

Scottish Commissioner for Human Rights Bill
Evidence from the Scottish Council of Jewish Communities

Q1. Do you think a Scottish Commissioner for Human Rights should be established? If so, why? If not, why not?

Q2. What would such a body add to existing mechanisms for protecting human rights in Scotland?

The Scottish Council of Jewish Communities supports the establishment of the post of Scottish Commissioner for Human Rights.

The importance of Human Rights and in particular ECHR compliance, is enshrined in the Scotland Act and this strong message would be emphasised by the establishment of a Commissioner for Human Rights. Legislation is not merely about criminalising particular activities; it is also a means by which a society indicates its standards and ideals, and signposts its aspirations. The establishment of a Scottish Commissioner for Human Rights would be a clear statement of the Scottish Executive's and the Scottish Parliament's intentions in this regard.

Q3. How should the Commissioner be accountable?

It is important that there should be complete transparency with regard to the Commissioner's activities. We believe that this will be partially achieved by the proposed reporting procedures, namely the requirement to publish an annual report, which is also laid before the Parliament and which may be the subject of debate. However, in order to achieve full transparency we suggest that there should be a requirement for the Commissioner to respond to questioning by MSPs in open Committee. In our view this could provide evidence not only of the activities undertaken by the Commissioner, but also of the manner in which those activities had been carried out.

Q4. Do you think that the proposed funding of £1 million per annum will be adequate given the proposed remit of the Commissioner?

We do not have a view as to an appropriate figure, but wish to emphasise the need for the Scottish Commissioner for Human Rights to receive adequate funding if he or she is to be able to act effectively.

Q5. What lessons might be learned from other Commissioners/Ombudsmen set up under the auspices of the Scottish Parliament/Scottish Executive?

We do not have direct experience of other Commissioners or Ombudsmen set up under the auspices of the Scottish Parliament or Executive. We do, however, suggest that it would be preferable to establish a Commission rather than a Commissioner. Each of the three existing UK Equality Commissions has a committee of Commissioners with a supporting staff and we suggest that this

structure is better able to reflect a range of interests than a single Commissioner is able to do. The Policy Memorandum points out (section 8) that all previous discussion and consultation has referred to the creation of a Human Rights Commission, and we would prefer the Bill to revert to this original intention.

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

We believe that the establishment of two new commissions could lead to both duplication and omission. To avoid dispute, the remit of the Scottish Commissioner for Human Rights and that of the Commission for Equalities and Human Rights should be defined in terms of the responsibilities of the Scottish and UK Parliaments with regard to devolved and reserved issues. We agree that there is a “need to ensure that the CEHR and SCHR will work closely together” (Policy Memorandum section 11) and are concerned that there is no reference to the Scottish Commissioner for Human Rights entering into a memorandum of understanding parallel to that included in the CEHR proposals.

We are also concerned that the proposed Scottish Commissioner will not have any remit for Equalities. In our view there is a potential for conflict between Equalities and Human Rights (as, for example, when an individual person believes his/her rights are being overridden by the rights of the group) and we are particularly concerned that this conflict would be between reserved (Equalities) and devolved (Human Rights) issues, resulting in possible conflict between the CEHR and the Scottish Commissioner for Human Rights.

We expect that the CEHR would have a remit in settling such conflicts, and suggest that this should also be the case for the Scottish Commissioner. Although Equalities are reserved, the encouragement of Equalities is devolved, and it would, therefore, be appropriate for the Bill to establish a Scottish Commissioner for Equalities and Human Rights rather than for Human Rights alone.

Summary

The Scottish Council of Jewish Communities is in agreement with the establishment of a Scottish Commissioner for Human Rights, and supports the intention thus indicated to further enshrine Human Rights in the fabric of Scottish Society. We would, however, caution that the Commissioner’s relationship with the CEHR should be clearly laid out in advance of either body being set up in order to avoid conflict between them and confusion as to the remit of each, to ensure that there is no unnecessary duplication of activities and to prevent the possibility that some important areas might slip through the net entirely.

Note: The Scottish Council of Jewish Communities is the representative body of all the Jewish communities in Scotland comprising Glasgow, Edinburgh, Aberdeen and Dundee as well as the more loosely linked groups of the Jewish Network of Argyll and the Highlands, and of students studying in Scottish Universities and Colleges.