



*Human Rights
Law*

A Stronger
Human Rights
Commission
for Scotland

SHRC Scottish
Human Rights
Commission

Summary and Background

In July 2023, the Scottish Government published a consultation document outlining its plans for a new Human Rights Bill for Scotland¹. Part of this consultation considers the future role of the Scottish Human Rights Commission in upholding the human rights of the people of Scotland. In particular, Question 31 asks: **What are your views on additional powers for the Scottish Human Rights Commission?**

In considering its response to this question, the Commission has undertaken a significant programme of work to ensure that the development of its mandate is guided firmly by the experience of rights holders in Scotland. We have carefully considered the current human rights system we operate within, in order to ensure that all proposals for the future evolution of the Commission's mandate are informed by a gap analysis of the current access to justice system in Scotland and are rooted in the experience of other existing National Human Rights Institutions (NHRIs), and the UN standards for NHRIs.

“The Scottish Human Rights Commission (SHRC) should be given additional powers including taking test cases and conducting investigations, and any further extended powers should be considered.” (Human Rights Taskforce Recommendation 11)

This paper therefore provides a summary of the powers that the Commission wishes to explore in a review of its mandate via either the proposed Human Rights Bill or any other route to amend the Scottish Commission for Human Rights Act 2006.

The Commission aspires to fulfil its mandate to the highest standard for rights holders and wants to ensure it is part of the solution to addressing violations of human rights faced by people in Scotland. In summary, the Commission wishes to explore the following powers to enable it to:

- Provide legal advice
- Raise legal proceedings in its own name
- Conduct investigations
- Conduct inquiries in less limited circumstances
- Require and compel information
- Make unaccompanied and unannounced visits to any human rights duty bearer
- Hold public hearings and require duty bearers to be present
- Issue binding guidance
- Recruit more members of the Commission to represent more voices and experiences of Scottish society

Fuller consideration of the international NHRI landscape as it impacts on the Commission's mandate can be found in the longer paper on the Commission's Powers, available at www.scottishhumanrights.com

About the Commission

Established via an act of the Scottish Parliament in 2006, the Scottish Human Rights Commission is Scotland's National Human Rights Institution (NHRI). We have a general duty to promote awareness, understanding and respect for human rights in Scotland.

We deliver analysis and outputs to fulfil our mandate to promote human rights, including providing guidance and monitoring law, policies, and practice to ensure compliance with international human rights standards.

The Commission is part of the international human rights system and is accredited by the United Nations as an 'A Status' human rights institution, which means that the Commission is granted a monitoring role at the UN on the actions of the state in Scotland to uphold human rights.

As an independent public body, accountable to the people of Scotland through the Scottish Parliament, the Commission has a broad mandate and to fulfil its duties the commission has several powers which include:

- Publishing advice and guidance
- Conducting research
- Providing education and training
- Reviewing and recommending changes to law, policy, and practice
- Conducting inspections in places of detention
- Conducting inquiries
- Intervening in civil proceedings before a court in certain circumstances.

Unlike the Human Rights Institutions in the other countries of the United Kingdom, it does not have the powers to raise legal proceedings in its own name or to provide advice to victims of human rights violations.

The mandate and resource of the SHRC has not been revisited since 2006. In recent years, the United Nations Secretary General has called on countries to ensure that NHRIs are provided with a broad mandate to protect and promote all human rights and granted adequate powers of investigation into allegations of human rights violations.ⁱⁱ The New Human Rights Bill for Scotlandⁱⁱⁱ offers the rare opportunity to review the Commissions powers.

Evidence Base and Factfinding

The proposals outlined in this paper have been informed by an extensive programme of research as follows.

3.1 Desk Based Research:

In June 2023, the Commission published: *At a Crossroads: What Next for the Human Rights System in Scotland?* This paper considered the gaps in accountability and access to justice in human rights terms in Scotland. In September 2023, the Commission published: *Access to Justice for Everyone? How might a new legal framework improve access to justice in human rights?*^{iv}

3.2 Stakeholder Engagement:

Throughout the Summer of 2023, the Commission undertook a series of **roundtables with civil society and duty bearers** exploring the issues this paper raised, and listening to views on additional powers for the Commission to contribute to a stronger human rights system.

Feedback from Civil Society, working alongside those whose human rights are most at risk, has highlighted that the Commission's limited mandate has had an impact on its ability to act on human rights violations and advance human rights.

In September 2023, the Commission published a further paper on **Access to Justice** for human rights in Scotland, which highlights a complex system that is difficult to navigate, and does not often reflect systemic change as a result of human rights violations.

The Commission **met with other UK, European and International National Human Rights Institutions** to explore the powers and mandate of NHRIs in countries with a comparable population size, and/or operating within the UK context

Also in September 2023, the Commission hosted a final roundtable with civil society organisations to share the proposals contained within this paper, and confirm support. Names of organisations who participated in the Commission's roundtables are presented at the end of this paper.

“Scotland needs its National Human Rights Institution to be authoritative and fit for purpose. The SHRC current powers and resources are not sufficient for it to play its full role in advancing human rights in Scotland” (quote from a civil society organisation, Sept 2023)

3.3 Paris Principles:

In addition, the Commission is committed to the United Nations Paris Principles which accredit National Human Rights Institutions. The Paris Principles identify six criteria that national human rights institutions should meet in order to be effective, including:

- a clearly defined and broad-based mandate based on universal human rights standards
- autonomy from government

- independence guaranteed by legislation or the constitution
- pluralism, including membership that broadly reflects their society
- adequate resources
- adequate powers of investigation

3.4 SHRC Accreditation:

Civil Society's view of the Commission has been reflected also by the Global Alliance of NHRIs (GANHRI) Sub-Committee on Accreditation^v who have highlighted significant barriers which have stopped the Commission fulfilling its remit.

Since being established, the Commission has been assessed three times by the Sub-Committee on Accreditation (SCA). Despite always being awarded an A status accreditation, the SCA has expressed concerns and expectations in relation to various issues connected to the Commission's restricted mandate, governance structure, and insufficient funding.

3.5 SHRC Independent Governance Review:

Finally, the Commission instigated and completed an Independent Governance Review^{vi} in 2023 as part of its commitment to effective governance as an independent public body. This independent review recommended greater powers for the Commission in line with the Paris Principles, and that there should be provision in its mandate to recruit more members of the Commission to ensure a more pluralist representative group at any given time.

Potential Future Powers for The Scottish Human Rights Commission

4.1 New Powers and Key Considerations:

As a result of the process outlined above, as a minimum, the Commission believes that its mandate should be amended to enable it with the following functions and powers to:

- Provide legal advice
- Raise legal proceedings in its own name
- Conduct investigations
- Conduct inquiries in less limited circumstances
- Require and compel information
- Make unaccompanied and unannounced visits to any human rights duty bearer
- Hold public hearings and require duty bearers to be present
- Issue binding guidance

There are two critical factors which must be considered in the development and implementation of these powers:

- a) **sufficient resource** must be allocated to the Commission to fulfil this mandate
- b) this mandate must be **applicable to all human rights** defined in the UK Human Rights Act 1998, and the International Human Rights Treaties as ratified by the United Kingdom, regardless of the incorporation approach adopted by the Scottish Government, in so far as possible.

This latter point is critical. We note that in the consultation document, the Scottish Government suggests that it sees 'value in extending the powers of SHRC to include the following in support of *Bill implementation, oversight and accountability*':

- Powers to bring or intervene in civil proceedings *under the Bill*;
- An investigatory power which allows for accountability for systemic issues *relating to the rights in the Bill* (relating to civil matters).

(*our italics)

The Commission is clear that any extended powers must be applicable to the full range of human rights already defined in the Scottish Commission for Human Rights Act 2006, Section 2 (2)

In addition, the Commission is committed to the principle of pluralism, including membership that broadly reflects Scottish society. In our June 2023 paper, we consider potential options to reflect more groups of people in the membership of the Commission, reflecting the trend in Scotland for proposals for new public bodies to uphold the human rights of particular groups of people. This is an issue which the Scottish Government has highlighted in the consultation document around the SHRC powers:

“We have noted a number of wider asks in relation to specific Commissioners focused on advancing rights for specific groups, or in specific areas. This includes proposals for Commissioners for women, disabled people and older people.” (Scottish Government consultation document, July 2023)

The Commission has endorsed a recommendation of its Independent Governance Review that there should be more members of the Commission. This would require an amendment to the Scottish Commission for Human Rights Act 2006. It may provide for an opportunity to address the accountability gap identified by civil society calls for Commissioners for specific groups of people.

The Commission is clear that it would not be sufficient solely to increase the number of members of the Commission in this way to achieve the policy intent behind these calls for more Commissions/ers – it would be essential to include sufficient resource to monitor the enjoyment of human rights of these groups of people within the function of the Commission to work with any 'representative' member of the Commission. Further consideration of this option is provided in the Commission's earlier paper *At a Crossroads: What next for the human rights system in Scotland?* (June 2023)

4.2 Overview:

A further overview of the additional powers the Commission requires, the comparison with where these powers are in place for other NHRIs in the UK and at international level, and crucially, the difference each will make to rights holders are outlined below.

Powers	Impact on Rights Holders in Scotland	Comparisons
Provide Legal Advice	People who have experienced rights abuses will be helped by the Commission who will offer advice on how they could have their issues addressed. The commission will also be able to give advice to civil society organisations on how to address human rights issues.	NHRIs internationally as well as the UK Equality and Human Rights commission and Northern Ireland Commission can provide general or legal advice. This is often provided through face-to-face advice, helpline, services, written/email advice.
Raise Proceedings	<p>People who have experienced abuses of their human rights would not have to fight for their human rights on their own as the Commission could raise a case on rights holders' behalf.</p> <p>People who have experienced abuses of their human rights will be able to have recommendations made on their behalf by the Commission. These recommendations will be powerful because if they are not implemented by duty bearers the Commission will be able to hold duty bearers to account.</p>	The power to raise proceedings is essential to all NHRIS across the world. The UK Equality and Human Rights Commission and Northern Ireland Commission have this power.
Require and Compel Information	<p>People whose human rights are most at risk in Scotland will have their specific experiences and concerns highlighted and addressed.</p> <p>Information about the human rights abuses people have faced will be evidenced and this will help to achieve systemic change, particularly for minority groups.</p>	<p>The Equality and Human Rights Commission and the Northern Ireland Human Rights Commission have this power in the context of an investigation/inquiry.</p> <p>Internationally NHRIs such as the South African Human Rights</p>

		<p>Commission have the power to require and compel information to inform general monitoring of human rights.</p> <p>In Scotland, the Mental Welfare Commission can request information from a duty bearer on what steps are being taken to address an issue.</p>
<p>Make unaccompanied and unannounced visits to any human rights duty-bearer</p>	<p>Rights holders who are living in institutions such as prisons, state hospitals and care homes can be visited by the Commission and have their human rights concerns heard, witnessed, and addressed.</p>	<p>Internationally some NHRIs have the power to make announced and unaccompanied visits. In Scotland the Mental Welfare Commission can make announced visits in relation to its mandate.</p>
<p>Hold public hearings and require duty bearers to be present</p>	<p>People who have experienced human rights abuses will have the opportunity to raise concerns directly with duty bearers and have their issues addressed.</p>	<p>The Equality and Human Rights Commission and Northern Ireland Human Rights Commission have variations of this mandate in relation to participation of duty bearers in Inquiries and Investigations.</p> <p>Internationally NHRIs including the South African Human Rights Commission and the Mexican National Human Rights Commission have this power in relation to more general monitoring work, outwith a formal Inquiry setting.</p> <p>In civil society in Scotland there are several examples of bringing duty bearers and rights holders</p>

		<p>together to work to address human rights issues. However, engagement of duty bearers is reliant on good will. Civil society in Scotland have indicated that this is a power they would welcome for SHRC.</p>
Issue binding guidance	<p>Rights holders will benefit from practice developments which will be informed by human rights. This will support making human rights real for people in Scotland – in relation to elements of Scots Law.</p>	<p>Currently the UK Equality and Human Rights Commission has the power to issue statutory binding guidance.</p>
Conduct Investigations	<p>Rights holders in Scotland will benefit from the ability of the Commission to undertake general or individual investigations where the Commission can determine grounds to do so</p>	<p>Currently, the Northern Ireland Human Rights Commission is empowered to conduct such investigations as it considers necessary or expedient. It is also entitled to publish the findings of such investigations and issue recommendations.</p> <p>SHRC has no comparable power.</p>
Conduct Inquiries in a greater set of circumstances	<p>Rights holders will benefit from the ability of the Commission to conduct an inquiry into the actions of a duty bearer where there is evidence of a systematic</p>	<p>Currently, the UK EHRC and the Northern Ireland Human Rights Commission have the power to conduct Inquiries in a broader set of circumstances than the SHRC mandate allows^{vii}.</p>
Recruit more members of the Commission	<p>More groups of people will have their rights and experiences represented via members of a more pluralist Commission.</p>	<p>Both the UK EHRC and NIHRC have a greater number of members of their Commission.</p>

		Other NHRIs internationally, such as New Zealand, Australia, Greece and the Netherlands have a model which consists of more members.
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Further analysis will be developed of the resource implications of implementing these powers to inform the Scottish Parliament’s consideration of the Bill in due course, building on actual costs in other NHRIs serving comparable population size and mandate.

4.3 Relationship with the powers of other public bodies

4.3.1 Scottish Public Services Ombudsman

The Commission welcomes the proposal for the SPSO to extend its remit. We would wish to be closely involved in discussions around data sharing, monitoring, and consideration of how SHRC may support ongoing capacity building around a human rights based approach.

4.3.2 Children and Young People’s Commissioner for Scotland

The Children and Young People’s Commissioner is a separate independent public body. While the Commission considers that it is important that the Children and Young People’s Commissioner for Scotland (CYPCS) is provided with the necessary, sufficient and strong powers to fulfil its mandate as Scotland’s Independent Children’s Rights Institution, the approach to its powers might require more careful consideration and nuance.

In particular, the CYPCS’ enabling legislation and the SHRC’s enabling legislation have important differences, with different powers afforded to each institution. For example, while the SHRC is barred from giving advice to the general public, the CYPCS is not; while the CYPCS can make investigations into any public authority, the SHRC is required to investigate all public authorities of similar nature when doing an enquiry; among many other differences. Therefore, a power by power analysis, which looks at the enabling legislation of each institution is needed.

Conclusion

“Far too many people in Scotland still experience denials of their basic human rights and dignity every day – and lack effective access to the mechanisms and means to challenge them” (SHRC, Access to Justice for Everyone, September 2023^{viii})

National Human Rights Institutions (NHRI) link international human rights norms and the policies and practice of the country where they operate. NHRIs are unique and do not resemble other parts of government or other public authorities because they are independent.

NHRIs act as an important bridge between civil society and governments; they link the responsibilities of the country where they operate to the rights of all persons, and they connect domestic legislation to international human rights laws and monitoring. NHRI's are completely independent from the state. They are neutral fact finders, not advocates for one side or another, with the role of upholding human rights standards objectively. They require access to a wide set of powers to enable them to fulfil that function well.

It is clear that there is a significant body of evidence to support the development of new powers for the Scottish Human Rights Commission. Whilst the proposed Human Rights Bill for Scotland provides a critical catalyst for this development, these new powers for the Commission must not be limited to those rights which are within the scope of the proposed Bill.

The Commission is clear that it would welcome an enhanced mandate, more powers and a more pluralist membership as outlined in this paper to better protect and promote the human rights of the people of Scotland. The Commission remains open to future discussions and input from rights holders in Scotland about how best any new powers are used to uphold their human rights.

About the Commission:

The Scottish Human Rights Commission exists to serve the people of Scotland. It is Scotland's National Human Rights Institution, accredited as an independent body at the highest level within the United Nations human rights system^{ix}. Established by the [Scottish Commission for Human Rights Act 2006](#), it fulfils a broad statutory mandate to protect people's rights and hold government and public bodies to account for their human rights obligations.

For more information:

Please contact the Commission at hello@scottishhumanrights.com

ⁱ See: [A Human Rights Bill for Scotland: consultation - gov.scot \(www.gov.scot\)](#)

ⁱⁱ UN Human Rights Council, Report of the UN Secretary-General, National institutions for the promotion and protection of human rights, A/HRC/39/20 (2018)

ⁱⁱⁱ See: [A Human Rights Bill for Scotland: consultation - gov.scot \(www.gov.scot\)](#)

^{iv} [Copy of FINAL Access to Justice ElizD MS Sep 1 \(scottishhumanrights.com\)](#)

^v See: [GANHRI Sub-Committee on Accreditation \(SCA\) | OHCHR](#)

^{vi} [Scottish Human Rights Commission: Independent Governance Review](#)

^{vii} Section 8 of the Scottish Commission for Human Rights Act 2006 creates the power to conduct an Inquiry; Section 9 contains Restrictions as to scope of Inquiry, which limit its scope to a particular Scottish public authority if it is the only Scottish public authority with functions in relation to the subject matter of

the Inquiry (s9(2)); or into the management or operations of a particular institution only if the institution is the only one of its kind in Scotland (s9 (5))

viii [Policy & Publications | Scottish Human Rights Commission](#)

ix [Third UN "A Status" award for Commission \(scottishhumanrights.com\)](#)