



International Covenant on Economic, Social and Cultural Rights: Report to the UN Committee on Economic, Social and Cultural Rights

January 2023

A Joint Civil Society report from: Human Rights Consortium Scotland, The Poverty Alliance, Who Cares? Scotland, Inclusion Scotland, Clan Childlaw, The ALLIANCE, Article 12, The Food Train, Close the Gap, Scottish Commission for Learning Disability (SCLD), Environmental Rights Centre for Scotland (ERCS), Community Policy Forum, Alcohol Focus Scotland, United Nations Association Scotland, and UN House Scotland

There has never been a more important time for the UK Government to follow guidance of CESCR and implement future recommendations from the Committee. The Joseph Rowntree Foundation estimates that 7 million households in the UK are at present going without the *absolute* basics¹. The last several years has seen those who have always faced barriers due to discrimination, inequality and poverty have increasingly more of their economic, social, and cultural rights disregarded. We face a human rights crisis in the UK rooted in deep discrimination and a lack of understanding to those at the sharpest end of it.

This report seeks to look at how the UK is fundamentally failing to implement the ICESCR, whilst focusing in on marginalised experiences to showcase wider gaps where affirmative action is needed to address inequality. Specifically, as a joint report from Scottish organisations, this report will use primarily devolved Scottish examples to highlight where people’s economic, social, and cultural rights are not being respected by government.

¹ Joseph Rowntree Foundation (2022), [Over three million low-income households said they have not been able to keep their home warm because they aren’t able to afford it as dangerously cold weather sets in](#)

1. Right to work and to just and favourable conditions of work

Zero-hour contracts

The fundamental principles behind zero-hour contracts are unfair. Human rights are exploited under these contracts and information is not communicated from employers to employees about their rights under contract. According to the ONS, about 1% of the UK workforce is bound by a zero-hour contracts, with 25% of employers in the public sector using them². The following is a list of ways in which a zero-hour contract breaches the economic, social, and cultural rights of UK workers, and thus we call for their abolishment:

- No maternity, holiday, redundancy, or sick pay leave
- No protection in the event of unprecedented circumstances such as nation-wide recessions, austerity, health pandemics
- Greater risk of unfair dismissal due to personal problems from management
- Greater risk of unfair treatment and workplace bullying / manipulation
- Greater risk of inconsistent hours and thus inconsistent salaries to keep up with the demands of rising costs of housing, food, and other key necessities
- Lack of job security³

Poverty Alliance's *Menu for Change* research also suggests that the requirements to search for employment for people already in work are unrealistic, particularly in the context of zero-hours contracts. Other evidence indicates that in-work conditionality is currently unrealistic in many cases, and undermining work incentives rather than reinforcing them⁴.

Questions

- Will the UK Government abolish zero-hour contracts nation-wide?

Gender Pay Gap

There remains a 10% gap between men's and women's average hourly rates, and a 30% gap when you compare women's part-time average hourly rate to men's full-time hourly rate⁵. This gap is caused by occupational segregation, lack of flexible working and discrimination in pay and grading systems. The gender pay gap is wider for Black and minority ethnic women, disabled women, and older women. COVID-19 has disproportionately affected women's employment, putting women at greater risk of poverty, and widening gender pay gaps⁶. Public sector employers are required to publish their gender pay gap under the Public Sector Equality Duty, however, there is little evidence of them taking meaningful action to address their pay gaps. Large private and

² Quality Solicitors (2022), [Zero-hours contracts: controversy and your rights](#)

³ Ibid

⁴ Dr Mary Anne MacLeod (2019), [Found Wanting: Understanding journeys into and out of food insecurity: a longitudinal study](#)

⁵ Close the Gap (2018), [The Gender Penalty: Close the Gap's new research on Scotland's gender pay gap](#)

⁶ Close the Gap (2021), [One Year On: How COVID-19 is impacting women's employment in Scotland](#)

third sector employers are required to report their pay gap under UK regulations, and similarly, most employers are not taking steps to address their pay gap⁷.

Racism in Employment

The employment rate for BAME⁸ Scots is 15% lower than the non-BAME population, and BAME Scots are much more likely to live in poverty, and on average BAME employees are paid 10% less than their non-BAME counterparts⁹.

Questions

- How are the UK and Scottish governments working to ensure the gender pay gap closes?
- How will the UK and Scottish governments work to improve employment rates amongst the BAME community?
- What are the UK and Scottish governments doing to address institutional and organisational racism in the workplace?

Asylum Seekers and Migrants' Right to Work

Currently, people seeking asylum can only work if they have been waiting more than 12 months on a claim and their job is listed on the highly restrictive Shortage Occupation List. Alongside a regrettable loss of their skills to the UK workforce, this also leaves many people at risk of destitution and entirely reliant on charitable support. In common with many other countries and with the support of the public, people should be allowed to work after living in the UK for 6 months¹⁰.

Questions

- Will the UK Government lift the ban and give people seeking asylum and refugees the right to work in the UK?

2. Right to education

Additional Support

An independent review found that Additional Support for Learning legislation is not consistently implemented, is over-dependent on committed individuals, and is not ensuring that all children and young people who need additional support are being supported to fulfil their potential¹¹. D/deaf children often have to travel miles from home to go to school, affecting their education and wellbeing. Parents of disabled children felt “abandoned” during COVID-19 closures because of lack of educational support and cancellation of support services¹². Disabled children struggled without vital support e.g., educational psychologists, speech and language therapy, Child and Adolescent Mental

⁷ Close the Gap (2020), [One year on and little change: An assessment of Scottish employer gender pay gap reporting](#)

⁸ This report recognises the homogeneity of the phrase “BAME”, but uses it in this context as the data used focused on the groups within the BAME community.

⁹ Race.ED (2020), [Taking Stock – Race Equality in Scotland](#)

¹⁰ Refugee Action (2022), [#LiftTheBan: Give People Seeking Asylum the Right to Work](#)

¹¹ Scottish Government (2020), [Review of additional support for learning implementation](#)

¹² Inclusion Scotland (2020), [Rights at risk – Covid-19, disabled people and emergency planning in Scotland](#)

Health Services (CAMHS)^{13 14} and experienced increased anxiety which impacted on moods and behaviour^{15 16}.

The Additional Support for Learning (Scotland) Act 2004 places duties on local authorities to identify, meet and review the needs of children and young people who have additional support needs (ASN), which includes disabled children. It gives children and young people, parents, and carers a number of rights, including rights to ask for additional support needs to be identified and planned for; to receive advice and information about their or their child's additional support needs. However, disabled children are still less likely to achieve Curriculum for Excellence levels and leave school with qualifications¹⁷.

Care Experienced School Leavers

Latest figures show that Care Experienced school leavers continue to have lower attainment than other school leavers. In 2019/20, 64% of all school leavers had 1 or more qualification at SCQF level 6 or better, whereas only 14% of school leavers looked after within the last year had qualifications of that level. Care Experienced children are less likely to be in positive destinations nine months after leaving school. Figures from 2019-20 show that 75% of school leavers looked after within the last year were in positive destinations. This is compared to 92% of all school leavers¹⁸.

Migrants' Right to Education

There are practical and policy barriers to migrants accessing their right to education. Migrants and others with communication and language barriers have a lack of access to information on entitlement and support for further and higher education, and mechanisms to represent themselves or secure advocacy. The residency requirements for funded places at college and university exclude many migrant young people, including many migrant young people who have grown up in Scotland¹⁹.

Racism in Education

There are still underlying issues with institutional racism across the education system within Scotland. Children and young people are being turned off of school and

¹³ Family Fund (2021), [The impact of COVID-19 - A year in the life of families raising disabled and seriously ill young children Scotland Findings – March 2021](#)

¹⁴ BBC News (2021), [Covid in Scotland: Parents of children with special needs 'struggling'](#); Daily Record (2021),

[Young disabled Scots left with 'extremely challenging' hardships due to coronavirus pandemic](#)

¹⁵ Inclusion Scotland (2020), [Rights at risk – Covid-19, disabled people and emergency planning in Scotland](#)

¹⁶ Family Fund (2021), [The impact of COVID-19 - A year in the life of families raising disabled and seriously ill young children Scotland Findings – March 2021](#)

¹⁷ Scottish Government (2021), [Achievement of Curriculum for Excellence \(CfE\) Levels 2020-21](#); Scottish Government (2021), [Summary Statistics for Attainment and Initial Leaver Destinations, No. 3: 2021 Edition](#)

¹⁸ Scottish Government (2021), [Achievement of Curriculum for Excellence \(CfE\) Levels 2020-21](#); Scottish Government (2021), [Summary Statistics for Attainment and Initial Leaver Destinations, No. 3: 2021 Edition](#)

¹⁹ Just Right Scotland (2022), [Access to Higher Education for migrant students is a fundamental right. Scottish Government's Students' Allowances \(Scotland\) Regulations now need to change](#)

experiencing negative impacts on their health and wellbeing because of racism. Sometimes the racism is reduced to talk of “bullying” and is seen as somehow less important. There were 2,251 racist incidents recorded in Scotland’s schools over the last 3 years (though it is likely that more incidents are underreported). 71% of teachers do not feel confident recognising incidents of racial discrimination within their school, and almost half (48%) of teachers are aware of a pupil, or pupils, expressing negative attitudes relating to skin colour²⁰.

Questions

- Will the Scottish Government prioritise a re-evaluation of residency requirements for higher education?
- Will the Scottish Government commit to ending formal and informal exclusion of care experienced children from schools, in addition to committing to better consistency in review of how many care-experienced children and young people are receiving an adequate and stable education?
- Will the Scottish Government ensure that there is a national policy on racist incident reporting in schools to ensure that there are consistent policies on prevention, action, monitoring, assessment, evaluation, staff training and enforcement to effectively challenge institutional racism and support minority ethnic children in Scotland’s schools?

3. Children’s rights

UNCRC Incorporation

In March 2021 the Scottish Parliament unanimously passed the UNCRC (Incorporation) (Scotland) Bill (the UNCRC Bill) to incorporate the UNCRC into Scots law to the maximum extent possible within the powers of the Scottish Parliament.

This new law is one of the most important steps forwards for children’s human rights in Scotland, and long campaigned for by civil society and by children and young people themselves. The new law will mean that Scotland’s public authorities must take proactive steps to ensure the protection of children’s rights in their decision-making and service delivery, and will make it unlawful for public authorities, including the Scottish Government, to act incompatibly with the UNCRC. Children, young people, and their representatives will also have the ability to use the courts to enforce those rights.

After a Supreme Court ruling, the Scottish Parliament need to reconsider and amend the Bill before it can be commenced.

Questions

- Will the Scottish Government prioritise progressing amendments to the UNCRC Incorporation Bill so that it can be commenced as soon as possible?
- Will the UK Government commit to incorporating the UNCRC into UK law?

²⁰ The Red Card (2022), [Show Racism the Red Card](#)

Right to an adequate standard of living including adequate food, clothing, and housing

Food Insecurity

The UK is not fulfilling their obligations under Article 11 of ICESCR and is not fulfilling the minimum core of the right to food. Food insecurity has become a systemic issue for people on low incomes. In September 2022, a quarter of UK households with children (25.8%) were experiencing food insecurity. Increases in food insecurity has led to escalating demand on food banks across the UK.

82% of independent food banks surveyed in October 2022 reported being impacted by supply issues since July 2022, with nearly one in four needing to reduce the size of food parcels²¹. Furthermore, cuts to social security, stagnant incomes, rising unemployment and increased costs of living have meant difficulty in affording food is a daily reality for far more households than the numbers of those turning to food banks²².

The COVID-19 pandemic has emphasised why enshrining a right to food into Scots law is vital, for both government and its population. The Government has a duty to ensure everyone in Scotland has the “fundamental right to adequate food”²³. The latest data, from the British Association for Parenteral and Enteral Nutrition (BAPEN), estimates 1 in 10 people in the UK over the age of 65 are malnourished or at risk of suffering from preventable malnutrition,⁵ based on the most up-to-date population data this equates to approximately 103,000 people in Scotland²⁴. Such severe food insecurity affects physical health, including weight loss, dizziness, and stomach problems, highlighting the relationship between this human rights failure and the regression of the right to the highest attainable standard of physical and mental health²⁵.

The Scottish Welfare Fund, a crisis fund offering grants to applicants facing emergency circumstances in Scotland²⁶, and cost of living support are welcome interventions, but single payments will not pull people out of poverty in the face of rising costs and inadequate incomes.

Some groups are at particular risk of infringement of their right to an adequate standard of living. For example, and *not limited to*:

- Asylum seekers with no recourse to public funds who are entitled to only £40.85 per family member per week are some of the most vulnerable to rising prices and food insecurity²⁷.

²¹ The Poverty Alliance, Scottish Women’s Budget Group (2022), [“It’s hard work being poor” Women’s Experiences of the Cost-of-Living Crisis in Scotland](#)

²² Ibid

²³ Food and Agriculture Organization of the United Nations (2022), [Policy Support and Governance Gateway: Right to Food](#)

²⁴ The Food Train (2022), [Eat Well Age Well](#)

²⁵ Ibid

²⁶ MyGov.Scot (2022), [Scottish Welfare Fund](#)

²⁷ Ibid

- Research in 2016 highlighted that disabled people are disproportionately impacted by poverty with 48% of people who are living in poverty in Scotland are disabled, despite making up only 22% of the population²⁸.
- The recent Scottish Care Review²⁹ estimated that Care Experienced adults are more than twice as likely to experience homelessness, have poor health or have no educational qualifications or internet at home. They are one and a half times more likely to have financial difficulties and on average earn three quarters of the salaries of their peers. They are over one and a half times more likely to experience severe and multiple disadvantage (homelessness, substance abuse, offending, mental illness).

Questions

- Will the Scottish Government commit to training on malnutrition, unintentional weight loss and health communication about household food insecurity to be embedded into basic training for all health and social care professionals?
- Will the Scottish Government ensure that the Scottish Welfare Fund adopts a more consistent approach and offers more than singular payments for recipients?
- Will the Scottish Government ensure more action to ensure groups more likely to face infringement on their right to adequate standard of living have additional means of support?

Housing

People's legal rights to housing are being routinely breached and there is lack of monitoring and accountability for this. 1.5 million people in Scotland are living in overcrowded, dangerous, unsafe, or unaffordable homes. 13,192 households are in temporary accommodation, including 7510 children³⁰. In 2020/21, there were 605 instances of households not being offered temporary homeless accommodation when they were entitled to it³¹.

Whilst people's legal rights to temporary accommodation have improved, as the law limiting the amount of time households spend in accommodation deemed to be unsuitable was extended from just households with children to all households, this law is regularly broken by local authorities and the government has admitted that they do not have accurate data on the extent of the issue.

Questions

- Will the Scottish Government deliver an immediate strategy for how they plan to deliver the first half of 110,000 affordable homes over the course of the next five years?
- Will the Scottish Government finalise their Plan for Ending the Need for Food Banks and implement it as soon as possible?

²⁸ Glasgow Disability Alliance (2022), [Social Security and Poverty](#) ; Tinson et al., (2016), Disability and poverty: Why disability must be at the centre of poverty reduction

²⁹ Independent Care Review (2022), [Report: The Money](#)

³⁰ Shelter Scotland (2022), [The Housing Emergency in Scotland](#)

³¹ Ibid

4. Right to social security

The Scottish Government's powers in social security have recently been increased through further devolution. Although within its initial stages, there needs to be safeguards in place which protect those most vulnerable of being failed by inadequate social security. This has never been more important as the UK faces a brutal cost-of-living crisis.

The recent increase of the Scottish Child Payment to £25 a week³² is a positive step towards realising the right to social security, and it is expected that if the Scottish Child Payment was replicated across the rest of the UK, 5.3 million children and young people would benefit³³.

The cost-of-living crisis and rising rate of inflation, currently at 11%³⁴ means that gaps and inadequacy of UK social security system is very pressing. Reforms and cuts to the UK social security system in the last ten years, through the introduction of the benefit cap (frozen since 2016), the two-child limit and the introduction of Universal Credit (UC), have led to high levels of financial hardship and individuals not being able to enjoy their right to an adequate standard of living³⁵.

The UK Government decision not to uprate UC in line with inflation means that hundreds of thousands of people in Scotland will experience a real terms income cut of £570 per year³⁶. The five-week wait for Universal Credit has been particularly criticised as it "entrenches debt, increases extreme poverty and harms vulnerable groups." These reforms came alongside a programme of further cuts to public services which have been found to have a disproportionate effect on women, particularly women from Black and ethnic minority households and disabled women³⁷. This measure not only is not in line with the obligations of the government under the right to social security but stops individuals from being able to access food, which is not in line with states obligations under the right to an adequate standard of living.

In their report to the Committee on Economic, Social and Cultural Rights the UK Government has stated: "The benefit cap introduced fairness between those receiving working age benefits and taxpayers in employment. It encourages people to move into work, where possible". The reality is that the benefit cap pushes households into deep poverty – an average capped couple with 2 children is £150 a week below the poverty line³⁸. Three quarters of those affected by the benefit cap in Scotland were single parents, and consequently the policy was having a disproportionate impact on women³⁹.

³² One Parent Families Scotland (2022), [Scottish Child Payment](#)

³³ The Independent (2022), [Ministers across UK told to 'take notice' as Scottish Child Payment expanded](#)

³⁴ Joseph Rowntree Foundation (2022), [JRF responds to latest inflation rate as new report reveals impact of high prices](#)

³⁵ The Poverty Alliance, Scottish Women's Budget Group (2022), ["It's hard work being poor" Women's Experiences of the Cost-of-Living Crisis in Scotland](#)

³⁶ Engender report

³⁷ Ibid

³⁸ Child Poverty Action Group (2022), [Benefit Cap: Cost of Living in a Crisis](#)

³⁹ One Parent Families Scotland/CPAG Scotland (2018), [The Impact of the Benefit Cap in Scotland](#)

Questions

- Will the UK Government commit to scrapping the benefit cap and two-child limit?
- Will the UK and Scottish Governments commit to increasing social security in line with inflation?

Use of sanctions

We strongly oppose the use of sanctions within the UK social security system. Sanctions are not effective in supporting people into work, and instead they act to push people into poverty and destitution. It is important to note that the people most likely to receive sanctions are groups with more complex needs such as those in temporary accommodation or those facing mental health issues⁴⁰.

Sanctions routinely trigger profoundly negative personal, financial, health and behavioural outcomes and push some people away from collectivised welfare provisions⁴¹. Poverty Alliance's research⁴² showed that sanctions were also viewed as being ineffective by Job Centre staff. Those who had experience of claiming Universal Credit emphasised that the fear of sanctions caused significant anxiety. Additionally, claimants interviewed felt that the conditions placed upon those with job-search expectations were unrealistic and that work coaches did not explain it well enough. The participants' accounts highlighted their constant worry of whether they were 'doing enough' to meet the expectations of their work coach and the job-search expectations⁴³.

UK policy statements assume that a combination of support and sanctions increase motivation for individuals to return to work. However, Poverty Alliance's work on mental health and welfare conditionality found that, in the case of people with mental health problems, the pressure and poverty arising from conditionality and sanctions are likely to exacerbate mental health problems and can move people away from employment.

Questions

- Will both the UK and Scottish Governments remove sanctions from social security?
- Will both the UK and Scottish Governments commit to fundamental training of a human-rights based approach for staff members dealing with claimants of social security so that claimants are treated with dignity and in a human-rights based manner?

5. Right to the highest attainment standard of physical and mental health

COVID-19

COVID-19 has restricted and impacted our human rights like few things before it. Civil society has raised many concerns that the impacts of the pandemic on some groups has been far vaster and more negative than on others. For example, Human Rights

⁴⁰ The Poverty Alliance (2022), [Poverty Alliance submission to the Work and Pensions Committees' inquiry into the cost of living](#)

⁴¹ Welfare Conditionality (2018), [Final Findings Report](#)

⁴² The Joseph Rowntree Foundation (2020), [How well is Universal Credit supporting people in Glasgow?](#)

⁴³ Ibid

Consortium Scotland’s report found that most public authorities did not take steps to consider their HR duties during COVID-19⁴⁴. As we rebuild from the pandemic and Scotland takes ambitious steps on the human rights journey, it is a matter of urgency that government as part of COVID-19 recovery gives proper attention, resourcing, and commitment to ensuring that public authorities fully comply with their current human rights duties.

There has been criticism that emergency coronavirus legislation impacted on some human rights without due consideration or justification. For example, the Coronavirus Act 2020 allowed for regulations that reduced local authority duties, such as the duty to carry out an assessment of social care needs or involve service users in decision making⁴⁵. There is significant concern that these regulations reduced people’s agency over their own lives in significant ways, and that this was a disproportionate and unnecessary rights restriction. There is no comprehensive data in Scotland on local authority use of these reduced Coronavirus Act duties and the reasoning for their use⁴⁶. In addition, research found that minority groups were at greater risk of not only contracting but dying of COVID-19⁴⁷.

Support for people experiencing poor mental health was impacted by systematic changes to how mental health care and treatment has been delivered during pandemic, particularly the loss of face-to-face meetings^{48 49}. Across the UK there was an increase in suicidal thoughts and depression – in particular, disabled adults are more likely to have experienced an increase in moderate to severe symptoms of depression^{50 51}.

6 in 10 people who died with COVID-19 between March 2020 and January 2021 were disabled. There were disproportionately high deaths and adverse health outcomes for Black, Asian and minority ethnic people⁵². Infection and death rates were higher for people with learning disabilities⁵³.

Some people were called, without any rationale and sometimes by non-clinical staff, to ask them to sign a “Do Not Resuscitate” order, whilst others found that these had been placed in their medical records without their knowledge. Disabled people and older people were sometimes told that they would not be taken to hospital if they contracted COVID-19.

⁴⁴ Human Rights Consortium Scotland (2021), [Delivering Human Rights in Scotland During COVID-19: A 2020 Survey of Public Authorities](#)

⁴⁵ ALLIANCE (2020), [briefing paper on social care and COVID-19 emergency powers](#)

⁴⁶ Scottish Government (2020), [Coronavirus Acts: first report to Scottish Parliament](#)

⁴⁷ ALLIANCE (2022), [The continuing impact of COVID-19 on health and inequalities](#)

⁴⁸ SAMH (2021), [Forgotten? Mental Health Care and Treatment During the Coronavirus Pandemic](#)

⁴⁹ Voices of Experience Scotland (2020), [Coronavirus and You - VOX Members Survey](#)

⁵⁰ Mental Health Foundation (2021), [Pandemic one year on: landmark mental health study reveals mixed picture](#)

⁵¹ Office for National Statistics (2020), [Coronavirus and depression in adults, Great Britain: June 2020](#)

⁵² House of Commons Women and Equalities Committee (2020), [Unequal impact? Coronavirus and BAME people](#)

⁵³ Scottish Learning Disabilities Observatory (2022), [The impact of COVID -19 on people with learning/intellectual disabilities in Scotland](#)

Questions

- To ask both the UK and Scottish governments what actions took place before or during the use of COVID-19 emergency powers to ensure human rights were considered?
- What is the Scottish Government doing to ensure that there is equal protection for people's right to life, including during public health emergencies?
- To ask the Scottish Government what steps they are taking to ensure that everyone who needs mental health services can access them, and to improve the collection and publication of disaggregated, intersectional data related to mental health?

Health Inequalities

Health inequalities are the 'systematic differences in the health of people occupying unequal positions in society'⁵⁴. Health inequalities are borne out of socio-economic inequalities but also result from discrimination. Health inequalities come from systematic failure meaning the gaps are not inevitable⁵⁵, and the UK and Scottish governments must work better to close the gap and tackle inequalities. For example, in the most affluent areas of Scotland, men experience 23.8 more years of good health and women experience 22.6 more years compared to the most deprived areas⁵⁶.

Trauma can affect Care Experienced people throughout life and manifest in different ways as people get older. 100% of respondents felt that their care experience had negatively impacted on their mental health. 77% felt they had been unable to access support and thus their right to healthcare through this⁵⁷. We need to have targeted services which explicitly support the mental health of Care Experienced children, young people, and adults.

Disabled people lost access to health services during the pandemic and there is concern about deteriorating health with people in Scotland and across the UK reporting their health has gotten worse⁵⁸. Treatment backlogs due to services being suspended or reduced makes it likely that people will be waiting a long time to get the treatment they need^{59 60}.

⁵⁴ Voluntary Health Scotland (2022), [Health Inequalities](#)

⁵⁵ Public Health Scotland (2021), [What are Health Inequalities?](#)

⁵⁶ Ibid

⁵⁷ Who Cares Scotland? (2022), [Mental Health Report: Tend Our Light](#)

⁵⁸ Inclusion Scotland (2020), [Rights at risk – Covid-19, disabled people and emergency planning in Scotland](#); Glasgow Disability Alliance (2020), [Supercharged: A Human Catastrophe Inequalities, Participation and Human Rights before, during and beyond COVID19](#); Office for National Statistics (2020), [Coronavirus and the social impacts on disabled people in Great Britain: September 2020](#); Office for National Statistics (2021), [Coronavirus and the social impacts on disabled people in Great Britain: February 2021](#)

⁵⁹ Scottish Government (2021), [NHS Recovery Plan 2021-2026](#)

⁶⁰ Public Health Scotland (2021), [NHS waiting times - stage of treatment](#)

Healthcare staff do not have the time to address the healthcare issues – people feel ‘fobbed off’ and that expertise of their own condition is not valued⁶¹. Disabled people with intersecting identities said attitudes of health care staff were a barrier to accessing treatment⁶². Despite a greater proportion of LGB⁶³ people being disabled⁶⁴ (around 35%), there is a lack of understanding within health and other services of the needs of this group.

LGBT+ young people said there was a tendency for doctors to attribute any health issues to age or LGBT+ status⁶⁵. There are long waiting times for NHS gender identity services of up to 47 months between referral and first appointment⁶⁶. Trans people cannot access transition-related surgical services in Scotland, but instead need to travel to England for surgery. These services are urgent and are not given parity with other services.

Questions

- To ask what the Scottish Government is doing to ensure unequal access to healthcare services is addressed?
- Will the Scottish Government take steps to ensure that targeted services are developed to support Care Experienced people access healthcare more readily?
- Will the Scottish Government address the lack of gender identity-related services in Scotland?
- Will the UK and Scottish Governments work to ensure that human-rights based approaches are ingrained within primary training of healthcare professionals and institutions so that patients are treated with dignity?

Mental Health

Many people affected by the mental health system have little say in decisions made about them, and few avenues for accountability and redress. This includes decisions about medication, over-medication, and non-medication treatments, where they live, monitoring, detention, and about the support that is provided. Mental health law permits the compulsory treatment of a person to begin before that person can appeal, and this treatment can last for 28 days.

Mental health detention in Scotland is significantly increasing, with 10.5% more in 2020-2021 than in 2019-20, and higher than average year-on-year increase in the previous years of 4.5%⁶⁷. There is a lack of effective safeguards, with too many people detained without the involvement of a Mental Health Officer⁶⁸.

⁶¹ UK Government (2021), [UN Committee on the Rights of Persons with Disabilities 2016 inquiry – UK 2021 follow-up report – Appendix 5 - qualitative responses](#)

⁶² Inclusion Scotland (2020), [Services for Who? The experiences of disabled people with other characteristics when accessing services](#)

⁶³ The data set has two categories – ‘heterosexual’ and ‘LGB and other’

⁶⁴ Scottish Government (2021), [Scottish Surveys Core Questions 2019 – supplementary tables](#)

⁶⁵ Appendix 3 – Inclusion Scotland UNCRPD events

⁶⁶ Sandyford (2022), [Gender Services](#)

⁶⁷ Mental Welfare Commission for Scotland (2021), [Significant rise in numbers of people being detained for mental health treatment in Scotland](#)

⁶⁸ Ibid

Questions

- Will the Scottish Government commit to a UNCRPD-compliant national mental health law framework?
- Will the Scottish Government explore reasons for the increase in mental health detention and ensure that proper safeguards are operating well?

Rights of People with Learning Disabilities

Too many people with learning disabilities are living in a hospital setting without clinical need. Institutional living risks exacerbating individuals' mental distress and ill health, as well as infringing upon their right to family life and risks their freedom from inhuman and degrading treatment. For example, in 2018, 67 people with learning disabilities, and complex needs were subject to delayed discharge. Of these, 22% had been in hospital for more than ten years and another 9% for five to ten years⁶⁹.

Children and young people in Scotland with learning disabilities are at a higher risk of premature death compared to the general population. Studies of cause of death for people with learning disabilities show that many deaths are potentially avoidable, including conditions which are amenable to timely and effective healthcare. Research has identified 106 deaths (0.6%) from 18,278 children and young people who had learning disabilities, 1.9% of pupils at school. Premature mortality was 12 times higher (ranging between 10 and 14 times). For girls and young women, risk of death was even higher, at a rate 17 times higher than their peers without learning disabilities (between 12 and 23 times)⁷⁰.

Questions

- What is the Scottish Government doing to ensure that no person is living in hospital without clinical need?
- Will the Scottish Government ensure collaboration between healthcare and social care to improve recognition and timely treatment of important health issues?

Right to a Healthy Environment

On 28 July 2022, the UN General Assembly declared access to a clean, healthy, and sustainable environment as a universal human right, and that environmental damage has negative implications for the effective enjoyment of all human rights, for present and future generations. This is the first new universal human right adopted in 70 years. As well as tackling the global climate and nature emergencies, there are a number of substantive environmental problems in Scotland.

Many people, particularly living in areas of highest deprivation, suffer from pollution, poor environmental quality, proximity to derelict land, and poor access to nature-rich and multifunctional greenspace, all of which exacerbate health inequalities. In addition, the Aarhus Convention's governing bodies have made their tenth consecutive finding that

⁶⁹ Scottish Government (2018), [Coming home: complex care needs and out of area placements 2018](#)

⁷⁰ Scottish Learning Disabilities Observatory (2022), [Mortality rates for children and young people with learning disabilities](#)

Scotland is in breach of Article 9(4) access to justice requirements and have asked for an Action Plan to ensure compliance by October 2024.

Questions

- Will the Scottish Government put the right to a healthy environment with substantive and procedural elements into Scots law by 2025, which will ensure full compliance with the Aarhus Convention?

6. Access to justice and legal aid

Too many people in Scotland find it difficult to find or access legal services including advice and representation⁷¹. There are significant gaps in the availability of solicitors in certain specialisms and in geographical areas. The sustainability of legal aid fees is a significant concern for access to justice and for the viability of the sector⁷².

Universal access to independent advocacy services should be included in the legislation as part of the vision for prevention and early intervention because it can, in many cases, resolve issues before a situation reaches the level of a formal complaint. This must be accompanied by sustainable funding to ensure effective implementation and prevent a postcode lottery⁷³.

Third sector organisations play a crucial role as representatives of the interests of many in public interest litigation. However, uncertainty over costs and a prohibitively expensive legal system are frequently highlighted as a major barrier to NGOs playing their full, proper, and vital role in using the law⁷⁴. In extending legal aid to group proceedings, charities should be able to access legal aid to take cases in the public interest.

Questions

- Will the Scottish Government commit to taking all the steps necessary to ensure that people have the tools to access legal aid both geographically and easily when they need it to access justice?
- Will the Scottish Government ensure universal access to independent advocacy services through implementation of access in the upcoming National Care Service?

7. Protection of the Human Rights Act

Bill of Rights

The Human Rights Act 1998 is an essential protection for our human rights, and it is working well in its current form. It has been vital to securing dignity, justice, and respect for individuals, families, and communities across Scotland and the UK over the past two decades. There is no need to repeal and replace it.

⁷¹ Dr Katie Boyle (2022), [The Access to Justice Journey](#)

⁷² Scottish Legal (2022), [Law Society backs call for urgent reform of legal aid system](#)

⁷³ Who Cares Scotland? (2021), [Response to the Scottish Government's National Care Service Consultation](#)

⁷⁴ Citizens Advice Scotland (2021), [How accessible is Scotland's Justice system?](#)

If the UK Government continues with its plan to repeal the Human Rights Act, we will see the following:

- (1) Reduced access to justice and accountability
- (2) Reduced requirements on public bodies to respect human rights
- (3) It will undermine the fundamental principle that we all have human rights by virtue of the fact that we are all universally human
- (4) The UK set on a collision course with the European Court of Human Rights (ECtHR)
- (5) Undermine the positive and preventative place of human rights in our public services and policy

The HRA has been an important tool for protecting many of our economic, social, and cultural rights in the UK⁷⁵.

Questions

- Will the UK Government scrap their plans for a Bill of Rights and keep the Human Rights Act?

Scottish Human Rights Incorporation Bill

Based on the recommendations of a National Taskforce for Human Rights Leadership, the Scottish Government is developing a Human Rights Incorporation Bill that will incorporate ICESCR, CEDAW, CRPD and CERD, and the right to a healthy environment into Scots law.⁷⁶

This new human rights framework is the best way to ensure that people will be able to claim these fundamental rights, and that human rights will shape Government and public authorities' priorities, policies, and practice. An enhanced human rights framework will underpin and strengthen the growth of a human rights culture and society in Scotland.

It is important that this Bill is developed with all the resource and expertise that it requires, and that the Scottish Government take steps now to plan for full implementation.

Questions

- Will the Scottish Government commit to all the resources and capacity needed to deliver a strong Human Rights Incorporation Bill, and to publish an implementation action plan in 2023?
- Will the UK Government commit to directly incorporating ICESCR, CEDAW, UNCRPD and ICERD into UK law?

⁷⁵ Equality and Human Rights Commission (2016), [Socio-Economic Rights in the UK: Updated submission to the UN Committee on Economic, Social and Cultural Rights in advance of the public examination of the UK's implementation of ICESCR](#)

⁷⁶ NTF results: [link to latest](#)