The Scottish Human Rights Commission was established by The Scottish Commission for Human Rights Act 2006, and formed in 2008. The Commission is a public body and is entirely independent in the exercise of our functions. The Commission has a general duty to promote human rights and a series of specific powers to protect human rights for everyone in Scotland. We are a national human rights institution, established according to the UN Paris Principles, one of over 80 in the world and three in the UK, along with the Northern Ireland Human Rights Commission and the Equality and Human Rights Commission.

I. Introduction

The Scottish Human Rights Commission (the Commission) welcomes the purpose of the PSR Bill, which is to "help simplify and improve the landscape of Scottish public bodies, to deliver more effective, co-ordinated government that can better achieve its core functions for the benefit of the people of Scotland." This purpose links closely with one of the strategic priorities of the Commission which is to use human rights based approaches to increase the ability and accountability of Scottish public bodies with responsibility for fulfilling rights. The Commission will be doing this at the local as well as the national level. The use of a human rights based approach ensures that better decisions are made and public bodies function more effectively.

II. Legal Framework

- The Scottish Commission for Human Rights Act 2006

III. Comments

The Commission intends to restrict its comments to Part 2 of the PSR Bill, which proposes new order-making powers for Scottish Ministers with respect to those bodies set out in Schedule 3. The Commission considers that including SPCB within the Schedule 3 of the PSR Bill may contradict the strengthened role of SPCB, as it has been highlighted by the Official Report, Scottish Parliament Review of SPCB Supported Bodies Committee, Tuesday 9 December 2008 (please see below).

While the Scottish Human Rights Commission welcomes the purpose of the Public Services Reform (Scotland) Bill (PSR Bill), we are concerned that bodies such The Commission which have their independence from the Scottish Government protected by statute are included within the scope of the PSR Bill. It is important...
that the public remains confident that the Commission operates without direct influence or control of Ministers.

The Commission was established by Act of the Scottish Parliament in 2006. In creating the Commission the Scottish Parliament followed the best practice for the creation of a National Human Rights Institution set out in the United Nations Principles relating to the status of national institutions - the “Paris Principles”.

In order to be recognised internationally as a legitimate National Human Rights Institution, the Commission will be evaluated according to the Paris Principles. The Commission may also be re-evaluated if a change in the legislative framework affects independence from Government in the future.

The Paris Principles provide that a National Human Rights Institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text. In June 2009 interpretive guidance was issued for bodies wishing to be accredited at compliant with the Paris Principles. This guidance provides that creation by an instrument of the Executive is not adequate to ensure permanency and independence.

The Paris Principle place a great deal of weight on independence. The Scottish Commission for Human Rights Act 2006 guarantees the Commission’s independence, setting out that the Commission in the exercise of its functions, is not subject to the direction of the Scottish Parliament or the Scottish Executive. The accountability mechanisms built into the Act provide for direct accountability to the Scottish Parliament. The complete independence from the Scottish Government provided for by the Act is the best way to ensure the Commission can fulfil its function as a National Human Rights Institution. The Commission has recently applied for accreditation as compliant with the Paris Principles to the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC) Secretariat at the Office of the United Nations High Commissioner for Human Rights (OHCHR).

The delegation of authority to Scottish Ministers of order-making powers that could fundamentally change the Commission would undermine this independence and may affect the Commission’s application for accreditation, including voting in the ICC and participation rights before the United Nations Human Rights Council.

Section 10(1) of the PSR Bill confers order-making powers on Scottish Ministers which would allow them to make changes to public bodies in the pursuit of ‘effectiveness, efficiency and economy’. Provisions include modifying, conferring, abolishing, transferring, or providing for the delegation of any function or amending

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3 Paragraph 3, Schedule 1 to the Scottish Commission for Human Rights Act 2006
the constitution of, or abolishing, a person, body or office-holder listed in schedule 3.

The Scottish Government sets out that the reason for seeking this power in the Delegated Powers Memorandum:

“14…public functions and responsibilities are sometimes for historical reasons enshrined in legislation or established by royal prerogative in the case of chartered bodies. If primary legislation is needed, this makes any change not only dependent on the legislative process but also on finding legislative time which may not be possible or may be subject to a wait of years.” (emphasis added)

While an order could only be made subject to the approval of Parliament, the stated purpose of this provision is to reduce the amount of Parliamentary scrutiny on future changes.

The wide scope of the powers delegated to Scottish Ministers under section 10 may be appropriate for bodies that are accountable to Scottish Ministers, but they are not appropriate for bodies which have their independence from Scottish Ministers protected by statute. They are particularly inappropriate for our Commission which secures its legitimacy not only from the Act of the Scottish Parliament which created it, but also from its international accreditation and place within the UN human rights system.

The Scottish Government has stated that it currently has no intention of bringing forward any order in relation to the Commission. The Scottish Government has also referred to the preconditions under section 12, requirement for consultation under section 20 and 21 and for explanatory documents under section 22 as possible safeguards. However, the delegation of powers to Scottish Ministers would in itself undermine the independence of the Commission.

Subordinate legislation is necessary for some technical matters in relation to the Commission. For example the Scottish Commission for Human Rights Act 2006 provides for Her Majesty by Order in Council to add additional international instruments to the scope of the Commission’s inquiry functions. However, the proposed order-making power in the PSR Bill is so broad in scope that it would allow Scottish Ministers to bring forward an order modifying or abolishing the Commission.

The Cabinet Secretary for Finance and Sustainable Growth gave evidence to the Review of SPCB Supported Bodies Committee on 7 December 2008:

“The clear distinction between the powers of the Executive and the Parliament must be properly recognised in meeting the essential requirement of ensuring that public concerns are properly and dispassionately considered, free of any relationship with the Government. That point of principle helps us to understand the distinction between those parts of the scrutiny process that are properly the
preserve of the Government to change and those that are more appropriately the preserve of the Parliament. The distinction is clear."\(^4\)

The RSSB Committee recognised the need to remain compliant with the Paris Principles throughout the inquiry.\(^5\) The Scottish Parliament debate the RSSB Committee report on 18 June 2009 and agreed the proposal for a Committee Bill to take forward the recommendations of the report.

IV. Conclusion

The Commission considers that it would be appropriate that SPCB Bodies, and specifically The Scottish Human Rights Commission to be removed from the list of bodies set out in Schedule 3 to the PSR Bill, and for any necessary modifications to the Scottish Commission for Human Rights Act 2006 to be made through the forthcoming RSSB Committee Bill or through subsequent primary legislation.

V. Supporting Evidence


\(^5\) Paragraph 224, 1st Report 2009 (Session 3), Review of SPCB Supported Bodies Committee (SP Paper 266)