

## Briefing to Parliament on Finance and Public Administration 7th Report, 2024: Scotland's Commissioner Landscape: A Strategic Approach

Thursday 31st October 2024

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Motion S6M-15086: That the Parliament welcomes the Finance and Public Administration Committee's 7th Report, 2024 (Session 6), Scotland's Commissioner Landscape: A Strategic Approach (SP Paper 642); agrees with the recommendation that a dedicated committee should be established to carry out a "root and branch" review, with the purpose of creating a clear strategic framework to underpin and provide more coherence and structure to the Scottish Parliamentary Corporate Body (SPCB) supported body landscape, and further agrees that, while this review is undertaken, there should be a moratorium on creating any new SPCB supported bodies, or expanding the remit of existing bodies.

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### 1. Overview Summary

1.1 The Scottish Human Rights Commission (SHRC) is pleased to provide this short briefing to MSPs ahead of their full consideration of the Committee Inquiry recommendations at 2.55pm on Thursday 31st October 2024. The SHRC looks forward to engaging fully with the next mechanism Parliament establishes to undertake a review of the model of the current office holder landscape.

1.2 We welcome the recommendations of the Finance and Public Administration Committee's report, and the opportunities we had to participate in the Inquiry process earlier this year. The prospect of work to develop a clearer articulation of the relationship between the Scottish Parliament and its office holders is a positive step. We welcome all further opportunities for Parliament to give due consideration to:

- the manner and mechanisms for strengthening the mandate of existing office holders;

- 'develop a more clear and coherent framework to underpin how the [SPCB-supported bodies] should operate';
- create the conditions for further joint work, including sharing of corporate services; and
- maximise the opportunities of our respective mandates to better serve the people of Scotland.

## 2. Coherent Infrastructure

2.1 Parliament will be aware that the SHRC has already entered into an effective Shared Services Arrangement with the Scottish Public Services Ombudsman, and shares office accommodation with the SPSO, the Children and Young People's Commissioner Scotland (CYCPS) and the Biometrics Commissioner.

2.2 The SHRC welcomes the timing of this next phase, having already instigated a work programme to review its own governance arrangements, invested in developing a Theory of Change to help better articulate its impact as Scotland's National Human Rights Institution. This will be published by the end of 2024-25.

2.3 The SHRC Strategic Plan 2024-28 articulates the Commission's purpose, vision and priorities for the coming period and how it will deliver against its statutory duties under the Scottish Commission for Human Rights Act 2006: [SHRC Strategic Plan 2024-28 \(scottishhumanrights.com\)](https://www.scottishhumanrights.com/strategic-plan-2024-28)

2.4 In the pursuit of its mandate to promote the human rights of the people of Scotland, under the 2024-28 Strategic Plan, the SHRC is actively exploring how best to collaborate with other office holders and regulatory bodies to make the best use of combined powers and duties to progress on key human rights issues.

## 3. Impact of moratorium on Human Rights Realisation:

3.1 The SHRC continues to be motivated by the root cause of this Inquiry and its report. We are pleased that the Committee agreed with our assessment that the recent trend to create new Commissions/ers has been driven by 'perceived systemic failures in the delivery of public services' to uphold people's human rights, and can be seen as an 'easy win'.

3.2 In our evidence to the Committee Inquiry, building on our own assessment of the issue in our June 2023 paper, *At a Crossroads: What next for the human rights system in Scotland?* we indicated that creating new Commissions/ers could create significant challenges for the protection of human rights. In particular, it risks:

- adding to the complexity of accessing justice. Potentially this could make the system as a whole even more inaccessible to rights holders, particularly those less equipped to navigate complex systems.
- creating silos between the protection of rights/groups, by not addressing human rights issues in a holistic and intersectional manner.
- prioritising certain groups at the expense of others, putting at risk those with less political support or representation.
- confusing the general public and the public sector on their understanding of human rights.
- duplicating existing bodies and their mandates, including that of the SHRC.
- Ultimately it risks diluting the protection of human rights in the country.

3.3 However, the SHRC has also been clear that far too many people in Scotland still experience denials of their basic human rights and dignity every day. This is made worse by lack of effective access to the mechanisms and means to challenge human rights denials. Change in the accountability systems is therefore necessary.

3.4 We therefore welcome the Committee Inquiry recommendations - they present the first opportunity since 2006 for the Scottish Parliament to review the effectiveness of the Commission's mandate to best promote the human rights of everyone in Scotland.

3.5 In our evidence to the FPA Committee's inquiry, the SHRC explained that it does not have the sufficient powers and resources to meet the expectations that rights-holders have. This has also been highlighted by the United Nations accreditation body for Independent National Human Rights Institutions, as recently as 2021:

The SCA recommends that the SHRC advocate for appropriate amendments to its enabling law to include a more expansive definition of human rights and to extend to acts and omissions of private entities. The SCA refers to Paris Principles A.1, A.2 and A.3 and to its General Observation 1.2 on 'Human rights mandate'..

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3.6 For example, the SHRC, is prohibited from providing advice to individuals and intervening in individual circumstances. It cannot raise legal proceedings on human rights points of law, it does not have the power to undertake formal investigations on matters of human rights concern, it cannot make unannounced visits, and its Inquiry

power has considerable limitations. This is in stark contrast with its sister NHRIs in Northern Ireland, and England and Wales.

3.7 In light of the delay to the Human Rights Bill, the need for the next phase of the Inquiry process to focus on how the SPCB supported bodies are best equipped collectively to uphold the human rights of the people of Scotland is perhaps more pressing than when the Finance and Public Administration Committee Inquiry began.

3.8 We urge that the next stage of the process develops in good time, and concludes within the context of the timeline suggested by the Committee that is, to complete by June 2025.

3.9 As an SPCB supported body, our role is to support the Parliament in its role as the guarantor of human rights in Scotland.

3.10 We encourage MSPs to be mindful of the human rights at stake and which may be impacted by a moratorium on new Commissions, or indeed new powers for existing office holders. Whilst the root and branch review of the current system is necessary, the development of plans to improve visibility, accountability and justiciability for the rights of groups most at risk must also continue, and we hope, inform the next phase recommendations.

3.11 We therefore call on the Scottish Parliament to consider this debate in the context of existing human rights challenges in this country, with many people experiencing denials of their basic human rights and dignity every day, and to consider how the review of the office holders, including the Commission as Scotland's National Human Rights Institution, can make a positive contribution to that.

3.12 Finally, we join MSPs in acknowledging the debt of gratitude to those proposers of Bills, and the effective long term advocacy from civil society groups and human rights defenders which have brought them to Parliament.

3.13 Through an examination of the SHRC's mandate and role as the designated National Human Rights Institution, we look forward to working with Parliament to explore what role the SHRC may usefully play to address some of those issues.

3.14 Many have called for the SHRC to be strengthened, to meet to demands of right-holders and ensure it can fulfil its role as a guarantor of rights.

## 4. Background Information

4.1 The SHRC is one of seven Scottish Parliament Supported Bodies, created by an Act of the Scottish Parliament in 2006. The SHRC is accredited by the United Nations as Scotland's National Human Rights Institution (NHRI), and is periodically reassessed to ensure continued compliance with the international principles which guide the operations of NHRIs, known as the Paris Principles.

4.2 As acknowledged by the United Nations, NHRIs are the cornerstone of domestic human rights protection systems and serve as a bridge between international human rights norms and the state, and between civil society and Government/Parliament. NHRIs are intended to ensure the full protection and realisation of human rights in a country.

“National Human Rights Institutions are key to making human rights a reality. And they give us chance to advance towards a future we all hope for. But for this, NHRIs need greater funding and full independence in line with the Paris Principles.” Volker Turk, UN High Commissioner for Human Rights

4.3 Via the Paris Principles, the UN expects NHRIs to be empowered to hold State parties to account (through investigations and legal proceedings), support individuals and victims (through advice and participation), monitor progress and regression (through regional monitoring, indicators, data collection), and provide advice and support to Parliaments.

4.4 The SHRC will be reaccredited by the UN in 2025. The SHRC currently holds A Status accreditation, as does the Equality and Human Rights Commission for England and Wales, and the Northern Ireland Human Rights Commission for Northern Ireland.

## 5. Further reading:

[Scottish Commission for Human Rights Act 2006 \(legislation.gov.uk\)](https://legislation.gov.uk)

[crossroads\\_what-next-for-human-rights-protection-in-scotland-shrc-june-2023.pdf \(scottishhumanrights.com\)](https://www.scottishhumanrights.com/crossroads-what-next-for-human-rights-protection-in-scotland-shrc-june-2023.pdf)

[A Stronger Human Rights Commission for Scotland \(scottishhumanrights.com\)](https://www.scottishhumanrights.com/a-stronger-human-rights-commission-for-scotland)

1. [shrc-submission-to-fpa-committee-inquiry-into-scotland-s-commissioner-landscape.pdf \(scottishhumanrights.com\)](https://www.scottishhumanrights.com/shrc-submission-to-fpa-committee-inquiry-into-scotland-s-commissioner-landscape.pdf)

## 6. For more information

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