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Equalities, Human Rights and Civil Justice Committee  
Scottish Parliament

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21<sup>st</sup> December 2021

Dear Convener,

I am writing to update the Committee in relation to the recent announcement by the UK Government that it intends to “replace the Human Rights Act 1998 with a Bill of Rights”.

The Committee will be aware that the UK Government published a response to the report and recommendations produced by its Independent Human Rights Act Review on 14 December 2021. Further details can be found at: <https://www.gov.uk/guidance/independent-human-rights-act-review>. The UK Government simultaneously launched a three month consultation on proposals which constitute an alarming attempt to radically alter the principal legal protections which have so successfully safeguarded and advanced human rights throughout the UK over the last two decades. Its consultation paper is available at: <https://consult.justice.gov.uk/human-rights/human-rights-act-reform/>

The Scottish Government was one of the almost 170 organisations and individuals which submitted detailed evidence in response to the Review’s call for evidence, as indeed did the Parliament’s then Equalities and Human Rights Committee. You will recall that the Cabinet Secretary for Social Security and Older People wrote to the Committee in March to provide a copy of the Scottish Government’s submission.

As you know, the Scottish Government has consistently made clear that there must be no changes to the Human Rights Act that would undermine or weaken existing human rights safeguards in Scotland or indeed elsewhere in the UK. That is a position shared by the many eminent legal experts and human rights campaigners who also submitted evidence to the Review.

It is therefore deeply disappointing that the UK Government has now effectively ignored the wealth of expert evidence submitted to the Review and has decided instead to press ahead with plans to replace the Human Rights Act with a UK Bill of Rights. Indeed, it has also largely ignored the conclusions reached by its own Review panel, which found no convincing case for large-scale reform of the existing legislation.

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The proposals which have now been published are in fact a thinly-disguised and politically-motivated attack on human rights, fundamental freedoms and the rule of law in the UK. They reflect a long-standing antipathy to the Human Rights Act and you will of course recall that David Cameron, as the then Leader of the Opposition at Westminster, proposed replacing the Human Rights Act with a Bill of Rights as far back as 2006. There have been repeated attempts by the Conservative Party when in government to bring forward proposals to amend, repeal or replace the Act.

The Scottish Government will of course now carefully analyse the proposals set out in the UK Government consultation paper and will submit a detailed formal response by the consultation deadline, which is 8 March 2022. In the meantime, I want to assure the Committee that the Scottish Government will continue to work in close collaboration with partners across Scottish civil society and in the political arena to ensure that human rights, progressive, democratic values and respect for the rule of law are upheld and robustly defended. I also want to reiterate and underline our position that there must be no changes to the Human Rights Act without the explicit consent of the Scottish Parliament.

The Human Rights Act remains one of the most important and successful pieces of legislation ever passed by the UK Parliament. It has a 20 year track record of delivering justice, including for some of the most vulnerable people in our society, and is a central pillar of Scotland's constitutional settlement.

In reality, the UK does not need a new "Bill of Rights". That role is already very ably performed by the Human Rights Act. The radical overhaul of the Human Rights Act that is now proposed by the UK Government is not founded in any credible or coherent analysis of the facts. On the contrary, the evidence submitted to the Independent Review by some of the UK's most eminent legal and human rights experts has made clear that there is no objective, evidence-based case for changes of the kind now being proposed.

It is important also to be conscious of the potential damage which this latest attack on the Human Rights Act may cause at the international level. We have repeatedly emphasised the need for the UK to demonstrate clear and decisive leadership on human rights. Historically the UK has been instrumental in promoting and upholding human rights, democracy and the rule of law. In fact, as is well-known, the UK was the first state party to ratify the European Convention on Human Rights in 1951. It therefore remains imperative that the UK continues to champion progressive values and does not fall into the trap of imposing restrictions on the enjoyment of universally-acknowledged rights. To do so would be both parochial and ill-judged, and it would send a regrettable message to the wider international community.

As you know, our own clear direction of travel in Scotland is to extend and enhance human rights protections, not to restrict fundamental freedoms or access to justice. That is an ambition which enjoys wide-ranging support in Scotland and will result in the introduction of new human rights legislation in the Scottish Parliament later in the current parliamentary session.

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The Committee will wish to be aware that the Deputy First Minister has written to the Lord Chancellor to make clear the Scottish Government's unequivocal support for the Human Rights Act in its current form, and to emphasise the importance of working within the constitutional parameters established by the devolution settlement. Human rights are not a reserved matter under the Scotland Act 1998 and we will expect the UK Government to fully respect devolved competence and the powers and responsibilities of Scotland's devolved institutions.

A copy of the Deputy First Minister's letter is attached for your information.

I will write again to the Committee to provide a copy of the Scottish Government's submission to the UK Government's consultation when it is submitted. That is likely to be in early March 2022. In advance of that I would also expect there to be further commentary on the proposals on the part of civil society and other interests in Scotland and I have today written to the Scottish Human Rights Commission, Amnesty International, the Human Rights Consortium Scotland and other human rights organisations to assure them of our continuing commitment to the Human Rights Act and to underline our intention to robustly oppose the UK Government proposals.

I imagine that the Committee will also wish to undertake its own analysis of the UK Government proposal and I would naturally be happy to assist the Committee in connection with its own deliberations in the normal way.

Yours sincerely,



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