

PE2135/E: Implement the International Covenant on Civil and Political Rights (ICCPR) in Scottish legislation

Petitioner written submission, 5 June 2025

This Petitioner submission comments on written submission PE2135/C of the Cabinet Secretary for Constitution, External Affairs and Culture, 1 May 2025.

It's with pleasure that I note the Cabinet Secretary's remark about our interest in implementation of the ICCPR in Scottish legislation - he rightly comments that we've done a lot of work on the subject. He should nevertheless be aware that we're not motivated by self-interest. Our sole motivation is to demonstrate to fellow Scots that, through implementation of the ICCPR, they can access human and direct political rights which they're currently denied under the existing system of UK Parliamentary Democracy.

The draft Official Report of the 2nd April CPPPC meeting reads *"Perhaps Mr Robertson could be asked to give detailed comment on all the arguments that the petitioner set out in response to the initial Government position."* In response to that request, rather than give detailed comment on my arguments as requested by the CPPPC, the Cabinet Secretary merely repeats the Directorate for Constitution's argument in its submission PE215/A of 31 January: *"...because the Scottish Parliament can only give effect to provisions within its powers and responsibilities ... this route cannot be used to extend the Parliament's powers by claiming that the incorporated international treaty provisions would allow the Parliament or the Scottish Government to do anything that would have previously been beyond devolved competence."*

The Cabinet Secretary nevertheless confirms in his submission that: *"There is no notion of devolved competence prior to the Scotland Act"*, which renders any argument that implementation might be *"previously beyond devolved competence"* meaningless. The UK ratified the ICCPR in 1976 and devolved its implementation, without reservation, in the Scotland Act 1998. The next step is implementation by a majority of MSPs.

Further, the Cabinet Secretary's submission ignores the recommendations or support for full implementation of the ICCPR from the Scottish Human Rights Commission (SHRC), the UN Human Rights Committee and Prof. Alan Miller, first Chair of the SHRC. He also ignores the latter's comment, in the same speech to which the Cabinet Secretary refers, that *"the Supreme Court judgement on the UNCRC Bill is rooted in the past"*.

The above government statement, which is in direct contradiction to the Scotland Act 1998 and which is repeated without any supporting legislative evidence whatsoever, bears further examination. Because the Cabinet Secretary hasn't commented at all on the arguments set out in my submission PE2135/B, I suggest that: (i) he should appear personally at the CPPPC meeting which next considers PE2135, and (ii) the

Committee should commission SPICe to urgently prepare a fact sheet to inform MSPs on Parliament's power to fully implement PE2135. The SPICe fact sheet should specifically consider the relevance of the above Government argument.

Further, as Petitioner and in the circumstances described above, we believe it's important that the Cabinet Secretary inform the CPPPC on the following at the next meeting which considers PE2135:

1. When First Minister Humza Yousaf said: "The Constitutional Convention may also want to consider further provisions on the right to public participation in public affairs as expressed in Article 25 of the International Covenant on Civil and Political Rights (ICCPR)," ¹ was he talking "off the cuff" or was it the considered view of the Cabinet?
2. We believe that Sections 29 & 30 of the Scotland Act 1998, together with Schedule 5, confirm that full ICCPR implementation is not reserved and that it's within the Scottish Parliament's competence. Section 30 clearly states: "Schedule 5 (which defines reserved matters) shall have effect".

Can the Cabinet Secretary explain why this is not already the case?

3. How does the Cabinet Secretary intend to correct the following breaches of item 1.7 of the Ministerial Code (*"overarching duty on Ministers to comply with the law, including international law and treaty obligations"*)?
 - Refusal to accept the recommendations of: (i) the Scottish Human Rights Commission (Parallel report of 4 February 2024 to the UN Human Rights Committee), and (ii) the UN Human Rights Committee (8th Periodic report 3 May 2024), and
 - Refusal to support PE2135 and implementation of the ICCPR in Scottish legislation?
4. According to the Directorate for Constitution, while the observation and implementation of international obligations, such as the ICCPR, *"are not specifically reserved under the Scotland Act, ... it is important to note that this only applies to devolved matters within the competence of the Scottish Parliament"*.

What is the Cabinet Secretary's position - as opposed to that of the Directorate for Constitution - if under Ministerial Code item 1.7 *"... the overarching duty on Ministers (is) to comply with the law, including international law and treaty obligations, and to uphold the administration of justice and to protect the integrity of public life"*?

¹ Building a New Scotland No. 4, June 2023: "Creating a modern constitution for an independent Scotland" (page 39).

One last thought - when the Cabinet Secretary concludes his submission by saying "*The Scottish Government continues to seek the transfer of powers from the UK Parliament to enable another lawful referendum*", he's perhaps overlooking the fact that, under the Scotland Act 1998 (Article 30 and Schedule 5), the UK Parliament has already transferred power to the Scottish Government and Parliament to fully implement the ICCPR, including Articles 1 & 25, Self-Determination and Direct Political Rights, respectively. He's also perhaps overlooking the fact that, under the Referendums (Scotland) Act 2020, the Scottish Parliament has the power to organise a referendum with respect to any Act of the Scottish Parliament at any time (e.g. implementation of the ICCPR).