

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

Cabinet Secretary for Constitution, External Affairs and Culture written submission, 1 May 2025

Thank you for your letter of 7 April 2025 regarding the petition ref: PE2135: Implement the International Covenant on Civil and Political Rights (ICCPR) in Scottish legislation, currently under consideration by the Scottish Parliament's Public Petitions Committee.

I would first of all like to thank the petitioner for their correspondence and work on this petition, which I appreciate is on a subject of particular interest to them.

As the Scottish Government's submission of 31 January 2025 explained, the reasons we chose not to incorporate ICCPR as part of the devolved law making process is because the Scottish Parliament can only give effect to provisions within its powers and responsibilities, and this route cannot be used to extend the Parliament's powers by claiming that the incorporated international treaty provisions would allow the Parliament or the Scottish Government to do anything that would have previously been beyond devolved competence.

Additionally, the majority of the rights in ICCPR have already been given domestic legal effect through the Human Rights Act 1998 (HRA), and our proposed legislative framework cannot have any substantive effect on the civil and political rights already protected via the HRA. As the petitioner has highlighted, by reference to the text of a 2022 address by Professor Alan Miller, the Supreme Court's judgment on the UNCRC (Incorporation) (Scotland) Bill has a bearing on the Scottish Parliament's legislative competence to incorporate international obligations.

There is no notion of devolved competence prior to the Scotland Act 1998 because this is the legislation which enabled devolution to Scotland, and the recommencement of the Scottish Parliament. Before devolution, decisions about Scottish legislation, along with all the matters now devolved to the Scottish Parliament, were taken solely by the UK Government and UK Parliament.

People in Scotland gave the Scottish Parliament a clear mandate to hold a referendum on independence. In January 2023, a majority of MSPs backed a motion calling on the UK Government to respect the right of people in Scotland to choose their constitutional future. The Scottish Government continues to seek the transfer of powers from the UK Parliament to enable another lawful referendum, consistent with the judgment of the Supreme Court.

Angus Robertson