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**European and External Relations Committee**

**Inquiry into International Policy in an Independent Scotland**

**Further Evidence (June 2014)**

**Introduction**

This paper gives details about how human rights could be recognised more effectively within the constitutional framework and law of Scotland. It builds on evidence given to the European and External Relations Committee on 12 June 2014.

The Scottish Human Rights Commission believes that the current debate about Scotland’s future is an opportunity to think carefully and creatively about how to promote and protect human rights. Whatever the outcome of the independence referendum in September, more can and should be done to ensure that all internationally recognised human rights are realised for everyone in Scotland.

**An important step forward would be the incorporation into law of all of our international human rights obligations.** This could be achieved both within the current devolved framework or in an independent Scotland.

**What are our international human rights obligations?**

The UK has played an active role in developing a system of internationally recognised human rights. As part of this, the UK has ratified (voluntarily agreed to be legally bound by) a series of international treaties designed to protect everyone’s human rights. These include (among others) the European Convention on Human Rights (ECHR) and seven core UN human rights treaties which cover a wide range of rights which are not included in the ECHR.

Most of these international obligations have not been incorporated into domestic law. The exception to this is the ECHR, which was brought into the law of Scotland via the Scotland Act 1998 and the Human Rights Act 1998.

**What benefits does incorporation have?**

Incorporation brings several benefits:

* It brings human rights closer to everyday life for everyone. Embedding internationally recognised human rights into our own laws makes them more tangible, accessible and understandable.
* It helps to build a rounded human rights culture. The implementation of the Human Rights Act has shown that incorporation helps ensure that bodies that deliver public services develop know how to put rights into practice .

* It enhances access to justice. People have a remedy, and ultimately access to justice to ensure that human rights are respected in practice.

**What are we missing?**

At the moment, only some human rights are incorporated in the law of Scotland. These include the rights to freedom from torture and degrading treatment, and freedom of expression. They do not include rights such as those to an adequate standard of living, and to the highest attainable standard of health. They also do not include the rights of the child, or specific human rights standards related to women, black and minority ethnic communities or disabled people.

Incorporating all internationally recognised human rights into law would help to ensure they are respected, protected and fulfilled in practice, through policy and through all law-making. For example, a policy like the “bedroom tax” would be assessed for its impact on human rights. If it was found to violate the right to an adequate standard of living, it would have to be repealed or revised.

By failing to incorporate the full range of its international human rights obligations, the UK is falling behind the rest of the world. In Germany, for example, constitutional protections of the right to dignity have been used to successfully challenge welfare and employment policies related to people seeking asylum. Pension reforms in Latvia were found to violate the right to an adequate standard of living.

Scotland’s National Action Plan for Human Rights includes a commitment by government, public bodies, civil society and other partners to explore the benefits of incorporating international human rights, as well as ways of doing this most effectively.

**How could Scotland incorporate international human rights obligations?**

There are many ways Scotland could do this, whatever the outcome of the September referendum.

*Within a devolved framework*

The UK is one of only three countries in the world which does not have a written constitution. Nevertheless, human rights already form part of Scotland’s constitutional framework through the inclusion of ECHR rights in the Scotland Act and Human Rights Act. Building on this approach, options within a devolved framework include:

* The Scottish Parliament could enact legislation to incorporate international human rights obligations within its existing powers over devolved matters.
* The Scotland Act could be amended to incorporate all of the UK’s international human rights obligations within Scotland.
* The Human Rights Act could be amended, or a new Act introduced, to incorporate additional rights.

* The UK Could develop a written constitution with a Bill of Rights which could be accompanied by Bills of Rights for the constituent nations of the UK.

*In an independent Scotland*

As a new state, an independent Scotland could incorporate its human rights obligations in a number of ways:

* Enacting laws like the Human Rights Act, but extending their scope to all human rights.
* Incorporating all human rights into a written constitution and Bill of Rights.

The Scottish Government’s White Paper, and its recent paper on the interim constitution, suggests that incorporation of internationally recognised human rights would take place through enacting a written constitution. A suggested process and timescale for developing this has been published and is now open for consultation.

The Commission’s view is that an independent Scotland should accept all of the UK’s existing international human rights obligations, consider ratifying additional human rights treaties such as those related to the rights of migrant workers. It should also review areas where the UK has limited its international obligations through “reservations” and “interpretative declarations”.

**Conclusion**

Whatever the outcome of the September referendum on Scotland’s constitutional future, there is an exciting opportunity to consider how best to give effect to all of our human rights obligations through their incorporation in domestic law. This would build on the commitments made within Scotland’s National Action Plan for Human Rights, continuing the progress that Scotland is already making towards building a better human rights culture and, crucially, improving protection of people’s human rights in their everyday lives.