

Getting it Right? Human Rights in Scotland

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Our Human Rights in Context

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 Dignity and Care. 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 Summary¹

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 sources² 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 Our Human Rights in Context

The aim of this chapter is to explore the various contexts within which the people of Scotland currently live their lives. The chapter provides a lens with which to view and to make sense of the different contexts within which people live and how they may impact positively or negatively on the realisation of rights of people in Scotland. The six contextual themes presented below are: Legal, Political, Economic, Social, Technological and Environmental.

Legal context

As the table below shows, the UK has made a wide range of international legal commitments to respect, protect and fulfil human rights. However it has been slow to grant the population the right to petition international human rights bodies where they believe their rights have been violated and they have not received a domestic remedy. Until it ratified⁴ the Optional Protocol to the International Convention on the Elimination of Discrimination Against Women in 2004 the UK had not accepted any of the UN individual petition mechanisms and only the jurisdiction of the ECtHR in the Council of Europe. Since then it has also ratified the Optional Protocol to the Convention on the Rights of Persons with Disabilities (in 2009) but has yet to allow individual petition on other treaties. For example, the UK has been denounced by the UN Human Rights Committee as the only state in the European Union which is not a party to the Optional Protocol to the International Covenant on Civil and Political Rights (UN CCPR, 2008).

Similarly, the UK has only incorporated (brought into domestic law)⁵ one international human rights treaty, the European Convention on Human Rights (ECHR), which mainly protects only civil and political rights.⁶ Domestic implementation of non-discrimination instruments is achieved in part through equality legislation, although that does not contain the full range of rights in international human rights instruments. As such it cannot be considered that these are fully incorporated.⁷ Steps towards a duty on the Scottish Government to have “*due regard*” to the UN Convention on the Rights of the Child are positive but are not an alternative to incorporation.

Domestic and international human rights bodies have consistently called for incorporation of a range of international human rights treaties UN Docs (UN CCPR, 2008, UN CEDAW, 2007, UN CERD, 2011, UN CESC, 2009, UNCRC, 2008a).

Table 1: UK's international human rights commitments (examples)

Treaty ratified by the UK	Complaints mechanism accepted?	Incorporated into domestic law?
International Convention on the Elimination of Racial Discrimination 1965	No ⁸	No ⁹
International Covenant on Economic, Social and Cultural Rights 1966	No ¹⁰	No
International Covenant on Civil and Political Rights 1966	No ¹¹	No ¹²
International Convention on the Elimination of all forms of Discrimination against Women 1979	Yes ¹³	No ¹⁴
Convention Against Torture and other forms of cruel, inhuman and degrading treatment or punishment 1984	No ¹⁵	No
Convention on the Rights of the Child 1989	No ¹⁶	No
Convention on the Rights of Persons with Disabilities 2006	Yes ¹⁷	No
European Convention for the Protection of Human Rights and Fundamental Freedoms 1950	Yes ¹⁸	Yes via the HRA 1998 ¹⁹
European Social Charter 1961	No ²⁰	No
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987	Not applicable	No
European Charter for Regional or Minority Languages 1992	Not applicable	No
Framework Convention for the Protection of National Minorities 1995	Not applicable	No
Council of Europe Convention on Action against Trafficking in Human Beings 2005	Not applicable	No

The majority of the ECHR is incorporated via the HRA, which also includes a series of mechanisms to pursue the realisation of those rights in practice. Domestic courts are required to take account of the case law of the ECtHR.²¹ All laws must also be understood so far as possible in a manner compatible with the rights contained in the HRA.²² Public authorities and others who undertake a public function must refrain from acting incompatibly with the rights in the HRA.²³ Evidence collected by SHRC indicates that this duty can result in improved respect for human rights in practice and achievement of related public policy aims such as personalisation of health and social care.²⁴ SHRC has consistently proposed that potential for ‘human rights culture change’ is most enhanced where rights holders are empowered to know and claim their rights, where duty bearers have the ability to put those rights into practice and where there is sufficient accountability (SHRC, 2008).

International human rights mechanisms including the UN and the Council of Europe Commissioners for Human Rights have joined SHRC and over 80 domestic civil society organisations in expressing concern at debates on the future of the HRA and a possible UK Bill of Rights. SHRC’s concerns relate primarily to the risk that current negative political and media debate on human rights – focusing on emblematic and often misrepresented cases of the ‘undeserving’ few - will lead to a roll-back on rights protection, affecting the whole population. Political and media debate has tended not to focus on the benefits of the HRA such as those identified by the Ministry of Justice, British Institute for Human Rights, Equality and Diversity Forum and the UK’s national human rights institutions.²⁵

Additional measures may be required to clarify duties under the HRA and to maximise its contribution to a human rights culture. For example, there continues to be a lack of legal certainty as to the extent to which the HRA extends to private bodies providing public services.²⁶ Whilst this has been addressed in relation to some providers,²⁷ it is important that this is clarified for all providers of public services. A recent amendment to the Health and Care Bill, for example, sought to clarify that private providers of social care fall within the ambit of the HRA.²⁸

The HRA is referenced in the Scotland Act 1998 and hence embedded in the devolution settlement. The Scottish Parliament may not pass laws which are incompatible with the rights in the HRA.²⁹ The Scotland Act also prevents the Scottish Government from making law or doing anything else which is incompatible with the HRA.³⁰ The constitutional consequence is that any act of the Scottish Government which is incompatible with the ECHR would have no legal effect, and any legislation passed which was outside legislative competence is not law.³¹ So, while Scottish courts can only make declarations of incompatibility in respect of Acts of the UK Parliament, they can invalidate Acts of the Scottish Parliament if they are judged not to be compatible with the ECHR.³²

In addition, both the Scottish Government and Parliament are required to take into account the whole range of international human rights obligations by observing and implementing them.³³ The UK Government can also act to implement international obligations in Scotland, even in areas within the competence of the Scottish Parliament.³⁴

In practice the Scottish Parliament has at times enacted laws which consciously adopt a human rights based approach.³⁵ In some cases this has gone beyond requirements at the time of pure compatibility (i.e. compliance with the minimum standard required by ECHR), at least at the time the laws were adopted (see Assuring good practice in human rights, below). This has led to a number of laws of the Scottish Parliament being cited as good practice in human rights and in their subject field.³⁶ In other cases, however, Scottish Governments and the Scottish Parliament have reluctantly engaged with human rights (see section below on political context).

Assuring good practice in human rights

The Adults with Incapacity (Scotland) Act 2000 (the Act) was considered the first law of the Scottish Parliament which tackled a significant policy area.³⁷ It addressed a global trend towards a more individualised, functional or “*tailor made*” approach to assessing whether an individual has capacity to make decisions and its passage followed:

“unprecedented openness, involvement of affected citizens, and responsiveness to their views” (Ward, 2008).

The Act itself is explicitly built on human rights foundations, taking account of Council of Europe Regulations on the subject. For example it provides that any intervention in the affairs of an adult should be the:

“least restrictive option in relation to the freedom of the adult, consistent with the purpose of the intervention.”³⁸

This seeks to apply the test of proportionality in an interference with the right to private and family life. Subsequently the Act has been considered a model of best practice and taken into account in similar legislative processes across the world and in deliberations at the European Court of Human Rights (ECtHR).

The HRA requires that all laws should be read through the lens of the ECHR, a “*living instrument*”. Since the entry into force of the Act in 2002 understanding of the requirements of the ECHR in this area has developed significantly. The UN Convention on the Rights of Persons with Disabilities (adopted in 2006 and binding on the UK since 2009) is increasingly influencing how the ECtHR is addressing legal capacity.

Recent decisions of the ECtHR in this area have held that:

“...the existence of a mental disorder, even a serious one cannot be the sole reason to justify full incapacitation.” Any interference with legal capacity – such as a finding of full or partial incapacity or a guardianship order – is an interference with the right to private and family life and must be based on law, pursue a legitimate aim and be a proportionate means of achieving that aim.³⁹

Individuals have a right to a fair hearing (including right to participate in decisions and of access to a court to challenge decisions) in relation to a determination of their legal capacity.⁴⁰

As these decisions make clear, blanket restrictions on a group of people to exercise capacity in a certain area simply due to the existence of a partial guardianship is disproportionate.⁴¹

A series of reports suggest practice in Scotland remains uneven.⁴² Following a consideration of practice and the developing approach of the ECtHR the Public Guardian concluded that:

“several aspects of the current system e.g. use of interim guardians, use of indefinite orders and the granting of unnecessary welfare powers arguably breach human rights legislation.”

In response the Public Guardian has recommended a more explicitly human rights based approach.⁴³

To ensure the consistent application of human rights best practice SHRC has recommended that the Scottish Government and others with an interest and responsibilities related to mental health should engage in the process of shaping Scotland’s first National Action Plan for Human Rights.⁴⁴

National Human Rights Institutions

In terms of the national promotion, protection and monitoring of international human rights the UK has established three national human rights institutions, namely: The Northern Ireland Human Rights Commission⁴⁵ (NIHRC) operationalised in 1999; the Equality and Human Rights Commission⁴⁶ (EHRC) in 2007 and the Scottish Human Rights Commission⁴⁷ (SHRC) in 2008. All are currently accredited at A (the highest) status internationally, in recognition of their compliance with best practice.⁴⁸ A memorandum of understanding has been agreed between the three commissions in order to foster cooperative working relations and avoid duplication of work activity. This has led in particular, to cooperation on a number of projects between SHRC and EHRC Scotland (as noted below) and has enabled EHRC Scotland to undertake two high profile inquiries into sex trafficking (EHRC, 2011f) and disability harassment (EHRC, 2011e) in Scotland.

All three UK NHRIs have recently been subjected to budgetary cuts which so threaten their abilities to comply with their functions in accordance with the Paris Principles. When SHRC was established in 2008 its budget was £1 million which equated to approximately £0.20 per head of population per annum. Subsequently, its budget has reduced by 19 per cent⁴⁹ although it has retained its ten staff. In August 2010 it was announced that, with effect from April 2013, NIHRC’s budget was to be cut by 25 per cent (from £1.7m in 2010-11). NIHRC also underwent a major restructuring losing two of its four management posts in July 2011. Further staff cuts have been made since 2011 and this pattern is expected to continue as a result of further budget cuts. The budget of the EHRC will have fallen from £70million in 2007 to £26.8million by the end of 2015 representing a 62 per cent cut. This has and will continue to result in a significant change in both its staffing levels (72 per cent reduction) and programme of work (including the loss of its national Helpline) during its second strategic plan (2012-2015).⁵⁰ Particular concerns have been noted in Westminster Parliamentary debates⁵¹ about the impact that the loss of independence, lack of financial control and lack of funding could have on the EHRC’s current ‘A’ accreditation status.⁵²

Despite its recently reduced budget, the Scottish Human Rights Commission has managed to achieve a great deal of progress against the four Strategic Priorities it set in its first Strategic Plan (2008-2012). A selection of SHRC's many achievements in pursuit of these strategic priorities are set out in Appendix 2.

Political context

Political debate on human rights at the Westminster Parliament has led some to suggest that *"human rights today suffer a democratic deficit"* in that context (Hunt et al., 2012). The tension between the role of Parliament and the courts is often expressed in terms of the fundamental UK constitutional tenet of Parliamentary sovereignty. That principle is taken into account in the way in which the HRA is drafted in that courts cannot strike down laws of the Westminster Parliament which are found to be incompatible with Convention rights. Rather they may issue a *"declaration of incompatibility"*.⁵³ It is then for the Westminster Parliament to consider how to respond. The debates around prisoner voting demonstrate continued tension in the way the relationship between the UK Parliament and courts operates in respect to human rights.⁵⁴

In Scotland, human rights are embedded in the present constitutional settlement. As such the balance of powers between legislative, executive and judiciary in Scotland is closer to increasing international experience where Parliaments are constrained to act in ways which are compatible with human rights rather than the doctrine of Parliamentary sovereignty.⁵⁵ This provides a formal basis from which to develop a more positive and proactive political engagement on human rights.

The current mechanisms to consider human rights in the work of the Scottish Parliament include statements of compatibility and a mainstreaming approach to human rights across its committees. The former may be contested as lacking transparency and public scrutiny, the latter as missing the potential for the Parliament to develop a specialist Committee and clear space to discuss human rights issues.⁵⁶ In the case of Government Bills a member of the Scottish Government and the Presiding Officer must both issue statements to the effect that the Bill is considered compatible with the Scotland Act (including that it is compatible with the ECHR).⁵⁷ SHRC alongside a wide range of other bodies and organisations routinely raises human rights concerns during the passage of Bills.⁵⁸ Furthermore Acts of the Scottish Parliament are open to challenge on human rights grounds as was the case with the very first Act – the Mental Health (Public Safety and Appeals) Scotland Act 1999.⁵⁹

SHRC has made a series of recommendations on how the Scottish Parliament could ensure more systematic, proactive and transparent engagement. These included refraining from the use of emergency procedures to enact human rights laws; considering the creation of a Committee on human rights⁶⁰ and amendments to legislative scrutiny (SHRC, 2011i).

The provision of detailed memoranda on human rights considerations in a proposed Bill (rather than simply a statement of compatibility) would also enable Parliament to fully consider its human rights dimensions. As the UK Joint Committee on Human Rights has stated,

“the case-law of the European Court of Human Rights clearly shows [that] laws which are passed following detailed and informed parliamentary scrutiny of their human rights compatibility are more likely to withstand subsequent judicial scrutiny.”⁶¹

Scotland’s current political parties all express enthusiasm for human rights⁶² and research demonstrates a range of rights based legal and policy measures adopted since the Scottish Parliament was established. Nevertheless political action to respect, protect and fulfil human rights remains at times reactive rather than proactive as demonstrated by successive Scottish Governments’ responses to a series of high profile cases. The approach to the *Cadder* case is one in a series which, as SHRC’s Chair has said, does not show Scotland at its best (Miller, 2011b). In that case and in others the Scottish Government inappropriately and unnecessarily used the Parliament’s emergency powers to respond to court decisions in human rights cases, even where the need for change had long been recognised.

A reactive approach to human rights: waiting for an ‘emergency’

A gap in Scottish practice on access to a lawyer during questioning in police detention had been identified by international human rights bodies at least as early as 1994. Following its visit to Scotland in that year the Council of Europe Committee for the Prevention of Torture recommended:

“that all persons taken into police custody [in Scotland] be entitled to have access to a lawyer from the very outset of their custody.”

European Committee for the Prevention of Torture, 1994.
(Council of Europe, 1996)

However it was not until 16 years later, following a decision of the UK Supreme Court in 2010⁶³ that the Scottish Government introduced legislation to secure access to a lawyer during police questioning in detention. It used the Scottish Parliament’s emergency procedure to do so.

At the time SHRC expressed the view that:

“This is no time for emergency legislation as there is no emergency. The floodgates have not been opened – this decision clearly does not apply to concluded cases. Rather, now it’s time to get it right, and we have the time to get it right” (SHRC, 2010e).

SHRC also raised concerns with a range of its provisions in the emergency legislation which it considered went well beyond the requirements of the Supreme Court’s decision cautioning that rushing through such changes risked further court challenge (SHRC, 2010e).

The Scottish Government subsequently established a review of criminal procedure led by Lord Carloway. Commissioner Shelagh McCall was a member of the Reference Group to the Carloway review and SHRC welcomed several of the themes of the recommendations in Lord Carloway’s report (Carloway, 2011). However, SHRC felt that the recommendation to abolish corroboration for all crimes would be a radical change in Scots Law

and therefore it is important to take time properly to consider the implications for those accused of crime, victims/survivors⁶⁴ and witnesses, the police, and the courts.⁶⁵

The Cadder case is not alone. Most infamously, a political decision not to invest £13m in upgrading sanitation in Scottish prisons is reported to have cost the taxpayer “*tens of millions of pounds*” in remedies for the resultant human rights abuses.⁶⁶

The place of human rights in Scotland’s constitutional settlement was an element in discussions surrounding the passage of the Scotland Act 2012, which seeks to implement recommendations of the Calman Commission. Again following an individual decision of the courts, the Scottish Government appointed a review group to consider the structure of appeals to the UK Supreme Court, particularly in relation to criminal cases. SHRC reiterated the importance of a domestic superior court which considers human rights implications of both civil and criminal cases⁶⁷ and this was ultimately accepted by the Scottish Government. How this works in practice will require monitoring.

Scotland’s internal political settlement is currently established in a series of Single Outcome Agreements between the 32 local authorities and the Scottish Government. Such agreements have been politically contested and in principle require close consideration from a human rights perspective. On the one hand they offer the potential for greater participation in decision making at the local level. On the other it has been argued that they create a challenge for national accountability and ensuring delivery of better outcomes across the country. Given that they currently represent a significant devolution of decision making over local services in areas such as education and housing, these agreements too should be clearly linked to human rights realisation. Some organisations, such as the Scottish Association for Mental Health, have called for their greater linkage to human rights in the context of United Nations human rights reviews (Scottish Executive, 2003b). While some local authorities have undertaken equality and human rights impact assessments of their Single Outcome Agreements, most have found no relevant human rights impacts, suggesting a need to improve the process.

Economic context

The global economic crisis has presented a significant challenge to human rights protection in the UK. Yet human rights should assist in responses to the economic crisis too, offering an objective framework for fair decision-making on the prioritisation of resources.

Since the 2010 General Election the UK Government has prioritised the reduction of the public debt, pursuing a programme of austerity and cuts in public spending. This has had consequential impacts on the availability of resources for the realisation of human rights in Scotland. The reduction in UK public spending has coincided with a significant decrease in the Scottish Government’s budget.⁶⁸

Policy responses from the UK and Scottish Governments have varied significantly. The UK Government has responded with drastic public spending cuts, a reduction in state provision, localism and ‘Big Society’ (Farnsworth, 2011). Radical policy shifts

such as those in welfare reform and in health service delivery have been highly controversial with many organisations raising concerns at the impact on human rights and equality. Particular concern has been raised in relation to the impact on disabled people.⁶⁹ Concluding its inquiry on welfare reform, for example, the UK Joint Committee on Human Rights criticised the UK Government for a lack of information on how it had assessed the human rights and equality impact of the new Welfare Reform Act 2012 (Joint Committee on Human Rights, 2011). The Committee further raised concerns that the Welfare Reform Bill (as it was) may risk breaching human rights in leading to destitution (engaging the prohibition of degrading treatment), discrimination and retrogression in the realisation of economic, social and cultural rights (Joint Committee on Human Rights, 2011).

In recognition of the need to adjust the delivery of public services to the new economic environment, the Scottish Government established an independent Commission to Consider the Future of Public Services (the Christie Commission). The Christie Commission concluded that there was a need for urgent and sustained reform to public services based on a series of principles (Christie Commission, 2011b). The Christie Commission findings have been endorsed by the Scottish Government.⁷⁰

SHRC has promoted a human rights based approach to public service reform. As the table below demonstrates there is significant potential for synergies between the Christie Commission recommendations and the UN endorsed PANEL principles of a human rights based approach. Adopting a more explicit linkage to human rights would ensure the empowering potential of human rights for the population – to act as rights holders not service users in prioritising and shaping interventions. It would also add an objective and enforceable legal basis to ensure positive outcomes in terms of human rights. All public service providers should already ensure that no decision is made if it risked a negative outcome in terms of absolute rights such as the right to life and the right to be free from degrading treatment. They should also ensure the proportionality of impact on qualified rights such as the right to private and family life. Extending this provision to internationally recognised economic, social and cultural rights would introduce an objective legal framework within which to ensure fair and just allocation of resources. Those rights require, for example, that the maximum of available resources is prioritised towards the immediate realisation of at least minimum essential levels of rights to housing and healthcare etc. for everyone, prioritisation of those in the most marginal situations, and ensuring non-discrimination.

Table 2: Public Service Reform and Human Rights principles aligned

Christie Commission principles	Human rights based approach PANEL principles
Increased participation	Participation: everyone has a right to take part in decisions which affect their rights
Accountability; integration of services	Accountability: indicators, monitoring, access to justice state responsibility and the need for joined up approach to realisation
Reduction of inequalities; prioritisation of vulnerable and disadvantaged people	Non-discrimination and the pursuit of equality and the prioritisation of the most marginalised
	Empowerment of people to know and claim their rights
Outcome focus; transparency; preventative spending	Legality: duties to respect, protect and fulfil all human rights (including prevention, protection and remedy duties)

The elements of PANEL described above raise cross-cutting concerns that emerged from all thematic issues presented in Chapter 3 of the main report. For the purposes of this scoping project, the value of the PANEL approach is explored in particular in Sections 1 and 2 (in Chapter 3) on Health and Dignity & Care, highlighting the sustainable impact that taking a human rights based approach could have across the full range of thematic areas.

Domestic and international human rights bodies have called on UK and devolved administrations to consider more effective processes for assessing the impact of legal, policy and practice steps on equality and human rights (Scottish Government, 2011k). A good practice model for undertaking such impact assessments is currently being developed by SHRC with the Equality and Human Rights Commission and in collaboration with many other public bodies. Some international human rights bodies have also called for the development and use of human rights budget analysis, similar to equality budgeting which is already a feature of practice in Scotland. The Council of Europe Commissioner for Human Rights for example considers that:

“budget review from a human rights perspective is a tool for making elected representatives and officials better informed of the consequences of their decisions”(SHRC, 2011g).

Social context⁷¹

Demographic change

Scotland's population is changing and this change has notable implications for the promotion and protection of everyone's human rights. At just over 5.2 million, the population is now at its highest since 1977.⁷² Within this overall rise, the demographic structure variance between urban and rural authorities is marked and the overall population is ageing.⁷³ This rise in population⁷⁴ (particularly⁷⁵ linked to a projected rise in the number of 'very old' people) is predicted to reach 5.54 million by 2033.⁷⁶ This also includes a projected rise of 75 per cent of people living with dementia by 2031 (based on a 2007 baseline).⁷⁷

These changes will have a clear impact on access to public services, with particular requirements to increase the availability and accessibility of services for older people. Many have highlighted that, without significant changes to public policy, existing service models - in health and social care in particular – will be overburdened.⁷⁸ Scotland is developing significant policy responses such as the integration of health and social care.⁷⁹

There are clear opportunities and benefits to be drawn from including a human rights based approach in major policy responses to demographic change. This has been recognised through rights based initiatives such as the National Dementia Strategy, SHRC's *Care About Rights* capacity building and the Scottish Parliament Health and Sport Committee Inquiry into Health and Social Care. A similar approach has yet to be adopted in other policy areas. Concerns have for example been raised that existing housing stock is inadequate to respond to the needs of an ageing population.⁸⁰

Poverty and Inequality

Barriers to realising human rights drive and deepen poverty and in turn social exclusion in Scotland as elsewhere.⁸¹ In 2009 the UN Committee on Economic, Social and Cultural Rights called on the UK to adopt human rights based anti-poverty strategies to address the persistence of considerable levels of poverty and social exclusion as a matter of 'high priority'. It called for particular focus on poverty among certain sections of population, such as ethnic minorities, older and disabled people (UN CESCR, 2009). The UK's failure thus far to tackle child poverty was also recently highlighted as part of the 2012 Universal Periodic Review of the UK's human rights obligations, where a recommendation on reducing child poverty was called for by Norway to:

"Set a clear pathway to meet the goal of ending child poverty in the UK by 2020 as stated in the Coalition's programme for government" (UN Human Rights Council, 2012).

Some anti-poverty initiatives have adopted elements of a human rights based approach. The Poverty Truth Commission in Scotland for example highlighted key human rights messages such as the importance of ensuring people living in poverty are provided the opportunities and supported to participate in shaping responses.⁸²

The UK Child Poverty Act 2010 introduces elements from the Convention on the Rights of the Child.⁸³ The Act formalised reduction and eradication targets⁸⁴ and required child poverty strategies to be developed by both the UK and the Scottish Government in relation to matters within their respective competence.⁸⁵

In practice, action to address poverty has made progress in respect of certain population groups such as adults of pensionable age⁸⁶ and children but not for others such as workless households (McKendrick et al., 2011b).⁸⁷ Current policies focus on working your way out of poverty, however, entry into work accounts for less than half of UK exits from poverty. The European Committee on Social Rights has repeatedly raised concern over the difference in minimum wage between older and younger people, as well as finding that the level at which the UK minimum wage as a whole is set, is manifestly unfair (Council of Europe, 2008, Council of Europe, 2010a, Council of Europe, 2010b, Council of Europe, 2012). Critics argue that as long as low wages persist and a lack of progression from low paid unskilled jobs remains, the central aim of 'making work pay' will not achieve the desired reduction in poverty and inequality in Scottish society (Scott, 2006, Bradshaw, 2011a, McKendrick et al., 2011b, Poverty Alliance, 2011, Poverty Alliance, 2010).⁸⁸ Poverty is also not distributed evenly across Scotland and whilst there are higher numbers (and proportions) of people in poverty in urban areas, poverty and income deprivation are both prevalent in rural Scotland (McKendrick, 2011a).⁸⁹

Concern has also been raised by Inclusion Scotland with regard to the impact that cuts in disability premiums and the proposed cuts on benefits will have on families with a disabled child. Inclusion Scotland have estimated that families with a disabled child will lose £3,000 each by 2015. Together (2012) further note the results of a recent survey by Contact a Family⁹⁰ of parents of children with disabilities which revealed that in households with paid work one in seven is missing meals and one in six cannot afford to heat their homes. These rates increased to almost a quarter going without food and a third without heating in homes where family members could not work due to their caring responsibilities (Together, 2012).

Since devolution, considerable progress has been made in addressing many inequalities in Scottish society, for example in relation to the proportions of people in poverty, rates of those out of work and improved education outcomes (Palmer, 2010). Yet significant problems do still remain.⁹¹ These inequalities act as barriers to the full realisation of human rights (Mooney, 2011) and one of the most noted persistent inequalities challenging Scotland is its health record (Palmer, 2010).⁹²

As with broader public service reform Scotland has sought to take a long-term view, moving away from crisis management towards prevention, which may also generate significant financial savings at later stages (Scottish Government and COSLA, 2011).⁹³ Along with other broad Scottish social policy approaches such as those directed towards self-direction, de-institutionalisation, independent living, personalisation and integration SHRC has identified many opportunities for enhanced linkages between social care and public health policy and human rights (Joint Committee on Human Rights 2012, Chetty et al., 2012, SHRC, 2011b, SHRC, 2012c).

Social attitudes

Scotland is often portrayed as a nation of people who value the concept of fairness (Dobbie et al., 2010). This has strongly informed the nation's self-perception. While there is some evidence that Scotland has become more open and accepting (EHRC, 2010b, Ormston and Webster, 2008, Ormston et al., 2011, Ormston and Curtice, 2011), there remains a distinct gap between perception and reality.⁹⁴

Whilst some progress has been made in recent years in relation to the promotion of equality across a wide range of sectors of Scottish society, discriminatory attitudes have not reduced consistently (Ormston et al., 2011). While attitudes towards gay men and lesbians have improved,⁹⁵ there remain high levels of discriminatory attitudes towards, among others, transgender people and Gypsy/Travellers (Ormston et al., 2011).

However, around two thirds of Scots recently expressed the view that everything possible should be done to rid Scotland of prejudice of every kind (Ormston et al., 2011) leading to the suggestion that this belief and self-perception of inherent fairness can be a basis to shape further concrete action to advance these aims (Reicher, 2010).

Disabled people appear to face a disproportionately high level of prejudice. EHRC recently exposed how widespread disability harassment remains in Scotland, criticising a lack of action by public authorities (EHRC, 2011e). Many have argued that public discourse around welfare reform has significantly contributed to negative attitudes towards disabled people in particular (Scope, 2011), with the use of pejorative language and representations of disabled people widely criticised by civil society and human rights bodies alike (Poverty Alliance, 2011, Scope, 2011, Walker, 2012, Joint Committee on Human Rights 2012).

A range of voices have also increasingly challenged media and political misrepresentation of human rights and of marginalised groups. Beyond those already given examples include representations of Gypsy/Traveller communities; representation of people with mental health problems; refugees and asylum seekers; and people in receipt of social security and other forms of social protection (Joint Committee on Human Rights, 2012, Scotland's Futures Forum, 2009, Poverty Alliance, 2011, Amnesty International Scotland, 2012a).⁹⁶

Public attitudes on the value of human rights in the period under review in this scoping project appear to depend significantly on the types of questions asked. Polling with questions which appear politically motivated (e.g. do you agree that the Human Rights Act has become a 'criminals' charter'?) has produced predictably slanted results.⁹⁷ Conversely, an opinion poll of 14,000 people on which human rights they believe in demonstrated that a majority believe in a broad range of civil and political as well as economic, social and cultural rights (Vizard, 2010). All rights were classed as having between 70 per cent+ and 95 per cent+ support. The research concluded that:

"the (UK) Government's perception of what the public thinks about rights has often been impressionistic and media driven, rather than based on in-depth social scientific analysis" (Vizard, 2010).

Environmental context

Scotland has world leading legislation on climate change mitigation targets⁹⁸ and an adaptation strategy, both welcomed internationally.⁹⁹ SHRC has supported efforts to increase understanding of the connections between human rights and climate change,¹⁰⁰ co-hosting a conference on a human rights based approach to climate change.¹⁰¹ SHRC has recommended that the Scottish Government adopt such an approach (SHRC, 2011j). Recently the Scottish Government committed to promote Climate Justice and a human rights based approach to climate change, including through the launch of a Climate Justice Fund based on recognition of the unfairness that those who had contributed least to the causes of climate change were suffering its most extreme consequences (Scotland on Sunday, 2012).

Despite these positive steps concerns related to human rights and the environment persist. In 2010 the UK was criticised for failing to ensure access to justice in environmental matters due to the prohibitive costs associated with challenging environmental planning decisions.¹⁰² This is an issue on which the European Commission is pursuing the UK before the European Court of Justice (Europa, 2011), and which has been the subject of a public petition to the Scottish Parliament (SHRC, 2011d). SHRC has contributed to these debates encouraging the Scottish Government to take a holistic approach to ensuring rights to information, participation and access to justice in environmental matters.¹⁰³

Technological context

Human rights defenders around the world have enthusiastically embraced technological advances to enhance their research, advocacy and campaigning goals. Here in Scotland, for example, SHRC in partnership with others has piloted the use of interactive internet seminars to advance the participation of disabled people in rural and remote areas in its work to promote, protect and monitor the implementation of the Disability Convention. This process was welcomed by participants, it was viewed as an effective way of consulting with those who face the intersectional problem of being disabled and living in rural Scotland (EHRC and SHRC, 2011).

Access to the internet is increasingly required to exercise the right to access information, and consequently for the right to participate in decisions. Rates of connectivity in Scotland, however, remain low in comparison to England (Myant, 2012).¹⁰⁴ Furthermore, while access to the internet does not vary significantly between rural and urban areas in Scotland, differential rates do exist for older people, those on lower incomes, those with fewer educational qualifications, the unemployed, disabled people or those with long-term illnesses (Myant, 2012).

Technological progress also offers significant challenges to human rights. In Scotland these have often related to the right to private life and how that is protected in public and private space, as well as security of information (Scobie, 2012, McKinstry et al., 2009, Raab and Goold, 2011, Scottish Government, 2010h, EHRC, 2011b, Scottish Government, 2011e, Miller, 2011a, Miller, 2011c). Concerns related to the proportionality of interference with private life also arise in relation to the use of Closed Circuit Television (CCTV) (Bannister et al., 2009, Scottish Government,

2009a, SCSWIS et al., 2011, SHRC, 2011e)¹⁰⁵ monitoring of email, telephone and other communications (Fraser, 2008).¹⁰⁶

Similarly the use of new technologies in combating crime has to be considered through the lens of human rights. Recent controversies relate to the retention of DNA and other forensic data (Fraser, 2008),¹⁰⁷ and the use of electro-shock weapons.¹⁰⁸

Moving Forward

This chapter, alongside the other thematic sections, 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:

Facts: What are the key gaps and the good practices in the realisation of human rights in Scotland?

Analysis 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?

Identify responsibilities: What changes are necessary? Who has responsibilities for helping to make the necessary changes?

Recall 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 3: 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

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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 ratification is the process which legally binds the State. It varies from state to state. In the UK this can be through a Parliamentary process or at times by an act of the executive.

⁵ As the UK does not permit the automatic ‘direct applicability’ of its international human rights treaty obligations in its domestic legal systems a process of incorporation is required whereby a domestic law is passed containing the provisions of the treaty.

⁶ The Joint Committee on Human Rights of the UK Parliament described the issues thus, “A recurring question in the dialogue between the UK Government and each of the UN treaty bodies is why the UK has not to date incorporated into its domestic law many of the rights guaranteed by the UN human rights instruments. The obligations imposed by the UN treaties bind the UK in international law. But under the dualist doctrine of international law which is followed in the UK, these international legal obligations are not binding in domestic law unless they have been specifically incorporated into that law by way of legislation. Unincorporated guarantees of human rights can however be taken into account by the domestic courts in a number of ways. For example, the courts will assume that Parliament does not intend to legislate in a manner incompatible with the UK’s international legal obligations, including those arising under human rights treaties. They therefore interpret legislation in a manner consistent with those obligations whenever possible, even if there is no obvious ambiguity in the legislation. The dualist approach that prevails in the UK contrasts with the ‘monist’ approach to international law, characteristic of many civil law jurisdictions, whereby international treaty obligations

automatically become part of the domestic legal order.”, JOINT COMMITTEE ON HUMAN RIGHTS 2005. Nineteenth Report, 6 April 2005, para 186. London: Joint Committee on Human Rights.

7 On the relationship between domestic equality legislation and international human rights treaties on non-discrimination the Joint Committee on Human Rights of the UK Parliament has stated, “the equality rights in the Convention on the Elimination of Racial Discrimination (CERD) and the Convention on the Elimination of Discrimination Against Women (CEDAW) though they are reflected in a framework of domestic anti-discrimination legislation, have no counterpart as general, overarching guarantees of rights enforceable in UK law.”

8 The UK has not made a declaration permitting individual petitions under Article 14 of CERD.

9 As noted above partial implementation of non-discrimination treaties is achieved through the Equality Act 2010 and related national discrimination laws and standards, however as these do not guarantee the full range of rights included in UN non-discrimination treaties it is not generally be considered that these have been incorporated in the UK.

10 The UK has neither signed nor ratified the Optional Protocol to the ICESCR, which was adopted in 2008.

11 The UK has neither signed nor ratified the first Optional Protocol to the ICCPR, which was adopted in 1966.

12 Although many of the rights in the ICCPR find equivalents in the ECHR the former also includes for example a right to political participation, and a freestanding provision on equality.

13 The UK ratified the Optional Protocol to CEDAW in 2004. So far two communications involving the UK have been considered, both were found to be inadmissible – N.S.F. v UK, UN Doc.

CEDAW/C/38/D/10/2005; Constance Ragan Salgado v UK, UN Doc. CEDAW/C/37/D/11/2006.

14 As noted above partial implementation of non-discrimination treaties is achieved through the Equality Act 2010 and related national discrimination laws and standards, however, as these do not guarantee the full range of rights included in UN non-discrimination treaties it is not generally be considered that these have been incorporated in the UK.

15 The UK has not made a declaration under Article 22 of UN CAT which would permit individual petitions.

16 The UK has neither signed nor ratified the Optional Protocol to the CRC on a communications procedure which was adopted in 2011.

17 The UK ratified the Optional Protocol to the UN CRPD in 2009. So far no individual petitions have been filed.

18 The UK accepted the jurisdiction of the European Court of Human Rights to receive individual petitions related to the ECHR in 1953. As of April December 2011 the European Court of Human Rights had issued 462 judgments involving the UK. Of those 279 had found a violation of at least one article of the ECHR. Source: Council of Europe, ECHR Overview 1959-2011, Strasbourg 2012.

19 The Human Rights Act 1998 does not incorporate all articles of the ECHR. Article 1 (obligation to respect and ensure all rights) and Article 13 (the right to an effective remedy) were not incorporated.

20 there is a collective complaints mechanism under the Revised European Social Charter which the UK has not accepted.

21 Section 2. The duty to take account is not the same as a duty to follow. See for example R v Horncastle [2009] UKSC 14; Runa Begum v Tower Hamlets [2002] 2 All ER 668 para 17

22 Section 3, Human Rights Act 1998. As Lord Hope stated in DS v HM Advocate, “the obligation to construe a provision in an act of the Scottish Parliament so far as it is possible to do so in a way that is compatible with the Convention rights is a strong one.” 2007 SC(PC) 1 at para 24.

23 Section 6 Human Rights Act 1998.

24 See SHRC’s independent evaluation of the human rights based approach adopted at The State Hospital, SHRC 2009b. Human Rights in a Health Care Setting: Making it Work for Everyone. An evaluation of a human rights-based approach at The State Hospital. Glasgow: SHRC. and the independent evaluation of the Commission’s Care About Rights? capacity building programme: <http://www.scottishhumanrights.com/application/resources/documents/CaRfullevaluationfinalOct2011.pdf>

25 See for example: Human Rights and the Commission on a Bill of Rights. Equality and Diversity Forum. 2011, available at http://www.edf.org.uk/blog/wp-content/uploads/2011/10/EDF_HRA_briefing2010111.rtf ; Review of the Implementation of the Human Rights Act. Department of Constitutional Affairs. 2006, available at http://www.justice.gov.uk/guidance/docs/full_review.pdf; KLUG, F. & STARMER, K. 2005. Standing back from the Human Rights Act: how effective is it five years on? Public law, Winter, 716-728. For case studies see for example; <http://www.ourhumanrightsstories.org.uk> prepared by the British

Institute for Human Rights (BIHR), Liberty and other human rights organizations; also Analysis of the impact of the Human Rights Act produced by the Ministry of Justice and Joint Committee on Human Rights in 2007.

26 Following the case of *YL v Birmingham City Council and others*, [2007] UKHL 27.

27 Section 145, Health and Social Care Act 2008; *R (Weaver) v London & Quadrant Housing Trust*, [2009] EWCA Civ 587.

28 <http://www.scottishhumanrights.com/news/latestnews/article/healthsocialcarebillnews>

29 Section 29(2)(d) of the Scotland Act 1998

30 Section 57(2) of the Scotland Act 1998

31 section 57(2) and Section 29(1) of the Scotland Act 1998. See for example *H.M. Advocate v. R*, 2003 SC (PC).

32 Schedule 6 of the Scotland Act 1998; Section 29(2)(d) of the Scotland Act 1998

33 Schedule 5 para 7 (2) of the Scotland Act 1998

34 New Section 57A of the Scotland Act 1998, introduced by the Scotland Act 2012.

35 See, for example, *Mental Health (Care and Treatment) (Scotland) Act 2003*; *Adults With Incapacity (Scotland) Act 2000*; *Adult Support and Protection (Scotland) Act 2007*.

36 See for example UN Docs. UN CESCR 2009. Concluding Observations of the Committee on Economic, Social and Cultural Rights. UN Doc. E/C.12/GBR/CO/5. Geneva., 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. on laws relating to homelessness and education.

37 Iain Gray, Deputy Minister for Community Care, 29 March 2000, SP OR Vol. 5, col. 1120.

38 *Adults with Incapacity (Scotland) Act 2000*, s 1(3).

39 *Shtukurov v Russia*, (application no. 44009/05), judgment of 27 March 2008.

40 *Salontaji-Drobnjak v. Serbia*, (application no. 36500/05), judgment of 13 October 2009; *Stanev v Bulgaria*, (application no. judgment 17 January 2012; *DD v Lithuania*, (application No. 13469/06), judgment of 14 February 2012 (the last two cases concerned placement of people with mental disorders in social care homes).

41 *Alajos Kiss v Hungary*, (application no. 38832/06), decision of 20 May 2010.

42 See for example: MENTAL WELFARE COMMISSION FOR SCOTLAND 2007. *Older and Wiser*. Mental Welfare Commission for Scotland. CARE COMMISSION & MENTAL WELFARE COMMISSION FOR SCOTLAND 2009. *Remember, I'm Still Me: Care Commission and Mental Welfare Commission joint report on the quality of care for people with dementia living in care homes in Scotland*. Dundee & Edinburgh: Care Commission & Mental Welfare Commission. In relation to mental health law, see Scottish Government, *Review of Mental Health Law Consultation Analysis*, 2010.

43 Office of the Public Guardian (Scotland), *Early Deliberation on Graded Guardianship*, paper drafted by Sandra McDonald, Public Guardian, November 2011.

44 See for example Scottish Human Rights Commission, *Submission to the Scottish Government on a Mental Health Strategy for Scotland: 2011-2015 a consultation*, February 2012, <http://www.scottishhumanrights.com/application/resources/documents/Finalmentalhealthsubmissionfeb2012.doc>

45 NIHR was established in 1999 by section 68 of the Northern Ireland Act 1998, in compliance with a commitment made by the UK Government in the Belfast (Good Friday) Agreement of 10 April 1998. Its key aims are to promote awareness of the importance of human rights in Northern Ireland, to review existing law and practice and to advise government on what steps need to be taken to fully protect human rights in Northern Ireland. NIHR has a number of key functions including: providing advice to the Secretary of State on a Bill of Rights for Northern Ireland; conducting investigations; enter places of detention, and to compel individuals and agencies to give oral testimony or to produce documents, through the Justice and Security Act 2007. The Commission can also: provide assistance to individuals when they are bringing court proceedings; intervene in proceedings; bring court proceedings itself; and provide training and information on human rights. For more information see <http://www.nihrc.org/>

46 The EHRC was launched in 2007 and works across England, Scotland and Wales with a statutory remit to promote and monitor human rights; and to protect, enforce and promote equality across the nine 'protected' grounds - age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment.

47 The Scottish Human Rights Commission was established by an Act of the Scottish Parliament in 2006 and started work in 2008. Under the Act the Commission has general functions, including

promoting human rights in Scotland, in particular to: encourage best practice; monitor law, policies and practices; conduct inquiries into the policies and practices of Scottish public authorities; intervene in civil proceedings and providing guidance, information and education. The Commission also has the authority to enter any place of detention unannounced for the purpose of inspection or interview in the process of an inquiry. The Commission is also currently the Chair of the European Group of NHRIs, a representative of Scotland on the Advisory Panel to the Commission on a Bill of Rights, part of the National Preventative Mechanism (NPM) under the Optional Protocol to the Convention Against Torture (OPCAT) and forms part of the independent monitoring mechanisms under the UN Disability Convention. Other members of the NPM are (in England and Wales): Independent Custody Visiting Association, HM Inspectorate of Constabulary, Care Quality Commission, Healthcare Inspectorate Wales, Children's Commissioner for England, Care and Social Services Inspectorate Wales, Office for Standards in Education; (in Scotland): HM Inspectorate of Prisons for Scotland, HM Inspectorate of Constabulary for Scotland, Mental Welfare Commission for Scotland, Scottish Commission for the Regulation of Care; (in Northern Ireland): Independent Monitoring Boards (Northern Ireland), Criminal Justice Inspection Northern Ireland, Regulation and Quality Improvement Authority, Northern Ireland Policing Board Independent Custody Visiting Scheme. Other independent mechanisms under CRPD are the Equality and Human Rights Commission, the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission.

48 When establishing a National human Rights Institution, a state is expected to comply with the United Nations (UN) Principles Relating to the Status of National Institutions, known as the Paris Principles. These are a series of recommendations on the role, status and functions of NHRIs which were developed in Paris in 1991 and adopted by the UN General Assembly in 1993. They provide that national human rights institutions should: Be established in the Constitution or by a law that clearly sets out its role and powers; Be given the power to promote and protect human rights and have as broad a mandate as possible; Be pluralist and co-operate with nongovernmental organisations (NGOs), judicial institutions, professional bodies and government departments; Have an infrastructure that allows them to carry out their functions; Have adequate funding to allow the institution "to be independent of the government and not be subject to financial control which might affect this independence"; Have stable mandates for the members of the institution provided for by law. They also provide that NHRIs shall have duties and powers including: Making recommendations and proposals to Government, Parliament or other competent bodies, on existing and proposed laws, administrative process, or changes to the organisation of the judiciary which will impact on human rights, human rights violations, and the general situation of human rights or specific issues it decides to take up; Promoting harmonisation of national law, policy and practice with international human rights law and standards; Contributing to international human rights reviews of the state; Cooperating with the United Nations and other bodies dedicated to promoting and protecting human rights; Promoting teaching and research on human rights and organising public awareness and education programmes; To publicise human rights and efforts to combat discrimination by increasing public awareness, especially through information and education and by making use of media channels. The Northern Irish Commission was the first in the UK to gain full A status accreditation in 2007. This was followed by both the EHRC and the SHRC in 2009.

49 In real terms.

50 For more information see: <http://www.equalityhumanrights.com/>

51 See:

<http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120424/halltext/120424h0002.htm#12042446000001>

52 Key Paris principles state that an NHRI must be independent of government and not be subject to financial control that might affect its independence. The commission must also have adequate funding to conduct its activities

53 Section 4, Human Rights Act 1998.

54 For a short overview of the debates see for example, WAGNER, A. 2011. Prisoner votes and the democratic deficit. UK Human Rights Blog, <<http://ukhumanrightsblog.com/2011/09/20/prisoner-votes-and-the-democratic-deficit/>>.

55 AXA General Insurance v. Lord Advocate [2011] 3 WLR 871, UKSC, Lord Hope at para 49 "The dominant characteristic of the Scottish Parliament is its firm rooting in the traditions of a universal democracy. It draws its strength from the electorate. While the judges, who are not elected, are best placed to protect the rights of the individual, including those who are ignored or despised by the majority, the elected members of a legislature of this kind are best placed to judge what is in the

country's best interests as a whole... This suggests that the judges should intervene, if at all, only in the most exceptional circumstances."

56 See SHRC 2011i. Submission to the Scotland Bill Committee. Edinburgh: Scottish Human Rights Commission. More broadly, in its review the Calman Commission noted that the Scottish Parliament Committees worked well, but that their workload limited the time available for legislative scrutiny. Serving Scotland Better: Scotland and the United Kingdom in the 21st Century, final report, 29 June 2009, Commission on Scottish Devolution, para 6.22. It also noted that, despite a focus early on in the Scottish Parliamentary process on consultation and evidence, new provisions are often introduced in later amending stages which are often rushed, lacking opportunity for external involvement (para 6.44).

57 section 31 of the Scotland Act 1998 and Standing Orders rules 9.3.3 and 9.3.1. The Scotland Act 2012 will extend this regime to all Bills.

58 See <http://www.scottishhumanrights.com/news/latestnews>

59 A v Scottish Ministers, 2002 SC(PC) 63.

60 Some Parliaments, such as the UK Parliament at Westminster, have specific human rights committees with broad mandates to consider human rights. A standing or thematic committee on human rights could be empowered to review draft legislation to consider how it could better contribute to the realisation of human rights, undertake inquiries into areas of concern and it could become a forum for constructive accountability of the Parliament and Government's efforts to put human rights into practice. For an overview of the work of the UK Parliament Joint Committee on Human Rights see <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/>

61 Joint Committee on Human Rights, Legislative Scrutiny: Welfare Reform Bill, summary, December 2011.

62 Prior to the Scottish Parliamentary election in 2011 for example Amnesty International UK succeeded in photographing then leaders of all major parties holding the banner "Scotland Stands for Human Rights", <http://www.amnesty.org.uk/content.asp?CategoryID=10828>

63 Cadder v HMA [2010] UKSC 43.

⁶⁴ The term victim/survivor is used in this report. It is, however, acknowledged that some other terms are preferred by others.

65 The Commission's full submission to the Carloway Review is available here: SHRC 2011f.

Submission to The Carloway Review Consultation Document. Edinburgh: SHRC.

<http://scottishhumanrights.com/news/latestnews/article/carlowaynewsjune2011>

⁶⁶ <http://herald.vlex.co.uk/vid/rising-bill-for-settling-slopping-out-335000066>

67 Including sending an open letter to all Members of the Scottish Parliament

<http://scottishhumanrights.com/news/latestnews/article/oct11openlettermsps>

68 There has been a six per cent year on year decrease in the budget of the Scottish Government, Financial Scrutiny Unit Briefing, Simon Wakefield and Nicola Hudson, 22 November 2010, table 4.

Public spending is not anticipated to return to 2010 levels for 16 years, CHRISTIE COMMISSION 2011a. The Commission on the Future Delivery of Public Services. Edinburgh: APS Group Scotland. p viii.

69 See for example the written evidence provided to the Joint Committee on Human Rights, Inquiry on the implementation of the right of disabled people to independent living,

http://www.parliament.uk/documents/joint-committees/human-rights/Independent_Living_Written_Evidence_4.pdf

70 The Scottish Government launched the Commission to Consider the Future of Public Services following its November 2010 spending review with a remit to provide "recommendations about how public services must change to meet the medium and long term financial challenges and the expectations of the people of Scotland".

71 Many specific issues related to the social context will be addressed in individual thematic sections in the full report, including those on 'where we live', 'education and employment', 'dignity and care' and health.

72 The current population figure sits within a context of relative stability over the last 50 years which peaked at 5.24 million in 1974.

73 At present almost 40 per cent of the population is not of working age (i.e. below 16 or over 60+ for women and 65+ for men). Since the mid-1980s rural authorities account for 2.7 per cent of the population increase compared to 1.4 per cent for the rest of Scotland, but when this is explored by age group this figure is even more stark. In rural areas those over pensionable age rose by 17.4 per cent compared to only 5.8 per cent in the rest of Scotland.

74 This rise does not take into account any future impact of government policies e.g. immigration policies or other factors.

75 But not exclusively. Research also suggests immigration from Eastern Europe contributing to an increase in younger people. See MACPHERSON, S. & BOND, S. 2009. Equality issues in Scotland: a review of research, 2000–08. Employment Research Institute, Edinburgh Napier University.

76 Future projections in population structure show that the proportion of older people, especially the 'very old' (aged 85+) and older men will increase considerably. From 2006 to 2016 the population over 65 is expected to raise by 21 per cent; by 2031 it will have risen by 62 per cent and by 2031 the 85+ age group will have risen by 144 per cent. See <http://kt-equal.org.uk/uploads/BuiltHS%20Old%20Themes%20New%20Issues%20KT%20EQUAL%20Edinburgh%2019%20March%202010.pdf>

<http://www.holyrood.com/articles/2011/01/05/making-it-right-2/>

and http://www.vhscotland.org.uk/library/misc/ippr_older_people_and_wellbeing.pdf

77 Approximately 58,000 to 65,000 people were thought to suffer from dementia in 2007. This is expected to increase to around 102,000 to 114,000 by 2031 a 75 per cent increase (Alzheimer Scotland: See: <http://www.alzscot.org/pages/policy/dementiaepidemic.htm>).

78 Jacquie Roberts, then CEO of the Care Commission, raised concerns that by 2020 approximately 40 per cent of young people leaving school will need to enter the sector in order to cope with the projected increase in demand for services. She stated that if population projections are correct and services continue at their current level of provision without an increase in resources, then by 2031 approximately 175000 people who are currently in receipt of services would not receive anything. She also stated that with a care sector that is unable to cope with the level of need, there may be an increased need to institutionalise older people which could increase the risk of human rights abuses

ADAMS, L. 2009. Scotland's Secret Scandal - abuse of the elderly. The Herald, 12th October 2009.

79 The central aim of which is to improve the quality and consistency of care for older people; end 'cost-shunting' between the NHS and local authorities and move to a culture of 'doing with' rather than 'doing to' that will enable the individual to experience a better quality of life.

See <http://www.scotland.gov.uk/News/Releases/2011/12/12111418>. The better integration of adult health and social care has been publicly supported by amongst others, COSLA, the Expert Group on Future Options for Social Care, Scotland's Chief Medical Officer, the Association of Directors of Social Work and number of NHS Boards, see

<http://www.scotland.gov.uk/Resource/Doc/924/0123935.pdf>

80 Jacquie Roberts, then CEO of the Care Commission has noted that the equivalent of a new 50 bed care home built every two weeks for the next 20 years would be required to cope with future housing and care demands (Adams). ADAMS, L. 2009. Scotland's Secret Scandal - abuse of the elderly. The Herald, 12th October 2009.)

81 Social exclusion is used to describe where people are prevented from fully participating in society resulting from the denial of civil, political, social, economic and cultural rights OPPENHEIM, C. & HARKER, L. 1996. Poverty: The Facts. 3rd Revised edition ed. London: Child Poverty Action Group.

82 <http://www.povertytruthcommission.org/>

83 for a human rights analysis of the Bill see JOINT COMMITTEE ON HUMAN RIGHTS 2009a. Legislative Scrutiny: Child Poverty Bill. London: UK Parliament.

<http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/183/18305.htm>

84 Targets were to reduce child poverty by 2010 and eradicate it by 2020.

85 See <http://www.scotland.gov.uk/Topics/People/tacklingpoverty/ChildPoverty>

86 That is men over the age of 65 and women over the age of 60.

87 Half of adults of working age who are living in poverty in the UK as a whole, live in households with work (52 percent). See MCKENDRICK, J., MOONEY, G., DICKIE, J. & KELLY, P. (eds.) 2011b.

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. Variations can also be seen between men and women, with more women than men living in poverty, this is most marked for those of pensionable age. Lone parents are also more than twice as likely than couples with children to be living in poverty MCKENDRICK, J. 2011b. Who lives in 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. Ethnic minority communities in Scotland most often experience poverty as a result of prejudice in gaining employment (discussed further in Chapter 3.3) (BEMIS 2009; de Lima et al. 2011) and loss of traditional livelihoods,

pressures to lead settled lives, prejudice and low literacy levels have been shown to have increased Gypsy/Travellers' risk of poverty (De Lima et al. 2011).

88 Research in the Scottish context has shown that for many in low paid jobs, even 45 hours a week of employment at the minimum wage is not enough to lift a family income out of poverty (Example based on the net disposable income for a couple plus two children before housing costs, with one parent in work earning minimum wage) BRADSHAW, J. 2011a. More than numbers: understanding poverty today - Poverty Trends: Child Poverty. 2nd SCOTTISH ASSEMBLY FOR TACKLING POVERTY 2011: Aspirations and Inspirations: Meeting the Challenge of Poverty in Difficult Times. Glasgow: Poverty Alliance.

89 Gauging poverty in rural areas is made difficult by the fact that poverty is measured by 'concentrated deprivation' which doesn't work in rural areas. Moreover, communities often don't want to declare themselves as poor. An estimated one in every seven people living in rural Scotland is living in poverty and whilst the causes of poverty are similar throughout Scotland, there are particularities of rural living which are believed to exacerbate the problems of living in rural Scotland including: Higher costs of living; Higher levels of consumption (fuel to heat homes and travel greater distances); Fewer opportunities to earn an adequate income; Dispersed invisible deprivation; Culture of independence and self-reliance; Low pay and gender pay issues; and Access to services, education and work MCKENDRICK, J. 2011a. Rural 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.

90 See http://www.cafamily.org.uk/media/381221/counting_the_costs_2012_full_report.pdf

91 For example in relation to education and work, research has highlighted that there is growing evidence of both gender equality in certain areas (e.g. educational performance) and of persistent gender inequalities in others (e.g. employment). The experiences of children (in education) and adults (in employment) from minority ethnic groups are also varied, with some minority ethnic groups out performing all children in education and considerable variance in participation rates of men and women between minority ethnic groups in employment. Persistent inequalities of access to (and outcomes in) education and work remain, however for Scottish Gypsy Travellers. People over 50 (although this is increasing) and people with disabilities also are also over represented amongst those who are economically inactive. See MACPHERSON, S. & BOND, S. 2009. Equality issues in Scotland: a review of research, 2000–08. Employment Research Institute, Edinburgh Napier University. Macpherson and Bond (2009) provide a valuable review of research (from 2000 to 2008) on equalities issues in Scotland. Next to the US, the UK suffers some of the worst levels of inequality in the world. The Institute of Economic Affairs data shows that in Scotland levels of inequality are at their worst since 1961, when comparable records began 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.

92 A girl born in Scotland today can expect to live 80.1 years and a boy 75.3 years. This compares to 81.4 and 77.1 in Wales and 82.1 and 78 in England. A study of life expectancy across the UK revealed that of the bottom ten geographical areas, eight are Scottish authorities, the top four of which are all on the west coast. None of the top 10 areas for male life expectancy are in Scotland ONS. 2010. Interim Life Tables [Online]. London: Office for National Statistics. Available: www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-61850 [Accessed 3 October 2011]. Within Scotland the gap between the lowest and highest life expectancy is also marked, with the difference being 5.6 years for women and 7 years for men. There is also a noted difference between east and west with a life expectancy of 78.3 (men) and 83.1 (women) in Edinburgh, compared to 71.1 (men) and 77.5 (women) in Glasgow (ibid.) Overall, people in Scotland die younger than in any other EU country EHRC 2010b. Triennial Review: How fair is Britain? London: Equality and Human Rights Commission,.. For up to date information on health outcomes in Scotland see <http://www.scotland.gov.uk/Resource/0038/00387520.pdf>

93 See <http://www.scotland.gov.uk/Resource/Doc/337715/0110884.pdf>. Though this rests on a number of assumptions, including economic projections.

94 For example, comparable attitude surveys show that the attitude of Scots to those in poverty and those in receipt of welfare benefits, actually differs little from the rest of the UK ORMSTON, R. & CURTICE, J. 2011. Is Scotland more left-wing than England? British Social Attitudes: Special Edition. Edinburgh: ScotCen..

95 Attitudes in particular towards gay men and lesbians had notably improved since 2006 by 61 per cent agreeing that gay and lesbian couples should be allowed to marry. This change in attitudes

towards the LGB community is further supported by the evidence from EHRC Triennial Review EHRC 2010b. Triennial Review: How fair is Britain? London: Equality and Human Rights Commission, .

96 See also:

<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=6647&mode=html>;

<http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news/independent-living-report/>; http://www.article12.org/pdf/Out_of_Site.pdf

97 Jack Doyle, "Human rights laws are a charter for criminals, say 75% of Britons", 16 April 2012, Daily Mail. Poll by YouGov commissioned by right of centre think tank Policy Exchange. Among Scottish respondents 44% Strongly Agree, and 27% Tend to Agree.

98 The Climate Change (Scotland) Act 2009, which contained ambitious emissions reductions targets interim 42 per cent reduction target for 2020, with the power for this to be varied based on expert advice, and an 80 per cent reduction target for 2050. To help ensure the delivery of these targets, this part of the Act also requires that the Scottish Ministers set annual targets, in secondary legislation, for Scottish emissions from 2010 to 2050.

99 Including by Mary Robinson and Al Gore. Scotland has also presented its ambitions to be a global leader in combating climate change and in developing renewable energy technology at COP15.

100 See www.scottishhumanrights.com/ourwork/environment

101 <http://www.scottishhumanrights.com/ourwork/environment/ourwork>

102 Findings and recommendations with regard to communication ACCC/C/2008/27 concerning compliance by the United Kingdom of Great Britain and Northern Ireland, UN Economic Commission for Europe, UN Doc. ECE/MP.PP/C.1/2010/6/Add.2, paras 44-45.

103 See for example Scottish Government consultation on Legal Challenges to Decisions by Public Authorities Under the Public Participation Directive 2003/35/EC, April 2012; SHRC 2011d.

Submission paper for The Public Petitions Committee PE No. 1372 Environmental Rights. Edinburgh: Scottish Human Rights Commission.

104 The Ofcom Communications Market survey in 2011 found that 61 per cent of adults in Scotland had a broadband connection at home, compared to a UK average of 74 per cent. The most common reasons given for low participation rates are a lack of need or desire or a lack of knowledge. Cost of computer equipment and broadband accounted for a much smaller proportion. See

<http://www.scotland.gov.uk/Resource/Doc/366093/0124633.pdf>

105 See also: <http://www.scotland.gov.uk/Publications/2011/03/18085554/6>;

<http://www.eveningtimes.co.uk/cctv-plan-for-1000-glasgow-taxis-1.982469>;

<http://www.theglaswegian.co.uk/glasgow-news/news/2012/02/08/glasgow-taxis-the-city-s-fourth-emergency-service-102692-23741160/>;

http://www.cabdirect.com/taxi_trade_news/news.cfm/642;

<http://www.thescottishsun.co.uk/scotsol/homepage/news/2677993/Shocking-rise-in-the-use-of-CCTV-cameras-in-Scotland.html>;

<http://www.abouthumanrights.co.uk/human-rights-cctv.html>

106 See also: <http://www.liberty-human-rights.org.uk/campaigns/for-their-eyes-only/for-their-eyes-only.php>;

<https://www.eff.org/deeplinks/2012/04/uk-government-proposes-law-monitoring-every-email-phone-call-and-text-message>

107 See also: <http://www.liberty-human-rights.org.uk/human-rights/privacy/dna-retention/index.php>

<http://www.equalityhumanrights.com/news/2010/january/governments-proposals-incompatible-with-the-european-convention-on-human-rights/>;

<http://www.scotland.gov.uk/Resource/Doc/254429/0110269.pdf>;

<http://www.scotland.gov.uk/Resource/Doc/77843/0018252.pdf>;

<http://www.hatnews.org/2010/08/26/government-challenged-on-asylum-seeker-dna-tests/>

108 See: <http://www.cjscotland.co.uk/2012/04/strathclyde-police-taser-pilot-human-rights-and-legality-concerns-immunity-claim-challenged/>

http://www.amnesty.org.uk/news_details.asp?NewsID=17176

http://www.amnesty.org.uk/news_details.asp?NewsID=17547

<http://www.scotsman.com/the-scotsman/opinion/comment/shabnum-mustapha-taser-ruling-sparks-a-new-controversy-1-2245386>

<http://scottishhumanrights.com/ourwork/publications/article/tasers>