

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE2135](#): Implement the International Covenant on Civil and Political Rights (ICCPR) in Scottish legislation, lodged by Henry Black Ferguson

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.

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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

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