

Shirley-Anne Somerville MSP,  
Cabinet Secretary for Social Justice  
Scottish Government  
St Andrew's House  
Regent Road, Edinburgh  
EH1 3DG  
Via email to: [cabsecsj@gov.scot](mailto:cabsecsj@gov.scot)

6 October 2023

Dear Cabinet Secretary,

## **Human Rights Bill consultation – Scottish Human Rights Commission Position**

I am pleased to provide you with an update on the Scottish Human Rights Commission's work to inform the consultation on a new human rights framework for Scotland.

The Commission has welcomed the consultation from the Scottish Government on proposals for a Human Rights Bill for Scotland, which sets out proposals for incorporating international human standards into Scots Law and delivering greater access to justice.

Having advocated for a new legal framework for over a decade, the Commission welcomes the Scottish Government's proposals for a Human Rights Bill. We believe these provide a significant milestone towards strong human rights protection in Scotland.

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

[hello@scottishhumanrights.com](mailto:hello@scottishhumanrights.com)  
[www.scottishhumanrights.com](http://www.scottishhumanrights.com)

However, we also recognise that the constitutional landscape around incorporation of human rights has only become more complex in recent years.

The Commission recommends that careful consideration must be given therefore to the model of incorporating international human rights treaties into Scots Law to achieve the greatest possible protection and promotion of human rights.

To support such consideration, during the consultation period, the Commission sought an Opinion from Senior Legal Counsel. This Opinion highlights that there are a number of alternative models for incorporating international human rights treaties into domestic legal systems, besides the 'direct' approach to incorporation as proposed by the Scottish Government's Human Rights Bill. The 'adaptation' approach, for instance, would amend the wording of specific rights from international treaties, seeking to adapt them to the domestic Scottish context and ensure they fall within devolved competence.

In our view, 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 welcomes the opportunity provided by the Bill to review its mandate to be part of a stronger system of accountability around human rights in Scotland. We have undertaken a significant amount of consultation on this with civil society organisations and other National Human Rights Institutions across the UK and internationally.

Whilst the proposed Bill provides a critical catalyst for the review of the Commission's mandate for the first time since 2006, we are mindful that

new powers for the Commission must not be limited in scope to the rights – economic, social, and cultural - addressed by the proposed Bill.

It is within this context that the Commission publishes the following 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

All are available on the Commission's website at [www.scottishhumanrights.com](http://www.scottishhumanrights.com).

In our view 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, so that the progressive development of human rights protection in Scotland is not unnecessarily undermined or delayed.

Regardless of how the drafting of 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.

I contacted your officials to arrange to meet with you in advance of publication of these papers, but understandably it was not possible to arrange for this at such a busy time. However, we are scheduled to meet at the start of November 2023, and I look forward to discussing the status of the Human Rights Bill at that time, amongst other updates.

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In the meantime, the Commission and I remain available to provide you with further explanation of our position and work in this area as requested.

Yours sincerely

A handwritten signature in blue ink that reads "Jan Savage". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Jan Savage  
**Executive Director**