

Respect Scottish Sovereignty

Legal mechanism for any independence referendum inquiry

1. Legal Mechanism

The legal mechanism for triggering a referendum on Self-Determination is through:

- **Full** implementation in Scottish legislation of the International Covenant on Civil and Political Rights (ICCPR), ratified by the UK in 1976 and included as an international treaty obligation in the Scotland Act 1998,

and

- Insertion of the text: *“Subject to referendum in accordance with Art. 1 (1) of the Referendums (Scotland) Act 2020”* at the conclusion of the enacting Bill.

This mechanism would represent the initial step towards introduction of a Modern Claim of Right for Scotland. It could also satisfy the First Minister's ambition to offer the Scottish People the Right to Decide their own constitutional future.

Because no amendment to either of the above Acts is necessary, Westminster doesn't need to be involved. PE2135's request that ICCPR be given full legal effect during the current parliamentary term is, therefore, achievable.

2. Certainty

Certainty is assured by the **clarity of existing legislation** (The Scotland Act 1998 and the Referendums Act 2020), **international treaty obligations** requiring immediate implementation (SHRC, UNHRC and Vienna Convention) and **authoritative support**.

UK Legislation

The Scotland Act gives Holyrood the power

“Schedule 5 (which defines reserved matters) shall have effect” (Scotland Act 1998: Section 30 (1)).

“Sub-paragraph (1) does not reserve observing and implementing international obligations, obligations under the Human Rights Convention and obligations under EU law.” (Scotland Act 1998: Schedule 5 Art. 7 (2) (a)).

The Referendums Act applies

“This Act applies to any referendum held throughout Scotland in pursuance of provision made by or under an Act of the Scottish Parliament.” (Referendums (Scotland) Act 2020: Art. 1 (1)).

UK Legislation (continued)

The Directorate for Constitution (DC), the Cabinet Secretary for Constitution (CSC) and SPICe, in their PE2135 submissions, haven't been able to cite legislation justifying a "constitutional override" to the power of MSPs to implement international treaty obligations. The attached annex describes this issue in detail.

In fact, the CSC relied on exactly the second quote above in resisting a Freedom of Information request¹ about the agenda and minutes of his meeting with Israel's Deputy Ambassador in August last year. The CSC stated that, whilst international *relations* were reserved in terms of the Scotland Act 1998, there was an exemption insofar as observing and implementing international *obligations* were concerned. He argued that in not disclosing information, he was observing the Vienna Convention (1961: Art 41) which specifies that states should respect the confidentiality of diplomatic communications.

Further, a member of the Citizen Participation and Public Petitions Committee makes the distinction that, far from attempting to use the Covenant to trespass into a reserved matter as suggested by the DC and CSC in their PE2135 submissions, *"It is for the Parliament to decide whether to use the competence or not. And the adoption of the Covenant will have no effect on the powers of the devolved parliament if it so wishes."*

International treaty obligations

Holyrood is required to implement ICCPR

"The Scotland Act 1998 requires both the Scottish Parliament and Scottish Government to observe and implement all of the UK's international Human Rights obligations" (Scottish Human Rights Commission ([SHRC](#)) report of 4th February 2024 to UNHRC: Pg. 15)²

"...the State party should - bearing in mind the Committee's [General Comment 31](#) on the nature of the general legal obligation imposed on States parties to the Covenant - ensure that all Covenant rights are given full legal effect in all jurisdictions that fall under its authority or control..." ([UNHRC report](#) on UK compliance with ICCPR of 3 May 2024: Art. 5)³

"Constitution is reserved" is not a valid argument against immediate implementation

"A State Party may not invoke the provisions of its internal law as justification for its failure to perform a treaty." ([Vienna Convention](#) on the law of treaties (23rd May 1969; Art 27))⁴

¹ <https://www.foi.scot/sites/default/files/2025-05/Decision116-2025.pdf>

² <https://www.scottishhumanrights.com/media/2606/iccpr-parallel-report-uk-examination.pdf>

³ <https://digitallibrary.un.org/record/4046143?v=pdf>

⁴ https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

“...States Parties are required on ratification to make such changes to domestic laws and practices as are necessary to ensure their conformity with the Covenant. Where there are inconsistencies between domestic law and the Covenant, article 2 requires that the domestic law or practice be changed to meet the standards imposed by the Covenant’s substantive guarantees.” (UNHRC [General Comment 31](#) on ICCPR of 26th May 2004: Art. 13)⁵

“The requirement under article 2, paragraph 2, to take steps to give effect to the Covenant rights is unqualified and of immediate effect. A failure to comply with this obligation cannot be justified by reference to political, social, cultural or economic considerations within the State.” (UNHRC [General Comment 31](#) on ICCPR of 26th May 2004: Art. 14).

Authoritative support

Holyrood has competence to incorporate UN treaties

“... the (Supreme Court UNCRC) judgment essentially reaffirms that human rights are not reserved to the UK Parliament by the Scotland Act and that Scotland can incorporate UN treaties, so thank you Donald Dewar” (Prof. Alan Miller, Strathclyde University: “Scotland’s Human Rights Journey” ([2022 speech](#))⁶

The principle of Self-determination applies in any event

“Nothing in the allocation of powers (i.e. between “reserved” and “devolved”), however widely or narrowly interpreted, infringes any principle of self-determination.” ([Supreme Court judgement](#) of 23rd November 2022, para. 90)⁷

3. Democratic consent

Democratic consent for a referendum within the UK constitutional context is assured by Scottish parliamentary approval of the ICCPR implementation Bill followed by a national referendum via the Referendums (Scotland) Act 2020.

⁵ <https://digitallibrary.un.org/record/533996?v=pdf>

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<https://www.strath.ac.uk/humanities/lawschool/blog/thesupremecourtsjudgmentontheuncrcincorporationscotlandbill/>

⁷ https://supremecourt.uk/uploads/uksc_2022_0098_judgment_5ca161fc9b.pdf