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Dear Convener,

I have pleasure in providing a Scottish Government response to the Committee's report *Getting Rights Right: Human Rights and the Scottish Parliament*, which was published on 26 November.

The report is a significant and substantial document, and the Committee is to be commended for its work, not just in inviting and presenting evidence from such a wide range of expert witnesses, but in developing and articulating the 40 specific recommendations for human rights action (by the Parliament, the Scottish Government and others) which emerge from the Committee's key findings.

As such the report makes a timely and very welcome contribution to the ongoing and wide-ranging debate about how Scotland - as a community and as a nation - can continue to take further and better steps to respect, protect and fulfil internationally-recognised human rights.

That debate has been guided in recent years by an overarching vision, shared by both public institutions and civil society, of a Scotland where every member of society is able to live with human dignity, and where we are all empowered to know and assert our rights. That same vision also recognises the critically-important role to be played by responsive, rights-aware public institutions, and by a public sector which understands and embeds human rights across the full breadth of public policy development and public service delivery.

Last year's refresh of Scotland's National Performance Framework (NPF) provided a further impetus for the prioritisation of human rights improvement in Scotland. Alongside the inclusion for the first time of an explicit human rights National Outcome, a rights-based approach is mainstreamed across the whole of the NPF. Eight (out of 11) of the new National Outcomes map directly to Scotland's international human rights treaty obligations, as well as to the UN Sustainable Development Goals. Within that structure, there are also now 31 National Indicators which serve as an important evidence source on overall human rights performance.

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As the evidence and analysis presented in the report clearly recognise, there is a direct connection between this established shared vision, existing work to give effect to human rights, and the further actions now proposed by the Committee.

Furthermore, the report helpfully aligns with, and explicitly recognises, other major human rights initiatives which will be central to shaping Scotland's continuing human rights journey over the next few years. Notable amongst these is the work of the First Minister's Advisory Group on Human Rights Leadership, which reported on 10 December, together with the Scottish Government's own existing commitment (set out in our Programme for Government for 2018-19) to incorporate the principles of the UN Convention on the Rights of the Child into domestic law.

Of similar significance is the prominence accorded in the report to the anticipated human rights implications of Brexit. As the Committee correctly identifies, there will be a critically-important role for both the Parliament and government in monitoring and responding to the very real threats posed by Brexit, over the coming months and years.

Given the ambitious and wide-ranging nature of the proposals set out in the report, it would be impractical, in this response, to provide a comprehensive analysis which addresses all of the Committee's recommendations in depth and detail. I do however want to take this opportunity to make clear that the Scottish Government welcomes the overall thrust of the report, and is committed to engaging actively and constructively with the recommendations which have been presented.

I have also sought, in the Annex to this letter, to address some of the key features of the Committee's principal recommendations, whilst of course recognising the need to undertake further scoping and developmental work, key elements of which will necessarily require to be collaborative in nature.

This latter point is itself worthy of emphasis. As you know, one of the defining features of existing work to advance human rights in Scotland has been a shared recognition of the importance of partnership working, both across institutional boundaries and between public institutions and civil society. That mode of working is itself a reflection of fundamental human rights principles, and of the importance of participation, empowerment, dialogue and deliberative decision-making.

That collaborative approach is one which will necessarily remain central to the way in which the Committee's own recommendations are now taken forward – and in particular those dealing with capacity building, human rights education, enhanced sharing of/access to information and the development of impact assessment mechanisms. Proposals such as those for an accessible treaty monitoring database (Recommendation 12) and for movement towards joint human rights and equality impact assessment (Recommendation 28) provide helpful illustrations of the kind of collaborative, co-produced, partnership-based approach which the Scottish Government is itself committed to promoting and supporting.

Turning to the specific features of the recommendations which are directed wholly or primarily at government, I am happy to offer the Committee the preliminary comments set out in the Annex to this letter.

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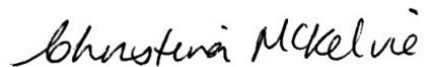
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I trust these will be helpful by way of contribution to what will necessarily be an ongoing process of dialogue and development.

In that connection I do very much welcome the Committee's own proposal to develop a detailed action plan to support implementation of the recommendations set out in the report. I am keen that my officials should liaise closely with the Committee Clerk and with other interested parties (such as the National Human Rights Institutions) in order to further explore the areas of common interest and endeavour highlighted by the Committee's recommendations.

I hope this is helpful.



CHRISTINA McKELVIE



INITIAL RESPONSE TO INDIVIDUAL RECOMMENDATIONS

First Minister's Advisory Group

Two of the **recommendations (1 and 11)** overlap with proposals made by the First Minister's Advisory Group when it reported in December. These relate to the potential for Scotland to develop a new National Mechanism for Reporting and Follow-up in connection with international treaty obligations, and to the need to track (and respond to) post-Brexit developments at both the UK and EU levels.

The Scottish Government will respond more fully to the Advisory Group's recommendations in due course. But in her initial response to the Advisory Group report (Human Rights Day, 10 December) the First Minister endorsed the report's overall vision for a new "Human Rights Framework" for Scotland and confirmed her intention to establish a national taskforce to carry that work forward.

International Human Rights Reporting/Annual Human Rights Report to the Parliament

The Scottish Government values the role played by all parliamentary committees in scrutinising the human rights record of the government of the day. Ministers therefore welcome opportunities to give evidence and to answer questions in relation to the progress being made in Scotland to fully respect, protect and fulfil human rights.

The Scottish Government is happy to explore further with the Committee whether that is best achieved through the mechanism of an annual report and evidence session, or whether greater use can be made in future of the opportunities presented by formal international reporting processes (**Recommendations 5 and 8**).

Work undertaken under existing scrutiny mechanisms already covers the 7 UN human rights treaties to which the UK is a state party, together with the Universal Periodic Review (UPR), as well as reporting procedures established under other treaty systems (most obviously those developed by the Council of Europe). Visits undertaken by UN Special Rapporteurs, and the reports subsequently submitted to the UN Human Rights Council, provide a further established framework around which scrutiny and inquiry can be undertaken.

The Scottish Government now has a well-established policy of publishing position statements for each of the 7 UN treaties ahead of treaty body examinations. These are submitted to the Committee for information and are publicly available on the SG website. In December 2017 we published (for the first time) a full response to the UN Human Rights Council's recommendations following the 2017 (3rd Cycle) UPR. Active efforts are being made to involve civil society more closely in these processes, and significant scope exists for future development in this area.

In relation specifically to the UPR, the Scottish Government proposes to use the opportunity afforded by the UPR Mid-Term Review (provisionally scheduled for Summer 2019) to identify timescales for action to progress implementation of UPR recommendations from the 2017 review. This would apply to UPR recommendations where specific actions have been identified by the Human Rights Council in a recommendation that is applicable to Scotland and accepted by the Scottish Government.

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The related proposal for a publicly accessible international treaty monitoring database system for Scotland (set out in **Recommendation 12**) is one which already enjoys our in-principle support. Indeed, it has previously been the subject of general scoping discussions between government, civil society and the National Human Rights Institutions.

Whilst there is clearly much work to be done if a mechanism of this kind is to be implemented, the potential benefits in terms of transparency, access to information, enhanced dialogue and more effective scrutiny are well understood. It is of course the case that much of the information which would be presented via a treaty monitoring database is already in the public domain. However, it is recognised by both government and other partners that a database would facilitate access to that material in a manner which does not, for example, require specialist knowledge of relevant UN processes or the ability to match up documents from the Scottish Government website with those published elsewhere by the National Human Rights Institutions and civil society organisations.

There is recognised potential for the treaty monitoring database to align with the National Performance Framework (which itself contains a carefully selected set of outcomes and indicators which support measurement of overall national performance against a variety of international human rights obligations).

Existing commitment to incorporate the principles of the UNCRC

Recommendation 16 seeks details of a timetable for incorporation of the principles of the UN Convention on the Rights of the Child (UNCRC).

The Scottish Government's Programme for Government for 2017-18 committed to undertaking a comprehensive audit on the most effective and practical way to further embed the principles of the UNCRC into legislation, policy and practice.

In September, the Scottish Government gave a further commitment (Programme for Government 2018-2019) to incorporation of the principles of the UNCRC into domestic law. Ministers subsequently announced (December) that the government will consult on proposals during 2019. Further details will be published in due course.

Human Rights Memorandum

Recommendations 24 and 25 contain proposals for a Human Right Memorandum which would explain the reasons why a Bill is considered to be human rights compatible.

The Scottish Government agrees that parliamentary scrutiny (and wider public debate) is at its most effective when properly informed, and supported, by the availability of appropriate explanatory and analytical information. In addition to assessment of predicted human rights impacts (see Recommendations 26 to 28), it may well be relevant to explore factors such as the respective benefits of different options for implementation (where such choices exist) in terms of their ability to ensure human rights are effectively respected, protected and fulfilled.

The extent to which issues of substance arise in relation to a specific legislative proposal is of course highly context-dependent. In some instances these issues may be of considerable prominence. In others they could be very limited in scope. For that reason the Scottish Government's inclination would be to build on the existing work which is being done to enhance the human rights content of the Policy Memorandum accompanying every bill. The

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discussion of human rights issues provided in the Policy Memorandum will of course also be informed, and complemented, by the availability of human rights and other relevant impact assessments. Taking this approach would offer the flexibility to include wider examination of human rights matters, where this is merited by the proposal under consideration, without at this juncture seeking to create an entirely new procedural requirement (in the form of a separate Human Rights Memorandum). The proposal is, however, one which would certainly lend itself to periodic review in the future, in the light of practical experience.

As the Committee itself recognises, it remains essential that legally professionally privileged material should not be disclosed. This principle will also necessarily inform any future developmental work in this area.

Impact Assessment and Pre-Legislative Consultation

Recommendations 26 to 28 make the case for enhancing existing impact assessment mechanisms and for further improving pre-legislative consultation.

These recommendations enjoy the in-principle support of the Scottish Government and are consistent with our long-established commitment to embedding all aspects of human rights and equality at the heart of the policy development and legislative processes.

As the Committee is aware, government has a well-developed track record in relation to both Equality Impact Assessment and Children's Rights and Well-being Impact Assessment. Other impact assessment mechanisms covering the Fairer Scotland Duty, Privacy and Data Protection are also of relevance in relation to human rights.

The Scottish Government (alongside local government and other public sector partners) was a contributor to the project run by Scotland's two National Human Rights Institutions between 2012 and 2014 to explore options for an Integrated Human Rights and Equality Impact Assessment. That project included two pilot projects (delivered by Renfrewshire Council and Fife Council) and yielded a number of valuable insights into the practical challenges associated with impact assessment mechanisms. Amongst those was the finding that in order to deliver effective impact assessment public authorities should prioritise efforts to build an active human rights culture, commit to developing internal capacity (and in particular professional knowledge and skills) and ensure that a human rights approach is embedded in the way each public authority carries out its work.

Effective impact prediction and assessment is itself a key factor in ensuring that pre-legislative consultation delivers maximum value and can fully explore the potential human rights implications of legislative proposals.

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