

Rt Hon John Swinney MSP
First Minister
Scottish Government
St Andrew's House
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Via email address: firstminister@gov.scot

7 September 2026
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Dear First Minister

Discussion on further powers for Scotland

Thank you for inviting me to attend the discussion convened by you on Thursday 20 August to discuss the priorities and concerns of civic Scotland as you progress discussions on further powers for Scotland with the new UK Government. Unfortunately, I was not able to attend the discussion in person and am therefore taking the opportunity to provide the SHRC's priorities in writing. To inform your forthcoming discussions, I wish to highlight two issues in particular.

Effectiveness of devolved legislation to incorporate human rights treaties

The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the UNCRC Act) was passed unanimously by the Scottish Parliament in 2024. The UNCRC Act makes the rights contained in the UNCRC (and set out in Schedule 1 to the Act) part of Scots law and therefore directly enforceable in the Scottish courts. As you are aware, prior to passage of the UNCRC Act, an earlier version of the Bill was referred to the UK Supreme Court in 2021. The Supreme Court's interpretation of section 28(7) of the Scotland Act 1998 in that reference has resulted in a significant gap in the legislative scope of the Act as it impacts on rights protections for children in Scotland.

In short, and as you are fully aware, the judgment has meant that the UNCRC Act compatibility duty does not apply in a number of key areas such as education, housing, the care system and the criminal justice system are currently out of scope despite relating to matters which are fully devolved to the Scottish Parliament.

I recently [wrote](#) to the Secretary of State for Scotland and HM Advocate General for Scotland highlighting this issue and the accountability gap it creates. The interpretation of section 28(7) has created a complex accountability landscape.

The SHRC considers that a systemic solution, brought about by the Scottish and UK Governments working together constructively, is required. The SHRC has previously recommended that the Scottish Government undertakes a legislative audit to clarify the areas which are out of scope to inform such a systemic solution. This is particularly important in the context of the forthcoming Human Rights Bill which will incorporate further international human rights treaties into Scots law. Without proactive efforts from both Governments, the same limitations will apply, thereby further limiting human rights accountability.

A stronger NHRI for Scotland

The SHRC works within its mandate to protect and promote the human rights of everyone in Scotland. To enable us to do so, we have a number of functions and formal legal powers - such as the power to intervene in some court cases, the power to conduct inquiries in certain circumstances and the ability to monitor law, policy and practice. Following the enactment of the UNCRC Act, the SHRC gained the power to raise litigation in its own name in respect of the rights protected under the UNCRC. This is often referred to as "own-name litigation".

The NHRIs in the rest of the UK - the Equality and Human Rights Commission (EHRC) and the Northern Ireland Human Rights Commission (NIHRC) - can bring legal proceedings in their own name to challenge potential breaches of the Human Rights Act 1998 by the State. The SHRC cannot. It is our view that there should be parity between the UK NHRIs in their ability to hold the State to account and work in the interest of rights holders. This means the SHRC should be able to raise proceedings about rights protected under the Human Rights Act 1998, which brought the rights contained in the European Convention on Human Rights (ECHR) into Scots law. These rights are built into the founding legislation of the Scottish Parliament. They include the right to life, freedom from torture and inhuman and degrading treatment, the right to a fair trial, to respect for private and family life, and to freedom of expression.

Much of the SHRC's work relates to ECHR rights, such as detention, mental health, police powers and protest. Without the power to raise proceedings under the Human

Rights Act 1998, the SHRC has no direct route to legally challenge and hold public bodies accountable for the most egregious human rights breaches. There is already limited human rights litigation in Scotland compared to other jurisdictions, and Scotland's access to justice system requires significant improvement. Empowering the NHRI to bring cases under the Human Rights Act would increase the options for human rights breaches to be remedied by the courts, avoiding reliance on individual rights holders to bring expensive and inaccessible litigation.

The SHRC considers that action would be required by the Westminster Government to allow the Scottish Parliament to bring forward legislation to widen SHRC's powers in this manner and believes the pursuit of a stronger Scottish NHRI should be a priority for both the Westminster and Scottish Governments.

Should you require further elaboration on any of the above points, my officials would be more than happy to assist.

Yours sincerely,

A handwritten signature in purple ink, appearing to read 'A. O'Hagan', followed by a horizontal line.

Angela O'Hagan
Chair, Scottish Human Rights Commission