

Parliamentary Scrutiny of Human Rights

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Introduction

In September 2016, the Equal Opportunities Committee of the Scottish Parliament acquired a remit for human rights scrutiny¹. Consequently, the name of the Committee was changed to the Equalities and Human Rights Committee². This paper has been written to inform the development of the Committee's role in scrutinising human rights.

The paper concerns itself in general terms with different models for the parliamentary scrutiny of human rights compliance. As such, the paper is set out as follows:

- Parliamentary Scrutiny of human rights standards
- Human rights in the UK and the human rights framework in Scotland
- Models of parliamentary scrutiny:
 - Parliamentary scrutiny of human rights in the UK
 - Parliamentary scrutiny of human rights outside the UK
- Dynamics of human rights scrutiny: What mechanisms would assist the Scottish Parliament to scrutinise human rights compliance?

¹ Equalities and Human Rights Committee Work Programme November 2016 – June 2017, work theme 4: 'Consideration of the incorporation of human rights into the Committee's remit': http://www.parliament.scot/S5_Equal_Opps/General%20Documents/EHRiC_Work_Programme_Nov_2016_-_June_2017_Final.pdf.

² Equalities and Human Rights Committee web pages: <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/Equalities-Human-Rights-Committee.aspx>.

Parliamentary Scrutiny of Human Rights Standards

Legislatures sit within a framework of human rights implementation in states. While governments are responsible for upholding human rights obligations in international treaties, national constitutions and legislation, legislatures have a role in the scrutiny of this process. There is a range of sources of information, advice and support of relevance to human rights scrutiny, including those below:

- National Human Rights Institutions (e.g. the Scottish Human Rights Commission), which can issue advice or carry out investigations on human rights matters
- International Monitoring Bodies (e.g. UN or Council of Europe Committees), which examine national human rights compliance
- International and Domestic Courts (e.g. European Court on Human Rights or the Supreme Court), which can issue judgements on human rights matters
- Local and International NGOs (e.g. Amnesty International), which can provide evidence and campaign on human rights issues

To this list can be added journalists, academics, individuals qualified to give legal advice and human rights campaigners that may contribute to the scrutiny of human rights.

In broad terms, legislatures have a range of roles in the oversight and protection of human rights. These include the following³:

Ratification of human rights treaties. National parliaments ratify international agreements, but legislatures can also urge the government to engage with and sign treaties to which a state may not yet be party.

Ensuring national implementation. Once treaties are ratified, legislatures can oversee their implementation through the adoption of enabling legislation or the scrutiny of compliance with standards.

Mobilising public opinion. Parliamentarians have a role in promoting human rights through public statements, debates and championing human rights.

Participation in international efforts. Legislatures can engage with international bodies and oversee government human rights policy and practice abroad.

A 2014 study on parliamentary oversight of human rights concluded that there needs to be an oversight mechanism and that this mechanism has to have a clear goal, which should state the purpose of the mechanism⁴. Usually this mechanism is a parliamentary committee which has a full or partial responsibility for human rights scrutiny. In the case of Scotland, this is a committee with shared responsibility for human rights and equality.

The study proposes a framework for determining the effectiveness of the mechanism for the oversight of human rights. This is reproduced at Table 1.

³ Inter-Parliamentary Union (2016), *Human Rights*, Handbook for Parliamentarians No 26, Geneva: IPU, pp.95-109: <http://www.ipu.org/PDF/publications/hrights-en.pdf>.

⁴ Philippa Webb and Kirsten Roberts (2014), *Effective Parliamentary Oversight of Human Rights: A Framework for Designing and Determining Effectiveness*, London: King's College London: <https://www.kcl.ac.uk/sspp/policy-institute/projects/government/assets/Human-Rights-Policy-DocumentV5.pdf>.

Table 1: Factors in Determining the Effectiveness of Human Rights Mechanisms

Factors Internal to the Parliament	
Factors	Description
Quality	<ul style="list-style-type: none"> • Expertise on human rights among parliamentarians and their staff, including the availability of high-quality training; • Access to relevant and reliable human rights materials.
Resources	<ul style="list-style-type: none"> • Resources, including secretariat/advisor support, and availability of information.
Political Support	<ul style="list-style-type: none"> • Relationship with the executive and the existence of government commitment to oversight.
Partnerships	<ul style="list-style-type: none"> • Partnerships with NHRIs and civil society through cooperation, coordination, consultation etc.; • Relationship with the judiciary.
Mandate/Powers	<ul style="list-style-type: none"> • Status/stability of mandate; • Powers should include independent selection of issues, publication of recommendations, compelling witnesses, compelling government members to appear, reviewing draft legislation and proposing amendments.
Approach	<ul style="list-style-type: none"> • Willingness to tackle sensitive human rights issues.
Method of Operation	<ul style="list-style-type: none"> • Transparency, including reasons given for incompatibility/compatibility with human rights obligations.
Politics	<ul style="list-style-type: none"> • Non-partisanship in the composition of oversight mechanisms; • Independence from the executive.
Factors External to the Parliament	
National Context	<ul style="list-style-type: none"> • National commitment to human rights through State participation in treaties, international and regional organisations, dispute settlement, resource allocation etc.; • Political system and environment (dialogue v division); • Quality of the overall democratic framework, including whether parliament is dominated by 'reactionary forces' opposed to human rights; • Composition and commitment of parliamentarians.

Clearly, the effectiveness of the mechanism is not confined to the operation of the mechanism itself, but on the capacity and commitment of the legislature in general and the context in which the legislature is located.

Once the role and nature of the mechanism is established, the next question is of what to scrutinise. The United Nations Office of the High Commissioner for Human Rights has developed indicators for the effective scrutiny of human rights⁵. These are grouped into three sets of indicators:

1. Structural Indicators – which reflect the ratification and adoption of legal instruments and the extent of their adoption into domestic law and policy
2. Process indicators – which reflect the actions that governments take in order to meet human rights commitments
3. Outcome indicators – which capture the individual and collective attainments that reflect the enjoyment of human rights

In Scotland, the devolved administration is obliged to uphold the human rights commitments made by the UK, but has additionally developed the Scottish National Action Plan on Human Rights (see below). In accordance with the commitments in the SNAP priorities, the Scottish Programme for Government states the Government will “*seek to safeguard existing human rights guarantees in a Scotland where international human rights obligations are protected, respected and given full effect for everyone in society*”⁶. The document then outlines actions the Government will take to meet this commitment.

These constitute the structural and process indicators that can be tracked to scrutinise the performance of the executive in upholding human rights. The National Performance Framework, which states the purposes, objectives, targets, outcomes and indicators for the Scottish Government, does not specifically refer to human rights⁷. However, under the Community Empowerment (Scotland) Act 2015, the Scottish Government is required to consult the Parliament on national outcomes every five years. A consultation on the national outcomes will begin in September 2017.

The human rights landscape of the UK and the frameworks in place in Scotland are discussed in the next section.

⁵ Office of the High Commissioner for Human Rights (2012), *Human Rights Indicators: A Guide to Measurement and Implementation*, Geneva: OHCHR:

<http://www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx>.

⁶ Scottish Government (2016), *A Plan for Scotland: The Scottish Government's Programme for Scotland 2016-17*, Edinburgh: Scottish Government, p.82: <http://www.gov.scot/Publications/2016/09/2860/downloads>.

⁷ ‘Scotland Performs’ website, accessed 21 July 2017: <http://www.gov.scot/About/Performance/scotPerforms>.

Human Rights in the UK

The key human rights instrument in the UK is the Human Rights Act 1998⁸, which brings the substantive articles of the European Convention on Human Rights (ECHR) into UK law. The Human Rights Act places the European Convention on a footing where⁹:

- Legislation must be deemed compatible with the Convention when passed
- Public authorities must not act unlawfully in breach of the Convention
- Courts have power of remedy for a breach of the Convention

The remedies that can be pursued under the Human Rights Act are as follows¹⁰:

- If the public body is acting unlawfully according to primary legislation, a declaration of incompatibility with the Convention can be pursued
- If a decision of a public authority is being challenged, a judicial review can be pursued to quash the decision
- If the complaint refers to an ongoing activity, an injunction can be pursued to stop that activity
- If the action has caused harm, damages can be pursued
- If evidence is obtained in breach of a Convention right, the exclusion of evidence can be pursued

If satisfaction cannot be obtained domestically, a case can be brought to the European Court of Human Rights in Strasbourg.

More broadly, human rights standards to which the UK is signatory are subject to periodic examination, by the committees associated with individual treaties and for a Universal Periodic Review (UPR), which looks at human rights standards in general. The reporting cycles of the relevant UN and Council of Europe treaties are given in Appendix 1.

There are two approaches to international human rights standards by states¹¹:

1. Monist – upon ratification, international law becomes national law
2. Dualist – national and international law are separate

The UK takes a dualist approach, so unless international standards are transposed into domestic legislation, they are not directly justiciable.

UK Human Rights Bodies

There are statutory bodies for the oversight of human rights implementation in the UK. These comprise institutions looking at a broad spectrum of human rights, such as the Scottish Human Rights Commission, and those which look at the rights of children and young people, such as the Scottish Commissioner for Children and Young People (SCCYP). These are summarised in Table 2.

⁸ Human Rights Act 1998: <http://www.legislation.gov.uk/ukpga/1998/42/contents>.

⁹ David Hoffman and John Rowe QC (2006), *Human Rights in the UK*, London: Pearson, p.55.

¹⁰ David Hoffman and John Rowe QC (2006), *Human Rights in the UK*, London: Pearson, p.80.

¹¹ Lammy Betten and Nicholas Grief (1998), *EU Law and Human Rights*, London: Longman, p.12.

Table 2: Human Rights Institutions in the UK

	Northern Ireland	Great Britain		
		England	Wales	Scotland
Human Rights	NI Human Rights Commission	Equality and Human Rights Commission (in Scotland, where it affects reserved matters)		
				Scottish Human Rights Commission (where it affects devolved matters)
Children	NICCY	Children's Commissioner for England	Children's Commissioner for Wales	SCCYP

There are commissioners for older people in Northern Ireland and Wales, and for victims and survivors of the conflict in Northern Ireland, but unlike children's commissioners, they do not have an international human rights instrument as a reference point.

There are other bodies that are concerned with the scrutiny of human rights standards. These include civil society organisations and the courts. In addition, there is the scrutiny role of the national and devolved legislatures, which will be discussed later.

The Human Rights framework in Scotland

The operation of the Scottish Parliament is provided for by the Scotland Act 1998¹². Section 29 of the Act sets out the legislative competence of the Parliament as follows:

29 Legislative competence.

(1) An Act of the Scottish Parliament is not law so far as any provision of the Act is outside the legislative competence of the Parliament.

(2) A provision is outside that competence so far as any of the following paragraphs apply

—

(a) it would form part of the law of a country or territory other than Scotland,

or confer or remove functions exercisable otherwise than in or as regards Scotland,

(b) it relates to reserved matters,

(c) it is in breach of the restrictions in Schedule 4,

(d) it is incompatible with any of the Convention rights or with EU law,

(e) it would remove the Lord Advocate from his position as head of the systems of criminal prosecution and investigation of deaths in Scotland.

There is a series of checks as to whether a Bill is within the legislative competence of the Parliament, which would include compatibility with Convention rights, i.e. the rights contained within the ECHR (Section 29(2)(d)). This takes place:

<u>Before introduction</u>	By the person in charge of a Bill (Section 31(1)) By the Presiding Officer (Section 31(2))
<u>During Passage</u>	By the Advocate General, the Lord Advocate or the Attorney General (Section 33(1))
<u>Before Royal Assent</u>	By the Presiding Officer (Section 32(3)(a))

The Secretary of State also has the power to intervene in the passage of a Bill that is believed *would be incompatible with any international obligations or the interests of defence or national security* (Section 35(1)(a)).

A Bill is also to be accompanied by a Policy Memorandum which sets out, inter alia, *an assessment of the effects, if any, of the Bill on equal opportunities, human rights, island communities, local government, sustainable development and any other matter which the Scottish Ministers consider relevant*¹³. The Policy Memorandum has a specific section in human rights¹⁴.

Just as the Scottish Parliament may not legislate in any way that is incompatible with the ECHR, the Scottish Government is limited in the same way¹⁵.

The Scottish National Action Plan for Human Rights 2013-2017 (SNAP)

The Scottish National Action Plan for Human Rights (SNAP) was launched by the Scottish Government and the Scottish Human Rights Commission on 10 December 2013¹⁶. The SNAP vision is stated as follows¹⁷:

Our vision is for a Scotland where everyone is able to live with human dignity.

SNAP comprises three outcomes, each with three priorities, set out in Figure 1 below.

¹³ Standing Orders of the Scottish Parliament, Public Bill Procedures, Rule 9.3 Paragraph 3 (d): <http://www.parliament.scot/parliamentarybusiness/17797.aspx>.

¹⁴ A review of the policy memoranda of the 14 public bills current in the Scottish Parliament on 8 August 2017 found that they comprised one to seven paragraphs. Each made reference to the ECHR, but other instruments were cited also (UN Convention on the Rights of the Child, Convention on the Elimination of all forms of Discrimination against Women and the International Convention on Economic, Social and Cultural Rights): 'Current Bills', Scottish Parliament website: <http://www.parliament.scot/parliamentarybusiness/Bills/576.aspx>.

¹⁵ Edwin Shorts and Claire de Than (2001), *Human Rights Law in the UK*, London: Sweet and Maxwell, p.42.

¹⁶ 'What is SNAP?', Scottish Human Rights Commission website, accessed 29 September 2016: <http://www.snaprights.info/what-is-snap>.

¹⁷ Scottish Human Rights Commission (2013), *Scotland's National Action Plan for Human Rights 2013 – 2017*, Edinburgh: SHRC, p.2.

Figure 1: Outcomes and priorities for the Scottish National Action Plan for Human Rights (SNAP)

<p>Outcome 1: Better Culture - People understand and can affirm human rights and organisations are enabled and accountable to put human rights into practice.</p>
<p>SNAP Priority 1: Empowerment - Increase people’s understanding of human rights and their participation in decisions.</p> <p>SNAP Priority 2: Ability - Increase organisations’ ability to put human rights into practice.</p> <p>SNAP Priority 3: Accountability - Increasing accountability through human rights based laws, governance and monitoring.</p>
<p>Outcome 2: Better Lives - Scotland effectively tackles injustice and exclusion, improving lives.</p>
<p>SNAP Priority 4: Enhance respect, protection and fulfilment of human rights to achieve high quality health and social care.</p> <p>SNAP Priority 5: Enhance respect, protection and fulfilment of human rights to achieve an adequate standard of living for all.</p> <p>SNAP Priority 6: Enhance respect, protection and fulfilment of human rights to achieve justice and safety for all.</p>
<p>Outcome 3: Better World - Scotland gives effect to its international obligations at home and internationally.</p>
<p>SNAP Priority 7: Implement international human rights obligations.</p> <p>SNAP Priority 8: Respect, protect and fulfil human rights in our international action.</p> <p>SNAP Priority 9: Engage constructively with the international human rights system.</p>

Human Rights Action Groups are co-convened by public bodies and civil society organisations to engage with people affected by human rights issues, identify actions and monitor implementation.

SNAP originated in a three-year research project by the Scottish Human Rights Commission. The report, ‘Getting it Right? Human Rights in Scotland’, was not intended as a comprehensive review of human rights in Scotland, but a basis for discussion and to identify major themes for a national action plan on human rights¹⁸.

The process included a five-month participation phase in which there was a call for written views and participation events were held. More than 430 individuals took part in the consultation. The key messages were that the themes of the ‘Getting it Right?’ report were

¹⁸ Scottish Human Rights Commission (2012), *Getting it Right? Human Rights in Scotland*, Edinburgh: SHRC: <http://www.scottishhumanrights.com/actionplan/executivesummary>.

correct, but that there was more to do in relation to people understanding their rights¹⁹. Taking into account the views of the participation phase, the Drafting Group compiled SNAP drawing on the experiences of national action plans in other countries.

Oversight of SNAP is through a Leadership Panel, drawn from statutory and non-statutory stakeholders. This meets six-monthly and receives reports from five Action Groups, which have responsibility for specific areas of implementation. A Monitoring Group has been developing indicators of progress for the implementation of SNAP²⁰.

While oversight of SNAP is by the Leadership Panel, referred to above, there is also the Monitoring Group, which observes the work of the Action Groups.

Scottish Human Rights Commission has commissioned an independent evaluation²¹ of SNAP as it is its final year. The purpose of the evaluation will be to undertake a process and impact evaluation of SNAP in order to:

- produce recommendations for how to improve the process of action planning (lessons for others, as well as for Scotland moving forward);
- identify where SNAP (processes and action) can be shown to have had both direct and/or indirect impact;
- identify unintended consequences of SNAP (positive and negative) and their implications for future planning;
- highlight what further work on human rights protection and promotion remains necessary in Scotland, particularly for a successor plan to SNAP.

There will also be an event held by the end of this year to mark the end of the first phase of SNAP and to consider future priorities.

The Scottish Human Rights Commission

The Scottish Human Rights Commission²² was established by the Scottish Commission for Human Rights Act 2006²³. The Act sets out the general functions of the Commission as follows (Sections 2-4):

- General duty to promote human rights
- Provision of information, guidance and education, etc.
- Monitoring of law, practices and policies

There is no formal requirement for the Scottish Parliament to refer Bills to the Commission or for the Commission to comment on the human rights compliance of Bills.

The Commission has powers to undertake the following²⁴:

¹⁹ Scottish Human Rights Commission (2013), *Scotland's National Action Plan for Human Rights: Report of Participation Process*

July 2013, Edinburgh: SHRC: <http://www.scottishhumanrights.com/actionplan/participation>.

²⁰ 'Supporting the implementation of Scotland's National Action Plan for Human Rights', Scottish Government website, accessed 30 September 2016: <http://www.gov.scot/Topics/Justice/policies/human-rights/scotlandsnationalactionplanforhumanrights>.

²¹ 'Evaluation and Participation Process 2017', Scottish Human Rights Commission website, accessed 17 August 2017: <http://www.snaprights.info/accountability/evaluation-2017>

²² Scottish Human Rights Commission website: <http://www.scottishhumanrights.com/>.

²³ Scottish Commission for Human Rights Act 2006: <http://www.legislation.gov.uk/asp/2006/16/contents>.

- Recommend changes to law, policy and practice
- Raise awareness of rights through education, training and publishing research
- Conduct inquiries into the policies and practices of Scottish public authorities

As well as promoting human rights in Scotland generally and monitoring human rights compliance of the state, the Commission also has a role in engaging with the international human rights community, including reporting to treaty monitoring bodies on the implementation of UK human rights obligations in Scotland²⁵. The Commission is also represented in the monitoring group of the Scottish National Action Plan for Human Rights (SNAP).

Equality and Human Rights Commission

The Equality and Human Rights Commission (EHRC) was established under the Equality Act 2006 and is responsible to the UK Government. It is a regulatory body responsible for enforcing the Equality Act 2010. It is accredited as an 'A Status' National Human Rights Institution and monitors the UK's compliance with the seven UN human rights treaties it has signed and ratified.

The EHRC has powers to:

- Enforce equality law
- Shape public policy
- Promote good practice

The EHRC also has responsibility for human rights in Scotland in relation to reserved policy areas, such as immigration. Human rights in relation to devolved areas, such as the police, is the responsibility of the Scottish Human Rights Commission. In practice, the two areas are often interwoven.

Scrutiny of Human Rights in the Scottish Parliament

From 2016-17 the Commission on Parliamentary Reform received a number of proposals with regard to the enhanced scrutiny of human rights in the Scottish Parliament, but felt that time did not permit doing justice to the issues raised in relation to the Parliament's role²⁶. However, there were two recommendations relating to human rights scrutiny:

Recommendation: Referral of human rights issues

R30: We refer the proposals raised with us on the Parliament's role as a human rights guarantor to the Equalities and Human Rights Committee to inform its inquiry work on this matter. We recognise the importance of the proposals made to us and consider that some of our other recommendations may also promote the delivery of a stronger human rights role for the Scottish Parliament.

Recommendations: Continuous professional development for MSPs

R56: The current CPD programme for MSPs should be extended to support MSPs in fulfilling their role as parliamentarians as distinct from that of representing their party

²⁴ 'About the Commission', Scottish Human Rights Commission website, accessed 29 June 2017:

<http://www.scottishhumanrights.com/about/>.

²⁵ 'Our role as an NHRI', Scottish Human Rights Commission website, accessed 29 June 2017:

<http://www.scottishhumanrights.com/international/our-role-as-an-nhri/>.

²⁶ Commission on Parliamentary Reform (2017), *Report on the Scottish Parliament*, Edinburgh: Commission on Parliamentary Reform, p.35:

<https://test123582.files.wordpress.com/2016/10/commissiononparliamentaryreformreport-june20171.pdf>.

and community. It should include training in: a. diversity and equalities; b. financial and analytical skills; and c. human rights (we note that the Equalities and Human Rights Committee is already considering this issue).

In relation to Recommendation 30, the Scottish Human Rights Commission submitted 24 recommendations to the Commission on Parliamentary Reform for human rights scrutiny in the Scottish Parliament²⁷. These are summarised at Appendix 2.

²⁷ Scottish Human Rights Commission (2017), *Submission to the Commission on Parliamentary Reform*, Edinburgh: SHRC:
https://test123582.files.wordpress.com/2017/02/cpr_032_scottishhumanrightscommission1.pdf.

Models of Parliamentary Scrutiny

This section looks at how other legislatures scrutinise human rights compliance. To give an idea of the range of approaches to parliamentary scrutiny of human rights internationally, a review of the Inter-Parliamentary Union (IPU) Parline database on parliamentary human rights bodies was conducted²⁸. The following models were indicated:

- No committee for human rights
- Human rights included in a committee that does not have 'human rights' in title: there are 31 examples in the list
- Human rights named on a committee title along with other remits: this is the most common model with 50 examples
- A sub-committee for human rights: these deal specifically with human rights by are a sub-unit of another committee, of which there are 5 examples
- A dedicated human rights committee: these are the second most common model, at 33 examples
- A committee dedicated to one area of human rights: there are two of these, both dealing with women's rights
- Human rights as a remit for all committees: this is explicit only in the example of Denmark, but may well be the case for other examples that do not have a specific committee for human rights that are not on the list, or indeed where there is a committee dealing with human rights but in practice all committees do so

This section is not intended to be exhaustive of all models and approaches, but provides some relevant examples of parliamentary scrutiny of human rights. Examples are taken from the following:

- Within the UK:
 - Houses of Parliament – a human rights committee: Joint Committee on Human Rights
 - National Assembly of Wales – human rights in a non-specific committee: Equality, Local Government and Communities Committee
 - Northern Ireland Assembly – human rights as procedure: Northern Ireland Act
 - Northern Ireland Assembly – tracking human rights commitments
- Outside the UK:
 - Parliament of Australia – human rights as legal requirement: Human Rights (Parliamentary Scrutiny) Act
 - Folketinget (Parliament of Denmark) – human rights in all committees
 - New Zealand - tracking human rights compliance: National Action Plan for Human Rights

²⁸ The review was undertaken on 7 August 2017, information taken from the Inter-Parliamentary Union (IPU) Parline Database on parliamentary human rights bodies: <http://www.ipu.org/parline-e/Instance-hr.asp>.

The Joint Committee on Human Rights – Westminster

The Joint Committee on Human Rights (JCHR)²⁹ first met in January 2001 in response to the need for parliament to oversee the implementation of human rights obligations under the Human Rights Act 1998. In particular, to become a focus for parliamentary measures to reconcile legislation with any incompatibility with human rights standards declared by a UK court or the European Court of Human Rights³⁰.

Broadly, the work of the committee is divided between a number of general strands³¹:

- Legislative scrutiny – the JCHR scrutinises Government Bills for compatibility with the UK's human rights obligations
- Monitoring the Government's response to adverse human rights judgements – courts cannot strike down incompatible laws, but the Government must take remedial action
- Monitoring the UK's compliance with the international human rights framework – this can include examining the ratification status of international human rights instruments and monitoring the Government's response to UN committee concluding observations
- Undertaking thematic or topical inquiries

Examples of these work streams are:

Scrutiny of Bills In October 2016, the JCHR published its report on legislative scrutiny of the Children and Social Work Bill³² in which it commented on human rights enhancing measures and made recommendations for improving human rights impacts, using the ECHR, the UN Convention on the Rights of the Child and concluding observations of the UN Committee on the Rights of the Child as reference points.

Monitoring adverse judgements In March 2015, the JCHR published a report tracing adverse human rights judgements from the European Court on Human Rights and UK domestic courts and responses to them by the Government³³.

Monitoring compliance In March 2015, in advance of the 2016 examination of the UK, the JCHR published a report which examined the UK's report to the UN Committee on the Rights of the Child³⁴ in relation to progress since the last examination of the UK by that committee in 2008.

²⁹ Joint Committee on Human Rights web pages:

<http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/>.

³⁰ Anjali Sakaria and Stephanie Aiyagari (2007), *The Parliamentary Committee as Promoter of Human Rights: The UK's Joint Committee on Human Rights*, New Delhi: Commonwealth Human Rights Initiative, p.4.

³¹ Angela Patrick (2011), *Human Rights and Parliaments: Handbook for Members and Staff*, London: International Bar Association, p.181.

³² JCHR (2016), *Legislative Scrutiny: (1) Children and Social Work Bill; (2) Policing and Crime Bill; (3) Cultural Property (Armed Conflict) Bill*, HC739/HL48, London: JCHR, pp.3-18:

<https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/739/73902.htm>.

³³ JCHR (2015), *Human Rights Judgements*, HC1088/HL130, London: TSO:

<https://publications.parliament.uk/pa/jt201415/jtselect/jtrights/130/13002.htm>.

³⁴ JCHR (2015), *The UK's compliance with the UN Convention on the Rights of the Child*, HC1016/HL144, London: TSO: <https://publications.parliament.uk/pa/jt201415/jtselect/jtrights/144/14402.htm>.

Inquiries In March 2017, the JCHR published its report on an inquiry into the implementation of the UN Guiding Principles on Business and Human Rights³⁵.

It has been stated that, in general, the establishment of the JCHR has been successful in increasing the impact of the Human Rights Act, the ECHR and international human rights law on Ministers, civil servants and parliamentarians³⁶. Certainly, references to the deliberations of the Committee in parliamentary debate and in court proceedings have increased in the years since its creation³⁷. A more critical analysis, however, suggests that, while the prospect of JCHR scrutiny may have had some influence on the drafters of legislation and the Committee has clearly had some impact on debate in the House of Commons, the actual record of effectiveness of the JCHR has been mixed³⁸.

Committee Inquiry on Human Rights – National Assembly of Wales

Parliamentary scrutiny of human rights in the National Assembly of Wales is undertaken by the Equality, Local Government and Communities Committee, which, along with human rights, also encompasses: local government; housing, community regeneration, cohesion and safety; tackling poverty; and equality of opportunity³⁹. Thus the Committee has a wide remit, and has only been in existence since June 2016, but despite this, meetings have included frequent (if not regular) references to human rights standards, most commonly the UN Convention on the Rights of the Child⁴⁰.

In August 2013, the Committee's predecessor, the Communities, Equality and Local Government Committee, published the report of its inquiry into the future of equality and human rights in Wales⁴¹. While the report noted views from witnesses that accountability for equality and human rights should be strengthened, none of the recommendations of the Committee related to the parliamentary scrutiny of human rights.

Following a formal consultation process, (14 December 2016 to Friday, 24 February 2017)⁴², the present Equality, Local Government and Communities Committee launched an inquiry into human rights in Wales. The inquiry is to consider⁴³:

³⁵ JCHR (2017), *Human Rights and Business 2017: Promoting responsibility and ensuring accountability*, HC443/HL153, London: JCHR:

<https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/44302.htm>.

³⁶ Anthony Lester (2002), 'Parliamentary Scrutiny of Legislation under the Human Rights Act 1998', *Victoria University of Wellington Law Review* 33(1), pp.23-4.

³⁷ Murray Hunt, Hayley Hooper and Paul Yowell (2012), *Parliaments and Human Rights: Redressing the democratic deficit*, AHRC Public Policy Series No 5, Swindon: Arts and Humanities Research Council.

³⁸ Michael Tolley (2009), 'Parliamentary Scrutiny of Rights in the United Kingdom: Assessing the Work of the Joint Committee on Human Rights', *Australian Journal of Political Science* 44(1), pp.51-3.

³⁹ Equality, Local Government and Communities Committee web pages: <http://www.assembly.wales/en/bus-home/committees/Pages/Committee-Profile.aspx?cid=447>.

⁴⁰ 13 October, 7 and 15 December 2016 and 11 January 2017 (prior to the first evidence sessions for inquiry into human rights, commencing 6 April 2017):

<http://senedd.assembly.wales/mgIssueHistoryHome.aspx?Ild=15159>.

⁴¹ Communities, Equality and Local Government Committee (2013), *The future of equality and human rights in Wales*, Cardiff: National Assembly for Wales:

<http://senedd.assembly.wales/mgIssueHistoryHome.aspx?Ild=6256>.

⁴² Equality, Local Government and Communities Committee consultation on an inquiry into human rights in Wales: <http://senedd.assembly.wales/mgConsultationDisplay.aspx?id=244&RPID=1509149878&cp=yes>.

⁴³ Equality, Local Government and Communities Committee, Terms of reference: Inquiry into Human Rights in Wales: <http://senedd.assembly.wales/mgIssueHistoryHome.aspx?Ild=16644>.

- The impact of the UK's withdrawal from European Union on human rights protection in Wales,
- The impact of the UK Government's proposal to repeal the Human Rights Act 1998 and replace it with a UK Bill of Rights, and
- Public perceptions about human rights in Wales, in particular how understandable and relevant they are to Welsh people.

Evidence sessions began in April 2017.

Human Rights as Procedure – Northern Ireland Assembly

While all committees can (and do) raise human rights issues relating to specific subjects, responsibility for human rights in general in the Northern Ireland Assembly lies with the Committee for the Executive Office. However, human rights safeguards are a constituent part of the Belfast Agreement 1998⁴⁴ and these are reflected in the Northern Ireland Act 1998⁴⁵ and, in relation to legislative scrutiny, the Standing Orders of the Northern Ireland Assembly⁴⁶.

As with the Scotland Act, the Northern Ireland Act requires legislation to be in accordance with the competences of the devolved legislature, which includes compatibility with the ECHR and other UK international obligations. However, the scrutiny of Bills in the Northern Ireland Assembly differ from the Scottish Parliament in two main respects:

1. The statutory role of the Northern Ireland Human Rights Commission: every Bill is passed to the Commission on introduction and a motion may be tabled at any time for the Commission to advise whether a Bill is compatible with human rights standards; and
2. The option to refer a Bill to an Ad Hoc Committee on Conformity with Equality Requirements, which includes rights under the ECHR.

The process is detailed at Appendix 3⁴⁷.

Tracking Human Rights Obligations – Northern Ireland Assembly

In September 2016, the Committee of the Executive Office in the Northern Ireland Assembly decided to scrutinise the responses of the Northern Ireland Executive to human rights observations specific to Northern Ireland. The implementation of a UN treaty is overseen by a committee, which examines signatory states at periodic intervals. Countries are required to provide a report on progress in adopting the standards, other relevant national organisations, such as NGOs, can contribute to a parallel report, the state is then examined

⁴⁴ Under 'Rights, Safeguards and Equality of Opportunity': <https://www.gov.uk/government/publications/the-belfast-agreement>.

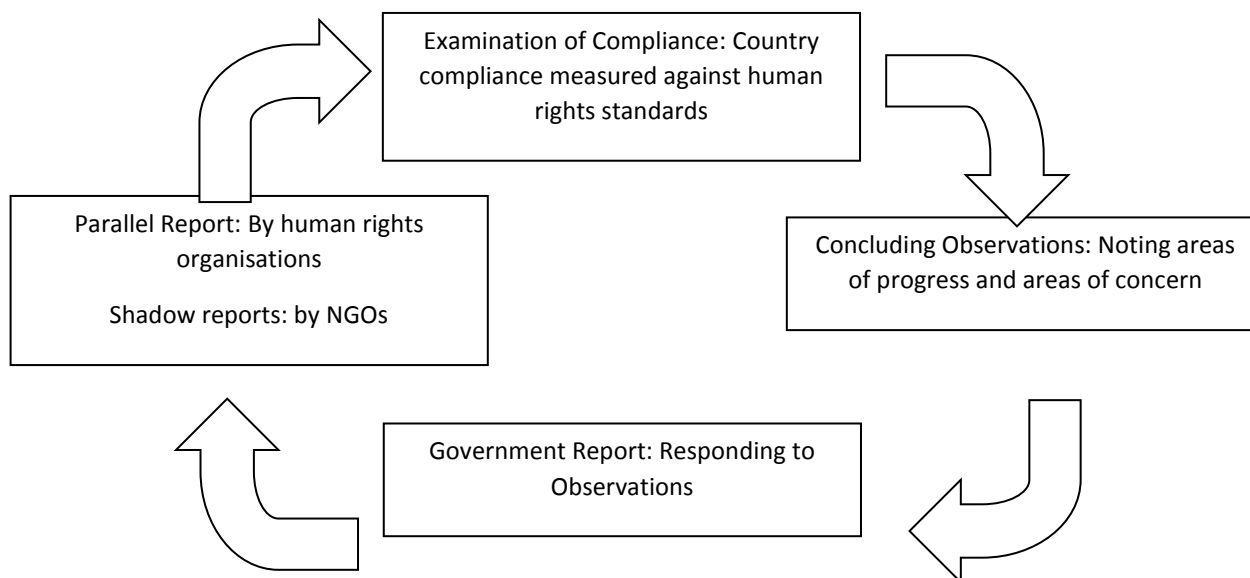
⁴⁵ Northern Ireland Act 1998: <http://www.legislation.gov.uk/ukpga/1998/47/contents>.

⁴⁶ Standing Orders of the Northern Ireland Assembly: <http://www.niassembly.gov.uk/assembly-business/standing-orders/>.

⁴⁷ Northern Ireland Assembly Research and Information Service Briefing Paper 20/14 Human Rights and Equality Proofing of Public Bills, 10 February 2014, pp.12-13: http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2014/assembly_exec_review/2014.pdf.

by the committee and concluding remarks are made with any relevant areas for action. This process is summarised below.

Figure 1: The UN treaty monitoring system



The Committee commissioned research to summarise references to Northern Ireland in UN human rights examinations of the UK⁴⁸ and heard evidence on compliance in Northern Ireland of with international treaty obligations⁴⁹.

Human Rights (Parliamentary Scrutiny) Act – Parliament of Australia

In a context where there is no national Bill of Rights, no Human Rights Act and courts do not have the power to strike down legislation judged incompatible with human rights standards⁵⁰, Australia relies on parliamentary scrutiny to uphold human rights obligations in legislation. To facilitate this, a framework was established by the Human Rights (Parliamentary Scrutiny) Act 2011⁵¹. The Act:

1. Establishes a Parliamentary Joint Committee on Human Rights (Part 2); and
2. Requires Statements of Compatibility with human rights standards in relation to Bills and certain other legislative instruments (Part 3)

In the Act, ‘human rights’ means the rights and freedoms recognised or declared by the following international instruments (Section 3):

- the International Convention on the Elimination of all Forms of Racial Discrimination

⁴⁸ Research and Information Service Briefing Paper 84/16 International Human Rights Standards: Recommendations Relating to Northern Ireland, 21 October 2016: http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2016-2021/2016/executive_office/8416.pdf.

⁴⁹ Executive Office Committee meeting 16 November 2016: <http://www.niassembly.gov.uk/globalassets/documents/executive-office/minutes-of-proceedings/20161116-mops.pdf>.

⁵⁰ George Williams and Daniel Reynolds (2015), ‘The Operation and Impact of Australia’s Parliamentary Scrutiny Regime for Human Rights’, *Monash University Law Review* 41(2), p.469.

⁵¹ Human Rights (Parliamentary Scrutiny) Act 2011: <https://www.legislation.gov.au/Details/C2011A00186>.

- the International Covenant on Economic, Social and Cultural Rights
- the International Covenant on Civil and Political Rights
- the Convention on the Elimination of All Forms of Discrimination Against Women
- the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- the Convention on the Rights of the Child
- the Convention on the Rights of Persons with Disabilities

The Committee has the following functions (Section 7):

- (a) to examine Bills for Acts, and legislative instruments, that come before either House of the Parliament for compatibility with human rights, and to report to both Houses of the Parliament on that issue;
- (b) to examine Acts for compatibility with human rights, and to report to both Houses of the Parliament on that issue;
- (c) to inquire into any matter relating to human rights which is referred to it by the Attorney-General, and to report to both Houses of the Parliament on that matter.

The Committee completed three inquiries in 2013, one in 2016 and one (up to 1 August) in 2017⁵², but the bulk of the workload has comprised the scrutiny of Bills⁵³. Critiques of the system have indicated that Statements of Compatibility have been inconsistent⁵⁴ and that the impact of the Committee's work has been disappointing: the deliberative impact in parliamentary debate has been limited, the majority of adverse impact reports have had no effect, the juridical impact in the courts has been extremely limited and media reporting has been minimal⁵⁵. However, there has been initial optimism at the potential of such an arrangement⁵⁶ and the statutory framework constitutes a demonstration of parliamentary commitment to producing legislation that is compatible with human rights obligations⁵⁷.

Human Rights in All Committees – Folketinget

As in the UK, Denmark takes dualist approach to international human rights law, i.e. international law is separate from Danish law, but international commitments are reflected in domestic law⁵⁸. Also as in the UK, the only international human rights instrument incorporated into Danish law is the ECHR (in 1992).

⁵² Committee Inquiries, Parliamentary Joint Committee on Human Rights web pages, accessed 1 August 2017: http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Committee_Inquiries.

⁵³ Scrutiny Reports, Parliamentary Joint Committee on Human Rights web pages, accessed 1 August 2017: http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports.

⁵⁴ Sawn Rajanayagam (2015), 'Does Parliament Do Enough? Statements of Compatibility under the Human Rights (Parliamentary Scrutiny) Act', *University of New South Wales Law Journal* 38(3), p.1076.

⁵⁵ George Williams and Daniel Reynolds (2015), 'The Operation and Impact of Australia's Parliamentary Scrutiny Regime for Human Rights', *Monash University Law Review* 41(2).

⁵⁶ Tom Campbell and Stephen Morris (2015), 'Human Rights for Democracies: A provisional Assessment of the Australian Human Rights (Parliamentary Scrutiny) Act 2011', *University of Queensland Law Journal* 34(1), p.27.

⁵⁷ Dan Meagher (2014), 'The Human Rights (Parliamentary Scrutiny) Act 2011 (CTH) and the Courts', *Federal Law Review*, 42(1), p.24.

⁵⁸ Jørgen Jensen (2001), 'Human Rights in Danish Law', *European Public Law* 7(1), p.2.

While there is a Gender Equality Committee in the Danish Parliament (Ligestillingsudvalget⁵⁹), there is no committee that takes a lead on human rights. In this context, it is incumbent upon all committees to consider human rights issues in their individual remits. In addition, there is no provision within Standing Orders specifying the scrutiny of legislation or policy for compliance with human rights standards⁶⁰.

While it has been noted that insufficient information is provided by the Government on Bills regarding international human rights compliance, parliamentary practice has traditionally in principle always respected international law⁶¹. Indeed, the impact of a lack of a specific committee dealing with parliamentary scrutiny of human rights compliance has not been raised by the national human rights institution, the Danish Institute for Human Rights⁶², or by the UN's Universal Periodic Review⁶³.

National Action Plan for Human Rights – New Zealand

One of the functions of the New Zealand Human Rights Commission, provided for in the Human Rights Act 1993, is *to develop a national plan of action, in consultation with interested parties, for the promotion and protection of human rights in New Zealand*⁶⁴. The National Plan of Action (NPA) takes the recommendations from the UN Universal Periodic Review (UPR)⁶⁵ and tracks the actions that the New Zealand Government has undertaken to address them⁶⁶.

The NPA is presented as an interactive tool by which UPR recommendations can be accessed and progress tracked⁶⁷. The 155 recommendations from the UPR are listed and can be accessed individually, giving the details of the recommendation, whether it is accepted by the Government and any Government actions associated with the recommendation⁶⁸. Government actions are also listed, along with SMART criteria and an indication of whether the criteria have been met⁶⁹.

While not a model of parliamentary scrutiny in itself, the NPA can be considered a tool that can enhance parliamentary scrutiny. The responsibility for the scrutiny of human rights standards in the New Zealand House of Representatives lies with the Justice and Electoral

⁵⁹ Ligestillingsudvalget web pages: <http://ft.dk/da/udvalg/udvalgene/liu>.

⁶⁰ Standing Orders of the Danish Parliament, June 2016: <http://www.thedanishparliament.dk/Publications/Standing%20Orders%20of%20the%20Folketing.aspx>.

⁶¹ Jonas Christofferson and Mikael Madsen (2011), 'The End of Virtue? Denmark and the Internationalisation of Human Rights', *Nordic Journal of International Law* 80(3), p.267.

⁶² Danish Institute for Human Rights (2017), *Status Report 2016-17 - Human rights in Denmark*, Copenhagen: DIHR: <https://www.humanrights.dk/publications/status-report-2016-17-human-rights-denmark>.

⁶³ Documentation accompanying the review of Denmark in January 2016: <https://www.upr-info.org/en/review/Denmark>.

⁶⁴ Human Rights Act 1993 Section 5(2)(m): <http://www.legislation.govt.nz/act/public/1993/0082/latest/whole.html#contents>.

⁶⁵ New Zealand's last UPR was on 27 January 2014: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/NZIndex.aspx>.

⁶⁶ 'Aotearoa New Zealand's National Plan of Action for the Promotion and Protection of Human Rights', New Zealand Human Rights Commission website, accessed 3 August 2017: <https://www.hrc.co.nz/your-rights/human-rights/our-work/npa/>.

⁶⁷ New Zealand National Plan of Action website: <http://npa.hrc.co.nz/#/>.

⁶⁸ UPR recommendations, NPA website, accessed 3 August 2017: <http://npa.hrc.co.nz/#/recommendations>.

⁶⁹ Government Actions, NPA website, accessed 3 August 2017: <http://npa.hrc.co.nz/#/actions>.

Committee⁷⁰. In the Committee's 2016 report into the Government proposal to accede to the Optional Protocol to the Convention on the Rights of Persons with Disabilities, reference is made to the UPR process⁷¹.

⁷⁰ Justice and Electoral Committee web pages: <https://www.parliament.nz/en/pb/sc/scl/justice-and-electoral/>.

⁷¹ Justice and Electoral Committee (2016), *International treaty examination of the Optional Protocol to the Convention on the Rights of Persons with Disabilities*, Wellington: House of Representatives: https://www.parliament.nz/en/pb/sc/reports/document/51DBSCH_SCR69777_1/international-treaty-examination-of-the-optional-protocol.

Dynamics of Human Rights Scrutiny

This section briefly reviews the range of models presented in the previous section. It is not intended as a list of recommendations for the Equalities and Human Rights Committee of the Scottish Parliament, rather a summary of how aspects of the various models might add value to parliamentary scrutiny in general.

It is acknowledged that there are limitations to the extent to which a parliamentary committee with multiple responsibilities can implement measures to effectively scrutinise human rights compliance in a devolved region. However, the establishment of certain procedures and mechanisms to facilitate such a process might focus the impact of limited resources. Suggestions for the application of the various models are as follows:

Organisation of work in the committee: Broadly the tasks of a committee for the scrutiny of human rights can be drawn from the work streams of the JCHR at Westminster:

- Scrutiny of Bills for human rights compliance – in theory, they will have been checked for legislative competence prior to introduction, this process therefore examining the extent and nature of the checking process.
- Monitoring adverse judgements – where courts have indicated incompatibility, this is a matter of holding the executive to account for any remedial change necessary.
- Monitoring compliance – tracking Government actions in response to recommendations or concluding observations of international human rights bodies, for example, in September 2016 the Committee for the Executive Office of the Northern Ireland Assembly requested and was presented with a summary of observations on Northern Ireland in human rights examinations of the UK to hold the Executive to account for its responses⁷².
- Inquiries – on human rights matters brought to the attention of the committee (also, see under committee inquiries below).

Committee inquiries: As indicated above, inquiries can be conducted on any human rights issues of concern to the committee. However, a general inquiry on human rights standards in a jurisdiction, as in Wales in 2017, can provide a baseline and set out priorities for committee work on human rights issues.

Human rights processes: In Northern Ireland, the involvement of the Northern Ireland Human Rights Commission is formalised in the scrutiny process. The procedural involvement of outside bodies, particularly that of a statutory body such as the Scottish Human Rights Commission, can provide guidance to and alleviate degree of work to be undertaken by the committee in the scrutiny of legislation (and indeed other actions of the executive).

Parameters of scrutiny: While parliamentary scrutiny of human rights being placed on a statutory footing, as in Australia, might not be desirable in every context, the procedural definition of what constitutes ‘human rights’ might be of benefit to the scrutiny process. In the UK, the statutory requirement is for compliance with the

⁷² Research and Information Service Briefing Paper 84/16 *International Human Rights Standards: Recommendations Relating to Northern Ireland*, 21 October 2016: http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2016-2021/2016/executive_office/8416.pdf, presented to the Committee on 16 November 2016.

ECHR, but additional UN and Council of Europe instruments might be set out to clarify the scrutiny process.

Scrutiny across committees: To alleviate the task of a single committee addressing human rights issues, the example of Denmark shows how all committees having a responsibility for the scrutiny of human rights can be appropriate. While one committee might take the lead in general human rights matters, tools, processes and expertise might be provided to enable the scrutiny process to function on a cross-committee basis.

Compliance scrutiny framework: The National Plan of Action in New Zealand clearly sets out what the New Zealand Government is doing in relation to specific human rights recommendations. In Scotland, the National Performance Framework shows the progress of Government actions towards specific measurable outcomes, while the separate Scottish National Action Plan sets out intended human rights outcomes, including Outcome 3: 'Scotland gives effect to its international obligations at home and internationally'. Clearly, the development of a more integrated performance tool would constitute a more effective scrutiny process.

Subject-specific scrutiny: While not included as one of the models described above, Canada has a committee for one particular area of human rights standards: The Senate Standing Committee on the Status of Women. While a single committee dedicated to one area of human rights may not be applicable to the Scottish Parliament, there are circumstances where a focus on a single aspect of human rights may be appropriate.

Appendix 1: Reporting Cycles for the UK to United Nations and Council of Europe Instruments

<i>Instrument</i>	<i>Last report</i>
<i>United Nations Instruments</i>	
Universal Periodic Review (UPR)	February 2017
Convention on the Elimination of all forms of Racial Discrimination (CERD)	August 2016
International Covenant on Economic, Social and Cultural Rights (ICESCR)	June 2016
International Covenant on Civil and Political Rights (ICCPR)	July 2015
Convention on the Elimination of all forms of Discrimination against Women (CEDAW)	July 2013
Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	June 2013; list of issues for next reporting cycle published April 2016
Convention on the Rights of the Child (CRC)	June 2016
Convention on the Rights of Persons with Disabilities (CRPD)	August 2017
<i>Council of Europe Instruments</i>	
European Social Charter (ESC)	Reports published annually
European Charter for Regional or Minority Languages (ECRML)	January 2014; due July 2017
Convention on Action against Trafficking in Human Beings (CATHB)	October 2016
Framework Convention for the Protection of National Minorities (FCPMN)	February 2017
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)	April 2017

Appendix 2: Recommendations from the Scottish Human Rights Commission to the Commission of Parliamentary Reform

The Commission believes that the Scottish Parliament should:

- i. Further embed a rights based approach in structures and processes to strengthen its effectiveness to deliver the best outcomes for the lives of people in Scotland.
- ii. Work with international partners to ensure that Scotland learns from developing good practice.
- iii. Build MSP and staff capacity in relation to human rights to ensure that the Parliament is able to act as a human rights guarantor.
- iv. Work together with the Commission in accordance with the Belgrade Principles to ensure the promotion and protection of human rights.

In relation to its structures the Scottish Parliament should:

- v. Have adequate internal structures to ensure that it can fulfil its responsibility to protect and realise human rights. These structures should ensure rigorous, regular and systematic monitoring of the Scottish Government's performance of its responsibilities to secure human rights in areas of devolved competence.
- vi. Follow the international guidelines on specialist human rights committees.
- vii. Undertake an assessment of resources available to the Equality and Human Rights Committee (EHRC) to ensure that they are sufficient to deliver on its mandate.
- viii. Ensure that Concluding Observations from treaty monitoring bodies and recommendations from other international human rights bodies provide a framework for its work.
- ix. Consider appointing Human Rights Rapporteurs for each Committee to ensure mainstreaming of human rights and a consistency of approach to human rights scrutiny.

In relation to processes the Scottish Parliament should:

- x. Make public the advice provided to the Presiding Officer on the human rights aspects of legislative competence to better inform the Parliament and allow the public to engage with the human rights issues at stake.
- xi. Require a broader statement of compliance from the Presiding Officer and the member in charge of legislation covering all applicable international obligations.
- xii. Introduce additional checks for human rights compliance for amendments and subordinate legislation.
- xiii. Require effective and transparent Human Rights Impact Assessments of primary and secondary legislation.
- xiv. Ensure that expert analysis of human rights issues is available to MSPs for all aspects of their Parliamentary work.

In relation to the scrutiny of compliance with and implementation of international human rights obligations the Scottish Parliament should:

- xv. Develop a strategy for systematically following up the recommendations made by international human rights mechanisms including treaty bodies, and other expert bodies.
- xvi. Require the Scottish Government to submit human rights treaty reports to the Parliament for scrutiny.
- xvii. Directly engage with treaty bodies by sending any relevant reports and, where appropriate, representatives.
- xviii. Monitor the Scottish Government's response to the Concluding Observations of the UN treaty bodies.
- xix. Hold plenary debates in relation to Universal Periodic Review reports.

In relation to the scrutiny of responses to human rights judgments of both domestic and international courts the Scottish Parliament should:

- xx. Undertake systematic scrutiny of the Scottish Government's response to court judgments against it concerning human rights.
- xxi. Require the Scottish Government to report at least annually to Parliament on its responses to human rights judgments.

In relation to budget the Scottish Parliament should:

- xxii. Take a human rights based approach to its scrutiny of the Scottish budget.

In relation to building capacity and evaluating effectiveness the Scottish Parliament should:

- xxiii. Develop training on human rights for MSPs and staff based on international developing practice.

In relation to Participation the Scottish Parliament should:

- xxiv. Strengthen meaningful participation of people with direct lived experience of the issues being addressed, ensuring a rights centric consideration of the issues being addressed.

Appendix 3: Stages of a Bill in the Northern Ireland Assembly in which Human Rights Standards are Considered

Stage	Action
1. Pre-legislative	<p>Sponsoring Department includes an Impact Statement on Human Rights and Equality in the Explanatory and Financial Memorandum to the Bill.</p> <p>Policy issues contained in the draft Bill are scrutinised by the relevant Assembly Committee during the pre-legislative consultation between Committee and Department.</p> <p>Minister in charge of a Bill must publish a written statement to the effect that in his/her view the Bill would be within the legislative competence of the Assembly (Section 9 of the Northern Ireland Act 1998).</p>
2. Introduction and First Stage	<p>Standing Order 30 (1) Copy of Bill received by Speaker prior to Introduction and scrutinised by Assembly Legal Office in respect of legislative competence including compatibility with, inter alia, Convention rights (required by Section 6 of the Northern Ireland Act 1998).</p> <p>Standing Order 30 (3) No Bill may be introduced in the Assembly if the Speaker decides that any provision is not within the legislative competence of the Assembly. (Section 10 (1) of the Northern Ireland Act 1998).</p> <p>Speaker sends copy of every Bill to the Northern Ireland Human Rights Commission as soon as practicable after its introduction (Section 13 (4) of the Northern Ireland Act 1998 and Standing Order 30 (6)).</p> <p>Standing Order 34 (2) A Member, at any time after a Bill has been introduced (or in the case of a draft Bill or proposal for legislation, after Publication for Public consultation), may table a motion that the NIHRC be asked to advise whether the Bill is compatible with human rights.</p> <p>Standing Order 35 (2) A member of the Executive Committee or the Chairman of the relevant Statutory Committee (or member of that Committee acting on his behalf) may table a motion to refer a Bill, draft Bill or proposal for legislation to an Ad Hoc Committee on Conformity with Equality Requirements. This Committee will report on whether the Bill is in conformity with Equality requirements, including rights under the European Convention on Human Rights.</p>
3. Committee Stage	<p>Standing Order 33 Detailed clause-by-clause examination of the Bill. Concerns expressed by Members at Second Stage are addressed. Human</p>

	<p>Rights Commission may be asked to give a written submission for comment on the Bill's provisions, or be called to give oral evidence.</p> <p>Standing Order 35 (2)</p> <p>The Chairperson of the appropriate Statutory Committee (or another Committee member acting on his behalf) may propose that the Bill be transferred to an Ad Hoc Committee on Conformity with Equality Requirements.</p> <p>The Ad Hoc Committee reports within 30 days of the referral, or at a time agreed by the Assembly (Standing Order 35 (5)) and has the power to call for people and papers to assist in its consideration (Standing Order 60 (2)).</p>
4. Consideration/ Further Consideration Stages	<p>Standing Orders 36 (4) and 37 (5)</p> <p>At the end of both the Consideration Stage and the Further Consideration Stage, a Bill stands referred to the Speaker.</p>
5. Final Stage	<p>Standing Order 39 (2)</p> <p>Prior to Final Stage each Bill is considered by the Speaker in accordance with Section 10 of the Northern Ireland Act 1998.</p>
	<p><i>When a Bill has been passed by the Assembly, the Attorney General for Northern Ireland or the Advocate General for Northern Ireland may within four weeks of its passing, as specified in Section 11 of the NIA 1998, refer the question of whether a provision of a Bill would be within the legislative competence of the Assembly to the Supreme Court for decision.</i></p>
6. Reconsideration	<p>Standing Order 40 (1)</p> <p>A Bill will be set down for reconsideration if Supreme Court decides that any provision of the Bill is not within the legislative competence of the Assembly.</p>
7. Royal Assent	<p>Under Section 14 (5) of the Northern Ireland Act 1998 the Secretary of State may decide not to submit a Bill for Royal Assent if he considers that it contains a provision which is incompatible with international obligations.</p>