



INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Scottish Government
Response to List of Issues
January 2015

Constitutional and legal framework within which the Covenant is implemented (Art. 2)

1. **With reference to the Committee's previous recommendations (CCPR/C/GBR/CO/6, para. 6), please provide information on measures taken to give effect to all Covenant rights not covered by the Human Rights Act 1998 in the domestic legal order, and indicate what Covenant articles are specifically protected by law in Scotland. Please also provide information on plans to repeal the Human Rights Act 1998 and adopt a new UK Bill of Rights, and on measures taken to ensure that any new such legislation would incorporate all Covenant rights into domestic law and provide protection of those rights across all jurisdictions.** (List of Issues, no. 2)

2. The Scottish Government has sought to reflect the principles set out in relevant treaties, including the Covenant, through law and policy wherever possible, and to act in ways that give effect to international obligations, and not to act in ways that are incompatible with those obligations. Work being taken forward under Scotland's National Action Plan for Human Rights¹ (launched December 2013) seeks to develop and extend the existing constructive dialogue between government and civil society in Scotland to further give effect to international human rights treaties in general. Further examination of the measures taken to give effect to rights under the Covenant, where these are not already covered by the Human Rights Act 1998, will feature in that work.

3. On proposed repeal of the Human Rights Act 1998, the Scottish Government understands that the plans referred to are not UK Government policy. We are strongly opposed to any attempt by a future UK Government to repeal the Human Rights Act or withdraw from the European Convention on Human Rights. Repeal of the Human Rights Act extending to Scotland would require the consent of the Scottish Parliament under the Sewel Convention, and we would invite the Parliament to refuse such consent. On 11 November 2014, the Scottish Parliament passed a motion supporting the Human Rights Act.

Non-discrimination, equality between men and women, prohibition of advocacy of national, racial or religious hatred and minority rights (Arts. 2, 3, 20, 26 and 27)

4. **Please indicate what measures are being taken to effectively combat racial and religious hatred and negative stereotyping of ethnic, religious or other minorities in the UK media, affecting mainly Muslims and persons of African descent, particularly migrant and asylum seekers. Please also report on measures taken to address racism on the internet and in sports, as well as racist bullying and name-calling in schools. Please provide information on the number of racist hate crimes reported to the police and the ensuing investigations and convictions.** (List of Issues, no. 5)

5. The Scottish Government values diverse ethnic communities, the contribution they make and the important role they play in enriching Scotland socially, culturally and economically. We have taken a range of measures to deliver race equality and better outcomes for Scotland's minority ethnic and faith communities. Working in

¹ <http://scottishhumanrights.com/actionplan>

partnership with stakeholders, officials have held a series of discussions over the last year on what might form a new approach to race equality in Scotland. These have highlighted a number of priority areas where further dialogue will take place in 2015.

6. In December 2013 the Scottish Government published its refugee strategy, *New Scots: Integrating Refugees in Scotland's Communities*,² which was developed in partnership with the Convention of Scottish Local Authorities (COSLA) and the Scottish Refugee Council. Between 2014 and 2017 the strategy provides a clear framework for implementation for all those working towards refugee integration in Scotland, including that asylum seekers arriving in Scotland receive the support they require during the asylum process, to fully understand their rights and entitlements, and to access services and legal support. The Scottish Government maintains that refugees and asylum seekers should be integrated from day one, and not just when leave to remain has been granted. Funding of £2.81 million is currently being provided between 2012 and 2015 to several organisations working with refugees and asylum seekers, including third sector organisations that provide advice on rights and entitlements.

7. In July 2014 the Scottish Government launched the 'One Scotland' campaign, promoting equality for all in Scotland and celebrating Scotland's diversity. The overarching campaign asserts that Scotland believes in equality, regardless of age, disability, gender, gender identity, race, religion/belief, or sexual orientation. The initial phase of the campaign, which launched the website onescotland.org, coincided with the Glasgow 2014 Commonwealth Games. In November 2014 the campaign focused on highlighting the contribution people from LGBTI and minority ethnic communities make to Scotland, as well as celebrating the progress Scotland has made in the promotion of equal rights and opportunities. It also reflects that, while Scottish people are strongly committed to equality, there is still work to be done to ensure equality for all. The campaign includes radio and press advertising, partnership work, PR and social media.

8. Hate crime statistics show that in 2012-13 police recorded 4,628 racist incidents in Scotland (14% decrease on 2011-12 (5,389)).³ There has been a general downward trend since 2006-7, though the 2011-12 figure was comparatively high, possibly due to increased awareness and reporting of racist incidents following several incidents which received significant media attention during the year. In 2012-13, 96% of racist incidents recorded by the police resulted in one or more crimes being recorded - a total of 5,228 (19% decrease on 2011-12 (6,472)). There was a 71% clear up rate on crimes recorded as part of a racist incident (3% higher than 2011-12, and the highest rate since racist incidents data collection started in 2004-05). According to the Crown Office and Procurator Fiscal Service (COPFS) report *Hate Crime in Scotland, 2012-13*,⁴ 4,012 charges relating to race crime were reported (12% decrease on 2011-12 and the lowest since 2003-4). 91% of charges reported led to court proceedings (including those incorporated into other charges for the same accused), and no action was taken in respect of 5% of charges.

² <http://www.scotland.gov.uk/Publications/2013/12/4581>

³ <http://www.scotland.gov.uk/Publications/2013/12/4535>

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http://www.copfs.gov.uk/images/Documents/Equality_Diversity/Hate%20Crime%20in%20Scotland%202012-13.pdf

Corresponding figures for 2013-14⁵ indicate that 4,148 charges relating to race crime were reported in that year (3% increase on 2012-13, though the second lowest since 2003-4). In total, 93% of charges reported in 2013-14 led to court proceedings (including those incorporated into other charges for the same accused), and no action was taken in respect of 3% of charges. In relation to convictions, in 2012-13 there were 998 offences with a charge proved with a racial aggravator recorded in terms of section 96 of the Crime and Disorder Act 1998 (an increase of 50 on 2011-12).⁶ However, as these figures do not include offences prosecuted under other pieces of legislation related to racist hate crimes, they do not represent all charges proved for racially aggravated harassment or behaviour.

9. Please provide information on measures taken: (a) to combat caste-based discrimination and indicate whether there has been any progress in adopting legislation outlawing such discrimination; (b) to increase the representation of ethnic minorities in civil service and in the judiciary. Please report on measures taken to address the social stigma and discrimination against Gypsies/Roma and Traveller communities, to provide them with adequate, secure and culturally appropriate sites and housing, with access to employment, health care and education on an equal footing with others and to ensure adequate safeguards against evictions. (List of Issues, no. 6)

10. The Scottish Government is committed to equality, and is working to eliminate unlawful discrimination and advance equality of opportunity across the breadth of its responsibilities. Legislation to prevent discrimination, including caste-based discrimination, is the responsibility of the UK Parliament and UK Government.

11. See also paragraph 22. The Judicial Appointments Board for Scotland has a statutory duty to appoint on merit and does not operate any positive discrimination in order to increase the representation of underrepresented groups in the judiciary. However, in carrying out its functions, the Board must have regard to the need to encourage diversity in the range of individuals available for selection to be recommended for appointment to a judicial office. The Board has an outreach and diversity policy and, in its advertising, encourages and welcomes applications from the widest possible range of eligible individuals. The three protected characteristics⁷ of gender, ethnicity and disability are closely monitored by the Board. The numbers of applicants from ethnic minority groups are very small. The Justice Board⁸ Equality & Diversity Subgroup includes the Crown Office and Procurator Fiscal Service, Police Scotland, the Law Society of Scotland, the Scottish Prison Service (SPS), the Scottish Court Service, the Scottish Legal Aid Board and the Justice Directorate. The Subgroup is taking forward the following six work streams to tackle under-representation in the justice sector at senior level across all protected characteristics, including women and ethnic minority groups:

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http://www.copfs.gov.uk/images/Documents/Equality_Diversity/Hate%20Crime%20in%20Scotland%202013-14.pdf

⁶<http://www.scotland.gov.uk/Topics/Statistics/Browse/Crime-Justice/Datasets/DatasetsCrimProc/crimprocaggrav2012-13>

⁷ Equality Act 2010, section 4 (protected characteristics)

⁸ <http://www.buildingsafercommunities.co.uk/justice-board.html>

- Mentoring aimed at the development of staff
- Cross justice staff network groups to build confidence and provide support and role models
- Staff focus groups to establish the barriers to progression and development
- Unconscious bias training programme
- Future workforce programme to encourage school pupils to consider a career in justice
- Specialist consultation to obtain expert advice on further steps to take

Five workshops were held in October and November 2014, engaging 29 external organisations representing women, LGBT people, people with disabilities young people and BME people. Results will be published in February 2015 for justice organisations to consider and take forward. As a direct result of the workshops, SPS is currently exploring partnership working with BEMIS to undertake sustained and meaningful action to increase the representation of ethnic minorities in their organisation.

12. The Scottish Government recognises that Gypsy/Traveller communities are among the most disenfranchised and discriminated against in Scotland. We make it very clear that we recognise Gypsy/Travellers as a distinct ethnic group and encourage others to do the same - there is no place for any form of racist prejudice or discrimination in modern Scotland and it will not be tolerated. We are working to develop an overarching strategy and action plan for Gypsy/Travellers, for publication in 2015; this is being overseen by a group of key stakeholders (Gypsy/Traveller Strategy Development Group), which includes members of the Gypsy/Traveller community. The overarching strategy and action plan will draw on the recommendations of the Scottish Parliament's Equal Opportunities Committee reports on *Gypsy/Travellers and Care* and *Where Gypsy/Travellers Live*. It will also take account of the ongoing work of the Gypsy/Traveller Site Working Group and the Scottish Traveller Education Review Group.

13. **Please also explain whether an evaluation of the stop and search powers, particularly non-statutory searches on a large scale by Police Scotland has been carried out with a view to ensuring their compliance with the Covenant, and report on measures to improve targeting, proportionality, training of law enforcement officers, data gathering, transparency and consent.** (List of Issues, no. 8)

14. Stop and Search is one of a range of tactics used by Police Scotland to keep Scotland's streets safe and, used proportionately and appropriately, is an effective tool. Police Scotland is committed to complying with the requirements set out by legislation including the Police and Fire Reform (Scotland) Act 2012, the Human Rights Act 1998, the Equality Act 2010, and also the Code of Ethics and Police Values⁹ - stop and Search must be carried out with integrity, fairness and respect. The Scottish Government welcomes the fact that Police Scotland is undertaking a number of initiatives to improve stop and search processes and data recording, and is actively engaging with stakeholders. We are clear that there should be proportionate and effective scrutiny and challenge by the relevant bodies where

⁹ <http://www.scotland.police.uk/about-us/code-of-ethics-for-policing-in-scotland/>

issues of public interest are concerned, and we have welcomed the work being carried out by the Scottish Police Authority and Her Majesty's Inspectorate of Constabulary in Scotland, who are playing a key role in ensuring that stop and search processes are subject to the appropriate oversight.

15. Integrity, Fairness and Respect are central to Police Scotland's Professional Ethics and Values. Police Scotland training has been reviewed to ensure that human rights, organisational values and the Code of Ethics must be considered in the design specification of every course. New recruits receive training on the ethics and values, as well as on both the European Convention on Human Rights and the Human Rights Act 1998. In addition, all police officers are required to make the 'Declaration of Constable', which includes a commitment to uphold fundamental human rights. These principles have been incorporated into central functions, such as Standard Operating Procedures and Operational Orders, and the personal development review process has been revised to ensure that the values and code of ethics are central tenets for development and progression. A presentation on the code of ethics and values, which includes the protection of human rights, has been delivered to senior management teams for cascading to all police officers and staff, and all staff have been sent a pocket guide on the values, code of ethics and the National Decision-Making Model. Police Scotland is committed to working together with our partners in Scotland's National Action Plan for Human Rights to ensure this remains at the forefront of our work and training.

16. In relation to stop and search, Probationer Constables are trained to Level One of the National Search Learning Programme. Eight hours of theory and practical training are allocated to searching people, and cover the three principles of stop and search (public trust and confidence, legality, and effectiveness of the search), officer and public safety, human rights considerations and dignity of the searched person. It also includes information on the four levels of search, from "initial" to "intimate", as well as the appropriate procedure for, and use of, consensual searches. The police powers to search people are explained and taught in relation to both Common Law and Statute, and guidance is given on considerations which may give rise to "reasonable cause to suspect" it to be appropriate to search an individual. Officers are advised that, where such circumstances arise, they are personally responsible for justifying any searches they undertake. During training, officers observe a demonstration of a search, and are themselves observed carrying out a search so that instructors can provide additional advice and information, to ensure that officers are competent in the practical elements of searching and have the appropriate levels of knowledge concerning their powers when considering searching a person. Furthermore, all officers have access to an online Stop Search toolkit.

17. Please report on measures taken: (a) to increase the representation of women in civil service and in the judiciary, including in decision-making positions; (b) to eliminate the wage gap between men and women. (List of Issues, no. 9)

18. The Women's Employment Summit in 2012 aimed to help women achieve their full potential in the Scottish labour market, and we are continuing to implement its actions through the Strategic Group on Women and Work and the Cross-

Government Group on Occupational Segregation. Affordable, high-quality childcare continues to be an economic priority and, from August 2014, the Scottish Government has increased the amount and flexibility of funded Early Learning and Childcare from 475 to a minimum of 600 hours per year for 3-4 year olds, and extended provision to 15% of Scotland's most vulnerable and disadvantaged 2 year olds (increasing to 27% from August 2015). More than 120,000 are set to benefit over this school year. Women tend to work in low pay sectors, and we are doubling funding for Living Wage Accreditation,¹⁰ providing an additional £200,000 to the Poverty Alliance to increase from 70 to at least 150 the number of accredited living wage employers in Scotland. The Fair Work Convention, which is designed to encourage dialogue between unions, employers public sector bodies and government, will develop, promote and sustain a fair employment framework for Scotland, including through providing evidence-based recommendations on minimum wage rates and policies that help as many low-paid workers as possible and contribute to increased sustainable economic growth.

19. We are continuing to take action on Occupational Segregation. Our £250,000 funding (over two years) of the CareerWise initiative started in April 2013 and aims to encourage more young women to consider careers in the fields of science, technology and engineering. The Scottish Funding Council will work with higher and further education institutions to find ways of addressing gender segregation issues in course participation and improve the gender balance on governing bodies. In June 2014, the Commission for Developing Young Scotland's Workforce,¹¹ recommended measures to strengthen vocational education opportunities, and to improve the participation of women and those from ethnic minorities in areas where they are currently underrepresented; an implementation plan was published on 15 December 2014. The Scottish Government provides £601,000 to Equate Scotland (2012-15) to support the recruitment, retention, return and success of women where they are significantly under-represented, and £615,000 to Close the Gap (2012-15) to change employment practices and workplace cultures to support gender equality and tackle the pay gap.

20. The Scottish Government has reaffirmed its commitment to tackling inequalities and the First Minister has made addressing gender inequality one of her main goals. The Cabinet is gender balanced and *One Scotland - Programme for Government 2014-15*¹² (published 26 November 2014) includes a commitment to encourage the public, third and private sectors to set a voluntary target for gender balance on their boards of 50:50 by 2020. The Smith Commission on strengthening the Scottish Parliament considered Scottish Government proposals on additional legislative powers to enact quotas, and the Commission's final report stated that new powers for the Scottish Parliament should include, but not be limited to, the introduction of gender quotas in respect of public bodies in Scotland. If such powers are conferred, the Scottish Government will work towards the introduction of such quotas as a matter of priority.

¹⁰ <http://scottishlivingwage.org/>

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<http://www.scotland.gov.uk/Topics/Education/edandtrainingforyoungple/commissiondevelopingscotland/youngworkforce>

¹² <http://www.scotland.gov.uk/Publications/2014/11/6336>

21. Currently, equal pay legislation is reserved to the UK Government. The Scottish Government's submission to the Smith Commission proposed that employment and employability policy, including responsibility for setting the minimum wage, and all employability programmes, should be devolved, along with equal opportunities and equality policy. This would have allowed the Scottish Government to take more action to tackle the pay gap, including a review of the costs and benefits of mandatory equal pay audits. However, the Commission's final report concluded that the National Minimum Wage and the Equality Act 2010 would remain reserved. Our public sector pay policies continue to require public bodies to ensure that pay is fair and non-discriminatory, and support work to raise awareness and encourage action by employees and employers to tackle the causes of pay inequality and to close that gap.

22. In this time of limited recruitment opportunities we have restricted our work on promoting the Scottish Government as an employer; nevertheless we remain committed to increasing the diversity of staff within the organisation. We develop all our staff, ignoring all irrelevant differences in their management and development; and we make full use of their different perspectives and skills in our work. This is reflected throughout our resourcing, promotion and development opportunities, and we actively seek applications from women, ethnic minorities and people with disabilities. We ran a very successful 'Women on Board; Quality through Diversity' event, looking at the issues facing women reaching the highest levels in employment and on boards. We recently set up the Public Boards and Corporate Diversity Programme Board¹³ to look at how we can change the shape of our Public Bodies and the Scottish Government as an employer. Initial efforts will concentrate on women but will evolve to cover all protected characteristics. Our on-going actions from this board include:

- Staff networks help us understand the issues underrepresented groups face, and we have appointed champions at senior civil service level to support and work with each network to identify future direction and strategy
- Developing a plan for a more representative workforce by 2025
- Monitoring and reviewing promotion and progression opportunities to ensure they are fair and transparent, including a full diversity analysis of our 2014 promotion exercise
- Reviewing and updating monitoring categories on our HR electronic information system to reflect revised census categories
- Undertaking targeted monitoring to address gaps in our existing information
- Working with our diversity networks and trade unions to increase understanding and confidence in employee monitoring, and to ensure that staff have a supportive and inclusive environment where they feel safe and respected
- Initial stages of work on the diversity of our Band C and Senior Civil Service (SCS) staffing are now in planning and will concentrate on how we improve the diversity of the organisation at senior levels

The Scottish Government has an on-going commitment to nurture talent and evaluate our processes to improve upon our equality outcomes. We have consulted

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with other organisations to learn about how they nurture talent in a way that meets diverse needs, and we are working with internal and external diversity networks to identify how best to attract people with protected characteristics to our Graduate Development Programme, Realising Potential Programme and Graduate Internship schemes. Our evaluation of phase one of the Realising Potential Programme, including the recruitment process, will inform our efforts to increase participation of underrepresented groups as part of phase 2. We do not permit all male panels or boards, to ensure that women are represented fully during our recruitment, resourcing and promotion opportunities, including at SCS level. We support Civil Service schemes that target ethnic minority groups, women, people with disabilities and LGBTI staff. We also have a mentoring scheme with strands specifically targeted at people with disabilities, ethnic minority groups and LGBTI staff - we have tasked all senior civil servants with mentoring at least one member of staff.

23. See also paragraph 11. The number of women in the Judiciary has increased since 1998 when there was only one female judge and twelve female sheriffs within the ranks of the full-time Judiciary. By 2002, the numbers had almost doubled and since 2002 there has been a significant increase in the percentage of female senators (9% to 26 %), however there is still work to be done in other areas.

Violence against women, including domestic violence (Arts. 2, 3, 7, and 26)

24. **Please report on measures taken, and the impact thereof, to address violence against women, inter alia black and ethnic minority women, including domestic violence and rape, in particular in the United Kingdom and Bermuda, and to ensure that such acts are effectively investigated, perpetrators are prosecuted and appropriately sanctioned and victims have access to adequate remedies.** (List of Issues, no. 10)

25. Reducing and eventually eradicating violence against women is a top priority for the Scottish Government and we have committed £34.5 million in total for the period 2012-15. We continue to work closely with key partners such as Police Scotland, Local Authorities, NHS Boards and voluntary sector organisations to ensure that perpetrators are held to account, and that victims and their children have the services they require. In June 2014, the Scottish Government published *Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls*,¹⁴ which will be a cornerstone of our work to tackle violence against women going forward. The Scottish Government has also committed to consulting in early 2015 on a new specific offence of domestic abuse to better reflect the experience of victims, and we have further committed to bringing forward legislation to tackle the malicious distribution of explicit images without consent, sometimes referred to as 'Revenge Porn'. We have also supported Police Scotland in developing their pilot Disclosure Scheme for Domestic Abuse, which was launched on 25 November 2014.

¹⁴ <http://www.scotland.gov.uk/Publications/2014/06/7483>

Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment (Arts. 2, 6, 7, 9, 10 and 16)

26. **Please indicate the measures taken (a) to address the suicide rates, particularly the high suicide rates in Scotland, and suicides in prisons; (b) to prevent deaths at the hands of police and deaths in custody in Scotland; (c) to ensure that cases of death in mental health settings are effectively and independently investigated.** (List of Issues, no. 12)

27. The suicide rate in Scotland fell by 19% during the period covered by the Scottish Government's *Choose Life* Strategy (2002 to 2013). The Strategy involved collaboration between a number of partners; suicide prevention awareness training in NHS frontline services and other sectors; measures to raise public awareness of suicide and its prevention (including work to address stigma relating to suicide); the introduction of local suicide prevention plans in all 32 local authority areas; and the systematic gathering of evidence about factors which can be related to suicide. We have also developed work to tackle problem drinking through alcohol brief interventions (ABIs); to increase access to treatment for depression in primary care settings; to improve access to psychological therapies; and to raise awareness of appropriate sources of support for people experiencing depression or anxiety, including GPs and telephone helplines such as Samaritans and Breathing Space. The Scottish Government's Suicide Prevention Strategy 2013-16¹⁵ (published 3 December 2013) focuses on five themes of work in communities and services, with 11 specific commitments aimed at delivering better outcomes for people who are suicidal and who come to services, for their families and carers, and for those not in contact with services, and also to improve our knowledge of what works in this field. The key themes are: responding to people in distress; talking about suicide; improving the NHS response to suicide; developing the evidence base; and supporting change and improvement. A Suicide Prevention Strategy Implementation Group, led by the Scottish Government and involving a range of stakeholders, is providing governance for this evidence-led strategy.

28. All deaths in custody are initially investigated by the police and then the Scottish Prison Service (SPS) carries out a review to determine if there were any lessons to be learned or actions to be taken. Fatal Accident Inquiries (FAI) are mandatory for deaths that occur in legal custody, though the Lord Advocate is permitted to waive the necessity of holding an FAI if he considers that the circumstances of the death have been adequately investigated during criminal proceedings. A team of senior SPS personnel with subject matter expertise, supported by representatives from the NHS, is currently reviewing the 2005 Suicide Risk Management Strategy. The reasons for the review are the transfer of responsibility and accountability for provision of health services to prisoners from the SPS to NHS Health Boards in 2011; recommendations from recent FAIs; and findings from SPS Audit & Assurance Services.

29. Healthcare services in custody are provided by NHS Scotland. Police Scotland attaches great importance to the care and welfare of people in police custody. As with all other deaths of which they are informed, the police are required

¹⁵ <http://www.scotland.gov.uk/Publications/2013/12/7616>

to investigate the death and report the circumstances to the relevant procurator fiscal. All deaths in police custody are subject to an inquiry.

30. An analysis of responses to the Scottish Government's proposals for modernising the legislation on fatal accident inquiries was published on 21 November 2014.¹⁶ 74% of respondents agreed that independent investigations into the deaths of persons subject to compulsory detention by a public authority should continue to be conducted by the Procurator Fiscal, and that the Lord Advocate should exercise discretion as to whether a fatal accident inquiry should be held.

31. Please provide information on safeguards in place against the misuse of electro-shock weapons (Tasers) by law enforcement officers in England and Wales and in Scotland should these continue to be used or rolled out there.
(List of Issues, no. 15)

32. There is a wide range of scrutiny measures and oversight arrangements in place to hold the Chief Constable of Police Scotland to account for the actions that he takes and the decisions that he makes. These checks and balances include oversight by the Scottish Police Authority (SPA), which reports annually to the Scottish Parliament, Her Majesty's Inspectorate of Constabulary in Scotland (HMICS), the Police and Investigations Review Commissioner (PIRC) and the Parliament's Justice Sub-Committee on Policing. The SPA and HMICS are currently playing a key role in reviewing Police Scotland's use of armed police. The Chief Constable is required to report any incident where any person serving with Police Scotland has used a firearm to the PIRC. The PIRC will then carry out an independent assessment and decide if a full investigation is required, making recommendations as necessary.

33. Please report on measures taken to ensure independent, impartial, thorough and effective investigations into serious allegations of torture and ill-treatment, arbitrary detentions, enforced disappearance, and renditions of individuals detained overseas committed by UK forces in the context of military interventions in Iraq and Afghanistan and counter-terrorism operations, as well as penalties commensurate with the gravity of such crimes for those found responsible and adequate remedies to victims or their families. In this respect, please provide up-to-date information on: (a) the investigation by the Intelligence and Security Committee (ISC) of the UK Parliament into the issues identified in the Detainee Inquiry's report; (b) the progress in investigating the complicity of UK security services in the rendition of two prominent opponents of the Gaddafi regime, Sami al-Saadi and Abdul Hakim Belhaj, to Libya under Muammar Gaddafi; (c) the progress made by the inquiry established to investigate allegations of torture and execution of up to 20 Iraqis by British troops in 2004 (the so-called "Danny Boy" incident); (d) the investigation into allegations about UK Special Forces personnel handing over detainees to U.S. custody at Camp Nama, a secret prison at Baghdad International airport. (List of Issues, no. 16)

¹⁶ <http://www.scotland.gov.uk/Publications/2014/11/2861>

34. Investigations which relate to reserved matters under the Scotland Act 1998 are a matter for the UK Parliament and Government. However, the Scottish Government strongly opposes illegal rendition flights. Scotland has always been a country that respects the rights and responsibilities of all its citizens, and the rule of law. The Lord Advocate has also asked Police Scotland to investigate the alleged use of Scottish airports for so-called rendition flights.

35. Please provide information on the implementation and impact of the new restraint system for persons deprived of their liberty introduced in July 2014 and training provided to officers on the use of force. What measures are taken to ensure that physical restraint commissioned for use on children and young people in Secure Children's Homes (SCHs), Secure Training Centres and Under-18 Young Offender Institutions and solitary confinement against children in young offender institutions is used only as a last resort and exclusively to prevent harm to the child or others, and that the use of any restraint techniques designed to inflict pain on young offenders is prohibited.
(List of Issues, no. 18)

36. All Scottish Prison Service (SPS) staff who may come into contact with prisoners are trained to detect, deter, de-escalate through non-physical techniques and, if necessary, protect themselves, prisoners and others from violent acts. The use of force will only be considered when all other means have been exhausted or are deemed unlikely to succeed. The Supervising Officer / Manager in Charge will continually carry out a dynamic risk assessment during any use of force and will consider de-escalation throughout. A review of the circumstances around the use of force will take place and, where appropriate, involve the individual. A full report will always be compiled and, if deemed appropriate, the use of a video recorder may be utilised during a planned use of force. Practice within residential childcare settings, the SPS and Police Scotland reflects that restraint should only be used as a last resort and should not be used as a form of punishment. Where physical restraint is necessary, both SPS staff and police officers are trained to take proper account of the individual's age and gender. Personal Protection Training was introduced into the SPS in September 2012 after research and consultation to identify techniques which addressed the types of assaults most prevalent against staff. Events were held to demonstrate the revised techniques to staff, governors, human resource managers, trade unions, legal advisors, doctors and representatives from the Children's Commission. The SPS Use of Force Policy recognises that each prisoner is an individual with their own unique needs, including but not restricted to children & young people, age, sex, disability, pregnancy, race, religion or belief, sexual orientation and vulnerability. The Children's Commissioner was provided with a copy of the revised Use of Force Policy in July 2013, prior to it going live on 1 September 2013. All feedback from the Office of the Children's Commissioner was included in the Use of Force Policy (Control and Restraint (C&R) Manual, volume one). Pain Compliance techniques are not part of any training programmes used in Residential or Secure Child Care in Scotland. Published in 2005 and updated in 2011 for use in residential childcare establishments, the Scottish Government guidance document *Holding Safely*¹⁷ outlines the parameters for physically restraining a child: staff must

¹⁷<http://www.scotland.gov.uk/Topics/People/Young-People/protecting/lac/residentialcare/Publications/Holding-Safely>

act lawfully; the method of restraint must be approved by the service provider and keep to the principles and standards in the National Care Standards for Care Homes for Children; staff who are restraining children must be appropriately trained and have the required skill and judgement; and the restraint must be limited to the act of holding the child for the shortest necessary time. *Holding Safely* was amended in 2012 to encourage all services to develop clear plans for reducing the use of physical restraint. Care home staff do not use any kind of mechanical restraints on children in their care.

37. Please report on measures taken to address physical and sexual abuse against children, including in residential institutions and including children between the ages 16-18, and to ensure that such acts are effectively investigated, perpetrators are prosecuted and sanctioned and victims have access to adequate remedies, including compensation. Please provide up-to-date information on the progress in investigating: (c) the alleged physical and sexual abuse of boys at the former St. Ninian's School in Fife. Please also report on measures taken to explicitly prohibit corporal punishment of children in all settings, including in the home and alternative care settings, and repeal all relevant legal defences across the State party's jurisdiction. (List of Issues, no. 19)

38. In Scotland, the creation of Police Scotland is helping a more consistent approach to tackling and investigating a range of crime types, including child abuse. In many cases Police Scotland now has dedicated national units in place to assist in this and have specialist liaison officers to interact with victims of sexual crimes. Police Scotland recently announced that it is developing a National Child Abuse Investigation Unit, and the Scottish Government will work with Police Scotland to ensure that the Unit is aware of and responsive to the particular needs of victims of historic abuse. Six men have been arrested and charged with multiple complaints of physical and sexual abuse at the former St Ninian's School in Falkland, Fife in the 70s and 80s. This investigation remains live and ongoing.

39. The Scottish Government has been engaged with the Scottish Human Rights Commission InterAction on Historic Abuse of Children in Care, and responded to the InterAction Action Plan on 27 October. We are planning a programme of engagement with survivors and organisations to review the National Strategy for Survivors of Childhood Abuse in 2015, and to look at what a Survivor Support Fund and commemoration (two of the commitments in the InterAction Plan) would look like. A National Confidential Forum (NCF) has been established through the Victims and Witnesses (Scotland) Act 2014, which will give people who were placed as children in a residential care or health service the opportunity to share their experiences through a confidential, supportive and non-judgmental process. The NCF is expected to start taking applications in January 2015. A public inquiry into historical abuse of children in care was announced on 17 December 2014. The terms of reference will be decided after a period of consultation with survivors, and this will be complementary to the work of the NCF.

40. The Scottish Government is committed to making Scotland the best place in the world to grow up. This means putting children and their rights at the heart of our communities and our public services. The Children & Young People (Scotland) Act

2014 places specific duties on Scottish Ministers in relation to the UN Convention on the Rights of the Child. Under Section 16 of the Standards in Scotland's Schools Act 2000, corporal punishment is banned in all schools, including independent schools and all nurseries. Section 51 of the Criminal Justice (Scotland) Act 2003 makes it illegal to punish children by shaking, hitting on the head and using an implement. In other cases, the current law requires the court to have regard to various factors when determining whether a punishment by a parent can be justified. These factors are: what was done, the reason and the circumstances; the duration and frequency; any effect, whether physical or mental, on the child; the child's age; the child's personal characteristics, including the child's sex and state of health. We do not support smacking as a way of punishing children but neither do we support criminalising parents who lightly smack their children. We plan to update our existing leaflet in this area.

Liberty and security of person (Art. 9)

41. Please clarify what legal safeguards are in place to ensure that individuals who are unable to consent to their placement or treatment in psychiatric hospitals and other care settings in Scotland are protected in law.
(List of Issues, no. 21)

42. The individuals described are protected through mental health and incapacity legislation, which confer statutory duties on the independent Mental Welfare Commission (MWC) to fulfill its safeguarding role. Its work, which includes investigation, monitoring and visiting, is intended to ensure that care, treatment and support are lawful, respect rights and promote the welfare of individuals with mental illness, learning disability and related conditions. Service users and carers are represented on the MWC Board and also act as visitors.

43. The overarching approach of the Mental Health (Care and Treatment) (Scotland) Act 2003 (the 2003 Act) is to ensure that the law and practice relating to mental health should be driven by a set of principles, for example minimum interference in people's liberty. Anyone carrying out duties or providing treatment under the 2003 Act has to follow these principles. Local authorities must ensure that Mental Health Officers (MHO) are appointed to work with individuals required to receive care and/or treatment under the 2003 Act who normally reside within that local authority area. The 2003 Act requires MHO consent before certain orders can be granted or decisions are made regarding the renewal or varying of certain orders. An MHO will also attend Mental Health Tribunal hearings and give evidence. As an MHO is employed by the local authority, any decisions made are independent of medical professionals. Part 16 (Medical Treatment) of the 2003 Act sets out the stringent safeguards in place for the giving of medical treatment to patients, whether capable or incapable of consenting.

44. The Adults With Incapacity (Scotland) Act 2000 (the 2000 Act) has a range of provisions covering the personal welfare and financial affairs of adults who lack capacity to make some or all decisions on their own behalf, and provides safeguards for such adults through the roles and functions of the statutory bodies involved. It sets out arrangements for guardianship orders and intervention orders, made by the Sheriff Court, which provide legal authority for someone to make decisions and act

on behalf of the person with impaired capacity, to safeguard and promote their interests. Authority to make welfare decisions can include placement in care settings if specified. Account must be taken of the views of persons with an interest in the welfare of the adult. All interested parties must be notified of the application to ensure that anyone who may object has an opportunity to make their views known to the Sheriff. The Scottish Government is considering recommendations made in the Scottish Law Commission's Report on Adults with Incapacity, which examined the potential application of Article 5 of the European Convention on Human Rights in relation to care arrangements of adults who fall within the scope of the 2000 Act.

Treatment of persons deprived of their liberty (Art. 10)

45. Please provide information on measures to improve conditions of detention, inter alia on: (a) measures taken to address the high prison population and overcrowding, particularly in Northern Ireland and Scotland; (c) measures to improve the educational and recreational activities and to reduce the level of violence in Young Offenders Institutions in Scotland, particularly within HMYOI Polmont; (d) measures to address the disproportionate number of women prisoners; (e) measures to address the increase in the number of prisoners with mental health problems, particularly in Scotland, and especially among imprisoned women and to provide adequate mental health care and appropriate services to reduce self-harm. (List of Issues, no. 22)

46. The Scottish Government continues to invest in a fit-for-purpose prison estate. Following the opening of HMP Low Moss in early 2012, HMP Shotts was rebuilt and reopened in October 2012 and a further new prison, HMP & YOI Grampian, opened in March 2014 to replace the aging facilities at HMP Aberdeen and HMP Peterhead. Since the Community Payback Order and the presumption against short sentences came into force in 2011, the number of community sentences has increased and the number of custodial sentences has decreased (both in absolute terms and as a proportion of all sentences). According to the report, *Criminal Proceedings in Scotland, 2013-14*¹⁸ (published December 2014), the number of sentences of three months or less (those caught by the presumption) has fallen by 23% in absolute terms (from 5,324 to 4,126) and by 6% proportionally (from 35% of all sentences to 29%). We are championing the use of a whole system approach, which aims to achieve positive outcomes for young people by helping various statutory and non-statutory bodies to work together to build a more consistent approach to prevent and reduce offending by children and young people through early and effective intervention. This continues to see a marked reduction in the number of juvenile offenders receiving custodial sentences. In relation to reintegration of detainees, we have already identified reducing reoffending as a principle where proactive improvement could make a significant contribution to reducing crime, improving public life, and reducing the prison population. The second three year iteration of the Reducing Reoffending Programme 2012-15 will include a thorough examination of the funding, structures and performance management for the delivery of adult community justice services, and the establishment of new, improved structures and processes as necessary. A separate project will analyse the management of offenders' transition from custody to community, and deliver improvements to the

¹⁸ <http://www.scotland.gov.uk/Publications/2014/12/1343>

processes and services available to all prison leavers, with a particular focus on those completing short-term sentences.

47. HMYOI Polmont has created a community safety unit, working with a wide range of partner organisations from the community, education sector and Scottish Government. Polmont has been designated as a 'community' for specific focus by the Scottish Government Community Safety Steering Group. Police Scotland has committed to a 'campus cop' resource on site to challenge constructively attitudes to authority and support anti-violence work, both in the establishment and in the community on release. A range of interventions is being developed and deployed on site: restorative practices for conflict resolution; anti-violence and anti-bullying workbooks; group work for bullying and knife crime; and associated staff training. We are undertaking development work on issues such as domestic abuse and those types of crime which undermine equality and diversity in society, as well as creating links between the community safety and parenting teams on site to support integrated learning. Research is being taken forward on a number of issues to inform our understanding of the needs of young men. Many of the underlying issues which lead to violent behaviour, such as trauma, bereavement, and learning difficulty, are being addressed through education-based interventions and assessment. Speech and language therapy resources from NHS have been increased and a review of the wider regime is in progress. Arrangements have been put in place to reduce the population on-site at Polmont, with a view to each young man having access, where possible, to a room of their own. This is already improving the environment and allowing more intensive staff interaction. Following a curriculum review undertaken by Education Scotland, a wide range of additional activities, including those focused on relationship skills and citizenship, is being developed. These include life skills, parenting, peer support and one-to-one support for those who are most disengaged, many of whom also exhibit violent behaviour. All staff at Polmont are receiving training, co-delivered with Education Scotland, which focuses on the emotional and social wellbeing of young people and their personal development. The Scottish Prison Service has now adopted as policy a *Vision for Young People in Custody*,¹⁹ which sets out medium and longer-term intentions for young people's learning and development while in custody, based upon individual needs.

48. An upgrade to HMP Cornton Vale has included renovation of prison buildings and the creation of a new family/visitor hub, and has benefitted from specialised training for all SPS staff dealing with women. A current review of Voluntary Throughcare will improve support for short term prisoners on release from prison: for universal service providers to work together to provide housing, health, mental health, education and employability services to offer meaningful support. A pilot project is taking place at HMP Cornton Vale to enable women prisoners to apply for benefits prior to release, so they receive their proper benefits promptly on release. A pilot project is underway in Glasgow to examine more effective use of diversion from prosecution for women offenders whose chaotic lifestyle can sometimes result in their being ineligible for standard diversion programmes. The Scottish Government has indicated that it plans to engage with stakeholders to consider the future configuration of the female prison estate – including proposals to create a national

¹⁹ <http://www.sps.gov.uk/MediaCentre/News-5544.aspx>

prison specifically for women serving long term sentences, as well as examining options for a national facility for female young offenders, regional prison facilities, and more community based facilities for women prisoners. This will be considered alongside ongoing work to expand and strengthen the provision of community based alternatives to custody, and community services to assist women not to (re)offend. Responsibility for the primary care of women prisoners with mental ill health lies with the NHS. Each prison holding women has a multidisciplinary mental health team, which works collaboratively to assess and develop individual care plans. Those women in particular distress are cared for under the umbrella of the 'Act to Care' strategy, which is focused on those in danger of self-harm and suicide. The Scottish Government has recently funded STORM training across Scotland's Secure Estate to provide a sustainable programme of self-harm and suicide prevention. STORM is an evidence based programme which helps to build the skills and confidence of staff to ask the difficult questions around self-harm, suicide and self-injury.

Right to an effective remedy and fair trial (Arts. 2, 14 and 24)

49. Please provide information on measures taken: (a) to ensure that the use of closed material procedures in legal proceedings, including those provided for in the Justice and Security Act 2013, does not undermine the right to an effective remedy, including for torture and other ill-treatment, and the right to a fair trial; (d) to ensure that sufficient additional safeguards for fair trial are put in place before the planned removal of the requirement for corroboration of evidence in Scotland. (List of Issues, no. 23)

50. The Justice and Security Act 2013 is UK legislation and the Scottish Government has no role in its implementation. In relation to "secret evidence", we implemented the recommended practice in the disclosure (of information to the defence) regime set out in the Criminal Justice and Licensing (Scotland) Act 2010. All consideration of "secret evidence" is dealt with by a judicially managed process involving special counsel.

51. Lord Bonomy's independent Post-Corroboration Safeguards Review, which encompasses a Reference Group comprising, amongst others, leading academics, top lawyers, judges, representatives of victims' groups and the Scottish Human Rights Commission, is currently considering what additional safeguards and changes to law and practice are necessary to maintain a fair, effective and efficient criminal justice system once the corroboration requirement is removed. This necessarily considers human rights in the round. Lord Bonomy has completed a public consultation, with events held across Scotland, and the review is due to produce its final report by April 2015. Further Parliamentary progress of the Criminal Justice (Scotland) Bill has been rescheduled for 2015, after the completion of the review.

52. Please explain how the restrictions to access to legal aid for judicial review introduced by The Civil Legal Aid (Remuneration) (Amendment) (No. 3) Regulations 2014 and the reforms proposed in part 4 of the Criminal Justice and Courts Bill are compatible with the State party's obligations under the Covenant. Please also outline the current and envisaged changes to the legal aid system, including in Scotland, and their impact on access to justice and

effective remedies, including for non-residents and immigration detainees.
(List of Issues, no. 24)

53. The Civil Legal Aid (Remuneration) (Amendment) (No. 3) Regulations 2014 do not apply in Scotland. Residence is not taken into consideration when determining eligibility for legal aid in Scotland. The Scottish Government's strategy for reforming legal aid is set out in *A Sustainable Future for Legal Aid*²⁰ (published October 2011), with a view to focusing legal aid on those who need it most; ensuring wider access to justice - the right help at the right time; maximising the value of legal aid expenditure; and making the justice system more efficient. Any changes to legal aid in Scotland are assessed for impact on equalities. The Scottish Legal Aid Board's monitoring duty and Access to Justice Reference Group keep access under review. No issues have been identified in respect of access to civil law. The network of Civil Legal Assistance Offices is able to provide access to legal aid for those who are eligible when private sector businesses choose not to provide services.

54. Please report on measures taken (a) to raise the minimum age of criminal responsibility. (List of Issues, no. 25)

55. The Scottish Government set the minimum age of prosecution at 12 in the Criminal Justice and Licensing (Scotland) Act 2010. This means that no child under the age of 12 can ever be prosecuted in court (nor can a child 12 years or older be prosecuted for an offence committed at a time when the child was younger than 12); instead, their behaviour will be addressed through the children's hearings system. It is worth pointing out that in the six years before 2010, there was only one case of a child aged between 8 and 11 being prosecuted. This case was ultimately remitted to a children's hearing for disposal. Since the 2010 Act changes, children aged 8-11 who have committed an offence have continued to be referred to a children's hearing on offence grounds. The determination of an offence referral by a children's hearing does not constitute criminal proceedings. Children under the age of 8 (the current minimum age of criminal responsibility) can still be referred to the children's hearing system but any offence would be treated under a welfare 'based' ground.

56. There is evidence that early criminalisation of young people leads to poor outcomes and raising the age of criminal prosecution was consistent with a number of the Scottish Government's objectives: to give children the best start in life, and to improve their life chances and those of all young people and families at risk. There are now provisions in the Children's Hearings (Scotland) Act 2011 which, when implemented, will re-define children's hearings offence disposals as "alternatives to prosecution" rather than convictions for the purposes of the Rehabilitation of Offenders scheme. Changes made by the 2011 Act to the provisions in the Police Act 1997, will, when implemented, restrict future disclosure of these alternatives to prosecution on a standard or enhanced disclosure certificate to situations where they relate to a serious sexual or violent offence. We are committed to giving further consideration to the age of criminal responsibility in this term of the Scottish Parliament. This will include consideration of the practical implications of any change to rules on criminal capacity, including for example, the impact on police

²⁰ <http://www.scotland.gov.uk/Publications/2011/10/04161029/0>

investigatory powers and ensuring that appropriate and robust interventions can still be taken where children are involved in offending behaviour. This is particularly the case where children aged 8-11 are involved in serious sexual or violent offences.

Elimination of slavery and servitude (Art. 8)

57. Please report on measures taken: (a) to improve the capacity of the National Referral Mechanism in identifying victims of trafficking, in particular of child victims and in detention centres as well as data collection; (b) to consider extending the current 45-day period of rest and recovery for victims; (c) to remove the requirement for evidence of compulsion relating to children victims of trafficking, as well as adult victim's failure to object to exploitation by means of threat, force or coercion as relevant factors in determining whether they have been trafficked; (d) to remove the link with movement and ensure that all involved in the trafficking chain are complicit in the crimes; (e) to provide for long-term legal alternatives to removal to countries where victims might face hardship or retribution outside the asylum procedures; (f) to address cases of forced labour and abuse of migrant workers, including of domestic workers; (g) to establish an independent and effective anti-slavery commissioner office. (List of Issues, no. 26)

58. The Scottish Government is committed to partnership working with the Northern Ireland Executive, UK Government, police, prosecutors, support agencies and others to combat trafficking in human beings and exploitation of individuals. Following the Human Trafficking Summit, hosted by the Cabinet Secretary for Justice in October 2012, Scottish Ministers have been working with other partner agencies to strengthen Scotland's response to human trafficking. The Human Trafficking and Exploitation (Scotland) Bill,²¹ introduced into the Scottish Parliament on 11 December 2014, contains provisions to consolidate and strengthen existing criminal law against traffickers and those who exploit others; enhance the status of and support for the victims of trafficking; and require the Scottish Ministers and relevant agencies to work together to develop and implement a Scottish Anti-Trafficking and Exploitation Strategy.

59. The gathering of accurate, reliable, data on this clandestine activity is very complex and difficult. The most reliable figures are contained in the National Crime Agency's Strategic Assessment, which estimated 55 potential victims within Scotland in 2013. The UK Government commissioned a review of the National Referral Mechanism, and the resulting report (published 11 November 2014) contains recommendations and conclusions in respect of adult and child victims, and the period of reflection and recovery. The Scottish Government will work with the UK Government in taking these forward. The offence of human trafficking in the Human Trafficking and Exploitation (Scotland) Bill makes clear that the consent of any person, adult or child is irrelevant, and that arranging or facilitating travel includes recruitment, transportation, exchange of control of an individual, or harbouring or receiving an individual. Immigration and asylum are reserved matters under the Scotland Act 1998 but the Scottish Government wants Scotland to be recognised as a good global citizen – able to welcome those seeking sanctuary and support those

²¹ <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/84356.aspx>

in need, including victims of trafficking, and to deal effectively and humanely with those who do not have a case to stay. We will continue to work with the UK Government on this issue. Section 4 (slavery, servitude and forced or compulsory labour) of the Human Trafficking and Exploitation (Scotland) Bill provides for a standalone offence which reflects Article 4 of the European Convention on Human Rights (prohibition of slavery or servitude and forced or compulsory labour). The UK Modern Slavery Bill²² contains provisions to establish an anti-slavery commissioner and, under the Sewel Convention, the Scottish Government is seeking the approval of the Scottish Parliament for these provisions to extend to Scotland.

Right to privacy and family life (Art. 17)

60. Please report on the compatibility with the Covenant of the GCHQ Tempora surveillance programme and State party's legislation governing surveillance and interception, analysis, use and storage of private communications and data, including the Data Retention and Investigatory Powers Act (DRIP) requiring internet and phone companies to collect their customers' personal communication data, tracking their phone and internet use and store it for 12 months to give access to the police, security services and up to 600 public bodies on request. Please provide information about the existing legal safeguards against unwarranted government access to private communications regardless of the nationality or location of individuals whose communications are intercepted, and their respect in practice. Please also explain how the indefinite retention of an adult's DNA and fingerprints meets conditions of necessity and proportionality. (List of Issues, no. 28)

61. In terms of GCHQ, national security is a reserved matter under the Scotland Act 1998 and the Data Retention and Investigatory Powers Act similarly relates to reserved matters. There was no consultation with the Scottish Government regarding its provisions. Notwithstanding this, we recognise that security and law enforcement agencies require access to communications data and interception of communications in order to prevent and detect the most serious crimes and to protect national security.

62. Scotland's DNA retention system has been widely praised for striking the right balance between protecting the public and protecting the right of the individual. Our approach to the retention of DNA has been highlighted as a good model by the European Court of Human Rights (*S & Marper v UK*). The Criminal Justice and Licensing (Scotland) Act 2010 strengthened the retention policy, including provisions for retention of data from those accepting fiscal disposals and fixed penalty notices.

Freedom of conscience and religious belief, freedom of expression, peaceful assembly and freedom of association (Arts. 18, 19, 21 and 22)

63. Please clarify whether and how the State party plans: (a) to abolish existing common-law offences of blasphemy and blasphemous libel in Northern Ireland, and to reform the libel laws applicable in Northern Ireland

²² <http://services.parliament.uk/bills/2014-15/modernslavery.html>

and Scotland in light of the Committee’s previous concluding observations (CCPR/C/GBR/CO/6, para. 25); (d) to address the use of overt and covert surveillance of protesters, including undercover police officers infiltrated in peaceful protest groups and campaigns, and alleged collection of data about peaceful protesters by private security companies; (f) to amend the Police, Public Order and Criminal Justice (Scotland) Act 2006 with a view to reducing the notification period for procession to a few days and alleviating the financial costs associated with obtaining a procession license. (List of Issues, no. 29)

64. The Scottish Parliament consented to the application of certain provisions of the Defamation Act 2013 to Scotland so that academic (including scientific) activities have the defence of qualified privilege.²³ In addition, we are arranging for an independent review of the law in this area.

65. In Scotland, covert surveillance is regulated by the Regulation of Investigatory Powers (Scotland) Act 2000 (RIP(S)A). RIP(S)A requires that the authorisation of surveillance must first of all be necessary for one or more statutory purposes: preventing or detecting crime or preventing disorder, in the interest of public safety, or for the purpose of protecting public health. If the covert activity can be shown to be necessary, it must then be shown to be proportionate. This involves balancing the intrusiveness of the activity on the target and others who might be affected by it against the need for the activity in operational terms. Undercover operatives are classified as covert human intelligence sources, which are also regulated by RIP(S)A. As of December 2014, secondary legislation has been laid in the Scottish Parliament,²⁴ which seeks to further regulate the use of undercover operatives by raising the level at which authorisation is required and introducing an element of independent oversight and prior approval from the Office of Surveillance Commissioners.

66. Any restrictions on marches and parades must take account of the fundamental rights contained in the European Convention on Human Rights, including Article 11, which enshrines the right to freedom of assembly and association subject to such restrictions as are prescribed by law and are necessary in a democratic society in the interests of, among other things, the rights and freedoms of others. The Scottish Government fully supports freedom of speech and peaceful assembly. Static demonstrations require no prior notice and the police will only take action if there is criminality. We have no plans to alter the current notification period of 28 days for public processions under Part V (public processions) of the Civic Government (Scotland) Act 1982 (“the 1982 Act”). The notification period was, in fact, extended from seven days to 28 days (by amendments made to the 1982 Act by the Police, Public Order and Criminal Justice (Scotland) Act 2006) under a previous Scottish administration to allow local authorities more time to consider notifications and reach a decision on whether to allow the parade, give public notice of forthcoming events in the area, and allow for effective planning of police resources. On cost recovery, charges are discussed and negotiated with the organisers. The purpose of the charges is to ameliorate the real

²³ <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/52618.aspx>

²⁴ <http://www.legislation.gov.uk/ssi/2014/339/policy-note/contents>

and potential negative impacts of processions upon local communities, as well as ensuring the safety of both participants and the public. In the absence of those, some parades might not be able to proceed. It is our view that these costs are appropriate, legitimate and proportionate, and we do not accept they have the effect of unduly restricting the exercise of peaceful assembly. The Advisory Group on Tackling Sectarianism has commissioned research on marches and parades. The key aim of the research is to explore the impact marches and parades have on the local communities in which they take place. The project will inform dialogue about how best to balance the key aspects of marches and parades. The final report is expected by March 2015.

Right to participate in public life (Art. 25)

67. Please report on measures taken to amend, in line with the Committee's previous recommendation (CCPR/C/GBR/CO/6, para. 28), the legislation denying all convicted prisoners the right to vote. (List of Issues, no. 30)

68. The franchise for elections is currently reserved to Westminster. Following the successful extension of the franchise to 16 and 17 year olds at the Scottish Independence Referendum, Scotland's then Deputy First Minister wrote to the Prime Minister on 24 September 2014 to request that full responsibility for all Scottish elections, including responsibility for the franchise, be devolved to the Scottish Parliament. The Smith Commission on further devolution to the Scottish Parliament subsequently recommended that the Scottish Parliament should have all powers in relation to elections to the Scottish Parliament and local government elections in Scotland. The Scottish and UK Governments are currently discussing the transfer of those powers, following which the Scottish Parliament will give full consideration to all of the relevant franchise issues.