



Law Society  
of Scotland

# Written Evidence

## Human Rights and the Scottish Parliament

March 2018



## Introduction

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The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Constitutional Law and Mental Health and Disability sub-committees welcome the opportunity to consider and respond to the Equality and Human Rights Committee Inquiry on Human Rights and the Scottish Parliament. The sub-committees have the following comments to put forward for consideration.

## Participation and engagement

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### **How can the Scottish Parliament 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?**

The Scottish National Action Plan (SNAP) noted that “[p]eople don’t know enough about what human rights are and their benefits in everyday life. While attitudes to individual human rights are positive, there are misunderstandings and even fears of what human rights mean in practice. There is a need for improved access to reliable information, advice and advocacy on human rights for the public. Where information is available it is sometimes inaccessible. There are opportunities to pursue the continual roll-out of effective human rights education in all schools in Scotland and the integration of human rights in the curriculum at all levels of education. The implementation of the proposed duty under the Children and Young Peoples Bill to raise awareness of the rights of the child could be evaluated and potentially extended to other areas of human rights and for other sections of the population.”<sup>1</sup>

Public legal education is one way to increase awareness not just of human rights, but also of routes to remedy and how to engage with law and policy making. For example, our Street Law programme delivers

<sup>1</sup> Scottish Human Rights Commission, *Scotland's National Action Plan for Human Rights 2013-2017*, p 30

classes about the law and the legal process which also cover the knowledge and skills that school pupils can use to recognise, prevent and in some cases, resolve legal problems.<sup>2</sup> Programmes such as this can complement and enhance the existing curriculum requirements contributing to a wide range of outcomes but also equipping young people with an understanding of the role of law and human rights in society. Similar courses can be used outwith the school system as well, and with people of all ages. It would seem important that the public should have the opportunity to understand the many contexts in which human rights observance is a valuable protection for a wide range of people, and thus to society as a whole.

The Scottish Parliament has a role in improving public awareness and education in relation to human rights, and building a positive human rights culture in Scotland.

The Parliament can support these objectives by continuing to articulate respect for human rights through the legislation which it considers and adopts - in effect leading by example.

The Presiding Officer, in certifying that legislation before the Parliament is competent under the Scotland Act 1998 is implicitly stating that the Bill is compliant with the European Convention on Human Rights (ECHR). The lack of successful challenges to Scottish Parliament legislation on the ground that the law does not comply with the ECHR indicates that the pre-introduction human rights analysis of the Bill has been broadly successful.

The Parliament could do more to assist in this educative role amongst the wider population. For example, it could host an annual conference on human rights, building on the success of the Festival of Politics. It could also host regular lectures by human rights experts and activists and could employ social media focussing on human rights, replicating the work done by the Parliament on Gaelic language issues.

The Parliament website is generally quite good and easily navigable. The use of other social media channels such as Facebook, Twitter, YouTube and Flickr covers many avenues for the delivery of information about the Scottish Parliament and could be used more fully to disseminate information about human rights.

In addition, the Parliament could build on its existing outreach programme by focussing on human rights in events, exhibitions, education programmes, leaflets and guides.

Technology could further be used to support the development and engagement of individuals and bodies by allowing for further and better consultation on human rights issues for example by video with community groups and individuals and through social media.

<sup>2</sup> Further information is available on our website - <https://www.lawscot.org.uk/qualifying-and-education/our-work-with-schools/street-law/>

## Parliamentary procedure and process

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### **Are there further steps the Scottish Parliament could take to ensure that people's human rights are being taken into consideration when the Scottish Government and public authorities are creating policies?**

The Scottish Parliament was designed to be accessible, open, responsive, and to develop procedures which make possible a participative approach to the development, consideration and scrutiny of policy and legislation. The Scottish Parliament was also designed to embody and reflect the sharing of power between the people of Scotland, the legislators and the Scottish Government. Another feature of the creation of the Parliament was that the Scottish Government should be accountable to the Scottish Parliament and that Parliament and the Executive should be accountable to the people of Scotland. These principles provide the baseline for the Parliament's work and a platform on which to build a human rights engagement strategy.

The concept of “universal design” has been defined in the United Nations Convention on the Rights of People with Disabilities as “the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design”. This concept can also be applied to the work of the Scottish Parliament, including legislation. The legislative process as well as legislation itself would be designed with full inclusivity as the default option, rather than requiring special provisions or exceptions to be made. ‘Jigsaw puzzle’ drafting, requiring constant cross-referencing in order to understand provisions, should be avoided.

One aspect of this is to consider the language and layout used when drafting legislation. This ranges from making the language as simple to understand as possible, to ensuring neutral language to ensure inclusivity and avoid potential discriminatory effects.

The Parliament could seek improvements at the consultation stage of the legislative process which would include the use of plain language and straightforward layout in consultation papers and draft Bills. This would enhance public participation in the process. Where possible a consultation document should be accompanied by a draft Bill and an accompanying memorandum indicating the human rights impact. If Government presents a Bill to Parliament which has not previously been published in draft there should be a Ministerial Statement explaining why the Bill was not published in draft. Such a statement should nevertheless provide information about the human rights impact of the measure.

The Scottish Parliament is unable to legislate in a way that is not compatible with the European Convention on Human Rights. This requires the Parliament to carefully consider its Bills in the context of whether or not they would be ECHR compliant.

Similar checks for other international treaties could lead to greater accountability and awareness of the broader range of human rights obligations of Scotland. Human rights in a broader sense do form part of the

policy memorandum which accompany Bills, but naming and considering other specific treaties may encourage thinking beyond the ECHR.

It would be appropriate, when entering into international treaties, for the UK Government to consult with the devolved administrations and consider the impact on devolved areas of law.

Thorough scrutiny should be given to policy and legislation to consider the possibility for unintended negative consequences. The current practice of policy memorandums, impact assessments, public consultations and parliamentary scrutiny should provide a framework that allows for these issues to be raised. However, problems still arise. Post-implementation reviews are an important tool to allow for reflection on how laws operate in practice, and to identify areas that need to be corrected.

## Accountability

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### **What more could the Scottish Parliament do to ensure that international treaties and other international human rights obligations are being followed in Scotland?**

Enhancing accountability is one of the key aspects of the Scottish Parliament. Thus the Parliament could promote regular audits of human rights compliance. This could be further achieved by a strategic programme of human rights accountability which would engage with the Scottish Government and Public Bodies on a regular basis by way of inquiries and surveys to find out how the UK's human rights obligations are being met.

The SNAP report identified among the international human rights treaties which the UK has signed and ratified the following:

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social, and Cultural Rights
- Convention Relating to the Status of Refugees and Protocol Relating to the Status of Refugees
- Convention on the Rights of the Child
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Rights of Persons with Disabilities

There are a number of NGOs active in Scotland which could help achieve greater awareness in the community. Bringing such bodies together on a regular basis would be a significant step forward. The First

Minister's Advisory Group on Human Rights Leadership will also contribute to highlighting human rights issues. Opportunities for groups to engage with the Parliament need to be regularly available and adequately resourced to enable long term relationships that can promote accountability.

Measures suggested above in relation to consideration of specific treaties beyond the ECHR would also encourage greater accountability regarding international treaty obligations by ensuring that these were expressly considered during the legislative process.

Finally, we would encourage continuing to strengthen the relationship between the Parliament, the Scottish Human Rights Commission, and the Equality and Human Rights Commission. In addition to coordinating and cooperating with these bodies on the Parliament's work on human rights, they provide an important source of expertise and are in a unique position to hold the Parliament to account on human rights issues in Scotland.



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**For further information, please contact:**

Michael P Clancy

Director Law Reform

Law Society of Scotland

DD: 0131 476 8163

[MichaelClancy@lawscot.org.uk](mailto:MichaelClancy@lawscot.org.uk)