

# PE2135/B: Implement the International Covenant on Civil and Political Rights (ICCPR) in Scottish legislation

## Petitioner written submission, 13 March 2025

### SPICe Briefing for the CPPPC

We have the following comments on the SPICe Briefing:

#### *Brief overview of issues*

The individual and inalienable right of all citizens to *direct* political rights (International Covenant on Civil and Political Rights Art. 25) is notable in its absence from the list of example Human Rights.

*Direct* political rights were included in the Universal Declaration of Human Rights of the United Nations in 1948 (Art. 21) but were deliberately excluded from the European Convention on Human Rights (ECHR) when it was signed in 1950 (ratified by the UK in 1951). They nevertheless reappeared when the ICCPR was signed in 1966 (ratified by the UK in 1976) (Art. 25).

The SPICe briefing doesn't mention the UN Human Rights Committee (UNHRC) publication [1996 Addendum to ICCPR Art. 25](#) which describes, in particular: (i) access to Popular Initiatives and Referendums (Comment No. 6), and (ii) the capacity of citizens to organise themselves (Comment No. 8).

Nor does the briefing mention the UNHRC recommendation which has been ignored by Holyrood and Westminster for years:

*"The State party (i.e. the UK) should.....ensure that all Covenant rights are given full legal effect in all jurisdictions that fall under its authority or control...."* ([3<sup>rd</sup> May 2024 Report: Page 2, Art. C 5\(a\)](#))

Further, UNHRC General Comment 31 of 26<sup>th</sup> May 2004 states: *"The ... obligation to respect and ensure the rights recognized by the Covenant has immediate effect for all States parties."* ([Page 3, Art. 5](#))

#### *Legislative competence*

Sections 29 & 30 of the Scotland Act 1998, together with Schedule 5, confirm that full ICCPR implementation is not reserved meaning it's within the Scottish Parliament's competence. [Section 30](#) clearly states: *"Schedule 5 (which defines reserved matters) shall have effect"*. This has been recognised in recent Government replies to our communications and is entirely logical - in recognition of the Covenant, in 1998 Westminster delegated legislative competence for implementing ICCPR to Holyrood.

The following text in the SPICe briefing is therefore a complete red herring: *"Given the restrictions on legislative competence, the Scottish Parliament can only legislate in devolved areas..."* As we noted above, the Scotland Act is clear that **there are no restrictions on legislative competence** with respect to ICCPR implementation - any such restrictions would violate a Covenant which the UK ratified in 1976. The Scottish Parliament is therefore competent to (i) implement ICCPR Art 25 (a): *"Every citizen shall have the right and the opportunity (a) To take part in the conduct of public affairs, directly..."* and, equally, to (ii) incorporate Art 1, *Self-Determination*, in Scottish legislation.

Because implementation is within the Scottish Parliament's competence, the Referendums (Scotland) Act 2020 is applicable. Insertion of the phrase "Subject to

referendum” by Parliament, as the last article in the Bill to implement ICCPR as requested in PE2135, would allow the Scottish people to finally decide the issue in a national referendum.

### *Incorporation of international human rights treaties*

The inaugural Chair of the Scottish Human Rights Commission (SHRC) commented on the Supreme Court judgement on the UN Convention on the Rights of the Child (UNCRC): *“On the one hand and significantly so, the judgment essentially reaffirms that human rights are not reserved to the UK Parliament by the Scotland Act and that [Scotland can incorporate UN treaties](#), so thank you Donald Dewar”*.

### **Scottish Government written submission, 31 January 2025**

The Scottish Government’s written submission was signed by the Directorate for Constitution (DfC) rather than, as one would expect, the responsible elected representative and Cabinet Secretary for Constitution, External Affairs and Culture, Mr Angus Robertson MSP.

### *Scope of ICCPR and the Scotland Act*

The first paragraph of the submission completely ignores PE2135’s request to give ICCPR “full legal effect” (UN recommended wording) in the devolved lawmaking process. Both SHRC and UNHRC have repeatedly recommended full ICCPR implementation - i.e. without any reference to devolution - most recently in their reports of 4<sup>th</sup> February ([Page 15, Art. 20](#)) and 3<sup>rd</sup> May ([Page 2, Art. C 5\(a\)](#)) 2024, respectively.

As noted previously, the phrase: *“it is important to note that this only applies to devolved matters within the competence of the Scottish Parliament.”* is irrelevant to ICCPR implementation. It’s also incorrect to state that: *“This route cannot be used to effectively extend the Parliament’s powers by claiming that the incorporated international treaty provisions now allow the Parliament or the Scottish Government to do anything that would have previously been beyond devolved competence”*. There was no notion of “devolved competence” prior to the Scotland Act 1998 which, insofar as powers to incorporate international Human Rights treaties are concerned, remains unamended and in full force.

The above two phrases are a perfect illustration of what the SHRC refers to when it says in its 4<sup>th</sup> February 2024 report: *“The Commission recommends that the UK, **at every level of government**, desists with all policy activities which restrict or undermine the level of protection for civil and political rights as set out in the present Covenant...”* ([Page 64 Annex A Part B](#))

On 19th June 2023 the First Minister published the Scottish Government’s proposals for a written Constitution in an independent Scotland. The following quote is relevant to PE2135: “The Constitutional Convention may also want to consider further provisions on public participation, reflecting the right to public participation in public affairs as expressed in Article 25 of the International Covenant on Civil and Political Rights.” ([Civil & Political Rights, page 39](#)). What the First Minister didn’t say is that the Government doesn’t need to wait for independence to implement ICCPR Art 25.

### *Sovereignty*

We consider that the above statements by the Scottish Government seek to restrict and undermine the Sovereignty of the Scottish People and we call on the Citizen Participation and Public Petitions Committee to join us in vigorously resisting such attempts. Such Unilateral Declarations of Westminster Control (UDWC) have no place in a serious debate on Scotland’s system of devolved National Governance.

## Conclusion

We leave the closing thought to the inaugural Chair of the SHRC [when he said in 2022](#):

*“I hope that these personal reflections of a traveller have demonstrated that, although clearly it needs to be carefully managed, the Supreme Court judgment on the UNCRC Bill is rooted in the past. It will not define the limits for the future and indeed its impact is actually more likely to be that of helping to focus debate on the next steps on Scotland’s human rights journey.”*

By giving ICCPR full legal effect in the devolved lawmaking process, PE2135 is an essential next step on that journey.