

Kaukab Stewart MSP, Convener,
Equality, Human Rights and Civil Justice Committee,
The Scottish Parliament,
Edinburgh,
EH99 1SP

5 October 2023

Dear Kaukab,

Scottish Government's Human Rights Incorporation Consultation

I am pleased to provide the Committee with an update on the Scottish Human Rights Commission's work to inform the Scottish Government's consultation on a new human rights framework for Scotland, which closes today (5th October.)

As we have set out to members of the Equality, Human Rights and Civil Justice Committee on previous occasions, the Commission since established has promoted an increasing appreciation for the importance of human rights in the day to day lives of the people of Scotland. Today, in Scotland, we witness more frequent consideration of human rights in policy making and legal debates.

However it is increasingly clear that despite increased reliance on human rights principles, outcomes for individuals requires a strong legal framework that protects and ensure the realisation of human rights.

The Commission therefore has welcomed the consultation undertaken by the Scottish Government on proposals for a Human Rights Bill for Scotland, where it sets out its proposals for incorporating international human standards into Scots Law and delivering greater access to

Bridgeside House, 99 McDonald Road, Edinburgh, EH7 4NS
0131 297 5750

hello@scottishhumanrights.com
www.scottishhumanrights.com

justice. This is something we have supported for over a decade, and we welcome many of the proposals, which provide a good starting point to build the essential components of strong human rights protection.

However, we also recognise that the political and constitutional landscape around incorporation of human rights has only become more politically and technically complex in recent years - in particular witnessing the impacts of the Supreme Court's decision in the Reference by the Attorney General and the Advocate General for Scotland – United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill.

It is within this context that the Commission shares with the Committee the attached materials in response to the Scottish Government's consultation:

- A Position Statement from the Scottish Human Rights Commission;
- A legal opinion from Senior Counsel concerning the model of incorporation proposed by the Scottish Government;
- A paper outlining the powers required to deliver a Stronger Human Rights Commission for Scotland
- A response to the Scottish Government's consultation

These materials follow previously published papers on the current human rights system in Scotland which have informed our position on the proposed Human Rights Bill:

- At a Crossroads: What Next for the Human Rights System in Scotland?
- Access to Justice for Everyone: A Discussion Paper

Bridgeside House, 99 McDonald Road, Edinburgh, EH7 4NS
0131 297 5750

hello@scottishhumanrights.com
www.scottishhumanrights.com

The legal opinion procured by the Commission confirms that other models are possible within the devolution settlement that may offer greater protection and access to justice for individuals, as well as certainty for duty-bearers.

We also note the concerns expressed by civil society organisations the Scottish Government's proposed approach may offer weaker protection in law for disabled people, women, older people, LGBT+ people, and people from ethnic minority backgrounds in Scotland. These groups have specific protections in human rights law that must be given the same weight as the economic, social and cultural rights of the population at large.

In our view therefore, further analysis is required to identify the respective strengths and challenges associated with different incorporation models, in light of recent litigation concerning respect for rights in the devolved context.

The Commission is concerned that access to justice in Scotland is already too difficult to navigate. It is not clear in the consultation document how the Scottish Government's proposals would offer improvement in this area, and may in fact further complicate the landscape.

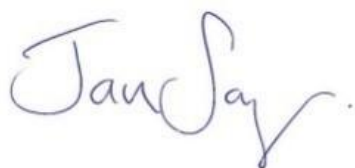
In terms of our own role in Scotland's human rights system, significant evidence supports extending new powers to the Scottish Human Rights Commission. Whilst the Scottish Government's Human Rights Bill could serve as one important catalyst for this development, new powers for the Commission must not be limited in scope to the rights – economic, social and cultural - addressed by the proposed Bill.

It will of course be for the Scottish Government to consider all options and propose a final model, and in due course for the Scottish Parliament

to fully consider, interrogate and pass legislation which achieves the best interests of the human rights of the people of Scotland, whilst navigating the increasingly complex challenges of devolution.

Regardless of how the Bill proceeds, the Commission will continue to fulfil our role in this process by providing advice and guidance on compliance with international human rights standards in order to assist the development of legislation which can make a real positive impact to making human rights real for the people of Scotland.

The Commission and I remain available to support the Committee with its vital scrutiny of the Human Rights Bill proposals and are happy to provide you with further explanation of our position and work in this area as requested.

A handwritten signature in blue ink that reads "Jan Savage". The signature is written in a cursive, flowing style.

Jan Savage
Executive Director