



## **HUMAN RIGHTS FOR ALL:**

Some recommendations for the  
Scottish Human Rights Bill on protecting  
migrants' human rights

## About this report

From 2020-2021, the Paul Hamlyn Foundation funded Amnesty International to enable the Human Rights Consortium Scotland to develop collaborations between human rights and migration sectors. These collaborations aimed to explore what is necessary to ensure that the enhanced Scottish human rights framework improves the realisation of rights for people who have migrated to Scotland. This project was in partnership with BEMIS, Forth Valley Migrants Support Network, Migrant Voice and JustRight Scotland.

This report summarises some of the key points raised in a number of project events, meetings and conversations around this challenge during 2020-2021, in particular including a number of community conversations of migrant rights-holders, legal analysis undertaken by JustRight Scotland on behalf of the Consortium, and expert input from migrant-related organisations from across Scotland including the Scottish Refugee Council, the Citizens Rights Project and PKAVS.



# **HUMAN RIGHTS FOR ALL: Some recommendations for the Scottish Human Rights Bill on protecting migrants' human rights**

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## **Summary of recommendations**

1. The Scottish Human Rights Bill should, on the face of the Bill, state that it applies to everyone living in Scotland and that the principle of respect for human dignity applies to all without restriction.
2. A wide diversity of migrant rights-holders and migrant-related civil society organisations should be directly involved in development of the Bill, the accompanying guidance and its implementation.
3. The Scottish Government should take steps to make all government provision that affects economic and social rights, and is in areas of devolved competence, available to all without any reference to immigration status. This includes devolved social security benefits, funding for further education, allocation of housing, homelessness support, and healthcare services.
4. Implementation of the Bill, including guidance, should specifically detail actions, including migrant rights impact assessments and the requirement to involve those with lived experience (a “nothing about us without us” statement) – to ensure fulfilment of economic, social and cultural rights for diverse migrant groups.

5. Migrant-related community-based organisations should be resourced to build their capacity to provide information, independent advocacy, support and advice around human rights.
6. Incorporation of the Convention of Elimination of Racial Discrimination (CERD) must be full and direct incorporation.
7. The right to rehabilitation from torture, as set out in the Convention Against Torture and Inhumane and Degrading Treatment, should be included within the new Scottish Human Rights Bill.
8. Human rights must be protected across the UK: the Nationality and Borders Bill should be significantly changed to protect refugee and trafficking survivor rights; the UK Government should not amend the Human Rights Act 1998 because it is working well, is a key pillar of devolution and the foundation for the new progressive Scottish Human Rights Bill.
9. The Scottish Human Rights Bill should incorporate the best EU and international legal instruments relevant to migrant rights, to maintain continuity of existing rights post-EU and to promote rights-fulfilment.

**1. The new Scottish Human Rights Bill should, on the face of the Bill, state that it applies to everyone living in Scotland and that the principle of respect for human dignity applies to all without restriction.**

Scotland is embarking on major human rights law reform. A Bill to directly incorporate the UN Convention on the Rights of the Child (UNCRC) into Scots law has already been unanimously passed by the Scottish Parliament, world-leading legislation. The Scottish Government has also said that this is just the beginning. The Government will introduce another Bill that will seek to incorporate four other international human rights treaties into Scots law – the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention to Eliminate Discrimination Against Women (CEDAW), the Convention on the Rights of Disabled People (UNCRPD) and the Convention to Eliminate Racial Discrimination (CERD). In addition, they will introduce measures to bring in a right to a healthy environment and extra protections for older people and LGBTI people.

The development of a new statutory framework for human rights in Scotland brings a vital opportunity to cement and demonstrate an approach where migrants are to be treated with dignity and respect, and where government law and policy should fully include and advance realisation of migrants' economic, social and cultural rights. All of the significant benefits of human rights incorporation such as an increase in everyday accountability, better access to justice, being empowered through being able to name and claim rights, and improvements in rights-based decision-making, should equally improve lives of those born here and not born here.

We note that the National Taskforce's Recommendation 9 suggests that 'the intent of the legislation is to give maximum possible effect to human rights and recognise that human

dignity is the value which underpins all human rights' could be included within a purpose clause<sup>1</sup>. We recommend that this purpose clause also states clearly that the law and all of the rights and provisions within it apply to all who live in Scotland, without restriction.

## **2. A wide diversity of migrant-related civil society organisations and rights-holders should be directly involved in development of the Bill, accompanying guidance and its implementation.**

One of the clear and over-riding messages of All Our Rights In Law<sup>2</sup> conversations, including with those who have migrated to Scotland, was that development of a human rights Bill without engagement of rights-holders themselves in its design, would lead to a human rights framework which fails them. To grasp the full potential of this Bill to improve lives, means putting rights-holder engagement at the centre of its development, as recommendation 27 from the National Taskforce states. We highlight here that this engagement strategy should specifically involve talking with, and getting the views of, a wide range of migrants living in Scotland, including those with varied migration status, from different parts of the world, and living in different circumstances and places in Scotland. There should be an independent and funded lived experience group, led by members, that is involved with Ministers throughout the formulation of the Bill and its parliamentary journey to legislation. Where it is difficult to engage directly such as with victims of trafficking, other forms of exploitation or undocumented people, the government should engage with organisations who work directly with them, and draw on all of the evidence available on the barriers to their human rights.

1. National Taskforce on Human Rights Leadership, Report published March 2021, available at: <https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/>

2. Human Rights consortium Scotland and Scottish Human Rights Commission, All Our Rights In Law project, details at: [www.allourrights-in-law.scot](http://www.allourrights-in-law.scot)

**3. The Scottish Government should take steps to make all government provision that is in areas of devolved competence available to all without any reference to immigration status, including devolved social security benefits, funding for further education, allocation of housing, homelessness support and healthcare services.**

By incorporating ICESCR into Scots law, the government will have specific duties to progressively realise economic and social rights for all. Currently, government action to realise these rights is hampered by immigration-related restrictions on who can access support. We welcome the Ending Destitution Together Strategy that recognises the human rights infringements that occur everyday due to people's inability to access government assistance when they really need it. We call on the Scottish Government to now take steps to change the law or practice to make all government provision in areas of devolved competence available without any need to consider someone's immigration status. We highlight for example, that there should be no requirement to prove immigration status (or additionally, pay the Immigration Health Surcharge) in order to access healthcare – this would help to ensure equality and non-discrimination, and the right to the highest attainable level of physical and mental health for all.

**4. Implementation of the Bill, including guidance, should specifically detailed actions, including migrant rights impact assessments and the requirement to involve those with lived experience (a “nothing about us without us” statement) - to ensure fulfilment of economic, social and cultural rights for diverse migrant groups.**

The new human rights framework will bring new rights-based approaches to decision-making, will drive a culture of human rights, and will require new and innovative approaches to informing and empowering rights holders. In all of these developments, public authorities should build in consideration of how to make sure that what they do works for migrants. This should not simply be assumed, but taking a rights-based approach, this should be specifically built into the policy and practice design. For example, this should include:

- Wherever there is information provided about a person's human rights, this should also be available in a range of languages. Support around human rights should be available in each person's first language, including proper availability of interpreters.
- Migrants often speak about particular experience of poor housing, exploitative and underpaid employment, and a lack of support when they first arrive in Scotland. Consideration should be given to making sure that migrants, from Day One in Scotland, have the information and support they need to name and claim their human rights.
- Monitoring and reporting on progress on human rights requires good data. However, often data collected about migrants uses blanket categories that do not show the gaps in rights experienced by particular groups. For example, by only collecting data about Asians in general, an authority would fail to identify discrimination faced by the Vietnamese population; by collecting only EU-wide data, they would fail to see the different experiences of the Romanian population from the Polish population. A human rights-based approach to data means being careful to seek out data about minority groups, to ensure that no one is left behind.

## **5. Migrant-related community-based organisations should be resourced to provide information, independent advocacy, support and advice around human rights.**

The Scottish Government must guard against any plans to provide information to people about their human rights that is top-down, inaccessible, complicated or vague. Instead, people need information about their human rights where they are and when they need it, in a way that is accessible and links well to more in-depth advice where required. Government actions to make sure people have information about their human rights, as set out in the National Taskforce Recommendation 20<sup>3</sup>, should include enabling migrant community-based groups, or organisations that work specifically with certain groups of migrants, to be rights information providers. These organisations should be resourced to increase their own capacity around human rights, and to provide accessible information, support and independent advocacy to their community, and link people to advice-givers where required.

## **6. Incorporation of the Convention of Elimination of Racial Discrimination (CERD) must be full and direct incorporation.**

We strongly welcome the Government's commitment to incorporate CERD into Scots law<sup>4</sup>. We note that this will implement one of the Concluding Observations to the UK of the UN Committee on the Elimination of Racial Discrimination in 2016<sup>5</sup>. Incorporation of CERD will bring many benefits including access to remedy, increased accountability for actions,

3. National Taskforce on Human Rights Leadership, Report published March 2021, available at: <https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/>

4. Scottish Government announcement to accept all National Taskforce recommendations, available at: <https://www.gov.scot/news/new-human-rights-bill/>

5. UN Committee on Eliminating Racial Discrimination, 2016 review of the UK: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fGBR%2fCO%2f21-23&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fGBR%2fCO%2f21-23&Lang=en)

increased awareness of these rights and a holistic approach to tackling racial discrimination in Scotland<sup>6</sup>.

Direct incorporation means 'using [the treaty's] original wording, and makes it binding upon public authorities and enforceable in domestic courts<sup>7</sup>.' This approach has many benefits including leaving no doubt as to what rights are included, enables Scotland to keep pace with the international body of human rights law such as General Comments, and ensures that there is full intersectionality and linkages across human rights treaties. Particularly given incorporation of CERD will sit in the Bill alongside incorporation of other human rights treaties, as well as the Human Rights Act 1998 and the UNCRC (Scotland) Bill, full and direct incorporation should be the approach taken to CERD incorporation in the new Scottish Human Rights Bill.

### **7. The right to rehabilitation from torture, as set out in the Convention Against Torture and Inhumane and Degrading Treatment, should be included within the new Scottish Human Rights Bill.**

The UN Convention Against Torture, Article 14 sets out that '*Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.*' The UN Committee Against Torture General Comment No. 3 (2012) defines rehabilitation further, stating that: '*Rehabilitation should aim to restore, as far as possible, torture victims' independence, physical, mental, social and vocational ability, as well as their full inclusion and participation in society.*'

Specialist rehabilitation services for torture survivors are crucial – they can enable torture survivors to talk and work through their

6. Sullivan, E. as part of University of Edinburgh student research placement: The Added Benefit of Incorporating CERD in Scotland, available at <https://hrscotland.org/incorporating-human-rights/incorporating-the-convention-on-the-elimination-of-racial-discrimination/>

7. Incorporating Human Rights in Scotland University of Edinburgh project, led by K McCall-Smith in partnership with HRCS, Amnesty International and Together – resources available at: <https://www.law.ed.ac.uk/research/research-projects/incorporating-human-rights-in-scotland>

traumatic experiences, to take control over their lives and recovery, to increase their resilience, to have their agency restored, to have stability, to recover their mental and psychological health, and rebuild their lives. Rehabilitation services can enable survivors to contribute fully to their communities, families and society.

Including survivors' right to rehabilitation within the new statutory framework is an opportunity for Scotland to be world-leading in developing innovative, survivor-centred rehabilitation services for torture survivors<sup>8</sup>. It would also embed, demonstrate and help to realise the ambition of enabling all refugees to recover their mental, psychological and physical health, and make a full contribution to their families and communities.

**8. Human rights must be protected across the UK: the Nationality and Borders Bill should be significantly changed to protect refugee rights and trafficking survivor rights; the UK Government should not amend the Human Rights Act 1998 because it is working well, is a key pillar of devolution, and the foundation for the new progressive Scottish Human Rights Bill.**

Article 14 of the 1948 Universal Declaration of Human Rights states: *'Everyone has the right to seek and enjoy in other countries asylum from persecution.'* The Nationality and Borders Bill includes many elements that are contrary to this Convention, and contrary to the UK's shared responsibility for refugees. The UK is a modest recipient of refugees and we should not shift our responsibilities on to other countries, nor should we start to categorise refugees depending on how they arrive here or how quickly they claim asylum – a person's dignity and right to be safe should never be determined by paperwork.

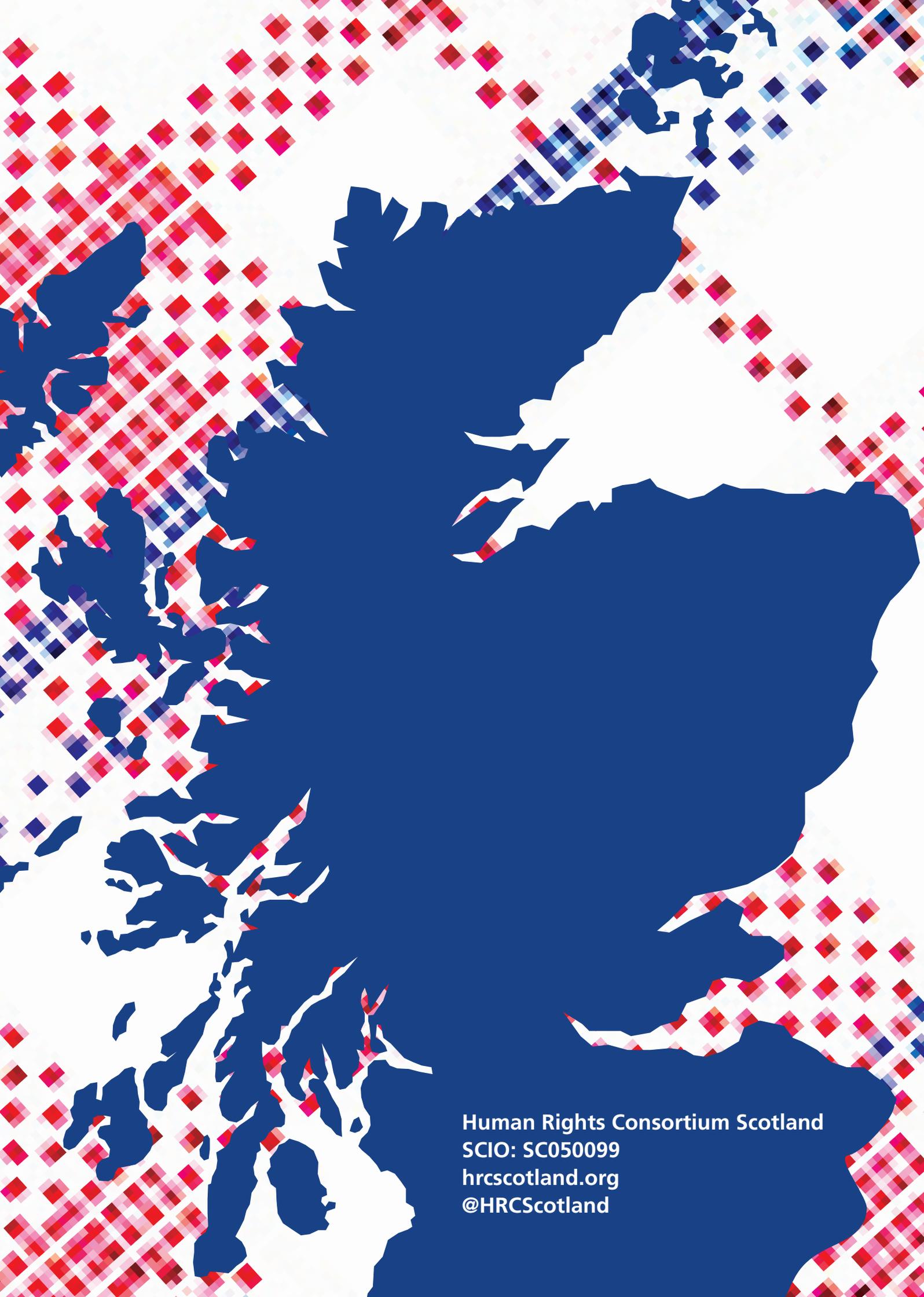
Additionally, persons seeking refugee protection in the UK, who arrive often necessarily via unofficial or irregular routes, should never be criminalised for such arrival. The Scottish Human Rights Bill should enable clear guidance to the Scottish criminal justice system against such practice.

The ongoing Independent Review of the Human Rights Act 1998 (HRA) has heard significant evidence around the ways in which the Human Rights Act protects people's lives everyday, including those of migrants. The HRA is not broken, and there should be no changes to it that would risk watering down our rights and the ways for individuals to hold government to account. Furthermore, the HRA is a key pillar of devolution and the non-negotiable basis for progressing human rights in Scotland.

**9. The Scottish Human Rights Bill should incorporate the best international, including EU, legal instruments relevant to migrant rights, to maintain continuity of existing rights post-EU and to promote rights-fulfilment.**

Consideration should be given, in discussion with migrant rights-holders, migrant-related organisations and other experts in this area, to which international and EU instruments best advance migrants' rights within devolved competences. This focus on migrants' rights should also be fully reflected in monitoring mechanisms.

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