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## Incorporation of International Human Rights Briefing Series:

# The Right to an Adequate Standard of Living

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## BACKGROUND

In March 2021 the Scottish Government [announced its intention](#) to introduce a Human Rights Bill to the Scottish Parliament. This world-leading legislation will include directly incorporation of four key United Nations Human Rights treaties into Scots law, subject to devolved competence. This will provide a new human rights framework for Scotland and is the result of a process which started with the 2018 Report of the First Minister's [Advisory Group on Human Rights](#) and culminated with the [National Taskforce for Human Rights Leadership Report](#), ([also available in easy read format](#)). The process was informed by extensive engagement with a wide range of representatives from the public sector, civil society and human rights experts. A public consultation process was conducted which resulted in the [All Our Rights in Law Report](#).

The relevant treaties are:

- The International Covenant on Economic, Social and Cultural Rights (ICESCR)
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- The Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- The Convention on the Rights of Persons with Disabilities (CRPD).

The overriding aim of the new framework is to protect and advance the realisation of human rights for everyone in Scotland. This Briefing series provides an overview of each of the treaties as well as some of the related rights and is intended to aid civil society's knowledge and understanding of the new framework and its potential future application.

## OVERVIEW OF THE RIGHT

The right to an adequate standard of living (ASOL) is made up of several, distinguishable component rights, including: right to food, right to water and right to housing, though other related rights are easily identified.<sup>1</sup> The right to ASOL is found in Article 11 of the [International Covenant on Economic, Social and Cultural Rights](#)<sup>2</sup> (ICESCR).

### Article 11 – The right to an adequate standard of living

1. *The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate **food, clothing and housing**, and to the continuous improvement of **living conditions**. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*
2. *The States Parties to the present Covenant, recognizing the fundamental right of everyone to be **free from hunger**, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:*
  - (a) *To improve methods of production, conservation and distribution of food by making full use of technical and scientific*

*knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;*  
 (b) *Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.*

The right to ASOL is key to the enjoyment of all economic, social and cultural rights (ESC rights). The UK agreed to give effect to the ESC rights set out in ICESCR in 1976. The UK has agreed to give effect to two further international treaties that include a general right to ASOL. These are:

- the UN [Convention on the Rights of the Child](#)<sup>3</sup> (UNCRC, Article 27); and
- the UN [Convention on the Rights of Persons with Disabilities](#)<sup>4</sup> (CRPD, Article 28).

The right's inclusion in additional treaties focused on specific groups reflects the growing understanding of the international community about how distinct rights-holders engage with and exercise their rights. The right to ASOL does not mean that the government must provide all elements of the right without individuals paying any costs themselves. Instead, the

1. CESCR, [Factsheet No.16 \(Rev.1\)](#), p 10.

2. <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

3. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

4. <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>

government must ensure the baseline or minimum level – known as the *minimum core* – of the right, including effective access to the different elements of the right. The continuous improvement of living conditions is the focus of the progressive development of ASOL.

Article 8 of the [European Convention on Human Rights](#) (ECHR) – the right to respect for private and family life – has also been interpreted to deliver some recognition of the right to ASOL.<sup>5</sup> The ECHR was incorporated into UK law through the [Human Rights Act 1998](#).<sup>6</sup>

## KEY PROVISIONS

### Right to adequate food

The right to adequate food is about making sure that all people, no matter their social, economic or political status, get the food they need to survive. It is an essential part of the right to ASOL.

ICESCR article 11(2) means that everyone has a right to be free from hunger and feed themselves in dignity. This does not mean that the government must feed people. Instead, it means that every person must individually meet their own needs and the needs of any people for whom they are responsible, and the government must make sure that the conditions exist that

allow people to feed themselves.<sup>7</sup> These conditions include ensuring that all people know how to gain access to food, have the economic resources to purchase food and/or the knowledge and skills to produce or gather food in their environment. The right to food is also recognised in [UNCRC](#) Article 24(2)(c).

Nutritious food in adequate amounts is directly linked to the right to water, the right to life, the right to health and a healthy environment. The following minimum core of the right to food should be ensured for all people:

- **Availability.** Food should be available from natural resources either through the production of food, by cultivating land or animal husbandry, or through other ways of obtaining food, such as fishing. Alternatively, food should be available for sale in markets and shops.
- **Accessibility.** Economic and physical access to food should be guaranteed. Economic accessibility means that people should be able to afford food for an adequate diet without compromising on any other basic needs, such as utilities, medicines or rent. Physical accessibility means that food should be accessible to all, including to the physically vulnerable, such as children, the sick, disabled people or the elderly.
- **Adequacy.** Food must satisfy dietary

5. For example, the Benefits Cap case, see *R (on the application of DA and DS and others) (appellants) v Secretary of State for Work and Pensions (Respondent)* [2019] UKSC 21, para 35

6. See Equality and Human Rights Commission, [The Human Rights Act](#)

7. CESCR, [General Comment No. 12, The Right to Food](#), UN Doc E/C.12/1999/5 (1999)

needs, taking into account the individual's age, living conditions, health, occupation, sex, etc. Food should be safe for human consumption.

- **Sustainability.** Food should be accessible for both present and future generations.<sup>8</sup>

As a step toward respecting, protecting and fulfilling the right to food, the UK has committed to the Food and Agriculture Organisation's (FAO) Voluntary Guidelines to [Support the Progressive Realisation of the Right to Adequate Food](#). Nonetheless, gaps in delivering the right remain.

### Right to water

Even though the right to water is not written into ICESCR, it is widely accepted as a necessary element to supporting the right to ASOL. Safe and potable drinking water has clear links to the right to a healthy environment. It is also essential to the realisation of the right to health and delivering clean sanitation systems, without which it is impossible to maintain human dignity. Water is also necessary to ensure the rights to adequate food, whether growing or cooking food, to work, to secure livelihood and, in certain circumstances, to take part in cultural life. The following principles should guide the government in delivering the right to water:

- **Availability.** Water must be available to every person in sufficient quantities for

personal and household use and in light of particular vulnerabilities.

- **Accessibility.** Water and water services and facilities must be accessible on a non-discriminatory basis. Accessibility must be considered in terms of physical accessibility, economic accessibility, and information accessibility.
- **Affordability.** Access to water should be affordable for all people without discrimination.
- **Quality.** Water must be safe and standards for water safety should be publicly available.
- **Acceptability.** Water and sanitation facilities must be culturally appropriate and compliant with other human rights principles.<sup>9</sup>

### Right to housing

The right to adequate housing is another key feature of the right to ASOL. The right to housing is also found in the [Convention on the Elimination of all forms of Racial Discrimination](#)<sup>10</sup> (Article 5), the [Convention on the Elimination of Discrimination against Women](#)<sup>11</sup> (Article 14), UNCRC (Article 27) and CRPD (Articles 9 & 28). The right is broader than simple shelter. It must be understood as the right to access and live somewhere in security, peace and dignity. The right to housing is an essential part of ensuring the right to health and should form part of a national housing strategy.<sup>12</sup>

8. OHCHR, [Right to Food](#); CESCR, [General Comment No. 12, The Right to Food](#)

9. OHCHR, [Right to Water and Sanitation](#); Danish Institute of Human Rights, [The AAAQ Framework and the Right to Water – international indicators](#), 8 July 2014.

10. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>

11. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

12. OHCHR, [Fact Sheet No. 21, The Right to Adequate Housing](#)

When determining the ‘adequacy’ of housing and the development of a national housing strategy, government should consider the following issues that contribute to securing the right:

- Legal security of tenure;
- Availability of services, materials, facilities and infrastructure (which is particularly important in relation to protecting against poverty) and includes access to safe drinking water and sanitation facilities, electricity and cooking facilities;
- Affordability;
- Habitability;
- Location;
- Cultural adequacy.<sup>13</sup>

### Progressive realisation

As with all other ESC rights, the right to ASOL should be progressively realised in line with the available resources within the state. In signing up to ICESCR, the UK agreed be reviewed by the [Committee on Economic, Social and Cultural Rights](#)<sup>14</sup> (CESCR) every five years. The review process offers the Committee the opportunity to examine how the UK is progressively protecting, respecting and fulfilling all ESC rights, including the right to ASOL.

## KEY POTENTIAL IMPACTS OF INCORPORATION

Today, there is no free-standing right to ASOL in Scots law, which means that accessing and enforcing the right and its component parts is extremely uneven across the population. [Incorporation](#) of ICESCR into Scots law would require the government to make sure that all people have at least the minimum core provision of each component of the right to ASOL. In particular, ensuring accessible, appropriate guidance for marginalised groups who often experience multiple barriers to the different components of ASOL, such as women, children and disabled people, will enable them to better engage and activate their rights.

Some UK judicial opinions have linked the right to ASOL to the right to family life protected by the [Human Rights Act 1998](#).<sup>15</sup> Incorporation would ensure individuals could enforce their rights directly, without having to make complicated arguments linking ASOL to civil and political rights that are enforceable through the Human Rights Act.

13. CESCR, [General Comment No 4, The right to adequate housing \(art. 11\(1\)\)](#), UN Doc E/1992/23 (1991), para 8.

14. <https://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx>

15. For example, the Benefits Cap case, see *R (on the application of DA and DS and others) (appellants) v Secretary of State for Work and Pensions (Respondent)* [2019] UKSC 21, para 35.

## NEXT STEPS

In line with the Human Rights Taskforce recommendations, the establishment of a new statutory human rights framework will be a multistep process. The aim of the new framework is to incorporate a range of internationally recognised human rights, including the right to an adequate standard of living and other rights set out in ICESCR, as well as civil and political rights and special attention to those who have often been given the least attention by society. To accomplish this, further consultation on the approach to be taken is necessary, particularly with rights-holders. Extensive law and policy guidance will be developed so that all people, public authorities and government understand what respecting, protecting and fulfilling human rights means in law, policy and practice. Together, everyone can play a part in making rights real in Scotland.

Kasey McCall-Smith  
September 2021

## USEFUL RESOURCES

Alston, Philip, Visit to the United Kingdom of Great Britain and Northern Ireland, Report of the UN Special Rapporteur on extreme poverty and human rights, UN Doc A/HRC/41/39/Add.1, 23 April 2019,

[https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/41/39/Add.1](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/41/39/Add.1)

Academic Advisory Panel to the National Taskforce on Human Rights Leadership, Briefing Papers,

<https://www.gov.scot/publications/national-taskforce-for-human-rights-leadership-academic-advisory-panel-papers/>

Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4, The right to adequate housing (art. 11(1)), UN Doc E/1992/23 (1991),

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en)

---General Comment No. 12, The Right to Food, UN Doc E/C.12/1999/5 (1999),

<https://undocs.org/E/C.12/1999/5>

Food and Agriculture Association of the United Nations, Resources on the Right to Food,

<http://www.fao.org/right-to-food/resources/learning-resources/en/>

--- Guidelines on the Right to Food,

<http://www.fao.org/right-to-food/guidelines/en/>

National Taskforce for Human Rights Leadership, Leadership Report, 12 March 2021,

<https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/>

Danish Institute of Human Rights, The AAAQ Framework and the Right to Water – international indicators, 8 July 2014,

<https://www.humanrights.dk/publications/aaaq-framework-right-water-international-indicators>

Equality and Human Rights Commission, The Human Rights Act,

<https://www.equalityhumanrights.com/en/human-rights/human-rights-act#:~:text=The%20Human%20Rights%20Act%201998%20sets%20out%20the,What%20human%20rights%20are%20covered%20by%20the%20Act%3F>

Human Rights Consortium Scotland, resources for civil society around human rights incorporation, available at:

<https://hrcscotland.org/incorporating-human-rights/incorporation-general/>

Incorporating Human Rights in Scotland, project website, including infographics, easy-read, and other resources,

<https://www.law.ed.ac.uk/research/research-projects/incorporating-human-rights-in-scotland>

Office of the High Commissioner for Human Rights (OHCHR), About water and sanitation, <https://www.ohchr.org/EN/Issues/ESCR/Pages/AboutWater.aspx>

--- Fact Sheet No. 21, The Right to Adequate Housing,

[https://www.ohchr.org/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf](https://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf)

--- Factsheet No. 34, Right to Food,

<https://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>

--- 'What are human rights?'

<https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx>

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