

T: 0300 244 4000
E: scottish.ministers@gov.scot

Joe Fitzpatrick MSP
Convener
Equalities, Human Rights and Civil
Justice Committee

18 May 2022

Dear Joe

Ratification of Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (CETS No. 210).

I am writing to update the Committee on UK ratification of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (“the Istanbul Convention”).

The Convention establishes comprehensive legal standards which seek to ensure the right of all women to be free from violence. It is legally binding as a matter of international law and has been ratified by 35 of the 46 members of the Council of Europe.

The obligations set out in the Convention cover four key areas of action. These are:

- preventing violence against women,
- protecting victims,
- prosecuting perpetrators, and
- implementing comprehensive and co-ordinated policies.

These four main objectives encompass various provisions, including legal and practical measures aimed at triggering concrete changes in national responses to domestic violence and to violence against women and girls (“VAWG”). The approach taken by the Convention aligns closely with Scotland’s own existing programme of action to tackle domestic violence, VAWG and gender-based violence in general.

As you know, the Scottish Government has been a long-standing supporter of the Istanbul Convention and Scottish Ministers have written to UK counterparts on a number of occasions in recent years to press the case for UK ratification. The UK originally signed the Convention in 2012 and, as a result of cross-party pressure, there has, since 2017, been a statutory obligation on the UK Government to publish an annual report on progress towards ratification.

I am therefore very pleased to be able to inform the Committee that the UK Government has now begun the formal process of ratifying the Convention. This is very welcome news, and the Scottish Government will continue to support action which ensures that the UK is able to fulfil its obligations as a full state party to the Convention.

You will be aware that the delay in ratification has been attributable in part to the need to put in place new legislative measures necessary to ensure compliance with the Convention's requirements. A major step forward occurred last year, when the Domestic Abuse Act 2021 came into force. The 2021 Act included devolved provisions which were taken forward with the agreement of the Scottish Government and the consent of the Scottish Parliament. Some further legislative changes have subsequently been in relation to Northern Ireland. As a result, the UK is now in a position to formally ratify the Convention.

The UK Government has indicated that it intends to notify the Council of Europe of two reservations as part of the ratification process, in accordance with Article 78(2) of the Convention.

The first reservation relates to Article 59 of the Convention, which deals with the issuing of residence permits to migrant victims of domestic abuse. To date, ten other countries have made this reservation. The article is designed to ensure that where the victim's residence status is dependent on that of their partner, the victim is able to get a residence permit in their own right following the ending of the relationship (where this also ends their right to be in the country as a relative/dependant). This article is under review pending the results and evaluation of the Support for Migrant Victims (SMV) scheme, which will conclude by this summer. At this point the UK Government will decide whether to maintain the reservation or to withdraw it.

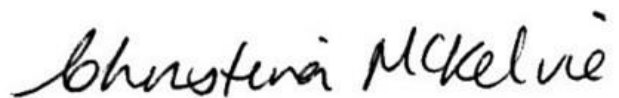
The second reservation relates to Article 44(3). It will ensure that the ability to prosecute UK nationals and residents for certain crimes committed overseas is not made subject to a condition that the act must also be illegal in the country where it was committed. It is generally accepted in the UK that certain serious offences should be capable of prosecution in England and Wales, Scotland or Northern Ireland even if the act itself is committed elsewhere. Relevant examples from the Convention include the crimes of forced abortion and forced sterilisation (Article 39), and crimes of sexual violence including rape (Article 36). The provisions of the Domestic Abuse Act 2021 already reflect those decisions.

The ratification of international treaties is a prerogative power exercised by UK Ministers. However, in line with the provisions of the Constitutional Reform and Governance Act 2010, the government's decision to ratify a treaty is subject to parliamentary scrutiny at Westminster. The UK Government will therefore lay a copy of the Convention before the UK Parliament as a Command Paper, together with an Explanatory Memorandum. Both Houses will then have 21 sitting days to decide whether to resolve that the Convention should not be ratified. Ratification is not subject to any formal process in the Scottish Parliament, but the Committee is of course entirely free to give consideration to the matter, should it wish to do so.

The Convention will enter into force for the United Kingdom on the first day following the expiration of a period of three months after the date the United Kingdom deposits its instrument of ratification, acceptance or approval with the Secretary General of the Council of Europe.

I will update the Committee once the instrument of ratification is deposited and will be able to provide members with a specific in-force date at that point.

Yours sincerely,



CHRISTINA MCKELVIE