

## Introduction

In the previous instalment of our series, we spoke about the European Court of Human Rights. As well as being arguably the most well-known of all the CoE's bodies, it is also Europe's most important mechanism for protecting civil and political liberties like the right to life, freedom of expression and the right to private life.

Far less well-known, however, is the CoE's role in protecting our "everyday rights" – in other words, rights that are [necessary for us to live healthy, fulfilling lives](#). Often termed "social and economic rights", they include the right to an adequate standard of living, the right to housing and the right to the highest attainable physical and mental health.

In this op-ed, we discuss the CoE's flagship mechanism for upholding social justice: the European Social Charter (ESC). In what follows, we set out key provisions from the Charter, explain how its enforced and highlight its relevance for Scotland.

## The European Social Charter explained

Often referred to as Europe's social constitution, the ESC differs to the European Convention of Human Rights in that focuses on people's living standards. Established in 1961, the Charter protects the right to work, the right to collective bargaining and the right to protection of health.

In many ways, the ESC resembles the [United Nations Covenant on Social, Economic and Cultural Rights](#) (see also our [joint report](#) to the UN Committee on Economic, Social and Cultural Rights (CESCR) as part of their review of the UK's implementation of the Covenant). However, there are some important differences.

Firstly, the ESC is arguably **more detailed** and **more prescriptive** than its UN counterpart. Though both treaties say that people have the right to work and to just and favourable conditions of work (ICESCRs Articles 6 and 7), the ESC sets out more specific policy goals that governments should achieve. These goals include attaining full employment (Article 1), progressively reducing the working week (Article 2(1)) and providing specified amounts of paid annual leave (Article 2 (3)).

Similarly, whereas the ICESCRs contains a single provision on the need to protect social security (ICESR Article 9), the ESC contains three separate provisions dedicated to this topic (Articles 12, 13 and 14). Once again, it also sets out important policy objectives like putting in place social work services and progressively increasing the system of social security to a higher level (Articles 14 and 12 (3)).

Secondly, both the IECSCRs and the ESC lay out protections for **particularly vulnerable members of society**. Again, however, the ESC is arguably far more specific in how such groups should be protected. For instance, the ESC sets out more specific provisions on:

- Providing and facilitating the employment of disabled persons (Article 15);
- ensuring migrant workers are not subjected to less favourable treatment than nationals (Article 19(4));
- Protecting women from dismissal whilst on maternity leave and allowing for up to 12 weeks' worth of adequate social security benefits whilst on such maternity leave (Article 8).

Finally, there is one last vital difference between the ESC and the ICESCRs. The UN Covenant operates on a “take it or leave it approach”. A state that signs up to it accepts each and every single provision within the Covenant. By contrast, the ESC operates on an **à la carte approach**. In other words, a state must accept a core minimum number of rights but can then “add” other rights to the ones it has already accepted if it chooses to do so.

The United Kingdom ratified the European Social Charter on [11/07/1962](#) and has accepted 60 of the Charter's 72 paragraphs. The provisions *not* accepted by the UK include:

- providing for reasonable daily and weekly working hours, whilst progressively reducing the working week;
- recognising the right of men and women workers to equal pay for work of equal value;
- making it unlawful for an employer to give a woman notice of dismissal during her absence on maternity leave; and
- endeavouring to raise progressively the system of social security to a higher level.

### The Social Charter Revamped

There are in fact two versions of the ESC. This is because in 1996 a new and improved version of the Charter – entitled the “[revised social charter](#)” – was adopted in order to reflect developments in other international instruments and in the legislation of member States (see the revised Charter's [explanatory report](#)).

This new charter contains 31 substantive rights (versus the 1961 version's 19 such rights). These include the right to protection against poverty and social exclusion; the right to housing; the right to protection against sexual harassment in the workplace; and rights relating to elderly persons.

Though the UK signed the revised version in 1997, it has so far not ratified it. In a [recent House of Lords debate](#), the UK's then Under Secretary of State for Work and Pensions confirmed that the UK agreed with the contents of this revised charter, but

could only ratify it “when we know that we will be compliant with it”. She also clarified that ongoing reforms, such as the UK’s employment rights bill, will influence whether it could adopt the revised charter. The 1961 version of the ESC is therefore the only version that remains relevant for the UK.

### **How is the charter enforced?**

The body in charge of overseeing whether states are complying with the charter is called the European Committee of Social Rights. The Committee is composed of 15 independent experts and is currently chaired by Aoife Nolan, Professor and Director of the Human Rights Law Centre at Nottingham University. Professor Nolan was previously a member of the Scottish Government’s Child Rights Working Group, which advised on the incorporation of the United Nations Convention on the Rights of the Child into Scot’s law.

The Committee works in a similar fashion to the UN Committee on Economic and Social Rights: States bound by the ESC submit “national reports” setting out how they are complying with their charter obligations. It will then be up to the Committee to examine these reports and to form a conclusion on whether national practices are in conformity with the Charter. As part of this process, the Committee receives information not just from Governments themselves, but also from NGOs and National Human Rights Institutions.

Each review cycle focuses on a different theme regulated by the Charter. Hence in [2022 and 2023 respectively](#), the Committee’s conclusions focused on labour rights and the rights of specific groups (migrants, children and families). The Committee’s [most recent questionnaire](#), issued to state parties in June 2024, focused on issues like healthy and safety conditions, the right to organise and bargain collectively and the right to fair remuneration. The UK’s response can be found [here](#).

However, the Committee doesn’t just look at the situation of specific countries. Since 2022, following a reform-process designed to enhance its impact, the Committee has been able to issue “ad-hoc” reports on certain thematic topics affecting all Member States. In contrast to the regular reporting process, the Committee ad-hoc procedure doesn’t involve addressing conclusions at specific states. Instead, it gives an overview of the measures taken by various States Parties and identifies good practice where possible. Again, NGOs and NHRIs can submit evidence concerning how their countries are responding to the issue identified by the Committee.

The Committee’s most recent ad-hoc report focused on the European cost-of-living crisis. As part of its inquiry, the Committee received a [60 page analysis](#) from the Scottish Human Rights Commission (SHRC) which highlighted issues around the

delivery of child payment in Scotland; the increased use of foodbanks; fuel poverty; and the cost of child care. The Committee's [final report](#) makes wide-ranging recommendations for all Member states including:

- adjusting social benefits to improve the purchasing power of people most at risk of poverty;
- ensuring a sufficient stock of affordable social housing; and
- maintaining an adequate minimum wage.

### **The ESC and the UK**

The [last report](#) in respect of the UK was released in March 2023. As noted above, the Committee's 2023 review cycle focused on family protection, children's rights and the rights of migrants. Again, the Committee received an [extensive submission](#) from the Scottish Human Rights Commission. Though the SHRC highlighted important areas of progress such as the implementation of Social Security Scotland, it also raised concerns around the provision of mental health care for children in Young Offenders Institutions; the persistent relationship between homelessness and domestic abuse; and the worrying data about the number of children subject to trafficking, sexual crimes and exploitation.

Some of these concerns were reflected in the Committee's findings. Though the 2023 report highlighted various areas of UK policy that conformed to the Charter, it outlined a number concerns such as:

- the high rate of child poverty;
- the level of child benefits being insufficient;
- the levels of migrant children going missing from hotels; and
- the inadequate amounts of maternity pay.