****

**Human Rights and the Rule of Law**

**Parliamentary Briefing, 10 November 2014**

In 2006, the Scottish Human Rights Commission was established by an Act of the Scottish Parliament with a remit to promote and protect human rights for everyone in Scotland. Accredited within the UN system as an “A status” national human rights institution (NHRI), the Commission also chairs the European Network of over 40 NHRIs and is deputy chair of the International Coordinating Council of over 100 NHRIs, forming a bridge between Scotland and the international human rights community.

**1. Summary**

**The Commission takes a strong view that the Human Rights Act 1998, in combination with the Scotland Act 1998, should be the legislative bedrock for further progress in realising human rights in people’s everyday lives, and that Scotland’s National Action Plan for Human Rights is a vital roadmap for embedding its protections, along with a broader range of United Nations human rights treaty obligations, into policy and practice across Scotland.**

The **European Convention on Human Rights** (ECHR) was ratified by the UK in 1951. It recognises a range of rights and freedoms including the right to life and liberty, freedom of expression and assembly, fair trial rights and the right to respect for private and family life. It has been ratified by 47 members of the Council of Europe, providing human rights protection for over 800 million people.

The **Human Rights Act 1998** (HRA) and the **Scotland Act 1998** brought most of the human rights in the European Convention directly into Scotland’s own laws. The combined effect of the Scotland Act and the Human Rights Act places a duty on Scottish Minsters, Parliament and public authorities to comply with the European Convention on Human Rights. They both gave people in Scotland, for the first time, a direct route to enforcing some international human rights through Scotland’s own legal system.

The **European Court of Human Rights** (ECtHR) ensures the enforcement and implementation of the European Convention. In 2013, it dealt with 1,652 applications concerning the UK, of which 1,633 (97%) were declared inadmissible or struck out. It is important to note that when the ECtHR finds in favour of an applicant, the state must provide a remedy to the individual, and it must also take general measures to prevent similar violations taking place in the future, including ensuring that domestic remedies are available for future breaches.

**Scotland’s National Action Plan for Human Rights** (SNAP) was launched in December 2013 with cross-party support, bringing together public bodies, national and local government and civil society to take action to progressively realise internationally recognised human rights for everyone in Scotland.

**2. Benefits of the Human Rights Act 1998**

**Places human rights duties on public bodies**

Section 6 of the HRA makes it unlawful for public bodies to act incompatibly with ECHR rights, giving rise to a compliance duty that has led to changes in policies and practices without the need for individuals to take legal action.

For example, independent evaluations of the experience in Scotland of The State Hospital and the *Care About Rights?* project in the care sector, provide evidence that implementing Section 6 duties contributed to improvements in human rights protections including a more individualised and person centred approach to service delivery and a move away from “blanket” policies, a reduction in complaints and a clearer understanding of shared responsibilities.[[1]](#footnote-1)

**Provides route for justice in domestic courts**

Individuals whose human rights have been breached by a public authority can bring a case within the UK’s legal systems, rather than having to go to the ECtHR. The courts have to interpret primary and subordinate legislation in line with ECHR rights, and take account of ECtHR jurisprudence when reaching judgments on relevant issues.

**EXAMPLE: Challenging the “bedroom tax”**

Several cases challenging the “bedroom tax” have been brought to courts and tribunals using the Human Rights Act, primarily arguing that it engages Article 8 –

the right to a private and family life and Article 14 – prohibition of discrimination. The outcomes of these cases have varied on the facts: the important principle is that a policy like the “bedroom tax”, manifestly disproportionate in its impact on disabled people and others, can be challenged on human rights grounds.

**EXAMPLE: Investigating fatal failures in health care**

Between 2005 and 2008, a series of sometimes fatal failures to protect people in hospital took place at Staffordshire Hospital. Patients were left lying in soiled bedding, without food and water and without basic privacy. The families of many of those affected used the Human Rights Act to secure compensation and to secure commitment from the UK Government’s Department of Health to holding a full public inquiry.

**EXAMPLE: Protecting military personnel – Smith & others**

The families of several soldiers killed in battle in Iraq when their vehicles were hit by roadside bombs, sued the Ministry of Defence using the Human Rights Act. The UK Supreme Court found that the Government owed a duty of care to properly equip and train soldiers sent to war as part of its duty to protect the right to life.

**3. Benefits of the European Convention on Human Rights**

The ECHR is an important international human rights treaty that sets a precedent for other regions of the world. It is the most effective regional system of human rights protection in the world, establishing common democratic values and supporting the progressive realisation of human rights across Europe through its function as a “living instrument” – a treaty which must be interpreted in the light of present day conditions so as to be practical and effective. Sociological, technological and scientific developments, evolving standards in the field of human rights and changing views on morals and ethics have necessarily to be considered when applying the Convention.

**EXAMPLE: Upholding dignity in care - Elaine McDonald**

Elaine McDonald is a disabled former Scottish Ballet dancer who brought a case against her local authority when it decided to stop providing her with a night carer to help her use the toilet. Although she lost her case on other issues, the ECtHR’s judgment has been described by disability and social care campaigners as a landmark ruling because it established that a failure to consider a person’s dignity can be a breach of human rights under Article 8 – the right to a private and family life.

**EXAMPLE: Ending degrading prison conditions - Robert Napier**

Robert Napier brought a successful claim under the ECHR against the then-Scottish Executive because he was required to routinely ‘slop out’ while in prison on remand. Since then, practices have been changed across the prison estate.

**EXAMPLE: Advancing equality – Jeff Dudgeon**

In 1975, Jeff Dudgeon brought a successful case against the UK Government under the ECHR leading to the ban on homosexual acts in Northern Ireland being lifted. Although nearly forty years ago, this remains a landmark example of the ECHR being used to advance equality and tackle discrimination where national governments have been unwilling to do so.

**EXAMPLE: Protecting children from assault – *A* (a child)**

The ECtHR has progressively condemned corporal punishment of children in a series of judgments against the UK since the 1970s. They have all been taken under Article 3 of the European Convention – that no one shall be subjected to torture or inhuman or degrading treatment or punishment. In 1998 the ECtHR ruled in the first case concerning parental corporal punishment. A stepfather who caned his nine-year-old stepson (*A*) was found not guilty of assault because his actions were deemed to be ‘reasonable chastisement’. *A* successfully claimed the State failed to protect him from ill-treatment, and subsequently the law has been changed across the UK to provide children with additional protection from assault.

**4. Reforming the European Court of Human Rights**

As the Convention system has grown and evolved in response to changing circumstances, there has been a need for an ongoing process of reform of the ECtHR to ensure its continuing relevance and effectiveness.

The Commission, along with colleagues from NHRIs across Europe, has been active in the process of reform covering not only the judicial control mechanism but also national implementation of the ECHR and execution of the Court’s judgments.

Since major reforms in June 2010 streamlined the processes of the Court, there has been a significant reduction of the often reported backlog of cases, the majority of which relate to repetitive cases where States have failed to execute judgements.

At the High Level Conference in Brighton in April 2012,  Alan Miller, Chair of the Commission and of the European Network of National Human Rights Institutions, made a statement[[2]](#footnote-2) stressing that the right of individual petition and the independence of the Court must remain the cornerstones of the Convention system, but also highlighting the work that can be done domestically to prevent violations and to ensure effective remedies.

**5. Proposals for a British or UK Bill of Rights**

Proposals for a British or UK Bill of Rights have been considered in a number of forums in recent years. Throughout these debates, the Commission’s position has been clear:

* Any attempt to limit accountability for the exercise of power, as many proposals for such a Bill of Rights do, would undermine the principles of the rule of law that are fundamental to the universal and effective recognition of human rights.
* For example, introducing a ‘democratic override’ enabling the UK Parliament to ignore ECtHR rulings, would undermine the very concept of collective enforcement of rights. In drafting and ratifying the ECHR the UK reaffirmed its profound belief in the fundamental freedoms which are the foundation of justice and peace in the world and acknowledged that those freedoms are best maintained on the one hand by an effective political democracy and on the other by a common European understanding and observance of human rights. Moves to undermine the concept of common understanding and observance, would have a profound effect not just in the UK, but would undermine the regional system of protection with severe consequences for populations in such countries as Russia, Belarus and Turkey. Indeed the current debate itself within the UK is causing significant concern within the Council of Europe.
* The protections set out in the Human Rights Act represent a minimum standard in terms of human rights. Any legislative changes must either incorporate additional human rights, or further entrench the protections provided by the Human Rights Act.
* For example, it is important that any changes to human rights laws maintain and build on existing provisions that hold public authorities to account (section 3 requires domestic legislation to be interpreted through the lens of the Convention; section 6 makes unlawful for a public authority to act in a way which is incompatible with a Convention right).
* There is a need to increase public education on the rights and freedoms protected by the Human Rights Act, and the ECHR, and how they work and serve us all. This would go some way to mitigating the unhelpful impact of inflammatory, inaccurate and sometimes irresponsible media and political rhetoric on human rights.
* Even if regressive changes to human rights laws were not applied to devolved areas there would be an adverse effect on people in Scotland because changes would affect human rights in areas reserved to Westminster. That could include people’s rights at work, the rights of Scottish soldiers to be adequately protected when serving overseas and the rights of people seeking refuge and asylum to be treated humanely.
* There is a need to progressively realise human rights throughout people’s everyday lives. The Human Rights Act 1998, in combination with the Scotland Act 1998, should be the legislative bedrock for this, with its protections being embedded at all levels of policy and practice through Scotland’s National Action Plan for Human Rights.

**6. Scotland’s National Action Plan for Human Rights**

Scotland’s National Action Plan for Human Rights (SNAP) was launched in December 2013. Progress in its first year has been significant in terms of bringing together a wide range of public sector bodies, national and local government and civil society organisations to take forward action on building a better human rights culture and improving human rights outcomes in health and social care, justice and safety and in relation to poverty and adequate living standards. Work has also taken place to advance Scotland’s fulfilment of its broader United Nations human rights treaty obligations.

SNAP provides a strong framework for taking the Human Rights Act 1998 and other laws off the statute books and into policy and practice, leading to improved outcomes in people’s lives. The actions that are taking place within SNAP are both short to medium term (e.g. embedding human rights into the process of health and social care integration, interrogating existing justice initiatives to ensure human rights considerations are being fully explored, developing collaborative approaches to raising awareness of human rights) and longer term (working with people whose rights are affected to identify long-term changes needed to culture and practices, exploring the benefits of incorporating all international human rights, embedding human rights into national and local outcome frameworks).

The Commission led the development of SNAP and continues to coordinate and provide a secretariat function. However, its work is now being taken forward by five Action Groups, bringing together over 40 organisations (with more taking part on a more fluid basis) and a Leadership Panel drawn from across Scottish public life. A full report on SNAP’s first year progress will be presented to Members of the Scottish Parliament in early December.

1. For further discussion see *Human Rights in a Health Care Setting: Making it Work for Everyone*

and *Training and Capacity Building Programme related to Care and Support for Older People* at <http://www.scottishhumanrights.com/> [↑](#footnote-ref-1)
2. <http://www.scottishhumanrights.com/news/latestnews/article/brighton2012news> [↑](#footnote-ref-2)