

The Scottish Human Rights Commission

Submission to the Universal Periodic Review of the UK

21 November 2011

About the Commission:

The Scottish Human Rights Commission is the national human rights institution (NHRI) for Scotland, accredited with A status by the International Coordinating Committee of NHRIs.

The Commission was established by an Act of the Scottish Parliament and has a general duty to promote awareness, understanding and respect for all human rights and to encourage best practice (including through education, training and awareness raising, and by publishing research). The Commission also has a number of powers including:

- The power to conduct inquiries into the policies or practices of Scottish public authorities;
- Recommending such changes to Scottish law, policy and practice as it considers necessary.
- The power to enter some places of detention as part of an inquiry, and
- The power to intervene in some civil court cases.

More information on the Commission and its activities is available via its website: www.scottishhumanrights.com

Contact:

Duncan Wilson, Head of Strategy and Legal, Scottish Human Rights Commission, 4 Melville Street, Edinburgh, EH3 7NS, Scotland, Duncan.wilson@scottishhumanrights.com, +44 (0)131 240 2989

Contents:

Submission by the Scottish Human Rights Commission to the Universal Periodic Review of the UK - May 2012.	2
NORMATIVE AND INSTITUTIONAL FRAMEWORK	2
PROMOTION AND PROTECTION OF HUMAN RIGHTS.....	5
Annex 1 – List of Recommendations	10
Annex 2 - Endnotes	12

Submission by the Scottish Human Rights Commission to the Universal Periodic Review of the UK - May 2012.

- 1. Introduction:** The Scottish Human Rights Commission (SHRC) is the NHRI¹ for Scotland, one of three UK A status NHRIs and currently chairs the European Group of NHRIs.
- 2. Consultation methodology:** SHRC has drawn upon its experience engaging with government, public and private sectors, and civil society, as well as a research programme to identify gaps and good practices in human rights in Scotland.² SHRC hosted a UPR briefing for civil society organisations and is engaging with the development of the State Report. Due to space constraints this report does not reflect the range of SHRC's priorities or areas of concern.³
- 3. Summary of recommendations:**
SHRC's key recommendations, in summary are:

- 1. That the UK retain the Human Rights Act 1998.**
- 2. That the UK incorporate all international human rights obligations into domestic law.**
- 3. That the UK and Scottish Governments support and fully engage with the development of Scotland's National Action Plan for Human Rights.**
- 4. That the UK and Scottish Governments support the development and use of human rights impact assessment and human rights indicators.**
- 5. That a human rights based approach be mainstreamed across public service in the UK.**

NORMATIVE AND INSTITUTIONAL FRAMEWORK

- 4. International obligations:** Since the previous UPR the UK ratified CRPD⁴ and OP CRPD⁵ and designated independent mechanisms under CRPD and a National Preventive Mechanism (NPM) under OPCAT. SHRC is part of both.⁶ The UK has yet to ratify, among others, OP ICCPR,⁷ OP ICESCR,⁸ CRMW,⁹ CED,¹⁰ ESC Rev.,¹¹ and ECHR Protocol 12. It has taken steps to improve coordination of reporting, implementation and accountability for international human rights obligations, notably through the nomination of focal points under CRPD, although practice is inconsistent. As in previous human rights reviews¹² SHRC is concerned that the UK failed to consistently represent law, policy and practice in Scotland during the previous UPR.¹³
- 5. Legal protection:** The majority of ECHR¹⁴ rights are incorporated through the HRA and the Scotland Act 1998. The UK has not incorporated its other international human rights obligations. UK political discourse on human rights has intensified with Ministers in the UK Government denouncing the

HRA, including through misrepresentation and misreporting of court decisions. This risks undermining human rights protection domestically and internationally. The UK Government has established a Commission to investigate a Bill of Rights. SHRC is concerned that discussion of a Bill of Rights in the present climate will result in a retrogressive outcome. The present Government is committed through its Coalition Agreement to ensuring that any Bill of Rights incorporates the ECHR, but significantly it does not refer to the HRA. The HRA was carefully crafted to respect the UK constitutional doctrine of Parliamentary supremacy. It requires courts to take account of ECtHR case law; enables courts to declare Westminster legislation incompatible with ECHR rights (not to strike it out); requires all law to be considered in the light of ECHR rights; and requires all public authorities, or private bodies performing public functions, to comply with ECHR rights. Each of these mechanisms must be retained. Additional measures may be required to clarify duties under the HRA and to maximise its contribution to a human rights culture. For example, there continues to be a lack of legal certainty as to the extent to which the HRA extends to private bodies providing public services.¹⁵ Whilst this has been addressed in relation to health and social care,¹⁶ and social housing,¹⁷ it is important that this is clarified for all providers of public services.

Recommendation 1: That the UK retain and increase understanding of the HRA, and clarify the extent to which private providers of public services have human rights obligations.

Recommendation 2: That the UK ratify and incorporate all human rights treaties without reservation.

6. The HRA is embedded into the Scotland Act 1998. As such it is at the centre of Scotland's devolution settlement. The Scottish Parliament may not pass legislation that is inconsistent with the rights in the HRA - any such statute would be found not to be law - and must observe and implement all of the UK's international human rights obligations. Consequently, it has passed human rights based legislation in a range of areas.¹⁸ However SHRC continues to raise concerns about the extent to which some draft legislation is consistent with human rights.¹⁹ To further secure human rights observance in practice SHRC has called for the Scottish Parliament to refrain from using emergency procedures to enact human rights laws, recommended consideration of the creation of a committee on human rights and more transparent, effective and systematic legislative scrutiny.²⁰
7. The Scottish Government recently consulted on a Bill which will require the Scottish Government to have "due regard" to the CRC.²¹ SHRC welcomes the Bill, although considers the duty should extend to public authorities, to other treaties and is not an alternative to incorporation.
8. Scottish Ministers recently raised concern at the role of the UK Supreme Court in adjudication of human rights in criminal matters, appointing a review group to consider this issue. SHRC reiterated the importance of a

domestic superior court which considers human rights implications of both civil and criminal cases²² and the Scottish Government now accepts such a continued role for the UK Supreme Court. SHRC continues to have concerns regarding the mechanisms proposed, by which Scottish courts would grant leave to appeal.

Recommendation 3: That the UK strengthen the coordination of the implementation of human rights treaties and the Scottish Parliament strengthen mechanisms for consideration of human rights, exploring the creation of a committee on human rights, improved legislative scrutiny and human rights impact assessment.

Recommendation 4: That steps by the Scottish Government to introduce a duty to have “due regard” to the CRC be welcomed, that this should extend to public authorities and the UK’s other international human rights treaty obligations and is not an alternative to incorporation.

9. **Institutional infrastructure:** SHRC was established in 2008 with ten staff, a full time Chair and three other part time Commissioners. Its budget was only £0.20 per head of population per annum. Subsequently, its budget has reduced by 19%.²³

Recommendation 5: That the Scottish Parliament ensure SHRC has adequate funding to enable it to comply with its functions in accordance with the Paris Principles.

10. **Strategy and policy:** Scotland is currently exploring the development of a National Action Plan for Human Rights – a roadmap to achieve the realisation of all human rights. Scotland’s National Action Plan would be based on evidence gathered by SHRC and others, as well as recommendations of the UPR, treaty bodies, special procedures and other UN and European human rights bodies. It would be developed through with broad participation, clear indicators and benchmarks and an independent monitoring mechanism.

Recommendation 6: That the Scottish and UK Governments fully engage with the development of Scotland’s National Action Plan for Human Rights, based on evidence and participation, consistent with the UK’s international human rights obligations, including clear indicators and benchmarks and independently monitored.

11. SHRC and the Equality and Human Rights Commission (EHRC) are developing an equality and human rights impact assessment process and a Human Rights Measurement Framework to support the integration of human rights into decision making, monitoring and accountability.²⁴ These will be based on international best practice²⁵ and the conceptual development of human rights indicators by OHCHR,²⁶ treaty bodies and others.

Recommendation 7: That the Scottish and UK Governments support the integration of human rights indicators into monitoring and accountability of public services and the development of equality and human rights impact assessment processes.

12. A human rights based approach (HRBA): Among SHRC's first activities was the evaluation of efforts to adopt an HRBA at the high security mental health hospital for Scotland and Northern Ireland. The results of that evaluation demonstrated how an HRBA can contribute to positive human rights outcomes for staff, patients and carers.²⁷ Subsequently, SHRC undertook a major capacity building programme on an HRBA to social care for older people. An independent evaluation demonstrated significant benefits to improved public service delivery.²⁸

Recommendation 8: That the Scottish Government support the consistent application of an HRBA in practice, not only in health and social care, but in other priority areas.

PROMOTION AND PROTECTION OF HUMAN RIGHTS²⁹

13. Economic climate: The programme of public spending cutbacks introduced by the UK Government in response to the global economic downturn and the UK's public debt has resulted in a significant decrease in the Scottish Government's budget³⁰ with considerable concern at the potential impact on human rights. In recognition of the need to adjust the delivery of public services to this new economic environment, the Scottish Government established an independent Commission³¹ which concluded that there was a need for urgent and sustained reform to public services³² based on the principles of:

- prioritisation of vulnerable and disadvantaged people,
- reduction of inequalities, integration of services,
- preventative spending
- increased participation,
- accountability,
- transparency and
- outcome focus.

14. This agenda, endorsed by the Scottish Government,³³ presents significant opportunities for the integration of an HRBA,³⁴ impact assessment and measurement based on all human rights. In particular greater understanding of obligations under the ICESCR would assist in ensuring more rights respecting outcomes to decisions on the allocation of resources.³⁵ (see recommendation 7).

15. Business and human rights:³⁶ The UK supported the Council decision endorsing the Guiding Principles on Business and Human Rights³⁷, implementing the "Protect, Respect and Remedy" Framework.³⁸ To ensure the implementation of these Principles in practice will require a systematic review of law, policy and practice in the UK.

Recommendation 9: That the UK undertake a comprehensive review of law, policy and practice, benchmarking itself against the UN framework, and that a strategy of implementation of the Guiding Principles is developed by the UK and devolved administrations.

16. **Environment:** Scotland has world leading legislation on climate change mitigation targets³⁹ and an adaptation strategy, both welcomed internationally.⁴⁰ SHRC supported efforts to increase understanding of the connections between human rights and climate change,⁴¹ co-hosting a conference from which the Government committed to exploring an HRBA to climate change and is chairing the Commonwealth NHRI working group on the topic.⁴²

Recommendation 10: That the Scottish Government adopt an HRBA to the environment, climate change and climate justice.

17. **Older people:**⁴³ SHRC has prioritised the promotion and protection of human dignity and care for older people. It has developed a capacity building programme, *Care About Rights?*⁴⁴ delivered to around 1,000 care workers and engagement with older people across Scotland. SHRC has also supported the development of a Charter of Rights for People with Dementia and their Carers,⁴⁵ and engaged in policy development on e.g. self-directed care and support⁴⁶ and the regulation of care for older people.⁴⁷ SHRC has also presented to the UN Open-Ended Working Group on Ageing on “existing regional framework or mechanisms on the human rights of older persons”.⁴⁸ (see recommendation 8)

18. **Health:** Scotland’s mental health and legal capacity laws are based on human rights principles, although there is evidence to suggest more needs to be done to ensure human rights are consistently upheld in practice.⁴⁹ The current healthcare strategy⁵⁰ is person centred and supported by a Patients Rights Act, although SHRC has called for increased clarity on the relevance of enforceable human rights in healthcare.⁵¹ (see recommendation 8)

19. **Access to justice:** A major review of civil justice in Scotland published in 2009⁵² noted unacceptable delays and expense and made a series of recommendations including a simplified test of admissibility.⁵³ A recent decision by the UK Supreme Court may simplify necessary legal status to judicially review decisions in the public interest.⁵⁴ In 2010 the UK was criticised for failing to ensure access to justice in environmental matters due to the prohibitive costs associated with challenging environmental planning decisions.⁵⁵ While that communication related to judicial review in England, this is an issue which has been the subject of a public petition to the Scottish Parliament.⁵⁶ The European Commission is currently pursuing the UK before the European Court of Justice in relation to the costs of challenging environmental decisions.⁵⁷

Recommendation 11: That the Scottish Government examine and address barriers to access to justice in relation to human rights, including admissibility.

20. **Remedies:** SHRC developed a human rights framework for remedies, reparation and access to justice for survivors of historic child abuse.⁵⁸ Survivors however, continue to petition the Scottish Parliament for the full application of SHRC's recommendations.⁵⁹

Recommendation 12: That the Scottish Government consider fully the implementation of the Human Rights Framework on historic child abuse developed by SHRC.

21. **Policing:** Current debate concerning the establishment of a single police service for Scotland⁶⁰ represents an opportunity to promote greater accountability.⁶¹

22. In response to a pilot programme by Scotland's largest police force to deploy TASER[®] weapons to non-firearms trained officers, SHRC is developing a Framework of Responsibilities for the deployment and use of electro-shock weapons to clarify relevant human rights standards and responsibilities.⁶²

Recommendation 13: That the Scottish Government consider mechanisms for enhanced accountability of the police for human rights, including in the deployment and use of potentially lethal force.

23. **Detention**⁶³ Scotland's prisons continue to operate beyond capacity⁶⁴ and concerns continue to exist, particularly regarding female offenders,⁶⁵ whose number in detention is increasing disproportionately.⁶⁶ A Commission on Women Offenders has been established to address this.⁶⁷

Recommendation 14: That the Scottish Government carefully consider the outcomes of the Commission on Women Offenders.

24. **Torture and ill-treatment:** An inquiry into allegations of UK complicity in torture is ongoing. Several respected civil society organisations have withdrawn from the process⁶⁸ arguing that the lack of transparency and participation of victims mean it does not comply with the investigation obligation in international law.⁶⁹

25. Evidence continues to emerge that "rendition" flights may have transited through Scottish airports.⁷⁰ The Council of Europe Rapporteur referred to "*a detailed report of numerous suspect movements of aircraft transiting through Scotland*".⁷¹ Evidence presented in recent litigation in the US also indicates that rendition flights stopped in Scottish airports.⁷²

Recommendation 15: That the UK ensure effective official investigations into all credible allegations of State involvement in torture or serious ill-treatment.

26. **Work:**⁷³ The UK's minimum wage structure has been criticised by a number of human rights bodies, both on the grounds that it is "manifestly unfair" (too low),⁷⁴ and that it discriminates on the grounds of age.⁷⁵ The Scottish Government has sought to encourage employers to guarantee workers a "living wage".⁷⁶

Recommendation 16: That the UK and Scottish Governments consider steps to ensure that the minimum wage is sufficient at least to secure an adequate standard of living.

27. **Disabled people:**⁷⁷ As an independent mechanism under the CRPD the SHRC, with EHRC, has a significant programme of work to promote, protect and monitor the implementation of the CRPD.⁷⁸ Amongst the emerging priority issues which our research and disabled people has identified are:

- ensuring understanding of the role of the CRPD as a lens through which domestic (and potentially European) law should be interpreted;
- ensuring the functional approach to legal capacity is consistently applied in practice;
- ensuring effective access to justice for people with disabilities;
- accessibility of public and private transportation, infrastructure and information;
- the "portability" of care from one local authority area to another; and
- the rights of people with learning disabilities including freedom of movement and living as a member of a community.

28. The right to independent living - broadly interpreted - is seen as an overarching priority by many disabled people in Scotland. SHRC and EHRC are currently promoting the development of an implementation plan for the CRPD in Scotland, and at the UK level.⁷⁹

Recommendation 17: That the Scottish and UK Governments develop an implementation plan for the CRPD with the involvement of disabled people and the independent mechanisms.

29. **Gypsy/Travellers:**⁸⁰ Research suggests that it is "socially acceptable to be racist towards Gypsies and Travellers".⁸¹ The recent forced eviction from Dale Farm in England is another example of the failure to adopt human rights based strategies to reconcile the rights of members of Gypsy/Traveller communities across the UK with settled communities. Similar concerns continue in Scotland,⁸² noted also by a range of human rights bodies.⁸³ Disputes have centred particularly on accommodation, including a lack of adequate culturally appropriate accommodation (in particular stopping places) and related informal occupation by Gypsy/Traveller communities of alternative land, often resulting in disputes with local communities., Aberdeen represents a rare example of practical coherent action to address this issue.⁸⁴

Recommendation 18: That the Scottish Government work with local authorities and all others with responsibilities as well as members of Gypsy/Traveller communities and of settled communities to develop an Action Plan, consistent with international human rights law, to reconcile the human rights of Gypsy/Travellers and settled communities.

Annex 1 – List of Recommendations

Recommendation 1: That the UK retain and increase understanding of the HRA, and clarify the extent to which private providers of public services have human rights obligations.

Recommendation 2: That the UK ratify and incorporate all human rights treaties without reservation.

Recommendation 3: That the UK strengthen the coordination of the implementation of human rights treaties and the Scottish Parliament strengthen mechanisms for consideration of human rights, exploring the creation of a committee on human rights, improved legislative scrutiny and human rights impact assessment.

Recommendation 4: That steps by the Scottish Government to introduce a duty to have “due regard” to the CRC be welcomed, that this should extend to public authorities and the UK’s other international human rights treaty obligations and is not an alternative to incorporation.

Recommendation 5: That the Scottish Parliament ensure SHRC has adequate funding to enable it to comply with its functions in accordance with the Paris Principles.

Recommendation 6: That the Scottish and UK Governments fully engage with the development of Scotland’s National Action Plan for Human Rights, based on evidence and participation, consistent with the UK’s international human rights obligations, including clear indicators and benchmarks and independently monitored.

Recommendation 7: That the Scottish and UK Governments support the integration of human rights indicators into monitoring and accountability of public services and the development of equality and human rights impact assessment processes.

Recommendation 8: That the Scottish Government support the consistent application of an HRBA in practice, not only in health and social care, but in other priority areas.

Recommendation 9: That the UK undertake a comprehensive review of law, policy and practice, benchmarking itself against the UN framework, and that a strategy of implementation of the Guiding Principles is developed by the UK and devolved administrations.

Recommendation 10: That the Scottish Government adopt an HRBA to the environment, climate change and climate justice.

Recommendation 11: That the Scottish Government examine and address barriers to access to justice in relation to human rights, including admissibility.

Recommendation 12: That the Scottish Government consider fully the implementation of the Human Rights Framework on historic child abuse developed by SHRC.

Recommendation 13: That the Scottish Government consider mechanisms for enhanced accountability of the police for human rights, including in the deployment and use of potentially lethal force.

Recommendation 14: That the Scottish Government carefully consider the outcomes of the Commission on Women Offenders.

Recommendation 15: That the UK ensure effective official investigations into all credible allegations of State involvement in torture or serious ill-treatment.

Recommendation 16: That the UK and Scottish Governments consider steps to ensure that the minimum wage is sufficient at least to secure an adequate standard of living.

Recommendation 17: That the Scottish and UK Governments develop an implementation plan for the CRPD with the involvement of disabled people and the independent mechanisms..

Recommendation 18: That the Scottish Government work with local authorities and all others with responsibilities as well as members of Gypsy/Traveller communities and of settled communities to develop an Action Plan, consistent with international human rights law, to reconcile the human rights of Gypsy/Travellers and settled communities.

Annex 2 - Endnotes

¹ National human rights institution.

² That programme gathered together reviews of legal literature on the compatibility of the law of Scotland with international human rights law, reviews of non-legal literature on human rights in Scotland, focus groups of people across the country, and analysis of all enquiries received by SHRC. <http://www.scottishhumanrights.com/ourwork/mapping>

³ In selecting the issues to address SHRC has been guided by the evidence it has gathered over its first three years of operation, its regular prioritisation criteria, and its statutory duty not to duplicate the work of others. In particular SHRC has been guided by the need to add value to the contributions of other stakeholders including the Equality and Human Rights Commission (EHRC) and Scotland's Commissioner for Children and Young People (SCCYP). Among issues which the Commission understands will be addressed by the EHRC are the following, on which SHRC makes only some additional comments:

Refugees and asylum seekers: Asylum is an area reserved to the UK Parliament and Government, Schedule 5, Scotland Act 1998. In May 2011 the Scottish Refugee Council released the first stage of a three year study on how well refugees and asylum seekers are integrating into Scottish life. (*Refugee Integration in Scotland: Briefing 1: key findings from stage 1*, Scottish Refugee Council, May 2011.) Among the findings of the survey of over 250 refugees in Scotland are that over 70% feel they have been discriminated against, 68% said they were struggling to cope financially, around one fifth were in employment. There was significant concern in November 2010 when all asylum seekers housed in Glasgow received a letter indicating they may be re-housed anywhere in Scotland with as little as 3 days notice. The UK Government apologised, (*UK Border Agency and Glasgow City Council*, Scottish Affairs Committee, evidence on 19 January 2011.) In April 2011 it was announced that all would be re-housed in Glasgow with a new provider. (*Asylum seekers in Glasgow get new landlord ending fears over re-housing*, The Glaswegian, 1 April 2011).

Victims of trafficking: While this issue is largely reserved to the UK Government, the prosecution of perpetrators and the support of survivors is within the responsibility of Scottish authorities. A raft of legislation criminalises conduct associated with human trafficking in Scotland. (Including s 22 Criminal Justice (Scotland) Act 2003, s 4-5 Asylum and Immigration (Treatment of Claimants) Act 2004, s26 Antisocial Behaviour etc (Scotland) Act 2004, s 10 and 12 Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, Criminal Justice and Licensing (Scotland) Act 2010.) The Association of Chief Police Officers Scotland has estimated that Scotland has around 13.5% of the UK trafficking trade (*Human Trafficking victims "not identified"*, Lucinda Cameron, 20 August 2008, Scottish Press Association.) However it was only in September 2011 that the first individuals were prosecuted for associated crimes. (*Pair admit sex trafficking offences*, The Times, 10 September 2011.) EHRC Scotland is currently finalising an inquiry into sex trafficking in Scotland.

⁴ Convention on the Rights of Persons with Disabilities

⁵ Optional Protocol to the CRPD.

⁶ Other independent mechanisms under CRPD are the Equality and Human Rights Commission, the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission. Other members of the NPM are (in England and Wales): [Independent Custody Visiting Association](#), [HM Inspectorate of Constabulary](#), [Care Quality Commission](#), [Healthcare Inspectorate Wales](#), [Children's Commissioner for England](#), [Care and Social Services Inspectorate Wales](#), [Office for Standards in Education](#); (in Scotland): [HM Inspectorate of Prisons for Scotland](#), [HM Inspectorate of Constabulary for Scotland](#), [Mental Welfare Commission for Scotland](#), [Scottish Commission for the Regulation of Care](#); (in Northern Ireland): [Independent Monitoring Boards \(Northern Ireland\)](#), [Criminal Justice Inspection Northern Ireland](#), [Regulation and Quality Improvement Authority](#), [Northern Ireland Policing Board Independent Custody Visiting Scheme](#).

⁷ Optional Protocol to the International Covenant on Civil and Political Rights.

⁸ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

⁹ International Convention for the Protection of the Rights of all Migrant Workers and Members of their Families.

¹⁰ International Convention for the Protection of all Persons from Enforced Disappearance.

¹¹ Revised European Social Charter.

¹² See Scottish Human Rights Commission, *Submission to the UN Committee on Economic, Social and Cultural Rights*, April 2009,

http://www.scottishhumanrights.com/application/resources/documents/parallel_report_to_UN_CESCR_May_2009.pdf, page 12, "In general SHRC notes that the State report does not fully reflect the realisation of economic, social and cultural rights in Scotland."

¹³ Following the previous UPR the UK agreed to "*enshrine in legislation the right of access of detainees to a lawyer immediately after detention, and not after 48 hours*". UN Doc. A/HRC/8/25 para 56, recommendation 8. In its 2010 mid-term report the UK indicated that the right to access to a lawyer immediately on detention was already secured, basing its response on the Police and Criminal Evidence Act 1984. That response was not an accurate reflection of law and practice in Scotland, which has a separate legal system. In 2010 the UK Supreme Court determined that the Scottish practice of detaining and questioning suspects without providing the right to legal assistance was contrary to the right to a fair trial. (In *Cadder v Her Majesty's Advocate* [2010] UKSC 43. This deficiency in the protection of detainees had also been highlighted by the European Committee for the Prevention of Torture in two prior reports on the United Kingdom. CPT/Inf(96) 11, 5 March 1996, para 291; CPT/Inf(2005) 1, 4 March 2005, para 53)

In response the Scottish Parliament passed new legislation (Criminal Procedure (Legal Assistance, Detention and Appeals) Scotland Act 2010), which guaranteed a right to access legal advice prior to questioning. SHRC welcomed this, however it expressed serious reservations about other aspects of the Act.

(<http://scottishhumanrights.com/news/latestnews/article/cadder>;

<http://scottishhumanrights.com/news/latestnews/article/cadderlegislationcomment>

The Commission reiterated this concern in evidence to post legislative review of the 2010 Act. Scottish Parliament Justice Committee. *Official Report 8 March 2011, Col 4267.*)

In particular SHRC opposed the extension of periods of detention from 6 to 12 (and 24 hours), which evidence now shows is unnecessary to facilitate access to a solicitor. A review of the law and practice of questioning suspects in a criminal investigation in Scotland was ongoing in 2011, to which SHRC is contributing. (Carloway Review, <http://www.scotland.gov.uk/About/CarlowayReview>; Scottish Human Rights Commission, *Submission to the Carloway Review Consultation Document*, 13 June 2011, <http://scottishhumanrights.com/application/resources/documents/June2011CarlowayconsultationResponseFINAL.doc>

¹⁴ European Convention for the Protection of Human Rights and Fundamental Freedoms.

¹⁵ Following the case of *YL v Birmingham City Council and others*, [2007] UKHL 27.

¹⁶ Section 145, Health and Social Care Act 2008.

¹⁷ *R (Weaver) v London & Quadrant Housing Trust*, [2009] EWCA Civ 587.

¹⁸ See, for example, Mental Health (Care and Treatment) (Scotland) Act 2003; Adults With Incapacity (Scotland) Act 2000; Adult Support and Protection (Scotland) Act 2007.

¹⁹ For example, recently the Scottish Government introduced a Bill to aimed at preventing offensive and threatening behaviour related to football matches and preventing the communication of threatening material, particularly where it incites religious hatred. The Commission welcomes these policy objectives but considers that there is also a need to address sectarian behaviour in non-football related environments. The Commission has engaged in the consideration of the Bill with a view to ensuring it is drafted in a manner which respects the right to freedom of expression and the principle of legal certainty. See <http://www.scottishhumanrights.com/ourwork/publications/article/footballconsultationAug2011>

²⁰ *Submission to the Scotland Bill Committee*, Scottish Human Rights Commission, September 2011,

http://www.scottish.parliament.uk/S4_ScotlandBillCommittee/Inquiries/Scottish_Human_Rights_Commission.pdf

²¹ <http://www.scotland.gov.uk/Publications/2011/09/07110058/0>

²² Including sending an open letter to all Members of the Scottish Parliament: <http://www.scottishhumanrights.com/application/resources/documents/LettertoMSPsJune2011.doc>

²³ In real terms.

²⁴ <http://personal.lse.ac.uk/prechr/>

²⁵ As reviewed in James Harrison and Mary-Ann Stephenson, *Human Rights Impact Assessment: Review of Practice and Guidance for Future Assessments*, Scottish Human Rights Commission, 2011.

²⁶ UN Office of the High Commissioner for Human Rights, see e.g. UN Doc. E/2011/90, 26 April 2011.

²⁷ including increased participation in decision making, increased accountability, a reduction in stress of staff, and moves away from blanket policies towards individualised decision making resulting in, e.g. reductions in use of seclusion and restraint. Scottish Human Rights Commission, *Human Rights in a Healthcare Setting: making it work, an evaluation of the human rights based approach at The State Hospital*, 2009 <http://www.scottishhumanrights.com/application/resources/documents/HRHCSFINALVERSION.pdf>

²⁸ Care About Rights? Project evaluation, <http://www.scottishhumanrights.com/careaboutrights/evaluation>

²⁹ Due to space constraints a range of additional issues of concern are not addressed in this submission. These include:

Education: Despite numerous efforts to address inequality in educational outcomes, the CRC raised concern at continued significant inequalities where parents are living in poverty (UN Doc. CRC/C/GBR/CO/4). Children belonging to Gypsy/Traveller communities are several times more likely to be assessed as having special educational needs (EHRC, *How Fair is Britain?*, 2010). Research suggests an increasing move towards inclusive education in Scotland for children with special educational needs (Scottish Council Foundation (2005) *Disability in Scotland 2005-2020: A state of the nation report*) however questions have been raised as to whether this is working in practice, and some have pointed to a need to ensure a consistent human rights based approach for those children. As one researcher concluded “there needs to be far better articulation and implementation of a rights discourse in schools, so that teachers and administrators accord much greater respect to children with additional support needs and their parents, rather than treating them as unwelcome customers.” Sheila Riddell, “Social justice, equality and inclusion in Scottish education”, *Discourse* (2009) 30, 3, 283-297. The Scottish Government’s higher education policy of charging UK nationals domiciled outside of Scotland has recently been the subject of threatened legal action (BBC News, “Scotland’s uni funding system faces legal challenge”, 21 August 2011. <http://www.bbc.co.uk/news/uk-scotland-14607122>)

Housing: Scotland’s housing law has been recognised by CESCR as “best practice”, (“The Committee also recommends that the State party take into consideration the Homelessness etc. (Scotland) Act 2003 as best practice, especially its provision relating to the right to housing as an enforceable right.” UN Doc. E/C.12/GBR/CO/5) particularly in the setting of a time-bound target of 2012 by which time no-one should be “unintentionally” homeless. Progress has been made although it appears to vary across the country. (Isobel Anderson, *The new Scottish homelessness framework: progress towards priority for all by 2012*, October 2011, HQN. Overall Scotland has progressed from determining 70 percent of unintentionally homeless persons are considered “priority need” (i.e. are subject to a local authority duty to ensure access to secure accommodation) in 2003/4 to 88 percent in 2010/11. However of the 32 local authorities in Scotland only two had met the 2012 target by 2010/11 and 11 still had rates of 85 percent or lower (with one local authority only managing to secure priority need to 63 percent of unintentionally homeless persons.)

³⁰ There has been a 6 percent year on year decrease in the budget of the Scottish Government, *Financial Scrutiny Unit Briefing*, Simon Wakefield and Nicola Hudson, 22 November 2010, table 4. public spending is not anticipated to return to 2010 levels for 16 years, *The Commission on the Future Delivery of Public Services*, 2011, p viii.

³¹ The Scottish Government had launched the Commission to Consider the Future of Public Services following its November 2010 spending review, which had firm plans for 2011/12 only. The remit was to provide “recommendations about how public services must change to meet the medium and long term financial challenges and the expectations of the people of Scotland”.

³² *The Commission on the Future Delivery of Public Services*, 2011.

³³ *Renewing Scotland’s Public Services, priorities for reform in response to the Christie Commission*, Scottish Government, 2011.

³⁴ The Commission promotes an HRBA based on the PANEL principles of participation, accountability, non-discrimination, empowerment and legality. See <http://www.scottishhumanrights.com/promotinghrba>

³⁵ These include the obligation to ensure the realisation, at least, of minimum essential levels of ICESCR rights and the prioritisation of the most marginalised, and that “any deliberately retrogressive measures ... require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.” Committee on Economic, Social and Cultural Rights, General Comment 3, para 9

³⁶ The 10th International Conference of National Human Rights Institutions (NHRIs), hosted by SHRC adopted the Edinburgh Declaration, committing NHRIs to consider how they can promote and protect human rights as they relate to business. In pursuit of this SHRC has for example supported EU NHRIs in responding to a consultation on EU public procurement policy (see, The Edinburgh Declaration, <http://www.scottishhumanrights.com/international/biennial/edinburghdec>, <http://www.scottishhumanrights.com/application/resources/documents/ECprocurement2011.doc>)

³⁷ UN Doc. A/HRC/RES/17/4 in relation to the Report of the Special Representative of the Secretary- General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework; A/HRC/17/31; 21 March 2011.

³⁸ Human Rights Council, 16 June 2011, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11165&LangID=E>

³⁹ The Climate Change (Scotland) Act 2009, which contained ambitious emissions reductions targets interim 42 per cent reduction target for 2020, with the power for this to be varied based on expert advice, and an 80 per cent reduction target for 2050. To help ensure the delivery of these targets, this part of the Act also requires that the Scottish Ministers set annual targets, in secondary legislation, for Scottish emissions from 2010 to 2050.

⁴⁰ Including by by Mary Robinson and Al Gore. Scotland has also presented its ambitions to be a global leader in combating climate change and in developing renewable energy technology at COP15.

⁴¹ See www.scottishhumanrights.com/ourwork/environment

⁴² <http://www.scottishhumanrights.com/ourwork/environment/environmentourwork>

⁴³ Following the previous UPR the UK agreed to “provide more care and attention to the rights of the elderly.”, UN Doc. A/HRC/8/25 para 56, recommendation 17.

⁴⁴ <http://www.scottishhumanrights.com/careaboutrights/>

⁴⁵ <http://www.dementiarights.org/charter-of-rights/>

⁴⁶ <http://www.scottishhumanrights.com/ourwork/publications/article/selfdirectedsupportconsultation>

⁴⁷ <http://www.scottishhumanrights.com/ourwork/publications/article/regulationofcaresubaug2011>

⁴⁸ See UN Doc. A/AC.278/2011/4.

⁴⁹ for example Mental Welfare Commission *Older and Wiser*, Edinburgh 2007; Mental Welfare Commission and Care Commission, *Remember I am Still me*, 2009. In relation to mental health law, see Scottish Government, *Review of Mental Health Law Consultation Analysis*, 2010.

⁵⁰ *The Healthcare Quality Strategy for NHSScotland*, Scottish Government, May 2010.

⁵¹ <http://www.scottishhumanrights.com/application/resources/documents/PRA%20Consultation%20on%20Secondary%20Legislation%20SHRC%20final.doc>.

⁵² *Report of the Civil Courts Review*, Lord Gill, 2009, <http://www.scotcourts.gov.uk/civilcourtsreview/>

⁵³ The “standing” of an individual to initiate judicial review proceedings.

⁵⁴ *AXA General Insurance Limited and others (Appellants) v The Lord Advocate and others (Respondents)* [2011] UKSC 46

⁵⁵ Findings and recommendations with regard to communication ACCC/C/2008/27 concerning compliance by the United Kingdom of Great Britain and Northern Ireland, UN Economic Commission for Europe, UN Doc. ECE/MP.PP/C.1/2010/6/Add.2, paras 44-45.

⁵⁶ <http://www.scottish.parliament.uk/business/petitions/pdfs/PE1372.pdf> SHRC submitted evidence in relation to the petition: <http://scottishhumanrights.com/application/resources/documents/EnvironmenthumanrightsPE1372.pdf>

⁵⁷ <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/439&format=HTML&aged=0&language=EN&guiLanguage=en>

⁵⁸ <http://www.scottishhumanrights.com/ourwork/care/adultprotection>

⁵⁹ Scottish Parliament Public Petition 1351, <http://www.scottish.parliament.uk/business/petitions/docs/PE1351.htm>

⁶⁰ “We will bring forward legislation to establish single services for police and fire & rescue.” *Renewing Scotland: The Government’s Programme for Scotland 2011-12*, Scottish Government, 2011, <http://www.scotland.gov.uk/Publications/2011/09/08102006/8>

⁶¹ Consideration may be given for example to the models of police accountability for human rights developed in Northern Ireland http://www.psnipolice.uk/index/about-us/human_rights.htm

⁶² <http://scottishhumanrights.com/ourwork/publications/article/tasers>

⁶³ Following the previous UPR the UK accepted to “*elaborate a national programme to combat the problem of overcrowding in prisons.*” UN Doc. A/HRC/8/25 para 56, recommendation 13.

⁶⁴ The daily average prison population in Scotland in 2010-11 was 7,853 whereas design capacity for Scotland’s prisons is 7,330. Despite a drop in the overall prison population of 1% in 2010-11 the longer term projections are for a rise. <http://www.scotland.gov.uk/Publications/2011/08/19154230/0>

⁶⁵ HM Inspector of Prisons for Scotland has said “Overcrowding remains an enduring problem for a number of establishments. The overcrowding in Cornton Vale [Scotland’s primary institution for female offender detainees] is of particular concern to me ...” HMIP Scotland, *Annual Report 2009-10*.

⁶⁶ Despite no significant rise in the rate of women convicted of offences, between 1999/2000 and 2008/2009 the female prison population in Scotland doubled, compared to an increase of 29% for men. Scottish Government (2009) *Prison Statistics Scotland 2008-9*, Edinburgh: Scottish Government, 2009.

⁶⁷ <http://www.scotland.gov.uk/About/commissiononwomenoffenders>

⁶⁸ Letter from The Aire Centre, Amnesty International, British Irish Rights Watch, Cageprisoners, Freedom from Torture, Human Rights Watch, Justice, Liberty, Redress, Reprieve, to Sara Carnegie, Solicitor to the Detainee Inquiry, 3 August 2011, <http://www.amnesty.org/en/library/asset/EUR45/010/2011/en/daf5cd13-dea8-47d2-99d2-6628b963f511/eur450102011en.pdf>

⁶⁹ For an overview of this obligation see http://www.scottishhumanrights.com/application/resources/documents/SHRClegalpaperforAA_F.pdf

⁷⁰ Following the previous UPR the UK agreed to “*provide more information on so-called ‘secret flights’*” UN Doc. A/HRC/8/25 para 56, recommendation 10.

⁷¹ *Alleged secret detentions in Council of Europe member states, Information Memorandum II*, Rapporteur: Mr Dick Marty, Switzerland, Alliance of Liberals and Democrats for Europe, AS/Jur (2006) 03 rev, para 28.

⁷² *US Court Case Reveals Rendition Details*, BBC News, 1 September 2011, <http://www.bbc.co.uk/news/world-us-canada-14745941>

⁷³ Employment is an area reserved to the UK Parliament and Government, Schedule 5, Scotland Act 1998. Unemployment in Scotland has risen since the previous review but remains lower than the UK average (Having fallen from over 10 percent in 1992 to just over four percent in 2008, at the time of writing unemployment in Scotland had risen to around eight percent. Office of National Statistics, *Regional Labour Market Statistical Bulletin*, October 2011, unemployment in Scotland was 7.9%, UK average was 8.1%). Particular barriers in accessing work are experienced by disabled people Of whom 69 percent are not in employment, Macpherson, S. and Bond, S. (2009) *Equality issues in Scotland: a review of*

research, 2000-08, Equality and Human Rights Commission: http://www.equalityhumanrights.com/uploaded_files/Scotland/equality_issues_in_scotland_a_review_of_research.pdf). This is apparently linked to discrimination and unwillingness of employers to ensure reasonable accommodation (as required by CRPD). (EHRC, *How Fair is Britain?*, 2010). Scottish law and policy has sought to support people with mental disabilities to access employment (s 26(1)(c) Mental Health (Care and Treatment) (Scotland) Act 2003; *See Me* campaign sought to address public attitudes to mental health; *Towards a Mentally Flourishing Scotland 2009-2011*, Scottish Government.)

⁷⁴ In that it is far lower than the European benchmark of 60 percent of average wage, European Social Charter, European Committee of Social Rights, *Conclusions XIX-3 (2010) (UNITED KINGDOM)*, December 2010, p 7.

⁷⁵ the CESCR has recommended considering the same minimum wage for workers aged 18-20 as those over 21 UN Doc. E/C.12/GBR/CO/5, para 41.

⁷⁶ <http://www.scotland.gov.uk/Publications/2010/07/livingwageanalysis>

⁷⁷ Recognising the preferred UN terminology of “persons with disabilities” as per CRPD, SHRC nevertheless uses “disabled people”. This is in response to the clear view expressed by disabled people and their representative organisations in all participation events which SHRC has hosted.

⁷⁸ EHRC and SHRC have held a series of participation events with hundreds of disabled people, promoted the implementation of the CRPD to civil society, disabled peoples organisation, events across Government and other public authorities. The Commissions have also begun their monitoring role, including preparing a parallel report and contributing to the UK Parliament Joint Committee on Human Rights Inquiry on Independent Living and have commented on the extent to which they consider the draft UK initial report complies with the UN CRPD’s reporting guidelines.

⁷⁹ See <http://www.scottishhumanrights.com/ourwork/crpd>.

⁸⁰ There are estimated to be approximately 2120 people in Scotland who are members of a Gypsy or Travelling community Scottish Government Social Research (2010), *Gypsies/Travellers in Scotland: the twice yearly count No. 16 July 2009*, Edinburgh, Scottish Government. For a recent overview of research on Gypsy and Travellers in the UK see Cemlyn et al, *Inequalities experienced by Gypsy and Traveller communities: a review*, University of Bristol, Buckinghamshire New University, Friends Families and Travellers for Equality and Human Rights Commission Research Report 12, 2009, http://www.equalityhumanrights.com/uploaded_files/research/12inequalities_experienced_by_gypsy_and_traveller_communities_a_review.pdf

⁸¹ Cemlyn, S., Greenfields, M., Burnett, S., Matthews, Z., Whitwell, C., *Inequalities Experienced by Gypsy and Traveller Communities: a review*, Research Report No. 12, Equality and Human Rights Commission, London, 2009.

⁸² In 2001 the Scottish Parliament’s Equal Opportunities Committee undertook an inquiry, and there continue to be calls for further action in response. A short strategy developed by the Scottish Government, local authorities and civil society in relation to.

⁸³ Numerous international and regional human rights bodies have raised concerns about the rights of Gypsy and Traveller communities in Scotland, most recently the UN CERD expressed concern at continued poor outcomes on a range of economic and social rights, increased stigmatisation and recommended concrete measures to improve the realisation of their economic and social rights, and their involvement in decisions which impact on their human rights. UN CERD Concluding Observations on the United Kingdom, September 2011, para 27, UN Doc. CERD/C/GBR/CO/18-20.

⁸⁴ *Good Relations between Settle Communities and Gypsies/Travellers, a strategy prepared by Aberdeen and Aberdeenshire Gypsy/Traveller Issues Working Party*, March 2011.