



Joint Committee on Human Rights
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From Rt Hon Harriet Harman MP, Chair

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Dear Christina

JCHR's written submission to Equalities and Human Rights Committee

Thank you for inviting me to give evidence to your inquiry on Human Rights and the Scottish Parliament.

Given the different ways in which human rights are protected in different jurisdictions, I do not think it would be sensible for me to suggest ways in which Scottish colleagues might operate. Instead, the attached submission gives an overview of the work of the Joint Committee on Human Rights, giving information about previous and current practices of the Committee and its approach to protecting and promoting human rights in Parliament.

Yours sincerely,

Rt Hon Harriet Harman QC MP
Chair
Joint Committee on Human Rights

Written evidence from the Joint Committee on Human Rights (JCHR) to the Equalities and Human Rights Committee, Scottish Parliament.

JCHR's Remit

The Joint Committee on Human Rights consists of twelve members, appointed from both the House of Commons and the House of Lords. House of Commons Standing Order No. 152B lists JCHR's primary role as to consider:

- a) matters relating to human rights in the United Kingdom (but excluding consideration of individual cases);
- b) proposals for remedial orders,¹ draft remedial orders and remedial orders made under Section 10 of and laid under Schedule 2 to the Human Rights Act 1998; and
- c) in respect of draft remedial orders and remedial orders, whether the special attention of the House should be drawn to them on any of the grounds specified in Standing Order No. 151 (Statutory Instruments (Joint Committee)).²

Thematic inquiries

JCHR typically conducts thematic inquiries to help to raise awareness of the UK's international human rights obligations or to scrutinise a new policy which is pertinent to the Committee's remit. The Committee's inquiries have been wide-ranging and have included examination of:

- Attitudes to enforcement of human rights
- Reforms of the Deprivation of liberty safeguards scheme
- Freedom of speech in universities
- Mental health and deaths in prisons
- Business and human rights
- Counter-extremism policies
- the human rights implications of Brexit
- the UK's extradition policy
- the implementation of the right of disabled people to independent living
- the human rights of unaccompanied migrant children and young people
- violence against women and girls
- the Government's policy on the use of drones for targeted killing

While the Committee has typically published one to two thematic inquiry reports per session,³ this part of its work is becoming more important. The Committee is increasingly using thematic inquiries to anticipate problems, highlight high-profile

¹ A remedial order is a form of delegated legislation. Remedial Orders seek to correct the law to remove incompatibilities with the Human Rights Act identified by either domestic courts or the European Court of Human Rights.

² House of Commons, [SO, 152B](#)

³ Parliament and the Law, Chapter 10, Parliament and Human Rights, February 2018, by Alexander Horne and Megan Conway, p. 242.

human rights issues and respond to events which appear to engage or interfere with fundamental ECHR or Common Law rights, or the human rights contained in other international obligations of the UK.

Legislative scrutiny

The Committee's practice includes scrutinising Government Bills for their compatibility with human rights, including:

- The rights under the European Convention on Human Rights (ECHR) protected in UK law by the Human Rights Act 1998;
- Common law fundamental rights and liberties; and
- The human rights contained in other international obligations of the UK.

This scrutiny of Bills also includes consideration of whether the Bill presents an opportunity to enhance human rights in the UK. The Committee does not report on every Bill, but focusses on bills which present the most significant human rights issues.

Following the Queen's Speech, legal advisers identify which bills announced in the Government's legislative programme are likely to raise significant human rights issues. The Committee considers these at its first meeting, agrees on which Bills it should scrutinise and then issues a call for evidence. The process includes correspondence between the Chair and the relevant Minister and written and (sometimes oral evidence) from NGO's, academics and other stakeholders. The Committee's practice has been to report to both Houses on the human rights implications of bills before Report Stage in the first House where possible, so that any amendments to the Bill recommended by the Committee can be moved at Report Stage by Committee members.

The Committee scrutinises about 20–30 per cent of the Government Bills in the legislative programme in any given session.⁴

Court judgments concerning human rights and scrutiny of remedial orders

The Committee also has the task of scrutinising the Remedial Orders the Government puts forward in response to judgments of the European Court of Human Rights and declarations of incompatibility under the Human Rights Act by the UK courts.⁵

⁴ Parliament and the Law, Chapter 10, Parliament and Human Rights, February 2018, by Alexander Horne and Megan Conway, p. 239.

⁵ House of Commons, [SO, 152B](#)

In the 2010–15 Parliament there were three remedial orders. JCHR reported on each of these twice.⁶ In each of these cases, the Government agreed to amend the remedial order in the light of recommendations from the Committee.⁷

There were no remedial orders in the 2015-17 Parliament. More remedial orders are expected to be laid in the current parliamentary session. The Committee has already reported on the first,⁸ and the second is being scrutinised by the Committee's legal advisers.

Treaty Monitoring

Human rights obligations are contained in a range of international treaties, including the UN Convention on the Rights of the Child, the UN Convention Against Torture, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Elimination of Racial Discrimination. JCHR has changed its approach to treaty monitoring over the years. Previously JCHR systematically monitored and scrutinised the UK's compliance with the UN treaties but it has now moved towards incorporating references to relevant recommendations of the UN treaty bodies and Human Rights Council into its general work programme.⁹ JCHR now refers to these recommendations when relevant rather than reporting systematically on all recommendations received.

JCHR has also scrutinised treaties with human rights implications prior to their ratification by the UK, such as the Istanbul Convention on violence against women¹⁰ and the UN Convention on the Rights of Disabled People.¹¹

Implementation of the Human Rights Act and monitoring of human rights bodies

A further strand of work in previous Parliaments was monitoring the implementation of the Human Rights Act, and scrutinising the work of National Human Rights Institutions such as the Equality and Human Rights Commission and the Northern Ireland Human Rights Commission and the various Children's Commissioners.

⁶ See the following reports of the Joint Committee on human rights: [Fourteenth Report: Terrorism Act 2000 \(Remedial\) Order 2011: Stop and Search without Reasonable Suspicion](#), and, [Seventeenth Report: The Terrorism Act 2000 \(Remedial\) Order 2011: Stop and Search without Reasonable Suspicion](#); [Fifth Report Proposal for the Asylum and Immigration \(Treatment of Claimants, etc\) Act 2004 \(Remedial\) Order 2010](#), and, [Ninth Report: Draft Asylum and Immigration \(Treatment of Claimants, etc\) Act 2004 \(Remedial\) Order 2010](#); [Nineteenth Report Proposal for the Sexual Offences Act 2003 \(Remedial\) Order 2011](#), and, [First Report Draft Sexual Offences Act 2003 \(Remedial\) Order 2012: Second Report](#)

⁷ Parliament and the Law, Chapter 10, Parliament and Human Rights, February 2018, by Alexander Horne and Megan Conway, p. 244.

⁸ JCHR, Second Report, [Proposal for a Draft Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018](#), 1 March 2018

⁹ Parliament and the Law, Chapter 10, Parliament and Human Rights, February 2018, by Alexander Horne and Megan Conway, p. 242.

¹⁰ Joint Committee on Human Rights, [Violence against Women and Girls](#), HL 106, HC 594 2014-15.

¹¹ Joint Committee on human rights, ['The UN Convention on the Rights of Persons with Disabilities'](#), First report of Session 2008–09, HL 9, HC 93; Joint Committee on Human Rights, ['The UN Convention on the Rights of Persons with Disabilities: Reservations and Interpretative Declaration'](#), 12th Report of Session 2008–09, April 2009, HL 70, HC 397.

Concluding remarks

All these different strands of work have become increasingly integrated. For example, work on legislative scrutiny is increasingly informed by the Committee's work on thematic inquiries, human rights treaties and human rights judgments and, and, where appropriate, amendments to bills might be recommended in legislative scrutiny reports, or promoted by Committee members on the floor of their respective Houses, to give effect to recommendations made in the Committee's other strands of work.