

HUMAN RIGHTS CONSORTIUM SCOTLAND

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

About Us

The HRCS is a network of over 150 civil society organisations and individuals. We work to increase understanding of and support for, human rights amongst civil society, brief politicians on ways to protect and better promote human rights and highlight where human rights practice can improve. The HRCS is an independent organisation and is non-party political. We happily work with international, UK and regional human rights organisations but we are 'home grown' rather than being a Scottish offshoot of a UK wide organisation.

The HRCS agrees that recognising the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, and that these rights derive from the inherent dignity of the individual. We also recognise that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom free from fear and want can only be achieved if conditions are created where everyone can enjoy his or her civil, political, economic, social and cultural rights.

To that end we suggest to the Committee 17 issues that it may consider raising with the UK and Scottish Governments in advance of the ICESCR hearing in 2016.

UK and Scotland

The HRCS understands that the UK Government has a 'long-term plan to provide economic stability and security at every stage of life, to bring the public finances under control and reduce and raise the productive potential of the economy and increase living standards.'ⁱ The HRCS believes this plan can be delivered without attacking, undermining or demonising our human rights. This plan can be achieved by protecting the human rights of the most vulnerable eg disabled people and respecting the rights of groups of people such as trade unionists. In this submission we argue that the UK Government is not fulfilling Article 2 and 'progressively realising to the maximum extent of its available resources' the rights contained in ICESCR.

The Scottish Government can use devolved powers to implement ICESCR eg to promote fair employment practices, address unfair working practices particularly in relation to the public sector and procurement by actively promoting the living wage; by banning zero hours contracts and blacklisting companies under procurement rules; encouraging collective bargaining in inward investment and supporting companies that engage fully with trade unions. The HRCS supports a proactive approach to promoting human rights in the workplace, worker democracy and fair work.

This submission is divided into three sections: context, 'list of issues' and conclusions.

Section 1 Context

In this submission, we focus on **impact** of laws and policies as well as the detail of policy and legislation. We have drawn on the expertise of our members. In compiling this report we have invited submissions from members and have undertaken desk-top research. Members of the HRCS have made submissions and we welcome that focus on gender and equality.

The HRCS receives no income from either the Scottish or UK Governments. Our very limited resources means this report is not as detailed as we would prefer. We hope the UN Committee will consider the issues that we raise and seek responses from the UK Government as well as the Scottish Government.

Poverty is “a global phenomenon experienced in varying degrees by all States but the UK is a rich country but the depths and extent of poverty continue to be alarming. The HRCS believes the common theme underlying poor peoples’ experiences is one of powerlessness. The HRCS believes that human rights can empower individuals and communities but there is a real problems in the UK in connecting the powerless with the empowering potential of human rights to help to equalize the distribution and exercise of power within our society:

- The Scottish Census 2011 revealed that for all 25+ age groups there are more women than men with long-term health conditions or impairments.
- Disabled women are disproportionately impacted by current austerity measures within the UK.
- Disabled women are less likely to be in full-time employment than non-disabled women;ⁱⁱ but are most likely to be the primary carer as well as the primary home-maker.ⁱⁱⁱ As a result, disabled women are disproportionately and specifically impacted, compared to non-disabled women and men, by current UK government austerity policy, particularly benefits cuts.
- Overall, 1 in 5 children in Scotland live in poverty, rising to 1 in 3 in deprived areas ^{iv} Poverty disproportionately affects children with a disabled parent (17% of Scotland’s child population). One in 3 children who live with a disabled adult live in poverty, compared to 19% of children who do not live with a disabled adult.
- Due to austerity measures and welfare cuts, the number of food banks in Scotland has risen from 1 in 2009 to over 50 in 2015.^v
- Gender discrimination in employment persists: for example only 15% of senior police and 25% of Senators of the College of Justice in Scotland are women; only 10% of UK national newspaper editors and 8% of Directors of FTSE 250 firms are women.
- There is a stubborn pay gap in many sectors of the economy. According to Close the Gap the gender pay gap in Scotland is 11.5%. ^{vi} According to the Equality and Human Rights Commission, women and men make up equal proportions of the finance workforce, yet women earn 55% less on average than their male colleagues. ^{vii}
- HIV related stigma remains a huge barrier for people seeking and sustaining employment.

Respecting, protecting and fulfilling human rights in Scotland

The HRCS is very proud of some of the achievements in Scotland in respect of

human rights, eg explicit support by the Scottish Government and Scottish Parliament for the ECHR and the Human Rights Act 1998, but recognise much more needs to be done. We offer constructive criticism.

The HRCS welcomes Scotland's National Action Plan on Human Rights (SNAP). (See Appendix 1) We recognise this is a positive development to be celebrated nationally and internationally. However HRCS members recognise SNAP's effectiveness will be determined if it is adopted by our 10,000 + public services and if it makes a direct impact on the lives of the general public.

The HRCS welcomes the Scottish Government's announcement of a public information campaign on human rights to be undertaken later in 2015, at a cost of £50,000. Such a campaign can address the disinformation on human rights as well as positively promote human rights more broadly eg ICESCR as well as the ECHR.

The Scotland Bill will amend the Scotland Act 1998 and make provision about the functions of the Scottish Ministers and extend the functions of the Scottish Parliament. There is some support for devolving employment law, including control over the minimum wage to Scotland. We await developments on what additional powers will be devolved to Scotland^{viii}. Whatever the outcome, the Scottish Government has obligations under ICESCR and could, for example, replicate the Welsh Government's Procurement Advice Notice (PAN) ensuring fair employment practices in all public contracts in Wales. This guidance deals specifically with the issue of umbrella companies and false or bogus self-employment in construction projects and ensures no worker will be exploited through an umbrella company or bogus self-employment. The HRCS urges the UN Committee to list issues specifically directed at Scotland too.

2. List of Issues

Article 1 (1) - Constitutional and legal framework within which the Covenant is implemented - Article 1 (1)

Article 2 (1) - the UK should progressively achieve the full realization of the rights recognized in ICESCR by all appropriate means, including particularly the adoption of legislative measures

Implementing ICESCR - ICESCR is not enforceable in Scottish Courts. The only international human rights treaty that has been incorporated in UK law is the European Convention on Human Rights (ECHR) through the Human Rights Act 1998 (HRA) and in Scotland also through the Scotland Act 1998 eg S57 and S100. The Scottish Parliament declined to incorporate the UN Convention on the Rights of the Child into Scots law during the passage of the Children and Young People Scotland Act 2014^{ix}. The HRCS believes the Scottish Government could be bolder in adopting international human rights standards to address inequality and poverty given the powers in the Scotland Act including Schedule 5(7).

Issue 1

- a) That the Scottish Government be asked what specific steps it will take, within its devolved powers, to give effect to ICESCR in Scotland.

- b) The Scottish Government is invited to detail what ICESCR training has been delivered to judges, sheriffs, medical staff and public servants in Scotland.

The Human Rights Act (HRA)

The recently-elected UK Government is set to deliver on its Manifesto promise to scrap the HRA and introduce a Bill of Rights instead. (See Appendix 2) We want such plans dropped as:

- Creating a new Bill of Rights is a diversion from the real problem, which is ensuring that people across the UK enjoy and understand their human rights.
- The HRA has still to reach its potential in everyday places and situations across the UK. There is too little evidence that the HRA is considered and applied in the design, delivery and funding of public services.
- There is no appetite for reform of the HRA in Scotland. For example the Scottish Parliament voted in support of the HRA and ECHR in November 2014. (See Appendix 3) The discord and parliamentary time taken up by changing the law is unwarranted and un-necessary.
- Human rights are too often a convenient punch bag for bad government decisions or practices. This is unfair and unacceptable.

Issue 2

- a) The UK Government should be invited to justify why it seeks to abolish the HRA.
- b) The UK Government should be invited to justify its position on the HRA given that the Scottish Parliament has, so recently, voted to uphold it.

Effective Functioning of NHRIs - Pursuing Individual Cases/Strategic Litigation

Although the GB Equality and Human Rights Commission (EHRC) can take up individual human rights cases in England and Wales, the SHRC is specifically prohibited from taking individual cases.⁸ Whilst we do not expect there will be a lot of cases, the SHRC could fund and pursue 'test' cases that could improve public service practice for all. Overall there is a problem in Scotland of individuals asserting their human rights through the court process. (See appendix 4)

Issue 3

- a) The Scottish Parliament should amend the Scottish Commission for Human Rights Act 2006 by deleting Section 6, so that the SHRC can take up cases.
- b) The budget of the SHRC should be increased accordingly so that there is at least the prospect of litigation in addressing breaches of human rights.

Unequal Scrutiny of Human Rights Application - Scottish Parliament

There is an unequal scrutiny of rights in the UK. At the UK Parliament there is a dedicated Human Rights Committee but calls for one to be established at the Scottish Parliament, since 2011, have been ignored. Human rights, it is argued, are an integral part of the business of each committee. However, Glasgow University, which studied the work of all parliamentary committees in November 2011, published a report that concluded that there was considerable room for improvement:

“Although we are limited by the terms of reference to a single calendar month, the evidence for the period reveals a widespread disregard of the normative and institutional framework for conceptualising and analysing human rights issues.

Although there is no evidence to suggest that this is deliberate, most Committees did not seize the opportunity to imbue human rights in their respective field of activities.”^x As the Scottish Parliament is now 16 years old, it is also appropriate to review the impact of legislation and how it may be improved from a human rights perspective. For example in line with Article 11 the right to enjoy the highest attainable standard of physical and mental health it is sensible to review the Mental Health (Care and Treatment) (Scotland) Act 2003

Issue 4

- a) Will the Scottish Government ensure that a Human Rights Committee is set up at the Scottish Parliament so that there is a thorough examination of the human rights implications of each Bill, inquiry, and petition and business item?
- b) If this is resisted, will each parliamentary committee appoint a human rights rapporteur so that there is a focus on human rights at every stage of the committee’s work and deliberations?
- c) Will the Scottish Government introduce human rights impact assessments on the Scottish Budget, in line with its current commitment to gender budgeting?

Changing the Public Sector Culture

The HRCS supports the delivery of Scotland’s National Action Plan including the ‘Better Culture Action group’ as there is very little evidence of a human rights culture rooted in our public services in Scotland. UNISON Scotland, which represents 160,000 public service workers advises that “members don’t generally operate in a human rights culture”^{xi}. This opinion is supported by other evidence, .e.g. two surveys of the public sector’s delivery of their human rights duties under the HRA in 2006^{xii} and in 2011⁶.

Issue 5

- a) What specific steps can be undertaken to instil a human rights culture within our 10,000 public sector organisations and evaluate its **impact** on practice?
- b) What audit mechanisms will be adopted to establish and monitor evidence of a human rights culture in our public services and services of a public nature?

Impact of UK laws and policies which undermine economic and social rights

In the budget of July 2015, the UK Chancellor of the Exchequer stated that his measures were about protecting hard working families and increasing the minimum wage for the poorest. You would think, therefore, that this is a very good time to bolster unions, and respect for them, so that workers can organise and campaign for better wages and conditions. Instead, the reverse is true and trade unions are under attack (see below)

In this submission we have drawn on some of the research that continues to be done and which exposes the negative impact on the human rights of the most vulnerable in the UK and Scotland. The research and campaigning activities of charities and voluntary organisations are under attack too. The ‘Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014’ (The Lobbying Act), amended legislation passed in 2000 that also proved problematic. Under part two, campaigning organisations such as charities must now register with the Electoral Commission as non-party campaigners if they spend more than a threshold of

£20,000 in England and £10,000 in Scotland, Wales or Northern Ireland on certain regulated activities during the election period.

The Lobbying Act expands the list of regulated activities and lowers the upper spending limits. The impact has been various, e.g. there has been a chilling effect on the activities of some organisations and some have scaled back their campaigning activities. Voters will suffer as the amount of information publicly available may be reduced, making it more difficult to form an opinion. That is not good for our democracy.

Issue 6

The Lobbying Act is abolished and legislation passed that is human rights compliant.

Article 4 - In the enjoyment of ICESCR rights, the UK may subject such rights only “to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.”

Article 8 - “The States Parties to the present Covenant undertake to ensure ... The right of everyone to form trade unions and join the trade union of his choice...”

Trade Unions

The UK government is currently preparing further legislation to curtail the activities of trade unions through the passing of a new Trade Union Bill. According to the Business Secretary Sajid Javid, this Bill will ‘balance their [trade unions] rights with those of working people and business. These changes are being introduced so that strikes only happen when a clear majority of those entitled to vote have done so and all other possibilities have been explored’.

This statement fails to recognise two things. Firstly that strike ballots are already subject to strict legislation and are conducted in line with democratic norms that are applied in other areas of civil and political life and secondly that the Trade Union Bill as proposed by government is far reaching and will affect trade union activities in a variety of ways that are not limited to the running of strike actions.

The Trade Union Bill 2015 and the Free Assembly the Bill threaten fundamental human rights including the ability of trade unions to function and represent their workers, freedom of expression rights, protection of property/freedom of contract rights and the prohibition on discrimination. The fundamental human rights of trade union members in the UK are already more heavily restricted than in most advanced economies. It is therefore incumbent on the government to provide cogent and compelling evidence that further interference in those rights is genuinely necessary and proportionate, and therefore lawful.

Some measures in the TU Bill restrict trade union activity in the public sector on the basis that the exercise of trade union rights does not represent good value for money. Such arguments require to be considered alongside the obligation to progressively achieve the "full realisation" of ICESCR rights "to the maximum of available resources.

Further, if the UK seeks to introduce new regulation of trade union membership and activity, the doctrine of progressive realisation of full ICESCR rights requires the UK state to consider other measures to maintain the enjoyment of trade union rights notwithstanding the measures in the TU Bill. So, for example, the doctrine of progressive realisation might require that insistence on postal ballots is relaxed in order to assist trade unions meet new participation thresholds when balloting for industrial action (see below). The Bill covers the following areas:

- **Ballot thresholds for industrial action** - Lawful strikes presently require, among other things, a simple majority in a secret postal ballot. The Bill makes provision in respect of all ballots for a 50% turnout requirement. In addition, the Bill proposes a requirement for overall support of 40% of those eligible to vote when strikes are proposed in six key public sector services; Non-voters will effectively be counted as voting against the strike action, in violation of ILO conventions which state that only votes cast in ballots should be taken into account in strike actions. The 40 per cent rule will apply to private organisations which provide public services, for example in the transport sector. However, in education it will be limited to state-funded schools.
- **Time Limiting Ballot Mandates** - Although the courts have held that changes in the circumstances of a trade dispute have had the effect of terminating the authority of a strike ballot there is no express statutory time limit on the mandate provided by a strike ballot. The Bill proposes the expiry of a mandate for industrial action four months after the date of the ballot. Currently, provided industrial action starts within four weeks of a successful ballot, the mandate for industrial action remains intact for as long as the dispute with the employer exists. Under the government's proposals, unions will no longer be required to start industrial action within four weeks. However, where industrial action – whether continuous or discontinuous – lasts for more than four months the union will be required to re-ballot.
- **Picketing & Campaigning** - Although the Code of Practice on picketing has no binding legal effect, courts will have regard to compliance with the code when considering an action for civil damages based on a complaint that a trade union has unlawfully induced workers to participate in strike action. The Bill proposes to give the Code of Practice binding legal effect. The Bill also proposes a number of sanctions linked to picketing and campaigning by trade union members.
- **Other industrial action measures** - The Bill also proposes a number of measures including specific information on ballot papers, advance employer notification of strike action, notice of the type of action to be taken and reporting requirements to the Certification Officer. The government is consulting on new wide-ranging restrictions on union members' right to picket and to protest including requiring unions to report publicly and directly to employers, the Certification Officer and the police their 'protest plans' 14 days in advance of any action taking place. The government's proposals even include requiring unions to report to the police on plans to run Twitter or Facebook accounts and to set out the likely content of any website created.
- **Application of funds for political objects** - The Bill proposes that trade union members will be required personally to opt in to affiliated political funds and to renew that mandate every five years. Currently it is ten years.

- **Facility Time** - Trade union reps presently receive some time off with pay for duties performed on behalf of the members and unpaid time for work on behalf of the trade union. The Bill proposes that Ministers be empowered to require any public body to publish data on facility time for trade union work. The Bill further proposes that Ministers are then empowered to order public bodies to reduce facility time by introducing an arbitrary cap on the amount of money each authority can spend on facility time. This power would allow the government to intervene in locally agreed collective bargaining agreements and could arbitrarily restrict the work of trade unions regardless of the views of the employer.
- **Payroll Deduction of Unions Subscriptions (DOCAS)** - Most public sector employers have entered voluntary arrangements with trade unions to deduct subscriptions from the wages of members and to remit subscription income to the trade union. Some DOCAS arrangements are contractual, either with the employee, the trade union, or indeed both. The Bill will be amended at second reading to ban public sector agencies from deducting and processing trade union subscriptions from wages. However the State will continue to take deductions for workers who want to donate to charity (Payroll Giving^{xiii}), pay pension, pay loans for bicycles.

It is not possible to go through each issue in detail but here we analyse one of the proposals – ballot thresholds. The Government asserts that 50% turnout equates to democratic legitimacy and that the promotion of "democratic legitimacy" provides lawful grounds for interfering with fundamental human rights. The justification is inconsistent: the UK government was elected on just 24% of eligible votes on 7th May 2015; 66.1% of the electorate voted giving the government 36.9% of the votes cast¹. This is an inconsistent approach to elections and in determining legitimacy from voting outcomes. This double standard suggests that the Government thinks the conduct of business is more important than the conduct of democracy.^{xiv}

Evidence of harm to trade union rights

- There are a number of trade disputes arising from a rule or practice adopted by an employer which is of general application but has a disproportionate adverse impact on a minority. For example, a refusal to provide time and space for religious observance. Such a general workplace rule, applicable to all staff, could only be opposed by a strike based on a ballot of all those to whom the rule applies.
- Disputes where the 'adverse impact' of a strike is limited to the rights and freedoms of the employer. For example, there is no adverse impact on the rights of the general public if the toilet cleaners at a factory vote unanimously to go on strike following a 48% turnout in a secret postal ballot.
- It is unlikely that a call for action in support of the right of religious observance at work would meet the 50% threshold in a great number of UK workplaces. The disinterest, or indeed opposition, of the majority would therefore combine with the new ballot threshold to prevent small minority groups from withdrawing their individual labour in pursuit of the right to meet their religious obligations.

- Similar problems would arise for a small group of women in a gender segregated workplace dominated by men, such as a factory or depot. If a minority group of women wanted to withdraw their labour in pursuit of a personal campaign to change work arrangements to better suit pregnant workers and breastfeeding mothers they might struggle to persuade male colleagues to participate in a ballot.
- Transsexual workers commonly face conflict with employers and colleagues over suitable access to toilets and changing areas. All workers affected by the dispute require to be balloted. Yet it is distinctly possible that a transsexual worker campaigning for different work facilities would fail to secure the participation of the required proportion of colleagues to permit the right to withdraw labour.

The proposed threshold requirement therefore acts as a bar on industrial action by small groups in pursuit of minority issues when the issue in dispute affects the whole workforce but, the majority of the workers are not sufficiently interested to participate in a ballot. Indeed, the position is potentially more regressive. Equal opportunities frequently involves the redistribution of wages, benefits or facilities to address the neglected rights of a disadvantaged group. In such cases, the ballot threshold would operate to permit the empowered majority group to strike in defence of the status quo while the minority facing discrimination would fail to reach the threshold and lose the right to strike. The changes proposed are significant and are likely to affect relationships between workers, employers and unions and are likely to have a detrimental effect on the union's ability to act on behalf of their members.

Unions will be the only organisations having ballot thresholds imposed on them. When the last government looked at the rules for shareholder voting on executive pay, it left the decision to be taken by a simple majority of those voting – no thresholds on turnout, no thresholds on the proportion of eligible voters. It is difficult to understand why changes would be applied to one part of industrial democracy while other parts remain unchanged.

Striking workers will also have their freedom to protest restrained with unions required to set out exactly how protests will be conducted to employers and the police 14 days in advance or face fines from the Certifying Officer. The government is also considering whether to direct local authorities to use antisocial behaviour orders against union members participating in pickets and protests. The government's proposals threaten to undermine the civil liberties of working people, limiting their rights to protest in defence of their jobs and for improved pay and conditions and exposing them to an unacceptably high level of monitoring and scrutiny.

Necessity

This Bill is simply unnecessary as it seeks to address a problem that does not exist. The number of days lost to strike within the UK is low and even during the recent period when economic conditions have not been favourable, strikes have continued to be relatively rare. Last year there were only 151 strikes and less than 2% of all workers participated in a strike. The days lost due to strikes were less than 3% of the 28.2 million days lost due to work related accidents and ill-health.

The government makes assertions but presents no evidence to justify infringing human rights of workers. The UK government does not present evidence that strikes based on turnouts below 50% attract disproportionate strike-support from workers who did not participate in the ballot but, thereafter, rely on the ballot to escalate the public impact of the strike. The UK Government does not address the obvious possibility that small turnouts in strike ballots generate small and short lived disputes. Such strikes have minimal public impact but preserve the UK respect for the individual right to strike.

Arguably, the threshold requirement might be counterproductive by compelling workers disinterested in a specific issue to vote in a ballot, and participate in a strike, in order to clear the threshold and protect the assets of the trade union for future campaigns.

Excessive and Disproportionate

There are downward trends in voter participation rates across a range of civic institutions. Strike ballot returns are further hindered by the requirement for secret postal ballots given the downward trend in the use of postal services. Human rights compliance requires that restrictions are not more severe than is necessary and that due regard is had to restrictions applied in comparable circumstances.

Human rights compliance demands that the right to strike is not restricted unnecessarily. If other ballot methods could establish the "democratic legitimacy" demanded by the Government, then the principle of "progressive realisation" requires consideration of alternative ballot methods by which workers could be encouraged to participate and express their views - for or against the strike. Perhaps it is time to permit on-line balloting.

The defined restrictions on rights and freedoms permitted under ICESCR do not apply but nonetheless the UK Government is proceeding with legislation. This bill follows on from previous legislation to create a culture and environment where trade unions are regarded as a problem rather than as a way for workers to assert their human rights eg to fair employment.

In conclusion the general thrust of the Bill is to regulate, contain and restrict trade unions as collective organisations which represent individual workers too. The Bill is part of a broader strategy which proves there is no 'progressive realisation' of trade union rights using the UK's maximum available resources.

Issue 7

In respect of the TU Bill we would urge the Committee to invite the UK Government to provide evidence for the undermining and restriction of trade union rights and specifically:

- Answer questions of legitimacy and proportionality backed up by evidence.
- Specify the need, and cite evidence of that need.
- Specify the scale, frequency and impact of the perceived problems the Bill purports to address?
- Set out how the measures be workable and effective in practice?
- Explain necessity and propose less restrictive measures that would achieve the same policy objective.

- Specify the adverse impact on trade union members caused by restricting these fundamental rights and freedoms.
- Set out how the Bill is proportionate and does the “benefit” of the proposed curb on fundamental rights outweigh the detriment to those whose fundamental rights have been eroded.
- Explain the interplay with other fundamental rights and set out how the restrictions on freedom of association apply to employee associations of all types or is it just trade unions?
- Given the requirement for “progressive realisation”, are their compensatory measures that preserve fundamental rights notwithstanding the effect of greater regulation?

Article 6 - *The UK recognizes the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*

Article 7 *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular ... remuneration which provides all workers, as a minimum, with fair wages and equal remuneration ...*”

Remuneration

Low pay subsidised by tax credits, welfare benefits and tax breaks for employers is masking the issue of low pay. Statistics released by the Scottish Government in 2014 showed that over half (52 per cent) of working-age adults in poverty were in “in-work” poverty.^{xv} The report also highlighted that six in ten children in poverty in Scotland in 2012-13 were in households where at least one adult was in employment. There were 30,000 more children in in-work poverty households in 2012-13 compared with the previous year.

A report by the Resolution Foundation found that:

“Part-time workers face a particular low pay risk, with two-in-five (43 per cent) of such employees being low paid in 2012, compared with 12 per cent of those working full-time. In the context of the growth of part-time employment over the last three decades and recent rises in (often involuntary) part-time work and under-employment, the prevalence of low pay among part-time workers is concerning.”

The Joseph Rowntree Foundation (JRF) has identified a Minimum Income Standard (MIS) as ‘enough money to live on, to maintain a socially-acceptable quality of life’. The Figures generated by the MIS are used to determine the Living Wage. According to a report by JRF:

“The cost of a decent standard of living, as defined by the public, has stopped rising for the first time since the recession began. However, the gap between people’s incomes and the amount they need to cover their essential costs has widened greatly since 2008.”^{xvi}

The Chancellor stated in the summer budget that the government will introduce a living wage of £7.20 in 2016 for workers over 25, which will rise to £9.00 by 2020. This amount is below £7.85 per hour which has been identified by the Scottish Living Wage

Campaign (using JRF figures) as the amount required to provide a decent standard of living and to keep workers out of poverty and will do nothing for the two million under 25's UK wide who will continue to live on the present National Minimum Wage level. According to the Scottish Government, in March 2014 there were an estimated 335,015 private sector enterprises operating in Scotland² providing an estimated 1.1 million jobs. SMEs accounted for 99.3% of all private sector enterprises and accounted for 54.8% of private sector employment.

The Scottish Government has signed up 300 businesses as living wage employers, with a further commitment to having 500 accredited employers by the end of March 2016. However the pace to drive a living wage is far too slow to make a dent in the number of small businesses registered in Scotland that do not presently pay the living wage. The Scottish Government should adopt a living wage of £7.85 for all public sector workers, not only those covered by Scottish Government pay policy, and further should stipulate paying the living wage is compulsory in all procurement contracts. This would set the standard in Scotland and encourage greater take-up in the private sector.

The Scottish Government must also go further by applying the rules to the supply chain; where sub-contractors and third party suppliers must also pay the living wage. It is not acceptable for the Scottish Government to award a procurement contract to one company and abdicate responsibility for who that company then sub-contract the work to. The chain of responsibility must be an important determinant when awarding procurement contracts.

Issue 8

What specific steps will the UK and Scottish Government's take to ensure that remuneration provides all workers, as a minimum, with fair wages and equal remuneration?

Employment 'Contracts'

The use of casual contracts including zero hours contracts and umbrella contracts is increasing within certain sectors of the Scottish and UK economy. The Office for National Statistics (ONS) estimates 1.4 million (April 2014) people are employed on zero hour contracts in the UK, rising from 134, 000 in 2006. The effect of this is an increasing number of workers who do not have work that can be relied upon and which provides them with a reasonable standard of living for themselves or their families. These contracts are specifically designed to reduce costs for employers by limiting workers access to paid time off and other benefits such as pensions. Employers are under no obligation to pay workers for turning up for work, if they are no longer needed. This gives employers all of the flexibility for the least cost and gives workers little financial or job security. Some workers are limited from taking up other employment to make up for hours/pay. Zero hours contracts appear to be inconsistent with Article 6 of ICESCR.

Evidence shows that zero hour contracts are impacting upon more vulnerable groups in the labour market eg workers are more likely to be young and less likely to have a degree. Zero hour contracts are also used more often in workplaces that employ non-

² <http://www.gov.scot/Topics/Statistics/Browse/Business/Corporate/KeyFacts>

UK nationals particularly in sectors such as food processing, cleaning, hospitality, agriculture, care and construction. This reinforces serious concerns about the social exclusion caused by these contracts.

Zero hour contracts are also impacting on workers wellbeing. A survey conducted by MASS 1 for Unite the union, found that 69% of respondents felt anxious about being on a zero hour contract.

A better system would be to introduce a system of guaranteed minimum hours in all contracts as a standard. Zero hour contracts could continue to exist as long as they are opt-in, permitted if there is a collective agreement in place with an independent trade union or a worker agrees to such a contract.

Health and safety in workplaces is also under threat. The Health and Safety Executive (HSE) now only inspects 'high risk workplaces' with many sectors simple carved out of the inspection regime, despite having clear health and safety issues within them. For example all universities are considered low risk workplaces, despite the presence of chemicals and experimentation on site and regardless of the research and development that the university is undertaking. Similarly local authority environmental health departments have been forced, through lack of funding or direction by the HSE, to severely curtail their inspection activity.

The Trade Union Bill highlighted above will also have an effect on health and safety in workplaces as facility time for Health and Safety trade union reps will be eroded if facility time is arbitrarily capped by central Government.

Issue 9

- a) Ask the UK Government how it is ensuring workers continue to access their rights to paid holiday and other statutory benefits in the context of growing casualization of the workforce; and how safe workplaces are ensured in the absence of a regulatory inspection regime and reduced facility time for health and safety reps.
- b) Ask the Scottish Government what steps it is taking to ensure safe workplaces within Scotland.

Blacklisting

Blacklisting is a practice whereby a list of individuals is designated for special discrimination or boycott by (potential) employers. Blacklisting is a particularly insidious practise despite some culprits justifying their motivation as common sense, for public good or commercially wise. Blacklisting is a clear breach of human rights as it lacks transparency, accountability and seeks to punish those who express an unwelcome opinion or who stand up for human rights and trade union rights.

Companies which have blacklisted workers on grounds of trade union membership or for raising issues around health and safety should be refused procurement contracts from the public sector. They must also be banned from bidding from future contracts until they take suitable remedial actions, including admitting their part in blacklisting workers, providing adequate compensation and employing workers previously blacklisted.

Companies which have blacklisted workers on grounds of trade union membership or for raising environmental or health and safety issues, should be refused contracts procured by the State. They must also be banned from bidding for future contracts until they have made suitable remedial actions, including admitting their part in blacklisting workers, providing adequate compensation and employing workers previously blacklisted.

The Scottish Government has condemned blacklisting companies and issued Guidance which states:

“...any company which engages in or has engaged in the blacklisting of employees or potential employees should be considered to have committed an act of grave misconduct in the course of its business and should be excluded from bidding for a public contract unless it can demonstrate that it has taken appropriate remedial steps;” ^{xvii}

However Unite the union, has anecdotal evidence that the blacklisting of workers continues and the Scottish Government continues to issue contracts to known blacklisting companies despite making a commitment to ban blacklisting and tackle this issue. ^{xviii}

The Select Committee on Scottish Affairs at the UK Parliament has published a report^{xix} which makes a series of substantial and reasonable recommendations including:

- That the UK Information Commissioner’s Office (ICO)^{xx} redouble its efforts to find and contact as many of the individuals whose names were on the original TCA list as possible-including the families of those blacklisted workers who may have passed away. (Paragraph 43)
- In order to maximise the number of victims who are compensated, the deadline for applications to the scheme be extended to allow more victims of blacklisting to access the scheme. (Paragraph 44)

Since the Committee began its work, and despite an increased focus on the practice of blacklisting, it was “gravely concerned that, in some areas at least, the practice of blacklisting appears to be on-going and many questions remain unanswered.” (Para 5). The report acknowledged that blacklisting is not confined to the construction industry and concluded that:

“Despite the progress and positive steps which have been taken during the course of our inquiry, in this final report we have identified that many questions in relation to the practice of blacklisting remain unanswered. We are specifically concerned as to whether the extent and breadth of the practice is fully known, and whether this odious practice is ongoing within the construction industry. We are convinced that the only way to fully answer these questions is through a full Public Inquiry. We recommend that the Government take immediate steps to launch such an inquiry as a matter of priority in the new Parliament. (Paragraph 61)”

Issue 10

What steps will the UK and Scottish Government’s take to deliver the recommendations contained in the Select Committee’s report?

Employment tribunals

The right to access and obtain a fair hearing has been undermined by the UK government introducing a new fee regime for taking a case to an Employment Tribunal (ET). Under the scheme employees must find fees of £1,250 to bring a claim against an employer. This has limited the ability to seek justice for many workers. Since the fees were introduced cases have dropped by 73%. The impact is a breach of human rights by denying access to justice for lower paid workers as, since the introduction of fees in 2013:

- Unfair dismissal claims are down 74%,
- race discrimination cases are down 61%,
- disability discrimination cases are down 63%
- Sex discrimination cases are down a massive 91%

On 1st September the First Minister of Scotland announced her 'programme for Government' which included an undertaking "as soon as we have the power to do so, we will abolish fees for employment tribunals"^{xxi}. This is welcome but we do not know if and when that will happen.

Issue 11

Will the UK Government abolish the new fee regime and instigate an effective access to justice system which complies with the duty to provide, without any discrimination, equal protection of the law to working people.

Cyber bullying

Cyberbullying members of the media is having a serious effect on freedom of expression. A survey into the extent of online abuse against journalists in Scotland has revealed cases where reporters have feared for their own personal safety as a result of cyberbullying^{xxii}. In some cases it led to journalists retreating from the use of social media and worrying about what stories to cover and how to report them. It should be noted that using social media is often part of the job which a journalist is required to undertake, in addition to writing copy or delivering broadcasts.

The survey, for the National Union of Journalists (NUJ), revealed that journalists were self-censoring material they were writing, as a result of online abuse, threats of violence and intimidation where journalists and/or their families had been threatened. It is a major problem for freedom of expression in Scotland if journalists, acting as watchdogs for the public, develop tendencies towards self-censorship, avoiding contentious stories, undermining the fundamental human right to freedom of expression in order to avoid being threatened and abused. Overall we are concerned about protecting the public in Scotland from the 'chill effect' persistent abuse is having on individual journalists and workplaces. In addition to the NUJ's concerns for the health and wellbeing of its members and their families, such actions impact upon society's right to be informed and the public are therefore unable to make rational and well-informed decisions about what is happening in society.

Issue 12

- a) What steps can the government take to ensure employers within the media

industry understand that this is not a 'normal' part of doing business in a democracy and take effective steps to prevent and react to such abuse including co-operation with law enforcement agencies when necessary? Private sector action is consistent with the UN 'business and human rights' initiative.

- b) Has the Committee raised cyberbullying with companies such as Twitter, on what specific measures it has taken and how technology can be used, to protect the human rights of journalists?
- c) Is the Scottish Government satisfied that law enforcement agencies, such as the police and prosecutors in Scotland, have taken robust measures to prevent as well as address cyberbullying against journalists and the public?

Public Procurement

The Scottish Government could do more with the public procurement process in order to promote and protect worker's rights. For example obliging contractors to pay the 'living wage'^{xxiii}, which would reduce inequality and lift thousands out of poverty, must be a pre-requisite on all public sector contracts.

Generally, there is a growth of insecure, two-tier work in the labour market which is underpinned by numerous loopholes and inadequacies in our labour law, not least of which is the arbitrary legal distinction between workers and employees that means that many workers are not entitled to legal rights and protections.

Umbrella companies, set up to deny workers their full wages, should also be banned by law. It is difficult to accurately measure, however it is estimated that around 200,000 people are employed by umbrella companies in the UK. According to UCATT^{xxiv}, the UK Treasury loses around £3,800 for every construction worker employed on such contracts. Therefore on lower estimates this would put the loss to the UK economy of tens of millions of pounds each year.

Issue 13

What steps will the Scottish Government take, via the public procurement process, to improve employment practices and respect worker's rights?

Article 9 - The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Benefit sanctions and compulsion to take unpaid work in workfare schemes and the removal of specialised employment advice to disabled job seekers are the regressive measures within the UK Government's 'welfare reforms' which are inconsistent with Article 9. The impact on people's lives and those of their family are significant.

- Benefit (social security) is increasingly seen less as a right and more as a tool to deal with people who have no job. Sanctions are used to compel workers, particularly young workers, into jobs regardless of eg the workers' skill levels. Unemployed people are also forced to work for free, often in low skilled jobs, in order to continue to receive unemployment benefit. These measures are applied regardless of the skills levels of the unemployed person and can often serve as job replacement within the labour market.

- Via a Freedom of Information Requests that the number of specialised Disability Employment Advisers employed by the DWP has fallen from 499 in 2010 to 297, a fall of 40 %
- Research by ICM Research Group found that 20% of GPs reported patients having suicidal thoughts due to stress from the Work Capability Assessment (WCA) and appeals process.^{xxv}
- The blog 'Calum's List' recorded at least 30 suicides where early welfare reform changes were alleged to have had some culpability.^{xxvi}
- 43% of appeals in Scotland against decisions made in the WCA have been successful,^{xxvii} suggesting that a substantial proportion of initial assessments and decisions are wrong.
- The Mental Welfare Commission of Scotland (MWCS) aired 'major concerns that the WCA is not sensitive enough to capture the elements of mental illness that mean a person is unable to function in a workplace'.^{xxviii} It investigated the death of a woman receiving mental health treatment who committed suicide after her Employment and Support Allowance (ESA) was stopped^{xxix} and found a number of deficiencies in the way the claimant was assessed and informed of the decision.
- Paul Farmer, Chief Executive of a leading UK mental health charity, Mind, resigned from his position on the DWP's WCA review panel, stating serious concerns that claimants with mental health problems (40% of all claimants) are not having their needs met.^{xxx}
- A Department for Work and Pension (DWP) response to a Freedom of Information request found that between January and November 2011, 1,300 people died within three months of being found partially fit for work.^{xxxi}

Issue 14

How are human rights being mainstreamed in the design, delivery and funding of welfare cuts in the UK?

Article 10 (3) - Special measures of protection and assistance should be taken on behalf of all children and young persons ... Children and young persons should be protected from economic and social exploitation.

Hitting Children as a Punishment

It is eleven years since the Scottish Parliament passed the Criminal Justice (Scotland) Act 2003 which introduced, in Section 51, a defence for adults of 'justifiable' assault^{xxxii} when they hit a child as a punishment, and sought to prohibit the use of implements, blows to the head and shaking.^{xxxiii} At the time the Scottish Executive decided not to evaluate the impact of S51 although research had been published of the operation of Section 74 of the same Act^{xxxiv}

There have been two attempts to amend this S51, in 2005 and 2014, but support has been so weak that the amendments have not even been pushed to a vote by MSPs (Members of the Scottish Parliament). Currently there is an opportunity to amend the law and give children equal protection from violence in the Criminal Justice (Scotland) Bill which is beginning Stage 2 of the process^{xxxv}. The incidence and impact of physical punishment on children in Scotland is not well understood. (See Appendix 5)

Issue 15

Will the Scottish Government use the opportunity of the current Criminal Justice (Scotland) Bill and amend the 2003 legislation to give children equal protection from assault?

Football ‘Contracts’ for Children

A report undertaken by Scotland’s Commissioner for Children and Young People and published in May 2015 concluded that “The Government and Governing Bodies should decide to what extent children involved in the youth football registration process should be contracted to a professional football club. Whilst children and young people want to play for a professional club, they and their families and carers currently lack power in negotiating contractual arrangements. Rules are required on the formation, performance, enforcement and impact of such contracts. Rights and remedies must be accessible, relevant, independent and effective for children and young people.”^{xxxvi}

Issue 16

Will the Scottish Government deliver on the recommendations contained in the report from Scotland’s Commissioner for Children and Young People?

Article 12 (1) - The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Mental illness

There is no doubt that the 2008 recession and the austerity measures implemented by the UK government have affected workers wellbeing in a number of ways including emotional, moral, social and financial wellbeing. A report by the TUC noted that:

“...workers have been experiencing a significant increase in stress, which in some cases has led to mental ill health, as a result of the impact of austerity on their work and home lives.”^{xxxvii}

The report goes on to say:

“Many employers do not deal with mental health issues and this may lead to many people losing their job, and even worse, failing to find new work as a result of the stigma associated with mental health issues.”

A recent report on working conditions within the online giant Amazon’s UK operations by the GMB union identified staff suffering from stress leading to physical and mental illness. The report described:

“Employees’ working and personal lives were tracked and quantified, with their movements, productivity and successes or failures being constantly measured, while managers were forced to rate their employees and fire their lowest-scoring workers, according to the article.”^{xxxviii}

According to the HSE there were 35,000 cases of work related stress and psychological disorders reported in Scotland in 2013/14.^{xxxix} While the Scottish

Government is making inroad to address mental health through such initiatives as See Me, they are also removing funding from existing mental health and disabled projects which is creating further anxiety for users and their families. An holistic approach to tackling mental illness is required to address the increasing problem of work related mental illness.

Issue 17

What steps will the Scottish Government take with employers so that workers in their workplace enjoy the highest attainable standard of physical and mental health?

Conclusion

The HRCS is very disappointed that despite our member's enthusiasm for the delivery of the Concluding Observations on the UK since 2009, there has been very little explicit work undertaken at a UK level including:

"..., the Committee urges the State party to ensure the equal enjoyment of the economic, social and cultural rights by all individuals and groups of individuals under its jurisdiction, and recommends that the State party adopt a national strategy for the implementation of the Covenant throughout the State party's territories."^{xl} And

"The Committee urges the State party to ensure that the Covenant is given full legal effect in its domestic law, that the Covenant rights are made justiciable, and that effective remedies are available for victims of all violations of economic, social and cultural rights. ... In this respect, the Committee again draws the attention of the State party to its general comment no. 9 (1998) on the domestic application of the Covenant."

The HRCS is also disappointed that the ICESCR cannot be enforced via the Scottish Courts. We believe there is a leadership role for the Scottish Government and Scottish Parliament to be ambitious and establish a Human Rights Committee at the Scottish Parliament so that all legislation and parliamentary business is thoroughly examined and assessed through a human rights lens.

We believe there is a climate developing in the UK which is increasingly hostile to human rights being enjoyed by us all equally and that creates an environment where injustice, poverty and exclusion grow.

In this submission we have highlighted the regressive measures which have meant too many people now regard the human right to food as a priority yet the UK is the sixth biggest economy in the world. The gap between the richest and poorest is increasing due to structural failing and barriers in the way to people asserting their rights and the state respecting their rights.

The HRCS believes the UK Government's approach to trade union rights is evidence of that broader agenda. The submissions we have received reject the government's claim that The Trade Union Bill will boost workplace democracy. Submissions argue that this Bill is about silencing the trade union voice. These proposals individually will undermine constructive dialogue with employers as well as the trade union's ability to engage with its members and wider society; collectively the Bill will inhibit the ability of trade unions to defend workers' rights and impede basic human rights.

Thanks to the organisations that informed this submission and assistance with editing the text. For further information contact:

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Appendix 1 SNAP

Scotland is the first part of the UK to have a ‘National Action Plan on Human Rights’. This initiative has been undertaken by the Scottish Human Rights Commission (SHRC) and was launched in December 2013.

<http://www.scottishhumanrights.com/actionplan>

Appendix 2 UK Government Policy

In the Queen’s speech on 27th May 2015 it was announced "My Government will bring forward proposals for a British Bill of Rights". In the Queen’s Speech Briefing Pack, available on the Ministry of Justice website at page 75, states:

“The Government will bring forward proposals for a Bill of Rights to replace the Human Rights Act. This would reform and modernise our human rights legal framework and restore common sense to the application of human rights laws, which has been undermined by the damaging effects of Labour’s Human Rights Act. It would also protect existing rights, which are an essential part of a modern, democratic society, and better protect against abuse of the system and misuse of human rights laws.”

Appendix 3 Scottish Government Policy

The Scottish Parliament voted in favour of the following Scottish Government motion on 11th November 2014 by 100 votes to 10:

“ The Parliament re-affirms and re-asserts, on behalf of all of the people of the community of Scotland, the inalienable human rights and fundamental freedoms that are the common inheritance of all members of humanity; recalls the particular importance to the Parliament, through its founding statute, its founding principles and in all aspects of its day-to-day work, of human rights in general and of the European Convention on Human Rights in particular; acknowledges the constitutional responsibility of the Parliament to uphold the principles and values expressed in the convention and to respect, protect and realise the rights and freedoms that it enumerates; further acknowledges the importance of that work not only in relation to Scotland, but also in establishing and maintaining standards of best practice, which provide a benchmark for human rights elsewhere in the world; expresses its confidence in, and support for, the Human Rights Act 1998 as a successful and effective implementation of the convention in domestic law, and believes that the principles and values that inform the convention, the rights and freedoms that it enumerates and the Acts that incorporate it into law, should be a source of unity and consensus across the whole of society and should enjoy the unequivocal backing of all who are committed to upholding human rights, democracy and the rule of law.”

Appendix 4 Cultural Problem

Historically, we have had a problem in people raising human rights cases in Scotland, including those which involve equality issues:

- The Faculty of Advocates has commented in 2004: “To date 85% or more of human rights cases have involved Article 6 procedural challenges in criminal proceedings. In a small jurisdiction like Scotland the limited throughput of litigation means that developments in the substantive law could be fitful and protracted were they to depend solely on complaints brought by individuals.”³
- In 2004, the then Equal Opportunities Commission stated “There is little tradition in Scotland of interest group intervention, and indeed no tradition at all of interest groups taking judicial reviews.”⁴

So how bad is the problem? In judicial review proceedings, a court reviews the lawfulness of a decision or action made by a public body. Of the 866 Judicial Reviews in Scotland in the last 3 years there have been a narrow range of issues adjudicated eg there were only 3 on housing, 6 on the environment and 1 on social security. Even when cases do go to court research by Brodies on planning decisions in the last 10 years show that 75% of cases were unsuccessful⁵. This is not inspirational.

Legal Context

There is a role in encouraging and informing people about access to justice. People need access to advocates or some degree of expert assistance to help make informed decisions about whether they should go to law to address a wrong. The State could act to make access to justice more real.

For example currently there is no obligation on a public authority covered by the Human Rights Act similar to that which applies to freedom of information cases in Scotland. Section 15 of the Freedom of Information (Scotland) Act 2002 “Duty to provide advice and assistance

(1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

(2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).”

The Section 60 Code, revised and published on 10th December 2014, provides more detail on what is expected of public authorities⁶.

The rules which enable people to access to justice are theoretical rather than practical. Cost is a huge factor in preventing cases ever going to court. There is no

³ ‘Scottish Commission for Human Rights: Analysis of Consultation Responses’ pub by Scottish Executive (2004) para 5.18

⁴ Scottish Executive Social Research, ‘Scottish Commission for Human Rights: Analysis of Consultation Responses’ F. MacDonald and E. Thomson (2004) Para 5.20)

⁵ ‘Judicial review of Planning Decisions in Scotland’ pub by Brodies 2014
<http://www.brodies.com/sites/default/files/pages/planning%20e-update%20report%20february%202013.pdf>

⁶ <http://www.scotland.gov.uk/About/Information/FOI/Section60Code3>

existing equivalent in Scotland to Article 9 of the Aarhus Convention⁷ (to which the EU has subscribed) which states that members of the public should be able to challenge environmental decisions, and the procedures for doing so shall be adequate and effective and "not prohibitively expensive". It is useful to note that the Scottish Parliament can only pass legislation which is competent and that includes complying with the ECHR and EU law.

Existing law has a depressing effect on raising cases at court:

- Article 13 of the ECHR 'right to an effective remedy' is not incorporated into the Human Rights Act sending out a message that Governments do not want people to go to court to settle wrongs;
- Section 6 of the Scottish Commissioner for Human Rights Act specifically prohibits the SHRC taking up or advising on cases which creates a gap in its ability to help people and communities.

Failure to provide for an effective remedy, a human right, has arisen in a number of equality issues. In particular we are concerned about the right to an effective remedy for disabled people under the Disabled Persons' Parking Badges (Scotland) Act 2014 and in the schemes established by local authorities for the determination of social care cuts, and in determining social care packages.

Appendix 5 Physical Punishment of Children in Scotland

The impact of physical punishment on children's lives and the failure of the State to protect children is a source of shame and concern. It also, unintentionally, sends a message to some of our most vulnerable and disempowered children that their rights are weak and that the State cannot protect them. The extent and use of physical punishment in Scotland is not well understood.

The investigation into child abuse and neglect in the Western Isles (Eilean Siar) was published in 2005⁸ and is instructive about the use and effect of physical punishment in one home. The Social Work Inspection Agency concluded that "...the children were subjected to physical abuse throughout their childhood until their removal from home. Some of the physical injuries to the children were caused by over-chastisement by Mr A. Once in England and twice in Eilean Siar he admitted at the time to losing his temper and/or causing an injury. In a later statement to police he said: 'I did have a temper...like anybody I became aggressive, shouting and shaking...if I had to smack them I would smack them, but I'm heavy handed ...on the legs...bruising...'

The Report went on to point out:

"We recognise that during the period when these physical injuries to the children occurred, common law entitled someone with parental responsibilities and rights relating to a child and someone with care and control of a child to physically punish the child. It entitled parents to use force to discipline their children provided their actions could be justified in court as 'reasonable chastisement'. Section 51 of the

⁷ <http://www.unece.org/env/pp/contentofaarhus.html> and for recent commentary see UK Human Rights Blog 1st December 2014 "Why domestic Aarhus rules are not wide enough to comply with the Convention".

⁸ 'An inspection into the care and protection of children in Eilean Siar' published by the Social Work Inspection Agency, published by the Scottish Executive 2005 ISBN 0-7559-4757-6

Criminal Justice (Scotland) Act 2003 set out to clarify the law relating to the physical punishment of children. The 2003 Act specifically prohibited blows to the head, shaking and the use of an implement."

"However, in all other cases the defence of 'reasonable chastisement' remains and the onus is on the prosecutor to prove that the punishment went beyond this. Mr and Mrs A were, and still would be, legally entitled to physically punish the children and if prosecuted could have claimed a defence of 'reasonable chastisement'. While there is evidence that professionals, particularly in England, did encourage Mr and Mrs A to use more positive methods of discipline, they could not legally prevent them from using physical punishment." (para 80, *Ibid*)

A study of the ChildLine database by the Centre for Research on Families and Relationships at Edinburgh University, found alarming levels of violence reported in calls from children suffering physical abuse. Children tell of physical assaults that are frequent, brutal and sadistic. Whilst they use many terms to describe the nature of their abuse including smacking, slapping and hitting, they more commonly discuss it in terms of 'being battered', 'beaten', 'hammered', 'punched', 'kicked' and so on. Children often talk about having marks, bruises and abrasions after assaults and some children talk about being kept off school until their bruises are healed.⁹

The use of physical punishment in the home does damage children. NHS Health Scotland produced health and wellbeing profiles for children and young people by Community Health Partnership area (CHPs) in 2010. The overview for Scotland counted hospital admissions per 100,000 population of 0 - 24 year olds as a result of assault, as an indicator of violence in children and young people's lives. The latest statistics are for 2008 - they do not publish these profiles anymore - and show that the average in Scotland was just over 100. 16 of the 38 CHP areas had above average rates of admission, with the rates of over 150 per 100,000 population in East Ayrshire, Kirkcaldy and Levenmouth, Glasgow South, North Ayrshire and Glasgow North East with the last two having rates of well over 200 per 100,000 population.

In 2011/12, the Reporter to the Children's Hearing system in Scotland received 52,527 referrals of which 39,737 were for care and protection grounds¹⁰. The police made 79.9% of care and protection referrals. 2,485 children under age 1 were referred on care and protection grounds.

An analysis of counselling sessions provided by ChildLine UK, the free 24-hour helpline for children and young people provides a unique indication of the nature and levels of concerns among children. ChildLine held 315,111 counselling sessions in 2011/12 and physical abuse accounted for 6% (17,452 contacts), sexual abuse 5 % (15,993), emotional abuse 1% (2,729) and neglect 1 % (1,646).¹¹

⁹ But what about me? is a research study of children's calls to ChildLine Scotland with concerns about the health and wellbeing of their parents and significant others. The study was carried out by the CRFR at Edinburgh University and funded by the ESRC.

¹⁰ Reasons are set out in S52(2) of the Children (Scotland) Act 1995

¹¹ http://www.nspcc.org.uk/Inform/research/findings/howSAFE/indicator07_wdf95545.pdf

Research undertaken by the NSPCC “How Safe are our Children?”¹² monitored the extent of child abuse and neglect in the UK to enable judgement on whether efforts to prevent maltreatment and to protect children are working. The report shows that one in five children today have experienced serious physical abuse, sexual abuse or severe physical or emotional neglect at some point in their lifetime.

Endnotes

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- ⁱ Queen’s Speech to both Houses of Parliament on 27th May 2015. For more information see <https://www.gov.uk/government/speeches/queens-speech-2015>
- ⁱⁱ Metcalf, H., (2009) Pay gaps across equality strands: a review
- ⁱⁱⁱ <http://www.engender.org.uk/content/publications/engenderwelfarereport.pdf>
- ^{iv} <http://www.cpag.org.uk/scotland/child-poverty-facts-and-figures>
- ^v Nourish Scotland <http://www.nourishscotland.org/the-right-to-food-campaign/>
- ^{vi} <http://www.closesthegap.org.uk/news/blog/scotlands-gender-pay-gap-remains-high-at-115/>
- ^{vii} http://www.equalityhumanrights.com/sites/default/files/documents/financial_services_inquiry_report.pdf
- ^{viii} The date for consideration of the Bill at report stage and third reading has not yet been announced. For more information see UK parliament website <http://services.parliament.uk/bills/2015-16/scotland.html>
- ^{ix} Section 1(a) <http://www.legislation.gov.uk/asp/2014/8/section/1/enacted>
- ^x ‘Scottish Parliament Committees’ Perspective on Human Rights - A Glasgow Human Rights Network Report for the Cross-Party Group on Human Rights’ pub April 2012 Page 20
- ^{xi} Report of Responses to Our Consultation Human Rights in a Public Servant’s Oath? Pub by HRCS
- ^{xii} ‘Delivering Human Rights in Scotland: A Report on Scottish Public Authorities’ pub September 2006
- ^{xiii} For more information see UK Government website <https://www.gov.uk/donating-to-charity/donating-straight-from-your-wages-or-pension>
- ^{xiv} From ‘Economic and Social Rights are Human Rights’ published July 2015 by the Reid Foundation, Pg 7 <http://reidfoundation.org/>
- ^{xv} <http://www.gov.scot/Publications/2015/01/3233>
- ^{xvi} <http://www.jrf.org.uk/topic/mis>
- ^{xvii} <http://www.gov.scot/resource/0043/00438311.pdf>
- ^{xviii} A recent example is the construction of the Aberdeen Western Peripheral Road. A Scottish Government project being undertaken by Balfour Beatty and Carillion. Both companies were found to have blacklisted Scottish workers and have not taken remedial action or accepted their role in blacklisting workers.
- ^{xix} ‘Blacklisting in Employment: Final Report’ pub by House of Commons on 27th March 2015 <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmsscota/272/27202.htm>
- ^{xx} During 2008/09 the ICO carried out an investigation into employment blacklisting in the construction industry and seized information from the Consulting Association (TCA). For more information see <https://ico.org.uk/for-the-public/construction-blacklist/>
- ^{xxi} For more information see Scottish Government website <http://news.scotland.gov.uk/Speeches-Briefings/Programme-for-Government-2015-16-1c80.aspx>
- ^{xxii} Cyberbullying the Media survey of NUJ members in Scotland by Fiona Davidson of Glasgow branch NUJ and Dr Sallyanne Duncan, University of Strathclyde, available at <https://www.nuj.org.uk/news/cyberbullying-the-media-survey/>
- ^{xxiii} There are currently 220 living wage employers <http://scottishlivingwage.org/>
- ^{xxiv} UCATT is the trade union for the construction sector in the UK. <http://www.ucatt.org.uk/>
- ^{xxv} <http://www.rethink.org/media-centre/2012/09/new-gp-survey-shows-government-welfare-test-is-pushing-vulnerable-people-to-the-brink>
- ^{xxvi} <http://wowpetition.com/calums-list/>
- ^{xxvii} <http://www.snp.org/media-centre/news/2014/feb/msp-criticises-work-capability-assessment-failures>

¹² http://www.nspcc.org.uk/Inform/research/findings/how-safe/how-safe-2013_wda95178.html

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- ^{xxviii} MWCS 2014 Who Benefits? The Benefits Assessment and death of Ms DE http://www.mwscot.org.uk/media/180939/who_benefits_final.pdf p. 33.
- ^{xxix} Op Cit.
- ^{xxx} 13/4/14: <http://www.scotsman.com/news/scotland/top-stories/suicide-watch-over-benefit-cuts-1-3374547>
- ^{xxxi} P. 6 DWP July 2012 Incapacity Benefits: Deaths of recipients
- ^{xxxii} S51 (1) of the Criminal Justice (Scotland) Act 2003
<http://www.legislation.gov.uk/asp/2003/7/section/51>
- ^{xxxiii} Ibid S 51 (2)
- ^{xxxiv} Published by the Scottish Executive in November 2006
<http://www.scotland.gov.uk/Publications/2006/11/24133659/0>
- ^{xxxv} <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/65155.aspx>
- ^{xxxvi} ‘Improving youth football in Scotland’ submission by SCCYP to the Scottish Parliament Public Petitions Committee on Petition PE1319 <http://www.sccyp.org.uk/ufiles/Youth-football-report.pdf>
- ^{xxxvii} https://www.tuc.org.uk/sites/default/files/GoodPracticeMentalHealth_0.pdf
- ^{xxxviii} <http://www.theguardian.com/technology/2015/aug/18/amazon-regime-making-british-staff-physically-and-mentally-ill-says-union>
- ^{xxxix} <http://www.hse.gov.uk/statistics/causdis/stress/stress.pdf>
- ^{xl} Concluding observations of the Committee on Economic, Social and Cultural Rights United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories pub by UN Committee on Economic, Social and Cultural Rights pub 12th June 2009 <https://www.justice.gov.uk/downloads/human-rights/cescr-concluding-observations.pdf>