

Rt Hon John Swinney MSP
First Minister
Scottish Government
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

20 November 2024
Our reference: SHRC2024003
Your reference: 202400422229

Dear First Minister,

Scottish Human Rights Commission

Thank you very much for meeting with me on Wednesday 9th October 2024 and our wide ranging conversation about the implications of the Scottish Government decision not to progress with the Human Rights Bill in the current session of Parliament, the work of the Scottish Human Rights Commission (SHRC), and the status of human rights in Scotland. I was pleased however that you confirmed your ongoing personal commitment to strengthening the legal framework around human rights in Scotland.

As we acknowledged during the meeting, the decision not to act on the incorporation of economic, social and cultural rights of the people in Scotland has been taken at a time when the Scottish Government has declared a housing emergency, deep and persistent child poverty remains, use of foodbanks is increasing, and public sector financing is under significant pressure. We also reflected on the deep concern of civil society organisations in Scotland, and the impact that the extended process towards the proposed incorporation Bill, and many years of engagement in consultation, have had on human rights defenders, individually and collectively.

Our statutory role, as Scotland's National Human Rights Institution, is to provide advice and guidance to promote human rights in Scotland. In that spirit, the Commission will continue to engage with you and your Government on all efforts to achieve greater realisation of rights in Scotland.

We encourage greater transparency in the ongoing development process on the draft Human Rights Bill. It is clear from our discussions that this next phase of Bill development requires coordination and a single point of leadership and scrutiny across at least four different policy areas and ministerial responsibilities: human rights, children's rights, justice, and constitutional law; and I trust that this will be the approach over the coming months.

I look forward to receiving further updates on the Bill development process, and to regular updates being provided to the Scottish Parliament's Equalities, Human Rights and Civil Justice Committee.

Beyond the ongoing work towards incorporation, and a Human Rights Incorporation Bill, there are clear opportunities for meaningful action to strengthen the human rights legal framework over the remainder of the current Parliamentary session, which neither require, nor preclude, the development and passage of a Human Rights Bill.

Strengthen the Human Rights Legal Framework to make it easier for people to access their rights

Proactive and deliberate action to embed human rights instruments into individual Bills which are already in the legislative programme would assist in strengthening the human rights legal framework in Scotland. We recommend that Bills are drafted with the intent of clarifying how these instruments must be interpreted and adopted by the courts and duty bearers, and making provision for improving the infrastructure through which people can access these rights through redress, remedy and access to advocacy support as required. As Scotland's NHRI, we will continue to scrutinise and support the Scottish Parliament to achieve this through due process, but a cross Government commitment to this approach in drafting and considering amendments would be very welcome.

In particular, we encourage you to consider carefully options to reform the Legal Aid System to improve access to justice for more people. Your current legislative programme allows for urgent consideration to address this via the Regulation of Legal Services Bill, for which the Stage 2 proceedings have been extended to February 2025.

We discussed the lessons learned from the process of developing and passing the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the UNCRC Act) as relevant to the approach to the Human Rights Bill. Beyond the constitutional elements of this, which are being well examined, it would be reassuring to understand what continued focus is being given to consideration of routes to extend the scope of the UNCRC Act within devolved competence. The Commission will engage with the Children and Young People's Commissioner Scotland on this matter, and encourage all opportunities to extend the scope of the Act to protect more children's rights in Scots Law.

Finally, as also discussed during our meeting, if increasing access to justice for human rights in Scotland remains a priority, then a stronger NHRI must be part of that plan. Consideration must be given to amend the Scottish Commission for Human Rights Act 2006 to strengthen the mandate and powers of the Commission to play a stronger role in upholding the human rights of the people of Scotland. The Commission has published papers outlining our position on this matter, and submitted these to inform the Bill development process.

Whilst development on this issue will rightly be paused until the Scottish Parliament's Inquiry into the current office holders is concluded in June 2025, subject to that process concluding and its recommendations, I hope that this is a discussion that we can return to in short order in the Summer of 2025 to inform action ahead of the dissolution of Parliament in March 2026. I would welcome an opportunity to discuss this further with yourself and the Cabinet Secretary as appropriate, and in good time to support the implementation process that the remaining time in this parliamentary session has been described.

Non legislative action to encourage and monitor a human rights based approach to public service delivery

During our meeting, we agreed that there is more work to do to build on the best practice which exists in supporting public bodies to adopt a human rights based approach to planning, delivering and monitoring the impact of public services on people's rights. I note that since our meeting, action has progressed on publishing a consultation on a new Equality and Human Rights Mainstreaming Strategy and that discussions have begun to scope out the development of a human rights tracker tool for Scotland. As the NHRI, we will engage fully in the process of informing the development of both of these outputs.

We reflected that our meeting was the first time that a First Minister had met with a Chair of the Scottish Human Rights Commission in at least seven years. I was pleased that we were both in robust agreement that this strategic relationship needs

to be reset from here. Given the short timescale ahead in the remainder of this Parliamentary session, we agreed that a biannual meeting schedule for us would be appropriate, and I am aware that officials have been in contact to progress on that basis. I hope that this letter is a helpful record of our discussions, and sets out clearly the role of the Commission in supporting the development of a stronger human rights legal framework which benefits everyone.

I look forward to our next meeting, and to work progressing in the meantime.

I enclose our newly laid [Annual Report](#) which provides an overview of our work and the human rights challenges in Scotland. Our 'State of the Nation' focus on civil and political rights to be published on Human Rights Day on the 10th December 2024 is a sobering snapshot of rights denials which I am sure you will agree requires urgent action to redress. I will ensure your office receives this and other planned publications from the Commission.

Given the shared priority on the areas outlined above, I am copying this letter to the Equality, Human Rights and Civil Justice Committee, the Education Committee, and the Criminal Justice Committee, and the Cabinet Secretary for Social Justice, the Minister for Equalities, and the Minister for Children and Young People.

Yours sincerely

Professor Angela O'Hagan
Chair, Scottish Human Rights Commission

cc: Cabinet Secretary for Social Justice, CabSecforSJ@gov.scot

cc. Minister for Equalities, MinisterforEqualities@gov.scot

cc. Minister for Children, Young People and The Promise, MinisterCYPTP@gov.scot

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