

# The Royal Society of Edinburgh

## Scottish Commissioner for Human Rights Bill

1. The Royal Society of Edinburgh (RSE) is pleased to respond to the . The General Secretary, Professor Gavin McCrone, and the Policy Officer, Dr Marc Rands have compiled this response, with the assistance of a number of Fellows with expertise in this area.

### ***Do you think a Scottish Commissioner for Human Rights should be established?***

2. The RSE believes there is a sufficient case made for Scotland to have a Scottish Commissioner for Human Rights. Implementation of the Convention on Human Rights will require more than the procedural safeguards provided by the Parliament and the judiciary, because many human rights issues will not arise as matters that will come directly within the specific jurisdiction of these bodies. In addition, the aspiration that respect for human rights will become a central part of the conduct of all bodies responsible for their endorsement will be more likely to be achieved where the focus is on prevention of breach rather than on remedying existing breaches.
3. Much will turn on the personality of the Commissioner. At present, all that is known is that the Scottish Commissioner is to be appointed on the nomination of the Scottish Parliament: clause 1(2). The explanatory notes refer at p15, para 110, to advertising costs. But we are not given any information about the qualifications that the holder of this office should have.

### ***What would such a body add to existing mechanisms for protecting human rights in Scotland?***

4. While other bodies exist which address some aspects of human rights, a lack of cohesion may result from this fragmentation and, therefore, a body whose sole concern is with human rights might best serve these issues. In addition, given the differences between Scotland and the rest of the UK, which underlay the arguments for devolution, it must be conceded that there are legal, educational and social characteristics in Scotland which may require separate and specialist consideration.
5. One area of value proposed will be giving the Commissioner power to intervene in proceedings before a court: clause 11. A weakness of the current system of public law in Scotland is the inability of bodies with practical experience in human rights issues to intervene in proceedings in the Scottish courts. The English courts, especially at the appellate level, are much more liberal in giving permission to such parties to intervene. Cases have occurred where a party who would clearly be given leave in England, has been refused leave in Scotland because of the Scottish rule that an intervener has to demonstrate a title to do this as well as an interest in the outcome of the case- a test which it is almost impossible for these bodies to satisfy.

### ***How should the Commissioner be accountable?***

6. The Human Rights Commission should be accountable to the Scottish Parliament. It is fundamental, however, that the Commissioner should be independent of the Scottish Parliament and Executive. This is particularly important if the Commission is to monitor Scotland's compliance with international instruments.
7. At present, there is no statement on the face of the Bill that the Commissioner is an independent officer and is not subject to direction or control by the Scottish Ministers. We suggest that, at the very least, a declaration of the Commissioner's independence should be in the Bill.

### ***Do you have any views on the proposed remit for the Commissioner?***

8. The suggestion that the remit be restricted to civil proceedings only is too narrow. Most of the human rights issues that have come to the attention of the courts in Scotland have been in the context of devolution-issues as defined in para 1 of Schedule 6 to the Scotland Act 1998. They have occurred for the most part in criminal cases and from time to time the issues raised are quite far reaching. While we would not extend the Commissioner's power to intervene to the trial courts, there would be an advantage in giving the Commissioner the power to seek to intervene in criminal cases at the appellate level in the high Court of Justiciary and especially in the Judicial Council of the Privy Council (JCPC). Jurisdiction in devolution matters, both civil and criminal, is to be transferred to the UK Supreme Court when it is set up, probably in October 2008. Unless there is power to do this the Scottish Commissioner will be unable to even to seek leave to intervene, although the Northern Irish counterpart can do so. And the JCPC/Supreme Court will

think it odd if the Commissioner's power of intervention in civil devolution cases is not also available in criminal devolution cases.

***Additional Information***

9. In responding to this consultation the Society would like to draw attention to the following Royal Society of Edinburgh publications which are of relevance to this subject: Protecting our Rights: A Human Rights Commission for Scotland and Preparing an Animal Health and Welfare Strategy for Great Britain (July 2001); The Public Appointments (Parliamentary Approval)(Scotland) Bill (November 2001) and The Scottish Human Rights Commission (July 2003). Copies of this response and of the above publications are available from the Policy Officer, Dr Marc Rands (email: [evidenceadvice@royalsoced.org.uk](mailto:evidenceadvice@royalsoced.org.uk)) or from the RSE web site: [www.royalsoced.org.uk](http://www.royalsoced.org.uk).

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