



The Scottish Parliament
Pàrlamaid na h-Alba

Christina McKelvie
Convener, Equalities and Human Rights
Committee

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Dear Christina,

Environment, Climate Change and Land Reform (ECCLR) Committee response to your inquiry into Human Rights and the Scottish Parliament

Thank you for your letter of 26 January seeking the view of the ECCLR Committee on your inquiry into Human Rights and the Scottish Parliament.

The Committee welcomes your inquiry into this vital issue as it underpins all that we do. This is particularly timely given the UK's departure from the EU. The Committee is significantly concerned that the EU (Withdrawal) Bill removes the Charter of Fundamental Rights from UK law.

The Committee agrees that the work of the Scottish Parliament: legislating; conducting inquiries; adopting the budget and; overseeing the Scottish Government; addresses civil, cultural, economic, political, and social rights and has a direct and immediate impact on the enjoyment of those rights. The Committee also agrees that collectively we should be focused on ensuring the Scottish Parliament is an effective human rights guarantor.

The Committee considers the Scottish Parliament can empower people to make them more aware of their rights under domestic and international human rights law and can help build a strong human rights culture in Scotland.

In terms of participation and engagement, the Committee agrees there is greater scope for: working with international partners to ensure Scotland learns from good practice; building MSP and staff capacity; further development of relationships with domestic National Human Rights Institutions; enhancing the participation of people

with direct lived experience of the issue being addressed and; ensuring a rights centric consideration of the issues.

In terms of parliamentary procedure and process, the Committee considers the Scottish Parliament should be scrutinising whether people's human rights are being taken into consideration when the Scottish Government and public authorities are creating policies and legislation. Specifically the Committee considers there is further opportunity to:

- provide detailed information on human rights to support legislative scrutiny at all levels
- undertake inquiries on human rights issues and address human rights issues as part of other inquiry work
- scrutinise relevant human rights judgements
- scrutinise government policy for human rights compatibility
- scrutinise public authorities use of Human Rights Impact Assessments
- Use Human Rights principles in the Budget Process.

The Committee considers the Scottish Parliament should be taking account of international treaties and considering whether international human rights obligations are being followed in Scotland. Notwithstanding issues of resource and capacity (highlighted below) the Committee considers parliamentary committees should be flexible in their approach and there may be occasions when we would wish to engage in scrutiny of specific human rights judgements, decisions and reports that fall within our remit.

The Committee considers this issue 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.

The Committee is not convinced there is a requirement to adopt a formal approach to human rights scrutiny or a requirement to appoint human rights "rapporteurs" to each committee. There is a risk that this could result in a "silo" approach to the issue. The Committee's preference is for a less formal approach, enabling committees to respond more flexibly to each set of circumstances.

The Committee is aware there may be barriers to ensuring effective consideration of human rights issues which require to be addressed, including:

- the availability and expertise of staff to analyse relevant documents and research;
- the extent to which human rights issues are a clearly defined and understood and the implications for scrutiny and;
- the extent to which committee's work programmes would permit scrutiny of relevant judgements, decisions and reports or enable specific inquiries on human rights issues.

The ECCLR Committee has specifically addressed human rights issues as part of its work on wildlife crime. There are human rights considerations which appear to limit the ability of the Police Service and the Crown Office and Procurator Fiscal Service to pursue general licences and there are issues with respect to vicarious liability related to difficulties in determining land ownership.

The Committee anticipates future consideration on secondary legislation emanating from the Community Empowerment and Land Reform Acts and these may also raise human rights issues in relation to land ownership. Our predecessor committee, the Rural Affairs, Climate Change and Environment Committee, considered human rights issues in session 4 as part of its Stage One scrutiny of the Land Reform (Scotland) Bill.

We would be pleased to provide further detail on this work if that would be helpful to your Committee.

We look forward with interest to the outcome of your inquiry.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Graeme Dey', with a stylized flourish at the end.

Graeme Dey
Convener, Environment, Climate Change and Land Reform Committee.