

The logo for Human Rights Consortium Scotland is a blue rectangular box with a white border and a folded corner effect at the bottom right. Inside the box, the text "Human Rights Consortium Scotland" is written in a bold, black, sans-serif font, stacked in three lines.

**Human Rights  
Consortium  
Scotland**

**Universal Periodic Review of UK:  
A civil society perspective from Scotland on  
human rights promotion, delivery and  
compliance**

**21<sup>st</sup> November 2011**

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*The Government is, of course, to be commended for introducing the Human Rights Act; but too often subsequently there has been a lack of leadership to use the Act to its full potential, ensure that public bodies promote human rights as well as do the minimum necessary to comply with the legislation...'<sup>1</sup>*

## **Introduction**

The Human Rights Consortium Scotland (HRCS) is pleased to have the opportunity to make a submission to the UN's Universal Periodic review of UK compliance with its international human rights obligations. The (HRCS) was set up in January 2010 and is a network of 37 civil society organisations working to increase awareness of human rights and to build capacity on delivering human rights principles and standards so that people's daily lives are improved. Members cover issues such as poverty, discrimination, combating violence and members work with specific as well as general groups of people such as children, women and national minorities. Members include the Campaign for Freedom of Information in Scotland, Migrants Rights Scotland, Inclusion Scotland, Engender and the Coalition for Racial Equality and Rights. We have no resources but benefit from the Scottish Trades Union Congress (STUC) providing meeting accommodation and catering, and Glasgow Disability Alliance providing administrative support.

The establishment of the HRCS was a reaction to the absence of an NGO that is focused on general human rights compliance and promotion across Scotland. The Scottish Human Rights Centre (formerly Scottish Council for Civil Liberties established in 1968) closed in 2005 and Human Rights Scotland closed in 2007. Amnesty International Scotland, with its global remit does undertake some work on the domestic application of human rights e.g. important work on the Taser pilot by Strathclyde Police and important work on gypsy travellers as well as undertaking educational work in schools across Scotland.

Given our scarce resources this submission is a composite of some of the areas we have already expressed concern about and we recognise that matters may change given the timeframe for the review. We believe each issue can be addressed through a dialogue with the UN, a willingness to work in partnership, agreeing priorities and drawing on best practice in other countries. We believe that the cultural, policy and organisational barriers to explicit compliance with human rights standards in Scotland are capable of easy and prompt remedy by informed and committed leaders in political, public and civic life.

Furthermore, we believe that the human rights treaties ratified so far set specific duties that can be generally applied by our Government and public sector. For example Article 31 of the UN Convention on the Rights of Persons with Disabilities requires States to "undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention." The systematic gathering of data on human rights

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<sup>1</sup> House of Commons House of Lords Joint Committee on Human Rights Para 20, Report 2010

compliance and its regular publication would certainly assist us to come to a better understanding of human rights across Scotland.

### **Purpose of Submission from HRCS**

The HRCS now seeks to highlight key issues in Scotland that should be addressed. We are focusing on 'process issues' rather than subject issues given the limitations on our resources and on the length of this document. We are deliberately focusing on where improvements can be made. However at the outset we wish to state that we welcome the Scottish Government's leadership on a range of recent matters such as the publication of an action plan on UNCRC 'Do the Right Thing' in September 2009 and understand that delivery may fall short of expectation but that there is a will to improve. We also welcome the opportunity to work e.g. with the new Human Rights Policy Manager at Scottish Government. In the past the Scottish Government has been helpful e.g. agreeing that civil society can use its video conferencing facilities so that we can participate in a Ministry of Justice meeting in London. The HRCS seeks to work in partnership with the Scottish Government to improve the delivery of human rights across Scotland.

## **Human Rights Law in Scotland**

### **Devolved Government**

In 1707, the Scottish Parliament was suspended and was reconvened in 1999. The Scottish Parliament, made up of 129 elected MSPs, and our Scottish Government have the power to pass laws, agree policies and fund services that are human rights compliant. In examining the UK, we urge the UN to establish just what distinct progress has been made in Scotland given the fantastic opportunity of a new form of democracy in Scotland that allows elected politicians, those in Scotland's 10,000+ public sector bodies and civil society to mainstream human rights across all aspects of our lives. The powers devolved to the Scottish Parliament are framed by what they cannot do rather than defining what they can. That means the Scottish Government and Scottish Parliament do have the power to act on a range of issues such as health, housing, education and local authority functions such as social work. Progress to date on specific human rights measures has however been patchy.

### **Scotland Act 1998**

The Scotland Act established the Scottish Parliament. The Act was passed by the UK parliament in 1998. The Act defines Scottish legislation as being competent if it meets certain tests including that it is compliant with the European Convention on Human Rights (S29) Section 57 of the Act requires all actions of Scottish Government Ministers (described as Scottish Executive Ministers) to comply with the ECHR and 'community law' except certain actions of the Lord Advocate (S57(3) which relate to the prosecution of crime and investigation of deaths). If Scottish Ministers fail to meet these obligations and "any international obligations"<sup>2</sup> they may be subject to enforcement action against them on the part of the UK Secretary of State by virtue of section 58 of the Scotland Act. Arguably the Scotland Act embodies a legitimate expectation that the actions of the Scottish devolved institutions will be compatible with the UK's international obligations when you also add in the definition of human rights - Schedule 5 7 (2) (a) and S126(10).

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<sup>2</sup> Section 58(1)

When the Scottish Parliament was permitted to define human rights, it went beyond the ECHR and looked to include international human rights treaties:

- **The Scottish Commission for Human Rights Act 2006** requires the Scottish Human Rights Commission (SHRC) to promote and encourage best practice in relation to human rights which are defined as ECHR as well as other human rights contained in a ratified, international treaty - Section 2(2)(b)
- **The Commissioner for Children and Young People (Scotland) Act 2003** gives specific responsibilities to Scotland's Commissioner for Children and Young People (SCCYP) to have regard to the UN Convention on the Rights of the Child in all its work - Section 5

### Questions

1. Will the UN ask the Scottish Government how it defines its human rights obligations in respect of UN treaties?
2. What explicit evidence it can cite to demonstrate how it gives effect to those obligations e.g. across the seven ratified Treaties as well as the Universal Declaration on Human Rights?
3. In terms of the regulatory framework established in Scotland to ensure that public services spend money wisely and deliver on their functions, how are human rights factored into that regulatory process? For example how does Audit Scotland ensure that human rights are being delivered across the health boards, local authorities and other public bodies for which it is responsible?

### Concerns

#### 1. Failure to incorporate ratified UN Treaties and need for legal clarity

The HRCS is concerned about the failure to address the real problem which is the lack of explicit compliance with international human rights law across the UK and believe the UK Government should focus on making the equal enjoyment of human rights a reality for ordinary people across the UK.

The UN has repeatedly advised the UK to incorporate the seven ratified UN Treaties into domestic law and the HRCS agrees. For example in 2009 the UN Committee on Economic, Social and Cultural Rights stated:

*“The Committee urges the State party to ensure that the Covenant is given full legal effect in its domestic law, that the Covenant rights are made justiciable, and that effective remedies are available for victims of all violations of economic, social and cultural rights. The Committee reiterates its recommendation that, irrespective of the system through which international law is incorporated in the domestic legal order (monism or dualism), following ratification of an international instrument, the State party is under a legal obligation to comply with such an instrument and to give it full effect in its domestic legal order. In this respect, the Committee again draws the attention of the State party to its General Comment No. 9 (1998) on the domestic application of the Covenant.”<sup>3</sup>*

The Committee was also concerned about the absence of a national action plan on human rights (Paras 12 and 14), a concern which the HRCS shares. We are

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<sup>3</sup> Para 13 Concluding Observations on UK E/C.12/GBR/CO/5 22nd May 2009

pleased that the Scottish Government adopted a national action plan 'Do the Right Thing' on UNCRC but argue this approach can be replicated in the other six treaties.

### Proposed Questions

1. When will Scotland incorporate the seven ratified UN Treaties?
2. Can you ask the Scottish Government when it will replicate adopting an 'action plan' to give effect to the Concluding Observations of the other six UN treaties?
3. If they agree on such a strategy, what is the time frame and who will be involved in the process of agreeing the action plans?
4. If such plans are drafted, what specific responsibilities will be expected from the public sector (such as local authorities and health boards) to make sure the plans are delivered across Scotland?
5. What will be the monitoring and accountability processes?

### 2. Lack of evidence on explicit compliance with human rights law and duties

Two studies undertaken on the application of S6 of the HRA in Scotland demonstrate the lack of explicit compliance within the public sector. S6 requires the public sector and those delivering services of a public nature to comply with the ECHR. Both reports can be supplied electronically but in summary:

- The Amnesty International report of 2006, "Delivering Human Rights in Scotland" revealed that *'65.5% of those surveyed either did not understand their duties under the Human Rights Act 1998 or could not provide evidence of steps taken to comply with those duties'*;
- The 2010 survey for four NGOs revealed that *"Ten out of the 42 public bodies admitted they could not provide explicit steps taken to implement or put into practice compliance with Section 6 of the Human Rights Act 1998 over the last three years."*<sup>4</sup>

Even when the public sector has undertaken reports on human rights compliance, there is insufficient evidence that the recommendations have been given effect and about the impact they have made. For example the 15 recommendations in the 'Report of the NHS Scotland Human Rights Working Group' (2010). Also, we need to learn more about the work and impact within the NHS of the 'Mutuality, Equality and Human Rights Board'<sup>5</sup>.

There is also a shortage of information about human rights delivery in Scotland compared to elsewhere in the UK. Permission was not given to extend the inquiries of the GB Equality and Human Rights Commission (EHRC) to Scotland in respect of:

- The 'Human Rights Inquiry' launched by the EHRC on 6<sup>th</sup> March 2008, focused on 'establishing the extent to which respect for the human rights of individuals were embedded in service delivery in England and Wales today'. However the published surveys contained in the report generally do extend to the UK.<sup>6</sup> The findings resonate with the experiences of some NGOs in

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<sup>4</sup> Delivering Human Rights in Scotland' by Scottish Association for Mental Health, Scottish Women's Aid, Amnesty International and Scottish Refugee Council pub Feb 2011, pg 10.

<sup>5</sup> <http://www.scotland.gov.uk/Topics/Health/NHS-Scotland/MEHRB>

<sup>6</sup> 'Human Rights Inquiry Report' Executive Summary Report of the Equality and Human Rights Commission' pub by EHRC 2009, pg 2 para 2.

Scotland and the recommendations could easily be applied to Scotland e.g. “*where appropriate, public authorities and voluntary and community sector groups should mainstream human rights into their decision making processes, strategies and business plans, as well as into their relevant policies and practices.*”

- The ‘Inquiry into Homecare of Elderly People’ launched by EHRC in 2010 is “investigating how well the home based care and support system in England is protecting the rights of people over 65”.<sup>7</sup> The full report will be published in November 2011 but interim findings confirm problems already identified in Scotland including: inadequate time to deliver care which means very brief time allocated to homecare visits – just 15 minutes in a number of cases which does not allow even basic essential tasks to be done properly; lack of control over timing of care visits which may mean that people are ‘put to bed early’ and not helped to get up until ‘late’; failure to deliver adequate homecare.

### **Proposed Question**

1. Do the SHRC and EHRC agree to work together on such important inquiries so that the benefits of the diligence in the inquiry process and recommendations crafted by the experts are equally enjoyed across GB?

### **3. Need for a Human Rights Committee to be established at Scottish Parliament**

The HRCS believes the establishment of a Human Rights Subject Committee at the Scottish Parliament would lead to better public policy decisions on services and funding for the following reasons

- **Evidence Human Rights in the Scottish Parliament’s Business**  
The House of Lords House of Commons Joint Committee on Human Rights has demonstrated the added value of examining all issues through a human rights lens including child poverty and welfare reform as well as traditional issues such as ID cards and policing of peaceful protest.  
<http://www.parliament.uk/jchr> There is little evidence that the current subject committees at the Scottish Parliament explicitly focus on the human rights implications of their work and when Bills are introduced there is only a brief statement about human rights compliance with no detail. Elected politicians can take the initiative and develop considered and clear policy positions on a range of issues e.g. the current UK inquiry into a Bill of Rights has significant devolution implications. The Joint Committee on Human Rights has already stated: “*One of the biggest controversies in the debate on the Bill of Rights is whether it should include social and economic rights. We believe that there is strong public support for including rights to health, housing and education.*”<sup>8</sup>
- **Review Compliance with Existing Human Rights Law.** Make public policy decisions on the design and delivery of services in compliance with existing duties to promote and protect human rights.

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<sup>7</sup> Inquiry reveals failure to protect the rights of older people receiving care at home  
News Release 20<sup>th</sup> June 2011

<sup>8</sup> A Bill of Rights for the UK? House of Commons House of Lords Joint Committee on Human Rights, Twenty-ninth Report of Session 2007–08, *printed 21 July 2008* Page 5

- **Save Money** Minimise Risk to the public pound by preventing problems arising. Historically Scotland has paid out huge sums of money where human rights abuses have been proven: *'as at 16th May 2008 the Scottish Prison Service had settled 1,093 court cases and 1,325 compensation claims submitted under the administrative scheme set up to consider stopping out claims without the need to go to court. SPS has paid out £5.1m in compensation and £2.6m in associated legal fees. A further 600 cases are under offer and another 740 have yet to be considered.'*<sup>9</sup>
- **Ensure Equal Enjoyment of and Respect for Human Rights in Scotland.** MORI Scotland was commissioned by the Justice 1 Committee of the Scottish Parliament to seek the public's views on human rights in 2005 and found out:
  - 29% said the term human rights in Scotland meant nothing to them, or formed no associations with the term - most common in working class respondents
  - 23% feel that there is inadequate protection of human rights in Scotland, twice those that feel there is excessive protection (11%).
  - Women and working class people more likely to feel protection is inadequate<sup>10</sup>
- **Deliver Scotland's Duties on Ratified International, Human Rights Treaties** Scotland has a duty to ensure all our laws and policies comply with seven UN Treaties as well as Council of Europe Treaties such as the Framework Convention of the Protection of National Minorities.
- **Improve Accountability of Current Commissions and Commissioners** Hear evidence annually about the performance of all relevant Commissioners, using a human rights lens including:
  - Scotland's Commissioner for Children and Young People (SCCYP) – duties revolve around delivery of UNCRC in Scotland.
  - Scottish Human Rights Commission (SHRC) – wide range of responsibilities on ECHR, ratified international treaties and duty to encourage best practice.
  - Office of Scottish Information Commissioner (OSIC) – accessing information is now regarded as a human right e.g. case law on the ECHR *'Tarsasag v. Hungary'* (2009) ruled social watchdogs can access government information.
  - GB Equality and Human Rights Commission (EHRC) – examine budget invested in human rights in Scotland on reserved issues and relevant work e.g. current inquiry into human rights and homecare and support of older people in England.

## Conclusion

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<sup>9</sup> Justice Secretary, June 08 Scottish Government News Release

<sup>10</sup> 'Scottish Commission for Human Rights Bill' Stage 1 Report, Justice 1 Committee Scottish Parliament Volume 2 Annex D

Previous Committees at the Scottish Parliament have matched Scottish Government Ministerial briefs but now is a good time to add another and establish a human rights subject committee. The HRCS believes that there has been an insufficient focus on human rights in the last 12 years of the Parliament. We believe this is an investment in the future and will lead to better, more responsive and efficient public services. We also believe that human rights are vulnerable in a period of economic downturn, particularly the right to dignity, and the people who most need human rights protection will suffer unless there is targeted, systematic scrutiny of laws, services and policy on preventing abuse, promoting rights and accessing effective remedies.

#### **Proposed Questions**

1. Why has the Scottish Parliament failed to set up a Human Rights subject committee?
2. Apart from the standard phrases that proposed bills 'comply' with human rights and ECHR obligations, what evidence is there that human rights are consistently debated, understood and reviewed by existing subject committees?

#### **4. Demonisation of human rights**

The perceived imbalance in the enjoyment of human rights is a real problem requiring practical and urgent solutions. The Government has a duty to address misinformation and stop blaming human rights for unpopular decisions. The UN has repeatedly raised the issue of press and media coverage. Recent examples demonstrate the role and influence of the press and media:

**UN Committee on Elimination of Racial Discrimination 2003** "*The Committee is concerned about the increasing racial prejudice against ethnic minorities, asylum-seekers and immigrants reflected in the media and the reported lack of effectiveness of the Press Complaints Commission in dealing with this issue. The Committee recommends that the State party consider further how the Press Complaints Commission can be made more effective and can be further empowered to consider complaints received from the Commission for Racial Equality as well as other groups or organizations working in the field of race relations*". (Para 13)

**UN Committee on the Rights of the Child 2008** "*The Committee is also concerned at the general climate of intolerance and negative public attitudes towards children, especially adolescents, which appears to exist in the State party, including in the media, and may be often the underlying cause of further infringements of their rights.*" (Para 24) "*The Committee recommends that the State party ensure full protection against discrimination on any grounds, including by: a) taking urgent measures to address the intolerance and inappropriate characterization of children, especially adolescents, within the society, including the media...*" (Para 25)

**UN Committee on the Elimination of Discrimination against Women 2008** "*The Committee notes with concern the stereotyped media portrayals of women and of women's roles in the family and in society, which contribute to women's disadvantaged position in a number of areas, including in the labour market and in access to decision-making positions, and affect women's*



*choices in their studies and professions. The Committee also notes the lack of positive media portrayals of ethnic and minority women, elderly women and women with disabilities." (Para 274)*

*"The Committee recommends that policies be strengthened and programmes implemented, including awareness-raising and educational campaigns directed at women and men, and specifically at media and advertising agencies, to help ensure the elimination of stereotypes regarding the roles of women and men in society and in the family, in accordance with articles 2 (f) and 5 (a) of the Convention. It also recommends that the media be encouraged to project a positive image of women, including ethnic and minority women, elderly women and women with disabilities, and to promote the value of gender equality for society as a whole. It calls upon the State party to review periodically the measures taken in order to assess their impact, to take appropriate action and to report thereon to the Committee in its next periodic report." (Para 275)*

### **Proposed Questions**

1. What competence has the Scottish Government to address press and media coverage on human rights?
2. Is this a reserved matter?
3. If yes, what steps will the UK Government take to ensure that human rights are protected in a free press and media?

### **5. Access to Justice**

The Scottish Parliament declined to follow the submissions from a range of bodies and chose instead to specifically bar the Scottish Human Rights Commission from providing any assistance to anyone considering or taking a human rights case. Assistance is defined as "advice, guidance and grants".<sup>11</sup>

The Faculty of Advocates has commented: *"To date 85% or more of human rights cases have involved Article 6 procedural challenges in criminal proceedings. In a small jurisdiction like Scotland the limited throughput of litigation means that developments in the substantive law could be fitful and protracted were they to depend solely on complaints brought by individuals."*<sup>12</sup>

The Equal Opportunities Commission<sup>13</sup> *"There is little tradition in Scotland of interest group intervention, and indeed no tradition at all of interest groups taking judicial reviews."*<sup>14</sup>

The net effect is that there is no threat of test cases from the SHRC regarding compliance in Scotland with the ECHR. Although NGOs can bring forward/fund/advise on individual cases too, there is little evidence of this happening

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<sup>11</sup> Scottish Commission for Human Rights Act 2006 Section 6.

<sup>12</sup> 'Scottish Commission for Human Rights: Analysis of Consultation Responses' pub by Scottish Executive (2004) para 5.18

<sup>13</sup> Abolished when the EHRC was established.

<sup>14</sup> Scottish Executive Social Research, 'Scottish Commission for Human Rights: Analysis of Consultation Responses' F. MacDonald and E. Thomson (2004) Para 5.20

in Scotland. There is also a lack of tradition in Scotland about NGOs pursuing test cases. The combined effect, it is argued, has led to a culture of complacency.

### **Proposed Questions**

1. Will the Scottish Parliament amend the Scottish Commission for Human Rights Act so that the independent NHRI can bring cases, in line with the Paris Principles?
2. Will the SHRC's budget be increased to ensure that this new responsibility is backed up by sufficient funds to bring at least 8 cases per year? However cases would only be pursued if merited rather than as a matter of routine.

### **6. Business and Human Rights Agenda**

Despite a global conference on 'Business and Human Rights' being convened at the Scottish Parliament on the 'Respect, Protect and Remedy' framework proposed by Professor John Ruggie in October 2010, we are still looking for evidence that the agenda is being promoted by the Scottish Government e.g. through its agency Scottish Enterprise in respect of domestic business involving workers in Scotland. We note that a number of Scottish based companies are already identified as having included a reference to human right in their company policies.

### **Proposed Questions**

1. What explicit steps have been taken by the Scottish Government to include human rights compliance in tender documents when seeking to award contracts to the private and voluntary sector?
2. What explicit steps have been taken by Scottish Enterprise to promote the 'Respect, Protect and Remedy' framework, as operationalised by the UN in June 2011, within those companies operating in Scotland and in respect of their domestic operations?
3. What steps have been taken by the Scottish Government and Scottish Enterprise in respect of businesses located in Scotland but operating globally?

### **7. Clear role for NHRI Status A**

Although Scotland benefits from two NHRIs each accorded Status A by the UN, there is an absence of information about what we can expect from each one. We believe this would increase accountability. For example is the NHRI supposed to participate in each UN treaty review process?

### **Proposed Question**

Will the SHRC and EHRC deliver training to civil society so that we know what to expect from an NHRI Status A body?

### **8. Need for Education and Training so that pressure for changes comes from grassroots as well as from governors and managers**

The HRCS is pleased to note that 600 out of Scotland's nearly 4,000 primary and secondary schools have achieved the 'Rights Respecting School's Award. When the right to access information was introduced in Scotland (2005), there were TV adverts at prime times, free leaflets and 'rights guides' published by the Office of the Scottish Information Commissioner. However there has been no such major publicity

campaign backed up by education materials across all ages and training programmes about how to exercise our human rights in the course of our everyday lives. The HRCS considers this to be an omission. For example it would be useful to have a human rights guide written in plain English distributed free to each household in Scotland.

### **Proposed Question**

What steps will be taken to circulate information to each household, provide training and promote understanding amongst ordinary people about what human rights are, how you can exercise your rights and the nature of public sector obligations?

### **9. Monitoring and Accountability**

Accessing information to enable an informed decision to be made is a human right. Freedom of Information is a crucial tool in ensuring people and organisations can monitor and hold to account the State in respect of human rights. The Freedom of Information (Scotland) Act 2002 (FoISA) sets out the current legal framework but we are calling for the extension of people's information rights as we believe the public's right to information should follow the money that pays for public services.

The Scottish Government announced a Freedom of Information (Amendment) Bill in 2011 - 2102 which is 'intended to add strength and clarity to the existing legislation'<sup>15</sup>. We believe that can only be achieved by a series of reforms. For example replicate progress announced at a UK level. The UK government is proposing to extend the UK FOI Act to other bodies including the Local Government Association, the NHS Confederation, the Law Society and the Bar Council. Their Scottish counterparts should be brought under FoISA, otherwise Scotland risks falling behind the UK

We are also concerned that new restrictions to the legislation may be introduced, such as further charges for information or measures allowing authorities to refuse more requests on cost grounds. When charges were introduced under Ireland's FOI law a few years ago, there was an immediate 75% fall in the number of requests. Such measures should not be introduced in Scotland.

We also call on the Scottish Government to:

- Make private contractors subject to FoISA. Transparency and openness should be part of doing business with the public sector. Trusts and other arms length organisations running public service facilities such as sports, leisure and cultural facilities, buildings, parking, transport, property, IT, finance and other support services, health, and social care should also be covered as should the Association of Chief Police Officers in Scotland.
- Make all housing associations subject to FoISA so that tenants and the public generally, have the right to access information. Such a change fits well with individual and community empowerment strategies. Housing associations are

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<sup>15</sup> The consultation on a Freedom of Information (Amendment) Bill was announced in the Programme for Government 2011-2012

<http://www.scotland.gov.uk/About/programme-for-government/2011-2012/FreedomofInformation>

already covered by Data Protection and Health and Safety laws - regulatory laws that give individuals enforceable rights.

A further problem with FoISA as it currently operates is that an apparently simple right can be hugely complex to enforce by ordinary people given the language used by public authorities and the range of rules e.g. on a public body seeking clarification which can cause a delay in getting the information within the 20 working day ceiling introduced by FoISA. The Minister who piloted the Bill through the Scottish Parliament 2001-2002 Lord Jim Wallace has recently commented:

*“Reading through the Commissioner’s decisions, let alone the judicial judgments, I was struck by just how technical and legalistic much of this has become. I suspect that was always an inevitability, but I didn’t see it as detailed at the time and it makes it more important to be conscious of engaging the public and not giving the impression that this is a topic only for lawyers and anoraks.”<sup>16</sup>*

### **Proposed Questions**

1. What will be the impact of the review of FoISA on the equal enjoyment of accessing information in Scotland from the public and private sectors?
2. What steps can be taken to make FoISA less complex and more accessible?

### **10. Process of Reviewing Compatibility**

Scotland needs a transparent framework which enables human rights decisions and recommendations to be properly assessed for relevance and how they may be interpreted in/applied to, Scotland. The recent case of *Cadder v Her Majesty’s Advocate*, heard at the UK Supreme Court in May 2010, resulted in emergency and controversial legislation at the Scottish Parliament despite there being sufficient time for a more considered and planned response.

- The *Cadder* case was prompted by the ECtHR decision in *Salduz v Turkey* - that the right to fair trial is irretrievably prejudiced if no access to lawyer from 1<sup>st</sup> police interrogation
- July 2010, Lord Advocate issued revised interim guidelines on suspects’ entitlement to request a solicitor’s advice and/or attendance at a police interview.
- Oct 2010, UK Supreme Court issued its decision that it has no real option but follow ‘clear and consistent jurisprudence of the Strasbourg court’.
- Decided one aspect of criminal procedure in Scotland is incompatible with ECHR.
- Emergency legislation debated at Scottish Parliament the day after, dealt with a number of issues.

However the majority of those member states which prior to *Salduz* did not afford a right to legal representation at interview (Belgium, France, the Netherlands and Ireland) are reforming their laws to bring them into line with the Convention’s requirements. In Scotland, an individual had to argue the case all the way to the UK Supreme Court to force legal change.

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<sup>16</sup> Inaugural Seminar and Launch of Centre for Freedom of Information, University of Dundee, 29th January, 2009 - Address by Rt. Hon. Lord Wallace of Tankerness QC  
<http://www.centrefoi.org.uk/portal/images/lordwallacesspeech.pdf>

**Proposed Question**

What mechanism exists in Scotland for the routine review of how human rights standards may require change in Scot's law, policy and practice?

**For Further Information**

The HRCS is happy to be contacted about any aspect of this submission and wish you well in your deliberations. We would be pleased to welcome any member of the UN to visit Scotland and meet with civil society organisations either as part of this process or as part of a general fact finding mission. We are happy to work with the public sector, with Government and with the private sector so that Scotland is more clearly able to demonstrate its compliance with human rights across all aspects of the daily lives of ordinary people.

For further information contact: Carole Ewart, Interim Convener.