

Citizen Participation and Public Petitions Committee
Wednesday 2 April 2025
6th Meeting, 2025 (Session 6)

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

Introduction

Petitioner Henry Black Ferguson on behalf of WeCollect.scot

Petition summary Calling on the Scottish Parliament to urge the Scottish Government to ensure that, prior to the next Holyrood parliamentary election, the International Covenant on Civil and Political Rights (ICCPR) is given full legal effect in the devolved law making process.

Webpage <https://petitions.parliament.scot/petitions/PE2135>

1. This is a new petition that was lodged on 6 January 2025.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. Every petition collects signatures while it remains under consideration. At the time of writing, 6,257 signatures have been received on this petition.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered.
6. The Committee has received submissions from the Scottish Government and the Petitioner, which are set out in **Annexe C** of this paper.

Action

7. The Committee is invited to consider what action it wishes to take.

Clerks to the Committee
March 2025

Annexe A: Summary of petition

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

Petitioner

Henry Black Ferguson on behalf of WeCollect.scot

Date Lodged

6 January 2025

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to ensure that, prior to the next Holyrood parliamentary election, the International Covenant on Civil and Political Rights (ICCPR) is given full legal effect in the devolved law making process.

Background information

MSPs continue to ignore Parliament's motion of 26.09.2012: "Parliament acknowledges the sovereign right of the Scottish people to determine the form of government best suited to their needs and declares and pledges that in all its actions and deliberations their interests shall be paramount"

The First Minister recently stated "I have complete faith in the People of Scotland to take the right decisions about their future. If we give them the tools, they can build whatever country they want" (SNP 2024 Annual Conference)

This petition provides access to such tools - direct Political Rights (e.g. Initiatives and Referendums) applicable to devolved legislation. Access to other ICCPR rights would allow the People to guide nation-building.

The Scottish Human Rights (HR) Commission has stated "The Scotland Act 1998 requires both the Scottish Parliament and Government to observe and implement all the UK's international HR obligations" (4th Feb.2024 Report to the UN HR Committee, page 15)

Annexe B: SPICe briefing on PE2135



Brief overview of issues raised by the petition

The International Covenant on Civil and Political Rights (ICCPR) was adopted in 1966. The UK ratified the ICCPR in 1976. It enables people to enjoy a wide range of human rights, including but not limited to those relating to:

- right of self determination
- freedom from torture and other cruel, inhuman or degrading treatment or punishment
- fair trial rights
- freedom of thought, religion and expression
- privacy, home and family life
- equality and non-discrimination.

Whilst the ICCPR has not been incorporated into Scots Law, many of the rights set out in the ICCPR are also reflected in international agreements, such as the European Convention on Human Rights, and have consequently been incorporated in UK human rights related legislation, such as the Human Rights Act 1998.

The petitioner has highlighted that:

“MSPs continue to ignore Parliament’s motion of 26.09.2012: “Parliament acknowledges the sovereign right of the Scottish people to determine the form of government best suited to their needs and declares and pledges that in all its actions and deliberations their interests shall be paramount”

The petitioner has suggested that by incorporating the ICCPR in Scots Law:

“This petition provides access to such tools - direct Political Rights (e.g. Initiatives and Referendums) applicable to devolved legislation. Access to other ICCPR rights would allow the People to guide nation-building.”

Legislative competence

The Scottish Parliament has legislative competence (i.e., the power to make laws) in some areas. The limits to the legislative competence of the Scottish Parliament are set out in [sections 29](#) and [30](#) of [the Scotland Act 1998](#) (‘the Scotland Act’). Section 29 of the Scotland Act provides that an Act or provision of an Act of the Scottish Parliament is outside its legislative competence in certain circumstances:

- it would form part of the law of a country or territory other than Scotland, or confer or remove functions exercisable otherwise than in or as regards Scotland,
- it relates to reserved matters,
- it is in breach of the restrictions in Schedule 4, (Schedule 4 sets out 'enactments protected from modification' by the Scottish Parliament for example the UK Internal Market Act 2020),
- it is incompatible with any of the Convention rights,
- it would remove the Lord Advocate from his position as head of the systems of criminal prosecution and investigation of deaths in Scotland.

[Section 30 of the Scotland Act](#) gives effect to [Schedule 5](#) which defines the reserved matters for which the UK Parliament is responsible. These are areas where the Scottish Parliament cannot legislate. Schedule 5 provides for general reservations and specific reservations. Specific reservations are listed under 11 Heads. The first general reservation is:

“The following aspects of the constitution are reserved matters, that is—

(a) the Crown, including succession to the Crown and a regency,

(b) the Union of the Kingdoms of Scotland and England,

(c) the Parliament of the United Kingdom,

(d) the continued existence of the High Court of Justiciary as a criminal court of first instance and of appeal,

(e) the continued existence of the Court of Session as a civil court of first instance and of appeal.”

Given the restrictions on legislative competence, the Scottish Parliament can only legislate in devolved areas (i.e. those not reserved to the UK Parliament). As such, the Scottish Parliament only has competence to legislate to give effect to the International Covenant on Civil and Political Rights (ICCPR) where matters within the ICCPR are within devolved competence. For example, Article 25 (b) relates to elections. It states that every citizen should be able:

“To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;”

Elections to the Scottish Parliament and to local government are devolved matters (i.e. the Scottish Parliament has legislative competence in this area). It may also be helpful to note that the Scottish Parliament is able to legislate for referendums in matters which are within its legislative competence. The [Referendums \(Scotland\) Act](#)

[2020](#) provides a framework for the holding of such referendums by setting out campaign and conduct rules.

Incorporation of international human rights treaties

The Scottish Government recently incorporated another international human rights treaty in Scots law, the UNCRC, under the [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#) (“the 2024 Act”).

Schedule 1 of the 2024 Act lists all the Articles of the UNCRC that have been incorporated. However, not all Articles were incorporated because some are outside the legislative competence of the Parliament. Any Articles, or sections of text, that related to reserved matters were ‘carved out’ and not included in Schedule 1.

There were plans to incorporate the [ICESCR](#) (international covenant on economic, social and cultural rights) through a Scottish Human Rights Bill, but these have now been [delayed](#). The [consultation on the bill proposals](#) stated “We need to ensure that the Bill operates clearly within devolved competence whilst still meeting our overall objectives.”

These two examples show the need for incorporation of international human rights to observe the provisions of the Scotland Act 1998 on legislative competence.

Iain McIver
Senior Researcher
February 2025

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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Annexe C: Written submissions

Scottish Government written submission, 31 January 2025

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

The Scottish Government is committed to a new Human Rights Bill that will incorporate further international human rights standards into Scots law. We have developed and consulted on proposals to give effect to the recommendations from the National Taskforce on Human Rights Leadership, which comprised a range of experts and stakeholders, including the Scottish Human Rights Commission. The International Covenant on Civil and Political Rights (ICCPR) was not one of the treaties the Taskforce recommended for incorporation, although it did recommend that we give further consideration to restating the rights contained within the Human Rights Act (HRA) 1998.

While the observation and implementation of international obligations, such as the ICCPR, are not specifically reserved under the Scotland Act, it is important to note that this only applies to devolved matters within the competence of the Scottish Parliament. When incorporating international treaties into domestic law, the Scottish Parliament can only give effect to provisions within its powers and responsibilities. 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. The majority of the rights in ICCPR have already been given domestic legal effect through the HRA. One of the limitations of devolved competence is that our proposed legislative framework cannot have any substantive effect on the civil and political rights already protected via the HRA. We have therefore taken the decision not to restate the rights contained within the HRA within the proposed Human Rights Bill.

Directorate for Constitution

Petitioner written submission, 13 March 2025

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

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...." ([3rd May 2024 Report: Page 2, Art. C 5\(a\)](#))

Further, UNHRC General Comment 31 of 26th 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 4th February ([Page 15, Art. 20](#)) and 3rd 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 4th 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.