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Via email to cc.office@scotland.police.uk ; LordAdvocate@gov.scot

Cc: Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs via CabSecforJHA@gov.scot

Date: 4 August 2025
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Dear Chief Constable Farrell and Lord Advocate,

Policing of Pro-Palestine Protests and Human Rights

On the 5th of July 2025, secondary legislation proscribing the organisation 'Palestine Action' for the purposes of the Terrorism Act 2000 came into effect. As of this date, it is a criminal offence to be a member of that organisation, or to invite support for that organisation.

While this legislation is UK wide, and relates to the reserved matter of terrorism, the operationalisation of policing and law enforcement practices by Scottish duty bearers affects the enjoyment of human rights in Scotland. As Scotland's National Human Rights Institution, the role of the SHRC is to promote the enjoyment of these rights as they relate to operational policing and prosecutorial decision-making within Scotland.

The SHRC notes that concerns have been raised by international and domestic human rights experts, including the UN High Commissioner for Human Rights, about the potential 'chilling effect' the proscription of Palestine Action could have on the

right to protest. Since the UK Government took this decision, the SHRC notes that there have been reports of an increase in arrests at pro-Palestine demonstrations. Media reports indicate that not all these individuals were verbalising explicit support for a proscribed organisation.

The SHRC is concerned that the application of the Terrorism Act 2000 in some of these arrests risks disproportionately restricting the right to peaceful protest, which is guaranteed by Articles 10 and 11 of the European Convention of Human Rights.

The right to free expression is protected by Article 10 ECHR. It protects the right to hold opinions and exchange and impart information, including the expression element of peaceful protest. This protection extends to speech that may be found offensive, shocking or disturbing. Article 11 protects the right to assembly and association. This protects the right to peaceful assembly, and it cannot be interpreted restrictively. In essence, this means that peaceful protest is highly likely to be covered regardless of the topic of concern. However, Article 11 does not cover situations where the protest is intended to be violent, such as a riot.

An individual being arrested for the expression of views at a protest - including expressing support for a banned group - constitutes an interference under Article 10 ECHR and any restriction must be proportionate. Likewise, the policing of any protest engages the right to free assembly under Article 11 and therefore must be done in a proportionate manner.

Restrictions on either must be in accordance with the law, and the rule of law. This means that individuals must be sufficiently clear on what is permitted, and duty bearers must make sure that interferences with the right to speech or assembly are not arbitrary. In general, only incitement to violence, the justification of terrorist acts, or the encouragement of violence towards specific people can be restricted. The expression of a political or moral viewpoint is protected.

Both the proscription of Palestine Action, and the subsequent approach to policing of demonstrations raise interferences with Article 10 and 11 ECHR. This includes the arrest of individuals, and any subsequent prosecutions brought. As such, these interferences must be proportionate and justified.

Whether the proscription of Palestine Action is justifiable under human rights law is a matter for the UK Parliament and the courts to determine. However, Police Scotland and the Crown Office and Procurator Fiscal Service (COPFS) have a duty to ensure that human rights standards are upheld in individual cases.

It is an important function of law enforcement bodies such as Police Scotland, and COPFS to uphold the law, such bodies have discretion, and duties to uphold

applicable human rights standards, which are set in law by the Human Rights Act 1998. Due consideration must be given by duty bearers such as Police Scotland and COPFS as to whether those interferences can be justified in individual cases.

While this is a live, complex and contentious issue, and the SHRC recognises that the police must enforce the law and protect public safety, there must be a careful balancing to ensure that human rights are also protected.

The SHRC is concerned that strict oversight and explicit proportionality assessment must be applied to operational decision-making in order to take proper account of the necessary limitations on interference with rights, and to draw a reasonable distinction between support for a proscribed organisation and support for a political or moral viewpoint, which otherwise may pose a risk to human rights. Freedom of association, and freedom of expression are fundamental values, which duty-bearers under the Human Rights Act 1998 are legally bound to protect. The SHRC, in its role as Scotland's National Human Rights Institution has a duty to promote these rights, and as such we are writing to you to ensure that decisions surrounding the policing of protests, and any related arrests and prosecutions, take due account of the relevant human rights standards.

Yours sincerely,



**Professor Angela O'Hagan,
Chair**

Cc: Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs