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Dear Joe

I am writing to bring the Committee up to date in relation to the UK Government's consultation on plans to replace the Human Rights Act 1998 with a "modern Bill of Rights". In particular I want to provide the Committee with a copy of the Scottish Government's formal response to the consultation paper.

As you are aware, the Scottish Government strongly supports the existing Human Rights Act and has made very clear that it will robustly oppose any attempt to undermine or weaken existing human rights protections.

Amongst the important recent developments that the Committee will wish to be aware of are the events noted below. Committee members will already be aware of a number of these significant milestones, but I think it would be helpful to the Committee and to others to provide a comprehensive update:

- On the 14th December 2021 the UK Government published the report of the Independent Human Rights Act Review ("IHRAR")¹. The Scottish Government was one of the almost 170 organisations and individuals who had submitted detailed evidence to the IHRAR². The overwhelming majority of responses decisively rejected the idea that the Human Rights Act should be altered. The Review panel itself found no convincing case for radical "reform" of the Human Rights Act.
- On the same day, the UK Government published a consultation paper on its new proposals to replace the Human Rights Act 1998 with a "modern Bill of Rights"³. That day the Cabinet Secretary for Social Justice, Housing and Local Government responded publicly and described the proposals as an "attack on human rights, fundamental freedoms and the rule of law"⁴.

¹ <https://www.gov.uk/guidance/independent-human-rights-act-review>

² <https://www.gov.scot/publications/scottish-government-response-uk-independent-human-rights-act-review/>

³ <https://consult.justice.gov.uk/human-rights/human-rights-act-reform/>

⁴ <https://www.heraldscotland.com/politics/19784246.robison-westminster-human-rights-reforms-bleak-day-country/>

- On the 21st December 2021 the Deputy First Minister and Cabinet Secretary for Covid Recovery wrote to the Lord Chancellor Dominic Raab to set out in more detail his concerns about the proposals, the anti-human-rights rhetoric used by the UK Government, and the UK's broader direction of travel in relation to human rights⁵.
- On the 8th February 2022 Scottish Government officials facilitated a round-table of legal and human rights experts to discuss the most significant elements of the UK Government's proposals.
- On the 23rd February the Deputy First Minister and Cabinet Secretary for Covid Recovery, the Cabinet Secretary for Social Justice, Housing and Local Government, and I met with the Lord Chancellor in Edinburgh and set out the Scottish Government's strong and principled opposition to the UK Government's proposals. During this short discussion, we raised our concerns about the potential impacts of the proposals in a wide range of areas, including access to justice, the ability of the courts to examine the proportionality of government decisions, and the devolution settlement.
- On the 28th February, I met with the Minister for Social Justice in the Welsh Government Jane Hutt MS and the Counsel General for Wales and Minister for the Constitution in the Welsh Government Mick Antoniw MS to discuss our deep-seated shared concerns about the UK Government's proposals and longer-term direction of travel. During that call we agreed to write publicly to the UK Government to set out these shared concerns in writing⁶.
- On the 2nd March, I attended the *Human Rights Act Reform: Responses from Wales Northern Ireland and Scotland* event organised by the Human Rights Consortium in Northern Ireland, the Human Rights Consortium Scotland and the Wales Civil Society Forum, to share the Scottish Government's support for the Human Rights Act and to listen to a panel of civil society leaders discuss their own concerns.

The Scottish Government has now submitted its response to the UK Government's consultation, which will be published shortly on our website. A copy of the response is attached to this letter.

Our response to the UK Government's proposals addresses the substance of each of the 29 consultation questions and reiterates the Scottish Government's rejection of the parochialism and antipathy towards human rights that characterise the UK Government's proposals.

As the Committee is aware, the Human Rights Act is woven directly into the fabric of Scotland's constitutional settlement. Changes to the existing statute would therefore be a constitutional matter with very real implications for the exercise of both legislative and executive competence by devolved institutions. As such, the Scottish Government is clear that no changes affecting Scotland should be made without the explicit consent of the Scottish Parliament.

⁵ <https://www.gov.scot/publications/human-rights-act-letter-to-the-lord-chancellor/>

⁶ <https://www.gov.scot/publications/human-rights-act-joint-letter-to-the-lord-chancellor-with-welsh-ministers-march-2022/>

The Act is significant, too, in an international context and it serves as both an example of legislative best practice and as a very visible expression of the UK's historic record of global leadership in promoting human rights, democracy and the rule of law. That international leadership role is called directly into question by the ill-considered nature of much of what is proposed in the consultation paper.

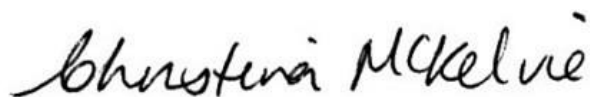
It is therefore essential that the UK Government take account of the overwhelming weight of evidence which demonstrates the utility, value and proven track record of the Human Rights Act as a statute which protects the public interest and defends the interests of individuals and communities throughout the UK.

While the true extent of the impacts of these proposals will only be known when the UK Government brings forward its own legislation, it is clear that the UK Government's proposals, as they are presented in its most recent consultation paper, would alter and undermine the principal legal and constitutional protections which have so successfully safeguarded and advanced human rights throughout the UK over the last two decades. They are also likely to have significant negative implications for the constitutional settlements in Scotland and in the other devolved nations.

When the UK Government brings forward legislation, Scottish Ministers will consider what further action and engagement should be taken in order to safeguard and protect human rights in Scotland and I will update the Committee again in due course.

Our plans do of course already include proposals for new devolved human rights legislation that incorporates economic, social, cultural and environmental rights into Scots law as far as possible within devolved competence, and I will similarly keep the Committee updated on developments in relation to the future human rights bill.

Yours sincerely,



CHRISTINA MCKELVIE