (Scotland) Act 2018. Without advocacy services she considered, people might not realise their right to social security. <sup>54</sup>

## Conclusion

77. Advocacy support is essential for many people to live in dignity and to ensure the voices of hard to reach groups are taken account of when planning service delivery. We believe there needs to be a more innovative and strategic approach taken to the provision of human rights advocacy services if they are to be sustainable. This could include a more in-depth investigation of the public sector and their reliance on the third sector and further identification of the type and number of groups delivering advocacy services, the nature of the services provided, how funding is directed to support advocacy work, funding gaps and whether new rights-based legislation, which relies on advocacy support for implementation, is being sufficiently funded.
78. In the short-term our budget scrutiny work will consider some of these aspects more closely and we will continue to highlight issues raised by third sector equalities and human rights advocacy groups through our work programme.

79. **Recommendation 4:** It is an important function of a parliamentary human rights committee to keep under constant review the barriers to vulnerable groups accessing their rights, so that they are practical and effective for all, and not entitlements existing only on paper. We will carry this theme through our work programme to investigate the capacity and resourcing issues faced by civic society in Scotland around equalities and human rights advocacy. This will help to identify what actions need to be taken to support this vital role. Short term 1-3 years.

# Leadership in Human Rights

## Civic society

80. Many organisations in Scotland were concerned about the potential loss of equality and rights protections due to Brexit. As the UK's relationship to the EU changed, they felt there was an increased risk that our legal rights framework would be weakened. The Human Rights Consortium Scotland (HRC Scotland) and the Scottish Council for Voluntary Organisations, supported by the Scottish Human Rights Commission and the Equality and Human Rights Commission developed 'The Scotland Declaration on Human Rights', in consultation with stakeholders. The Declaration states—

### ” No going back

- Human rights and equalities protections in law, policy and practice must not be reduced or regressed for any individual, group, community or sector of the population.

### Progression

- Human rights standards should be continually strengthened over time. Scotland must help to shape and adopt the highest international human rights and equalities standards.

### Transparency

- Any changes to existing rights protections should be undertaken only with a fully transparent consultation process and the appropriate degree of parliamentary scrutiny at all levels.

### Participation

- The people of Scotland must be engaged in a process of understanding what their rights are, how they are protected and what more can be done to protect their rights. Any significant change in the protection of rights must be based on this meaningful engagement.<sup>55</sup>

## The Scottish Government

81. The Scottish Government's programme for 2017-18<sup>56</sup> identified actions to give practical effect to human rights. The First Minister established an Advisory Group on Human Rights Leadership in November 2017<sup>57</sup>. The Cabinet Secretary advised “the L-word [leadership] is important” because it was recognised Scotland had a good record, but “we are always striving to achieve more by working through some of the thorny issues and making sure that things can be delivered in practice”.<sup>58</sup>

82. She went on to explain that the Scottish Government did “not want any diminution of the rights that we currently enjoy as a result of being a member of the European Union”. Furthermore, she said the First Minister would consider how, “in the uncharted waters of Brexit, ... we continue on the road of being aspirational and ambitious and wanting to go further on our human rights obligations” .<sup>59</sup>
83. It is understood, at the time of writing this report, the Advisory Group has consulted on its proposals and will make its recommendation to the First Minister in December 2018.

## The Scottish Parliament

84. Dr Katie Boyle pointed to the potential opportunity for the Parliament post-Brexit—

” The Scottish Parliament could lead the way both across the UK and internationally in its approach to fostering a human rights culture across its remit that seeks to ensure rights and remedies are protected and enhanced in a post-Brexit landscape.

Source: Dr Katie Boyle, Written Submission

85. In the UK context, Rogier Huizenga, IPU, commented that the UK focus had been very much on the ECHR—

” However, in this time of uncertainty as to where things will go with the Human Rights Act 1998, it is also wise to make sure that the work of the UN human rights treaties and monitoring bodies is fully included as a reference in the committee’s work.

Source: Equalities and Human Rights Committee 21 June 2018, Rogier Huizenga, contrib. 14<sup>4</sup>

86. HRC Scotland stated “it is vital that the Parliament does not aim to merely ‘comply’ with human rights treaties and law but instead aims to continually take action and decisions for the progressive realisation of rights”.<sup>60</sup> Mhairi Snowden, HRC Scotland, said it was “helpful and positive for the committee to use the international framework to continue to progress rights”<sup>61</sup> and commented that one of the key principles of the Scotland Declaration was progression of rights, including Scotland keeping pace with what happens in the EU.<sup>62</sup>

## Conclusion

87. Human rights leadership in Scotland is critical and post-Brexit, UN human rights protection and the enshrinement of human rights in domestic law are even more important. Our report sets out a number of actions and recommendations which will enable the Parliament to lead, including how we make better use of the international human rights framework to support and inform our work. A core part of the Parliament’s role is also to hold the Scottish Government to account on its human rights record. Therefore, putting human rights into practise requires not only leadership, but monitoring as well. It is currently difficult for the Committee and the Parliament to monitor the Scottish Government’s human rights record as its human rights activities are not reported to us in any formal manner.

88. **Recommendation 5:** We welcome the Scottish Government’s commitment to show leadership on human rights. We ask it to demonstrate such leadership by presenting an annual Human Rights Report to us. This should set out the Government’s record in relation to human rights over the previous year. This would provide the focus for an annual evidence session with the responsible Minister to review progress on human rights. Short term: implementation within the next 12 months.

## The Human Rights 'Voice' in the Parliament

89. The Parliament’s role in addressing the human rights challenges that Scotland faces is crucial.
90. As well as the Parliament, the government and the courts are vital in providing a human rights accountability mechanism. This separation of powers is an important principle of the Rule of Law<sup>63</sup> and requires that all three arms of the state perform their constitutionally distinct roles independently of each other. In summary—
- the government is responsible for formulating and implementing policy,
  - the legislature oversees the work of the government, and creates the law to reflect policy, and
  - the judiciary interprets, enforces and applies the resulting legal rules.
91. Courts are the authoritative interpreters of human rights legal standards, but Parliamentarians also have an important interpretive role to play in deciding what human rights standards mean when applied to particular practical problems which demand a policy response.

## Conclusion

92. **Recommendation 6:** To avoid any ambiguity in relation to the status of our views as the Parliament’s ‘Human Rights Committee’, we wish to clarify that we intend to speak in our own voice on human rights matters, rather than seek to predict the views of courts. We hope that this will also encourage MSPs to realise that we are not a technical scrutiny committee doing work of interest only to lawyers, but rather provide an opportunity for elected politicians to be directly involved in important debates about what human rights mean for the people of Scotland.

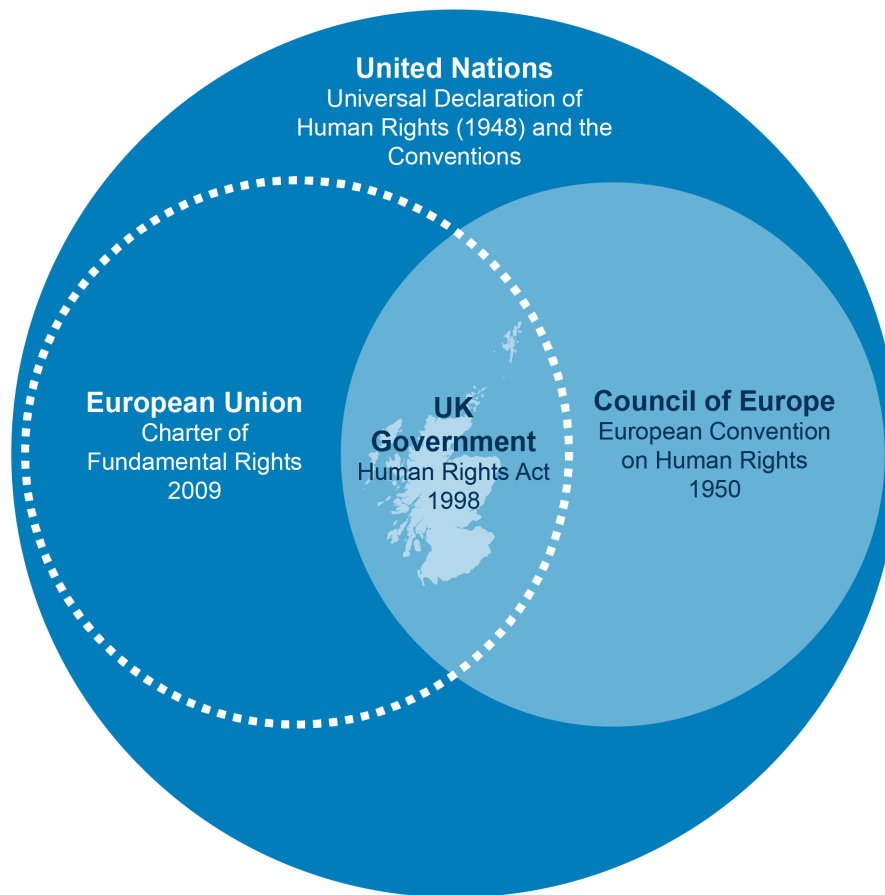
# The human rights framework

## Background

93. Human rights are the basic rights and freedoms that belong to every person in the world, from birth until death. They apply regardless of where you are from, what you believe or how you choose to live your life.
94. Human rights are indivisible and interdependent. Because each human right depends on other human rights, violating one right affects the exercise of another right. For example, the right to life takes for granted respect for the right to food and to an adequate standard of living. The right to be elected to public office implies access to basic education. The right to an effective remedy for violations of human rights implies a right of access to court. And a right of access to court might require, in certain circumstances, some financial assistance from the State for it to be practical and effective.
95. Some rights are absolute and cannot be limited for any reason. It is never justifiable, for example to subject someone to torture or to inhumane or degrading treatment, nor to hold somebody in slavery or servitude. Other rights, such the right to privacy or freedom of expression, are “qualified rights” which are capable of being interfered with if there is a strong enough justification. This is because sometimes such rights may conflict with someone else's rights or with the interest of the wider community. So, your rights may have to be restricted to protect other people's rights or the rights of the community. For example, your right to free speech may have to be restricted to protect someone else's right to privacy. Public authorities may only restrict your rights under certain circumstances, for reasons like national security, public safety, the prevention of crime or the protection of health. Even then, such restrictions on qualified rights are only justifiable if they are both necessary and proportionate.

# Understanding the human rights framework

## Layers of human rights protection in Scotland



Source: Scottish Parliament

96. Scotland's human rights obligations derive from several sources. The international framework comprises of United Nations conventions, international treaties, international declarations, European law, European charters and the European convention. Human rights are also provided for, and protected, under the domestic framework. This includes UK legislation, such as the Human Rights Act, and Scottish legislation on specific rights, such as, the Children and Young People (Scotland) Act 2014. These human rights frameworks and legislative provisions have different parameters, legal tests, standards and routes of remedy.

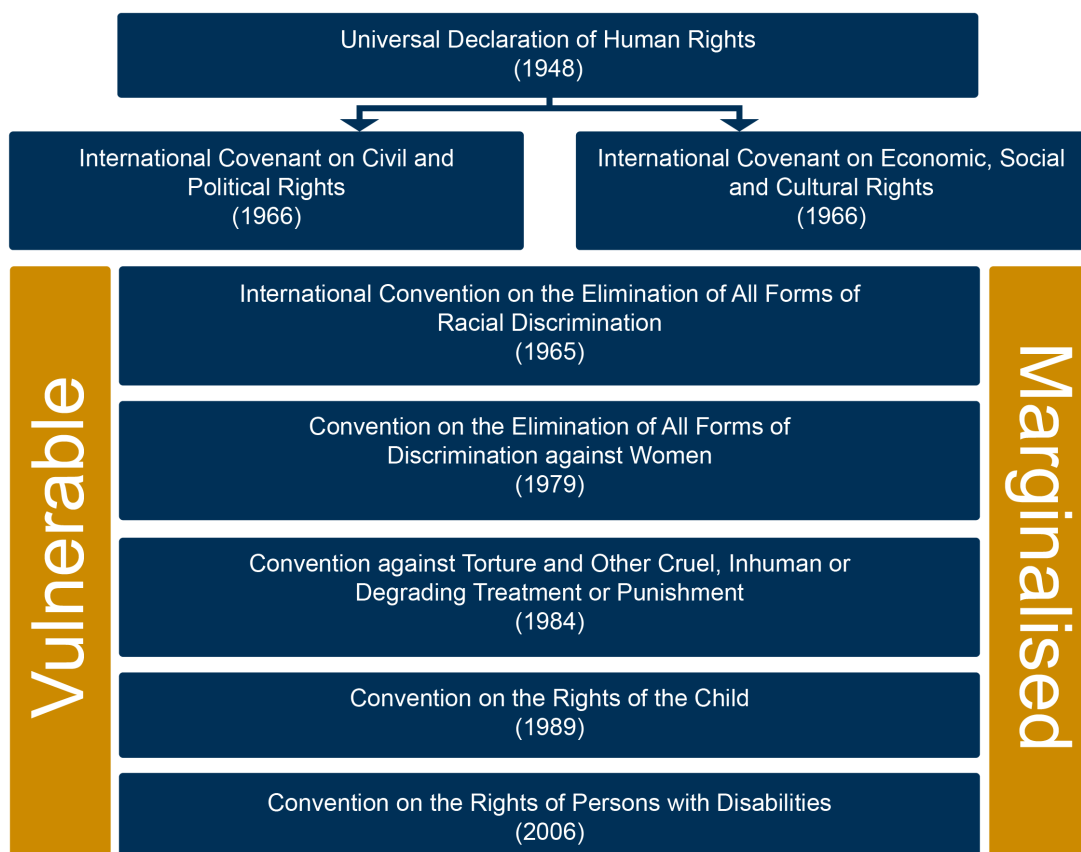
## International human rights framework

97. The Universal Declaration of Human Rights (UDHR) is an international document that states the basic rights and freedoms all human beings are entitled to. It was adopted by the United Nations General Assembly in Paris on 10 December 1948. The Declaration is based on dignity, equality and fairness.
98. The anniversary of the signing of the Universal Declaration is celebrated as International Human Rights Day. The UDHR celebrates its 70<sup>th</sup> anniversary this

year. Since the expansion of our remit we have made a point of celebrating International Human Rights Day by reaching out to groups in our society that are protected or marginalised. This year the Committee intends to hold an event in the Parliament, ‘Human Rights Take Over!’. It will look at Scotland’s human rights journey and where we see human rights in the future. It gathers together the people who have contributed to this report and public authorities whose responsibility it is to make those rights real.

99. Rights can be categorised under two main headings: ‘civil and political’ rights and ‘economic, social and cultural’ rights. Examples of civil and political rights include freedom of expression, freedom of religion or conscience, freedom of assembly, the right to a fair trial, the right to privacy, and the right to vote. Economic, social and cultural rights include the right to an adequate standard of living, the right to adequate food, housing, sanitation and water, the right to education, and rights at work, for example.
100. As well as being a signatory to the Universal Declaration of Human Rights, the UK has ratified seven United Nations (UN) human rights treaties including—

### United Nations Human Rights Instruments



Source: Scottish Parliament

- International Covenant on Economic, Social and Cultural Rights (date of entry into force 1976) <sup>64</sup>
- International Covenant on Civil and Political Rights (ICCPR) (1976) <sup>65</sup>

- International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1969) <sup>66</sup>
  - Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1981) <sup>67</sup>
  - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) (1987) <sup>68</sup>
  - Convention on the Rights of the Child (UNCRC) (1990) <sup>69</sup>
  - Convention on the Rights of Persons with Disabilities (CRPD) (2008) <sup>70</sup>
101. Although the rights contained in these UN treaties are not directly legally enforceable in UK courts, they represent binding obligations in international law. By ratifying the treaties, the UK has pledged to make sure its domestic laws and policies comply with them.
102. States agree to respect, protect and fulfil the human rights contained in treaties or conventions—
- To respect means that states must not interfere with or restrict human rights.
  - To protect involves passing laws and creating mechanisms to prevent violation of rights by state authorities and by non-state actors.
  - To fulfil means that states must take positive action to ensure the enjoyment of human rights.
103. These three principles apply to the rights of all people within the state and mean that NHRIs, the Parliament and civic society can hold the Scottish Government to account against the terms of the treaties.
104. They also have some legal relevance in domestic law even though they have not been incorporated. Courts may refer to them, for example, when interpreting statutory language, which is presumed to be intended to be consistent with international treaty obligations, and executive and administrative decision-makers may be required to have regard to them as relevant considerations.

## International treaty monitoring

105. The seven human rights treaties signed up to by the UK are monitored by the relevant UN rights treaty monitoring bodies. The Equalities and Human Rights Commission and the Scottish Human Rights Commission examine the UK's performance across all the treaties and report to the UN in their 'shadow reports'.
106. Other civic society organisations can also submit 'shadow reports', for example, Coalition for Racial Equality and Rights (CRER) on the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) or Engender on Convention on the Elimination of All Forms of Discrimination against Women

(CEDAW). Emma Ritch from Engender, a feminist membership organisation, explained that they were preparing for Scotland's shadow report for the UN CEDAW Committee's examination of the UK's compliance with the requirements of the treaty, which will happen in early 2019.

## The Universal Periodic Review

107. The Universal Periodic Review (UPR) <sup>71</sup> is a peer review mechanism coordinated by the UN Human Rights Council. It takes the form of a rolling review of the human rights records of all UN member states and results in formal recommendations to the state under review.
108. Every UN Member State is reviewed every five years <sup>72</sup>. Evidence is gathered from a wide range of sources, including from—
- the Member State under review
  - Independent assessments from UN treaty bodies which make concluding observations – e.g. the Committee on the rights of the child, or the Committee on the rights of persons with disabilities
  - National Human Rights Institutions – e.g. the Scottish Human Rights Commission and the Equality and Human Rights Commission
  - Non-governmental organisations – e.g. civic society organisations, such as the Scottish Refugee Council.
109. The UPR takes place through an interactive discussion between the State under review and other UN Member States.
110. So far, the UK's human rights record has been examined under the UPR on three occasions, 2008, 2012 and 2017. The Scottish Government feeds into the UK's response, although this contribution is limited to a certain number of words and so the Scottish Government publishes a fuller Scottish-specific response. <sup>73</sup> The UK received 227 recommendations <sup>74</sup> from the UN Human Rights Council (UNHRC) in the latest review, to which the UK responded on 21 September 2017. <sup>75</sup> This cyclical process is intended to support continuous improvement by UN Member States.
111. The Cabinet Secretary advised ministerial representation from Scotland at the UPR would be useful given the different policy approaches to human rights between the UK Government and the Scottish Government, but the UK Government did not accept that proposal. She said, "it is something that I will continue to pursue". <sup>76</sup>

## Scottish Government accountability against international human rights standards

112. The UPR's latest (third) cycle, which began on 1 May 2017, focused on implementation of its previous recommendations. Gianni Magazzeni, who is the Chief of the UPR branch in UNOHCHR, said—

” the role of Parliaments is critical in efforts to ensure greater implementation by all stakeholders. The report of the secretary general last year referred to the fact that more than 50 per cent of the recommendations from the universal periodic review required some kind of action by Parliaments in order to be implemented.

Source: Equalities and Human Rights Committee 21 June 2018, Gianni Magazzeni (Office of the United Nations High Commissioner for Human Rights), contrib. 2<sup>1</sup>

113. Mhairi Snowden, HRC Scotland, expressed her concern about implementation in Scotland. She said that once the recommendations were made by the UNHRC, and responded to by the Scottish Government, “not a lot is done until the process comes round again”. <sup>77</sup>
114. Implementation concerns were also expressed by the Equalities and Human Rights Commission, responsible for equalities and reserved human rights matters in Scotland. In its experience, Scottish Government departments tended to put more energy into reporting to, and examination by, the UN, than in following up on UN Concluding Observations. The Commission advised the challenge was therefore to develop and maintain momentum for implementation by Government. <sup>78</sup>
115. When asked about how to approach such a huge task, given the UK had received around 900 concluding observations from all the UN treaty bodies put together, Gianni Magazzeni, UNOHCHR, encouraged member states to “cluster and prioritise the recommendations, especially in the context of their action vis-à-vis the plan of implementation over the next four and a half years”. <sup>79</sup>

## Parliaments' engagement with the United Nation

116. On 18 January 2018 <sup>80</sup>, we took evidence on the Scottish Government’s UPR response <sup>81</sup>. Issues covered by the response included: human trafficking, suicide prevention, access to justice, mental health detention, right to vote, hate crime, taxation, zero hours contracts, housing, health and social care, and environmental protection. This was the first time a Parliamentary Committee had taken evidence on what actions the Scottish Government had taken to fulfil its international human rights obligations as raised in the UPR.
117. Gianni Magazzeni, UNOHCHR and Rogier Huizenga, IPU, agreed that it was critical for parliamentary human rights committees to engage with the UN monitoring mechanisms. Rogier Huizenga said—

” the UN is favourably disposed to engagement with Parliaments. There is a momentum, and it is important that Parliaments seize that opportunity when it comes to the universal periodic review and the work of the UN treaty bodies...

Source: Equalities and Human Rights Committee 21 June 2018, Rogier Huizenga (Inter-Parliamentary Union), contrib. 4<sup>5</sup>

118. We also met with Ms E Tendayi Achiume, UN Special Rapporteur on Contemporary Hate Crime, when she visited Scotland on 8 May 2018. We wrote to her with the follow-up information she requested to assist with her enquiries and will also bring

this report to her attention <sup>82</sup>. Other Committees also took the opportunity to meet with her to share their work e.g. the Local Government and Communities Committee and the Justice Committee, as well as some individual members. On 8 November we met Professor Philip Alston, the UN Special Rapporteur on Extreme Poverty and Human Rights and again will bring this report to his attention. It is our understanding that there will be other opportunities for committees and Members to meet with UN Special Rapporteurs on work relevant to them.

119. We heard evidence that international human rights treaties were relevant to committees other than the Equalities and Human Rights Committee. Emma Ritch, Engender, explained that in respect of the Health and Sport Committee the International Covenant on Economic, Social and Cultural Rights, provided guidance on achieving the progressive realisation of the highest attainable standard of health. <sup>83</sup>
120. The Health and Social Care Alliance (also known as The Alliance) also argued that it was not only human rights committees that should engage with the international human rights system, or other international networks that can provide support and expertise in international human rights. For example, committees could engage with the World Health Organisation, which had progressed initiatives on health and human rights, the Food and Agriculture Organisation on food and human rights, or the International Labour Organisation on work-related rights. <sup>84</sup>

## Conclusion

121. Our intention is to continue to engage directly with the international human rights system. We propose to increase this engagement, in accordance with the UN's draft Principles <sup>85</sup>, by—
- scrutinising systematically the Scottish Government's response to relevant recommendations from the UK's UPR, the treaty bodies and special rapporteurs,
  - reviewing the Scottish Government's input into UK State Reports to the UN, and where necessary taking evidence and reporting on that input,
  - engaging directly, where possible, with the international monitoring mechanisms such as the UN Human Rights Council, the treaty bodies and special rapporteurs.

122. **Recommendation 7:** We will send our relevant Committee reports directly to the monitoring mechanisms to assist them with their monitoring task, and will meet with members of the treaty bodies, Special Rapporteurs and other UN officials dealing with human rights when they are conducting official visits to the UK. Where appropriate we will also ask for a member of our Committee, or other MSP with relevant expertise, to be included in the UK delegation, for example to reviews by the treaty bodies or the Human Rights Council.

123. **Recommendation 8:** We note the Scottish Government's response to the most recent Universal Periodic Review (2017) which sets out several actions relevant to Scotland to address recommendations made by the UN Human Rights

Council. To assist us with planning our scrutiny and engagement, we ask the Scottish Government to draw up and present to us a timetable for implementing those actions. Also, in order to build on the good practice established in relation to the UPR, we ask the Scottish Government, within two years, to add to its timetable its plans for responding to the relevant recommendations of all other UN Treaty bodies and Special Rapporteurs. Short term 1-3 years

124. **Recommendation 9:** We ask Scottish Parliament Committees, assisted by the Scottish Parliament's Research service, to utilise the Universal Periodic Review recommendations and the Scottish Government's timetable for action to inform their scrutiny work. Short term 1-3 years.
125. **Recommendation 10:** We also ask for this timetable for action to form the basis of a debate in the Parliament, at least once per UPR cycle, to which Committees can contribute. Such debates should be timed to maximise their usefulness to the international monitoring mechanisms, for example, shortly before the UK's review by the Human Rights Council or other relevant event such as consideration of a mid-term report. Medium term 3-6 years.

## A Scottish mechanism for implementation, reporting and follow up

126. There is currently no co-ordinated Scottish mechanism to support implementation, reporting and follow-up of relevant recommendations by international human rights bodies. We understand, from the evidence of Professor Alan Miller that this is an area where Scotland is falling behind international best practice. The UN Office of the High Commissioner for Human Rights recommends that States establish a National Mechanism for Implementation, Reporting and Follow up (NMIRF)<sup>86</sup> and has published a helpful guide to establishing such a mechanism.
127. To support a Scottish mechanism, we feel strongly there needs to be publicly accessible information about relevant human rights recommendations, and the Government's response to them, in a format that would be useful not only to us, but also to a variety of interested stakeholders, whether that is NHRIs, other Parliamentary Committees, public bodies, NGOs or individuals.
128. The New Zealand National Plan of Action (NPA)<sup>87</sup>, which resulted from recommendations made to them in their 2014 UPR, is supported by a free interactive webtool that monitors human rights in New Zealand. This has been held up as an excellent example of best practice. The tool tracks the Government's progress implementing recommendations from the Universal Periodic Review (UPR) in real-time and gives people the opportunity to understand and examine human rights progress.

129. **Recommendation 11:** We ask the Scottish Government to establish a Scottish mechanism for implementation, reporting and follow up, modelled on the NMIRFs

recommended by the UN. We would take part in such a mechanism, to ensure that recommendations from the international human rights mechanisms that require action from the Parliament are identified and drawn to the attention of the Parliament or relevant Committees. We regard this as an urgent priority as it would accelerate the implementation of a number of other recommendations about the Parliament's engagement with the international human rights system.

130. **Recommendation 12:** To enable the new mechanism for implementation, reporting and follow-up to adequately track Scotland's progress against its international obligations, we also ask the Scottish Government to work with the Parliament and the Scottish Human Rights Commission to develop a publicly accessible international treaty monitoring database system for Scotland, including by providing the necessary resources for the creation of such a database. In the meantime, we will give further consideration as to how relevant international monitoring information can be shared on a systematic basis with other Committees to assist them with their work programmes. Medium term 3-6 years

## Scotland's National Action Plan for human rights

131. Scotland's National Action Plan for Human Rights (SNAP) was launched on 10 December 2013. SNAP was the first, and remains the only National Action Plan for human rights in any part of the UK and drew from the experiences of countries all over the world as well as guidance from the United Nations and the Council of Europe. It focused on building a better culture where people could understand and exercise their human rights, and, where Scotland effectively tackled injustice and exclusion, improving lives.
132. Witnesses Cath Denholm, NHS Health Scotland, and Lucy Mulvagh, The Health and Social Care Alliance, advised that they had played an integral part in SNAP and had welcomed the challenge of making rights real.
133. SNAP concluded in 2017 and the SHRC advised it will be reporting on the outcome of SNAP in 2018. It was expected that discussions on the next iteration of Scotland's National Action Plan would commence soon.
134. The Cabinet Secretary said that through SNAP, Scotland and civic society had "shown great leadership and commitment to the practical and meaningful implementation of human rights". She said it was important to stress that the national action plan did not belong to the Scottish Government. It was a process in which it co-operated with the Scottish Human Rights Commission and other partners across the public, private and third sectors.<sup>88</sup>

## Conclusion

135. We are aware that the Justice Committee had taken evidence<sup>89 90</sup> on the first two years of Scotland's National Action Plan on Human Rights 2013-2017 and held Parliamentary debates. Due to the timing of the broadening of our remit, it has not been possible for us to be involved in SNAP to the same degree as the Justice Committee. The next iteration of SNAP is something in which we intend to be

closely involved due to both its unique approach and its involvement of civil society. As such, we will ensure that the next National Action Plan will feature in our work programme.

136. SNAP will also have added importance as the UK leaves the EU, and Scotland looks more to our international obligations. The next National Action Plan will be crucial in driving forward change and we hope it will give consideration to both the Committee’s report and the Scottish Government’s response to the recommendations of the First Minister’s Advisory Group on Human Rights Leadership.

137. **Recommendation 13:** We commit to holding an annual evidence session on Scotland’s National Action Plan and a Parliamentary debate, parliamentary time permitting. We also ask the Parliament, its committees and Members to take a more proactive role in working with Scotland’s National Action Plan and its principles to build alliances between organisations, politicians and citizens to help build a culture of human rights. We ask the SHRC to suggest practical ways in which this could be done. Short term 1-3 years.

### Third sector involvement in UN rights treaty monitoring

138. We received evidence about Non-Government Organisations’ ability to participate effectively in the UN rights treaty monitoring processes.
139. On the efficacy of the UN treaty monitoring processes, HRC Scotland stated they “work best when civil society is fully engaged with them”. They were concerned that, “due to significant strain on civil society funding and capacity, most organisations simply are unable to take part in these processes in any meaningful way”. This, they believed, was especially true for the most marginalised and excluded groups in our society, such as refugees and asylum seekers, Black and Minority Ethnic communities and disabled people.<sup>91</sup>
140. Gianni Magazzeni of UNOHCHR encouraged good practice, so countries could fulfil their international obligations. For the UNOHCHR that meant having “a strong independent judiciary, a Parliament with a human rights committee, national institutions in line with the Paris Principles, and space for civil society and for human rights defenders to do their investigative work”<sup>92</sup>.

### Conclusion

141. Civic society plays a critical role through its monitoring, promotion and follow-up activities relevant to the work of treaty bodies throughout the various stages of the reporting cycle and its processes. Although Non-Government Organisations are traditionally the main civic society group engaging, other individual experts, academics and human rights defenders can contribute to the treaty reporting process.
142. We are concerned that the UN rights treaty monitoring processes are much less effective in Scotland than they could be. Civic society organisations could

participate more fully if there was greater knowledge of how to interact with the treaty monitoring processes and engagement was supported through better funding provision.

143. **Recommendation 14:** We ask the Scottish Government and public authorities to specifically include resources for engagement with the United Nations in their funding to civic society organisations. In addition, we ask the Scottish Government to explore ways in which it can up-skill civic society around engagement in UN treaty monitoring. This could be through holding workshops or providing plain language leaflets explaining the Universal Periodic Review and how civic society can get involved. Short term 1-3 years.

## European human rights protections

144. The European system for human rights protection is made up of two distinct but overlapping parts: first, the Council of Europe (CoE) which focuses on human rights and the rule of law across its 47 Member States, including the UK, and second, the European Union (EU), which currently has 28 Member States, including the UK. Although the CoE co-operates with the EU in many ways, the two organisations are entirely separate in how they are structured, their institutions and the ways they work. Every member of the EU was first a member of the CoE.

## The European Convention on Human Rights

145. The primary human rights text of the Council of Europe is the European Convention on Human Rights (ECHR or the Convention). The Universal Declaration of Human Rights forms the basis of the European Convention on Human Rights<sup>93</sup>. The UK incorporated these rights into domestic law through the Human Rights Act 1998.
146. The European Court of Human Rights applies and protects the rights and guarantees set out in the Convention and is based in Strasbourg. When considering a State's interference with a right, the European Court of Human Rights considers whether the interference has a basis in law and serves a legitimate aim. If it does, the Court then considers whether the interference was both necessary and proportionate.

## EU Charter of Fundamental Rights

147. As discussed earlier, the Charter of Fundamental Rights of the European Union (the Charter) brings together the fundamental rights of everyone living in the EU – it's the overarching human rights framework in the EU. It includes all the rights in the ECHR, in some cases in updated form, as well as some additional more specific rights not in the ECHR, such as a right to the protection of personal data (Article 8). The Charter sets out the full range of civil, political, economic and social rights based on—
- the fundamental rights and freedoms recognised by the European Convention on Human Rights
  - the constitutional traditions of the EU Member States, for example, longstanding protections of rights which exist in the common law and constitutional law of the UK and other EU Member States
  - the Council of Europe's Social Charter
  - the Community Charter of Fundamental Social Rights of Workers, and
  - other international conventions to which the EU or its Member States are parties.

148. The EU Charter became legally binding on EU Member States when the Treaty of Lisbon entered into force in December 2009 and is interpreted by the Court of Justice of the European Union (CJEU), which is in Luxembourg. The Charter only applies to Member States when they are implementing, departing from or acting within the scope of EU law. It also does not extend the field of application of EU law beyond the EU's existing powers. As a result, the EU Charter does not apply to situations which are outside the scope of EU law and involve only domestic law.
  
149. Brexit will significantly change Scotland's relationship with the Charter, which, under the EU (Withdrawal) Act 2018, will no longer apply in the UK after Brexit day: see [paragraph 34 and 35](#).

## Access to justice for human rights breaches

150. Many witnesses, including NHRIs, academics, and NGOs, considered the ability of rights holders to seek justice when their rights had been infringed or violated to be fundamental to the effective realisation of human rights and to the public's confidence in the human rights system. Rights without remedies are not only ineffective, but encourage public cynicism about the human rights framework and its institutions.

## Routes for legal redress

151. There are several different ways to access justice for breaches of human rights<sup>94</sup> depending on the particulars of any case, e.g. for Scottish legislation which breaches human rights protected by the European Convention on Human Rights or the Charter of Fundamental Rights of the European Union.
152. The Health and Social Care Alliance said that “despite many checks and balances in Scotland, there is still inadequate redress when people's rights are infringed”.<sup>95</sup> They argued that empowerment to claim rights is meaningless without accessible structures for people to claim their rights in practice.

## Roles of inspection, regulatory and complaints bodies

153. Because human rights include rights such as the right to education, adequate housing and health, many human rights issues arise in the course of delivery of public services. It is the role of inspection regimes and regulators to ensure public authorities have regard to human rights in policies, procedures and practice. Ombudsmen can also serve as an alternative to litigation in the courts.
154. Marie Anderson, the Northern Ireland Public Services Ombudsman (NIPSO) explained that although she didn't have an explicit human rights mandate she used a human rights-based approach for her investigations. She said, “I test public authorities in Northern Ireland and ask them, ‘Have you had regard to the human rights of the individual who has complained to me?’”.<sup>96</sup>
155. We wrote to Rosemary Agnew, the Scottish Public Services Ombudsman (SPSO), on 23 May 2018 to ask whether she took a rights-based approach to her investigations and how this might assist Parliamentarians when examining policy approaches or scrutinising legislation or looking at the impacts on individuals and their rights as a result of legislation or a particular policy approach.
156. The SPSO advised that “much of our work involves consideration of complaints where people feel they have not been treated with dignity or respect”. She stated, “while I am confident that as an organisation, a human rights approach is

embedded in the way we work, it is fair to say that reference to human rights is not explicit ... we do not, for example, operate a Human Rights Framework in the way that the NIPSO does". The SPSO said prior to us writing, she had been "considering how a similar approach to NIPSO might work in Scotland, bearing in mind we have a different human rights structure to Northern Ireland and the rest of the UK".<sup>97</sup>

## Improving current enforcement and remedies

157. Some witnesses questioned whether current non-compliance mechanisms were fit for purpose, claiming access to justice was impossible for some.
158. Fife Centre for Equalities suggested there was a need for "a clear structure for scrutiny and enforcement", as well as an explicit "menu of remedies for addressing issues" to enable individuals and civil society organisations to exercise their rights.<sup>98</sup> They pointed to their experience supporting individuals facing discrimination, which showed there to be a lack of conventional understanding about how the Equality Act 2010 interfaced with the HRA, leading to frustration for those trying to enforce their right, for example, to 'freedom from degrading treatment'.
159. Public legal education was cited by the Law Society as a way to increase awareness of routes to remedy. They drew our attention to their Street Law programme, which delivered classes about the law and the legal process to school pupils to help them recognise, prevent and in some cases, resolve legal problems.<sup>99</sup>
160. The Health and Social Care Alliance argued empowerment of people to claim their rights necessitated open and transparent administrative and legislative frameworks of accountability and redress underpinned by a wide range of support e.g. legal aid and independent advocacy.<sup>100</sup>
161. An approach focusing more on the public authority duty-bearers, rather than the right-holders, was suggested by Carole Ewart a Public Policy and Human Rights Consultant, as a way of strengthening enforcement of the HRA. She highlighted the comprehensive approach taken by the Freedom of Information (Scotland) Act 2002 (FoISA) in contrast with the more generic approach taken by the HRA that 'all public bodies and those delivering services of a public nature' have a duty to comply with the ECHR. She believed the HRA could be "powerful in allocating rights and responsibilities on designated bodies"<sup>101</sup> and require enforcement through enhanced SHRC powers. She said—

” The crucial point is that duty bearers understand their rights. I was intrigued to hear the evidence in the previous session; I would urge the committee to focus on the role of the duty bearer. There is absolutely no point in people knowing about and trying to assert their rights if they are ignored or laughed off and nothing happens. That is fundamentally disempowering.

Source: Equalities and Human Rights Committee 29 March 2018, Carole Ewart, contrib. 42<sup>6</sup>

162. She described the free enforceability of freedom of information rights as a “game changer” and proposed that the powers of the SHRC should be added to so that the Commission could undertake case work and bring test cases—

” A fear of litigation preying on the current culture would presumably lead to a voluntary change in practice.

Source: Equalities and Human Rights Committee 29 March 2018, Carole Ewart, contrib. 55<sup>7</sup>

## Conclusion

163. The Parliament has a fundamental role in the creation and maintenance of the effective functioning of bodies and institutions for the protection and promotion of human rights.<sup>102</sup> In fulfilling that role, we have considered the adequacy of certain aspects of Scotland’s current human rights structures.

164. We see an important role for inspectors and regulators in helping to mainstream public bodies’ human rights compliance through their routine inspection and regulatory processes. We are keen to work with inspectors and regulators, along with the SHRC, to develop this role.

165. In terms of access to justice for human rights matters more generally, this is an area where we feel there needs to be greater clarity for the individual, those organisations assisting them, public bodies and Members (in respect of their constituency roles). We have heard a number of good ideas but many of them would have potentially significant resource implications. As such, we consider further investigation is needed in conjunction with the various stakeholders and this should be part of a wider discussion with the Scottish Government around possible incorporation of international human rights law into Scots law post-Brexit. We will look to consider this matter further once we know the outcomes of the First Minister’s Advisory Group on Human Rights Leadership and any impact this may have on this area.

166. **Recommendation 15:** We will inquire into ways of strengthening human rights in Scotland and the institutions which promote and protect them. This might comprise of looking at the powers of the Scottish Human Rights Commission to litigate individual cases in addition to the power to intervene in existing cases, and the Commission’s ability to effectively support public bodies in adopting a human rights-based approach to their work and the resources required to support this action. The example of the Northern Ireland Public Services Ombudsman illustrates the benefits and offers lessons for Scotland of what can be gained from adopting such an approach to matters within its jurisdiction. Short term 1-3 years.

## Incorporation of international human rights law into Scots Law

167. As previously stated, rights contained in international treaties are not directly legally enforceable in UK courts, although they represent binding obligations in international law. Dr Katie Boyle, University of Roehampton, considered that without

access to justice, increasing awareness of international human rights may be “a futile exercise”. She said—

” It is, of course, important to continue to raise awareness; education is critical, and we need to have those conversations. However, we must recognise that, while we can advise someone to engage with a specific right under the UN Convention on the Rights of the Child or the International Covenant on Economic, Social and Cultural Rights, that will not, if the person cannot engage with an institution such as a local council and claim that as an actual legal right, necessarily result in any change.

Source: Equalities and Human Rights Committee 29 March 2018, Dr Boyle, contrib. 15<sup>8</sup>

168. Some recent Acts have sought to specifically protect people’s rights through reference to key human rights conventions and principles to support effective accountability, for example—
- the Social Care (Self-directed Support) (Scotland) Act 2013 <sup>103</sup> , <sup>104</sup>
  - the Children and Young People (Scotland) Act 2014 <sup>105</sup> , <sup>106</sup>
  - the Community Empowerment (Scotland) Act 2015 <sup>107</sup> , <sup>108</sup>
  - the Land Reform (Scotland) Act 2016 <sup>109</sup> , <sup>110</sup>
  - the Social Security (Scotland) Act 2018 <sup>111</sup> , <sup>112</sup>
169. The then HM Chief Inspector of Prisons for Scotland, David Strang, also highlighted the opportunities to take a rights-based approach in subordinate legislation. He pointed to the reference to the Optional Protocol to the Convention Against Torture (OPCAT) in the Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2015, which introduced Independent Prison Monitoring to Scotland. He believed “such references strengthen awareness and understanding of international legislation and how these obligations should be overseen” <sup>113</sup> .
170. Some witnesses considered Scotland should be more ambitious in delivering human rights through Scottish legislation. For instance, Dr Katie Boyle suggested housing legislation could reflect what is required by international human rights law to provide the right to adequate housing (Article 11 International Covenant on Economic, Social and Cultural Rights (ICESCR)), or the provision of health care could be benchmarked against the right to the highest attainable physical and mental health (Article 12 ICESCR). <sup>114</sup>
171. A number of witnesses favoured the full incorporation of international human rights treaties into domestic law.
172. Children and young people’s representative bodies, the Children and Young People’s Commissioner Scotland and the SHRC all called for full incorporation of the UNCRC.
173. The Scottish Youth Parliament stated—

” Children and young people's rights are being breached in Scotland. It is now the ‘Year of Young People’(YOYP) in Scotland, an opportunity for generations to come together and celebrate Scotland’s young people. With this in mind, and for Scotland to truly be the best place to grow up – SYP believes that it is time to incorporate the United Nations Convention on the Rights of the Child (UNCRC) into Scots law Right Here, Right Now, to ensure young people's rights are properly respected, protected and fulfilled. <sup>115</sup>

Source: Scottish Youth Parliament, Written Submission

174. On incorporation of the UNCRC, the Cabinet Secretary advised work had started on an audit of the Scottish Government’s compliance with the UNCRC. She commented that this was a useful process to focus attention on particular areas. <sup>116</sup> She indicated that the Government was open to expert advice about the benefits of incorporation, and about some of the challenges, such as how to ensure legal certainty for duty bearers. Following the conclusion of our evidence taking, on 4 September 2018, the First Minister announced in the Programme for Government a commitment to incorporate the principles of the UNCRC into domestic law—

” Having now carefully considered that matter, I can announce today that we will incorporate the principles of the UN convention into Scots law. We will work with partners and the Parliament to do that in the most effective way possible, but in this year of young people there can be few more powerful symbols of this Government’s commitment to our young people. <sup>117</sup>

Source: The Scottish Parliament Chamber, Official Report, 4 September 2018, col 21.

## Alternatives to incorporation

175. Full incorporation, we were told, was not the only way to “bridge the accountability gap”. Dr Katie Boyle outlined that there were numerous means by which ‘incorporation’ of rights could occur. For example, rights could be set out in a framework bill, a constitutional text or through specific pieces of legislation which tackled a particular set of rights or addressed a rights issue. She stated enforcement of rights could best be secured through legislative, administrative, executive or judicial means. <sup>118</sup>

176. Dr Boyle indicated that States adopted different approaches to the protection and observance of human rights standards. In particular, she pointed to Switzerland where the primary responsibility for the observance of international human rights law rested with the devolved legislatures. She stated that “a constitutional process around human rights change should be predicated by a participative, informed and inclusive process – achieved through a format such as a national conversation or a constitutional convention process”. <sup>119</sup>

177. Professor Alan Miller, Chair of the First Minister's Advisory Group, said that his Group had been tasked by the First Minister to consider how to give effect to the UN human rights treaties that were ratified, but not yet given legal effect. His Group would, in particular, look at the associated benefits, risks and challenges. <sup>120</sup>

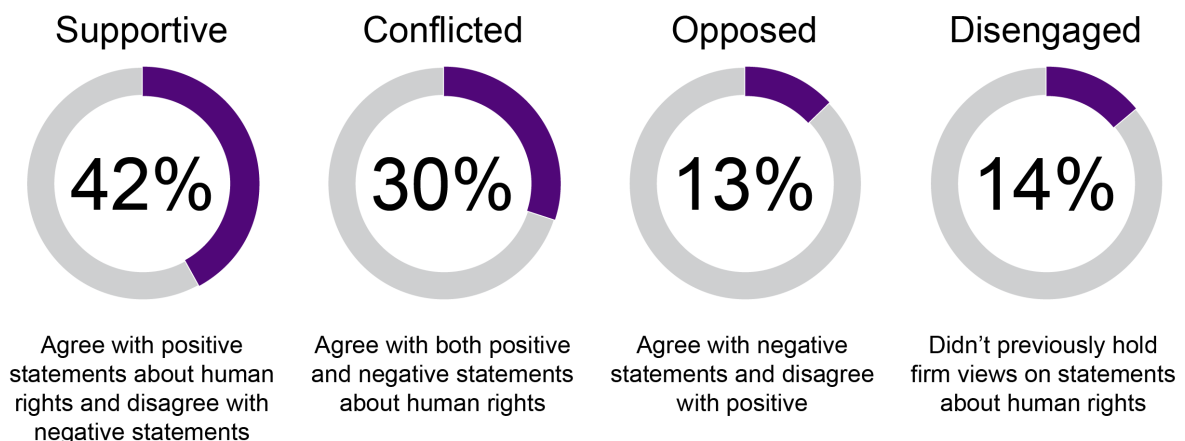
## Conclusion

178. **Recommendation 16:** We wholeheartedly welcome the Scottish Government's commitment to incorporate the principles of the UNCRC into domestic law and we identify this as a priority for this parliamentary session. This would be a significant and meaningful step towards affording children in Scotland the special care, protection and the access to justice they deserve. We will scrutinise carefully the legislation which gives effect to the Government's commitment to ensure that the means of incorporation chosen is adequate. Incorporation should ensure UNCRC rights are actively considered when making policy decisions. We also understand that by incorporating the UNCRC, these rights should be capable of being settled by the action of a court. We ask for a timescale for this work to take place.
179. This will provide children legal redress in Scottish courts and tribunals, which will help children to take action when their rights are violated. In the words of the Scottish Youth Parliament, this will help make Scotland truly the best place to grow up.
180. We also note the wider issue of leadership on human rights including those set out in the International Covenant on Economic, Social and Cultural rights as well as environmental rights, which are currently being examined by the First Minister's Advisory Group on Human Rights Leadership. We look forward to engaging with the Advisory Group's recommendations when they are available.
181. **Recommendation 17:** We ask other Parliamentary Committees to actively engage with the recommendations and comments of the Advisory Group. Short term 1-3 years.

## Building a culture of human rights

182. Carole Ewart, Public Policy and Human Rights Consultant, advised YouGov conducted a poll in 2015<sup>121</sup> for the Scottish Government on human rights. It revealed that one in five Scots believed human rights were for minority groups only, and two in five Scots said human rights had no bearing on their everyday life.<sup>122</sup>
183. Carole Ewart compared this to an Ipsos MORI poll conducted at the same time for the Office of the Scottish Information Commissioner (OSIC) which revealed that at 85%, public awareness of FOI rights in Scotland was at the highest ever recorded level and 77% agreed that FOI gave them more confidence in the decisions of Scottish public bodies.<sup>123</sup>
184. More recently, the SHRC 2018 report, 'Building a Human Rights Culture in Scotland: insights from audience research', found that while 42% of people over 16 years old in Scotland were supportive of rights, the majority remained either conflicted, opposed or disengaged and had low detailed knowledge of rights.<sup>124</sup>

### Scottish Human Rights Commission poll



Source: Scottish Parliament

185. These polls indicate that there is still some work to be done to build a culture of human rights in Scotland where human rights are considered and discussed as the norm. We consider it will take all the principal institutions of the domestic human rights framework i.e. the legislature, government, the courts, NHRIs and civic society to work together to show the positive effect a focus on rights can have on people's everyday lives.

## Embedding human rights across the Scottish Parliament

186. There were calls for human rights to filter through every aspect of the way the Parliament operates. Judith Robertson, Chair of the SHRC, said-

” There is the potential to incorporate human rights into the thinking and analysis that go into all the processes that are intrinsic to the Parliament’s day-to-day running, whether we are talking about scrutiny of legislation, bringing the treaty body processes from the UN much more into our public narrative and consciousness and supporting civil society organisations to do that, or scrutiny of the budget from a human rights perspective.

Source: Equalities and Human Rights Committee 19 April 2018, Judith Robertson (Scottish Human Rights Commission), contrib. 3<sup>9</sup>

187. The Parliament has a strong commitment to human rights borne out by the significant additions to Scotland’s human rights machinery, including the Parliament’s creation of the Children and Young People’s Commissioner Scotland (CYPCS) in 2003 (the role of the CYPCS is to promote and safeguard the rights of children and young people. The Commissioner provides a bridge between the international legal framework and the implementation of those rights in Scotland) and the Scottish Human Rights Commission (SHRC) in 2006. The establishment of a committee with an explicit human rights mandate this Parliamentary session further strengthens this commitment.

## National human rights institution

188. The Scottish Human Rights Commission (SHRC) is the national human rights institution (NHRI) for Scotland and has a general duty to promote human rights and protect human rights for everyone in Scotland. The Equalities and Human Rights Commission is responsible for reserved human rights matters and is also a NHRI. NHRIs are independent of government and parliament in the exercise of their functions. NHRIs are crucial to embedding a rights culture and holding the principal structures to account. The Belgrade Principles are a set of internationally agreed principles which provide helpful guidance to both parliaments and NHRIs about how to develop their relationship.<sup>125</sup>

189. Rogier Huizenga, the IPU, advised the Inter-Parliamentary Union (IPU) had surveyed implementation of the Belgrade Principles on the relationship and co-operation between Parliaments and national human rights institutions. He said that national human rights institutions regularly presented reports to parliaments, but that there was insufficient feedback on those reports and follow-up action. For example, he said, Parliaments took follow-up action in only 25% of cases, and most of the actions that were taken were not conveyed or communicated to the NHRIs.<sup>126</sup>

190. The HRC Scotland expressed “disappointment” at the Social Security Committee’s decision not to agree Stage 2 amendments to the Social Security Bill that would have provided a human rights-based approach to social security by including a ‘due regard duty’ requirement. The HRC Scotland strongly urged the Parliament to “pay greater heed” to Scotland’s experts on human rights.<sup>127</sup>

191. **Recommendation 18:** The Scottish Human Rights Commission (SHRC), as an NHRI, holds a unique position within the human rights framework. It is an expert in its field and it is therefore essential that the Parliament, in addition to

co-ordinating and co-operating with this body, recognises its role in holding the Government, and the Parliament, to account on human rights issues in Scotland in accordance with the Belgrade Principles. The SHRC is a valuable resource that can provide information about public bodies' human rights progress and Scottish society's views on their human rights'. The SHRC is also aware of the international work being carried out on human rights across all subject areas. We intend to deepen our connection with the SHRC and ask other committees to strengthen their relationships with the SHRC too. Short term 1-3 years.

## The equalities and human rights remit

192. The Equalities Committee (formerly known as “the Equal Opportunities Committee”) is a mandatory committee established under Standing Order Rule 6.9<sup>128</sup>. In 2016, ‘human rights’ was added to our remit as an additional matter under Rule 6.1.5A<sup>129</sup> and we became the Equalities and Human Rights Committee.
193. Gianni Magazzeni, UNOHCHR, referred to a report by the Secretary General which stated—
- ” While human rights are a cross-cutting issue that should be taken into account by all parliamentary committees, the establishment of a parliamentary committee with an exclusive human rights mandate sends a strong political message and should be encouraged.
- Source: Equalities and Human Rights Committee 21 June 2018, Gianni Magazzeni (Office of the United Nations High Commissioner for Human Rights), contrib. 2<sup>1</sup>
194. When our remit was first extended in 2016, some stakeholders were concerned about sufficient resources being available to support a larger remit, which they believed could lead to less focus on equalities matters.<sup>130</sup>
195. The Catholic Parliamentary Office (CPO) considered there may be merit in establishing separate committees in the Scottish Parliament, like the UK Parliament, which has distinct committees for both equalities and human rights. CPO recognised, however, that this decision would need to follow an assessment by the Parliament of workload and an analysis of the benefits of the various options.
196. Deaf Scotland (formerly, Scottish Council on Deafness), the Glasgow Council for the Voluntary Sector, the Jimmy Reid Foundation and the Campaign for Freedom of Information in Scotland considered too often equalities and human rights were understood to be the same thing, which they considered unhelpful. They made the distinction that “human rights are to be equally enjoyed and are therefore a much more expansive framework to achieve fairness” and cited City Partnership Deals as an example where specific measures were undertaken to promote equality that could have equally been agreed for human rights.<sup>131</sup>
197. Based on our experience over the last two years, we have some understanding as to why these issues may arise.

198. "Equality" recognises that historically certain groups of people with protected characteristics such as race, disability, sex and sexual orientation have experienced discrimination. It is about ensuring that every individual has an equal opportunity to make the most of their lives and talents. Human rights are the basic rights and freedoms that belong to every person in the world.
199. The UDHR is generally agreed to be the foundation of international human rights law. Equality and non-discrimination are core principles of the UDHR. Equality is also one of the human rights set out in Article 2 of the Universal Declaration of Human Rights.<sup>132</sup>
200. Human rights treaties have what is known as a 'non-discrimination' clause that explicitly states that all of the rights enshrined in that treaty must be afforded regardless of an individual's race, sex, religion, political opinion, national origin and so on. Some examples of non-discrimination clauses include: Article 14 of the European Convention on Human Rights (ECHR), Article 2 of the International Covenant on Civil and Political Rights (ICCPR) and Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Some earlier treaties do not explicitly mention disability, sexual orientation or age as grounds against which discrimination is prohibited; however, jurisprudence of the European Court of Human Rights (ECtHR) and the UN treaty monitoring bodies have made it clear that unjustified discrimination on such grounds is not permitted under human rights law.
201. In addition to non-discrimination clauses, certain groups are the subject of specialist treaties, for example, which deal specifically with discrimination and equalities. These are the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Rights of Persons with Disabilities (CRPD). The Convention on the Rights of the Child (CRC) also contains a non-discrimination provision.
202. Equalities and human rights centre on the values of fairness, equality, dignity, respect, autonomy, empowerment and participation. Key to understanding the relationship between equalities and human rights in the UK is the legislative requirements of the Equality Act 2010 and Human Rights Act 1998. In relation to equality, a person can pursue discrimination in treatment cases in a range of settings, and from both the public and private sectors. Human rights can, however, only be directly relied upon in the public sector.
203. When we asked our international panel of witnesses about our joint equalities and human rights remit, Rogier Huizenga, IPU, advised lots of countries took this approach and we should draw our own conclusions based on whether we were sufficiently effective in promoting a human rights agenda. It was his view that "a committee that had an exclusively human rights mandate would need to be powerful and effective enough to relay the message internally in Parliament".<sup>133</sup>
204. It was important to us to obtain other committees' views on the appropriate approach to human rights within the Scottish Parliament and so we wrote<sup>134</sup> to all Committee Conveners. Of the three Committees that expressed a view on having a 'human rights committee', all were in favour. The Environment, Climate Change and Land Reform Committee said-

” Human rights is of such significance, in order to ensure effective consideration across the Parliament there should be a lead Human Rights Committee taking a strategic role. This would ensure the development of a body of expertise and a focus on the issue. In addition, a focus on human rights should underpin the work of each Parliamentary committee and each committee should, as a matter of course, be undertaking human rights scrutiny throughout its work.

Source: [Letter from the Convener of the Environment, Climate Change and Land Reform Committee, 6 March 2018](#)

## Conclusion

205. We believe our dual focus makes us uniquely placed to drive a more integrated approach to human rights broadly conceived, so as to include equality and the rights of particular groups who face the most difficulty in accessing their rights because of discrimination, vulnerability or marginalisation. A recent example of this was our consideration of issues around allowing prisoners serving a custodial sentence to vote. This dual focus, we consider, compares favourably to committees in many other parliaments – including the UK Parliament – where the remit is divided between human rights committees, equality committees and other committees on constitutional affairs.

206. **Recommendation 19:** We will use our broad remit to promote a more integrated, holistic approach to human rights and equality in the Parliament and in Scotland generally that can demonstrate in practice how to overcome the risk of a fragmented or ‘silo’ approach to human rights. Short term 1-3 years.

## Permanency of the human rights remit

207. The inclusion of human rights as an additional matter in our remit applies for this Parliamentary session only. The importance of parliaments having a committee with such an explicit and permanent mandate is referred to in the UN’s draft Principles.<sup>135</sup> However, it would be open to the next Parliament to decide whether to maintain the same focus on human rights. Under Rule 6.1.5A of Standing Orders, “An additional matter may be varied or removed by the Parliament on a motion of the Parliamentary Bureau”.<sup>136</sup>

208. On the need for an expert human rights committee when other committees have a focus on human rights in their subject areas, Professor Alan Miller said—

” Until there is a culture and a norm of understanding human rights and how to operationalise them, mainstreaming will not be credible. There must be very explicit and well-resourced expert focal points within Government, Parliament and many other bodies in order that we can move towards human rights actually being mainstreamed.

Source: Equalities and Human Rights Committee 03 May 2018, Professor Miller, contrib. 9<sup>10</sup>

209. The Committee’s expanded remit was also welcomed by Professor Kurt Mills, University of Dundee, who referred to research published six years ago, commissioned by the Cross-Party Group on Human Rights, which had called for the former Equal Opportunities Committee to have human rights added to its remit. He said—

” I begin [...] by reiterating the potentially transformative nature of the creation of this committee, and I encourage you to use its potential not only to scrutinise the work of other committees and to routinise the consideration of human rights throughout Parliament but as a platform to embed within Scottish society the positive values of human rights.

Source: Equalities and Human Rights Committee 29 March 2018, Professor Kurt Mills (University of Dundee), contrib. 7<sup>11</sup>

210. Rogier Huizenga, IPU, told us the Inter-Parliamentary Union “has always been a strong advocate of having dedicated parliamentary human rights committees but, at the same time, we have highlighted the importance of making sure that those committees do not work in isolation from other committees but co-ordinate and co-operate closely with them”. He expanded his point saying—

” If there is no real willingness and commitment within the Parliament as a whole, the human rights committee will not be terribly effective.

Source: Equalities and Human Rights Committee 21 June 2018, Rogier Huizenga (Inter-Parliamentary Union), contrib. 4<sup>5</sup>

211. Judith Robertson, Chair of the SHRC said “One of our absolute recommendations is that it [the remit] be extended in perpetuity”.<sup>137</sup>

## Conclusion

212. The cultural shift that we wish to help bring about requires a change in the way the Parliament approaches its role in relation to human rights. There needs to be a shift from an essentially reactive role of checking Government Bills, policies or actions to ensure that they comply with Convention rights, to a more positive and proactive role. An approach where the Parliament helps the Government and public bodies to identify opportunities to advance human rights, including by taking positive steps where those are necessary.

213. **Recommendation 20:** As the Parliament’s expert human rights body, we will seek to establish an integrated approach across the Parliament, by providing the leadership and coordination required. We will be proactive in identifying human rights issues which should be considered by Parliament and drawing them to the attention of the responsible body or individual. A range of actions are set out in this report which underpin this approach and provide a road map for progress.

214. We believe it is crucial that human rights are made a mandatory subject matter to provide a central focus to build consistency and expertise and to deliver on human rights for the people of Scotland.

215. **Recommendation 21:** We ask the Parliament to amend its Standing Orders to make the Equalities and Human Rights Committee a mandatory Committee of the Parliament, replacing the former mandatory Equalities Committee. Short term 1-3 years
216. **Recommendation 22:** In order to build a culture of human rights in the Scottish Parliament, we ask the rest of the Parliament, its Committees, Parliamentarians and staff, to help us to embed human rights across the Parliament. We will produce guidance to support the work of the Parliament and its Committees and work with the parliamentary authorities and staff to prepare guidance and implement the actions identified in the 'road map' in a participative process. Short term 1-3 years

## Human rights scrutiny

217. Effective human rights scrutiny is an important aspect of accountability in the Scottish Parliament. Human rights scrutiny can arise during committee-initiated human rights inquiries or through the consideration of Government human rights legislation or Bills promoted by Members or Committees. Moreover, any area of inquiry or legislation can have human rights consequences and a human rights dimension.
218. In practice, human rights matters may arise in both devolved and reserved areas. For example, the areas of criminal justice, prisons, health, and education may give rise to human rights issues in devolved areas. Human rights may also arise in connection with reserved matters such as immigration, extradition, national security, and occupational or personal pension schemes. As with other reserved matters, committees might investigate the impact of reserved policies on matters that fall within devolved competence. Brexit is the most obvious example of this. Another would be our 2017 inquiry into the destitution of asylum seekers and those with insecure immigration status, which looked at the impact of the UK's immigration policy on the people affected and Scottish public bodies and NGOs.
219. Professor Miller considered the Parliament had made progress examining a wider range of rights “over the years, and especially recently, that reactive approach has developed incrementally into a more proactive approach that considers the broader range of rights—economic, social and cultural, and environmental”.<sup>138</sup>

## Human rights and legislative competence

### The Scotland Act 1998

#### The Scotland Act 1998

220. It is important for the Parliament and Members to have a clear understanding of human rights and the operation of the Scottish Parliament, provided for by the Scotland Act 1998 (the “Scotland Act”).
221. Human rights are not explicitly reserved as they are not listed in Schedule 5 to the Scotland Act. Under Paragraph 7(2) of Schedule 5 of the Scotland Act, the Scottish Parliament has the power to “observe and implement international obligations, obligations under the Human Rights Convention and obligations under EU law...”.
222. The Scottish Parliament must comply with ECHR when legislating or its legislation is not law.

### Statements on legislative competence

223. A series of checks are carried out in advance of the introduction of a Bill, as to whether a Bill is within the legislative competence of the Parliament. These checks involve the application of the five tests set out in section 29(2) of the Scotland Act, which include an assessment of a Bill's compatibility with Convention rights, as

mentioned above. Statements on legislative competence of any Bill must be made by the Presiding Officer and the Member in Charge of the Bill, in accordance with section 31 of the Scotland Act. Before they make such a statement, they receive advice on legislative competence, including ECHR compatibility, from the Parliament's legal service. That advice may have been preceded by correspondence between the Parliament's legal service and the department introducing the Bill, including about ECHR compatibility. Neither the correspondence nor the advice are published.

224. The Scottish Human Rights Commission and some NGOs, such as the HRC Scotland, have called consistently for the legal advice provided to the Presiding Officer to enable him to make his Statement on Legislative Competence to be made public. Judith Robertson, the Chair of the SHRC considered that the advice provided to the Presiding Officer to inform his decision should be made public to better inform both the Parliamentary consideration of the issues, but also to better allow the public to engage with the issues at stake.<sup>139</sup>
225. David Pedley highlighted that the Parliament does not get the full benefit of the work that has been done by its lawyers to identify possible ECHR compatibility issues raised by a Bill—

” The Scotland Act 1998 requires statements as to legislative competence to be made relating to any Bill before Parliament. Perhaps the statement could flag up possible conflicts on human rights, even if the Bill is thought to be compliant. For example, the current Planning Bill has a statement simply saying it is Human Rights compliant, whereas I have submitted to the Committee considering the Bill the suggestion that it (and the Planning etc (Scotland) Act 2006, which it amends) is in breach of Article 6 of the ECHR ('everyone is entitled to a fair and public hearing .... by an independent and impartial tribunal').

Source: David Pedley, Written Submission

## Conclusion

226. We understand Government Ministers are not permitted to disclose their legal advice under the Ministerial Code without express authority of the Law Officers<sup>140</sup>. The principle of maintaining the confidentiality of legal advice is well established. It ensures those seeking it have access to full and frank advice to support robust decision making. This has been upheld under Freedom of Information on several occasions in relation to advice on legislative competence certificates – though each specific case is subject to a public interest test. The Government, like any other client, is entitled to legal professional privilege when it seeks legal advice, subject only to overriding considerations of exceptional public interest. As we explain below, we consider there to be more effective ways of ensuring that the Parliament receives sufficiently detailed explanatory information from the Government about the human rights compatibility of Bills, without requiring the Government to forego its right to legal professional privilege, which could have negative consequences for the nature and quality of the advice that it receives.

227. **Recommendation 23:** Whilst we recognise that the legal advice informing the Presiding Officer’s statement would not routinely be made public, we recommend the statement be as expansive as possible to provide the public and the Parliament with an understanding of the Presiding Officer’s views on human rights issues relating to bills.

## Availability of human rights information to inform parliamentary scrutiny

228. Scotland has a comprehensive policy and legislative framework comprising the current practice of public consultations, impact assessments, explanatory notes, financial memorandums and policy memorandums. Much of the information gathered in relation to legislation is set out in the latter three accompanying documents, with the policy memorandum providing a specific section for human rights. For Government Bills this section is provided for under the Parliament’s Standing Orders, Rule 9.3.3(d) and must contain “an assessment of the effects, if any, of the Bill on equal opportunities, human rights, island communities, local government, sustainable development and any other matter which the Scottish Ministers consider relevant”.<sup>141</sup>
229. Taking account of the issues raised about availability of human rights information, we considered it necessary to look at the information being provided by the Scottish Government to inform Parliamentary scrutiny of its Bills.
230. We found the treatment of human rights in policy memorandums was variable, both in the scope of the human rights material provided and the level of detail. Best examples referred to the international human rights framework, as well as ECHR, and included discussion of General Comments that explain the monitoring bodies’ interpretation of the specific articles of UN human rights treaties. These examples discussed human rights throughout the policy memorandum, which helped to create a clearer understanding of how human rights interacted with the topic being legislated on, while the designated ‘human rights section’ of the Memorandum focused on an assessment of the policy’s impact on human rights. A recent good example was the Age of Criminal Responsibility (Scotland) Bill.<sup>142</sup>
231. At the other end of the scale, policy memorandums can contain little or no information on the interaction with international human rights and make only brief reference to ECHR compatibility, for example, the Health and Care (Staffing) (Scotland) Bill.<sup>143</sup>
232. Judith Robertson reinforced to us the importance of the Scottish Parliament looking at legislation through a human rights lens. She said—
- ” If the policy makers know that that is going to be one of the lenses through which the Parliament looks at legislation, they will have to do that in advance.

Source: Equalities and Human Rights Committee 19 April 2018, Judith Robertson, contrib. 24<sup>12</sup>

233. In common with the Scottish Human Rights Commission, Carole Ewart, a Public Policy and Human Rights Consultant, did not believe that Members currently had sufficient information on the human rights implications of a bill or an inquiry.<sup>144</sup>
234. The Law Society argued that the Scottish Government would have considered human rights to some extent to assess whether the policy being pursued in legislation was compatible with ECHR and EU law. They believed similar checks for other international treaties could lead to greater accountability and awareness of the broader range of human rights obligations of Scotland.<sup>145</sup>
235. The Education and Skills Committee told us that the comprehensive nature of the UNCRC and the policy focus on ensuring that these rights reflect the experience of children and young people in Scotland, meant that its work was very often looking into topics that were included in the Articles of the Convention. However, this was not always explicitly stated and the Committee wondered whether there would be benefits for links to human rights to be more explicitly identified in a subject committee's work.<sup>146</sup>

## Human rights memorandums

236. In Westminster, the Joint Committee on Human Rights (JCHR) routinely receives from the UK Government a Human Rights Memorandum accompanying a Government Bill which has significant human rights implications, as can be seen from examples such as those concerning the Data Protection Bill<sup>147</sup>, the Children and Social Work Bill<sup>148</sup> and the Policing and Crime Bill<sup>149</sup>. Such human rights memoranda are often long and detailed and set out very fully the Government's explanation for its view that the provisions in the Bill are compatible with human rights.
237. It is our understanding that when the Human Rights Act 1998 (HRA) came into force in October 2000, the Explanatory Notes accompanying Government Bills contained a short section under the heading "ECHR" which often said little more than the ministerial statement of compatibility which is required by section 19 of the Human Rights Act to be on the face of the Bill: that the Government is satisfied that the provisions in the Bill are compatible with the Convention rights.
238. The JCHR recognised work would have been done within Government anyway to enable the advice to be given to the Minister as to whether he or she could sign the section 19 certificate of compatibility. Eventually the Government was persuaded by the JCHR, through its detailed scrutiny of legislation for human rights compatibility, that it was in everyone's interests, including the Government's, for as much of that analysis as possible to be published alongside the Bill.
239. The Government began providing the JCHR full human rights memoranda, which took as their starting point the advice to the Minister to enable the statement of compatibility to be signed. Any material which the Government's lawyers regarded as attracting legal professional privilege was removed.
240. These human rights memoranda facilitated UK Parliament's scrutiny by allowing more focused questioning and testing of the Government's position. They also provided an opportunity for the Government to demonstrate how carefully they had

thought about human rights compatibility when developing the policy or drafting the legislation.

241. The Cabinet Secretary commented on the Scottish Government's human rights experience and capacity-

” In my experience, bill teams are robust and thorough, and the Scottish Government legal department and its lawyers are very well versed in human rights; they are often a prompt for, and a check on, ministers, and a good resource. That has been my experience in dealing with a number of bills over the years. However, the issue of rights literacy is not only for bill teams and legal teams; we have to ensure that the organisation as a whole has the necessary capacity.

Source: Equalities and Human Rights Committee 10 May 2018, Angela Constance, contrib. 13<sup>13</sup>

## Conclusion

242. It is clear to us that there is insufficient human rights information being provided in support of legislation. This impacts directly on the ability of Members to scrutinise legislation thoroughly, not only in relation to specific human rights issues, but also in supporting members to take a human rights-based approach to scrutiny. Better human rights information will also help to increase the participation of stakeholders on human rights issues that affect them, and supports a human rights-based approach by empowering individuals and organisations through increased knowledge.

243. We were told by Rogier Huizenga, IPU, that “many Commonwealth Parliaments that have a Westminster system have taken the lead and made sure that a rights-based review of legislation comes before their Parliament”. So, this level of scrutiny has become more commonplace.

244. **Recommendation 24:** To address this human rights information gap, we ask the Scottish Government to provide a ‘Human Rights Memorandum’ similar to that which the Joint Committee on Human Rights in Westminster receives. We don’t consider this would require too much extra work as it would be essentially “showing the working”. The memorandum should share as much of its analysis of the reasons why the Bill is human rights compatible as it feels able to provide while not including legally professionally privileged material. Information provided in a less legalistic form would, we believe, also be more likely to increase engagement of stakeholders with human rights issues. Medium term 3-6 years.

245. **Recommendation 25:** Based on published examples of such memorandums provided by the UK Government to the Joint Committee on Human Rights in Westminster, we ask the Scottish Government to include in its ‘Human Rights Memorandum’ the reasons for the Government’s assessment that the Bill is compatible with relevant human rights obligations. This compatibility assessment should include obligations in relevant UN treaties as well as the ECHR. It should also provide an assessment of the opportunities the Bill presents to advance human rights, as well as its assessment of the Bill’s impact on those rights.

# Legislative and policy impact assessments

## Human rights impact assessment

246. The Scottish Human Rights Commission argued that a way to improve the information available to Members was through “effective and transparent Human Rights Impact Assessments”. These would “ensure that human rights and a culture of human rights can be systematically mainstreamed and embedded into the law, as well as policies, practices, procedures and priorities of government, public and private bodies”.<sup>150</sup>
247. Carole Ewart, a Public Policy and Human Rights Consultant, advised that conducting a Human Rights Impact Assessment is an integrated part of the UN Guiding Principles on Business and Human Rights (UNGPs), which is the “authoritative global standard on the respective roles of businesses and governments in helping [to] ensure that companies respect human rights in their own operations and through their business relationships.”<sup>151</sup>
248. In relation to our remit, we know that public authorities currently have a statutory duty to undertake an equality impact assessment. Under the Equality Act 2010, Scottish Ministers and other listed public authorities, are required to assess the impact of a proposed new or revised policy or practice to fulfil the general equality duty. There is no prescribed method for undertaking an Equality Impact Assessment (EQIA), but it should provide enough information so that Scottish Ministers/public authorities can ensure they meet the three needs of the duty: to eliminate discrimination, advance equality, and foster good relations. Advice from the Equality and Human Rights Commission<sup>152</sup> is that it should not be a tick-box exercise, but used as a process to understand the effects of a policy or practice on equality, and to take necessary action as a result.
249. We are also aware that the Child Rights and Wellbeing Impact Assessment (CRWIA) was introduced to assess the impact of any proposed law or policy on children’s human rights and wellbeing. It was developed as a tool to meet new duties under the Children and Young People (Scotland) Act 2014. The duties require Scottish Ministers to consider whether there are any steps they could take to give further effect to the requirements of the UNCRC, and if appropriate, to take those steps. Guidance<sup>153</sup> is available to Scottish Government officials to undertake CRWIAs.
250. Interestingly, as part of its consideration of Petition PE1319: Improving youth football in Scotland, the Session 4 Public Petitions Committee requested the then Commissioner for Children and Young People to undertake a review of the registration process from a rights perspective. This led to the production of a Child Rights Impact Assessment (CRIA).<sup>154</sup>
251. Although Scottish Care were concerned that equality impact assessments in the statutory sector were a paper-based, tick box exercise with little evidence to suggest assessments were being undertaken in a robust manner and degree”, they believed that there was real potential to utilise impact assessments to ensure there is thorough and robust consideration of the potential negative impacts of any

proposed legislation, policy development or project intervention, especially upon the lives of those with protected characteristics. <sup>155</sup>

252. In relation to consideration of Scotland's international obligations in the impact assessment process, Emma Ritch, Engender, advised that the contents of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) were not considered as part of impact assessment processes and policy development. <sup>156</sup>

## Conclusion

253. We consider there is substantial merit in undertaking a 'human rights impact and assessment' in preparation for Scottish Government Bills. This assessment should also include an assessment of the opportunities that the Bill presents to advance human rights, for example by giving more concrete expression to a particular human rights standard, implementing a court judgement on human rights, or a recommendation from the UK's UPR, the UN treaty bodies, or special rapporteurs.
254. In addition to informing policy direction, information gathered through a human rights impact assessment will, we recognise, be core to achieving the Scottish Government's national performance outcomes, which aim to improve the quality of life and opportunities for all people across Scotland. In this respect, we note the recent inclusion of an explicit human rights outcome "we respect, protect and fulfil human rights and live free from discrimination".
255. Furthermore, we consider undertaking a human rights impact and opportunity assessment, alongside information arising from the examination of compatibility with ECHR and international obligations, will provide a clear basis upon which a detailed 'human rights memorandum' can be prepared, because as we have identified treatment of human rights in the Policy Memorandum is of a widely variable standard.

256. **Recommendation 26:** We ask the Scottish Government to amend its practice for all Scottish Government bills. The Scottish Government, should, in conjunction with the Parliament, the Scottish Human Rights Commission, the Equalities and Human Rights Commission and the Children and Young People's Commissioner Scotland, agree a template for an 'impact and opportunity assessment' which might acknowledge the risk of such assessments becoming tick-box exercises and contain suggestions as to how to avoid that from happening. Medium term 3-6 years.

257. **Recommendation 27:** To improve public participation at an early stage, we ask the Scottish Government to seek improvements to pre-legislative consultations to encourage discussion of human rights issues. For example, consultations could include a section indicating the human rights impact of the proposed policy and seek comments on the issues set out. Medium term 3-6 years.

## Joint equalities and human rights impact assessment

258. The Equality and Human Rights Commission (EHRC) suggested that we look at increasing the use of equality and human rights impact assessments across the Scottish Parliament and Government when developing and implementing policies or legislation.
259. A joint project between the EHRC and the SHRC was set up to examine the use of combined equality and human rights impact assessments (EQHRIAs) and to develop resources for public bodies to help them carry out such an integrated assessment. Fife and Renfrewshire Councils piloted the joint impact assessment. The EHRC believed that EQHRIAs had the potential to enable equality and human rights thinking to be embedded into the policies, practices, procedures and priorities of public bodies.<sup>157</sup>
260. NHS Health Scotland advised they had worked with the Equality and Human Rights Commission to develop a health inequalities impact assessment tool. Cath Denholm of NHS Scotland said, “We use that tool in all our planning processes and decision making, and we share it with others. The tool covers equality impact assessments, but also human rights impact assessments and health inequalities”.<sup>158</sup>
261. Scottish CARE considered EQHRIAs had the potential to revitalise and renew the impact assessment process and considered they should be mandatory. They also encouraged “the use of a robust, independent EQHRIA process in the setting and adoption of the Scottish Budget”.<sup>159</sup>
262. Carole Ewart, a Public Policy and Human Rights Consultant, believed that there was a lot of merit in the idea—

” In Scotland, we need more of a focus on gathering the right information and data, not only to undertake impact assessments but so that the committee has access to better information during its deliberations.

Source: Equalities and Human Rights Committee 29 March 2018, Carole Ewart, contrib. 76<sup>14</sup>

263. But she emphasised that such a change “would have to be underpinned by training, and better-quality information would need to be gathered to ensure that the assessment was worthwhile”.<sup>160</sup>

### Conclusion

264. We note the Scottish Human Rights Commission and the Equality and Human Rights Commissions ongoing work in relation to EQHRIAs and its link to the proposed integrated approach to equalities and human rights we have set out in this report. This is an area where we consider the Scottish Government can show leadership to other public bodies. Assessing equalities and human rights impact together could, we believe, help to achieve better outcomes by taking account of the rights of all individuals whose interests may otherwise be overlooked. As has been shown by NHS Health Scotland, it is possible to develop an integrated assessments tool. We consider EQHRIAs could contribute to developing better policies and legislation, based on evidence. More transparent assessments of

equalities and human rights would also lead to greater accountability to stakeholders, including the Parliament.

265. Nevertheless, we recognise that integrating impact assessments would appear to be a significant task for the Scottish Government that would need to be undertaken in a considered way, so that it did not have any unintended consequences and was supported by the requisite training.

266. **Recommendation 28:** We ask the Scottish Government, in respect of its human rights leadership role to other public authorities, to identify and report to us on what measures would need to be put in place to enable the Scottish Government to undertake joint equalities and human rights impact assessments. This process should take into account of advice from the Scottish Human Rights Commission and the Equality and Human Rights Commission on bringing the two assessment processes together. The report should also consider what support is needed for the new process to bed-in, for example, training to Scottish Government officials responsible for carrying out EQHRIAs. Medium term 6-9 years

## Systematic legislative scrutiny

267. The challenge for the Parliament is to make scrutinising legislation through a human rights lens more systematic, so that a robust human rights analysis is embedded into the Parliament's processes and structures. If a human rights impact assessments and human rights memorandums should increase the flow of information to Committees to facilitate such scrutiny.

268. Committees can draw from a range of expert advice to assist them with their scrutiny of the issues raised, for example legal and research services. The draft Principles state—

” A parliamentary human rights committee shall have access to external independent human rights advice, as required, including from the national human rights institution, legal professionals with expertise in human rights, academic experts, representatives of civil society organizations, international or regional organizations, or other relevant professionals with expertise in the area.

Source: [Draft Principles on Parliaments and Human Rights, Annex 1 to Report of the Office of the United Nations High Commissioner for Human Rights, Contribution of parliaments to the work of the Human Rights Council and its universal periodic review, Composition and Working Methods, Annex I, para 8, A/HRC/38/25 \(17 May 2018\)](#)

269. On the need for human rights expertise, Rogier Huizenga commented that “expert legal staff are indispensable”. He considered it was “absolutely critical” to draw on expert legal advice for inquiries and on research facilities to put together questions to ask relevant authorities and to help organise inquiries. <sup>161</sup>

270. The JCHR advised in relation to scrutinising the UK Government's legislation that “following the Queen's Speech, legal advisers identify which bills announced in the Government's legislative programme are likely to raise significant human rights

issues. The Committee scrutinises about 20–30 per cent of the Government Bills in the legislative programme in any given session”.<sup>162</sup>

271. This systematic scrutiny is carried out by the JCHR’s legal advisers, who look at every Government Bill introduced into Parliament, along with the accompanying explanatory information including the Human Rights Memorandum, and identify for the Committee any significant human rights issues raised by the Bill which the Committee might wish to scrutinise further. The legal advisers judge the significance of a human rights issue by applying criteria of significance agreed and published by the Committee in advance. The Committee considers the advice from its legal advisers and decides for itself which issues it wishes to scrutinise further. This system of sifting or “triage” by the Committee’s legal advisers results in the Committee scrutinising in detail and reporting on about 20-30% of the Bills introduced each session. Such scrutiny need not be comprehensive scrutiny of every provision of a Bill, but may be confined to the provisions of the Bill which raise significant human rights issues.

## Conclusion

272. We considered the relative merits and disadvantages of taking a systematic approach to legislative scrutiny like the JCHR. Scrutinising a substantial number of Policy/Human Rights Memorandums would bring a useful level of consistency which would help to integrate and shape the human rights memorandum process more quickly as the experience would be held in one place. The drawbacks of this approach would be that it would be time consuming and have potential to impact on the Committee’s work programme, require dedicated resources and could possibly delay aspects of embedding a culture of human rights across Committees.
273. Having weighed up these arguments, we consider the long-term need to improve the flow and quality of human rights information made available to the Parliament out-weighs the short-term arguments against systematic scrutiny of all Government Bills by our Committee. This should also help to drive forward changes and develop human rights practice by the Scottish Government more quickly. Based on the figures scrutinised by the JCHR Committee, we estimate around three bills require increased scrutiny.

274. **Recommendation 29:** We therefore intend to pilot a ‘JCHR approach’ of systematic scrutiny of all Government Bills for the remainder of this parliamentary session. This would require a legal adviser with the necessary human rights expertise to scrutinise policy/human rights memorandums to highlight areas where there is a need for further human rights information and where there are human rights matters of significance or opportunities to advance human rights. We will ensure that relevant matters highlighted by the legal adviser are brought to the attention of the Scottish Government and the lead Committee responsible for the Bill. This approach would enable us to grow our expertise on human rights issues and gather relevant information that can be used as the basis for detailed guidance for other Committees, and inform the commissioning of Members’ professional development. The legal adviser would also support our international work as outlined in paragraph 120. We expect this will require an additional, centrally-funded, dedicated legal resource. Short term 1-3 years

## Potential further areas

275. We consider there is scope to further embed the use of Human Rights Memorandums to support other parts of the legislative process. In particular we have identified the amending stages of a Bill and the consideration of subordinate legislation.
276. During the amending stages of a Bill <sup>163</sup>, it is possible for new policies to be introduced via amendments or for existing provisions to be substantially altered. These amendments may have the potential to impact on human rights or advance human rights.
277. We consider there is potential to ask the Scottish Government to provide a supplementary Human Rights Memorandum to the lead Committee at Stage 2 to cover Government amendments that introduce significant policy changes or substantially change existing provisions. The scope of the Supplementary Memorandum would be confined to the amendments and should address how the amendments would impact on or advance human rights.
278. As part of the scrutiny of subordinate legislation (Scottish Statutory Instruments) <sup>164</sup>, a statutory instrument is accompanied by a Policy Note. This Note could be expanded in a similar manner to that proposed for a human rights memorandum. This would help to ensure more systematic human rights scrutiny for legislation because human rights issues, including opportunities for their advancement, can arise in the detailed implementation of subordinate legislation in exactly the same way that they arise in relation to a Bill.
279. This, we believe, would enhance Committees' policy scrutiny of subordinate legislation.
280. We do not ask for action in these areas at the present time. Instead we consider the effectiveness of the human rights memorandums and human rights impact assessment approach should be reviewed before extending it to other areas. It might also be too much of a burden, until the human rights expertise has grown in the Scottish Government.

## Implementation of delegated powers

281. The SHRC asked for powers that had been delegated by a Bill <sup>165</sup>, and would be enacted through statutory instruments, to be brought into force to make rights more meaningful and effective. In particular the SHRC drew our attention to delegated powers under the right to effective support in the community contained in sections 25-27 of the Mental Health (Care and Treatment) (Scotland) Act 2003 and to section 3 of the Land Reform (Scotland) Act 2016: Duty to promote land rights and responsibilities statement.

282. **Recommendation 30:** We draw these issues to the attention of the Scottish Government, the Health and Sport Committee, and the Environment, Climate

Change and Land Reform Committee, for their respective interests. Short term  
1-3 years

## Post-legislative scrutiny

283. Parliament has an important role in monitoring implementation of legislation and evaluating whether the laws it has passed have achieved their intended outcomes.
284. Rogier Huizenga, IPU considered there should be routine post-legislative human rights impact assessment of the implementation of legislation. He suggested when bills are adopted there should be an automatic review of the realisation of human rights after a prescribed period.<sup>166</sup>
285. There are several Acts of the Scottish Parliament ([see paragraph 168](#)) which have sought to incorporate human rights principles. Some witnesses considered particular attention should be paid to the post-legislative review of rights-based legislation.
286. The Health and Social Care Alliance referred to the Social Care (Self-directed Support) (Scotland) Act 2013, which explicitly placed a set of human rights principles at its heart. They referred to the discussion document prepared by the Centre for Welfare Reform, '[Self-Directed Support: Your Choice, Your Right](#)', which said "these principles are not just aspirational statements of the ideal but are the legislative underpinning and barometer by which the success or otherwise of implementation is judged."<sup>167</sup> In the coming years, the Alliance also stated that the Scottish Parliament pay close attention to the implementation of the Social Security (Scotland) Act and development of the Social Security Agency.<sup>168</sup>
287. The Law Society argued that in spite of a comprehensive legislative framework, "problems still arise", and that a greater focus should be given to "unintended negative consequences", and "post-implementation reviews ... to allow for reflection on how laws operate in practice, and to identify areas that need to be corrected".<sup>169</sup>
288. The remit of the Public Audit Committee was extended at the start of the session to include post-legislative scrutiny and is now known as the Public Audit and Post-Legislative Scrutiny Committee. The Committee Convener, Jenny Marra MSP, advised that the Committee was currently working on developing its work programme. She believed the Committee could "ensure that human rights are taken into consideration while carrying out post-legislative scrutiny work", although she would find guidance on how human rights can be used to support the work of Committees helpful.<sup>170</sup>

## Conclusion

289. There are a number of reasons why we consider routine post-legislative scrutiny is vital to the protection of human rights. The Parliament would be clearer about whether human rights-based legislation or provisions are working in practice and delivering the Scottish Government's policy aims. Post-legislative scrutiny would

also contribute to better regulation (as noted under implementation of delegated powers, see [paragraphs 181-182](#)) . Of course, where post-legislative scrutiny identified an adverse impact on fundamental rights, we would wish the Scottish Government to take remedial action as soon as possible.

290. **Recommendation 31:** We ask all Committees to take in to account human rights when undertaking post-legislative scrutiny. We believe legislation which is designed to advance human rights should be prioritised. As a first step towards more systematic post-legislative human rights scrutiny, we propose to identify the Acts of the Parliament which are best candidates for such post-legislative review. We will work with the Public Audit and Post-Legislative Scrutiny Committee to develop guidance for use by Committees when conducting such post-legislative human rights scrutiny. Short term 1-3 years

# A human rights-based approach to conducting scrutiny

## Chest, Heart and Stroke Scotland



Human rights remind us we are working with people and their lives - not just a condition, not a policy, not a statistic, not just a problem to be solved. They matter because they protect us from the worst that we can do to one another - and highlight the joy and positive impact we can have. Human Rights illuminate the respect and humanity we can show each other.

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**Chest Heart and Stroke Scotland**

Source: Chest, Heart and Stroke Scotland

## Balancing rights

291. We received a number of calls for the Scottish Parliament to focus on specific rights or the rights of specific groups. It was argued that some rights were not being upheld, or that they were competing against other rights. Examples included—
- Right to freedom of religion or belief (CARE)
  - Right to life for the unborn child (CARE, CPO)
  - Rights for older people (Scottish Care)
  - Assisted dying and dying with dignity (Friends at the End and Dignity in Dying)
  - Rights for Gypsy/Travellers (Ken MacLennan)
  - Rights for Romanian nationals in Scotland (Friends of Romano Lav)
292. We also received recommendations that the law should be changed in certain ways in order to advocate human rights. For example, in pursuance of recommendations made by the UN committee on the Rights of the Child—
- Raising the age of military recruitment to 18 (Forces Watch and Quakers in Scotland)
  - Allowing children and young people to opt out of religious observance in schools without parental permission (Humanist Society Scotland).
293. We heard that an understanding of human rights and the concept of proportionality could help Parliamentarians to balance rights and the risks to those rights in decision making, i.e. to strike the right balance between protecting people from risk of harm, while upholding their autonomy.

294. It was considered important by Dr Katie Boyle that there was space for dialogue to take place around these issues as they were a common occurrence, for example, one person's freedom of expression against another person's privacy. She suggested, similar to legal tests, Parliamentarians could develop an approach based on proportionality or reasonableness.<sup>171</sup> She suggested Parliamentarians could look at evidence of how seriously a measure would affect someone's rights in practice; how much this change would impact on other people or the public interest; and whether there were less intrusive ways to solve a problem.
295. Dr Boyle said that the best way to view potentially difficult and controversial human rights issues was to depoliticise them-

” We need to take a step back and depoliticise the issues. With regard to the broader framework of international human rights, we have gone through a centuries-long dialectic process to arrive at the realisation that we can all agree on some kind of understanding of human dignity as a basic component. We need to use that understanding as a basis for legal standards rather than political aspirations or objectives.

Source: Equalities and Human Rights Committee 29 March 2018, Dr Boyle, contrib. 25<sup>15</sup>

296. On decision-making and human rights, CARE asserted “to see human rights as an end in themselves rather than as a means to an end, is to open them up to subjective interpretation based on the exercise of power by organised interests who seek to promote particular political ideologies”.<sup>172</sup>
297. Jayne-Claire Judson, Chest, Heart and Stroke Scotland, said in her experience of balancing views there was conflict at the beginning of the process, but “if we stick to the PANEL principles<sup>173</sup> of participation and accountability, that works its way out”.<sup>174</sup>

## Human rights-based approaches

298. The ‘human rights-based approach’ is a method of systemising human rights throughout processes and practices
299. Several of the NGOs and community groups we talked to advised how they had harnessed human rights to effect change. They very much saw the human rights framework and its practical implementation as empowering, and a way for public authorities, the Scottish Government and the Scottish Parliament to make rights real for people. They specifically highlighted the human rights framework as a way to—
- measure progress of rights,
  - identify whether there has been regression of rights, or
  - establish where opportunities have not been taken to fulfil rights.
300. Justine Bradd, Housing Rights Development Worker, told us about her work with tenants in Leith, helped by the SHRC and the Participation and the Practice of

Rights Project in Belfast, which helped people living in sub-standard council-housing in Leith to use a human rights-based approach to tackle the issues affecting them. <sup>175</sup>

301. Heather Ford, Edinburgh Tenants Federation, explained tenants were living in damp housing with kitchens and bathrooms that needed to be upgraded. She told us the effects of the project had been greater than just improving their living conditions, it had also had a positive impact on the residents' health and wellbeing—

” At Christmas, a neighbour came up to me and said, “Heather, for the very first time ever, I’m having friends and family for Christmas lunch, because I needn’t be ashamed or embarrassed by my house.” At the time, we were delivering the Christmas newsletter. I have lived in that area for 18 years and, for the very first time, I saw people hanging holly wreaths and other things outside their doors. Basically, my feeling is that the community has gone from dying to being what a community should be, and people are living with dignity and with respect for others. To me, that is what human rights are about.

Source: Equalities and Human Rights Committee 26 April 2018, Heather Ford, contrib. 86<sup>16</sup>

302. According to the SHRC, taking a human rights-based approach was about using international human rights standards to ensure that people’s human rights are put at the very centre of policies and practice.
303. The [PANEL principles](#) are one way of breaking down what a human rights-based approach means in practice.

**Participation:**

People should be involved in decisions that affect their rights.

**Accountability:**

There should be monitoring of how people’s rights are being affected, as well as remedies when things go wrong.

**Non-Discrimination and Equality:**

All forms of discrimination must be prohibited, prevented and eliminated. People who face the biggest barriers to realising their rights should be prioritised.

**Empowerment:**

Everyone should understand their rights, and be fully supported to take part in developing policy and practices which affect their lives.

**Legality:**

Approaches should be grounded in the legal rights that are set out in domestic and international laws

304. A case study which looks at how the international framework interacts with Gypsy/ Travellers rights, a marginalised and protected group in Scotland, and the PANEL principles is attached at [Annex A](#)

305. The Scottish Human Rights Commission developed FAIR as a way to put the PANEL principles into action—

### **Facts**

- What is the experience of the individual? Is the individual being heard and if not, do they require support to do so? What are the important facts to understand?

### **Analysis of right(s) at stake**

- What are the human rights or issues at stake? Is the right to life or the right not to be subjected to inhuman or degrading treatment at stake? If so, these rights are absolute and cannot be restricted. Can the right be restricted? What is the justification for restricting the right? Is the restriction on the right 'proportionate'? i.e. is it the minimum necessary restriction to meet the aim or is a "sledgehammer being used to crack a nut"?

### **Identification of shared responsibilities**

- What changes are necessary? Who has responsibilities for helping to make the necessary changes?

### **Review actions**

- Have the actions taken been recorded and reviewed and has the individual affected been involved?

306. The Local Government Committee advised that its recent inquiry into homelessness recognised the provision of good quality suitable housing as a fundamental human right for all and advocated taking a "housing first" approach as part of tackling the issue in Scotland. <sup>176</sup>

307. Embedding a rights-based approach in the Parliament's structures and processes, the Children and Young People's Commissioner Scotland stated, could only serve to enhance and build on the principles of the Parliament: power sharing, accountability, accessibility and equal opportunities. <sup>177</sup>

308. Whilst HRC Scotland stated that embedding a human rights-based approach would also bring progress in other policy areas and aims, such as towards Scotland's achievement of the Sustainable Development Goals. <sup>178</sup>

309. HRC Scotland considered that without a human right-based approach by the Parliament itself, their work to promote and progress human rights, particularly with other public authorities, would ring hollow and be ill-received. It was suggested by HRC Scotland that the Parliament's Corporate Body should take advice around what it means for them to put the PANEL human rights principles into practice. <sup>179</sup>

310. The Cabinet Secretary considered wider engagement was about "normalising human rights as part of our everyday language" and about "taking human rights out of the academic sphere of legalese". <sup>180</sup>

## Participation and engagement

311. Participation in decisions which affect our lives is a fundamental element of human rights, as well as being a key component of a human rights-based approach. The importance of participation is recognised in a range of international human rights treaties and in General Comments on a number of specific articles. Furthermore, participation is one of the founding principles of the Scottish Parliament, that it should be—

” Accessible, open, responsive and develop procedures which make possible a participative approach to the development, consideration and scrutiny of policy and legislation. <sup>181</sup>

Source: [Report of the Consultative Steering Group on the Scottish Parliament 'Shaping Scotland's Parliament'](#)

312. Mhairi Snowden, HRC Scotland, acknowledged participation could be “challenging” but argued it should be key to the Parliament setting its priorities. She said—

” This committee and other committees need to ensure that they speak to different groups at various times and build that approach into their work plans. A fundamental part of taking a human rights-based approach involves listening and letting the results affect your priorities.

Source: Equalities and Human Rights Committee 29 March 2018, Mhairi Snowden (Human Rights Consortium Scotland), contrib. 44<sup>17</sup>

313. Rogier Huizenga, IPU, reinforced the importance of “making sure that you reach out as much as possible to communities, establishing clear objectives in a work plan and being as close as possible to citizens”. <sup>182</sup>

## Conclusion

314. We undertook training on the practical application of the PANEL Principles and found it helpful in gathering together all the relevant human rights strands into a framework from which to scrutinise a topic. The approach is relatively straightforward and certainly made it easier for us to make the connections with Scotland’s international obligations and the topic in hand.

315. **Recommendation 32:** Further consideration is needed as to what a human rights-based approach to scrutiny might look like in the Scottish Parliament. We would welcome the assistance of the SHRC in developing a bespoke approach and in ensuring the process is participative and meets human rights standards. Once developed this could be rolled-out to Committees and be included as part of members’ professional development. Short term 1-3 years

## Childrens and young people's participation

### Who Cares? Scotland



Human rights are children's rights, and children's rights are human rights

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**Claudia Macdonald, Who Cares? Scotland**

Source: Claudia Macdonald, Who Cares? Scotland

316. Children can be affected by a host of issues, ranging from transport policy to health and education. The Commission for Parliamentary Reform looked at the involvement of children in the Parliament. The Commission recommended strengthening the ties between the Scottish Youth Parliament (SYP) and the Scottish Parliament <sup>183</sup>. The SYP membership extends to young people aged between 14 and 25 years old.
317. Our inquiry highlighted that often younger children can be over-looked as rights-holders, for example, those under 12 years old. This is important because they are not an extension of their parents or legal guardians and must be empowered to claim their rights. Also, children under 16 do not form part of the Parliament's electorate.
318. We heard from two 11 year old human rights defenders <sup>184</sup> about the work they had been doing to increase children's awareness of human rights and how to protect them. Dylan from the Children's Parliament told us about the multiple workshops he had been leading in schools around Scotland—
- ”** We inform children about what it means to be a children's human rights defender, which is a child who is willing to stand up for not only their rights but other children's rights.
- Source: Equalities and Human Rights Committee 10 May 2018, Dylan (Children's Parliament), contrib. 46<sup>18</sup>
319. While Hannah, also from the Children's Parliament, told us about her visit to the UN, where she took a mural from her school showing children's views on their community. <sup>185</sup>
320. Together (Scottish Alliance for Children's Rights) set out lots of ideas on how Parliamentary Committees could engage young people, such as creating child friendly calls for evidence for inquiries or by inviting children and young people to meet with a Committee for lunch. <sup>186</sup>
321. They also drew our attention to the Welsh Assembly as it had developed a Children and Young People Engagement Charter, which pledged to involve children and young people in the work of the Assembly and set out a series of commitments. To help meet the pledge, the Welsh Assembly set up a website for children and young people to learn about the National Assembly for Wales – what it does and how it affects young people living in Wales and includes a range of resources for different

ages including guides to the Assembly, lesson plans and resources for children and young people to organise their own debates.<sup>187</sup>

322. Together (Scottish Alliance for Children’s Rights) also provided examples from international jurisdictions. The German Bundestag had developed an online portal for children, named the KuppelKücker, which aimed to inform them about politics and the Bundestag as an institution in a child-friendly way, with children able to ask questions directly to the Children’s Committee, which is a sub-committee of the Bundestag Committee on Family, Seniors, Women and Youth. Juliette Harris, Together (Scottish Alliance for Children’s Rights), also pointed to the [European Parliament’s Intergroup](#) as a practical model which the Parliament could adopt, she said, “to have an intergroup on children and young people’s rights and have real champions in all the committees who push the importance of MSPs going out to speak to children and young people in their constituencies”.<sup>188</sup>
323. Nick Hobbs, Office of the Children and Young People’s Commissioner Scotland, said to mainstream children’s rights considerations throughout all aspects of the Parliament’s work, including legislative scrutiny and accountability, “we have to improve the scope for children’s participation in processes across the range of the Parliament’s activities and committees, in line with international standards and best practice”.<sup>189</sup> The CYPCS referred to the ‘Handbook on Child Participation in Parliament (2011), which was produced by the Inter-Parliamentary Union (IPU) and UNICEF. This recognised the role of children and young people in Parliamentary decision making and human rights monitoring, and stated that ‘a Parliament informed by children’s voices will function better and enjoy stronger democratic practices’.<sup>190</sup>

## Conclusion

324. We heard lots of good ideas about how the Parliament could more routinely engage with children, particularly younger children, to ensure the Parliament is taking account of children’s right across the policy spectrum. Children are not a homogenous group, and so we need to be careful that any action taken ensures children from marginalised groups and those with protected characteristics are included and involved in the development of approaches.

325. **Recommendation 33:** Greater efforts are needed to ensure that younger children’s voices, and children’s voices in general, are heard by the Parliament across subject areas and that they are engaged appropriately with the work of MSPs and the Parliament more broadly. We ask the Parliament to undertake an investigation as to how it can actively encourage children’s participation through, for example, an online portal or Children’s Charter or the establishment of an Intergroup modelled on the one in the European Parliament. Short term 1-3 years.

## Increasing awareness about human rights

326. A number of opportunities were also identified where the Parliament could make human rights more visible to the people of Scotland. These included—
- plain language explanation of human rights and its role in the Parliament on the Parliament’s website
  - use the language of human rights in its publications i.e. rights holders and duty bearers
  - draw out the human rights aspects of an issue in Parliamentary debates,
  - hold a human rights event,
  - celebrate international days e.g. human rights’ day, women’s day, or day of Persons with Disabilities to highlight the challenges faced
  - host human rights lectures, and
  - select human rights-based topics for discussion at the Festival of Politics.

### Conclusion

327. Some of these ideas are relatively straight forward and could easily help to make the Parliament’s interest in human rights more transparent and accessible. We are particularly attracted to a plain language explanation or story of the Parliament and human rights. Also, we propose to hold a Human Rights Day Event to celebrate the 70<sup>th</sup> anniversary of the Universal Declaration of Human Rights which will also publicise the findings of this report

328. **Recommendation 34:** We ask the Parliament’s Engagement Unit to develop a monitoring mechanism to measure the effectiveness of the Parliament’s participation work in relation to human rights. This information should be used to inform future action and to encourage a plurality of views, including those of marginalised groups. Medium term 3-6 years.

## Building capacity

329. Members are an essential component of strengthening the Parliament’s ability to act as a more effective guarantor of human rights. The role of a Parliamentarian is challenging. Members have to hold the Scottish Government to account, make and change laws, debate the important issues of the day, and check and approve Scottish Government spending, all whilst remaining closely in touch with the concerns and views of the people they represent.
330. Building Members’ individual capacity in relation to human rights, and the capacity of the staff that support them in their Parliamentary duties, will help to ensure the human rights aspects of this work is not merely taken into account but is absolutely

central to the way that Members think about the very purpose of their roles as Parliamentarians.

## Human rights professional development

331. New members of the Scottish Parliament are provided with training as part of their induction, and there are also opportunities for continuous professional development for serving Members. Members will have first-hand experience of helping people access their rights and ascertaining the various options for redress where their rights have been breached. Also, Members who sit on Committees will have experience of human rights issues arising during scrutiny of legislation or topics, even if the issues are not portrayed as such.
332. Concerns were raised with us about whether the Parliament had sufficient focus on human rights in its basket of training. Sanchita Hosali, British Institute of Human Rights said—

” We expect parliamentarians to pass legislation that complies with human rights and to take part in scrutiny and debate around human rights without a foundation of knowledge that would enable them to do so. We need to ensure that that is in place.

Source: Equalities and Human Rights Committee 29 March 2018, Sanchita Hosali, contrib. 60<sup>19</sup>

333. The Health and Sport Committee considered there could be “a general absence of awareness of the rights” and wondered if this was an area in which the Scottish Human Rights Commission could assist by raising awareness and delivering training.<sup>191</sup>

## Conclusion

334. We agree that including human rights within Members’ induction and continuous professional development would help to strengthen the Parliamentarian role and, by default, the constituency role. It would increase expertise in taking a human rights-based approach to scrutinising legislation and policies, while also ensuring greater accountability through consistency of monitoring of the Scottish Government’s human rights responsibilities. An increased knowledge of international human rights law would help to advance human rights in Scotland, as this would permeate the work of the Parliament linking scrutiny and therefore Government decision-making directly with the promotion and protection of human rights. We note that the Draft Principles on Parliaments and Human Rights recommend that the responsibilities of a parliamentary human rights committee includes conducting training and awareness raising of parliamentarians on human rights issues.<sup>192</sup>

335. **Recommendation 35:** We ask the SHRC to deliver to Members tailored training on human rights as part of their induction and through continuous professional development, as we feel strongly they are best placed as human rights experts with an understanding of how Parliament works and the role of parliamentarians in protecting and advancing human rights. Any programme of tailored training should take account of Members differing roles, including the proposed Human

Rights Champions (see recommendation x). Staff, who support committees, should receive appropriate training. Short term 1-3 years.

336. **Recommendation 36:** In addition, individual Committees may wish to commission tailored training, for example, the Health and Sport Committee on the right to health and social care, or the Social Security Committee on the right to social security, to assist them with their work programme. Short term 1-3 years.

## Human rights Champions

337. In its submission to the Commission on Parliamentary Reform, the SHRC proposed the appointment of Rapporteurs for each Committee. The SHRC said this would ensure mainstreaming of human rights and a consistency of approach to human rights scrutiny.<sup>193</sup>
338. Mhairi Snowden, HRC Scotland, considered there was a tension between embedding human rights, while also requiring expertise from someone with specific responsibility. She said that there was no obvious model, but that Committee Rapporteurs might ensure that human rights issues get raised.
339. Lucy Mulvagh, Health and Social Care Alliance, wanted to be sure that “the rapporteur’s word had a certain amount of weight in the Committee and that that approach would not negate the need for all Committee members to understand the significance of international human rights laws and frameworks”.<sup>194</sup>
340. From an international standpoint, Roger Huizenga, IPU, was not aware of the Rapporteur suggestion being followed anywhere else, although he found it an interesting mainstreaming approach. Like Lucy Mulvagh, for it to be effective he believed there should be an “understanding that the person on the committee is open to and committed to human rights, and has sufficient leverage in the committee to ensure that human rights are taken on”.<sup>195</sup>
341. The Environment, Climate Change and Land Reform Committee (ECCLR) was not convinced there was a requirement to adopt a formal approach to human rights scrutiny or a requirement to appoint human rights “rapporteurs” to each committee. The Committee considered there was a risk that this could result in a “silo” approach and preferred a less formal approach, enabling committees to respond more flexibly to each set of circumstances.<sup>196</sup>

## Conclusion

342. The success of any Rapporteur approach lies in obtaining and retaining genuine involvement. We see the Rapporteur role more in terms of a proactive champion for human rights and less concerned with reporting, which might risk the effectiveness of the role if it was deemed too onerous. The core focus would be to seek further information on human rights where the information is identified as insufficient to inform Committee scrutiny, explore issues which could impact on the protection of human rights, and highlight any opportunities for advancing human rights.

343. An active human rights Champion would ensure that Committees had a focus on the best available information to support effective scrutiny of human rights relevant to specific issues. Human rights Champions would be our main point of contact with other Committees and we would liaise directly and regularly with them. We would be willing to support members who take on this role, for example by arranging tailored human rights training, which is relevant to their Committee's work. Members of the Equalities and Human Rights Committee on other Committees will also help and support identified champions.

344. **Recommendation 37:** We ask other Committees to identify from their membership a member who will be that Committee's human rights Champion. As this is an important part of the embedding agenda this should happen as soon possible. Short term 1 year.

345. Once champions are more familiar with their role and have gained expertise and knowledge of the human rights issues arising, we could revisit the role to gauge its efficacy. There may also be opportunities for Members with an interest in human rights to meet as a network to share best practice, to highlight any broad or emerging cross-cutting human rights issues that require to be addressed by the Parliament, and to engage with the Parliament's human rights action plan. Champions could also play a role in partnering with Scotland's National Action Plan (SNAP), for example by taking a more prominent role in any relevant evidence session or a Parliamentary debate on SNAP.

346. **Recommendation 38:** We will review the human rights Champions after one year of operation to assess their effectiveness and whether any changes need to be made to take account of the progress made.

# Implementation and resourcing

347. We intend to create a detailed action plan to support the implementation of the recommendations in this report as set out in the ‘roadmap’. Objectives have been designed to be incremental to allow changes to bed-in and provide a firm basis from which to move forward to the next stage. A staged approach will provide achievable targets and allow for progress to be monitored.

348. **Recommendation 39:** We propose to review the operation of the Action Plan annually to ensure that progress is being made and that lessons are learned from experience, and to report more fully on progress before the end of the Parliament in 2021.

349. This Report contains a number of new initiatives for the Committee to implement, including engaging with the international monitoring process undertaking further investigation into developing a human rights-based approach to Parliamentary scrutiny. It will be important to keep under review the impact this has on the staffing resources for the Committee.

350. In particular we have identified a need for legal support to systematise scrutiny of human rights over the period of a year, as well as developing and delivering human rights induction for new Members and continuous professional development for existing Members. These recommendations will need to be financially resourced for them to be fully implemented. We note that the Draft Principles on Parliaments and Human Rights state-

” A parliamentary human rights committee shall be provided with sufficient financial and human resources by the Parliament to enable it to carry out its functions effectively.

Source: Draft Principles on Parliaments and Human Rights, Annex 1 to Report of the Office of the United Nations High Commissioner for Human Rights, Contribution of parliaments to the work of the [Human Rights Council and its universal periodic review, Composition and Working Methods, Annex I, Principle 7, A/HRC/38/25 \(17 May 2018\)](#).

351. **Recommendation 40:** We ask the Parliament to resource the initiatives set out in this Report, in particular: our work with the international human rights system, to provide legal support to systematise scrutiny of human rights until the end of this parliamentary session, and for the development and delivery of human rights induction training and continuous professional development

# Annex A - Gypsy Travellers in Scotland - A Human Rights Case Study

The Human Rights Framework and international recommendations can enhance the ability of public, private and voluntary bodies to put human rights into practice and is key to the delivery of human rights.

**Among other relevant recommendations, international human rights bodies have called on the UK to:**

***Develop a comprehensive strategy:*** in consultation with members of Gypsy/ Traveller & Roma Communities to ensure a systematic and coherent approach in addressing the challenges that members of these communities continue to face in the fields of health, education, housing and employment and ensure its effective implementation by adopting specific action plans, putting in place effective oversight and monitoring mechanisms to track progress and providing adequate human and financial resources (CERD 2016)-

***Adopt a human rights based approach :*** Adoption of a human rights based approach to (aspects of) public service (CESCR 2016; CRC 2000, 2002, 2008, 2016; UN Special Rapporteur on Migrants' Rights, 2010).

***Facilitate participation in decision making :*** Participation of Scottish Gypsy/ Travellers in decisions about their rights (CRC 2016; ESC 2013, UN Special Rapporteur on Housing 2013)

***Enable prioritisation and policy making :*** Introduce human rights based impact assessment and budget analysis (CEDAW 2009; CERD 2011, 2016; CESCR 2009, 2016; CRC 2008, 2016; UPR 2017).

***Provide national process of reconciliation:*** Need for an accountable national process to reconcile the Gypsy/Traveller Communities with Settled Communities (UN Special Rapporteur on Housing 2013)

**Among the internationally recognised rights engaged are:**

- The right to respect for private and family life, home and correspondence, including a duty to facilitate (article 8, HRA)
- The right to an adequate standard of living including adequate food, adequate housing, and the fundamental right to be free from hunger (article 11, ICESCR)
- The right to adequate housing including: legal security of tenure; availability of services; affordable, accessible, and habitable housing that is located within access to employment and is culturally adequate (article 11, ICESCR).
- The right of the family to social, legal and economic protection, including housing (article 16, ESC)
- The right to non-discrimination in the realisation of rights, including on the basis of rural living (article 2(2) ICESCR).

- The right to live independently as a member of a community (article 19, CRPD)
- The Council of Europe Framework Convention for the Protection of National Minorities.
- The right to education (Article 2, Protocol 1, ECHR; Article 13, ICESCR; article 28 CRC) – including education that is progressively available, accessible, acceptable and adaptable (article 13, ICESCR).
- The right to inclusive education (article 24, CRPD)
- The right to work (article 6, ICESCR)
- Rights at work including fair and equal pay for work of equal value, a decent living, safe and healthy conditions of work, equal opportunities (article 7, ICESCR; article 1-6 of the ESC, and various ILO treaties)
- The right to social security (article 9, ICESCR; article 12, 13, 14 & 16, ESC).
- The right of mothers and children to social and economic protection (article 17, ESC)

The Scottish Parliament Equal Opportunities Committee investigated issues connected to Gypsy/Travellers in Scotland over the life of the Parliament, making recommendations for change in 2001<sup>i</sup>, 2005<sup>ii</sup>, 2012<sup>iii</sup> and 2013<sup>iv</sup>.

The Scottish Human Rights Commission's research for Scotland's National Action Plan for Human Rights, 'Getting it Right' in 2012 found:

- A lack of adequate housing, including insufficient pitch numbers and/or poor-quality provision, with high fuel costs, poor sanitation and insecurity of tenure.<sup>v</sup>
- Poor educational outcomes for Gypsy/Traveller children and young people, including higher rates of exclusion;<sup>vi</sup>

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i Scottish Parliament, Equal Opportunities Committee, 2001. 1<sup>st</sup> Report, 2001, (Session 1): Inquiry into Gypsy Travellers [sic] and Public Sector Policies, Edinburgh: Scottish Parliament

ii Scottish Parliament, Equal Opportunities Committee, 2005. 5<sup>th</sup> Report, 2005, (Session 2): Preliminary Findings on Gypsy/Travellers – Review of Progress, Edinburgh: Scottish Parliament

iii Scottish Parliament, Equal Opportunities Committee 2012. 3<sup>rd</sup> Report, 2012, (Session 4): Gypsy/Travellers and Care, Edinburgh: Scottish Parliament

iv Scottish Parliament, Equal Opportunities Committee 2013. 1<sup>st</sup> Report, 2013, (Session 4): Where Gypsy/Travellers Live, Edinburgh: Scottish Parliament

v Scottish Human Rights Commission 2012. Getting it Right? Human Rights in Scotland. Edinburgh: Scottish Human Rights Committee

vi UN CESCR (2009) Concluding Observations of the Committee on Economic, Social and Cultural Rights. UN Doc. E/C.12/GBR/CO/5. Geneva. STEP (2006) Project 7 Final Report: Impact of national guidance: inclusive educational approaches for Gypsies and Travellers: within the context of interrupted learning schools and practice. Step. EHRC (2010)

- Poor physical and mental health outcomes with additional barriers to accessing both primary and secondary healthcare services;<sup>vii</sup>
- Increasingly limited opportunities for cultural expression through nomadic lifestyles, because traditional stopping sites and seasonal labour opportunities have diminished and fewer formal halting sites are available;
- Poverty and unemployment rates remain high in a context of poor educational attainment and fewer traditional work opportunities, plus a lack of access to digital technology which could facilitate finding work;<sup>viii</sup>
- Discrimination, harassment and racially aggravated hate crime persist, and social attitudes surveys demonstrate continuing negativity towards Scottish Gypsy/ Travellers.<sup>ix</sup> This is set within a context of frequent media misrepresentation and discriminatory attitudes towards Scottish Gypsy/Travellers<sup>x</sup>

Triennial Review: How fair is Britain? London, Equality and Human Rights Commission., NATIONAL EQUALITY PANEL (2010) An Anatomy of Economic Inequality in the UK Report of the National Equality Panel. London. FLANIGAN, D. (2011) Mapping the Law of Scotland in Relation to Economic, Social & Cultural Rights. Glasgow, Scottish Human Rights Commission.

vii It has been estimated that life expectancy is on average ten years lower than the national average for Traveller men (EHRC (2009a) Gypsies and Travellers: Simple solutions for living together. London, Equality and Human Rights Commission.) and can be as low as 55 (LAMBIE, J. (2010) Report of Keep Well Gypsy and Traveller Outreach Service. Edinburgh, NHS Lothian.; MECOPP (2012) Hidden Carers, Unheard Voices: Informal caring within the Gypsy/ Traveller community in Scotland. Edinburgh, Minority Ethnic Carers of People Project.) Scottish Gypsy and Traveller mothers are also 20 times more likely than the rest of the population to have experienced the death of a child (ibid.). Research indicates that the conditions of living in the inadequate stopping sites can have a serious detrimental impact on the health of the inhabitants VAN CLEEMPUT, P. (2008) Health Impact of Gypsy Sites Policy in the UK. Social Policy and Society, 7, 103-117. These findings were also reinforced in testimony of the direct experience of participants in the SHRC research.

viii Participants raised a number of work-related issues that they faced. All participants involved recounted the difficulties they had faced in gaining any employment, despite considering that they were adequately qualified for the jobs they were seeking. This was felt especially to be the case where these individuals were viewed by the settled community as 'activists'. Parents also reported that they struggled to encourage their children to enter mainstream education, when their experience was that becoming educated and qualified had not made employment any more likely. The 'digital divide' was also raised whereby a lack of access to computers and internet access made applying for jobs increasingly difficult.

ix ORMSTON, R., CURTICE, J., MCCONVILLE, S. & REID, S. (2011) Attitudes to Discrimination and Positive Action, Scottish Social Attitudes Survey 2010. Scottish Centre for Social Research (ScotCen). This was also the direct experience of participants in the SHRC mapping research. CEMLYN, S., GREENFIELDS, M., BURNETT, S., MATTHEWS, Z. & WHITWELL, C. (2009) Inequalities experienced by Gypsy and Traveller communities: a review. London, Equality and Human Rights Commission.

x AMNESTY INTERNATIONAL SCOTLAND 2012. Caught in the Headlines: Scottish media coverage of Scottish Gypsy Travellers. Edinburgh: Amnesty International Scotland. EHRC

- Scottish Gypsy/Travellers report barriers to accessing legal advice and representation, legal aid and effective remedies.<sup>xi</sup>

Subsequent to the publication of 'Getting it Right', a more recent analysis of the evidence from sources including MECOPP and Shelter Scotland found that:

- Gypsy/Travellers face additional barriers to accessing social care support and being able to choose the most appropriate option for care and support under the Self-Directed Support (Scotland) Act.<sup>xii</sup>
- Gypsy/Travellers face significant financial exclusion, connected to low literacy and numeracy, low pay and barriers to accessing welfare benefits<sup>xiii</sup>

The issue has attracted attention at the UK's Universal Periodic Review with recommendations from Spain, Guatemala, Indonesia and Venezuela.<sup>xiv</sup> The UN Committees which monitor treaties on eliminating racial discrimination, economic, social and cultural rights and eliminating discrimination against women have all made recommendations relating to Gypsy/Travellers in Scotland.

This year the Northern Ireland Human Rights Commission published its own inquiry into the situation of Gypsy/Travellers in Northern Ireland<sup>xv</sup>, making 45 recommendations based on international human rights law.

**Committees could use a human rights-based approach to consider the issues outlined in the case study. The PANEL framework can frame these discussions, as the aim of human rights based approaches is to realise human rights law, by considering which rights, whether in domestic or international law are engaged (the 'L' of PANEL). It is then possible to work through the other principles.**

**Participation** – Consider the involvement of people affected in identifying issues and being able to influence solutions to these, whether in law or policy.

### **Accountability –**

Consider monitoring and remedies available to Gypsy/Travellers

Consider the norms as set out in the international human rights framework:

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SCOTLAND (2010) Gypsy Travellers in Scotland: resource for the media. Glasgow, EHRC Scotland,. This was also the direct experience of participants in the SHRC mapping research. CEMLYN, S., GREENFIELDS, M., BURNETT, S., MATTHEWS, Z. & WHITWELL, C. (2009) Inequalities experienced by Gypsy and Traveller communities: a review. London, Equality and Human Rights Commission.

<sup>xi</sup> This was found to be the direct experience of many participants in the SHRC mapping research, especially in relation to discrimination, planning permission and employment issues as well as the prohibitive cost of potentially losing cases.

<sup>xii</sup> MECOPP 2015. Self-directed support and Gypsy/Travellers. Edinburgh:MECOPP

<sup>xiii</sup> SHELTER SCOTLAND 2015. Gypsy/Travellers and Financial Exclusion – An examination of Best Practice in the development of financial capability. Edinburgh: Shelter Scotland.

<sup>xiv</sup> See [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/36/9](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/9)

<sup>xv</sup> Northern Ireland Human Rights Commission 2018. Out of Sight, Out of Mind: Travellers Accommodation in Northern Ireland. Belfast: Northern Ireland Human Rights Commission

- progressive realisation, use of maximum available resources, non-retrogression
- immediate obligations, including taking steps, non-discrimination, provision of a minimum core of rights

**Non-discrimination** – Consider for example the potential discrimination issues within law and policy, any intersectional issues, the extent of marginalisation within groups affected

**Empowerment** – Consider whether people affected know and understand their rights and how to claim them

**Law** – Consider which rights are engaged, whether in domestic or international human rights law. Which rights can provide legal remedy in domestic law and which cannot?

## **Acronyms used in this Annex**

CEDAW – Convention on Elimination of All Forms of Discrimination against Women

CERD – International Convention on the Elimination of All Forms of Racial Discrimination

CESCR - The Committee on Economic, Social and Cultural Rights

CRC – Convention on the Rights of the Child

CRPD – Convention on the Rights of Persons with Disabilities

ECHR – European Convention on Human Rights

ESC – Council of Europe’s Social Charter

HRA – The Human Rights Act 1998

ICESCR – International Covenant on Economic, Social and Cultural Rights

## Annex B - Extract from Minutes

Extract from the minutes of the Equality and Human Rights Committee

[1st Meeting, 2018 \(Session 5\) Thursday 18 January](#)

[10th Meeting, 2018 \(Session 5\) Thursday 29 March](#)

[11th Meeting, 2018 \(Session 5\) Thursday 19 April](#)

[12th Meeting, 2018 \(Session 5\) Thursday 26 April](#)

[13th Meeting, 2018 \(Session 5\) Thursday 3 May](#)

[14th Meeting, 2018 \(Session 5\) Thursday 10 May](#)

[17th Meeting, 2018 \(Session 5\) Thursday 7 June \(in private\)](#)

[19th Meeting, 2018 \(Session 5\) Thursday 21 June](#)

# **Annex C - Glossary of terms and acronyms**

## Equalities and Human Rights Committee

Getting Rights Right: Human Rights and the Scottish Parliament, 6th Report, 2018 (Session 5)

Term / acronyms	Definition
AAAQ	Availability, Accessibility, Acceptability and Quality
Absolute rights	Some human rights, like the right not to be tortured, are called “absolute”. “Absolute” rights can never be interfered with in any circumstances.
Amending stages	A Bill goes through three stages in the Parliament. Stage 2 and 3 are when Members can submit amendments to the Bill, and are called the amending stages.
CARE	Christian Action, Research and Action
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CJEU	Court of Justice of the European Union
CoE	Council of Europe
Convention rights	Rights covered by the European Convention on Human Rights
COSLA	Convention of Scotland Local Authorities
CPO	Catholic Parliamentary Office
CRC	The Convention on the Rights of the Child
CRED	Convention on the Elimination of All Form of Racial Discrimination
CRER	Coalition of Racial Equality and rights
CRIA	Child Rights Impact Assessment
CRPD	Convention on the rights of Persons with Disabilities
CRWIA	Child’s Rights and Wellbeing Impact Assessment
CYPCS	Children’s and Young People’s Commissioner Scotland
Delegated powers	Delegated powers are frequently included in the Bills. These powers allow Scottish Ministers to use ‘delegated legislation’ (usually a Scottish Statutory Instrument, or SSI) to do things which would otherwise need another Bill. The powers are often practical, for example, a Bill may set out the main elements of a policy, but allow for minor modifications to the policy as circumstances change over time through an SSI.
ECtHR	European Court of Human Rights
ECHR / ‘The Convention’	European Convention on Human Rights
EQIA	Equality Impact Assessment
Equality budgeting	Equality Budgeting is an approach to economic policy-making and planning that places equality at the centre of decisions.
EU	European Union
FAIR	As system developed by the Scottish Human Rights Commission as a way to put PANEL principles into action. FAIR stands for Facts, Analysis of right(s) at stake, Identification of shared responsibilities, and Review actions.
FoISa	Freedom of Information Scotland Act 2002
GCVS	Glasgow Council for the Voluntary Sector
HRA	Human Rights Act
HRC Scotland	Human Rights Consortium Scotland
HRIA	Human Rights Impact Assessment
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IPU	Inter-Parliamentary Union
JCHR	Joint Committee on Human Rights
Law Officers	There are two Scottish Government Law Officers. The Lord Advocate heads the Crown Office and Procurator Fiscal Service and is the chief public prosecutor in Scotland. The Lord Advocate is supported by the Solicitor General for Scotland.
Legislative Competence	Areas that the Scottish Parliament can make laws on are said to be within the Parliament’s ‘legislative competence.’

Mandatory Committee	Scottish Parliament Committees which are required to exist by the Standing Orders (rules of the Parliament)
Member States	Countries which make up the European Union
National Performance Framework	The National Performance Framework (NPF) is produced by the Scottish Government and sets out targets for national wellbeing across a range of economic, social and environmental factors.
NGOs	Non-governmental organisation
NHRIs	National human rights institutes
NIPSO	Northern Ireland Public Services Ombudsman
NMIRF	National Mechanism of Implementation, Reporting and Follow up
NPA	National Plan of Action
OPCAT	Optional Protocol to the Convention against Torture
OSIC	Office of the Scottish Information Commissioner
PACE	Parliamentary Assembly of Council of Europe
PANAL principles	Participation, Accountability, Non-Discrimination and Equality
Parliamentary Bureau	The Parliamentary Bureau is drawn from all Scottish Parliament parties with five or more Members who propose the Parliament's programme of business.
Qualified rights	Rights can sometimes be interfered with if it's in the interest of the wider community or to protect other people's rights. These rights are qualified. Qualified rights may need to be balanced against other people's rights or the rights of the wider community to achieve a fair outcome.
SAMH	Scottish Association for Mental Health
SCoD	Scottish Council on Deafness
SHRC	Scottish Human Rights Commission
SNAP	Scotland National Action Plan for Human Rights
SPCB	Scottish Parliament Corporate Body
SPSO	Scottish Public Services Ombudsman
Standing Orders	The rules of the Scottish Parliament
Subordinate legislation	Another name for Delegated powers (see above)
SYP	Scottish Youth Parliament
The Charter	Charter of Fundamental Rights of the European Union
UDHR	Universal Declaration of Human Rights
UN Special Rapporteur	A title given to individuals working on behalf of the United Nations
UNCAT	Convention against Torture or other Cruel, Inhuman or Degrading Treatment or Punishment
UNCRC	United Nation Convention on the Rights of the Child
UNCRC	Convention on the Rights of the Child
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNHRC	United Nations Human Rights Council
UNOHCHR	United Nations Office of the High Commissioner for Human Rights
UPR	Universal Periodic Review
VAS	Voluntary Action Scotland
VG	Volunteer Glasgow
YOYP	Years of Young People

# Annex D - Written Evidence

All written evidence received can be accessed on our [website](#)

- [1] Equalities and Human Rights Committee 21 June 2018, Gianni Magazzeni (Office of the United Nations High Commissioner for Human Rights), contrib. 2, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11620&c=2104400>
- [2] Equalities and Human Rights Committee 19 April 2018, Graham O'Neill (Scottish Refugee Council), contrib. 91, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11475&c=2083841>
- [3] Equalities and Human Rights Committee 10 May 2018, Callum Lynch, contrib. 63, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11531&c=2092719>
- [4] Equalities and Human Rights Committee 21 June 2018, Rogier Huizenga, contrib. 14, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11620&c=2104412>
- [5] Equalities and Human Rights Committee 21 June 2018, Rogier Huizenga (Inter-Parliamentary Union), contrib. 4, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11620&c=2104402>
- [6] Equalities and Human Rights Committee 29 March 2018, Carole Ewart, contrib. 42, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11460&c=2081291>
- [7] Equalities and Human Rights Committee 29 March 2018, Carole Ewart, contrib. 55, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11460&c=2081304>
- [8] Equalities and Human Rights Committee 29 March 2018, Dr Boyle, contrib. 15, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11460&c=2081264>
- [9] Equalities and Human Rights Committee 19 April 2018, Judith Robertson (Scottish Human Rights Commission), contrib. 3, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11475&c=2083753>
- [10] Equalities and Human Rights Committee 03 May 2018, Professor Miller, contrib. 9, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11512&c=2089804>
- [11] Equalities and Human Rights Committee 29 March 2018, Professor Kurt Mills (University of Dundee), contrib. 7, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11460&c=2081256>
- [12] Equalities and Human Rights Committee 19 April 2018, Judith Robertson, contrib. 24, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11475&c=2083774>
- [13] Equalities and Human Rights Committee 10 May 2018, Angela Constance, contrib. 13, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11531&c=2092669>
- [14] Equalities and Human Rights Committee 29 March 2018, Carole Ewart, contrib. 76, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11460&c=2081325>
- [15] Equalities and Human Rights Committee 29 March 2018, Dr Boyle, contrib. 25, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11460&c=2081274>
- [16] Equalities and Human Rights Committee 26 April 2018, Heather Ford, contrib. 86, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11493&c=2086708>

- [17] Equalities and Human Rights Committee 29 March 2018, Mhairi Snowden (Human Rights Consortium Scotland), contrib. 44, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11460&c=2081293>
- [18] Equalities and Human Rights Committee 10 May 2018, Dylan (Children's Parliament), contrib. 46, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11531&c=2092702>
- [19] Equalities and Human Rights Committee 29 March 2018, Sanchita Hosali, contrib. 60, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11460&c=2081309>

- 1 UNGA Res 68/272 'Interaction between the United Nations, national parliaments and the Inter-Parliamentary Union' (19May 2014) UN Doc A/RES/68/272
- 2 PACE Resolution 1823 (2011) "National parliaments: guarantors of human rights in Europe"; Council of Europe, 'Brighton Declaration adopted at the High-level Conference on the future of the European Convention on Human Rights' (20 April 2012) Available at: <https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/>
- 3 DROI policy paper on enhancing cooperation between the European Parliament and EU national parliaments on EU human rights policy
- 4 See: The Mahe Declaration 2014, Pipitea Declaration 2015, and Kotte Declaration 2016 on actions by parliamentarians to promote and protect human rights.
- 5 Official Report, 21 June 2018, Col 1
- 6 Official Report, 3 May 2018, Cols 2-3
- 7 The Scottish Parliament, the Chamber, consideration of Motion S5M-01645, 27 September 2016, Official Report, cols 66-67 and col 74
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- 99 The Law Society of Scotland, Written Submission
- 100 The Health and Social Care Alliance, Written Submission
- 101 Carole Ewart, Written Submission
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- 107 The Community Empowerment (Scotland) Act 2015. Available at: <http://www.legislation.gov.uk/asp/2015/6/contents>
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- 109 The Land Reform (Scotland) Act 2016. Available at: <http://www.legislation.gov.uk/asp/2016/18/contents>
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- 147 Data Protection Bill, Human Rights Memorandum: <https://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/legislative-scrutiny/parliament-2017/data-protection-bill-17-19-/>
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- 154 Public Petitions Committee letter to the Equalities and Human Rights Committee, 26 March 2018. Available at: [http://www.scottish.parliament.uk/S5\\_Equal\\_Opps/20180326ConvenertoEHRiC.pdf](http://www.scottish.parliament.uk/S5_Equal_Opps/20180326ConvenertoEHRiC.pdf)
- 155 Scottish Care, Written Submission
- 156 Equalities and Human Rights Committee, Official Report, 26 April, Col 31.
- 157 Written Evidence, Equality and Human Rights Commission
- 158 Official Report, 26 April 2018, Col 20.
- 159 Written Evidence, Scottish CARE
- 160 Official Report, 29 March 2018, OR Col 35
- 161 Official Report, 21 June 2018, Col 11.
- 162 Written Evidence, Joint Committee on Human Rights, the UK Parliament.
- 163 Amending Stages of a Bill: At Stage 2 the bill undergoes more detailed "line-by-line" scrutiny, either by the appropriate Committee, the whole Parliament, or a combination of the two. Amendments (changes) may be made at this stage. At Stage 3 the bill is considered by the whole Parliament. Amendments can be made at this stage. Up to half of the sections of the bill may be referred back to stage 2 for further consideration. Only amendments that were referred back for consideration at stage 2 are debated now.
- 164 [Guide to Scottish Statutory Instruments](#)
- 165 Delegated powers are frequently included in the Bills presented to Scottish Parliament by the Scottish Government. These powers allow Scottish Ministers to use 'delegated legislation' (usually in the form of Scottish Statutory Instruments or SSIs) to do things which would otherwise need another Bill. The powers are often practical, for example, a Bill may set out all the key elements of a policy, but allow a Scottish Minister to make minor modifications to the policy as circumstances change over time, by making a set of Regulations.
- 166 Official Report, 21 June 2018, Col 4
- 167 Written Evidence, The Alliance – in full
- 168 The Health and Social Care Alliance, Written Submission
- 169 The Law Society of Scotland, Written Submission

- 170 Letter from the Public Audit and Post-Legislative Scrutiny Committee, 26 April 2018. Available at: [http://www.parliament.scot/S5\\_Equal\\_Opps/General%20Documents/20180426PAPLSHR\\_inquiry.pdf](http://www.parliament.scot/S5_Equal_Opps/General%20Documents/20180426PAPLSHR_inquiry.pdf)
- 171 Official Report, 29 March 2018, col 16
- 172 Christian Action Research and Education, Written Submission
- 173 [PANEL Principles](#)
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- 175 Scottish National Action Plan for Human Rights. Human Human Rights in Practice: Housing available at: <https://www.youtube.com/watch?v=CrSOxT6FUPE&feature=youtu.be>
- 176 Local Government and Communities Committee letter to Equalities and Human Rights Committee, 7 March 2018. Available at: [http://www.scottish.parliament.uk/S5\\_Equal\\_Opps/Inquiries/Response\\_from\\_LGC\\_on\\_Human\\_Rights\\_Inquiry\\_20180307.pdf](http://www.scottish.parliament.uk/S5_Equal_Opps/Inquiries/Response_from_LGC_on_Human_Rights_Inquiry_20180307.pdf)
- 177 Children and Young People's Commissioner for Scotland, Written Submission
- 178 Human Rights Consortium Scotland, Written Submission
- 179 Scottish Human Rights Consortium, Written Submission
- 180 Official Report, 10 May 2018, Col 5.
- 181 Report of the Consultative Steering Group on the Scottish Parliament 'Shaping Scotland's Parliament' Presented to the Secretary of State for Scotland December 1998, Founding principles: Access and Participation, para 28. Available at: [http://www.parliament.scot/PublicInformationdocuments/Report\\_of\\_the\\_Consultative\\_Steering\\_Group.pdf](http://www.parliament.scot/PublicInformationdocuments/Report_of_the_Consultative_Steering_Group.pdf)
- 182 Official Report, 21 June 2018, col 10.
- 183 Commission on Parliamentary Reform, Closer working with the Scottish Youth Parliament, paragraphs 319-320, page 68. Available at: <https://test123582.files.wordpress.com/2016/10/commissiononparliamentaryreformreport-june20171.pdf>
- 184 Children's Human Rights Defenders: <https://www.childrensparliament.org.uk/our-work/children-human-rights-defenders/>
- 185 Official Report, 10 May 2018, Col 21.
- 186 Together (Scottish Alliance for Children's Rights), Written Submission
- 187 Together (Scottish Alliance for Children's Rights), Written Submission
- 188 Official Report, 10 May 2018, Cols 23-24.
- 189 Official Report, 19 April 2018, Col 3.

- 190 Children and Young People's Commissioner for Scotland, Written Submission
- 191 Letter from Health and Sport Committee to the Equalities and Human Rights Committee, 27 February 2018. Available at: [http://www.scottish.parliament.uk/S5\\_Equal\\_Opps/Inquiries/20180227\\_Ltr\\_to\\_Christina\\_McKelvie\\_-\\_Convener\\_-\\_Equalities\\_and\\_Human\\_Rights\\_Cttee.pdf](http://www.scottish.parliament.uk/S5_Equal_Opps/Inquiries/20180227_Ltr_to_Christina_McKelvie_-_Convener_-_Equalities_and_Human_Rights_Cttee.pdf)
- 192 Draft Principles on Parliaments and Human Rights, 2(k)
- 193 Commission on Parliamentary Reform, CPR032: Scottish Human Rights Commission, Written Submission. Available at: [https://test123582.files.wordpress.com/2017/02/cpr\\_032\\_scottishhumanrightscommission1.pdf](https://test123582.files.wordpress.com/2017/02/cpr_032_scottishhumanrightscommission1.pdf)
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- 196 Letter from the Convener of the ECCLR Committee, 6 March 2018. Available at: [http://www.scottish.parliament.uk/S5\\_Equal\\_Opps/Inquiries/Response\\_from\\_ECCLR\\_on\\_Human\\_Rights\\_Inquiry\\_20180306.pdf](http://www.scottish.parliament.uk/S5_Equal_Opps/Inquiries/Response_from_ECCLR_on_Human_Rights_Inquiry_20180306.pdf)



# Agenda Item 4

By virtue of paragraph(s) vi of Standing Order 17.42

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