



Devolution and international human rights monitoring mechanisms

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ABSTRACT

This article analyses how the protection of human rights in the three devolved regions of the United Kingdom (UK) has been periodically monitored at the international level since devolution took effect in 1999. It looks at the work of the 10 United Nations monitoring mechanisms to which the UK has subscribed and at seven Council of Europe mechanisms. A summary is provided of the degree to which the UK's national reports, responses to lists of issues and replies to questionnaires have referred to human rights issues in Scotland, Wales and Northern Ireland, and there is then a summary of references made to those jurisdictions in the monitoring body's concluding observations or reports, especially when the references express concerns about whether the rights in question are being fully protected in accordance with treaty requirements. The analysis reveals that UK national reports do now include a lot of information about how rights are protected in the devolved regions, even if the devolved administrations themselves, especially in Northern Ireland, are not always as cooperative as they should be in compiling the national reports. The monitoring bodies also now pay close attention to regional variations in the protection of rights and at times issue recommendations directed at the devolved administrations, while emphasising that the UK Government has ultimate responsibility for compliance with treaty obligations. The case study illustrates various well-known defects in the international monitoring system, such as delays, duplication of effort and lack of enforcement powers.

Keywords: human rights monitoring; devolution and human rights; UN and European monitoring bodies.

INTRODUCTION

There are essentially three different ways in which international human rights standards can be 'enforced' at the national level by external states or institutions. The first is through 'direct action', which can take the form of travel restrictions, economic sanctions or even military intervention. The second is through litigation, perhaps by lodging a complaint with a regional Court of Human Rights or sending a 'communication' to a treaty-monitoring body. The third enforcement

mechanism is the evaluative one, whereby an independent body – eg the United Nations (UN) Human Rights Council, a Working Group, a Special Rapporteur, a Commissioner or a treaty-based monitoring committee – evaluates the extent to which a state is complying with its international human rights obligations and issues a report listing its conclusions and recommendations.¹ It is with this last type of enforcement mechanism that this article is solely concerned, and in particular those which operate on an agreed periodic basis.

Typically, the evaluative mechanisms operate in review cycles and require the state to initiate the monitoring round by submitting a national report on how it has met its obligations under a particular treaty during the immediately preceding years. But some mechanisms operate on a more *ad hoc* basis: they do not demand a national report but they do seek answers to written questions and may pay visits to the state to inspect facilities (such as prisons or refugee centres) and to speak with government representatives, activists and other experts with knowledge of the human rights situation on the ground.

Under international law the duty to comply with ratified treaties rests squarely on national governments, even when day-to-day responsibility for meeting the standards in question has been devolved to sub-state entities such as, in the United Kingdom (UK), the Scottish Government, the Welsh Government and the Northern Ireland Executive. This orthodox position was clearly stated by, for example, the UN Committee on the Elimination of Discrimination Against Women (CEDAW) in its Concluding Observations on the UK's Eighth Periodic Report in 2019:

The Committee is cognizant of the State party's structure of government, with devolved administrations in Northern Ireland, Scotland and Wales, and with separate governance structures in the State party's overseas territories and Crown dependencies. It recalls, however, that the devolution of government powers does not negate the direct responsibility of the State party to fulfil its obligations to all women and girls within its jurisdiction ... It also recalls that article 27 of the Vienna Convention on the Law of Treaties provides that a party to a treaty may not invoke the provisions of its internal law as a justification for its failure to perform a treaty.²

The monitoring mechanisms which were the focus of a study backgrounding the current article are the periodic evaluations conducted by UN, Council of Europe and (in one case) European Union

- 1 Sometimes these evaluative bodies can also hold 'inquiries' into particular human rights issues. Two examples of such inquiries involving the UK are mentioned at nn 11 to 13 and 56 below.
- 2 CEDAW/C/GBR/CO/8, para 10. There was no space in this article to examine how the UK's Crown Dependencies and Overseas Territories are now dealt with by the evaluative mechanisms.

(EU) bodies.³ As indicated in Table 1, the UK is currently involved in 10 UN mechanisms and eight Council of Europe mechanisms. There are two UN mechanisms which have not made assessments of the UK because the UK has not yet ratified the treaties under which

Table 1: Human rights monitoring mechanisms applying to the UK (with starting dates)

	United Nations mechanisms		Council of Europe mechanisms	
1	Committee of Experts on the Application of Conventions and Recommendations (CEACR) ⁴	1926	European Committee on Social Rights (ECSR)	1968
2	Committee on the Elimination of Racial Discrimination (CERD)	1969	European Committee on the Prevention of Torture (ECPT)	1989
3	Human Rights Committee ⁵	1977	European Commission Against Racism and Intolerance (ECRI) ⁶	1993
4	Committee on the Elimination of Discrimination Against Women (CEDAW)	1981	Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC)	1998
5	Committee Against Torture (CAT)	1984	Group of States Against Corruption (GRECO)	1999
6	Committee on Economic, Social and Cultural Rights (CESCR)	1985	Committee of Experts of the Charter for Regional or Minority Languages (CECRML)	2001
7	Committee on the Rights of the Child (CRC)	1991	Group of Experts on Action against Trafficking in Human Beings (GRETA)	2009
8	Sub-Committee on the Prevention of Torture (SPT)	2007	Group of Experts on Action Against Violence Against Women and Domestic Violence (GREVIO)	2022
9	Human Rights Council ⁷	2007		
10	Committee on the Rights of Persons with Disabilities (CRPD)	2008		

- 3 Brice Dickson, *International Human Rights Monitoring Mechanisms: A Study of their Impact in the UK* (Edward Elgar 2022). The study was undertaken with the help of an Emeritus Fellowship from the Leverhulme Trust, whose assistance is here gratefully acknowledged. The EU mechanism is – or was, now that the UK has left the EU – the monitoring conducted by the Fundamental Rights Agency, whose offices are in Vienna. Its monitoring is not reviewed within this article.
- 4 This Committee evaluates state adherence to (*inter alia*) the eight ‘fundamental rights’ Conventions drawn up by the International Labour Organization, now a UN institution.
- 5 This Committee evaluates state adherence to the International Covenant on Civil and Political Rights.
- 6 This is the only Council of Europe mechanism which is not linked to a specific human rights treaty.
- 7 This is the UN body which conducts Universal Periodic Reviews of each member state every four or five years. It is the only mechanism not conducted by human rights experts but by political representatives.

they operate, and in the case of one Council of Europe mechanism monitoring became possible only in November 2022.⁸

As many as seven of the 18 mechanisms listed in Table 1 began operating only *after* considerable powers were devolved to Scotland, Wales and Northern Ireland in 1999. Since then it might have been expected that the devolved administrations would play a significant role in providing information for, and responding to, evaluations conducted by the various mechanisms, especially the new ones. Regrettably, that has not consistently been the case, although in recent years the situation has improved.

The evaluations conducted after 1999 are listed in Table 2.⁹ It will surprise many readers to learn that there are no fewer than 145 of them, roughly two-thirds being UN evaluations and one-third European.¹⁰ The 73 evaluations conducted by the International Labour Organization (ILO) were of a much less intensive nature than those conducted by the traditional treaty-monitoring bodies but were still rigorous. A further 21 evaluations were conducted by the European Committee on Social Rights (ECSR), since under its system states which have ratified the European Social Charter are assessed each year on one of four groups of rights. Of the remaining 51 evaluations, two were not periodic reports but *ad hoc* inquiries set up by the Committee on the Rights of Persons with Disabilities (CRPD) and the Committee on the Elimination of Discrimination Against Women (CEDAW), the latter of which became a key driver of the process which ultimately led to the decriminalisation of abortion in Northern Ireland.¹¹

Each of the evaluations relied greatly on information submitted to the monitoring body concerned. Some of this was specifically requested, some was volunteered. It emanated not just from government sources but also from quangos and civil society organisations. The accuracy of evaluations clearly depends on the quality of information supplied. When monitoring mechanisms make visits to states – as do the Council of Europe mechanisms (except for the ECSR) and UN bodies when conducting inquiries or inspections – there are clear opportunities to gain further insights. The bodies can do their own research too.

8 These are the UN Committee on the Rights of Migrant Workers, the UN Committee on Enforced Disappearances and the Council of Europe GREVIO. The UK eventually ratified the (Istanbul) Convention on Preventing and Combating Violence against Women and Domestic Violence on 22 July 2022, and it came into effect for the UK on 1 November 2022.

9 There was a Northern Ireland Parliament and Government between 1921 and 1972, but there appears to be no record of the involvement of either institution in the ECSR's evaluations of the UK in 1968, 1970 and 1972, nor in CERD's evaluations in 1970 and 1972.

10 This was the position as of 31 December 2022.

11 By the Northern Ireland (Executive Formation etc) Act 2019, s 9.

Table 2: Evaluations of the UK by UN and Council of Europe mechanisms, 1999–2022

UN Evaluative Mechanisms	Council of Europe and Evaluative Mechanisms
CEACR (ILO): 73 reports since 2000	ECSR: 21 reports since 2000
CERD: 2001, 2003, 2011, 2016	ECPT: 2001, 2009, 2018
Human Rights Committee: 2001, 2008, 2015	ECRI: 2001, 2005, 2010, 2016, 2019
CRC: 2002, 2008, 2016	GRECO: 2001, 2004, 2008, 2012, 2018
CESCR: 2002, 2009, 2016	ACFC: 2002, 2007, 2011, 2016
CAT: 2004, 2013, 2019	CECRM: 2003, 2006, 2010, 2013, 2018
Human Rights Council: 2008, 2012, 2017	GRETA: 2012, 2016, 2021
CEDAW: 2008, 2013, 2018, ¹² 2019	
CRPD: 2016, ¹³ 2017	
SPT: 2020	
Total number of evaluations: 99	Total number of evaluations: 46

For the purposes of this article an analysis was made of the information supplied about the devolved regions by the UK Government during the most recent round of each of the 17 varieties of periodic evaluation.¹⁴ It appears that there is little uniformity in the way that central government departments liaise with devolved governments in this regard. Regrettably, it was not possible in this short piece to also analyse the information supplied by regional non-governmental organisations or the three ‘national human rights institutions’.¹⁵ In addition, an analysis was made of the attention given to the UK’s devolved regions in the monitoring bodies’ Concluding Observations or reports. A summary of the results of these analyses is set out below, working forward from the least recent evaluation (published in July 2015) to the most recent (published in December 2021). In the case of the ECSR and the Committee of Experts on the Application of Conventions and Recommendations (CEACR), each of which spread their periodic evaluations over a number of years, the last complete cycle of evaluations has been analysed (2018–2021 for the ECSR; 2019–

12 This was a report of an inquiry conducted by CEDAW on the criminalisation of abortion in Northern Ireland.

13 This was a report of an inquiry into the impact of austerity measures on persons with disabilities in the UK.

14 In May 2014, the Office of the UN High Commissioner for Human Rights set a limit of 21,200 words for state reports and 10,700 words for treaty bodies’ Concluding Observations: A/RES/68/268. While doubtless necessary for bureaucratic reasons, these word limits do restrict the breadth and depth of analysis in those documents.

15 These are the Equality and Human Rights Commission (which covers Wales as well as England, but only equality issues in Scotland), the Scottish Human Rights Commission and the Northern Ireland Human Rights Commission.

2022 for CEACR). The article therefore looks at the comments made on *all* the human rights standards monitored by the 17 mechanisms. The focus is not so much on the substance of the information supplied and evaluated as on the degree of attention paid by the state and the monitoring body to the human rights situation in each devolved region. An ascending chronological approach to the evaluations has been adopted in order to make it clearer whether the devolved regions are being given more attention as time moves on.

THE HUMAN RIGHTS COMMITTEE (JULY 2015)

The UK's Seventh Periodic Report was submitted in 2012.¹⁶ Its 'Foreword' claims that the increased devolution of powers to Scotland, Wales and Northern Ireland greatly impacted upon the character of the report and in the section where responses are given to the Committee's previous recommendations from 2008 it is stressed that entries referring to the devolved nations are direct submissions from those nations' governments unless otherwise indicated. But in fact this applies only to entries relating to Scotland and Wales because earlier the report admits that:

[d]espite requests from the UK Government, the devolved administration in Northern Ireland has been unable to agree a contribution to this report reflecting the views and actions of the Northern Ireland Executive relating to those Articles for which they have policy responsibility under the devolution settlement.¹⁷

This is a sad reflection of the disharmonious nature of the relationship between the Democratic Unionist Party and Sinn Féin within the Office of the First Minister and Deputy First Minister in Northern Ireland's Executive between 2007 and 2012.¹⁸

In explaining the UK's position regarding article 1 of the International Covenant on Civil and Political Rights (ICCPR) (which guarantees the right of all peoples to self-determination), 23 paragraphs are devoted to explaining the devolution arrangements in the UK. In the remainder of the report there are separate paragraphs on developments

16 CCPR/C/GBR/7 (29 December 2012). The Committee now operates on the basis that it will review each country every eight years. The UK's next report was due by 24 July 2020, but it was not received until 28 June 2021 (CCPR/C/GBR/8). It is based on the list of issues adopted by the Committee in March 2020 (CCPR/C/GBR/QPR/8) and should be considered by the Committee during 2023.

17 Ibid para 12.

18 The Assembly and Executive were suspended from 2002 to 2007, due largely to the failure of Republican paramilitary groups to decommission their weapons. It was only in 2010 that responsibility for policing and criminal justice was transferred to Northern Ireland from Westminster.

in Scotland on more than 20 different issues relating to, for example, equality and discrimination, judicial appointments, police and judicial training, human rights education in schools, domestic violence against women, deaths in police custody and in prisons, human trafficking, the treatment of asylum seekers, aspects of criminal procedure, religious education, freedom of information, hate crime, civil partnerships, and the rights of children and young people.

There are fewer separate references to Wales, partly because the devolution of powers in Wales was (and still is) not as extensive as in Scotland and Northern Ireland. There are separate paragraphs on public sector equality duties, reducing violence against women, the appointment of an Anti-Trafficking Co-ordinator, the Rights of Children and Young Persons (Wales) Measure 2011, the Welsh language and education.

With regards to Northern Ireland, mention is made of the continuing derogation notice relating to the right to liberty guaranteed by article 9 of the Covenant, deemed necessary because of the continuing risk of terrorism in that part of the UK. For the same reason non-jury trials are mentioned. Further information is supplied as to how the right to a thorough investigation of killings is protected.

In the Human Rights Committee's Concluding Observations on the UK's report,¹⁹ five concerns were raised vis-à-vis Scotland: the way stop and search powers were being used; the high number of suicides; the availability of a 'justifiable assault' defence when children are corporally punished (particularly at home); the cuts to legal aid; and the fact that the minimum age for criminal responsibility was set at eight years and for criminal prosecutions at 12 years. Wales did not attract the Committee's concern on any matter specific to that jurisdiction, but Northern Ireland was criticised for: the slow progress in introducing a Bill of Rights; the reduction in the budget of the Northern Ireland Human Rights Commission (NIHRC); the poor quality and pace of the process for promoting accountability in relation to 'the Troubles'; the way stop and search powers were exercised without data being gathered on the community background of those stopped; the low number of women in the civil service and the judiciary; the highly restricted circumstances in which abortion was permitted; delays across the criminal justice system; and the absence of suitable bail packages for child defendants.

19 CCPR/C/GBR/CO/7 (adopted 21 July 2015).

THE ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES (MAY 2016)

The Advisory Committee on the Framework Convention (ACFC) issued its fourth Opinion on the UK on 25 May 2016.²⁰ Here we look not only at the UK's Fourth Report on which that Opinion was based, but also at its Fifth Report which was received on 4 November 2021 and on which the ACFC's Opinion should be published in mid-2023.²¹

The fourth Opinion is quite generous in the attention it gives to the devolved regions. It notes the moves that were then in place to increase the devolution of powers to Scotland and Wales. It describes the situation in Northern Ireland as:

characterised by political tensions in governing bodies, tensions that often prevent smooth governance, by lack of dialogue with stakeholders and by the continuing lack of an updated legal framework for equality implementing section 75 of the 1998 Northern Ireland Act.²²

It devotes separate paragraphs to the three devolved regions when commenting on sites for Gypsies and Travellers and it looks closely at what has been done to protect the Gaelic and Scots languages in Scotland, the Welsh language in Wales and the Irish and Ulster Scots languages in Northern Ireland.

There are seven paragraphs on community relations in Northern Ireland and two recommendations targeted directly at the Northern Ireland Executive rather than the UK Government: it should 'adopt legislation directing the Department for Education to enhance shared education' (between children from Protestant and Catholic backgrounds) and it should 'monitor the Traveller Education Support Service to ensure that access and attendance of Traveller children to education is effective and that funds provided to schools in relation to children belonging to ethnic minorities are used to improve their attainment'.²³ The report also says the Northern Ireland Assembly should adopt robust and comprehensive single equality legislation. Neither the Scottish nor the Welsh Government and legislature are targeted in this direct manner.

The UK's Fifth Report consists mainly of information on what progress has been made in implementing the ACFC's 2016 recommendations. Where pertinent, reference is made to developments in Scotland and Wales. Startlingly, at three points the report admits that further information is still awaited from the Northern Ireland

20 ACFC/OP/IV(2016)005.

21 ACFC/SR/V(2021)009.

22 See n 20 above para 7.

23 Ibid paras 119–120.

Executive on comprehensive equality legislation, using disaggregated data to help implement effective minority protection policies and supplying legislative definitions of ‘good relations’ and ‘sectarianism’. But responses are provided on other issues in Northern Ireland, such as housing, the protection of Irish and Ulster Scots, and shared education. This suggests that it was the Executive Office itself (which is responsible for equality issues) and not other departments in the Northern Ireland Government, which was resisting cooperation with the ACFC when the fifth state report was being compiled.

THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (JUNE 2016)

The UK’s Sixth Periodic Report was submitted in June 2014.²⁴ The bulk of it (paras 5 to 107) is devoted to responding to the Committee’s previous recommendations in 2009,²⁵ one of which called for the adoption of a national action plan on human rights. The UK Government’s response was that ‘[t]he development and management of such a plan would have implications in the context of devolution’,²⁶ and it added that human rights promotion is further strengthened at the devolved level, citing Scotland’s National Action Plan for Human Rights developed by the Scottish Human Rights Commission in 2013 and the Welsh Government’s UN Stakeholder Group, which provides expert advice to the government on UN human rights reporting. In preparing its periodic report, the UK Government held stakeholder events not just in London but in Edinburgh, Cardiff and Belfast. For some unexplained reason the Executive in Northern Ireland seems to have been willing to cooperate in the preparation of this national report (and also with that for the Committee on the Rights of the Child (CRC), below) but not with that for the Human Rights Committee (above).

24 Sixth Periodic Report E/C.12/GBR/6. It is much longer than 21,200 words (see n 14 above) because it was already in an advanced draft when that limit was imposed. At several points it incorporates by reference information contained in the UK’s latest ‘Core Document’, issued in 2014 (a new version was issued in 2022: HRI/CORE/GBR/2022). It also follows the UN Office of the United Nations High Commissioner for Human Rights’ guidance by cross-referring extensively to UK state reports already submitted to other UN and Council of Europe treaty-monitoring bodies – CERD, the Human Rights Committee, CEDAW, CAT, the CRC, the CRPD, the ECSR, the ACFC and the CECRML. This practice saves on words, reduces the workload of treaty bodies and enhances their consistency of approach. The UK’s Seventh Periodic Report was received by CESCR on 20 May 2022: E/C.12/GBR/7. It makes copious references to developments in each of the three devolved regions, but it may not be considered by CESCR until 2024.

25 E/C.12/GBR/CO/5.

26 See Sixth Periodic Report (n 24 above) para 8.

The report goes on to provide more information about how Scotland, Wales and Northern Ireland are complying with the previous recommendations of the Committee on Economic, Social and Cultural Rights (CESCR) regarding the provision of employment opportunities, the protection of women and girls from violence, the right to adequate housing (including for Roma, Gypsies and Irish Travellers), the right to the highest attainable standard of health, the prevention of suicide, the reform of the welfare benefits system, the reduction of inequalities in the primary and secondary education systems and the introduction of higher tuition fees at the tertiary level.

The report mentions what both Scotland and Wales have done vis-à-vis gender equality, the poor health of people with mental disabilities, and greater awareness-raising for health care professionals and the general public concerning dementia and Alzheimer's disease. Scotland's commitment to a minimum Living Wage is also referred to.

On Northern Ireland the report corrects CESCR's assumption that there is already a draft Bill of Rights for Northern Ireland about to be presented to Parliament, and it reminds the Committee about Northern Ireland's public sector equality duties,²⁷ the details of Northern Ireland's law on abortion and what is being done to develop the Irish language. On the last of these issues the report cross-refers the Committee to information in reports already submitted by the UK Government to the Council of Europe's ACFC and Committee of Experts of the Charter for Regional or Minority Languages (CECRML).

Subsequent paragraphs in the report outline additional developments within the UK beyond those covered in the responses to CESCR's 2009 recommendations. Three of these relate to Scottish developments, on protection of the family, the right to an adequate standard of living and the right to education. Wales and Northern Ireland do not feature.

The Committee's Concluding Observations were adopted in June 2016.²⁸ CESCR welcomed the constructive dialogue held with the UK's ministerial delegation, which included representatives from Scotland and Wales but not from Northern Ireland. It could not therefore make 'a full assessment of the enjoyment of Covenant rights in Northern Ireland', and it asked future UK governments 'to ensure effective coordination with all devolved administrations, particularly Northern Ireland'.²⁹ Nevertheless, the Observations include multiple comments on human rights in Northern Ireland, only two on Scotland (on enhancing childcare services and reducing the gender pay gap) and none specifically on Wales.

27 These were provided for by the Northern Ireland Act 1998, s 75.

28 E/C.12/GBR/CO/6.

29 Ibid paras 2, 7 and 72.

Regarding Northern Ireland, CESCR repeated its 2009 recommendation that the UK should ‘take all necessary measures to expedite the adoption of a bill of rights’,³⁰ regretted that there was no equivalent to Great Britain’s Equality Act 2010, called for an anti-poverty strategy and for the repeal of the Unauthorised Encampments (NI) Order 2005, urged that immediate measures be taken to reduce the exceptionally high rate of homelessness, proposed that the law on termination of pregnancy should be made compatible with women’s rights to health, life and dignity, and recommended that an Irish Language Act be enacted.

THE EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (JUNE 2016)

The European Commission against Racism and Intolerance (ECRI) conducted its fifth assessment of the UK’s performance in tackling racism and intolerance in 2016. Its experts prepare their reports by analysing documents, visiting the country concerned and conducting a confidential dialogue with the country’s authorities. As with the Council of Europe’s Group of States against Corruption (GRECO) and Group of Experts on Action against Trafficking in Human Beings (GRETA), different topics are chosen as the focus for each round of assessments. For ECRI’s fifth round, the four topics were legislative issues, hate speech, violence and integration policies. In addition, each assessment looks at how the state has implemented ECRI’s recommendations from the previous round. A novel feature of the process is that the Commission is asked to specify two priority implementations above all others, and the state must then submit a follow-up report on how it is implementing those two recommendations.

ECRI’s 2016 report makes 23 recommendations. None of them relates specifically to Scotland or Wales, but Northern Ireland features three times.³¹ First, and this was one of the round’s two priority recommendations,³² ECRI strongly recommended ‘that the authorities of Northern Ireland consolidate equality legislation into a single, comprehensive equality act, taking inspiration from the Equality Act 2010 [applicable in Great Britain]’. Second, it recommended that Northern Ireland develop a refugee integration strategy to assist newly arrived refugees with matters such as housing and access to welfare.

30 Ibid para 10.

31 CRI(2016)38 (adopted 29 June 2016). An appendix contains the UK Government’s comments on the report.

32 The second priority recommendation was that in Great Britain data should be collected on the application of the Equality Act 2010, from the filing of a complaint to the final outcome.

Third, it wanted legislation to be enacted protecting people in Northern Ireland from discrimination on grounds of gender identity: currently the law protects people only on the ground of gender reassignment.

In 2019 ECRI issued its conclusions on how the UK was implementing its two priority recommendations, including the one on equality in Northern Ireland.³³ It had been informed that, in the absence of a functioning Northern Ireland Executive since January 2017, there had been no ministerial agreement on a new Equality Act, but a team had been set up to review the Race Relations (NI) Order 1997. There was not enough progress to allow ECRI to find that its recommendation had been implemented. The Review was eventually published in March 2023, for consultation; legislation may therefore finally appear in 2024.

THE COMMITTEE ON THE RIGHTS OF THE CHILD (JULY 2016)

The UK's Fifth Periodic Report was submitted in May 2014.³⁴ In its depiction of the current state of play in the UK it focused on issues raised by the CRC in its 2008 Concluding Observations,³⁵ and in relation to nearly all of them information is supplied on the position in each of the devolved regions. Even developments in Northern Ireland are extensively recorded, indicating that, as with the report to CESCR, government departments in Northern Ireland must have been involved in its compilation. Appendix 3 to the report provides further information on devolution, including new legislative measures, while Appendix 4 contains fascinating fine-grained detail on how much money is allocated to children's issues throughout the UK. For instance, the per head spending on primary and secondary education in each region of the UK in 2012–2013 was £6504 in England, £6396 in Scotland, £6262 in Wales but only £4961 in Northern Ireland.

After reviewing the state report, in November 2015 the CRC sent the UK Government a 'List of Issues' (28 of them in all) on which it required more information.³⁶ The UK replied to that list in March 2016,³⁷ and in July the CRC adopted its Concluding Observations.³⁸ In the latter document the CRC seemed to recognise the realities of devolution in the UK when it said that, while the recommendations were addressed to the UK Government, they were also addressed 'where relevant mandates

33 CRI(2019)28 (adopted 3 April 2019).

34 CRC/C/GBR/5.

35 CRC/C/GBR/CO/4.

36 CRC/C/GBR/Q/5.

37 CRC/C/GBR/Q/5/Add.1

38 CRC/C/GBR/CO/5.

fall under their jurisdiction, to the governments of the devolved administrations in Wales, Scotland and Northern Ireland'.³⁹ Amongst the concerns expressed about the regions were: for Scotland, the high rate of children in care, the lack of a statutory duty on local authorities to provide safe and adequate sites for Travellers and the retention of eight years as the minimum age for criminal responsibility; for Wales there were no issues raised that were not also an issue for England or one of the other regions; for Northern Ireland, the issues were the need for a Bill of Rights 'agreed under the Good Friday Agreement' (GFA),⁴⁰ the lack of 'a child rights indicator framework' with relevant data, the exclusion of children under 16 years from the protection of age discrimination legislation, violence against children carried out by non-state actors involved in paramilitary-style attacks, the use of secure accommodation for some children in care, the criminalisation of abortion and the segregation of schools by religion. The CRC noted as well that in Scotland and Northern Ireland children have no right to withdraw from collective worship without parental permission.

To start the sixth cycle of reporting, and in line with the UN's preferred 'simplified reporting procedure', the CRC issued the UK with a 'List of Issues Prior to Reporting' (LoIPR) in March 2021,⁴¹ and the UK submitted a 5000-word update on developments in its devolved regions in June 2022.⁴² It is on the LoIPR that the UK will focus when submitting its joint Sixth and Seventh Periodic Reports.⁴³ Unless otherwise stated, the CRC wants responses to each issue to include separate information in respect of England, Scotland, Wales and Northern Ireland.⁴⁴

THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (AUGUST 2016)

The UK's joint Twenty-First, Twenty-Second and Twenty-Third Periodic Report was submitted to the Committee on the Elimination of Racial Discrimination (CERD) in 2015. It too reminds the Committee about the devolution arrangements in the UK:

39 Ibid para 3.

40 Ibid para 7(b). This is a factual inaccuracy, since the GFA does *not* promise a Bill of Rights.

41 CRC/C/GBR/QPR/6–7.

42 See 'Annex B: Developments since 2016' on the UN's Human Rights Treaty Bodies Database (section on the CRC). See too Annex E: III. Statistical information and data, which includes a lot of data relating to the three devolved regions.

43 The full joint report was apparently submitted on 15 June 2022, but at the time of writing (February 2023) it was still not available on the Treaty Body Database.

44 See n 41 above para 2.

Under the UK's devolved system of government, legislation and policy in Scotland, Wales and Northern Ireland on many subjects relevant to the Convention are the responsibility of the devolved administrations. The commitment of the governments of Scotland, Wales and Northern Ireland to the Convention is exemplified by their participation in drafting the State Report and attending the periodic examinations.⁴⁵

To an extent the report is a model of how the UK should be reporting to a treaty body because on many issues it sets out what is different about the position in Scotland, Wales and Northern Ireland compared with that in England. However, this is done in a rather haphazard fashion. There are separate sections for the three devolved regions in relation to five themes: race equality and integration policies; measures to improve equality of socio-economic outcomes; tackling hate crime; Traveller accommodation; and education. But nothing specific is said about Scotland on police stop and search powers, on the representativeness of the police, on health or on mental health. There is nothing about Wales in relation to police stop and search powers or on housing. There is nothing about Northern Ireland concerning anti-Muslim hatred or mental health. In relation to health there are four paragraphs on the situation in England, none on Scotland, three on Wales and, bizarrely, 22 on Northern Ireland. Clearly the devolved administrations were not working to the same template when compiling their contributions to the State Report or else their contributions were not adequately edited at a central UK level. Moreover, as is common, a lot is said in this report about what *is being* or *will be* done, rather than about what *has been* done during the period under review. Even when the past *is* reviewed, indications are rarely given as to whether the initiatives taken were effective in reducing racial discrimination.

CERD adopted its Concluding Observations in August 2016. It appreciated 'the open and constructive dialogue that it had with the delegation of the State party, which included representatives of Northern Ireland, Scotland and Wales'.⁴⁶ Like the Human Rights Committee a year earlier, CERD referred to 'the complex structure of the State party, with devolved governments in Northern Ireland, Scotland and Wales', but it reiterated that 'as the duty bearer at the international level, the State party has the duty to ensure that the provisions of the Convention are implemented effectively in all territories it is responsible for'.⁴⁷ The Committee expressed concerns in relation to the failure by all three devolved governments to collect data on the enjoyment of rights by members of ethnic minorities in all fields of life

45 CERD/C/GBR/21–23 para 12.

46 CERD/C/GBR/CO/21–23 para 2. The UK's next report was due by April 2020 but by February 2023 it had still not been received.

47 Ibid para 4.

and to review the impact of stop and search powers on such persons. One concern specific to Scotland was the inability of its Human Rights Commission to support individuals with their legal claims. Nothing specific was observed about Wales. Four points were made about Northern Ireland: the absence of comprehensive anti-discrimination legislation; the slowness of the process for adopting a Bill of Rights; the reduced resources of the NIHRC; and the lack of information on concrete measures adopted to address racial discrimination.

THE HUMAN RIGHTS COUNCIL (MAY 2017)

The UK's national report for its third Universal Periodic Review (UPR) in 2017 expressly states that it includes contributions from devolved administrations.⁴⁸ During its preparation there were 'stakeholder' events in Glasgow and Cardiff and the Northern Ireland Executive 'held a series of bilateral meetings with various organisations in the course of October 2016'.⁴⁹ Separate attention is given to the three devolved regions on human trafficking, discrimination and hate crime, the treatment of detainees, combating poverty, the gender pay gap, the rights of older persons, the rights of persons with disabilities, Gypsies and Travellers, protecting children's rights, and promoting health.

On the legal framework for protecting human rights, mention is made of the Scottish Government's commitment to integrate human rights and the Sustainable Development Goals within its 'National Performance Framework' and also of its National Equality Improvement Project, which assists public authorities to better comply with the public sector equality duty, including in the socio-economic area. A paragraph on Northern Ireland refers to the UK Government's promise to seek a resolution to legacy issues that will allow the bodies envisaged by the Stormont House Agreement of 2014 to be established. In addition, it is 'willing to consider proposals for a Northern Ireland specific Bill of Rights if sufficient consensus can be reached'.⁵⁰

The relevant Working Group of the Human Rights Council adopted its report on the UK in May 2017. As was the custom, it summarised

48 A/HRC/WG.6/27/GBR/1 para 4. The UK's fourth UPR took place in November 2022, with Scotland and Wales being represented on the UK delegation by someone from each of those regions' governments and Northern Ireland being represented by someone from the UK Government (through its Northern Ireland Office). The report of the Human Rights Council's Working Group was published on 9 January 2023 (A/HRC/52/10). It contains no fewer than 302 recommendations, to which responses from the UK Government were still awaited at the time of writing. Scotland is mentioned once in the recommendations, Wales not at all and Northern Ireland 10 times.

49 Ibid para 5.

50 Ibid para 13.

the interactive dialogue held with the national delegation to the UPR, during which 94 other delegations gave statements. As many as 227 recommendations were made by the Working Group. It is in the nature of the UPR process, which is inevitably rather superficial given that the time available is limited and the dialogue is with political representatives rather than human rights experts, that the issues affecting particular regions of the state rarely get much attention unless the human rights situation there is egregious. In the Working Group's report, therefore, there were very few references to Scotland, Wales or Northern Ireland, and in its recommendations there were none at all aimed at Scotland or Wales. There were six specifically concerning Northern Ireland. Five related to the position on same-sex relationships, the role of coroners, abortion law, inclusive education and domestic violence. The sixth, made by Ireland, asked that the UK Government's proposed British Bill of Rights should not adversely affect the protection of rights in Northern Ireland and that 'a Bill of Rights for Northern Ireland ... should be pursued to provide continuity, clarity and consensus on the legal framework for human rights there'.⁵¹

THE COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES (AUGUST 2017)

The CRPD's first, and so far only, review of the UK's adherence to the 2006 Convention on the Rights of Persons with Disabilities took almost six years to complete: the UK's report was received in November 2011, but the CRPD did not produce its 'list of issues prior to review' until March 2017, to which the UK replied promptly in July 2017,⁵² and the CRPD's Concluding Observations emerged in August 2017.⁵³

At the start of the UK's report, in the 'Overview' section, there are multiple paragraphs summing up the situation in Scotland, Wales and Northern Ireland, and in almost all of the subsequent sections of the report separate attention is paid to developments in each of the regions.⁵⁴ Unlike with the report to the Human Rights Committee just a year later, there does not appear to have been any lack of cooperation in compiling the report on the part of the Northern Ireland Executive.

The CRPD's report commended the UK delegation, which included persons 'from authorities in Northern Ireland, and the governments of Scotland and Wales'.⁵⁵ Otherwise Scotland was mentioned only twice,

51 Ibid para 134.67.

52 CRPD/C/GBR/Q/1 and CRPD/C/GBR/Q/1/Add.1, respectively. The UK's next national report (its joint second, third and fourth) is due by July 2023.

53 CRPD/C/GBR/CO/1.

54 CRPD /C/GBR/1.

55 See n 53 above para 3.

for two positive developments in 2016: its national plan of action to implement the UN Convention on the Rights of Person with Disabilities and its Accessible Travel Framework. The only specific reference to Wales (rather than to England and Wales) was to its Social Services and Well-being (Wales) Act 2014, which provides a framework for social services and health. Northern Ireland, on the other hand, was the subject of several concerns: the CRPD notes the absence of initiatives aimed at addressing living conditions for persons with disabilities, the lack of adequate protection against disability-based discrimination and discrimination by association, the use of non-consensual electroconvulsive therapy (which was also occurring in Scotland and Wales, but less frequently), the high suicide rate among persons with disabilities, and the need for support packages to mitigate the negative impacts of social security reform.⁵⁶

THE GROUP OF STATES AGAINST CORRUPTION (MAY 2018)

The Council of Europe Committee which evaluates states' compliance with anti-corruption standards (GRECO) published its latest report on the UK in May 2018.⁵⁷ It compiles such evaluations on the basis of information collected from a questionnaire sent to the national government and from on-site visits during which meetings are held with various stakeholders. The focus of the fifth round of evaluations was corruption amongst persons with top executive functions in government (whether ministers or senior officials) and amongst members of law enforcement agencies (specifically, in the UK's case, the London Metropolitan Police Service and the National Crime Agency). The three devolved regions are mentioned in passing several times in GRECO's report, but none of its 12 recommendations refers to one of the regions.

In May 2021 GRECO published its comments on how the UK had implemented the recommendations made three years earlier.⁵⁸ It concluded that five of the 12 recommendations had been implemented, or otherwise dealt with, satisfactorily. Four had been partly implemented and three had not been implemented. Again, none of the regions featured in GRECO's reckoning. Scotland and Northern Ireland were not mentioned, and Wales was referred to only in the

56 In 2013 the CRPD agreed to launch its first ever 'inquiry' under the UN Convention. It was into the effects of the UK Government's austerity measures on persons with disabilities. For the inquiry's report, see CRPD/C/15/4 (24 October 2017).

57 GrecoEval5Rep(2017)1. The next evaluation will take place in 2023.

58 GrecoRC5(2020)4.

phrase ‘England and Wales’. It is remarkable, for example, that the controversy over a Renewable Heating Incentive scheme in Northern Ireland, which was one of the reasons why the Northern Ireland Executive was suspended between 2017 and 2020, does not seem to have been considered by GRECO, despite the widespread allegations of corruption relating to the scheme that were made at the time.⁵⁹

THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (FEBRUARY 2019)

The UK’s Eighth Periodic Report to CEDAW was received in November 2017.⁶⁰ The ‘Foreword’ explains that the report uses statistics and information provided by UK government departments as well as by the devolved administrations in Scotland, Wales and Northern Ireland, and it refers to a targeted engagement exercise with a cross-section of women’s organisations organised by the UK, Scottish and Welsh governments, there being stakeholder roundtables held in each of those jurisdictions. It adds that power-sharing negotiations were continuing between the main political parties in Northern Ireland and so ‘in the absence of a functioning devolved government, references to Northern Ireland contained in this report remain subject to review and agreement by future ministers with responsibility for the issues concerned’.⁶¹

The State Report reviews the UK’s implementation of the UN Convention on the Elimination of Discrimination Against Women on an article-by-article basis, cross-referring where appropriate to the recommendations issued by CEDAW in 2013 after the previous periodic review. References to developments within the three devolved regions occur under almost every heading within the report, and in truth it is difficult to identify any significant gaps in the information relating to the prevailing situation in Northern Ireland.

CEDAW sent the UK a list of issues prior to review, and the UK duly issued its responses to that list.⁶² Amongst the issues was a call for more information from each of the three devolved regions on actions being taken to improve the representation of women in parliament and in local government. Further information was called for from both Scotland and Northern Ireland on the activities undertaken by the UK’s Government Equalities Office in those jurisdictions and on

59 The *Report of the Independent Public Inquiry into the Non-domestic Renewable Heat Incentive (RHI) Scheme* (12 March 2020). See too Sam McBride, *Burned* (Merrion Press 2019).

60 CEDAW/C/GBR/8.

61 Ibid ‘Foreword’.

62 CEDAW/C/GBR/Q/8 and CEDAW/C/GBR/Q/8/Add.1 respectively.

the measures taken to ensure the availability of affordable childcare facilities.

CEDAW's Concluding Observations were adopted in February 2019.⁶³ The UK's delegation at the review meeting with the Committee included representatives of the governments of Scotland, Wales and Northern Ireland but, as already noted,⁶⁴ CEDAW sternly stressed that it is the UK Government which must take ultimate responsibility for implementing its international human rights obligations, even if there is no functioning government in a devolved region.⁶⁵ The only specific reference to devolved regions in CEDAW's recommendations related to the need for more research to be conducted into the prevalence and nature of prostitution in Scotland and Northern Ireland, so that changes required to legislation and policy could be identified. The UK's Ninth Periodic Report to CEDAW was due in March 2023.

THE COMMITTEE AGAINST TORTURE (MAY 2019)

The UK's most recent periodic report to the Committee Against Torture (CAT) was submitted in 2017.⁶⁶ It comprised the Government's responses to the list of issues prior to reporting, which CAT had published the previous year.⁶⁷ The report contains separate sub-sections on Scotland, Wales and Northern Ireland in the sections on violence against women, human trafficking, and minors and women in detention. Scotland and Wales have sub-sections on hate crimes. There are also separate sub-sections on Scotland and Northern Ireland relating to prison regulations, prison overcrowding and the minimum age for criminal responsibility. On several other issues there is separate attention given only to Scotland: training for law enforcement officials, deaths in custody, persons deprived of their liberty in mental health settings, and inadmissibility of evidence obtained through torture. Likewise, only Northern Ireland is referred to on a number of matters: non-jury trials, transitional justice, historical institutional abuse, abortion law and the recruitment of children into illegal paramilitary groups. On a Bill of Rights for Northern Ireland the UK Government said that it was 'willing to consider proposals for Northern Ireland specific rights if sufficient consensus can be reached', the same phrase that it used in its report to the Human Rights Council in 2017.⁶⁸

63 CEDAW/C/GBR/CO/8.

64 See the text at n 2 above.

65 See n 63 above para 10.

66 CAT/C/GBR/6.

67 CAT/C/GBR/QPR/6.

68 See n 66 above para 8. See too nn 40 and 51 above.

CAT's Concluding Observations were adopted in May 2019.⁶⁹ They are critical of all three devolved regions (and also England) for their very low minimum ages for criminal responsibility, but otherwise no negative criticism relates specifically to Scotland or Wales. In contrast, a whole page is devoted to accountability for conflict-related violations in Northern Ireland, with CAT calling for the implementation of the Stormont House Agreement of 2014. In particular it does not approve of limitations being placed on the investigations of past crimes, nor of any amnesties being accorded for torture or ill-treatment (a step which CAT says would be inconsistent with the UK's obligations under the UN Convention against Torture). The Committee also called for stronger efforts to be made to promptly and effectively investigate cases of paramilitary violence in Northern Ireland, including against children. As a matter of urgency, measures should be adopted to provide redress to victims of ill-treatment identified by the Historical Institutional Abuse Inquiry, and an impartial and effective investigation into the practices of the Magdalene laundries and mother-and-baby homes should be expedited. Finally, CAT recommended that the UK should ensure that all women and girls in Northern Ireland have effective access to a termination of pregnancy when not doing so would be likely to result in severe pain and suffering or in cases of fatal foetal impairment.

The UK's Seventh Periodic Report to CAT was due by May 2023. In anticipation of that, the Committee issued its list of issues prior to reporting in May 2022.⁷⁰

THE COMMITTEE OF EXPERTS OF THE CHARTER FOR REGIONAL OR MINORITY LANGUAGES (JULY 2020)

The UK submitted its latest report to the CECRML (also sometimes abbreviated to COMEX) in 2018. It contained long sections on the status of regional languages in Scotland and Wales (and also in Cornwall and the Isle of Man), but it contained nothing whatsoever on Northern Ireland.⁷¹ In its evaluation of the report the Committee regretted this lacuna and added:

Given that the Northern Ireland Assembly has been suspended since January 2017, it was, as in the fourth monitoring cycle, not possible to agree within the Northern Ireland power-sharing Executive on a contribution to the report. However, it is unclear to the Committee of Experts why the United Kingdom central authorities have not reported on their own competences. The Committee of Experts reminds the UK

69 CAT/C/GBR/CO/6.

70 CAT/C/GBR/QPR/7.

71 MIN-LANG (2017) PR 8, 15–33 (Scotland) and 34–89 (Wales).

Government that it has the final responsibility under international law for the implementation of the Charter and that it is its treaty obligation to submit a complete report in full compliance with Article 15 of the Charter.⁷²

The blockage within the Northern Ireland Executive was doubtless due to Unionist opposition to further protection of the Irish language. Nevertheless, basing itself on information gleaned from elsewhere, not least during its visit to the UK, the Committee's evaluative report still comments quite extensively on the position of both Irish and Ulster Scots in Northern Ireland.⁷³

The report helpfully sets out in the form of charts the degree to which the UK's undertakings relating to each of the regional languages have been fulfilled. It calls for more complete implementation where required and then makes specific recommendations. In relation to Scots there are five recommendations, one of which calls for immediate action to provide forums and means for the teaching and study of Scots at all appropriate stages. On Scottish Gaelic there are 11 recommendations, two of which call for immediate action on making school education available in the language and on providing teacher training and learning materials. Welsh attracts three recommendations, all comparatively minor in nature. On Irish there are as many as 18, two of which call for immediate action on adopting a comprehensive law and strategy for its promotion in Northern Ireland and on providing training for a sufficient number of teachers. The only recommendations concerning Ulster Scots are to adopt a strategy promoting its use in education and other areas of public life and to establish cultural relations with other linguistic groups. After examining the Committee's report, the Council of Ministers of the Council of Europe emphasised just two of all these recommendations: those on further measures to strengthen Scottish Gaelic education and on a comprehensive law and strategy for the promotion of Irish.⁷⁴

In January 2021 the UK submitted information on how it was implementing the Committee's latest recommendations for immediate action,⁷⁵ and two months later the Committee responded to that document.⁷⁶ While it was reasonably satisfied with what had been done in relation to Scots, it was less so in relation to Scottish Gaelic, and

72 CM(2019)84-final (1 July 2020) ch 1, para 7.

73 Ibid ch 1, paras 13 and 17, and chs 2.2 and 2.6.

74 CM/RecChL(2020)1. It also stressed the recommendation to empower Cornwall County Council to promote Cornish.

75 MIN-LANG (2021) IRIA 1.

76 MIN-LANG (2021) 3. It should be noted that on 6 December 2022 the Identity and Language (NI) Act 2022 received Royal Assent. But under s 10 its main provisions will not commence until the necessary regulations are in place.

much less so as regards Irish and Ulster Scots. The UK's next national report is due by July 2023.

THE EUROPEAN COMMITTEE ON THE PREVENTION OF TORTURE (APRIL 2002 [WALES], DECEMBER 2018 [NORTHERN IRELAND], OCTOBER 2020 [SCOTLAND])

The European Committee on the Prevention of Torture (ECPT) now makes a 'periodic' visit to the UK once every four or five years, but it also makes *ad hoc* visits. Between its periodic visits in 2016 and 2021 it made two *ad hoc* visits in 2017, one in 2018 and two in 2019. Both types of visit may or may not include detention facilities in the devolved regions, but none of them is preceded by the submission of a state report. The Committee's report on its periodic visit in 2021, which included detention facilities only in England, was generally complimentary, but it did draw attention to the problems of overcrowding and prolonged periods of seclusion in psychiatric establishments.⁷⁷

The latest ECPT visit to detention facilities in Scotland occurred in 2019, and the resulting report referred back to another visit made the previous year.⁷⁸ It concluded that urgent measures were required to counter the rise in the prison population, with the number of women prisoners being 85 per cent above the envisaged maximum capacity of 230, meaning that many women were being held in primarily male prison facilities. The Committee also criticised the use of long-term segregation measures, which were sometimes imposed on prisoners for years on end. It invited the Scottish authorities to consider providing body-worn video cameras for front-line prison staff and making their use mandatory when staff may have to apply control and restraint measures. It added that the lack of secure psychiatric beds for women prisoners remained a concern.

It would appear that the only visits to detention facilities in Wales since devolution occurred took place in 2001, when Cardiff Central Police Station, Parc Prison in Bridgend and Hillside Secure Centre for children in Neath were included.⁷⁹ The ECPT recommended that conditions in police stations be reviewed. Some of the young persons the Committee spoke to at Parc Prison and Hillside Secure Centre alleged that they had been ill-treated by police officers in different parts of Wales, but not in the detention facilities themselves.

The ECPT's last visit to Northern Ireland, in 2017, examined developments on policing and prison matters since its previous visit

⁷⁷ CPT/Inf (2022) 13. The UK Government's response is at CPT/Inf (2022) 14.

⁷⁸ CPT/Inf (2020) 28 (published 8 October 2020), a follow-up to CPT/Inf (2019) 29 (published 11 October 2019).

⁷⁹ CPT/Inf (2002) 6 (18 April 2002).

in 2008. It focused particularly on Maghaberry Prison, Ash House (for female prisoners) and Shannon Clinic (a forensic psychiatric unit). The report noted that '[t]he co-operation received from the Northern Ireland authorities and from the staff at the establishments visited was excellent'.⁸⁰ It highlighted 'the enormous culture change that has taken place within the police of Northern Ireland since the late 1990s',⁸¹ but it recommended that better training be provided to police officers to avoid the use of unnecessary force when conducting arrests (eg not applying very tight handcuffs). It pointed out that the confidentiality of a detainee's medical details was not always respected. Amongst many other concerns were the incidence of inter-prisoner violence, the number of prisoners locked in their cells for more than 22 hours a day and deficiencies in the health care provided. The 54-page report is probably the most comprehensive evaluation ever conducted by an international human rights monitoring mechanism of a particular set of human rights issues in Northern Ireland or in either of the other two devolved regions.

THE SUB-COMMITTEE ON PREVENTION OF TORTURE (MAY 2021)

The UN's Sub-Committee on the Prevention of Torture (SPT), created by the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, made its first visit to the UK in September 2019 and its report was published in May 2021.⁸² The SPT tries to coordinate its activities with that of the ECPT (see above), so during its visit it focused on places of deprivation of liberty which the ECPT had not recently visited (it went to 12 places in England and four in Scotland) and also on the functioning of the National Preventive Mechanism (NPM), the body which the Optional Protocol requires to be established in each ratifying state. The UK's NPM actually comprises 21 bodies, six of which operate in Scotland, two in Wales and four in Northern Ireland. They include, for example, the Scottish Human Rights Commission, the Care Inspectorate Wales and Criminal Justice Inspection Northern Ireland. During its visit in 2019 the SPT had 14 meetings with individuals or organisations in Scotland (including eight from within the Scottish Government), one in Wales and two in Northern Ireland. No one from the Welsh or Northern Ireland governments appears to have been involved in the meetings, unless they did so indirectly as members of the NPM.

80 CPT/Inf (2018) 47 (6 December 2018) 4.

81 Ibid 9.

82 CAT/OP/GBR/ROSP/1.

The SPT's report, as several other UN treaty-monitoring reports have done, calls for the minimum age for criminal responsibility to be raised in all four UK jurisdictions. It was concerned about the quality of health care provided at Dungavel House Removal Centre in Scotland, but no observations were made specifically about Wales or Northern Ireland. This is surprising, certainly as far as Northern Ireland is concerned. As pointed out in this article, several other monitoring mechanisms – notably the ECPT and CAT – have recently expressed concerns about police behaviour, prison regimes and institutional care in Northern Ireland. The omission may be because the SPT is a relatively young treaty-body mechanism, it has a difficult role to play in trying to avoid any significant duplication of the work of the ECPT, and it effectively delegates a lot of its monitoring to the NPM in the country being assessed.

The UK Government's comments on the SPT report were published at the same time as the report itself.⁸³ From its content we can reasonably infer that both the Scottish Government and the Northern Ireland Executive (especially the Department of Justice) were consulted during its compilation. They are replete with additional information about how Scotland, in particular, is complying with its obligations in this domain. Wales is dealt with as part of England and Wales, since justice is not an issue that has been devolved to the Welsh Senedd. One of the points made in relation to Northern Ireland is that research has been commissioned into why the proportion of Catholics within the Youth Justice System is higher than the current census breakdown for the 10 to 17-year-old age group. More details are supplied about health care in prisons and the training given to prison staff on mental health issues, and it was disclosed that, as of February 2021, no prisoners in Northern Ireland were sharing a cell, which is remarkable. There were also legislative plans to change the law on bail and remand for children since at present the number of children admitted to custody on remand is significantly higher than the number who subsequently receive a custodial sentence.

THE GROUP OF EXPERTS ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS (OCTOBER 2021)

GRETA monitors state compliance with the Council of Europe's Convention on Action against Trafficking in Human Beings of 2005. Like GRECO and ECRI (see above) it focuses on different issues in each round of evaluations. It conducts these by sending states a questionnaire, considering the responses, making a visit to the state

83 CAT/OP/GBR/CSPRO/1 (1 June 2021).

and then publishing an evaluative report, usually alongside the state's comments on the report. The thematic focus of the third evaluative round was access to justice and effective remedies for victims of trafficking and the UK submitted its responses to the questionnaire in June 2020.⁸⁴

The UK's 100-page document is exemplary in containing, within each section, separate sub-sections explaining the position in Scotland and Northern Ireland (Wales is again treated in conjunction with England). It is again obvious that the Scottish Government and Northern Ireland Executive contributed significantly to the document. GRETA's report on the UK's answers to the questionnaire was published in October 2021, with the UK Government's comments inserted at the end.⁸⁵ To help prepare its report, GRETA held online meetings with eight governmental and non-governmental organisations in Scotland, three in Wales and nine in Northern Ireland. Of the 32 paragraphs which contain GRETA's recommendations, 20 of which focus on the topics under consideration in the third evaluation round and 12 on other issues already raised by the Committee, only one relates specifically to a devolved region: the amount of compensation awarded by the Northern Ireland Criminal Injuries Compensation Authority should not be dependent on the victim's co-operation with the authorities or prior convictions. GRETA's next evaluation of the UK is likely to be in 2025.

THE EUROPEAN COMMITTEE ON SOCIAL RIGHTS (2018–2021)

The ECSR monitors implementation of the European Social Charter and also its Revised version. In the case of the UK, which has ratified only the original Charter, reviews take place annually over a cycle of four years, with one of the four groups of Charter rights being examined each year. Group 1 rights relate to employment, training and equal opportunities; Group 2 rights relate to health, social security and social protection; Group 3 rights are labour rights; and Group 4 rights relate to children, families and migrants. National reports are submitted to, and assessed in, Strasbourg; the ECSR does not visit states nor engage in face-to-face dialogues with state representatives. After conducting its assessment the Committee declares clearly whether the state is or is not in conformity with the requirements of each Charter provision in question. If it needs more information in order to make up its mind, it defers taking a firm position until the next review.

84 GRETA(2018)26_GBR_rep.

85 GRETA(2021)12.

The UK's national reports do now refer very frequently to the relevant position on particular rights in each of the devolved regions, and to date the Committee has not highlighted any lack of cooperation by a devolved government in the compilation of a national report. The Forty-First National Report (on Group 3 rights) was submitted in February 2022, but at the time of submitting this article the ECSR has not yet published its assessment of it. The four most recent assessments relevant to this article are therefore those published in 2021 on Group 1 rights (2015 to 2018) and Group 2 rights (2016 to 2019), in 2020 on Group 4 rights (2014 to 2017) and in 2019 on Group 3 rights (2013 to 2016).⁸⁶ It is immediately evident that ECSR reports sometimes relate to the position obtaining in the state up to six years earlier.

On Group 1 rights, the ECSR's 2021 report gives special attention to Scotland in relation to disability issues, leaving Wales and Northern Ireland to be dealt with alongside England. The Committee deferred its conclusion on whether the UK was in conformity with article 15 of the Charter (the right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement) until further information was forthcoming on the remedies available in Scotland in cases of disability discrimination with respect to education. On Wales it said that it was not clear that workers' organisations participated in the supervision of vocational training for young workers. In relation to Northern Ireland the ECSR asked for updated information on whether equality law was to be brought into line with that in Great Britain and on what progress was being made with a new racial equality strategy and new racial equality legislation.

On Group 2 rights, the ECSR's 2021 report refers at length to information provided in the UK's report about the devolved regions and often mentions information provided separately by the Scottish Human Rights Commission and the Scottish Children and Young People's Commissioner. As regards tackling the causes of ill-health the Committee noted that very limited information had been provided about Wales and asked that the next report should provide details concerning all constituent parts of the UK, 'rather than a list of links to various websites'. People living in Scotland and Northern Ireland had lower life expectancy rates than people living in England, though they also displayed smaller gaps between the rates in the most deprived and the least deprived areas. The ECSR wanted more information on the measures taken to provide abortion services in Northern Ireland.

As regards the right to protection of health, the Committee noted concerns over mental health services for young people in Scotland

86 For convenient links to all the relevant reports, see Council of Europe, '[Country Profiles: United Kingdom](#)'. They are also available through the database at HUDOC.

and asked for the data existing in other parts of the UK. It noted that the drug-related death rate was higher in Scotland than anywhere else in the EU and 3.5 times as high as in the UK as a whole. Minimal reference is made to comparable issues in Wales and Northern Ireland. As social security is largely not a devolved matter in the UK, the ECSR found that in the whole of the country the levels of statutory sick pay, employment support allowance, long-term incapacity benefits and unemployment benefits were all inadequate. Also, non-nationals had to be in permanent residence in the UK for an excessively long period (five years) before becoming eligible for social security benefits.

The ECSR's latest report on Group 3 rights says little about regional situations because labour rights are a reserved matter in Scotland and Wales, while in Northern Ireland the tradition is usually to follow the English lead (except that in Northern Ireland employees are protected against unfair dismissal after just one year of working for an employer, while in England, Scotland and Wales they must have served for two years). The report on Group 4 rights refers to the situation in devolved regions when relevant, but expresses few concerns. It upbraids Wales and Northern Ireland (as well as England) for maintaining the age of criminal responsibility at 10 years and notes that Scotland intends to increase the age to 12. The ECSR's own position is that the age should be at least 14. It also notes that in Scotland and Northern Ireland (as well as in England), but not Wales, it remains possible for a child to be taken into care merely because the parents have inadequate resources to look after the child. It impliedly praises Scotland for introducing its own Child Poverty Act in 2017 but is concerned that Northern Ireland's laws on protecting women are inadequate. It observes that Wales is intending to remove the 'reasonable chastisement' defence in cases of assault against children, but it criticises that region (as well as England) for continuing to allow the prosecution of child victims of prostitution.

THE COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS (2019–2022)

Of the 190 Conventions which the ILO has developed (many have lapsed or been replaced), eight are referred to as fundamental human rights Conventions, and state compliance with these is monitored every two or three years by CEACR. In the case of the UK, the most recent monitoring of each such Convention occurred as follows: in 2022, the Conventions on Freedom of Association and the Right to Organise; in 2021, the Conventions on Equal Remuneration and Discrimination; in

2019, the Conventions on Forced Labour, Abolition of Forced Labour, Minimum Age of Employment and Child Labour.

If we look at the available comments from CEACR on each of the latest evaluations we see that the UK's devolved regions receive barely a mention.⁸⁷ This is partly because the comments are rarely longer than one or two pages per Convention (hundreds of evaluations are conducted each year, and not just of the fundamental Conventions), but also because only in Northern Ireland is employment a devolved issue.⁸⁸

In 2020, in its comments on the Forced Labour Convention, CEACR noted the publication of annual progress reports on the implementation of the Human Trafficking and Exploitation Strategy in Scotland and that a revised strategy was being prepared. It also remarked that the Department of Justice in Northern Ireland had developed its third Modern Slavery Strategy for 2019–2020 and that the Organized Crime Task Force was regularly monitoring progress made with that strategy in its annual reports. CEACR requested the UK Government to provide information on any revised strategies in Scotland and Northern Ireland and asked for more detail on their effectiveness.⁸⁹

In 2021, in its comments on the Convention on Discrimination, CEACR repeated its usual call for the abolition of the exclusion of teachers in Northern Ireland from protection against discrimination on the ground of religious belief, as provided for by section 71(1) of the Fair Employment and Treatment (NI) Order, 1998.⁹⁰ In 2022 CEACR commented on implementation of the Convention on Freedom of Association, but it referred only to legislation applying throughout Great Britain, making no specific mention of Scotland, or Wales, and ignoring the legislation applying in Northern Ireland altogether.

CONCLUSIONS

A number of tentative conclusions can be drawn from the foregoing analysis and from other research conducted for the background study to this piece.⁹¹

87 The comments are contained in CEACR's own Annual Reports (Part A) and also in its annual reports on the Application of International Labour Standards.

88 In Scotland responsibility for employment tribunals was devolved in 2016, but not responsibility for employment law.

89 CEACR, [2020 Observations](#).

90 In 2022 the Northern Ireland Assembly enacted the Fair Employment (School Teachers) Act (NI), which requires the legislative exclusion to be removed within two years.

91 See n 3 above.

- 1 While the international monitoring mechanisms have a great deal to be said for them, they are not designed to deal well with states which are non-unitary. In other words, if a state has regional governments as well as a central government, the monitoring bodies find it difficult to make a full assessment of the situation in each region, even if the powers devolved to that region are very wide-ranging and its population quite large. In the UN's system, the word limits applying to documents associated with an assessment inevitably mean that little can be said about each and every region. The largest UK region is Scotland, with a population of about 5.4 million. Within Europe alone there are 21 independent states with a smaller population, but because of their independence most of them receive a lot more attention from the monitoring bodies than does Scotland.
- 2 By and large the UK Government does now include appropriate information in its national reports, and in its replies to questions, to explain how, if at all, devolved regions are protecting rights differently. In general, it emphasises positive differences rather than deficiencies. The fact that so many rights have to be covered, especially in the reports submitted to the Human Rights Council, the Human Rights Committee, CESCR and the ECSR, impacts negatively on the comprehensiveness of information available to the monitoring bodies, which often have to supplement what they are told by the state through gathering information from other sources. The principle of equality (whereby in each monitoring round the same time is devoted to each state, regardless of its size) also militates against devolved regions being considered in close-up.
- 3 There continue to be inconsistencies and inefficiencies in the way that information is supplied by devolved regions in the UK. In recent years the Scottish Government has been much more proactive than those in Wales and Northern Ireland in this regard, as is evident from the responses to recommendations emerging from the UPR in 2017.⁹² The absence of devolved government ministers in Northern Ireland from 2002 to 2007 and from 2017 to 2020 led to a significant deficit in the information supplied to the ACFC and CECRML during those periods. Northern Ireland departments and the Northern Ireland Office (a branch of the UK Government) were unable or unwilling to remedy the deficit. The quality of government consultation with civil society organisations and national human rights institutions remains variable across the regions.

92 See A/HRC/36/9/Add.1/UK-Annex: Annex to the UK response to the recommendations received on 4 May 2017 (29 August 2017).

- 4 Monitoring bodies, especially at the UN, tend to insist upon a state devising one overall national strategy to protect a set of rights, even though this runs counter to the principles of devolution and subsidiarity. The monitoring bodies appear unwilling to engage directly with representatives from subnational governments, although those representatives do sometimes form part of the national delegation when it is meeting with a UN body in Geneva, and Council of Europe bodies making visits to the UK do often try to travel to one or more of the devolved regions.
- 5 The monitoring bodies do not always operate efficiently. The UN bodies, in particular, are overworked and under-resourced, except for the ILO's CEACR.⁹³ Long delays build up, meaning that Concluding Observations and recommendations are sometimes issued in respect of deficiencies in human rights protection that arose many years earlier. The remits of the bodies also significantly overlap. Both the UN and the Council of Europe have monitoring bodies focusing on socio-economic rights and on torture and ill-treatment. Within the UN the remits of the Convention-based bodies (CERD, CAT, the SPT, CEDAW, the CRC and the CRPD) overlap with the remits of the two Covenant-based bodies (the Human Rights Committee and CESCR), and the work of all of these bodies is duplicated again by the UN Charter-based Human Rights Council. All of this results in the same issue being highlighted time and time again by several monitoring bodies: the minimum age for criminal responsibility in the devolved regions is referred to by five of the 17 monitoring bodies examined above, while a Bill of Rights for Northern Ireland is mentioned by six. There is a distinct lack of cross-referencing between the various monitoring bodies, and the UK's national reports exhibit the same defect, with the notable exception of its 2014 report to CESCR.⁹⁴
- 6 Northern Ireland receives a disproportionate amount of attention relative to its population (1.9 million). Apart from the rather formulaic mentions of a Bill of Rights, the issues given particular salience are the decriminalisation of abortion, accountability for conflict-related violations, the mistreatment of children in residential institutions and by paramilitary groups, and the

93 In 2022 the UN's planned expenditure on the ILO's monitoring mechanisms was US\$25,107,827. Its planned expenditure on *all* its other human rights monitoring mechanisms was US\$8,978,700. See ILO, *The Director-General's Programme and Budget Proposals for 2022–23* (2021) 87 and 89–90; UN General Assembly, *Proposed Programme Budget for 2022* (Human Rights) A/76/6 (Sect.24) 94.

94 See n 24 above.

absence of legislation comparable to the Equality Act 2010 which applies in England, Scotland and Wales.

- 7 Wales and Northern Ireland could learn a lot from Scotland as regards devolved legislative engagement with international monitoring mechanisms. Since 2000 various Committees of the Scottish Parliament have considered human rights issues, and in 2016 an Equalities and Human Rights Committee was created, the remit of which extends to ‘human rights contained in any international convention, treaty or other international instrument ratified by the UK’. In 2018 the Committee published *Getting Rights Right: Human Rights and the Scottish Parliament*, which makes several recommendations aimed at increasing Scottish parliamentary engagement with monitoring.⁹⁵ The Committee undertook to send its relevant reports directly to monitoring bodies and to meet with members of those bodies and other monitors when they are visiting the UK.
- 8 The NIHRC has been the most active of the three UK National Human Rights Institutions (NHRIs) in this field of international monitoring. Between 2001 and 2020 it made 61 submissions to international bodies, including to two UN Special Rapporteurs.⁹⁶ The Scottish Human Rights Commission has also engaged well with the UN’s UPR mechanism, with seven UN treaty bodies and, recently, the ECSR.⁹⁷ But no NHRI has interacted meaningfully with the ILO, and the Equality and Human Rights Commission, as well as the NIHRC, pay little attention to the ECSR: socio-economic rights are to that extent still the poor relation in the field. However, the three NHRIs (and the Equality Commission for Northern Ireland) form the UK Independent Mechanism for the purposes of the UN Convention on the Rights of Persons with Disabilities, and the Scottish Human Rights Commission is part of the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture.

95 Sixth Report, 2018 (Session 5), SP Paper 431, 26 November 2018. It is worth recording that in 2021 a member of CEDAW submitted written and oral evidence to the Northern Ireland Assembly’s Committee for Health when it was considering the Severe Fetal Impairment Abortion (Amendment) Bill, a Private Members’ Bill aimed at protecting some disabled fetuses from being aborted. See the Committee for Health’s Report NIA 88/17-22 (11 November 2021). At the time of writing the Bill had not been passed by the Assembly. (I am indebted to Rhyannon Blythe of the NIHRC for this information.)

96 The Special Rapporteurs on Extreme Poverty (in 2019) and on Adequate Housing (2016).

97 Details are available on the Scottish Human Rights Commission, ‘Treaty and International Work’.

9 Devolved administrations do little to assist in the dissemination of Concluding Observations of monitoring bodies or to consult with civil society organisations and national human rights institutions on how to implement recommendations emerging from those observations. The Scottish Government has developed a plan to incorporate five human rights treaties into Scottish law, but the Supreme Court has recently pointed out that there are constitutional limits to what regional legislatures can enact in that regard: they cannot mandate UK-wide institutions to act in a certain way in Scotland, since no devolved legislature has the competence to bind such institutions.⁹⁸ Wales leans more towards a ‘due regard’ approach in its legislation.⁹⁹ The Northern Ireland Executive has no clear strategy on the issue and activists’ concentration on devising a Bill of Rights for Northern Ireland may be distracting the Northern Ireland Assembly’s attention from the potential impact of international monitoring as well as from its own legislative capacity. It is vital for elected representatives in the devolved legislatures to recognise that ‘observing and implementing international obligations’ is a transferred matter in all three of the regions.¹⁰⁰

10 The fundamental question is what impact the numerous monitoring bodies are having on the protection of human rights in the UK’s three devolved regions. Is this a situation where, in Horace’s famous phrase, ‘*parturient montes, nascetur ridiculus mus*’ (‘the mountains will go into labour, and a ridiculous mouse will be born’)? The answer must be an emphatic ‘no’, but it is important to specify that the impact of the monitoring is not easily measurable in terms of policies and laws that have been reformed as a direct consequence of something recommended by a monitoring body. Instead, the impact lies in the constant pressure which states are put under by the monitoring mechanisms to live up to the obligations they promised to adhere to when they ratified or acceded to a human rights treaty. The pressure means that policy- and law-makers need to be continuously aware that if they do not comply with those obligations this will be noticed and publicised on the international plane. It can safely be said that, collectively, the monitoring systems do shine a bright light and ring a resounding bell, even if governments, whether central or devolved, are not always watching or listening.

98 *In Re United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill* [2021] UKSC 42, [2021] 1 WLR 5106.

99 See eg Social Services and Well-being (Wales) Act 2014, s 7(1) and (2).

100 Scotland Act 1998, sch 5, para 7; Government of Wales Act 2006, sch 7A, paras 10(1) and (3); Northern Ireland Act 1998, sch 2, para 3(c).