



The Scottish Parliament
Pàrlamaid na h-Alba

**EQUALITIES AND HUMAN RIGHTS COMMITTEE
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CONVENER**

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Dear Convener,

Inquiry into Human Rights and the Scottish Parliament

On 21 January 2018, we formally launched our [inquiry](#) into 'Human Rights and the Scottish Parliament' with a [call for views](#).

We would like your assistance to gather information from committees about how they interact with human rights issues. We are interested in:

- establishing the benefits of using human rights as a way of scrutinising matters in your remit.
- gathering best practice examples from different committees
- identifying where there might be barriers to consideration of human rights issues

A list of areas to help you respond to our request is attached to this letter, but we would be content to receive any information you consider relevant to our inquiry.

To further assist you I have set out the background to our inquiry below.

Background

As you will recall in September of 2016 the Parliament extended the remit of the Equal Opportunities Committee to include human rights:

“Human rights, including Convention rights (within the meaning of section 1 of the Human Rights Act 1998) and other human rights contained in any international convention, treaty or other international instrument ratified by the United Kingdom”.

Some early concerns were expressed by a few stakeholders that adding human rights to the remit of the Equal Opportunities Committee would impact on our ability to scrutinise equalities issues. They considered we may need further resources to support this dual focus or that human rights should be the remit of a separate committee or sub-committee.

Aside from these views, we saw the need to consider in more detail how we would approach scrutiny of human rights given the breadth of the subject matter and, more generally, how human rights are taken account of by the Parliament in its work and what role the Committee would play in facilitating that work. We have looked at UK and international jurisdictions^{1,2} to assist us with our considerations.

In addition, the Scottish Human Rights Commission³ and civic society groups made representations to the Commission for Parliamentary Reform (the Commission) for the Parliament to have a strengthened role in the promotion and protection of human rights in Scotland. This culminated in the Commission referring the matter of human rights to the Committee to address in its inquiry. The Commission recognised, in the time available, it could not do justice to the complex and important issues raised about the Parliament becoming an effective human rights guarantor (Recommendation 30)⁴.

There are two other factors which give further weight to this inquiry. Firstly, the UK's departure from the EU. The EU (Withdrawal) Bill removes the Charter of Fundamental Rights from UK law. The Equality and Human Rights Commission, and over 20 other organisations, argue that losing the Charter creates a human rights hole because it provides some rights and judicial

¹ SPICe Briefing on Models of Human Rights Practice.
http://www.scottish.parliament.uk/S5_Equal_Opps/Inquiries/Models_of_HR_committee_practice_Jan_2017.pdf

² SPICe Briefing, What do other Parliaments in the UK do on Human Rights.
http://www.scottish.parliament.uk/S5_Equal_Opps/Inquiries/HR_committees_other_parl_Jan_2017.pdf

³ CPR032 Scottish Human Rights Commission submission to the Commission on Parliamentary Reform:
https://test123582.files.wordpress.com/2017/02/cpr_032_scottishhumanrightscommission1.pdf
CPR032:1 Scottish Human Rights Commission submission to the Commission on Parliamentary Reform: Belgrade Principles on The Relationship Between National Human Rights Institutions and Parliaments: https://test123582.files.wordpress.com/2017/02/cpr_032-1_scottishhumanrightscommission.pdf

⁴ Commission on Parliamentary Reform Report June 2017, Taking forward human rights in the Scottish Parliament, paragraphs 157-160.
<https://test123582.files.wordpress.com/2016/10/commissiononparliamentaryreformreport-june20171.pdf>

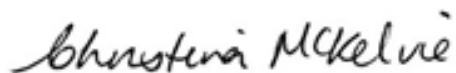
remedies that have no clear equivalents in UK law⁵. Second is the potential for the Human Rights Act to be replaced with a Bill of Rights. It is understood the current position is that plans for a British Bill of Rights are on hold until after Brexit⁶.

We have appointed the former legal adviser to the Joint Committee on Human Rights at Westminster, Murray Hunt, to assist us with our deliberations.

We have also [agreed](#) a number of engagement activities, for example, drop-in sessions for MSPs, their staff and parliamentary officials, to discuss human rights hosted by the committee clerks and researchers. It would also be valuable to have members participate in our focus group sessions when held in constituency or region, with an opportunity to bring along a constituent or an advocate for human rights. We will provide further information on these activities once it's available.

Our aim is to publish our Report before the summer recess. In order to meet this timescale and, to consider responses in advance of inviting witnesses for oral evidence, it would be helpful to have your response by Thursday 8 March. Please let us know at the earliest opportunity if you would like to provide oral evidence to the Committee.

Yours sincerely,



Christina McKelvie
Convener
Equalities and Human Rights Committee

⁵ Equality and Human Rights Commission: EU Withdrawal Bill will not protect UK rights: open letter: <https://www.equalityhumanrights.com/en/our-work/news/eu-withdrawal-bill-will-not-protect-uk-rights-open-letter>

⁶ Rightsinfo 'Liz Truss confirms British Bill of Rights on hold until after Brexit': <https://rightsinfo.org/liz-truss-confirms-british-bill-rights-will-hold-brexit/>

SCOTTISH PARLIAMENTARY COMMITTEES AND HUMAN RIGHTS

Background

The Scottish Parliament was founded in 1999 on four key principles. These are Power Sharing, Accountability, Accessibility and Equal Opportunities. They seek to make the work of the Parliament rational, effective and inclusive process, leading to 'better legislation'. They also aim to provide an open, accessible and above all participative Parliament, which takes a proactive approach to engaging with the Scottish people – in particular those groups traditionally excluded from the democratic process.

The Scotland Act 1998 placed the European Convention on Human Rights (ECHR) at the heart of the Scottish Parliament by linking legislative competence to Convention rights drawn from the ECHR. It also transferred responsibility for the implementation of all other international human rights obligations within devolved competence. These include the core United Nations treaties:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Convention on the Elimination of Racial Discrimination (ICERD)
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Convention on the Elimination of Discrimination against Women (CEDAW)
- Convention on the Rights of the child (CRC)
- Convention on the Rights of Persons with Disabilities (CRPD)

Also the regional human rights treaties of the Council of Europe and the European Union.

Human rights are the basic rights and freedoms that belong to every person in the world, from birth until death. They apply regardless of where you are from, what you believe or how you choose to live your life. They can never be taken away, although they can sometimes be restricted – for example if a person breaks the law, or in the interests of national security.

They include 'civil and political' rights, for example, freedom of expression, freedom of religion or conscience, freedom of assembly, the right to a fair trial, the right to privacy, and the right to vote.

Human rights also include 'economic, social and cultural' rights, for example, the right to an adequate standard of living, the right to adequate food, housing, sanitation and water, the right to education, and rights at work.

The work of the Scottish Parliament, for example, legislating, conducting inquiries, adopting the budget, and overseeing the Scottish Government,

covers civil, cultural, economic, political, and social rights. This work therefore has an immediate impact on the enjoyment of these rights.

We would like to:

- **Establish the benefits of using human rights as a way of scrutinising matters in your remit, for example, by considering the Scottish Government’s response to the [Universal Periodic Review](#) in relation to committee remits.**
- **Gather best practice examples from different committees, e.g. consideration of issues on policing, prison monitoring, mental health and land reform.**
- **Identify where there might be barriers to consideration of human rights issues**

Please provide us with any information you think relevant.

The main themes of the inquiry are listed below. This includes early suggestions of where improvements could be made to ensure that the Scottish Parliament is an effective human rights guarantor.

Participation and engagement

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

- Working with international partners to ensure that Scotland learns from developing good practice, for example, United Nations, Council of Europe, European Union and the Commonwealth on human rights
- Building MSP and staff capacity in relation to human rights to ensure the Parliament is able to act as a human rights guarantor
- Further development of relationships with domestic National Human Rights Institutions (NHRIs) e.g. the Scottish Human Rights Commission, the Children and Young People’s Commissioner for Scotland and the Equalities and Human Rights Commission
- Participation of people with direct lived experience of the issue being addressed, ensuring a rights centric consideration of the issues.

Parliamentary procedure and process

The Scottish Parliament can scrutinise whether people’s human rights are being taken into consideration when the Scottish Government and public authorities are creating policies and legislation.

- Provision of detailed information on human rights to support legislative scrutiny (including pre-legislative, post-legislative and subordinate legislation, amendments etc.)
- Undertaking topical inquiries on human rights issues and addressing/identifying human rights issues in inquiry work.
- Scrutiny of relevant human rights judgements of courts
- Scrutiny of government policy for human rights compatibility
- Role of a Human Rights Committee (including support i.e. legal/SPICe expertise, type i.e. mandatory, sub-committee etc.)
- Use of Human Rights “rapporteurs”
- Scrutinising public authorities use of Human Rights Impact Assessments
- Making use of Human Rights principles in the Budget Process

Accountability

The Scottish Parliament can take account of international treaties, for example, the United Nations Convention on the Rights of the Child (UNCRC) and consider whether international human rights obligations are being followed in Scotland.

- Committees’ role in the Universal Periodic Review process and use of concluding observations in their work
- Clarity around what “incorporation” of human rights means