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22 March 2023

Dear Joe,

I am writing to provide the Committee with an update on the Scottish Government's engagement with international human rights systems and institutions. This letter includes details of anticipated activity over the course of 2023 and 2024.

You will recall that I last updated the Committee in relation to international human rights activity in May of last year.

This reporting year has seen the beginning of a welcome return to more normal international reporting practice, following the disruption caused by the pandemic. There has been a resulting increase in the extent of the scrutiny being exercised by international institutions and a correspondingly greater focus on the monitoring of performance against the UK's and Scotland's international human rights obligations. The Scottish Parliament, the National Human Rights Institutions ("NHRIs") and civil society also continue to play a vitally important role in delivering accountability at the domestic level, by scrutinising and commenting on performance across a wide range of treaty obligations.

Other post-pandemic developments, including the enhanced use of technology to support online meetings and effective international communication, has resulted in a broader reach of engagement with international bodies, external experts and civil society. This is very much to be welcomed and we will be seeking to build on this positive experience for the future.

## General Overview

As the Committee is aware, the UK is a State Party to seven (out of nine) core UN human rights treaties, together with six (out of nine) optional protocols to those core treaties. Within the Council of Europe treaty system, this reporting year saw the UK ratify the Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence (the "Istanbul Convention"). As a result, a total of eight major Council of Europe human rights treaties are now in force in respect of the UK. A full list of relevant instruments can be found in **Annex A**. Further details of the most recent developments, including ratification of the Istanbul Convention, are set out later in this letter.

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In addition, the UK has human rights obligations under eight fundamental conventions of the International Labour Organisation<sup>1</sup> together with a number of further significant treaties such as the Aarhus Convention<sup>2</sup>, the Rome Statute of the International Criminal Court<sup>3</sup> and the Genocide Convention<sup>4</sup>.

## Monitoring and Compliance

Compliance with treaty obligations is monitored and examined by the relevant UN, Council of Europe, and International Labour Organisation treaty bodies on a cyclical basis.

These treaty bodies and committees are generally comprised of independent experts with specialist knowledge of human rights. In certain cases, periodic and *ad hoc* inspection visits may be carried out by the relevant body. The monitoring and reporting activity undertaken by individual UN treaty bodies is supplemented by the Universal Periodic Review (UPR), carried out approximately every four to five years by the UN Human Rights Council. The UK's most recent UPR examination took place in November 2022. Further details are provided below.

In addition, the UK cooperates with UN Special Procedures<sup>5</sup> in fulfilment of their mandates and has issued a standing open invitation to all thematic special procedures to undertake visits to the UK, including Scotland. This commitment includes facilitating visits to the UK by UN Special Rapporteurs (UNSRs) and responding to communications and requests for information on specific thematic issues. The Scottish Government strongly supports the work of UNSRs and welcomes visits to Scotland in both a formal and an informal capacity.

The Scottish Government actively supports and participates in UK engagement with all of the above international human rights monitoring mechanisms. Scottish Government Ministers and officials work closely with Whitehall counterparts, and with the Welsh Government and, in so far as possible, the Northern Ireland Executive, to ensure that formal reporting processes (undertaken on behalf of the UK as the State Party) properly reflect devolved policies and interests.

## Scottish Government Reporting Policy

In addition to contributing to formal reporting by the UK, our general policy in Scotland is also to publish, where possible, a more detailed position statement for major international treaties.

This approach recognises that formal UK reporting is usually subject to a strict word limit and may need to cover not only reserved and devolved matters within the UK but also the interests of the Crown Dependencies and Overseas Territories. Publication of a standalone Scottish position statement, under our editorial control, complements the UK's formal reporting activity by providing a more detailed and context-specific account of human rights implementation and compliance in Scotland.

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<sup>1</sup> <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>

<sup>2</sup> <https://unece.org/environment-policy/public-participation/aarhus-convention/text>

<sup>3</sup> <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>

<sup>4</sup> [https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1\\_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf)

<sup>5</sup> <https://www.ohchr.org/EN/HRBodies/SP/Pages/Welcompage.aspx>

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The principal purpose of such statements is to assist the Scottish Parliament, the NHRIs, civil society, the general public and other interested parties in engaging with treaty reporting processes and in scrutinising the Scottish Government's human rights record.

In 2022 we published three Scottish position statements. These were submitted to the respective lead committees in the Scottish Parliament as well as being made publicly-available on the Scottish Government website. The statements covered:

- the UPR<sup>6</sup>,
- the International Convention on Economic Social and Cultural Rights<sup>7</sup>, and
- the UN Convention on the Rights of the Child<sup>8</sup>.

In previous years, we have also published position statements in response to visits or communications from UNSRs. Engagement by UNSRs over the course of 2022 was more targeted in nature and the Scottish Government's response has therefore taken the form of subject-specific exchanges, rather than the publication of more general position statements. Further detail is provided below.

### Universal Periodic Review

The start of the UK's fourth UPR cycle in 2022 has presented a welcome opportunity to set out details of the measures that the Scottish Government has taken, since the start of the UK's previous UPR cycle in 2017, to give effect to the full range of our international human rights obligations.

Engagement with Scottish civil society interests was undertaken in January 2022 as an important part of the overall UPR process. The views of rights-holders, practitioners and campaigners constitute an important source of evidence which should inform the recommendations made by the UN Human Rights Council. This is facilitated independently through the submission of civil society shadow reports to the UN, and through the work of the NHRIs. It is also important that civil society views are properly taken into account when compiling both the formal State Party report and our independent Scottish position statements. My officials therefore worked closely with the UK Government's Ministry of Justice to facilitate stakeholder engagement as part of the UPR process.

Collaboration with UK counterparts also served to maximise the coverage and accuracy of devolved Scottish content in the UK's State Party report, which was published and submitted to the UN Human Rights Council in August 2022<sup>9</sup>. This was followed in October 2022 by publication of the Scottish Government's standalone UPR position statement<sup>10</sup>. I should stress that the standalone position statement does not form part of the formal documentation submitted to the UN. The principal purpose, as noted above, is to assist and inform the Scottish Parliament, the NHRIs, civil society, the general public and other interested parties in relation to treaty reporting processes and scrutinise the Scottish Government's human rights record. The UPR position statement was shared with your Committee in October<sup>11</sup>.

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<sup>6</sup> [Universal Periodic Review 2022: Scottish Government Position Statement - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/universal-periodic-review-2022-scottish-government-position-statement/pages/1-to-3.aspx)

<sup>7</sup> [International Covenant on Economic, Social and Cultural Rights: position statement - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/international-covenant-on-economic-social-and-cultural-rights-position-statement/pages/1-to-3.aspx)

<sup>8</sup> [Embedding children's rights: position statement - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/embedding-childrens-rights-position-statement/pages/1-to-3.aspx)

<sup>9</sup> [Fourth Universal Periodic Review: National State Report - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/114444/Fourth-Universal-Periodic-Review-National-State-Report-2022.pdf)

<sup>10</sup> [Universal Periodic Review 2022: Scottish Government Position Statement - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/universal-periodic-review-2022-scottish-government-position-statement/pages/1-to-3.aspx)

<sup>11</sup> [Universal Periodic Review 2022: Scottish Government Position Statement | Scottish Parliament Website](https://www.gov.scot/publications/universal-periodic-review-2022-scottish-government-position-statement/pages/1-to-3.aspx)

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The UK's overall human rights record was formally examined by the UN Human Rights Council by means of an Interactive Dialogue session held in Geneva on 10 November 2022.

The Interactive Dialogue is an opportunity for representatives of all UN member states to scrutinise the human rights record of the State Under Review (in this case the UK) and to make recommendations. National delegations in Geneva have access to the formal State Party report submitted by the State Under Review together with evidence compiled by the Office of the UN High Commissioner for Human Rights. This includes information submitted in the form of shadow reports by the NHRIs and by civil society. As a consequence, the Interactive Dialogue session can cover a broad range of topics and these should reflect issues and concerns identified by the NHRIs and domestic stakeholders.

For the 2022 Interactive Dialogue the UK delegation was led by Mike Freer MP, the Parliamentary Under Secretary of State in the Ministry of Justice, with support from officials representing the interests of the Scottish and Welsh Governments, together with a number of key Whitehall departments. During the three-hour session, comments and observations were made by 115 participating states and the Dialogue resulted in the UN Human Rights Council adopting a total of 302 recommendations.

Unsurprisingly, one of the main topics of challenge to the UK delegation was the UK Government's commitment to replace the Human Rights Act 1998 with their proposed Bill of Rights Bill. The Scottish Government particularly welcomed the interventions on this topic made by UN member states, and the 24 recommendations which resulted (list at **Annex B**).

Also welcome was an increased level of interest in, and coverage of, devolved Scottish policies. Areas of Scottish Government policy showcased during the session included the Scottish Government's work to promote gender equality, end conversion practices, and ban the physical punishment of children in Scotland. This increased level of visibility is testament to the growing profile of the Scottish Government within human rights treaty reporting processes in both a domestic and an international context. I intend this trajectory to continue, and invite the Parliament, the NHRIs and civil society partners also to develop and extend their own respective roles in delivering effective scrutiny of human rights compliance in Scotland.

The UK's formal response to the UPR recommendations will be presented by the UK Government during the forthcoming 52nd session of the UN Human Rights Council, which will take place between 27 February and 4 April 2023. The UK's response will indicate whether the UK "supports", "partially supports", or "notes" each recommendation. My officials have worked closely with the Ministry of Justice to develop a common UK position in response to the recommendations, where these engage devolved competence. The Scottish Government will subsequently set out its own more detailed position on the UPR recommendations in a position statement that will be made available to the Scottish Parliament and published on the Scottish Government website. I will write to the Committee in due course and provide you with a copy of the statement.

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## UN Treaties

### International Covenant on Economic, Social and Cultural Rights (ICESCR)

The Scottish Government contributed to the UK Government's 7<sup>th</sup> State Party report on implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) in May 2022<sup>12</sup>.

We subsequently published our own detailed position statement setting out Scotland's record under the ICESCR in November<sup>13</sup> and I wrote to your Committee to provide a copy of that report.

The UN Committee on Economic, Social and Cultural Rights will convene in March 2023 to review the UK's record and issue a List of Issues. Following this, we expect an interactive dialogue to take place in Geneva in either late 2023 or early 2024.

### UN Convention on the Rights of Persons with Disabilities (CRPD)

In May, we submitted the Scottish Government contributions to the UK Government follow-up inquiry report on compliance with the UN Convention on the Rights of Persons with Disabilities.

### Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)

In October, we submitted the Scottish Government contribution to the UK's 9<sup>th</sup> periodic report on the implementation of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). The UK is due to submit its State Party report to the UN CEDAW Committee by the end of March 2023.

### UN Convention on the Elimination of all Forms of Racial Discrimination (CERD)

We are currently working with UK Government counterparts to finalise the detail of the UK's State Party report to the UN Committee for the Elimination of all Forms of Racial Discrimination, before its onward transmission to the UN Committee.

### UN Convention on the Rights of the Child (CRC)

The UK's next interactive dialogue session with the UN Committee on the Rights of the Child is due to take place in May 2023. Ahead of this, the Scottish Government contributed to the UK's State Party response to the List of Issues Prior to Reporting<sup>14</sup> prepared by the UN Committee. The UK Government presented the response to the Committee in June 2022.

In November 2022, we published a detailed position statement<sup>15</sup> for the CRC, setting out the progress made in further embedding children's rights across Scotland since the previous

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<sup>12</sup> [International Covenant on Economic, Social and Cultural Rights \(ICESCR\): 7th periodic report - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/108122/ICESCR_7th_periodic_report.pdf)

<sup>13</sup> [Supporting documents - International Covenant on Economic, Social and Cultural Rights: position statement - gov.scot \(www.gov.scot\)](https://www.gov.scot/bin/view/gov/Document/Supporting_documents_-_International_Covenant_on_Economic_Social_and_Cultural_Rights_position_statement)

<sup>14</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CRC%2fC%2fGBR%2fQPR%2f6-7&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CRC%2fC%2fGBR%2fQPR%2f6-7&Lang=en)

<sup>15</sup> [Embedding Children's Rights: Position Statement - gov.scot \(www.gov.scot\)](https://www.gov.scot/bin/view/gov/Document/Embedding_Children's_Rights_Position_Statement)



interactive dialogue session with the UN Committee in 2016. As with other position statements, this publication was prepared in order to assist the Scottish Parliament, civil society and other interested parties in scrutinising the Scottish Government's human rights record with particular reference to the rights of the children and young people.

## **International Labour Organisation**

The International Labour Organisation is the United Nations specialised agency that brings together governments, employers and workers in 187 member States to set labour standards, develop policies and devise programmes promoting decent work for all. These standards are set out in legally binding international treaties ("Conventions") and in non-binding guidance ("Recommendations").

Over the course of the year the Scottish Government contributed to UK reporting on compliance with International Labour Organisation (ILO) Conventions in accordance with Article 22 of the ILO Constitution. Specifically, we contributed in respect of:

- Convention 122 (Employment policy), and
- Convention 002 (Unemployment).

There has been a welcome increase in ILO related activity in recent years and further reporting will take place in 2023. Whilst industrial relations and much of employment remains reserved, I am keen to ensure that Scotland's distinctive policies and practice, including in areas such as Fair Work and in relation to employment support, are properly understood by international institutions.

## **UN Special Procedures**

### UN Special Rapporteur on Human Rights Defenders

In October, Mary Lawlor, the UN Special Rapporteur on Human Rights Defenders undertook an informal visit to Scotland at the invitation of the University of Dundee. My officials worked closely with the University and with other partners to deliver a number of meetings and events as part of the visit. These provided Ms Lawlor with an overview of the Scottish Human Rights Defender Fellowship Programme and included meetings with the First Minister, myself and Mr Gray, Minister for Culture, Europe and International Development and Special Responsibility for Refugees from Ukraine. Ms Lawlor was able to meet with our current Scottish Human Rights Defender Fellows together with Scottish civil society activists, academic experts and others with relevant interests.

### OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings

The Scottish Government, along with partners in the Police Service of Scotland and the Crown Office and Procurator Fiscal Service hosted the Special Representative and Co-ordinator for Combating Trafficking in Human Beings from the Organization for Security and Co-operation in Europe (OSCE) in November 2022.

This took place as part of the OSCE's programme of country visits, with discussions focused on Trafficking and Exploitation policy and operations and work to combat Violence Against Women and Girls (VAWG) ahead of the OSCE's expected country report in Spring 2023.

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## UN Special Rapporteur on violence against women and girls and UN Independent Expert on violence and discrimination based on sexual orientation and gender identity

The Gender Recognition Reform (Scotland) Bill was passed by the Scottish Parliament on 22 December<sup>16</sup>. Prior to Stage 3 of the Bill, Reem Alsalem, UN Special Rapporteur on violence against women and girls, its causes and consequences, and Victor Madrigal-Borloz, UN Independent Expert on violence and discrimination based on sexual orientation and gender identity, both intervened in the wider public debate by means of formal communications submitted via the UK Mission in Geneva.

Ms Alsalem set out concerns about the potential impact of the Bill on women and girls<sup>17</sup>, whereas Mr Madrigal-Borloz expressed strong support for the reforms<sup>18</sup>, describing the Bill as “an act of compliance with obligations incumbent upon the State under international human rights law.”

Dunja Mijatović,<sup>19</sup> Council of Europe Commissioner for Human Rights, and Liz Throssell<sup>20</sup>, spokesperson for the UN High Commissioner for Human Rights, both also spoke publicly in favour of the Bill.

The Cabinet Secretary for Social Justice, Housing and Local Government met on-line with both Ms Alsalem and Mr Madrigal-Borloz, and both also gave evidence to your Committee.

## UN Working Group of Experts on People of African Descent

The UN Working Group of Experts on People of African Descent undertook a fact finding visit to the UK in January of this year to assess the human rights situation of people of African descent. The last visit by the Working Group took place in 2012. It had been expected to visit the UK in 2016 but that visit was cancelled.

The Working Group developed their own itinerary and sought to meet with representatives from across the UK. The Scottish Government was represented across the suite of meetings which took place and the Working Group sought clarification on a number of aspects of devolved policy. We expect a report to be drawn up by the Working Group over the course of this year and I will update you on developments in due course.

## **Council of Europe Treaties**

### Convention on Preventing and Combating Violence Against Women and Domestic Violence

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<sup>16</sup> [Gender Recognition Reform \(Scotland\) Bill – Bills \(proposed laws\) – Scottish Parliament | Scottish Parliament Website](#)

<sup>17</sup> [OL GBR \(14.2022\) \(ohchr.org\)](#)

<sup>18</sup> [OL GBR \(15.2022\) \(ohchr.org\)](#)

<sup>19</sup> [Commissioner for Human Rights on Twitter: "I welcome Scotland's new law #GRRBill adopted today by @ScotParl introducing legal #GenderRecognition based on self-determination. Nine @coe states have already adopted such laws & several others under consideration. Key trend for full realisation of trans people's #HumanRights. https://t.co/1QpbJOIBQw" / Twitter](#)

<sup>20</sup> [UN chief backs Scottish government's gender recognition reforms - BBC News](#)

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In May, I wrote to the Committee to notify you in relation to UK ratification of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (“the Istanbul Convention”)<sup>21</sup>. The Convention establishes comprehensive legal standards which seek to ensure the right of all women to be free from violence.

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<sup>22</sup>. Significant progress in paving the way for ratification was made by the Domestic Abuse Act 2021<sup>23</sup>. That Act included provision in relation to devolved matters in Scotland and legislative consent was granted by the Scottish Parliament in June 2020<sup>24</sup>.

The UK’s ratification of the Convention was formally communicated to the Council of Europe in an instrument of ratification deposited on 21 July 2022 and the Convention entered into force in respect of the UK on 1 November 2022.

The UK’s ratification is, however, subject to a reservation in relation to Articles 44(3) and 59 of the Convention<sup>25</sup> and the UK has exercised its right not to apply these provisions, in accordance with Article 78(2) of the Convention. The Article 59 exemption relates to the issuing of residence permits to migrant victims of domestic abuse. To date, ten other countries have made a similar reservation<sup>26</sup>.

The requirements of Article 59 are designed to ensure that where the victim’s immigration status is dependent on that of their partner, the victim is able to obtain 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 by the UK Government pending the results and evaluation of the Support for Migrant Victims scheme, which concluded in summer 2022.

As you are aware, legislative competence for international relations, including the ratification of treaties, is reserved by the Scotland Act 1998. In addition, the subject matter of Article 59 itself relates to immigration and nationality, which is also a reserved matter. Nonetheless, the UK Government’s decision not to apply Article 59 runs counter to Scotland’s established policy approach and it is both disappointing and regrettable.

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<sup>21</sup> [CETS 210 - Council of Europe Convention on preventing and combating violence against women and domestic violence \(coe.int\)](https://conventions.coe.int/Treaty/210)

<sup>22</sup> As a result of section 2 of the Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017.

<sup>23</sup> [Domestic Abuse Act 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>24</sup> [Domestic Abuse Bill - Parliamentary Business : Scottish Parliament](#) – see in particular the amendments to the Criminal Procedure (Scotland) Act 1995, the Sexual Offences (Scotland) Act 2009 and the Criminal Justice and Licensing (Scotland) Act 2010 contained in Part 2 of Schedule 3 to the 2021 Act.

<sup>25</sup> <https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=210&codeNature=2&codePays=UK>

<sup>26</sup> <https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=210&codeNature=0>

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In response to this proposed reservation, I wrote to Rachael MacLean MP, the Minister of State for Victims and Vulnerability to make clear Scotland's profound and principled objection to the position adopted by the UK Government.

### European Code of Social Security

In July, we contributed to UK reporting under the European Code of Social Security (ECSS). The ECSS is an instrument which encourages the development of effective social security provision in all Council of Europe member States. The purpose is that states seek, progressively, to reach 'the highest level possible'.

The ECSS sets standards which signatories undertake to include in their social security systems and defines 'norms' for social security coverage. It establishes minimum levels of protection which parties must provide in areas such as medical care, sickness benefits, unemployment benefit, old-age benefits, employment injury benefits, family benefits, maternity benefits, invalidity benefits, survivors' benefits and more.

In terms of reporting, the State Party is required to provide an annual report to the Council of Europe to demonstrate compliance with its international treaty commitments, and a biannual report on law and practice relating to the parts of the ECSS that it has not yet adopted. This latest round included reporting on both the annual and the biannual aspects of the Code.

### European Social Charter

In November, we contributed to the UK's annual report on compliance with the European Social Charter (ESC). This Council of Europe treaty guarantees fundamental social and economic rights and serves as a counterpart to the European Convention on Human Rights (which focuses primarily on civil and political rights).

The ESC guarantees a broad range of rights related to employment, housing, health, education, social protection and welfare and places specific emphasis on the protection of vulnerable persons, such as older people, children, disabled people and migrants. The ESC also serves as a point of reference in European Union law with many of the social rights in the EU Charter of Fundamental Rights based on the relevant ESC Articles.

Implementation and conformity with the ESC is monitored by the European Committee of Social Rights (ECSR). Reporting and monitoring of compliance with the ESC's provisions is structured around four thematic groups: 'Health, Social Security and Social Protection'; 'Labour Rights'; Children, Families and Migrants'; and 'Employment, Training and Equality Opportunities'. States parties report on the provisions of each thematic group once every four years. These reports are then examined by the ECSR which determines whether the national situations described by the State conforms with the Articles of the ESC. The 2022 UK report addressed the theme of Children, Families and Migrants.

### Framework Convention for the Protection of National Minorities

Following on from the UK's 5th State Report on the Framework Convention for the Protection of National Minorities (FCPNM), which was submitted to the Council of Europe in November 2021, representatives of the FCPNM's Advisory Committee visited Stornoway in April 2022 as part of their 5<sup>th</sup> cycle monitoring visit to the UK.

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They also met virtually with a range of Scottish Government policy officials covering issues including Gaelic and Scots, race equality, and gypsy/travellers in May 2022.

The Advisory Committee subsequently adopted its Opinion on the UK in December 2022. The Opinion has been sent to the UK for formal comments, to be provided by April. My officials are working closely with UK counterparts to ensure that the overall UK response accurately reflects Scotland's position. The adopted Opinion, together with any formal comments, is expected to be published by May 2023.

## **Other International Visits, Delegations and Activity**

### Council of Europe Commissioner for Human Rights

In July, the Minister for Children and Young People, Clare Haughey, and I were delighted to meet with the Council of Europe's Commissioner for Human Rights, Dunja Mijatović, as part of a suite of meetings undertaken by the Commissioner in the course of a fact finding visit to the UK.

Amongst the topics discussed were our proposals for a Scottish Human Rights Bill, action to address Child Poverty and implementation of Scotland's devolved Social Security system. We followed up this meeting with further correspondence providing further information about action being taken to respect, protect and fulfil human rights in Scotland. The Commissioner published her report<sup>27</sup> covering her visit to the UK on 9 December and I wrote to you to draw the report to the attention of the Committee.

### National Preventive Mechanism

In January 2023, the Scottish Government received a draft of the annual report of the National Preventive Mechanism (NPM) for fact-checking.

The NPM is a UK body established under the UN Optional Protocol to the Convention against Torture<sup>28</sup>. The NPM's 2022 report focuses on UK-wide thematic issues, including recovery from the COVID-19 pandemic, police custody, equality and diversity in detention, and health and social care in prisons, and covers the period from 29 March 2021 – 4 April 2022. The report is expected to be published in the near future and I will write to the Committee with an update in due course.

### Liaison with UK Missions and international institutions

Scottish Government officials from the Directorate for Equality, Inclusion and Human Rights liaise closely with UK counterparts representing UK interests in the Council of Europe and at the UN. I remain grateful to the respective UK Permanent Representatives for their positive engagement and the ongoing assistance provided by their staff.

Familiarisation visits to both Strasbourg and Geneva were undertaken last summer at official level in conjunction with the UK Ministry of Justice and at the invitation of the respective UK Missions.

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<sup>27</sup> [United Kingdom: Commissioner warns against regression on human rights, calls for concrete steps to protect children's rights and to tackle human rights issues in Northern Ireland - Commissioner for Human Rights \(coe.int\)](#)

<sup>28</sup> [National Preventive Mechanism – National Preventive Mechanism](#)

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These visits served to further develop effective working relationships and enabled officials to meet representatives of a number of treaty body secretariats in both the Council of Europe and the UN. The Geneva visit also supported preparations for the UPR Interactive Dialogue session in the UN Human Rights Council, which took place in November 2022 (referred to above).

## **Forthcoming International Activity**

The 75<sup>th</sup> anniversary of the adoption by the UN of the Universal Declaration on Human Rights will be marked by Human Rights Day, on 10 December 2023. The significance of that milestone will inevitably shape activity throughout 2023.

Following the COVID-19 pandemic, we are beginning to see a welcome return to more normal international reporting schedules and we are currently expecting the following activity over the course of 2023:

- We are working with the UKG on planning for a visit to the UK of the Independent Expert on Sexual Orientation and Gender Identity at the end of March.
- Publication of a Scottish Government position statement on the recommendations made to the UK by the UN Human Rights Council at the UPR Interactive Dialogue in November 2022.
- Contribution by the Scottish Government to the UK's next annual report on the European Code of Social Security.
- Publication by the Committee on Economic, Social and Cultural Rights of a formal List of Issues in respect of UK compliance with the International Covenant on Economic Social and Cultural Rights. The subsequent interactive dialogue is expected to take place either later this year or in early 2024.
- Contribution by the Scottish Government to the UK's annual report under the European Social Charter. The theme for 2023 will be "Employment, Training and Equal Opportunities".
- Contribution by the Scottish Government to UK reporting on compliance with ratified ILO Conventions; we expect to input into returns under the following Conventions:
  - C029 – Forced Labour Convention
  - C081 – Labour Inspection
  - C105 – Abolition of Forced Labour
  - C124 – Medical Examination of Young Persons
  - C138 – Minimum Age Convention; and
  - C182 – Worst Forms of Child Labour
- Towards the end of this year, we also expect further activity in relation to the:
  - European Charter for Regional or Minority Languages,
  - Framework Convention for the Protection of National Minorities, and
  - Convention on Action against Trafficking in Human Beings and Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention).

*[Note: The activity identified above is subject to change. Further events and activity, for example visits by Special Rapporteurs or Working Groups, may be added at short notice]*

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## Domestic Activity

### UK Government Bill of Rights Bill

In parallel with our internationally-focussed work, the Scottish Government will continue to make clear our strong and principled opposition to the UK Government's Bill of Rights Bill, which was introduced to the UK Parliament in June 2022 but has not yet received a Second Reading.

The Scottish Government responded to the UK Government's consultation on its proposals for the Bill in March 2022<sup>29</sup> and submitted evidence to the UK Parliament's Joint Committee on Human Rights (JCHR) in August 2022<sup>30</sup>.

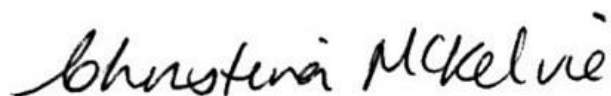
The JCHR has now published its own detailed legislative scrutiny report on the Bill<sup>31</sup> and has called on the UK Government not to make further progress with the Bill's passage through the UK Parliament. This is because the Bill weakens rights protections, undermines the universality of rights, shows disregard for the UK's international legal obligations; creates legal uncertainty and hinders effective enforcement. The Bill will lead to an increased caseload in Strasbourg; and will damage the UK's international reputation as a guardian of human rights.

The UK Government's proposals continue to generate concern at the international level and, as noted above, the Bill was the subject of 24 recommendations made to the UK by the UN Human Rights Council in November.

## Conclusion

I hope that the information provided in this letter is helpful to the Committee and will assist in enabling appropriate further consideration to be given to monitoring and reporting activity as well as more general engagement with international human rights mechanisms.

Yours sincerely,



**CHRISTINA MCKELVIE**

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<sup>29</sup> <https://www.gov.scot/publications/human-rights-act-reform-consultation-scottish-government-response/>

<sup>30</sup> [UK Parliament Joint Committee on Human Rights - legislative scrutiny: Bill of Rights Bill - evidence submitted by the Scottish Government - gov.scot \(www.gov.scot\)](#)

<sup>31</sup> [Legislative Scrutiny: Bill of Rights Bill \(parliament.uk\)](#)

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## Annex A

### INTERNATIONAL HUMAN RIGHTS TREATIES RATIFIED BY THE UK

#### UNITED NATIONS

The UK has signed and ratified the following core UN human rights treaties:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Elimination of all Forms of Racial Discrimination (CERD)
- Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)
- Convention on the Rights of the Child (CRC)
- Convention on the Rights of Persons with Disabilities (CRPD)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT)

The UK has not signed the:

- Convention for the Protection of All Persons from Enforced Disappearance (CPED)
- Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CPRMW)

The UK is a party to the following Optional Protocols –

- Second Optional Protocol to the International Covenant on Civil and Political Rights (OP2-ICCPR) (Abolition of Death Penalty)
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (Communications Procedure)
- Optional Protocol to the Convention on the Rights of the Child (OP-CRC-AC) (Children in Armed Conflict)
- Optional Protocol to the Convention on the Rights of the Child (OP-CRC-SC) (Sale of Children, Prostitution and Pornography)
- Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP-CRPD) (Communications Procedure)
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (OPCAT)

The UK is not currently a party to the:

- First Optional Protocol to the International Covenant on Civil and Political Rights (OP1-ICCPR) (Communications procedure)
- Optional Protocol to International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) (Communications Procedure)
- Optional Protocol to the Convention on the Rights of the Child (OP-CRC-IC) (Communications Procedure)

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## **COUNCIL OF EUROPE**

The UK has signed and ratified the following Council of Europe human rights treaties:

- European Convention on Human Rights (ECHR)
- European Social Charter (ESC)
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment (CPT)
- European Charter for Regional and Minority Languages (ECRML)
- Framework Convention for the Protection of National Minorities (FCPNM)
- European Convention on Action against Trafficking in Human Beings (CATHB)
- Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)
- Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence (CPVW – “Istanbul Convention”)

The UK has signed but has not ratified the:

- Revised European Social Charter (rESC)

## **LIST OF ABBREVIATIONS**

<i>CEDAW</i>	– <i>Convention for Elimination of all Discrimination against Women (UN)</i>
<i>CERD</i>	– <i>Convention for the Elimination of Racial Discrimination (UN)</i>
<i>CESCR</i>	– <i>Committee on Economic, Social and Cultural Rights (UN)</i>
<i>CPT</i>	– <i>Convention for the Prevention of Torture (Council of Europe)</i>
<i>ECMRL</i>	– <i>European Charter for Regional or Minority Languages (Council of Europe)</i>
<i>ECRI</i>	– <i>European Commission against Racism and Intolerance (Council of Europe)</i>
<i>ECSR</i>	– <i>European Committee of Social Rights</i>
<i>ECSS</i>	– <i>European Code of Social Security (Council of Europe)</i>
<i>ESC</i>	– <i>European Social Charter (Council of Europe)</i>
<i>FCPNM</i>	– <i>Framework Convention for the Protection of National Minorities (Council of Europe)</i>
<i>HRD</i>	– <i>Human Rights Defender</i>
<i>ICESCR</i>	– <i>International Covenant on Economic, Social and Cultural Rights (UN)</i>
<i>ICCPR</i>	– <i>International Covenant on Civil and Political Rights (UN)</i>
<i>ILO</i>	– <i>International Labour Organisation (UN)</i>
<i>OHCHR</i>	– <i>Office of Human Rights Commissioner for Human Rights (UN)</i>
<i>UNCAT</i>	– <i>Convention against Torture (UN)</i>
<i>UNCRC</i>	– <i>Convention on the Rights of the Child (UN)</i>
<i>UNCRPD</i>	– <i>Convention on the Rights of Persons with Disabilities (UN)</i>
<i>UNSR</i>	– <i>UN Special Rapporteur</i>
<i>UPR</i>	– <i>Universal Periodic Review (UN)</i>
<i>SPT</i>	– <i>The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN)</i>

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## UNIVERSAL PERIODIC REVIEW

## Recommendations made to the UK in respect of the Human Rights Act and the European Convention on Human Rights

19. Commit to remain a member state of the Council of Europe and party to the European Convention on Human Rights (Costa Rica);
20. Remain committed to fully implement the European Convention on Human Rights (Germany);
21. Take necessary measures to ensure the current proposed new Bill of Rights does not result in weakening the legal effects, scope and effectiveness granted under the Human Rights Act of 1998 (Kenya);
23. Ensure that the British Bill of Rights (Bill) provides the same level of human rights protection as the 1998 Human Rights Act it seeks to replace (Luxembourg);
24. Ensure that any future human rights legislation complies with the duty under the Good Friday Agreement to ensure full incorporation of the European Convention on Human Rights into Northern Ireland law (Ireland);
25. Ensure that any amendments to the legal framework maintain the same level of protection as the current Human Rights Act of 1998 (Mexico);
29. Ensure that any modifications to human rights legislation do not adversely affect the current level of the protection of human rights provided by the Human Rights Act 1998 (Ukraine);
30. Stop the plan to replace the Human Rights Act 1998 with a Bill limiting their protection (Venezuela (Bolivarian Republic of));
31. Ensure that the current level of human rights protection provided by the Human Rights Act 1998 is maintained and improved if legislation is replaced or reformed (Australia);
32. Reconsider the intention to replace the Human Rights Act 1998 with a Bill of Rights and commit to continued domestic incorporation of the European Convention on Human Rights (Belgium);
33. Ensure that all new legislation remains in line with the UK's international human rights obligations (Cyprus);
34. Ensure the effectiveness and scope of the Human Rights Act in any future legislation (Estonia);
38. Maintain its international obligations and international standards in accordance with the jurisprudence of the European Court of Human Rights (Slovakia);
40. Ensure that any possible reform to the Human Rights Act 1998 does not weaken the protection or limit the ability of individuals to enjoy and enforce rights under the European Convention on Human Rights (Germany);
42. Ensure that modifications to the Human Rights Act do not result in the weakening of the current level of human rights protection (Portugal);

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43. Ensure that the European Convention on Human Rights is fully implemented and given effect in UK law (Slovakia);
44. Ensure that any instrument that may replace the Human Rights Act of 1998 grants rights-holders at least the same level of effective protection (Ecuador);
45. Commit to continued domestic incorporation of ECHR rights and provisions (Cyprus);
46. Ensure that any proposed changes to the Human Rights Act do not diminish access to justice (Greece);
48. Ensure that any possible reform of the Human Rights Act 1998 does not in any way affect the scope of protection or access to the remedy mechanism of the European Convention on Human Rights (Switzerland);
49. Refrain from replacing the Human Rights Act of 1998 with more limited legislation, and rather maintain the same level of human rights protection provided by the Human Rights Act in the British Bill of Rights and include additional child-specific rights (Malawi);
50. Ensure that the current level of human rights protection provided by the Human Rights Act of 1998, including the rights of asylum seekers, are maintained under any legislative reform (Canada);
109. Strengthen measures to ensure the effective enforcement of provisional measures and judgments of the European Court of Human Rights (Mexico);
114. Ensure that any reform of the 1998 Human Rights Act does not reduce the scope of protection or remedies currently enjoyed (Bahamas);

## SCOTTISH GOVERNMENT

March 2023

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