

The Rt Hon Lord McNally
Minister of State
Ministry of Justice
102 Petty France
London
SW1H 9AJ



29 August 2012

Dear Tom,

UNIVERSAL PERIODIC REVIEW

I refer to previous correspondence regarding the Universal Periodic Review, where you sought my views on the recommendations arising from the interactive dialogue in Geneva.

I should state at the outset that the Scottish Government is committed to participating in the Universal Periodic Review process. We wish to see Scotland reflected as a modern, responsible nation, with a commitment to protecting, respecting and realising human rights. Within the UK, Scotland takes a distinctive approach to realising international human rights standards, and securing recognition at the UN level of this diversity is important. I remain grateful for the constructive engagement of your office throughout the course of the current review. The remainder of this letter sets out the Scottish Government's views on the recommendations, our position on those and what we are doing to address them.

I am aware your office is in the process of preparing an addendum report for submission to the UN which sets out the UK response, and would be grateful for sight of the text you intend to submit.

Human Rights policy and law

A number of the recommendations made reference to the UK signing and ratifying various international treaties. Under the current constitutional arrangements, we accept that the decision to enter into such international commitments is reserved to the UK Government, subject to the agreement of the UK Parliament. The Scottish Government does however remain disappointed that the opportunity was missed in the Constitutional Reform and Governance Act 2010 to accord the Scottish Parliament appropriate recognition in relation to the ratification of treaties touching significantly on matters within devolved competence.

The failure to do so continues to be at odds with the fundamental principles of the settlement. In particular, it allows new obligations and responsibilities to be imposed on the Scottish Parliament and Scottish Ministers without their prior consent, in a manner that is extremely difficult to reconcile with established constitutional convention.

Qatar recommended that the UK ensure that human rights principles are integrated into domestic law. We would support this as a general concept, whilst noting the differing practical and technical considerations which arise in relation to specific treaties. The Human Rights Act (1998) already provides for specified elements of the European Convention on Human Rights (ECHR) to have effect as a matter of domestic law. Furthermore, ECHR rights are independently given direct effect in the context of devolved matters in Scotland by virtue of the Scotland Act (1998). That is an arrangement to which we remain committed and, as the Scottish Government has made clear in communications with the Commission on a UK Bill of Rights, we would not be supportive of proposals which erode the current protections enjoyed by citizens. That includes, in particular, the existing "constitutional entrenchment" of ECHR rights, which places Scotland closer than the UK to the European mainstream in terms of constitutional safeguards. It does not, however, necessarily follow that identical implementation mechanisms are appropriate for all other treaties, above all where the relevant treaty body is not constituted as a court of law. Within the devolved competence currently available to the Scottish Parliament and Government, we will continue to seek to observe and implement treaty obligations by legislating where appropriate and through the issuing of guidance and the promotion of good practice where legislation is not the most suitable means to achieve the desired end.

Iran recommended that the UK adopts and implements a concrete plan of action to realise international human rights law. The Scottish Government is supportive. While the adoption of such plan at the UK level is a matter for the UK Government, you may wish to note that the Scottish Government have had initial discussions with the Scottish Human Rights Commission regarding their call for such a plan. The Scottish Government is supportive of an action plan in principle, and we are considering further how we might engage further with this initiative.

Mexico recommended that the UK comply with rulings from the European Court of Human Rights, as well as promote the participation and cooperation of EU member states within the Court. The Scottish Government strongly supports compliance with judgements of the Strasbourg Court, and notes that all contracting parties have undertaken, by virtue of Article 46 of ECHR, to abide by the final judgement of the Court in any case to which they are party. The position of the Scottish Government is, accordingly, that it will implement in full the rulings of the Court where these apply to Scotland.

Justice and Security

Spain, Columbia, Australia, Greece and the USA made recommendations around the UK's approach to combating human trafficking. The Scottish Government is supportive, excepting the suggestion of the US that national rapporteurs are appointed. We are committed to tackling the abhorrent crime of human trafficking through partnership working with the UK Government and others, and have both changed the law and provided resources to meet European standards and assist enforcement and prosecution. We were supportive of opting into and implementing the EU Directive on trafficking in human beings. We are not convinced that the appointment of a Rapporteur would add value to the UK's fight against human trafficking and are concerned that it would add an additional layer of bureaucracy that may actually hamper our efforts to combat this crime.

We do agree that monitoring progress of anti trafficking efforts through out the UK is of the utmost importance, and an Inter-Departmental Ministerial Group (IDMG) is in place to coordinate and oversee our progress in this area. The IDMG comprises ministers from each constituent nation in the UK to ensure effective representation and is the UK's equivalent Rapporteur mechanism.

Iran recommended that the UK strengthen guarantees for detained persons, and shorten the length of time for pre-trial detention. The Scottish Government is supportive of the general intent of the recommendation, whilst noting that Scottish pre-trial maximum detention periods (40 days for summary level business and either 110 or 140 days for solemn business, depending on what court hears the case) are short by international standards. Previous and ongoing reforms to the criminal justice system are designed to bring fully prepared cases to court as quickly as possible. In terms of additional guarantees, we plan to establish a right to essential information for suspects in criminal proceedings (including a right to interpretation and translation); to create a "letter of rights" to be given to all suspects; and to consider new safeguards for child and vulnerable adult suspects being questioned by the police.

Austria recommended that the UK continue to ensure that secret evidence is only used in cases where there is a serious and immediate threat to public security, ensuring independent and effective judicial oversight. The Scottish Government is supportive. We implemented this 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.

Russia and Austria recommended that prison overcrowding in the UK be reduced, that conditions be improved for detainees and that the UK consider the increased application of alternative sentences for juvenile offenders. Additionally, Iran recommended that the UK facilitate the access of the Red Cross to prisons. On the recommendations around overcrowding and conditions, the Scottish Government is supportive, having continued to invest in a fit-for-purpose prison estate as well as having introduced a range of reforms to help reduce both the prison population and reoffending. As an alternative to custody, we have introduced the Community Payback Order as well as a presumption against sentence of 3 months or less, and are working closely with key partners through a joint working group which seeks to deliver continued improvement in this area. On the recommendation to facilitate Red Cross access to prisons, we consider that Scotland already has effective monitoring and scrutiny arrangements in place through relevant public authorities and national preventative mechanisms established under international law.

Nicaragua recommended that the UK improve programmes for social reintegration of detainees. The Scottish Government is supportive. 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. With that aim, we are undertaking an ongoing process of review and proactive improvement to adult community justice services. Under the second three year iteration of the Reducing Reoffending Programme 2012-15, this work will include thorough examination of the funding, structures and performance management for the delivery of such 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 processes and services available to all prison leavers, with a particular focus on those completing short-term sentences. We will also take action to deliver improved conditions and treatment for women offenders, responding to the recommendations of an independent, expert Commission.

Thailand recommended the incorporation of relevant UN rules in relation to the treatment of women offenders. The Scottish Government is broadly supportive. Scotland has established standards for the treatment of women offenders in a custodial and non-custodial which comply with the broad principles set out in the so-called "Bangkok Rules". The Scottish Government continues to pro-actively improve the outcomes for women offenders in the criminal justice system, and, as mentioned previously, recently commissioned an independent expert Commission to examine how to improve these and make recommendations in this regard. We largely accepted these recommendations and are working with justice partners to take these forward. In doing so we will consider the "Bangkok Rules" as part of policy development in this area.

Malaysia, Turkey and the US made recommendations in relation to tackling hate crime. The Scottish Government is broadly supportive. We supported the parliamentary passage of the Offences (Aggravated by Prejudice) (Scotland) Act 2009 which strengthened our criminal law in dealing with hate crime. Current data collection in Scotland includes a variety of statistics relating to hate crime, including statistics about people convicted in court for "aggravated" crimes, including hate crimes relating to certain protected characteristics including religion, disability, and sexuality.

Russia recommended that the UK ensures the right of access to a lawyer immediately following detention. The Scottish Government has provided legislation to ensure that all persons suspected of having committed a crime, and are to be interviewed by the police as suspects, are provided with legal representation. The relevant legislation received Royal Assent on 29 October 2010.

Egypt recommended that the UK set up a mechanism to carry out the repatriation of funds of illicit origin and illegally acquired assets to their countries of origin, and to ensure cooperation with the requesting states. The Scottish Government is supportive. In Scotland, the Crown Office cooperate extensively with foreign states seeking to recover assets in Scotland where it is alleged that they have been obtained through criminal conduct in the requesting state. This process is governed by the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005.

Equality and non-discrimination

Egypt and Indonesia recommended that the UK review national legislation to ensure equality and non-discrimination. The Scottish Government has no plans to undertake a review in relation to equalities. The recommendation does appear to suggest that any form of discrimination must be avoided, but we would be of the view that it is sometime appropriate to treat people differently in terms of targeting services for those who have a particular need.

Spain and Morocco made recommendations relating to generally reducing inequalities and strengthening anti-discrimination in a range of areas. The Scottish Government is supportive. We have taken a distinctive approach to implementing the public sector equality duty in the Equality Act (2010), which is already supporting work to identify unlawful discrimination and encourage the promotion of equality across Scotland.

Costa Rica and Morocco recommended that the UK adopt measures to ensure the independence of the Equality and Human Rights Commission in accordance with the Paris Principles. The Scottish Government is supportive. We have been clear that we support the existence of a strong and independent Commission, and have expressed concerns to the UK Government about current plans for reform.

We remain particularly concerned at the potential risk to the UN accreditation of the Commission, and to the consequential reputational risk to the UK, should planned reforms result in the loss of the Commission's 'A' status.

A number of states (Indonesia, Sudan, India, Ukraine) made recommendations around gender rights. The Scottish Government is broadly supportive. The Scottish Government continues to prioritise the work to tackle gender inequality through the allocation of significant levels of funding to address its consequences, such as the gender pay gap and occupational segregation. Most recently, in recognition of the disproportionate impact on women of the recession and the UK Government's welfare reform agenda, the First Minister announced that a Women's Employment Summit, jointly organised with the Scottish Trade Union Congress, would be held in September this year and will investigate what more can be done to improve the position of women in the workplace.

Brazil, Columbia and Malaysia invited the UK to take further action to combat violence against women. The Scottish Government is broadly supportive. Scotland has a proud record, recognised internationally, for the focus it gives to addressing violence against women. Our strategic approach for this work, *Safer Lives: Changed Lives*, is currently being refreshed to give a sharper focus on prevention and early intervention, data and outcomes measurement and the impact on minority ethnic women. On forced marriage, we would welcome any measures which makes forced marriage more difficult. In November 2011, the Scottish Government became the first jurisdiction in the UK to criminalise breach of a Forced Marriage Protection Order.

A number of states (India, China, Turkey, Nicaragua and Hungary) made recommendations in relation to eliminating racial discrimination and protecting the rights of religious and racial minorities. The Scottish Government is broadly supportive. We celebrate multiculturalism, and recognises that diversity is a strength. While measures taken to address these issues operate for the most part within the existing UK legislative framework, it should be noted (as Lord McNally did in Geneva) that the Scottish Government has taken a range of measures to deliver race equality and better outcomes for Scotland's minority ethnic and faith communities. The £20million of funding provided since 2008 to organisations and projects working on the ground supports this, as does the strong relations we have developed with a range of communities and intermediary bodies.

A number of states (including Nepal, Bangladesh, Paraguay, Viet Nam and Iran) recommended further measures to ensure the rights of migrants and asylum seekers are respected. The Scottish Government is broadly supportive. It should also be noted again that many of the levers in relation to race and refugee integration are reserved to the UK, and we would differ with the UK Government on some aspects of their approach. For example, we do not agree with the practise of detaining asylum seekers during the process of determining their refugee status. Where possible, we do utilise the devolved powers available to encourage integration of migrants and asylum seekers from "Day 1" of their arrival. There remain challenges in realising the aspirations of the recommendations fully; for example, the majority of asylum seekers are dispersed in and around the Glasgow area, although there are a significant minority in the east of Scotland. Support services are therefore concentrated in these areas, and that does limit the extent to which integration can be supported across all of Scotland. We work closely with and provide funding to the Scottish Refugee Council, one of our strategic partners in this area, to ensure that those seeking asylum and refugee protection in Scotland are welcomed and supported.

Child Rights

Sweden, Norway and Finland recommended that the UK takes measures to ensure the freedom of children from corporal punishment in accordance with the UN Convention on the Rights of the Child. In Scotland, we believe that the existing law provides the right protection of children and young people; it is already illegal to punish children by shaking or hitting them. We have no plans to change this approach

Slovakia recommended that the UK incorporate fully, as a matter of urgency, the principles and the provisions of the Convention on the Rights of the Child into domestic law. In Scotland, we are committed to enshrining the principles of the Convention into domestic law and policy wherever possible. However, we also believe that incorporation is best achieved on a case by case basis, and are not of the view that wholesale incorporation of the UNCRC into domestic law represents the best way to progress our approach to children's rights at this time.

Slovakia also recommended that the UK ensures the best interests of the child are taken into account in relation to their parent's status within the criminal justice system. In Scotland, it is an operational matter for the police to determine appropriate action during and following the removal of a parent into police custody. The welfare of the child is of paramount importance and in some cases there will be a need for a multi-agency approach, involving the police, social work and childcare professionals to carefully consider the child's needs, any views expressed by the child, and, if required, consider and put in place suitable measures in order to protect the child. On the issue of sentencing, the Scottish Government's position is that it is for the courts to decide on the most appropriate sentence, within the overall legal framework, in all cases. The complete independence of the judiciary in making sentencing decisions is at the heart of the criminal justice system in Scotland and it is appropriate that sentencing decisions are entirely a matter for the judge, who hears all the facts and circumstances surrounding the offence and the offender, and takes into account any factors which they consider to be relevant before reaching a view on whether a custodial sentence or non-custodial sentence should be imposed.

Belarus recommended raising the minimum age of criminal responsibility and refrain from the practise of keeping children in custody. Following the raising of the age of criminal prosecution in the Criminal Justice and Licensing (Scotland) Act (2010), Scottish Ministers have committed to give fresh consideration to the age of criminal responsibility with a view to bringing forward any legislative change in the lifetime of this Parliament. On the issue of custody, the Criminal Justice and Licensing (Scotland) Act 2011 introduced provisions to end the very rare practice of remanding 14 and 15 year olds in the prison estate. Accordingly, no legal mechanism exists for the courts to either remand or sentence a young person under age 16 to custody in prison.

Costa Rica recommended that the UK adopt a strategy so that children of vulnerable groups are not excluded from the education system. The Scottish Government is supportive. We are committed to ensuring that all children and young people are able to make the most of the educational opportunities available to them to reach their full potential. To achieve this, we are committed to supporting the implementation of the provisions of the Equality Act 2010 which require schools to proactively prevent direct and indirect discrimination in relation to protected characteristics. In addition, we recognise that vulnerable children and young people may require support to enable them to realise their full potential. The Additional Support for Learning legislation provides the framework for children and young people who need additional support, for any reason, short or long term, to receive it to overcome barriers to their learning.

Scottish education authorities must identify, provide for and keep under review the additional support needs for all children and young people for whose education they are responsible. The framework includes provisions for planning for learning, with support from other agencies, including health and social work services. In addition, parents and young people have a series of rights relating to assessment, planning and appeal. Scottish legislation allows schools to exclude pupils, either temporarily or permanently, where it is felt that allowing the pupil to continue would be detrimental to order and discipline in the school. However, during periods of temporary exclusion and following a permanent exclusion from a school, the education authority retains a legal obligation to provide education in some form. When considering the decision to exclude, schools are encouraged to explore alternatives and take account of the individual circumstances in each case.

Economic, Social and Cultural Rights

Cuba recommended that the UK guarantees the enjoyment of economic, social and cultural rights, in particular rights to health, education and adequate housing. The Scottish Government is supportive. Our Purpose is to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. We measure success through a National Performance Framework, which working towards outcomes relevant to the enjoyment of rights to health, education and housing. These include working to ensure that Scots live longer and healthier lives, that young people are successful learners, that Scots are better educated and that Scots live in well designed, sustainable places. These outcomes are measured through specific national indicators which provide us with information on where we are achieving success and where more still needs to be done.

Nepal and Viet Nam made recommendations around ensuring that the welfare of individuals is protected, and that sufficient resources are delivered under welfare reform. The Scottish Government is supportive. While we agree with the broad principles of the UK Government's welfare reforms plans, we recognise that work is not appropriate for everyone and that sufficient support should be available to those who need it. We agree that welfare reform should take account of the needs of the poorest and most vulnerable people in society.

Norway recommended the UK set out a clear pathway to meet the goal of ending child poverty in the UK by 2020. The Scottish Government is supportive. We recently published a Child Poverty Strategy for Scotland in 2011 that sets out our approach, which focuses on early intervention and is linked to related Government strategies on reducing poverty and health inequalities as well as early years education. We report annually on Scottish progress towards the four UK child poverty targets and on actions under the main aims of the Strategy: maximising household resources and improving children's wellbeing and life chances.

Angola and Ecuador made recommendations regarding the publication of the Levenson Inquiry and to take appropriate follow up action. The Scottish Government is supportive. In terms of devolved functions, we will consider the recommendations arising from the Inquiry carefully.

International Development

A number of states (Trinidad and Tobago, Bangladesh and Pakistan) made recommendations in relation to the right to development. The Scottish Government is supportive. In these difficult economic times our commitment to work in partnership with the developing world on poverty alleviation and the achievement of the Millennium Development Goals must be stronger than ever. Scottish Ministers continue to support international development and our commitment is clearly evidenced by our doubling of the baseline budget from £3 million to £6 million, followed by a further increase to £9 million in 2010/11 which has been maintained through the current period of this spending review. Since the launch of our refreshed International Development Policy in 2008, we have focused our development programmes to be more strategic and sustainable, and to encourage close partnership working to meet the needs and priorities of developing countries. All our work across our priority countries is clearly focused on the key objective of poverty alleviation and the achievement of the Millennium Development Goals and must adhere to the principles of the Paris Declaration on Aid Effectiveness.

Spain and Germany recommended the UK recognise the right to safe drinking water and sanitation. The Scottish Government is supportive. The Water Resources (Scotland) Bill and Scotland's Hydro Nation agenda both promote action on water and sanitation issues. Scotland's Hydro Nation approach of developing the value of our water resources domestically and through international development work such as the Climate Justice Fund is a strong supporting contribution to the water and sanitation resolutions.

I would conclude by stating that the Scottish Government is committed to creating a modern, inclusive Scotland that protects and respects human rights. I welcome the opportunity to participate in the process of having our approach scrutinised at the highest level, and look forward to continuing dialogue on how we might ensure that the rights of all in Scotland are realised.



ROSEANNA CUNNINGHAM