Chapter 4: Education and work

Getting it Right?
Human Rights in Scotland

Contents Page

Theme 4: Education & Work

Introduction

The Scottish Human Rights Commission (SHRC) seeks to empower people to know and claim their rights, and to increase the ability and accountability of public and private bodies to deliver on human rights in Scotland. In support of these goals SHRC promotes the evidence based and inclusive development of Scotland's National Action Plan for Human Rights – a road map to the further realisation of all human rights in practice in Scotland.

The report as a whole presents a summary of some of the key gaps and good practices which have emerged from a scoping project undertaken by the SHRC. This specific section summarises the findings relating to theme of Education and Work. It is not intended to be a comprehensive 'state of human rights in Scotland' report, but a prompt for discussion in the development of Scotland's National Action Plan for Human Rights. With this in mind, individuals and organisations are encouraged to consider their views in response to two key questions as they review this thematic section:

> **1. Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?**
>
> **2. What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?**

Scoping Project Methods Summary[1]

The data collection began in 2010 and was divided into two phases - a first phase focussing on collating and analysing a range of secondary data sources[2] and a second phase where SHRC convened a series of small focus groups and in-depth interviews with a range of communities, groups and individuals in Scottish society.[3] In line with the SHRC's statutory mandate, particular attention was given to hearing from those who tend to be marginalised and whose voices are less often heard in mainstream debates surrounding human rights. In taking this approach SHRC sought to put a 'human face' on the issues uncovered in the scoping project.

Introduction to Education & Work

This thematic section explores the theme of 'Education & Work' in Scotland, which is one of the eight themes that emerged from the human rights analysis of the research reviews. The review highlighted a number of areas in which human rights may be engaged in education and work in Scotland. Following a prioritisation process,[4] four

areas are discussed in some detail in this thematic section, namely: access to education; inclusive education; access to and fair treatment at work; and fair pay.

The focus of this scoping project has primarily been on issues of human rights concern that are within the competence of the Scottish Parliament. Across all thematic areas, there are some, often complex issues, which raise issues of concern that are devolved, whilst others are reserved to Westminster,[5] including equality legislation. The Equality Act 2010, however, dose place a duty on the Scottish Government to abide by the public sector equality duty,[6] which could bring about a more substantive role for Scottish equality duties in the future.[7]

Education

> *"Education is both a human right in itself and an indispensable means of realising other human rights."*
> UN Committee on Economic, Social and Cultural Rights (UN CESCR, 1999)

The right to education is protected under Article 2 Protocol 1 of the European Convention on Human Rights (ECHR). It is also guaranteed in Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and in numerous other international treaties such as the International Convention on the Rights of Persons with Disabilities (UN Disability Convention)[8] and the UN Convention on the Rights of the Child (CRC).[9]

The right to education in the ECHR is largely a civil and political right; it is a right to access educational facilities existing at the time and a right to freedom of education according to religious and philosophical convictions. Additionally, this right is subject in the UK to a reservation which provides Article 2 of Protocol 1 applies only in so far as:

> *"it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure."*

This reservation is also reflected in the Human Rights Act 1998.[10] The effect of this reservation has been found, for example, to exclude claims related to the closure of a primary school,[11] and a failure to provide free public transport to a religious school 45 miles away.[12]

In other international human rights treaties the right to education includes both civil and political and economic, social and cultural rights components. It requires States to achieve progressively the full realisation of the right to primary, secondary, fundamental technical and vocational and higher education. It is thus not exclusive to children and young people and the human rights framework reflects the importance of life-long learning.

The essential elements of the right to education have been authoritatively interpreted by the UN Committee on Economic, Social and Cultural Rights (UN CESCR, 1999) as:

- Availability – educational institutions and programmes must be sufficiently available, this will include adequate educational infrastructure and trained teachers whose rights are upheld.
- Accessibility – educational institutions and programmes must be accessible to all without discrimination. This includes a duty to prioritise the most marginalised, physical accessibility (*"education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a "distance learning" programme)"*) and economic accessibility (the obligations here vary by level and type of education).
- Acceptability – for example all education must comply with minimum educational standards and human rights law includes provisions on the aims and content of education,[13] and on the means and methods of discipline.[14]
- Adaptability – education is not a one size fits all and must adapt to the needs of diverse learners, for example there is an obligation to ensure reasonable accommodation of disabled people, and disabled people have the right to *"receive the support required, within the general education system, to facilitate their effective education"*.

Although not all aspects of the right outlined above are protected in law, the right to education is generally considered to be well established in practice throughout the UK. Research suggests that Scotland in particular is recognised as a country with a strong belief in education as a means of fostering democracy and meritocratic social systems (Devine, 1999), with the Church of Scotland and private landowners providing access to a system of parish schooling as far back as the 17th Century, although its quality and uptake have been questioned by (Smout, 1986). However, it was not until the Education (Scotland) Act of 1872 that compulsory schooling for all children aged 5 – 13 years was established, a provision that was expanded to include free access to secondary education with the Education (Scotland) Act 1944.

> *"It shall be the right of every child of school age to be provided with school education by, or by virtue of arrangements made, or entered into, by, an education authority"*
> Section 1, Standards in Scotland's Schools etc. Act 2000

Since devolution legislation has aimed to improve the educational provision and standards within Scottish schools[15] and has drawn on directly on international human rights law, particularly the UN CRC. The UN Committee on the Rights of the Child has consequently welcomed the *"adoption of a rights-based approach to education in Scotland"* (UNCRC, 2002). The Scottish Government has focussed its policy and strategy interventions on improving the various aspects of the right to education and lifelong learning in accordance with their commitment to equality, inclusion and social justice through initiatives such as the *Skills Strategy* and the *Curriculum for Excellence* (Riddell, 2009).

Under the Education (Scotland) Act 1980, children and young people could be classified as having special educational needs (SEN) if they have a learning disability or physical impairment. The concept of SEN was broadened in scope in Scotland via the Education (Additional Support for Learning) (Scotland) Act 2004 (implemented in 2005) which introduced ASN as a description of those who require additional support with their education (for whatever reason) in the long or short term. However, although children and young people facing social barriers are now more easily included,[16] it is less obvious that children with an impairment are covered. The Education (Additional Support for Learning) (Scotland) Act 2004 does not place a duty on schools to know which children are disabled if they do not actually face barriers in addition to their impairment. Part 4 of the Disability Discrimination Act 1995[17] [DDA] places a duty on schools to know how many children have an impairment and face disabling barriers, however, it is not clear that the DDA's duties are being met now the Education (Additional Support for Learning) (Scotland) Act 2004 is enforced.

The equivalent to the Record of Special Educational Needs under the Education (Additional Support for Learning) (Scotland) Act 2004 is the Co-ordinated Support Plan (CSP), a statutory document that specifies additional resources and the agency responsible for delivery of the resources. However, only children who now require co-ordinated support (from more than one agency i.e. NHS support and education, or education and social work) qualify. Therefore, children who face severe disabling barriers to education but who do not have medical or social support do not qualify. These children should be covered by an Individualised Educational Programme, however, these do not have a statutory status and so therefore cannot guarantee (even in theory) additional support to make education accessible.

There have been no studies yet to show how this has impacted directly on access to learning, however, in 2006, one senior education officer reported that of 400 Records that were reviewed, only 27 CSPs had been opened (about seven per cent). In another authority, of 300 Records reviewed, only ten CSPs were opened. Most children in special schools were not given CSPs because although they accessed additional services, (physiotherapy and speech and language therapy), these were provided within the school timetable and so did not need inter-agency co-ordination (Riddell et al., 2006).

The Scottish Government 's own report on the progress of *Do the Right Thing* (Donnelly, 2009) acknowledges that more is required to be done to improve the outcomes for children and young people with 'hidden' additional requirements, including children with mental health needs, young carers and looked after children. A recommendation from the UK's recent review of all of its human rights obligations at the Universal Periodic review in 2012 was that the UK

> *"Adopt a strategy so that children of vulnerable groups are not excluded from the education system (Costa Rica)" (UN Human Rights Council, 2012).*

Access to education

Non-discrimination and equality

Evidence presented to the UN Committee on Economic, Social and Cultural Rights (UN CESCR, 2009) raised concern about several groups of children struggling to become enrolled, remain engaged or re-engage with formal education, either in regular schools or alternative educational facilities in Scotland. Concern was also raised about those who could not fully enjoy their right to education, including: children with disabilities, children of Gypsy/Travellers, children of asylum-seekers, children excluded from education, non-attendees (due to sickness, family obligations etc.) and pregnant young women and young mothers of school age (UN CESCR, 2009). Also, research suggests that Muslims are amongst the most educationally disadvantaged group in the country (UK) with over a third of those of working age having no formal educational qualifications (ONS, 2004), whilst children from Pakistani and Bangladeshi backgrounds are less likely than other groups to achieve five GCSE passes at A-C (British Muslims ' Media Guide' (Masood, 2006).

Barriers to education are also faced by disabled people for a number of reasons, for example, as a result of the inaccessible built environment of many educational institutions, exclusive policies which do not cater to disabled students, and the continuation of prejudicial attitudes (Glasgow Disability Alliance, 2008). As a result, disabled people are twice as likely as other citizens to have no recognised qualifications further hindering their chances of reaching their full potential (DRC, 2006).

Research has also highlighted lower levels of educational achievement among disabled children and children from a Gypsy/Traveller backgrounds (Padfield, 2006, EHRC, 2010b). The scoping project review also suggested that there may be some gaps in the literature in areas such as the ways and means of overcoming inequality of outcome related to socio-economic status, disability, and ethnicity as well as other marginalised children such as those who are placed in care (Connelly et al., 2008).

Gypsy/Traveller children

The National Equality Panel (National Equality Panel, 2010) reported that Gypsy, Roma and Irish Traveller pupils experience high levels of inequality in relation to attainment. Irish Traveller pupils are 2.7 times more likely than White British pupils to be categorised as having Additional Support Needs (ASN) and children from a Scottish Gypsy/Traveller backgrounds had the lowest educational performance compared to any other category of children and young people (Padfield, 2006, Equality and Human Rights Commission, 2010). With regards to ASN, however, Gypsy/Traveller children are potentially more likely to be labelled because they have contact with housing and social professionals. Therefore, this does not necessarily point at a deficit amongst Gypsy/Traveller children themselves, but rather, a recognition of more support required from social structures.

In 2004 the Scottish Traveller Education Project (STEP) found that:

7

> *"educational provision across local authorities and schools is patchy and varies from good to very poor, with little or no developed connections in or between schools for providing a relevant and continuous school education responsive to Gypsy/Traveller school-aged children and young peoples' particular learning needs" (Padfield and Jordan, 2004).*

The Equality and Human Rights Commission (EHRC) noted in 2009 that:

> *"Recent developments such as a limited fund to increase the portability of education between schools may assist but the widespread exclusion faced by Scottish Gypsy Travellers –-, which has its root in a lack of access to sites and persistent "discrimination and vilification", continues to mitigate against this" (EHRC, 2009).*

Participants in this scoping project also pointed to continuing inconsistencies in support for Gypsy/Traveller education:

> *It is fair to say it is on an ad hoc basis and it depends which school you go to, what resources there will be, what teachers there will be and who know what the issues are as well.*
> **Maureen, Council equalities officer.**

Participants in this scoping project who were from Scottish Gypsy/Traveller reported having experienced negative attitudes towards their communities among school staff and felt that very little had changed.

Professionals interviewed during this scoping project from areas of Scotland with significant concentrations of Gypsy/Traveller communities felt that engaging Scottish Gypsy/Traveller children in education was difficult in part due to their "*nomadic existence*". However, while Gypsy/Traveller communities will often pursue a nomadic lifestyle, international human rights bodies have also pointed to the connection between patterns of evictions and forced evictions of Gypsy/Traveller communities in the UK and an impact on the right to education.[18] Furthermore STEP researchers have noted:

> *"much research, including our own, has included settled families who still identify problems of participation and racism" (Padfield and Jordan, 2004).*

Pointing in particular to:

> *"Issues identified in the research in England, Scotland and Northern Ireland include: low educational participation/attendance, particularly at the secondary stages, low attainment, disproportionate disciplinary exclusion, racist harassment and bullying, a lack of continuity of work, interrupted learning, inconsistent/often inadequate support, problems with multiple registration, the failure of schools to pass on records/evidence of attainment; and children identified inappropriately with special educational needs" (Padfield and Jordan, 2004).*

In 2005 HMIE published a self-assessment guide for schools on Gypsy/Traveller inclusion (HMIE, 2005). In it HMIE encourages schools, among other things, to respect the wishes of parents as to whether or not to remain private on their Gypsy/Traveller

heritage, to develop positive attitudes and a welcoming ethos, ensure fairness and combat bullying, improve communication with Gypsy/Traveller communities.

The 2011 Revised National Guidance published by the Scottish Government and STEP builds on this to highlight how children and young people from Travelling communities with interrupted education can be better enabled to learn, including through the opportunities brought about by the Curriculum for Excellence (Scottish Government and STEP, 2011). The guidance aims to support policy makers, schools and families to make sure that children and young people are able to engage with relevant and appropriate education. The guidance encourages better communication and outreach to Gypsy/Traveller communities, provides examples of good practice and highlights where schools have responsibilities to tackle amongst other things, bullying and institutional discrimination whilst facilitating flexible learning.

Socio-economic status

As pointed out in the literature, Scotland mirrors other developed countries in that children and young people's experience of education and educational outcomes are strongly associated with their social background (Riddell, 2009). Research evidence indicates that children from low-level income families are less likely to achieve a good level of educational attainment compared to those from a more affluent background (Paterson and Iannelli, 2007, Paterson, 2007, OECD, 2007). Findings from the *Growing up in Scotland* research series have revealed that children and young people from disadvantaged backgrounds can fall behind their peers cognitively as early as three years old (Bradshaw, 2011). Indeed, by the time pupils leave school, the attainment of those pupils from the richest areas in Scotland is 137 per cent higher than those from the most deprived areas. With those from the most deprived areas achieved attainment levels 65 per cent below the national average (Scottish Government, 2012c).

The UN Committee on the Rights of the Child in its concluding observations in 2008 recognised the numerous efforts that had been made in Scotland to more effectively ensure the right to education, however, the Committee specifically and explicitly stated its concern that significant inequalities persisted with regard to school achievement of children living with their parents in economic hardship across the UK (UNCRC, 2008). The Committee's recommendation was to strengthen the efforts made to reduce the adverse implications related to social background of children on their achievement in school.

Higher education

The issues of tuition fees for higher education attracted much attention in the media during 2011. Fees for undergraduate study at Scottish universities are currently only due to be paid by non-EU students or those from within the UK who are not domiciled in Scotland. In other words, students who normally live in England, Wales and Northern Ireland must pay tuition fees, whilst students who normally live in Scotland will not.[19] The UN Committee on Economic, Social and Cultural Rights in its concluding observations in 2009 encouraged the UK to review its policy on tuition fees with a view

to the progressive introduction of free higher education, as required by ICESCR. The High Court in England has granted permission to judicially review the decision of the UK Government to increase tertiary fees in England. Allowing the case to go to a full hearing the judge reportedly stated that,

> *"The introduction of higher fees can properly be regarded as a retrogressive step which does require clear justification".[20]*

Ultimately the tuition fee rise in England was found not to be unlawful, however the UK Government was criticised for having failed to assess the impact of the move on equality grounds. Whether or not the current situation in Scotland is consistent with human rights remains a matter of legal debate,[21] which has yet to be tested in court.

Inclusive education

Article 24 of the UN Disability Convention provides for the right to education of disabled people. It provides in paragraph 2 that States must ensure amongst other things:

- That disabled people are not excluded from the general education system on the basis of disability;[22]
- That disabled people can access an *inclusive*, quality and free primary education and secondary education on an equal basis with others;[23]
- Reasonable accommodation;
- Support within general education to enable effective education of disabled people;
- Effective individualized support measures are provided in environments that maximize academic and social development, *consistent with the goal of full inclusion*.

This Article is the subject of a reservation and a declaration by the United Kingdom. The latter provides that:

> *"The United Kingdom Government is committed to continuing to develop an inclusive system where parents of disabled children have increasing access to mainstream schools and staff, which have the capacity to meet the needs of disabled children… The General Education System in the United Kingdom includes mainstream, and special schools, which the UK Government understands is allowed under the Convention."*

The effect of this declaration is unclear, and is likely only to be formally considered at the UK's first review under the Disability Convention in 2014 at the earliest. It is unclear how the UN Committee on the Disability Convention will interpret references to inclusion in Article 24, whether it will consider that the *"goal of full inclusion"* requires, as the UK Government seems to have feared, abolishing separate special schools altogether. Some in civil society and national human rights institutions have considered the UK declaration to be unnecessary. [24] Similarly the Education Minister for Northern Ireland has formally indicated that it would not be applied in that context.[25]

Research in Scotland reveals competing views as to what inclusion should mean, in particular for children and young people with complex needs. Some believe that supporting children and young people with additional needs is best achieved through adapted and supported provision within mainstreaming education rather than placing pupils in designated special needs institutions (Scottish Council Foundation, 2005) and some research evidence indicated that a move to this perception was a positive step for both disabled and non-disabled children (Macpherson and Bond, 2009).

Some research suggests an increasing move towards inclusive education in Scotland (Scottish Council Foundation, 2005). However, questions have been raised as to whether the policy of inclusion in mainstream education works in practise (Allan, 2008). As Riddell has noted that:

> "there needs to be far better articulation and implementation of a rights discourse in schools, so that teachers and administrators accord much greater respect to children with additional support needs and their parents, rather than treating them as unwelcome customers" (Riddell, 2009).

In practice research highlighted access and continued participation in education of children and young people with additional support needs in general, and more serious and complex impairments in particular as a particularly problematic (Rosengard et al., 2007).

The Scottish Parliament and successive Governments have sought to address this in legislation, including the Education (Additional Support for Learning) (Scotland) Acts 2004 and 2009. The 2004 and 2009 Acts introduced a new system for identifying and addressing additional support needs and placed a duty on Scottish education authorities to provide for these needs.

Some who have contacted the Commission suggest children and young people with autism are a group who continue to face significant barriers in relation to appropriate recognition and support within educational settings. This is reportedly further exacerbated by competing approaches to treatment of autism within the health profession and a lack of awareness and training of health and education professionals (Simons, 2007, Autism Rights, 2009).

A number of participants involved in this scoping project were parents of children with Autism Spectrum Disorders or Attention Deficit Hyperactivity Disorder (ADHD). They spoke of their frustration in relation to how they felt schools had failed to effectively educate their children:

> *Marc's teachers, I don't know how much they know about ADHD, if anything. In Marc's school the doctor is great but she's had to write to the teachers five times to tell them simple things like – if he is allowed to doodle, when he doodles his brain is concentrating better. They still don't allow him to do that. She gave him a specialist fidget toy which is like a snake that goes into different shapes, which effectively does the same as doodling, and two of his teachers have taken it off*

11

him. So the doctor has to keep writing. But when they take these things away from him, he ends up out of the class because he's disruptive, which is a result of these things being taken off him. At the school all they do is mismanage him and then he misbehaves and then they send him to isolation. The last time he got put out they put him into isolation for three days, he stayed in a room on his own, he wasn't allowed out for the same lunch time or the same breaks and he has got ADHD. You can't just stick him in a room on his own, he's going to go mental...
Lisa, Mother of a child with ADHD, Member of women's support group.

Another mother of a child with autism talked of the lack of understanding of and provision for autism in schools:

Basic stuff, it is common for people to try and get kids to look them in the face so they can connect what they are saying, but children with autism can't do that and I have seen people trying to make my son do that, physically moving his face – it doesn't work for children with autism, it can upset them more.
Freya, Mother of a child with Autism, Member of women's support group.

The Scottish coalition of children's rights organisations, *Together*, has also reported that:

"training for teachers and support staff in mainstream schools on additional support for learning, equalities and inclusion is not adequate in Scotland. Only five local authorities provide mandatory training on equalities and inclusion, and none provide mandatory training on specific learning disability topics, e.g. autism or dyslexia" (Together, 2011).

Participants in this scoping project also suggested that the availability of additional support in practice was often limited as adequate resources were unavailable for that purpose:

We struggled, we fell out with the educational psychologist in Edinburgh who was clearly trying to steer us towards what the council could afford, not what would be best for our child.
Jeremy, Father of a child with complex disabilities.

Work

The right to work is guaranteed in Article 6 of the ICESCR. It is to be progressively realised for all, according to the maximum of available resources and contains the right to access to employment without discrimination, free choice of employment, and a supportive structure that aids access to employment, including appropriate vocational education.[26] Amongst other steps to realise this right, States should develop a national employment strategy which is founded in human rights principles and ensure that both the public and private sector employers are aware of human rights obligations.[27]

Rights at work are protected in a broad range of international human rights standards including conventions of the International Labour Organisation as well as core UN

12

human rights treaties[28] and Articles 1-6 of the Council of Europe European Social Charter. Article 7 of the ICESCR includes the right to fair wages, to equal pay for work of equal value, to safe and healthy working conditions, and to reasonable limitations on working hours, the prohibition of dismissal on the grounds of pregnancy, as well as equality of treatment in employment. For example under ILO Convention 111 States should:

> *"…declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof".*[29]

As with ICESCR, Article 4 of the European Social Charter (ESC) provides a right to *"fair remuneration"*, which includes, amongst other aspects, the right to a remuneration which supports a *"decent standard of living"* for those working and their families. Guidelines to the ESC describe "fair" as meaning above the poverty line, although the concept of a 'poverty line' itself is highly contentious and open to interpretation. Across the European Union [EU], a measure of relative poverty is generally used to classify the most disadvantaged people in society. This measure is based on household income, adjusted for family size, in which those who have a disposable income of less than 60 per cent of the median average income are deemed to be living in poverty (Lelkes and Gasior, 2011).

In 2009 the UN Committee on Economic, Social and Cultural Rights expressed concern at the unemployment rate in the UK, particularly among marginalised groups (UN CESCR, 2009). Having fallen from over 10 per cent in 1992 to just under four per cent in parts of 2008, unemployment in Scotland rose to 8.6 per cent between September 2011 and January 2012, but for the period March 2012 to August 2012 had fallen to 7.9 per cent, just below the UK average of 8.0 per cent (ONS, 2012). In reviewing research on employment in Scotland concerns emerge regarding the comparatively high proportion of 15-19 year olds who are not in education, employment or training in Scotland (GARA, 2007). In addition, concerns have been raised that the Scottish and UK Government policy emphasis on work as an exit from poverty may be failing to address those who, despite being in work, are unable to realise an adequate standard of living (McKendrick et al., 2011). Research suggests this policy direction may be overlooking those who do not work e.g. pensioners and those who are incapacitated (Jarvis and Gardner, 2009). It should also be allied with an appropriate emphasis on fair wages, whereas Scotland Futures Forum found that almost half of all children living in poverty in Scotland have a parent in work (Scotland's Futures Forum, 2009).

Access to and fair treatment at work

This section highlights some areas where access may be better facilitated by the state and by employers and explores potential barriers that could be removed through legislation,[30] policy and by the acknowledgement of difficulties faced by potential employees.

13

The scoping project review has identified a range of sources which identify discrimination and inequality in access to work by some of the most disadvantaged and marginalised people in Scotland, evidence which is supported by the conclusions and recommendations of the UN Committee on Economic, Social and Cultural Rights (UN CESCR, 2009). Research has also indicated that there are insufficient support mechanisms in place, for example, for parents with children in working families and that many structural barriers exist for marginalised groups such as asylum seekers who are prevented from entering employment whilst applications are pending.

Access to Employment for Disabled People and People with Mental Health Conditions

In 2009 the UN Committee on Economic, Social and Cultural Rights recommended that the UK:

> *"reinforce its measures aimed at ensuring that persons with disabilities, including those with learning disabilities, have equal opportunities for productive and gainful employment, equal pay for work of equal value, and provide them with improved, expanded and equal opportunities to gain the necessary qualifications"* (UN CESCR, 2009).

The '*Employment and the Work Place'* and '*See me*[31] campaigns are evaluated examples of good practise in addressing discrimination relating to disability and mental health through high impact social marketing at the macro level and community engagement at the micro level. Research literature cites both of these campaigns as initiating positive outcomes although there is also evidence which suggests that development has been limited due to funding constraints (Myers et al., 2009). [See Me is discussed further in the thematic section on Health]

Research indicates that only 48 per cent of disabled people are in employment compared with 82 per cent of non-disabled people (Scottish Executive, 2006, National Equality Panel, 2010).[32] A range of possible factors affecting access to work have been identified by research, for example, poor health, lower qualifications, geographical location and access to transport (Riddell et al., 2005). However, more recent research evidence continues to demonstrate that economic inactivity amongst persons with a disability is significantly lower because of the difficulties faced in accessing employment in the first place (Macpherson and Bond, 2009), despite this being a requirement in law.[33] Furthermore, disabled people often have to overcome negative attitudes held by employers about productivity and the associated prejudices on the risks of employing disabled people (EHRC, 2010a) resulting in many disabled people being more likely to be subject to severe financial hardship and marginalisation (Larner, 2006, EHRC, 2010b).

2010 data on the implementation of the national strategy for people with learning disabilities, "*Same as You"*, found that 75 per cent of adults with learning disabilities for whom employment status was known were not in employment or training for employment. Of those who were employed or in training for employment, only around

14

20 per cent were working more than 16 hours a week (Scottish Government, 2012b). The Scottish Consortium for Learning Disability suggests the figures may be even higher, and that progress may have been marginal with 11.1 per cent of adults with learning disabilities in work or training in 2003 rising to 14 per cent in 2010 (SCLD, 2011).

Participants at a SHRC/EHRC event on the UN Disability Convention felt that it was critical that more employers understood the importance of employment on an individual's well-being and the importance of support to remain employed:

> *"An essential ingredient to empower, liberate and inspire disabled people in the 21st Century job market is meaningful employment... Meaningful employment, however, means more than just a job - it involves a range of support mechanisms like transport for example... A major concern for disabled people is the fear of being placed in meaningless jobs with no hope or prospect of progression, promotion or career path" (EHRC and SHRC, 2011).*

Many participants at that event did not feel that potential employers were willing to spend the necessary money to make the reasonable adjustments that they required to facilitate employment. For those in employment, some felt that employers viewed necessary adjustments were a one-off fix, rather than something to be continually monitored. As one participant noted, the attitude he faced was:

> *"They have a ramp and a toilet what else do they want?" (EHRC and SHRC, 2011).*

Often, organisations say they do not have the money to be able to make the required adjustments, as was the experience of one participant in this scoping project who applied for an opening with a civil society organisation:

> *I had asked if they could take me on as a councillor with me being registered blind and the answer I got was a definite 'NO, because our equipment isn't geared up for that', they couldn't take me on because their equipment is not geared so that it could bring the zoom up on their screens so that I could see. So I was denied the chance of doing voluntary work because of my disability and people were being denied the chance to get advice from someone who knows a bit more about how it feels to be disabled, and where they are coming from.*
> **Eric, Person living with multiple physical disabilities**

Other participants at the SHRC/EHRC event believed that the reasons why many disabled people were being denied promotion in their jobs was a lack of funding to move their adaptions and equipment to new locations:

> *"Cumulatively these negative attitudes and misguided perceptions bring about a glass ceiling, limiting progression whilst impacting severely on disabled employees' hopes, aspirations and prospects" (EHRC and SHRC, 2011).*

People with mental ill health or mental disabilities also face a range of problems in accessing employment. One study found that 79 per cent of people with long-term

15

mental health problems were not in employment and highlighted the difficulty in overcoming inherent prejudices in people's perception of mental health problems that are not recognised as serious enough to inhibit capacity to work (Riddell et al., 2005). Other research has also indicated that those who are in work and suffer from a mental ill-health, are confronted frequently with prejudice surrounding their capacity to effectively perform in a job (Ormston and Webster, 2008). This was also a view held by many participants in this scoping project, as explained by this youth transition support worker:

> *... from my experience with employers, if I had anyone on benefit for any length of time[34] then they had an issue with that, they were a problem, they weren't someone who could go into employment and hit the ground running. There was very much a stigma attached. A lot of the time, they had to declare that they had health related issues and that was a big problem because they had to admit that they'd been off work for 6 months due to such and such and alarm bells would ring with employers. Mental health issues are also a lot harder with… with many employers because you can explain away a broken leg but a mental health problem there's always that fear it could happen again. There is a real lack of understanding of many mental health conditions and a lack of support within employment.*
> **Erica, Employability support officer.**

The Scottish Government has taken steps to improve public attitudes and behaviour towards people experiencing mental health problems and their access to and fair treatment at work (Myers et al., 2009). The Mental Health (Care and Treatment) (Scotland) Act 2003 makes provision for supporting those suffering from mental health problems in accessing training and employment.[35] The Scottish Government Action Plan (2009), *Towards a Mentally Flourishing Scotland: Policy and Action Plan 2009-2011 (Scottish Government, 2009)*, outlined a commitment to support the *See Me* campaign in delivering this objective.

In its Mental Health Strategy 2012-2015, the Scottish Government emphasises the value of *"place then train"* programmes to support people with mental health problems into work which accords with their preferences. The Government has committed to publicising the evidence base for what works in employability of people with mental health problems, including *"place then train"* and projects such as the WORKS in NHS Lothian (a vocational rehabilitation service which supports people with mental health problems into work, or educational opportunities) (Scottish Government, 2012a).

Migrant workers and ethnic minorities

Around 11 per cent of the European workforce is made up of migrant workers (OECD, 2011) with an additional unknown number of undocumented migrants accounting for between 0.4 per cent and 0.8 per cent of the population of the 27 EU member states (Vogel, 2009). With employment a major driver of migration to the European Union from developing countries, migrants could be the answer the demographic challenges facing an ageing, less economically active Europe. However, the research evidence

16

suggest that migrants are failing to find their way into appropriate employment with many being relegated to jobs in the unqualified and less regulated sectors of the labour market, with consequent economic, health and social difficulties (Ronda et al., forthcoming).

In 2009 the UN Committee on Economic, Social and Cultural Rights expressed concerns at the continued high unemployment rate among ethnic minorities and their continued over-representation in low paid jobs. It also expressed concerns related to:
> *"unsafe working conditions and low wages of some groups of migrant workers whose employers are registered outside the State party, in particular those employed in the fishing industry who enter the State party on transit visas" (UN CESCR, 2009).*

Glasgow Anti-Racism Alliance suggests unequal rates of employment among ethnic minorities is connected with historical inequalities and discrimination resulting in low retention and high exit rates in employment (GARA, 2007). Research by the UK Government itself has highlighted that ethnic discrimination continues to play a role in employment. The research, which involved sending nearly 3,000 job applications to employers in seven cities across Britain (including in Glasgow) found evidence of discrimination against those perceived (based on the applicant's name) to belong to ethnic minorities:
> *"16 applications from ethnic minority applicants had to be sent for a successful outcome in our test compared with nine white. That is, 74 per cent more applications from ethnic minority candidates needed to be sent for the same level of success" (Wood et al., 2009).*

The level of discrimination was found to be considerably less among public sector employers (four per cent as compared to 35 per cent) (Wood et al., 2009).

In 2011 research supported by the Joseph Rowntree Foundation identified a number of barriers to migrants and ethnic minorities in accessing employment in Scotland (De Lima et al., 2011).

> *"Most participants, regardless of ethnicity, identified the following barriers to accessing employment:*
> *• difficulties in accessing training and skills development programmes due to inadequate provision and costs;*
> *• a lack of appropriately trained staff with the relevant skills within employment agencies at a local level, e.g. Jobcentre Plus, in helping them to seek work.*

Furthermore, a number of ethnic- and/or gender-specific issues with regard to seeking employment emerged:
> *• a lack of English fluency for work purposes among many Chinese and East European participants and low levels of literacy amongst Gypsy/Travellers;*
> *• poor access to English language provision, particularly in Highland, owing to a combination of factors;*

17

> • *insufficient provision, and an inability to access provision due to childcare responsibilities or shift work and long hours;*
> • *a lack of affordable and appropriate (e.g. culturally sensitive) childcare, cited by single parent women (particularly Chinese) with school-aged children;*
> • *a lack of recognition of overseas qualifications;*
> • *language barriers that exacerbated the challenges faced in accessing training and skills development programmes; in addition, some eligibility rules appeared to create barriers to accessing language training;*
> • *the legal status of some Chinese women participants (e.g. asylum seekers/recently granted refugee status), in particular, impacting on their ability to access employment as well as other state support;*
> • *concerns expressed by some white Scottish men about the diminishing opportunities for accessing well-paid skilled, manual occupations in their local areas" (De Lima et al., 2011).*

According to the Close Business Barometer, 28 per cent of Scottish businesses employ migrant workers. Of those 57 per cent do so because they are best placed to do the job (Hamilton, 2011). However, many of the issues raised in the JRF research were also raised by participants in a participation event organised by Migrants' Rights Scotland in 2011.[36] Separately, Migrants' Rights Scotland has also reported concerns related to patterns of low wages, de-skilling, and a lack of reliable statistics on migrant workers in Scotland (Kyambi, 2011). Participants in this scoping project also raised the issue of "*de-skilling*" linked to the difficulty in translating qualifications across borders, resulting in migrant workers not being able to realise their potential in their chosen fields or at the professional level that they previous worked. One initiative highlighted in research is a Voluntary Code of Practice on Employing Migrant and European Workers developed by UNISON Scotland.[37]

A further issue raised by a number of participants was a lack of affordable English as a second language education provision for migrants, which could impact negatively on the Scottish economy in future years. Those working in the North East of Scotland recognised the difficulty in attracting people to work in certain sectors (e.g. Care providers) in areas where the cost of living was artificially high. As one participant noted:

> *We need to look at how best we can attract people to Scotland to fill those gaps, not deter or prevent people from coming...for better integration we need better English provision for adults and their children.*
> **David, Housing strategy officer (Local Council).**

Other research has highlighted the intersectional nature of discrimination in access to employment, for example, on religious as well as racial grounds (Jayaweera and Choudhury, 2008) and particularly among ethnic minority women (Equal Opportunities Commission Scotland, 2007). This latter point has been found to be linked to inherent prejudices, limited appropriate childcare, a lack of understanding of Islamic practises by employers, difficulty with communication in English and potential lack of confidence (El-Nakla, 2007).

18

Participants in this scoping project from Scottish Gypsy/Traveller communities recounted difficulties in gaining employment, despite being suitably and adequately qualified. They felt this was particularly true where they were viewed as 'activists'.

> *I have gone 14 years without a day's teaching, I have got a degree, postgraduate training and several good references, but I've come back to an area where I am known as a Gypsy/ Traveller and suddenly I am unemployable. Five, six years ago the job centre said to me, you are going to have to go on new deal because you've not had a job for a year and a half and I said great what are you going to do to help me find a job? They came with a folder in induction week which had a fortnight's worth of work in it. I did it in one day. So they took me through to the manager and she said I don't know what to do with you, you have more qualifications than me... So anyway, there was a Gaelic job going, so she went over to the human resources because she couldn't get any joy from the education department who told her to keep her nose out and put the phone down. So she went over the head of human resources and she came back and said, it's political. So they couldn't get me a job anywhere, they phoned everywhere... they even shut down the Gaelic Medium unit in the town because they couldn't get a Gaelic teacher, so… that's the job centre for you and yet they still have to say, you have to make yourself available for work. But what work? That was 6 years ago, and still nothing.*
> **Kathleen, Scottish Gypsy/ Traveller.**

Participants pointed to the importance of educating children and young people about discrimination and the facts related to migrant work in Scotland. As one youth worker noted:

> *We had one student come in and one of the girls turned around and said, see all you Poles coming in and talking our jobs, and she [Polish student] was really taken aback. It comes from their parents, the TV, they've read it in the paper, and they're just passing on information that they know nothing about, but because their dad said it or the daily record said it or whatever...*
> **Lucy, Employability support officer.**

Employment rights of parents

Various human rights standards pertain particularly to employment rights of parents. For example the International Convention on the Elimination of Discrimination against Women (ICEDAW) provides in Article 11(2) (c) that States should take effective measures:

> *"to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities."*

> *In 2009 the UN Committee on Economic, Social and Cultural Rights raised concern at the UKs approach to paternity leave, finding it:"…negatively impacts*

on equal rights between men and women." It has recommended that the UK *"introduce a more flexible scheme for paternity and parental leave, taking into consideration the report 'Working Better' by the Equality and Human Rights Commission"(UN CESCR, 2009).*

Similarly the European Committee on Social Rights has found that the UK arrangements for maternity leave are inadequate (Council of Europe, 2012).

Research suggests that it is particularly difficult for mothers to return to or access employment after the birth of a child, and more so again for lone parents (McQuaid et al., 2009, McQuaid et al., 2008).

The Work and Families Act 2006 made progressive changes to the support available to working families across Great Britain, such as through extended maternity leave, more flexible working arrangements and additional paternity leave if the mother returns to work. Additional support is also made available to working families through a tax credit scheme, however, accessing this support can reportedly be complex and bureaucratic (McQuaid et al., 2009) and recent changes to the eligibility rules have reduced the number of families who qualify for this support.

Research evaluating the *Working Family Fund,* an initiative of the Scottish Executive/Government (which operated between 2004-2008) found that one of the most significant barriers faced by parents in accessing the employment market was access to affordable and suitable childcare (McQuaid et al., 2009). This issue of access to affordable, accessible and quality childcare was also raised as an issue of concern by Together in their most recent review of the *State of Children's Rights in Scotland 2012.* They note in particular that:

> *"Work is the best route out of poverty, but for too many parents the high costs of childcare means that work simply doesn't pay. Cost coupled with additional barriers that prevent parents' accessing childcare means that many parents are not able to access suitable childcare" (Together, 2012).*

Whilst most participants in this scoping project, (especially those who were parents) sympathised with the difficulty of obtaining suitable childcare in general, a number of mothers raised their specific difficulties in relation to children with additional needs. In particular, those who were parents to children with ADHD or Autism expressed particular difficulty in accessing suitable childcare when their children were pre-school age. This was apparently not resolved once their children were of school age, as the standard reaction of many schools to any difficulties was to call the mother to collect her child. In one example where a child was particularly challenging, the school had reportedly asked the mother to take her child home every lunch time for the previous eight years, severely limiting her ability to take on any employment:

> *Women's rights to work and children... not easy, especially if they have children with special needs, I think if there is a problem, schools just expect the women to drop everything and come running out. They are not basically allowed to work...*
> **Elise, Women's support group leader**

Participants also reported difficulties with the costs associated with childcare, for example cost of deposits and registration fees which were required before the parent was able to return to work. This was summarised by one participant as a catch 22:

> *You cannot afford children without working and you cannot afford childcare to work.*
> **Teresa, Working single mother and a member of women's support group.**

There has been an increase in flexible working arrangements in Scotland for parents, particularly more so for working mothers, however, research has indicated that this may also have unforeseen consequences in practice including: mothers working in lower status occupations after maternity leave (Johnes, 2006); lower average pay for part-time work (Manning and Petrongolo, 2004); and parents not achieving their full potential (Darton and Hurrell, 2005).

Riddell (2009) has called for the adoption of a human rights based approach to working families in Scotland in order to better protect the rights of the child and the rights of parents to work .

Access to Employment for Asylum Seekers

Asylum and Immigration are also reserved areas[38] and the UK Government is responsible for the arrangements surrounding financial support of asylum seekers. The rights of those seeking asylum to work, pending status determination, has been the subject of litigation in the UK. In 2008 the High Court of England and Wales found that rules which prevented an asylum seeker from taking employment *"for a prolonged and indefinite period"* were incompatible with the ECHR.[39] In 2010 the UK changes immigration rules to comply with a European Union Reception Directive requiring that asylum seekers be granted the right to work if their status had not been determined after twelve months.[40] A 2010 UK Supreme Court case*,* found that the Reception Directive protects the right to work for those affected, even where the outcome awaited is for a second application after a first application has been rejected.[41]

For those who are not yet able to seek protection under the Reception Directive, case law has clarified that those who face destitution should have access to employment or welfare support in order to comply with the ECHR.[42]

In 2009 the UN Committee on Economic, Social and Cultural Rights has highlighted that the unacceptable length of waiting time asylum-seekers face in the UK before taking up employment and has urged the UK to remove restrictions in accessing employment while waiting for a decision (UN CESCR, 2009). Many civil society organisations have also called consistently for a relaxation on the rules prohibiting asylum seekers from working.[43]

Research literature has further highlighted the exclusion of asylum seekers as a result of financial deprivation (Mulvey, 2009) and the erosion of employment skills during long

waiting periods for decisions (Smith et al., 2010). Participants in this scoping project, themselves going through the process of seeking asylum, expressed a desire, in the absence of the right to work (for remuneration) to be allowed to undertake voluntary work. There was a general feeling that participation in unpaid work would not only help them to integrate better into the local community, but also to allow for the maintenance and/or improvement of work-related skills.

Fair Pay

The Gender Pay Gap

Various international human rights standards[44] and European Union regulations and directives[45] require States to pursue equal pay for work of equal value. In 2009 the UN Committee on Economic, Social and Cultural Rights expressed "*particular*" concern at the continued wage gap between men and women, especially in the private sector and for persons employed in part-time work (UN CESCR, 2009).

Research identifies that although gender inequality in employment is being addressed in certain respects, it remains a reality in Scottish society (Reid Howie Associates and Equality Plus, 2010, Macpherson and Bond, 2009). This inequality is noted both in the type of work women do (horizontal segregation) and their ability to reach higher positions in employment (vertical segregation). As previously noted, women are also more likely to work part-time or make use of flexible working arrangements due to caring responsibilities for children or dependent adults and as a result, are more likely: to work in lower paid jobs; receive less in pay with less employment protection; and are less likely to be in positions of seniority (Wassof and Breitenbach, 2007, Macpherson and Bond, 2009).

Research has also highlighted that a gender pay gap continues to exists between men and women performing work of equal value (Reid Howie Associates and Equality Plus, 2010). The research indicates that there needs to be more emphasis placed on both public and private sector employers addressing occupational segregation by accepting responsibility for developing inclusive practises, for example, by encouraging employees to avoid participating in a long hours culture in their place of work or by supporting employees to manage a better work/life balance (Reid Howie Associates and Equality Plus, 2010). Research by Reid Howie Associates and Equality Plus also identified the need for Government led awareness campaigns to tackle the equality gap (Reid Howie Associates and Equality Plus, 2010).

Pursuing poverty reduction by paying fairly

Research has indicated that low pay and in-work poverty are significant issues in Scotland (McKendrick et al., 2011, Strauss and Kelly, 2011). The evidence tells us that most of those in the three lowest income deciles, who are in work, receive low hourly pay. The UK Government is responsible for setting the national minimum wage and the current rates (2012) are:

£6.08 - the main rate for workers aged 21 and over

22

£4.98 - the 18-20 rate
£3.68 - the 16-17 rate for workers above school leaving age but younger than 18
£2.60 - the apprentice rate, for apprentices under 19 or 19 or over and in the first year of their apprenticeship

In 2010 the European Committee on Social Rights found the UK minimum wage "*manifestly unfair*" (European Social Committee, 2010) and in breach of Article 4 of the European Social Charter. Both the UN Committee on the Rights of the Child and the UN Committee on Economic, Social and Cultural Rights have recommended (in 2008 and 2009) that the UK address age based discrimination by ensuring the same minimum wage for workers under 21 (UNCRC, 2002, UN CESCR, 2002).

Participants in this scoping project who work with especially vulnerable young people, helping them through their transition to adulthood, spoke in particular about the difficulties they have in convincing some young people to move from living on benefits to working when there is little difference between the two incomes and the wages appear grossly unfair, when compared to someone older:

> *How do I convince someone aged 17 that it is fair that they are paid [£3.84] an hour for doing exactly the same job as the person next to them who is over 21 and earns [£6.08]?*
> **Lucy, Employability support officer.**

An added difficulty arises where these young people are also being accommodated in private flats (as opposed to supported accommodation or Bed and Breakfast establishments) with very high rents which they would not be able to afford without housing support:

> *... the rent is extortionate and they can be in there for 6 months to a year, sometime plus and it is financially impossible for them to work during that time... it becomes an absolute nightmare to manage because they are then having to pay towards their rent which can be about £200 plus a week. A lot of the young people I work with are in that situation – they are on job seekers allowance and they are getting a lot of pressure from the job centre to prove that they are seeking work, when in actual fact it's just not within their interests financially to do that because they don't gain anything from it and if anything they are out of pocket, so that is a barrier for them, but the odds really are stacked against them.*
> **Francis, Personal development & employability worker.**

Scottish research has indicated that working-age adults without dependent children make up a third of those in poverty and that income poverty for this group is on the increase (McKendrick et al., 2011) and that those in the lowest paid jobs were not seeing the same proportionate rise in income as Scotland's top earners income (Palmer et al., 2006). Many Scottish researchers and commentators have stated their support for addressing poverty suffered by low income workers and their families as a matter of national urgency (McKendrick et al., 2011, Strauss and Kelly, 2011).

The Scottish Government has adopted the Living Wage scheme, which encourages employers to adopt a sustainable wage for employees. The living wage is defined as a wage that gives individuals and families enough income to meaningfully participate in society and that meets socially acceptable standards (Scottish Government, 2010). The literature commends the work being undertaken to encourage a living wage (McKendrick and Sinclair, 2009), however, the operation of such a scheme is not without its difficulties as income inequality traverses both the public and private sector. In addition, some participants in this scoping project who are employers of relatively small businesses noted the potential difficulties they would face with an increased minimum wage:

> *In relation to the national minimum wage, as an employer I personally believe that every member of my staff is worth more and I mean a lot more than I can pay them, but if I added 20p an hour onto everybody's wage this week, we would be closed within a month. So it's not always about companies, especially small companies, it's not that they want to provide such a small wage, but they have no option.*
> **Nathalie, Care home manager.**

A recent survey by Citizens Advice in Scotland (CAS) has revealed a Scotland wide deficit on payment of the minimum wage where employers are in some cases refusing to meet the minimum amount laid down in law (Citizens Advice Scotland, 2011).[46] With wages starting as low as £1.62 per hour the report reveals that women, migrant workers and young people are the most likely to be affected. CAS also found that many workers are unaware of their rights, or lack confidence in how to fight for them (Citizens Advice Scotland, 2011). CAS has called for the introduction of a Fair Employment Commission to address a number of unfair employment practices (Citizens Advice Scotland, 2011).

Moving Forward

This section, alongside the other thematic sections and the overarching contextual chapter, has highlighted gaps, and inconsistencies, as well as good practices in the realisation of human rights in practice in Scotland. Addressing these shortfalls should be a concern of all bodies with responsibilities, including Government, local authorities, other public authorities and private providers of public services.

Identifying the shared framework of responsibilities and agreeing steps to address gaps requires an inclusive process of engagement. It should result in clarity on what action such bodies will take and when concrete improvements can be expected – it should result in specific, measurable, achievable, relevant and time-bound objectives. An independent system for monitoring progress should also be agreed. In short, the report supports the conclusion that Scotland needs a National Action Plan for Human Rights. To develop this SHRC will host human rights InterActions involving a broad range of public and private bodies, civil society and individuals. These InterActions will follow a FAIR approach:

> **F***acts*: What are the key gaps and the good practices in the realisation of human rights in Scotland?
> **A***nalysis of rights at stake*: Which human rights are at stake? Is any restriction on the rights justified? Is the extent of realisation of the right reasonable?
> **I***dentify responsibilities*: What changes are necessary? Who has responsibilities for helping to make the necessary changes?
> **R***ecall and review progress*: Independent monitoring according to agreed indicators and periodic review of progress.

This process will allow for constructive dialogue between those with responsibilities and those whose rights are affected. Further, it will clarify the steps that are required to improve human rights practice in Scotland taking a pragmatic approach to understanding financial and other constraints. It is hoped that Scotland's National Action Plan for Human Rights will launch in summer 2013.

To inform the process of developing Scotland's National Action Plan for Human Rights responses are requested to the following questions:

> **1. Based on the evidence presented in this report, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?**
>
> **2. What specific and achievable actions do you consider would best address the concerns you identify in terms of question 1?**

Please use the form at the end of this section and send your responses to actionplan@scottishhumanrights.com or post it to us at Scottish Human Rights Commission, 4 Melville Street, Edinburgh, EH3 7NS

Table 1: Key Dates

Date	Action
May 2012	The UK Universal Periodic Review at the United Nations begins.
September 2012	The final report and recommendations of the UK's Universal Periodic Review is anticipated
October 2012	Publication of SHRC's Report and launch of a process of participation to shape Scotland's National Action Plan for Human Rights
December 2012	SHRC hosts a National InterAction to address the findings of the scoping exercise and facilitate negotiation of commitments to address them
Aiming for Spring 2013	A draft of Scotland's first National Action Plan for Human Rights is published for comment
Aiming for Summer 2013	Scotland's National Action Plan for Human Rights will be launched
June 2014	UK's progress on Universal Periodic Review recommendations is considered in a mid-point review. Progress on Scotland's National Action Plan for Human Rights to feed into this process.

PARTICIPATION FORM
SCOTLAND'S NATIONAL ACTION PLAN FOR HUMAN RIGHTS

Views are sought from all individuals and organisations who have experience or expertise which can help to shape Scotland's National Action Plan for Human Rights.

The Scottish Human Rights Commission will be collecting and analysing all responses receive before the **29 March 2013**. Early responses are encouraged.

Unless respondents request that their views remain confidential or anonymous all responses will appear online with the organisation or individual named as the respondent. Contact details for the respondent will not appear online.

- Please tick this box if you do not wish your response to appear online:

- Please tick this box if you are happy for your response to appear online but not your name or organisation's name to appear:

- Please tick this box if you would prefer we did not link to your website:

Name: _____
Organisation: (where appropriate) _____
Website: _____
Email address: _____
Contact telephone number: _____

This form can be returned by post to: Dr Alison Hosie, Scottish Human Rights Commission, 4 Melville Street, Edinburgh, EH3 7NS, or sent as an electronic or scanned document to actionplan@scottishhumanrights.com

You can also fill out this form online at www.scottishhumanrights.com/actionplan

---

1. Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

2. What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Thank you for sharing you experience or expertise and helping to shape Scotland's National Action Plan for Human Rights.

Contact point: Dr Alison Hosie / actionplan@scottishhumanrights.com / 0131 240 2989 / www.scottishhumanrights.com/actionplan / @scothumanrights

Bibliography

ALLAN, J. 2008. Inclusion for all? . *In:* BRYCE, T. G. K. & HUMES, W. M. (eds.) *Scottish education : beyond devolution, 3rd edition.*

AUTISM RIGHTS. 2009. Child and Adolescent Mental Health Services Inquiry, Evidence to the Scottish Parliament Health and Sport Committee. Available: http://www.scottish.parliament.uk/S3_HealthandSportCommittee/Inquiries/MH36.pdf [Accessed 21st October 2011].

BACKETT-MILBURN, K. & OGILVIE-WHYTE, S. 2006. Children's and young people's concerns about their sexual health and wellbeing The Scottish Executive.

BARNES, L.-A. 2001. The right to education in Scotland. *Journal of the Law Society of Scotland,* 46**,** 23-26.

BERTOLINI, P., MONTANARI, M. & PERAGINE, V. 2008. Poverty and social Exclusion in Rural Areas: final report/annex 1 - country studies. European Commission.

BRADSHAW, P. 2011. Growing Up in Scotland – 2011 Research Findings No.2/2011: Growing Up in Scotland: Changes in child cognitive ability in the pre-school years. Edinburgh: Scottish Government.

CITIZENS ADVICE SCOTLAND 2011. Employers 'exploiting workers and breaking the law' on minimum wage. Edinburgh: Citizens Advice Scotland.

CONNELLY, G., FORREST, J., FURNIVALL, J., SIEBELT, L., SMITH, I. & SEAGRAVES, L. 2008. The Educational Attainment of Looked After Children - Local Authority Pilot Projects: Final Research Report. University of Strathclyde.

COUNCIL OF EUROPE 2012. European Social Charter European Committee of Social Rights Conclusions XIX-4 (2011) (UNITED KINGDOM) Articles 7, 8, 16, 17 and 19 of the Charter. Strasbourg: Council of Europe.

CRAIG, G. 2011. Mapping human rights organisations in Scotland. Durham: University of Durham, School of Applied Social Sciences.

DARTON, D. & HURRELL, K. 2005. People Working Part-Time Below Their Potential. Manchester: Equal Opportunities Commission.

DE LIMA, P., ARSHAD, R., BELL, A. & BRAUNHOLTZ-SPEIGH, T. 2011. Community Consultation on Poverty and Ethnicity in Scotland. York: Joseph Rowntree Foundation.

DE LIMA, P., CHAUDHRY, M., WHELTON, R. & ARSHAD, R. 2007. Study of Migrant Workers in Grampian.

DEVINE, T. M. 1999. The Scottish Nation, 1700 - 2000? London.

DONNELLY, R. 2009. Do the Right Thing: A report for under 18s on Scottish Government priorities in response to the UK Concluding Observations 2008. The Scottish Government.

DRC 2006. Disability Rights Commission Disability Briefing. Leeds: Disability Rights Commission.

DRIVER, S., LAMB, M. & WILSON, C. 2010. Annotated Bibliography of Published and Grey Non-Legal Literature on Human Rights in Scotland since 2006. London: The Crucible Centre and Social Research Centre, ROEHAMPTON UNIVERSITY.

EADIE, D., MACASKILL, S., HEIM, D. & HASTINGS, G. 2010. Responding to change: how did bar workers adapt to the smoke-free legislation in Scotland? *International Journal of Environmental Health Research,* 20**,** 13-26.

EHRC 2009. Submission on the United Kingdom's fifth periodic report under the International Covenant on Economic Social and Cultural Rights. London: EHRC.

EHRC 2010a. Significant inequalities in Scotland: Identifying significant inequalities and priorities for action. Glasgow.

EHRC 2010b. Triennial Review: How fair is Britain? London: Equality and Human Rights Commission,.

EHRC & SHRC 2011. Being part of Scotland's story under the disability convention: The report of the joint Commissions' participation event with disabled people in Scotland about the United Nations Convention on the Rights of Persons with Disabilities. Glasgow: Equalities and Human Rights Commission and Scottish Human Rights Commission.

EL-NAKLA, E. A. 2007. Muslim Women's Voices; Report presenting the findings of a Scotland-wide listening exercise conducted with Muslims The Muslim Women's Resource Centre.

EQUAL OPPORTUNITIES COMMISSION SCOTLAND 2007. Moving on up?: The Way Forward: Report on the investigation into Visible Minority Ethnic Women at Work in Scotland. Glasgow: Equal Opportunities Commission Scotland.

EQUALITY AND HUMAN RIGHTS COMMISSION 2010. Triennial Review: How fair is Britain?

EUROPEAN SOCIAL COMMITTEE 2010. European Social Charter, European Committee of Social Rights, Conclusions XIX-3 (2010) (UNITED KINGDOM). Strasbourg: Council of Europe.

FLANIGAN, D. 2011. Mapping the Law of Scotland in Relation to Economic, Social & Cultural Rights. Glasgow: Scottish Human Rights Commission.

GARA 2007. Challenging Worklessness and Underemployment of Black and Minority Ethnic Communities in Glasgow. Glasgow Anti Racist Alliance.

GLASGOW DISABILITY ALLIANCE 2008. "Dignity and Justice For All: Partnership Matters" Partnership Working to ensure the human rights of disabled people. Glasgow Disability Alliance.

HAMILTON, D. 2011. One-third of Scots firms use migrant workers. *The Herald*, 27 October 2011.

HARRIS, N. & 2009 2009. Playing catch-up in the schoolyard? Children and young people's 'voice' and education rights in the UK. *International Journal of Law, Policy and the Family,* 23**,** 331-336.

HMIE 2005. Taking a closer look at: Inclusion and Equality – meeting the needs of Gypsies and Travellers. Glasgow: Learning and Teaching Scotland.

JARVIS, A. & GARDNER, P. 2009. Poverty and Inequality in Scotland Report of expert seminars and stakeholder feedback on the relationship between equality and poverty. Unify.

JAYAWEERA, H. & CHOUDHURY, T. 2008. Immigration, Faith and Cohesion: Evidence From Local Areas with Significant Muslim Populations. London: JRF.

JOHNES, G. 2006. Career Interruptions and Labour Market Outcomes. Manchester: EOC Working.

KANE, P. 2008. Now families of Nimrod victims launch £20m fight for compensation. *Mail on Sunday* September 28, 2008 Sunday

KYAMBI, S. 2011. Employment and Migration: Scotland: http://migrantsrightsscotland.org.uk/wp-content/uploads/2011/05/MR-Scotland_EMPLOYMENT-AND-MIGRATION-IN-SCOTLAND.pdf Auchterarder: Migrants' Rights Scotland.

LARNER, C. 2006. Paying the Price : The real costs of illness and disability for CAB clients. Citizens Advice Bureau.

LELKES, O. & GASIOR, K. 2011. Income Poverty in the EU, Situation in 2007 and Trends. . *Policy Brief* January

MACPHERSON, S. & BOND, S. 2009. Equality issues in Scotland: a review of research, 2000–08. Employment Research Institute, Edinburgh Napier University.

MANNING, A. & PETRONGOLO, K. 2004. The part-time pay penalty, Paper prepared for the Women and Equality Unit at the Department of Trade and Industry. London: London School of Economics.

MASOOD, E. 2006. British Muslims Media Guide. London: British Council.

MCCARTHY, F. 2010. Personal injury: employers' liability - foreseeability (Case Comment). *J.P.I. Law,* 4**,** C171-174.

MCKENDRICK, J., MOONEY, G., DICKIE, J. & KELLY, P. (eds.) 2011. *Poverty in Scotland 2011: Towards a more equal Scotland?,* London: Child Poverty Action Group in association with the Scottish Poverty Information Unit, the Open University and the Poverty Alliance.

MCKENDRICK, J. & SINCLAIR, S. 2009. Child poverty in Scotland: taking the next steps. Scottish Poverty Information Unit, Glasgow Caledonian University.

MCQUAID, R., BOND, S. & FUERTES, V. 2009. Evaluation of the Working for Families Fund (2004-2008). Employment Research Institute, Napier University.

MCQUAID, R., FUERTES, V. & BOND, S. 2008. Employability and disadvantaged parents: the case of working for families. *ERSA Conference.* Liverpool.

MULVEY, G. 2009. 'Even among asylum seekers we are the lowest' Life on Section 4 Support in Glasgow. Scottish Refugee Council.

MYERS, F., WOODHOUSE, A., WHITEHEAD, I., MCCOLLAM, A., MCBRYDE, L., PINFOLD, V., THORNICROFT, G., MCBRIERTY, R. & WILSON, L. 2009. Evaluation of 'SEE ME' - The National Scottish Campaign Against Stigma and Discrimination Associated with Mental Ill-health,. SDC, Rethink, Institute of Psychiatry, King's College London.

NATIONAL EQUALITY PANEL 2010. An Anatomy of Economic Inequality in the UK Report of the National Equality Panel. London.

NEWALL, E. & LEWIS, R. 2007. It's my body: calls to ChildLine Scotland about sexual health and wellbeing University of Edinburgh Centre for Research on Families and Relationships.

NORMAND, A. & WEBSTER, E. 2010. Mapping the Law of Scotland in relation to International Human Rights Treaties – Civil and Political Rights. Glasgow: University of Strathclyde.

OECD 2007. *Reviews of National Policies for Education - Quality and Equity of Schooling in Scotland*, Organisation for Economic Cooperation and Development,.

OECD. 2011. *Foreign and foreign-born labour force in OECD countries [online]. http://www.oecd.org/document/30/0,3746,en_2649_37415_48326878_1_1_1_37 415,00.htm* [Online]. Organisation for Economic Cooperation and Development,. Available: http://www.oecd.org/document/30/0,3746,en_2649_37415_48326878_1_1_1_37 415,00.htm [Accessed 06/09/12 2012].

ONS 2004. Focus on Religion. London: Office of National Statistics.

ONS 2012. Regional Labour Market Statistical Bulletin, August 2012. . London: Office of National Statistics.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT 2008. Policy Brief: The OECD Review of Scottish Rural Policy. *PolicyWeb, policy briefs.* The UHI Policy Research Institute for Remote and Rural Regions.

ORMSTON, R. & WEBSTER, C. 2008. The report contains findings from a module of questions in the Scottish Social Attitudes Survey 2007, and examines public attitudes towards drinking and the role of alcohol in Scottish culture. Edinburgh: Scottish Government Social Research.

PADFIELD, P. 2006. Project 7 Final Report: Impact of national guidance: inclusive educational approaches for Gypsies and Travellers: within the context of interrupted learning schools and practice. Edinburgh: STEP: Edinburgh Moray House School of Education.

PADFIELD, P. & JORDAN, E. 2004. Issues in school enrolment, attendance, attainment and support for learning for Gypsy/Travellers and school-aged children and young people based in Scottish local authority sites. Edinburgh: Moray House School of Education, The University of Edinburgh.

PALMER, G., MACINNES, T. & KENWAY, P. 2006. Monitoring poverty and social exclusion in Scotland 2006 The New Policy Institute.

PATERSON, L. 2007. Patterns of absolute and relative social mobility: A comparative study of England, Wales and Scotland. *Social Research Online,* 12.

PATERSON, L. & IANNELLI, C. 2007. Social Class and Educational Attainment: A Comparative Study of England, Wales, and Scotland. *Sociology of Education,* 80**,** 330-358.

REID HOWIE ASSOCIATES & EQUALITY PLUS 2010. Reporting on Progress Towards Equality of Opportunity for Women and Men Made by Public Authorities in Scotland: Ministerial Priorities for Gender Equality: Tackling Violence Against Women. Reid Howie Associates, Equality Plus.

RIDDELL, S. 2009. Social justice, equality and inclusion in Scottish education. *Discourse: Studies in the Cultural Politics of Education,* 30**,** 283-296.

RIDDELL, S., FERRIE, J. & MAGUIRE, R. 2006. The Disability Discrimination Act, Education Legislation Pre-16 and Implications for a Single Equality Act: Report to the DRC. Edinburgh: Disability Right Commission.

RIDDELL, S., TINKLIN, T. & WILSON, A. 2005. *Disabled Students in Higher Education: Perspectives on widening Access and Changing Policy,* London, RoutledgeFalmer.

RONDA, E., BENAVIDES, F., LEVECQUE, K., LOVE, J., FELT, E. & VAN ROSSEM, R. forthcoming. Differences in working conditions and employment arrangements among migrant and non-migrant workers in Europe. *Ethnicity and Health* forthcoming.

ROSENGARD, A., RIDLEY, J. & HUNTER, L. 2007. A Literature Review on Multiple and Complex Needs. Edinburgh: Scottish Executive.

SCLD 2011. Statistics Release: Adults with learning disabilities - implementation of 'The same as you?' Scotland 2011: An Official Statistics Publication for Scotland. Glasgow: Scottish Consortium for Learning Disabilities.

SCOTLAND'S FUTURES FORUM. Poverty and inequalities in Scotland: ten years of devolution. Poverty and inequalities in Scotland: ten years of devolution, 2009 Glasgow. Scottish Poverty Information Unit.

SCOTTISH COUNCIL FOUNDATION. 2005. State of the Nation Report, Disability in Scotland 2005-2020. Available: http://www.leeds.ac.uk/disability-studies/archiveuk/DRC/DRC%20Scotland%202005-2020.pdf.

SCOTTISH EXECUTIVE 2006. The Future Delivery of Advice and Information for Additional Support Needs in Scotland. Edinburgh: Scottish Executive Education Department.

SCOTTISH GOVERNMENT 2009. Towards a more successful Scotland: The Government's Programme for Scotland 2009-10. Edinburgh.

SCOTTISH GOVERNMENT. 2010. Low pay and income inequality analytical paper - A living wage. Available: http://www.scotland.gov.uk/Resource/Doc/1034/0100962.pdf [Accessed 12th Feb 2012].

SCOTTISH GOVERNMENT 2012a. Mental Health Strategy 2012-2015. Edinburgh: Scottish Government.

SCOTTISH GOVERNMENT 2012b. The same as you? 2000-2012: Consultation Report. Edinburgh: Scottish Government.

SCOTTISH GOVERNMENT 2012c. Summary Statistics for attainment, leaver destinations and school meals Edinburgh: Scottish Government.

SCOTTISH GOVERNMENT AND STEP 2011. Inclusive Educational Approaches for Scotland's Travelling Communities within the context of interrupted learning Guidance for local authorities, schools and support services, . Edinburgh: Scottish Government and STEP.

SHRC 2008. Scottish Human Rights Commission STRATEGIC PLAN 2008-2012. Glasgow: SHRC.

SIMKHADA, P., VAN TEIJLINGEN, E., YAKUBU, B., MANDAVA, L., BHATTACHARYA, S., EBOH, W. & PITCHFORTH, E. 2006. Systematic review of sexual health interventions with young people from black and minority ethnic communities.

Department of Public Health, University of Aberdeen, Dugald Baird Centre for Research on Women's Health, University of Aberdeen, School of Nursing and Midwifery, The Robert Gordon University, Aberdeen, Department of Health Sciences, University of Leicester.

SIMONS, L. 2007. Think differently - act positively: public perceptions of autism in Scotland.

SMITH, R., TAIT, L., BALES, K., MCCONNELL, L. & RABAN-WILLIAMS, R. 2010. Mapping the Law of Scotland in Relation to International Human Rights Treaties: CAT & CPT. Newcastle: Northumbria Law School.

SMOUT, T. C. 1986. *A Century of the Scottish People: 1830-1950,* London, Collins.

STRAUSS, K. & KELLY, P. 2011. In-work poverty. *In:* MCKENDRICK, J., MOONEY, G., DICKIE, J. & KELLY, P. (eds.) *Poverty in Scotland 2011: Towards a more equal Scotland?* London: Child Poverty Action Group in association with the Scottish Poverty Information Unit, the Open University and the Poverty Alliance.

SWANSON, I. 2006. Prison officers set to sue for supervising slopping out. *Evening News* February 22, 2006, Wednesday

TOGETHER 2011. Submission to the United Nations Universal Periodic Review, Thirteenth Session of the Working Group on the UPR Human Rights Council 2012. Edinburgh: Together - Scottish Alliance for Children's Rights.

TOGETHER 2012. State of Children's Rights in Scotland, 2012. Edinburgh: Together - Scottish Alliance for Children's Rights.

TOMKIN, N. 2010. Work equipment and duties on employers. *J.P.I. Law,* 1**,** 1-9.

UHI POLICY WEB 2006. Policy Brief: Thriving Rural Communities: Outcomes, Indicators and Service Standards. *PolicyWeb, policy briefs.* University of the Highlands and Islands.

UN CESCR 1999. General Comment no. 13, the right to education. *UN Doc. E/C.12/1999/10.* Geneva.

UN CESCR 2002. Concluding Observations of the Committee on Economic, Social and Cultural Rights: United Kingdom of Great Britain and Northern Ireland. . *UN Doc. E/C.12/1/Add.79. .* Geneva.

UN CESCR 2009. Concluding Observations of the Committee on Economic, Social and Cultural Rights. *UN Doc. E/C.12/GBR/CO/5.* Geneva.

UN HUMAN RIGHTS COUNCIL 2012. Report of the Working Group on the Universal Periodic Review United Kingdom of Great Britain and Northern Ireland. Geneva: UN Human Rights Council.

UNCRC 2002. Concluding observations of the Committee on the Rights of the Child : United Kingdom of Great Britain and Northern Ireland. 10/09/2002. CRC/C/15/Add.188. (Concluding Observations/Comments). Geneva: UNCRC.

UNCRC 2008. UK Concluding Observations. Geneva: United Nations Committee on the Rights of the Child,.

VOGEL, D. 2009. *Size and development of irregular migration to the EU. Clandestino research project [online]. Available from:* http://irregular-migration.hwwi.de/typo3EN/ComparativePolicyBrief_SizeOfIrregularMigration_Clandestino_Nov09_2.pdf [Online]. [Accessed 05/09/12 2012].

WASSOF, F. & BREITENBACH, E. 2007. A Gender Audit of Statistics: Comparing the Position of Women and Men in Scotland Centre for Research on Families and Relationships, Edinburgh University.

WOOD, M., HALES, J., PURDON, S., SEJERSEN, T. & HAYLLAR, O. 2009. A test for racial discrimination in recruitment practice in British cities. London: Department for Work and Pensions

Appendix 1: Prioritisation criteria to select Phase 2 issues for further study

Occurrence: Number of Phase 1 sources commenting on a particular issue in relation to the Right being examined.

Devolved competence: Allows scoring according to whether an issue is reserved and wholly beyond the powers of devolved government, partly within the powers of devolved government, or fully within the powers of devolved government to address.

Gravity: Score reflects the nature of the rights at stake:

Category 1.Qualified & limited Rights, Economic, Social & Cultural Rights, the Right to an Effective Remedy, Non-discrimination in the Exercise of Rights

Category 2.The Right to Life, Retrospective Criminal Law and Absolute Rights (Right to be Free from Torture& Inhumane and Degrading Treatment and Prohibition of Slavery).

Imprint: Score reflects the extent to which the issues raised in a particular category would affect a large number of people

Vulnerability/ Marginalisation: Score reflects the extent to which the issues raised affect vulnerable or marginalised groups/communities.

Added value: Scores reflect whether the issue contributes to the human rights culture of Scotland without duplicating research work already being done by other bodies (or within the clear remit of other organisations)?

Opportunity: Scores reflect whether the issue creates/ensures the establishment of positive, supportive interaction and understanding between the SHRC and institutions or individuals where previously this did not exist?

Endnotes

1 Further details on the methods and methodology of this scoping project can be found in the main report which can be accessed at: http://www.scottishhumanrights.com/actionplan

2 The data sources collated and analysed in the first phase included:
An annotated bibliography of published and "grey" social research. DRIVER, S., LAMB, M. & WILSON, C. 2010. Annotated Bibliography of Published and Grey Non-Legal Literature on Human Rights in Scotland since 2006. London: The Crucible Centre and Social Research Centre, ROEHAMPTON UNIVERSITY. See also Hosie & Lamb (2013 forthcoming) for further information on the methodology of this aspect of the research http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8685263
Three legal literature reviews exploring specific Conventions/Acts in relation to the law in Scotland. (Convention against Torture, Inhumane and Degrading Treatment, International [CAT] SMITH, R., TAIT, L., BALES, K., MCCONNELL, L. & RABAN-WILLIAMS, R. 2010. Mapping the Law of Scotland in Relation to International Human Rights Treaties: CAT & CPT. Newcastle: Northumbria Law School, ibid., International Convention of Economic, Social & Cultural Rights [ICESCR] FLANIGAN, D. 2011. Mapping the Law of Scotland in Relation to Economic, Social & Cultural Rights. Glasgow: Scottish Human Rights Commission, ibid. and Human Rights Act/ European Convention of Human Rights] NORMAND, A. & WEBSTER, E. 2010. Mapping the Law of Scotland in relation to International Human Rights Treaties – Civil and Political Rights. Glasgow: University of Strathclyde.
An analysis of all individual enquiries received by SHRC and all general intelligence on systemic human rights issues in Scotland collated by SHRC (2008-2010). Whilst only those inquiries received between 2008 and 2010 were analysed as part of Phase one of this scoping project, the mapping project continued to collate and review inquiries during 2011 as part of Phase two. All responses to SHRC's 2009 national consultation. The original consultation document can be accessed at http://www.scottishhumanrights.com/ourwork/publications/article/reportofthenationalconsultation Initial Scottish data from the development of a "Human Rights Measurement Framework". The HRMF is a new tool for evaluating the human rights position of individuals and groups in England, Scotland and Wales. It was developed by the London School of Economics and Political Science, CASE and the British Institute for Human Rights within a partnership project of EHRC and SHRC. More information can be found here: http://personal.lse.ac.uk/prechr/

3 During this process SHRC also developed a Stakeholder Database of third Sector organisations involved to some degree in the promotion of human rights in Scotland. This database provides SHRC with a greater understanding of the range of groups and organisations which view part of their work to be promoting human rights in Scotland and provided a sampling framework for groups to approach to participate in the primary data collection of this scoping project. This database is available to the public [http://maps.scottishhumanrights.com/] For further information on this project see: CRAIG, G. 2011. Mapping human rights organisations in Scotland. Durham: University of Durham, School of Applied Social Sciences.

4 Not all of the many issues identified within this framework could, however, be explored further in Phase 2. Accordingly, a prioritisation criteria filter was applied (see Appendix 1) in order to determine which would be explored in the focus groups. Other issues that arose from the scoping project that did not reach the threshold for prioritisation were:
Young people's rights to sex education in school, (See NEWALL, E. & LEWIS, R. 2007. It's my body: calls to ChildLine Scotland about sexual health and wellbeing University of Edinburgh Centre for Research on Families and Relationships.; SIMKHADA, P., VAN TEIJLINGEN, E., YAKUBU, B., MANDAVA, L., BHATTACHARYA, S., EBOH, W. & PITCHFORTH, E. 2006. Systematic review of sexual health interventions with young people from black and minority ethnic communities. Department of Public Health, University of Aberdeen, Dugald Baird Centre for Research on Women's Health, University of

Aberdeen, School of Nursing and Midwifery, The Robert Gordon University, Aberdeen, Department of Health Sciences, University of Leicester.; BACKETT-MILBURN, K. & OGILVIE-WHYTE, S. 2006. Children's and young people's concerns about their sexual health and wellbeing The Scottish Executive, NORMAND, A. & WEBSTER, E. 2010. Mapping the Law of Scotland in relation to International Human Rights Treaties – Civil and Political Rights. Glasgow: University of Strathclyde, BARNES, L.-A. 2001. The right to education in Scotland. Journal of the Law Society of Scotland, 46, 23-26, HARRIS, N. & 2009 2009. Playing catch-up in the schoolyard? Children and young people's 'voice' and education rights in the UK. International Journal of Law, Policy and the Family, 23, 331-336.);

Rural living and access to work (which is an issue discussed in the thematic section on Where We Live) (See UHI POLICY WEB 2006. Policy Brief: Thriving Rural Communities: Outcomes, Indicators and Service Standards. PolicyWeb, policy briefs. University of the Highlands and Islands, BERTOLINI, P., MONTANARI, M. & PERAGINE, V. 2008. Poverty and social Exclusion in Rural Areas: final report/annex 1 - country studies. European Commission, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT 2008. Policy Brief: The OECD Review of Scottish Rural Policy. PolicyWeb, policy briefs. The UHI Policy Research Institute for Remote and Rural Regions.);

role of migration work in Scotland (see DE LIMA, P., CHAUDHRY, M., WHELTON, R. & ARSHAD, R. 2007. Study of Migrant Workers in Grampian.)

Safe working conditions (see EADIE, D., MACASKILL, S., HEIM, D. & HASTINGS, G. 2010. Responding to change: how did bar workers adapt to the smoke-free legislation in Scotland? International Journal of Environmental Health Research, 20, 13-26.;FLANIGAN, D. 2011. Mapping the Law of Scotland in Relation to Economic, Social & Cultural Rights. Glasgow: Scottish Human Rights Commission.; MCCARTHY, F. 2010. Personal injury: employers' liability - foreseeability (Case Comment). J.P.I. Law, 4, C171-174.; TOMKIN, N. 2010. Work equipment and duties on employers. J.P.I. Law, 1, 1-9.; SWANSON, I. 2006. Prison officers set to sue for supervising slopping out. Evening News February 22, 2006, Wednesday , KANE, P. 2008. Now families of Nimrod victims launch £20m fight for compensation. Mail on Sunday September 28, 2008 Sunday.

Erosion of facility time for trade union reps: An issue that was not raised with the research reviews but was raised by some participants involved in this scoping project was the issue of the erosion of facility time for trade union reps within the work place. A number of employment rights are dependent on good representation. Good representation requires that a representation has sufficient time to: prepare to represent an individual; to interview them before their grievance or disciplinary that they are representing them in or regarding issue that is coming up. Trade Union reps also require time to research what has happened else where, to look for alternatives, for example, when there are budgetary cut in terms of protecting key groups. Participants who were trade union reps believed that trade union facility time is one of the areas where cuts are being taken forward without recognising the implications of that in terms of insuring that people are properly represented.

5 Since 1999 the way the United Kingdom is run has been transformed by devolution - a process designed to decentralise government. Devolution essentially means the transfer of powers from the UK parliament in London to the Scottish Parliament and the Scottish Executive (officially referred to as the Scottish Government since August 2007) in Edinburgh. The Scottish Parliament is a legislation-making body, passing bills in various areas of its many devolved responsibilities. The Scottish Parliament also has the power to raise or lower income tax (as changed by the Scotland Act 2012). Devolved areas of legislative competence to the Scottish Parliament include agriculture, forestry & fishing, education, environment, health, housing, justice, policing and courts, local government, fire service, economic development, some transport responsibilities and human rights. The UK government is responsible for national policy on other powers which have not been devolved - these are known as "reserved powers". These include the constitution, defence and national security, foreign policy, energy, immigration and nationality, social security and some transport responsibilities. Many themes in this scoping project engage equality legislation in relation to combating discrimination. Equal opportunities is a reserved

matter (under Schedule 5 of the Scotland Act 1998 (Reservation - L2)), however, the reservation incorporates an exception in so far as the Scottish Government and the Scottish Parliament can impose certain duties which allows for scope for positive steps to be taken in relation to equality despite limitations on the powers available to the devolved administration.

6 Section 149 of the Act.

7 *"The public sector equality duty requires equality to be considered in all the functions of public authorities, including decision-making, in the design of internal and external policies and in the delivery of services, and for these issues to be kept under review. The public sector equality duty is set out in sections 149-157 and schedules 18 and 19 of the Equality Act. The general equality duty covers all public authorities named or described in Schedule 19 – Part 3 of the Equality Act 2010 together with those listed in the Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2010. The specific duties were created by secondary legislation in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012. These specific duties came into force on 27 May 2012. Under the specific duties each listed authority is required to assess and review policies and practices i.e. impact assess*".   See http://www.equalityhumanrights.com/scotland/public-sector-equality-duty/non-statutory-guidance-for-scottish-public-authorities/ for further details.

8 Article 24.

9 Article 28 and 29.

10 Schedule 3.

11 Buchan v West Lothian Council, 2001 SLT 1452.

12 R(R) v Leeds City Council, [2005] EWHC 2495.

13 E.g. article 13(1), ICESCR, article 29(1) CRC, article 24(1) CRPD, Article 10(c) ICEDAW. See also UN CRC, General Comment no. 1, the aims of education, UN Doc. CRC/GC/2001/1, 17 April 2001.

14 Article 28(2) CRC.

15 E.g. the Education (Standards in Scotland's Schools, etc.) (Scotland) Act 2000 and the Education (Additional Support for Learning) (Scotland) Act 2009.

16 E.g., Gypsy/ Traveller children and the children of drug users etc.

17 For further information see: http://www.equalityhumanrights.com/uploaded_files/a_guide_for_parents__scotland__part_4_of_the_disability_discrimination_act_1995.pdf

18 See for example Connors v UK, application no. 66746/01, judgment of 27 May 2004, Para 85.
 "The seriousness of what was at stake for the applicant is not in doubt. The applicant and his family were evicted from the site where they had lived, with a short absence, for some fourteen to fifteen years, with consequent difficulties in ...ensuring continuation in the children's education."

19 This issue is being challenged on the bases of equality; however, the position of the Scottish Government is that students are being charged fees on the basis of where they ordinarily live not on the basis of their nationality. Had a student of English, welsh or northern Irish nationality, been living in Scotland for 3 years of more, they too would be entitled to free tuition at Scottish university. Similarly if a student of Scottish nationality had been resident in England, Wales or Northern Ireland, they would be expected to pay the same tuition fees as other students coming from that country.

20 Public Interest Lawyers, "Sixth Formers Force Vince Cable MP to Defend Tuition Fees Rise in The High Court", http://www.publicinterestlawyers.co.uk/news_details.php?id=94

21 See for example Matthew Kelly, "Does Scotland's university fees system breach human rights laws?", The Guardian, 24 August 2011; Amelia Hill, "Scotland's university fees 'discriminatory', says lawyer", The Guardian, 21 August 2011.

22 Article 24(2)(a)

23 Article 24(2)(b)

24 See for example CRPD Independent Mechanism for Northern Ireland, Making the Disability Convention rights a

Reality in Northern Ireland Have your say, a platform event, December 2010, http://www.equalityni.org/archive/pdf/ReportonCRPDPlatformEvent1DecF.pdf, p 34.

25 See for example CRPD Independent Mechanism for Northern Ireland, Making the Disability Convention rights a
Reality in Northern Ireland Have your say, a platform event, December 2010, http://www.equalityni.org/archive/pdf/ReportonCRPDPlatformEvent1DecF.pdf, p 34.

26 For a fuller, authoritative, interpretation of the requirements of article 6, ICESCR see UN CESCR, General Comment no. 18 Article 6 of the International Covenant on Economic, Social and Cultural Rights, UN Doc. E/C.12/GC/18, 6 February 2006.

27 Ibid.

28 For example Article 27 of the International Convention on the Rights of Disabled People; Article 5, paragraph (e) (i), of the International Convention on the Elimination of All Forms of Racial Discrimination; Article 11, paragraph 1 (a), of the Convention on the Elimination of All Forms of Discrimination against Women; Article 32 of the Convention on the Rights of the Child; and Articles 11, 25, 26, 40, 52 and 54 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

29 Article 2.

30 The subject areas of Employment and Social Security are reserved matters under the Scotland Act 1998, as is Equality of Opportunity. The reservation under equality contains an exemption allowing the Scottish Ministers to encourage compliance with equal opportunity requirements. Regulations made under the Equality Act specific to Scotland are currently under consultation.

31 See the thematic section on Health for more information on the 'See Me' campaign.

32 See also http://www.scotland.gov.uk/Topics/People/Equality/disability

33 The duty to make reasonable adjustments, sections 20 – 22 of the 2010 Equality Act

34 The issue of employers unwilling to take risks with the long-term unemployed irrespective of disability was a further issue which raised concern amongst many participants.

35 Section 26(1)(c)

36 Migrants' Rights Scotland, Migrants' rights – more than just talk!, STUC Glasgow 30 March 2011, summary report, p11.
http://migrantsrightsscotland.org.uk/mrs_files/Migrants'%20Rights%20Scotland%20-%20Event%20Report%202011.pdf

37 UNISON Scotland, Minimum Standards Charter, A Voluntary Code of Practice on Employing Migrant and European Workers. http://www.unison-scotland.org.uk/activists/migrantworkerscharter.pdf

38 Under Schedule 5 of the Scotland Act.

39 Tekle v. Secretary of State for the Home Department [2008] EWHC 3064 (Admin).

40 European Council Directive 2003/9/EC (the Reception Directive)

41 R (on the application of ZO (Somalia) and others) (Respondents) v Secretary of State for the Home Department (Appellant) [2010] UKSC 36.

42 Anufrijeva v Southwark London Borough Council, 2004 QB 1124; R (on the application of Limbuela) v Secretary of State for the Home Department (2005) UKHL 66, (2006) 1 AC 396.

43 For an overview of these and the legal and political issues, see Melanie Gower, Asylum seekers and the right to work, House of Commons Library Standard Note SN/HA/1908, 4 November 2011.

44 Including ICEDAW, article 11(1)(d) "The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work"

45 Including European Council Directive on Equal Pay for Men and Women (75/117/ECC); Resolution on Equal Pay for Work of Equal Value (2000/2312(INI)

46 Available at
http://www.cas.org.uk/news/employers-exploiting-workers-and-breaking-law-minimum-wage