



## **Equalities and Human Rights Committee**

### **Human Rights and the Scottish Parliament**

#### **Summary of Written Evidence**

##### **Introduction**

This paper summarises the written evidence received for phase two of the EHRiC Committee's inquiry on [Human Rights and the Scottish Parliament](#).

A [call for evidence](#) on the Human Rights Inquiry was issued on 21 January 2018 and closed on 16 March 2018.

The Committee received 35 responses to its call for evidence. The majority of submissions were from third sector organisations. The Committee received responses from the Scottish Human Rights Commission (SHRC) and the Equality and Human Rights Commission (EHRC), and one other public body, NHS Health Scotland. There were eight responses from individuals.

The Committee also wrote to the other Parliamentary committees and the Presiding Officer. Their responses are not included in this summary.

##### **Overview**

The Committee's inquiry has been welcomed by the respondents. The submission from the Human Rights Consortium Scotland (HRCS), a joint response from a number of its members<sup>1</sup>, states:

“We greatly welcome the Equalities and Human Rights Committee's (EHRiC) consideration of the Parliament's role around promoting human rights in Scotland.

We further note that in doing so, the Committee has the support of the breadth of Scottish civil society”.

The Scottish Youth Parliament (SYP) said:

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<sup>1</sup> Amnesty International Scotland, Nourish Scotland, Health and Social Care Alliance Scotland (the ALLIANCE), SCVO, Advocard, Women for Independence, Scottish Independent Advocacy Alliance, Alcohol Focus Scotland, MND Scotland, C-Change Scotland, The Jimmy Reid Foundation, Inclusion Scotland, the Scottish Youth Parliament, Coalition of Racial Equality and Rights (CRER), and CLAN Childlaw

“We believe that EHRiC is really leading the way and demonstrating true ambitions in terms of ensuring human rights are at the heart of the Scottish Parliament”.

The Scottish Human Rights Commission (SHRC) referred to increasing recognition of national parliaments in protecting and promoting human rights and said:

“Parliaments are cornerstones of national protection systems. They play a critical role in ensuring government compliance with their national and international human rights obligations and share a responsibility, with other branches of the State, to protect, respect and fulfil human rights”.

There is broad consensus in the submissions of how the Scottish Parliament can ensure it protects and promotes human rights in Scotland. Many submissions also refer to existing work and principles that the Scottish Parliament can build on.

The responses to the Committee’s three themes of the call for evidence focused on:

#### **Participation and engagement**

- Involve people with lived experience from diverse backgrounds
- Have meaningful and deliberative participation, rather than one-off events
- Increase awareness through education and awareness raising campaigns
- Engage with civil society as well as national and international stakeholders such as the Council of Europe and the UN
- Empower people so that they can exercise their rights

#### **Parliamentary procedure and process**

- Build on existing approaches and principles to embed human rights across the parliament
- Training for MSPs their staff, and parliamentary staff
- Bring in expertise when considering human rights on specific issues
- Use of committee Rapporteurs to provide a point of expertise on each subject committee
- Improve pre-legislative and post-legislative scrutiny

#### **Accountability**

- Monitor compliance with international treaties, response to concluding observations and the Universal Periodic Review (UPR)
- Proactively take part in UN treaty reporting and assessment
- Promote the full incorporation of international human rights law into Scots law.

## **Challenges**

Many of the submissions also identified significant challenges in the promotion and protection of human rights in Scotland - the impact of Brexit, the incorporation of international human rights law, the balancing of different rights, and the role of the Scottish Human Rights Commission.

### **Brexit**

The UK's withdrawal from the EU was mentioned in several submissions. There is a concern that rights may be weakened post-Brexit (for example, the ALLIANCE, Human Rights Consortium Scotland, Scottish Community Development Centre). Dr Katie Boyle, Senior Lecturer, School of Law, University of Roehampton said:

“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. In fact, clause 5(2)(b) of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill seeks to retain many of the rights and remedies in Scots law after withdrawal as would have been available before withdrawal, including the right of the courts to strike down legislation incompatible with the Charter and EU general principles. Nonetheless, other routes to remedy, such as access to the Court of Justice of the European Union remains uncertain and so supervision and reflection on the potential impact remains an ongoing necessity”.

### **Incorporation of international human rights law**

Many of the submissions expressed a desire for the incorporation of international human rights law into Scots law (for example, People First, HRCS, SHRC, SYP).

Dr Boyle wrote about the split between different rights in Scotland and the UK. Civil and political rights, such as the right to a fair trial and the right to life, are protected under the legal system under the Human Rights Act 1998 and the European Convention on Human Rights. Economic, social and cultural rights, such as health, housing and social security, are not protected under the legal system. Dr Boyle argues that this is out of step with constitutional arrangements elsewhere, and creates ‘accountability gaps’ where some rights are not protected. While the UK is bound by international treaties on human rights, they are not enforceable legal obligations unless incorporated into domestic law.

The EHRC referred to the [First Minister's Advisory Group on Human Rights Leadership](#), which will consider the wider incorporation and enhancement of human rights in Scotland. The EHRC said it would expect EHRiC and other Committees “to actively engage with the recommendations and comments of the Advisory Group”.

### **Balance of rights**

A number of submissions called for the Scottish Parliament to focus on specific rights or the rights of specific groups. It is argued that some rights are not being upheld, or they are competing against other rights. Examples include:

- Right to freedom of religion or belief (CARE<sup>2</sup>)
- Right to life for the unborn child (CARE, CPO<sup>3</sup>)
- Rights for older people (Scottish Care<sup>4</sup>)
- 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)
- Following recommendations made by the UNCRC, such as:
  - 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).

### **Strengthening the role of the Scottish Human Rights Commission**

The HRCS called for the increased resourcing of the SHRC. It said that a lack of capacity has hampered its work. As an example it says the Commission has the statutory power to intervene in court cases to add understanding to the court's deliberations around human rights. However, the Commission has not been able to make use of this power.

Carole Ewart said that:

“The SHRC’s powers should be extended to address the unmet need for free advice on human rights and be given the power to take forward cases. Consequently, there needs to be an increase in its budget. The Committee should instigate legal reform by bringing forward an amendment to the 2006 Act”.

## **How the Scottish Parliament can promote and protect human rights in Scotland**

This section focuses on the responses to the Committee's questions in its call for evidence.

### **Participation and engagement**

- **How the Scottish Parliament can empower people to make them more aware of their rights under domestic and international human rights law and to help build a strong human rights culture in Scotland?**

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<sup>2</sup> Christian Action Research and Education

<sup>3</sup> Catholic Parliamentary Office

<sup>4</sup> Voice of the independent care sector

Some of the submissions described how [Scotland's National Action Plan for Human Rights](#) (SNAP), launched by the SHRC in December 2013, has been leading a culture change on human rights in Scotland. Some of the submissions said that there is now a role for the Scottish Parliament to build on the work of SNAP, to ensure that people can have greater involvement in influencing legislation and policy making (eg, Chest Heart and Stroke Scotland, ALLIANCE).

### **Increase awareness through education**

A number of submissions called for awareness raising of human rights. This will allow people to participate in discussions around human rights, and empower them to challenge public bodies when their rights have been infringed. See for example, the joint submission from Glasgow Council for the Voluntary Sector (GCVS), Scottish Council on Deafness (SCoD), Voluntary Action Scotland (VAS) and Volunteer Glasgow (VG); People First; SYP; the ALLIANCE.

The ALLIANCE referred to a [YouGov poll in 2015](#) that showed:

- One in five adults in Scotland (22%) thought that human rights are designed to protect minority groups, rather than everybody
- Over two in five people (44%) believed that human rights had little bearing on their everyday life.

[Recent research for the SHRC](#) (2018) found that while 42% of people over 16 in Scotland are supportive of rights, the majority remain either conflicted, opposed, or disengaged, and have low detailed knowledge of rights.

Carole Ewart contrasted the evidence in the YouGov poll with an [Ipsos MORI poll on Freedom of Information](#) (November 2015). This showed that 85% of the public have an awareness of FOI rights in Scotland, and that 77% of people agreed it gave them more confidence in the decisions of Scottish public bodies.

Dr Boyle referred to a UN Human Rights Committee recommendation that the UK should introduce awareness raising campaigns aimed at promoting respect for human rights and tolerance for diversity. Dr Boyle said there could be a coalition of partners to develop the campaign – the Scottish Parliament, Scottish Government, civil society organisations and National Human Rights Institutions.

### **People with lived experience**

A number of submissions stressed the importance of involving people with lived experience in helping to shape legislation and policy (eg Chest Heart and Stroke Scotland ALLIANCE, HRCS, People First, SYP, Edinburgh Tenant's Federation).

Together, Who Cares, and SYP also stressed the importance of involving children and young people, not just on issues that are directly related to them, but on broader subjects such as housing and transport.

Examples of supporting Committees to include the views of those with lived experience were also provided. For example, the ALLIANCE provided support to the Scottish Parliament's Health and Sport Committee to speak to them about NHS governance and their experiences, in March 2017.

### **Meaningful participation**

The submissions emphasised that any participation with the Scottish Parliament must be meaningful and inclusive. The SYP said that participation should be co-designed and ensure accessibility in terms of location, timing, resources and inclusion. The HRCS said that participation should not be a one-off event, but that opportunities should be many and varied, with full information and the knowledge that views will be respected and taken seriously.

### **Engage with others**

Many of the submissions stressed the importance of engaging with others in order to build a human rights culture in Scotland. It was suggested that Committees should consider how they engage with individuals in each part of their work programme (HRCS).

The SYP said that MSPs should work together with their MSYPs. As an example of good practice, they referred to the EHRC and SYP's joint response to the Hate Crime review in November 2017.

It was also proposed that the Scottish Parliament should engage nationally and internationally with a network of relevant stakeholders, such as the Council of Europe and United Nations (Dr Boyle, EHRC, the ALLIANCE, HRCS).

In particular, the HRCS said:

“This should include drawing on their expertise in advising on policy and law, as well as Ministers taking part in treaty monitoring sessions. For example, the UN Special Rapporteur on the Right to Food Hilal Elver has significant expertise around this issue which could directly inform the upcoming Good Food Nation Bill”

### **Third sector support**

Some of the submissions said that there should be more funding for civil society organisations, to provide the capacity for them to engage with the UN treaty monitoring process and to strengthen and promote a human rights culture in Scotland (eg HRCS, People First).

### **Parliamentary procedure and process**

- **What further steps the Scottish Parliament could take to ensure that people’s human rights are being taken into consideration when the Scottish Government and public authorities are creating policies?**

### **Building on existing principles and approaches**

The need for the Scottish Parliament to embed human rights across its work was a strong theme in the submissions (eg, EHRC, SHRC, Dr Boyle, SYP, Chest Heart and Stroke Scotland).

References were made to existing approaches and principles that the Scottish Parliament could build upon. This would not be just for committees, but for work across the Parliament.

The EHRC referred to the SHRC’s submission to Commission for Parliamentary Reform which details how the Scottish Parliament can be a human rights guarantor. It makes reference to the [Belgrade Principles](#), which provide guidance on how NHRIs and parliaments should interact and cooperate.

A recent development is the [Scotland Declaration on Human Rights](#), supported by 140 organisations and states 4 key principles that must apply in all decisions around human rights:

- No going back
- Progression
- Transparency
- Participation

The HRCS said that these principles are relevant to the remit of the inquiry and encourages the Committee to adopt a “bold and deliberative approach to human rights”.

[Right Here, Right Now](#) is the Scottish Youth Parliament’s national campaign on young people’s rights. The campaign aims to ensure young people are aware of and understand their own rights and are empowered to take action. It also calls for decision-makers to take a human rights-based approach to all policy making.

The EHRC also suggested that the Scottish Parliament should look at increasing the use of Equality and Human Rights Impact Assessments (EQHRIA). The EHRC and SHRC completed a joint project on this and developed resources for public bodies. Fife and Renfrewshire Council have been piloting the resources.

“We believe that EQHRIAs have the potential to enable equality and human rights thinking to be embedded into the policies, practices, procedures and priorities of public bodies” (EHRC).

Reference was also made to the [PANEL principles](#), which breaks down a human rights-based approach into practice. The [FAIR approach](#) was also referred to and is a way of conducting an EQHRIA.

### **Training**

There were repeated calls in the submissions for MSPs, their staff, and parliamentary staff to have training on international human rights law. It was also suggested that Committees could have subject-focused training. For example, HRCS, EHRC, the ALLIANCE, Chest Heart and Stroke Scotland.

### **Expertise**

It was also suggested that Committees should involve experts around the implementation of human rights, for in-depth analysis of policy and law (eg HRCS, the ALLIANCE, Chest Heart and Stroke Scotland, Law Society Scotland). Expertise comes from those with lived experience, civil society organisations, and academia, as well as both the SHRC and EHRC.

However, the ALLIANCE criticised the way in which the Scottish Parliament recently dealt with advice from the SHRC:

“We also urge the Committee to take a strenuous view of the extent to which the Parliament pay heed to the SHRC’s advice. We were very disappointed when the proposed amendments to the Social Security Bill which would have made the rights principle real by including a ‘due regard duty’ requirement were not accepted at Stage Two of the Bill. This amendment was supported by the SHRC with the express purpose that this would provide for a human rights-based approach to social security. The SHRC are Scotland’s experts on human rights – if the Parliament is to promote and progress human rights, we strongly urge the Parliament to pay great heed to those experts”.

The SHRC also suggested that the Committee should have permanent responsibility for human rights, and that consideration should be given to increasing resources “to ensure it can adequately deliver its mandate supported by specialised staff with expertise in human rights law and policy”.

### **Committee Rapporteurs**

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. This proposal was supported by some of the submissions, and that with adequate support and resources it could be an innovative approach (eg, Dr Boyle, the ALLIANCE, Chest Heart and Stroke Scotland).

### **Legislative scrutiny**

A number of the submissions said that the Scottish Parliament should improve how it assesses legislation for its compatibility with human rights. There is a legal requirement under the Scotland Act 1998 for the Presiding Officer to

make a statement on compatibility with the European Convention on Human Rights. Commenting on this practice, Dr Boyle said:

“This occurs through non-disclosed assessments by the Executive and the Presiding Officer of the Scottish Parliament before legislation is passed. There is a requirement for the relevant Minister and the Presiding Officer to make a statement of compatibility in relation to each bill being considered. However these limited reviews do not take the full body of international human rights law into consideration meaning that ESC rights, for example, are not regularly reviewed as part of the pre-legislative process. There would be scope for broadening the current pre-legislative scrutiny arrangements in order to ensure that all human rights are being taken into consideration across parliamentary business, by the EHRiC and by other committees. Effective human rights scrutiny by committees is a particularly important aspect of accountability in the parliament because the legislature is unicameral”.

The HRCS said:

“...the Committee should insist that the advice to the Presiding Officer on the human rights aspects of legislative competence is made public. Human Rights Impact Assessments of legislation by the Scottish Government should also be made public.”

There were also calls to improve post-legislative scrutiny. Social Care called for scrutiny of the Social Care (Self-directed Support) (Scotland) Act 2013. They argue that there is differential treatment for older people accessing self-directed support, and regret lack of post-legislative scrutiny. The ALLIANCE said that there will need to be post-legislative scrutiny of the Social Security (Scotland) Bill.

The SYP said that more time would have to be built into the scrutiny process in order to adequately consider the human rights aspects of any proposal. It was also suggested that more information should be available in Scottish Government Policy Memorandums for Bills, such as references to international treaties on human rights (eg ALLIANCE, Law Society Scotland). The HRCS suggested there should be a Human Rights Impact Assessment on every piece of legislation.

### **Accountability**

- **What more could the Scottish Parliament do to ensure that international 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?**

### **Monitor progress against international human rights**

There was strong support in the submissions for EHRiC and other subject committees to monitor compliance with international human rights law and the

concluding observations made by UN treaty committees (eg, EHRC, SHRC, SYP, Dr Boyle, HRCS, ALLIANCE).

The EHRC said that it would encourage subject committees to:

“...use international human rights treaties as the basis for their analysis of gaps in protection that need to be addressed in domestic policy and law, and the shadow reports of the statutory Commissions and Civil Society Organisations to inform their deliberations”.

The HRCS said that it welcomed the Scottish Government’s current approach to engagement with the UN treaty process. However, it argued that this could be more focused towards using these processes to bring about improvement, and that:

“...it is difficult to know what the Scottish Government will do, or do differently, as a result of the recent UPR process.”

It was also suggested that the Scottish Parliament should have a systemic approach to monitoring court judgments on human rights (HRCS, SHRC).

### **Proactive involvement in UN treaty reporting and assessment**

There were also calls for the Scottish Parliament to be more proactive in the treaty reporting process.

The SHRC said that it is important for MSPs to attend the UK’s UPR, and other regional and international human rights reviews, where Scotland’s compliance with international treaties is assessed.

The EHRC said:

“One of our continuing challenges is therefore to develop and maintain momentum for implementation by Government. We see Parliament as having a vital role in this. Regular meetings, for example, with legal advisers, Committee staff and civil servant representatives of those Government departments responsible for treaty reporting and implementation allow an exchange of information and discussion of potential follow up to help foster the Government’s further engagement with human rights treaties”.

### **Incorporation**

The incorporation of international human rights law was identified above as one of the challenges in the promotion and protection of human rights in Scotland. It was a subject referred to in many of the submissions. There were calls for the Scottish Parliament to support the incorporation of international human rights law.

The HRCS said:

“We urge the Committee to support the incorporation of UN treaties on rights into Scots law. This is one of the most far-reaching and

important steps that this Parliament can take to make our law an international leader in human rights. We suggest that the Committee should discuss with the SHRC and the Scottish Government around the role that they specifically can play in progressing and preparing for incorporation of UN treaties into Scots law. We also urge the individual Committee members, as representatives of political parties, to consider what they can do to concrete support for this policy direction within their own party policy consideration structures”.

Dr Boyle said that there are different methods for incorporation, either as an overarching ‘constitutional statute’ or through legislation dealing with specific rights in specific areas. Examples around the world show that different approaches have been taken to protect and promote human rights standards. To consider an approach for Scotland, Dr Boyle said:

“Ideally 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”.

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**9 April 2018**