

Shirley-Anne Somerville MSP
Cabinet Secretary for Social Justice

5 May 2023

SCOTTISH HUMAN RIGHTS COMMISSION

Dear Cabinet Secretary,

Congratulations on your appointment. I look forward to working with you and your colleagues, to further human rights promotion and protection in Scotland.

In advance of our meeting on 17 May, I would like to outline some further detail about the role of the Scottish Human Rights Commission (SHRC) and our interest in the forthcoming Human Rights Bill.

As Scotland's National Human Rights Institution (NHRI), the SHRC acts as a bridge between human rights in Scotland and the international human rights system. We monitor the implementation of human rights treaties in Scotland, working closely with civil society to gather evidence and produce recommendations for change. Our mandate, as set by the Scottish Parliament, is to promote human rights and to encourage best practice.

The SHRC continues to follow legislative proposals in Scotland, including the development of a new Human Rights Bill, which seeks to incorporate a number of international human rights treaties into Scots Law. The SHRC strongly supports the full incorporation of these treaties, which should strengthen human rights protection in Scotland. Your restated commitment to deliver the Bill within the current session of this Parliament is very welcome.

The Bill also provides an opportunity to reconsider and update the legal powers and mandate of the SHRC, which have remained unchanged

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since our creation in 2008. While we await publication of the draft Bill, I thought it would be helpful to set out some of our early thinking on potential new legal powers for the SHRC. As prescribed by our founding legislation, our powers - and resource - are currently quite limited, especially in comparison to the other UK NHRIs.

I have also noted recent proposals from civil society and MSPs to create new public bodies in Scotland covering thematic human rights issues. I share many of their concerns about appropriate accountability and scrutiny of human rights in Scotland across particular groups.

However, I am concerned about the implications of a proliferation of new public bodies covering human rights issues. As an NHRI we have a responsibility to monitor all the international human rights treaties for everyone living in Scotland. In practice, we have an annual budget and headcount which is analogous with that of the Children and Young People's Commissioner.

I am concerned that creating new Commissions could undermine the broad mandate of the SHRC and lead to duplication of effort, at a time when public resources are already stretched. In my view, the same impact could be achieved by (a) an SHRC with stronger legal powers and (b) an uplift in our resources, which would be more efficient than creating new stand-alone bodies.

Annex A sets out some of our initial thinking around additional powers. You will see that it includes some significant changes, for example, the ability to provide legal advice to individuals, greater investigatory and inquiry powers, the ability to raise legal proceedings in our own name, and to compel public authorities in Scotland to provide information on human rights issues.

We would also want to frame any additions as "enabling powers" rather than explicit duties, as our ability to act would depend on an uplift in our resources. The proposals listed in Annex A are not a definitive position. We will of course need to await formal publication of the Bill to give a more considered response. Nevertheless I hope that by setting out some broad ideas at this stage we can provide a useful steer to your officials charged with drafting the Bill.

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Finally, in addition to the Human Rights Bill, the Commission also supports incorporation of the UN Convention on the Rights of the Child into Scots Law. Therefore I do hope the Scottish Government will set a clear timetable for bringing forward a new Child Rights Bill. Two years have passed since the UK Supreme Court judgement and I hope that further delay in presenting an updated Bill will be avoided.

Yours sincerely,

Ian Duddy

Chair, Scottish Human Rights Commission

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ANNEX A – POTENTIAL NEW LEGAL POWERS

- the provision of legal advice to individuals; the Commission is currently precluded from doing this.
- the ability to investigate all Scottish duty bearers in relation to human rights.
- amending the Commission's Inquiry powers to enable us to investigate a single duty bearer and for the conclusions to be binding.
- to make unaccompanied and announced visits to any Scottish public authority.
- to present reports to the Scottish Parliament and require the relevant parliamentary committee to debate the Commission's findings and recommendations.
- to require information from Scottish duty bearers and compel them to respond.
- to raise legal proceedings in our own name.
- to financially support individuals to raise legal proceedings.
- to hold public hearings and require Scottish duty bearers to be present.
- the power to issue binding guidance.
- the power to issue non-binding guidance in relation to the new human rights bill.
- to monitor the respect, protection and fulfilment of human rights in Scotland. The Commission can already do this, but we would like this to be recognised explicitly in our mandate given the resource implications.

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