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# Incorporation of International Human Rights Briefing Series:

## The Right to Take Part in Cultural Life

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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 take part in cultural life (right to culture) is one of the many economic, social and cultural rights (ESC rights) outlined in the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>1</sup> The UK agreed to give effect to the ICESCR, including the right to culture, in 1976 as one of its growing international human rights obligations. The right has many components but the core of the right is set out in Article 15, paragraph 1:

### ICESCR – Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

- (a) To take part in cultural life;
- (b) To enjoy the benefits of scientific progress and its applications;
- (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Focusing on paragraph 1, ‘cultural life’ is a concept that has many different meanings. These meanings speak to the distinct ways that different people engage their ESC rights. The Committee on Economic, Social and Cultural Rights (CESCR) has explained ‘cultural life’ as

...[encompassing], inter alia, ways of life,

language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives. Culture shapes and mirrors the values of well-being and the economic, social and political life of individuals, groups of individuals and communities.<sup>2</sup>

The UK has agreed to five additional international treaties that include a general right to culture. These include:

- the International [Convention on the Elimination of all forms of Racial Discrimination](#)<sup>3</sup> (CERD, Articles 5(e)(vi), 7);
- the [Convention on the Elimination of Discrimination against Women](#)<sup>4</sup> (CEDAW, Article 13(c));
- the UN [Convention on the Rights of the Child](#)<sup>5</sup> (UNCRC, Articles 23(3), 30 and 31);
- the UN [Convention on the Rights of Persons with Disabilities](#)<sup>6</sup> (CRPD, Article 30); and

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

2. CESCR, General Comment No. 21, The right of everyone to take part in cultural life, UN Doc E/C.12/GC/21 (2009), para 13

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

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

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

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

- the [Council of Europe Framework Convention for the Protection of National Minorities](#).<sup>7</sup>

## KEY PROVISIONS

### Minimum core

As with all ESC rights, the state must respect, protect and fulfil this right. To do so, it must make sure that the following baseline or minimum level – known as the minimum core – conditions are met:

- **Availability.** The presence of cultural goods and services that are open for everyone to enjoy and benefit from, including libraries, museums, theatres, cinemas and sports stadiums; literature, including folklore, and the arts in all forms; the shared open spaces such as parks, squares, avenues and streets; nature preserves, such as seas, lakes, rivers, mountains and forests; intangible cultural goods, such as languages, customs, traditions, beliefs, knowledge and history, as well as values, which make up identity and contribute to the cultural diversity of individuals and communities;
- **Accessibility.** Concerns effective and concrete opportunities for individuals and communities to access and share information in a language of their choice about cultural life. It also encompasses the opportunity to enjoy culture fully, within

physical and financial reach for all in both urban and rural areas, without discrimination and taking account of the needs of vulnerable persons;

- **Acceptability.** Entails that domestic strategies, policies, programmes and measures adopted in relation to the enjoyment and exercise of cultural rights should be considerate and acceptable to the individuals and communities involved and respectful of cultural diversity;
- **Adaptability.** Consider the flexibility and relevance of domestic strategies, policies, programmes and measures that impact any area of cultural life. These must be respectful of the cultural diversity of individuals and communities;
- **Appropriateness.** Refers to the realisation of a specific human right in a way that is respectful of the culture and cultural rights of individuals and communities, including minorities and indigenous peoples. CESCR has linked cultural appropriateness to the rights to food, health, water, housing and education. How those rights are implemented may impact cultural life.<sup>8</sup>

### Respect, protect, and fulfil

The right to take part in cultural life is ensured by the state's commitment to respect, protect and fulfil the right. To respect the right means that the state will not interfere unnecessarily with any person's

7. <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007cdac>

8. CESCR, General Comment No. 21, The right to everyone to take part in cultural life (art. 15, para. 1(a)), UN Doc E/C.12/GC/21 (2009), para 16

ability to participate in, access and contribute to cultural life, either individually or as part of a community. Protecting the right to culture includes the preservation of cultural heritage and its artefacts. The right to culture and its defence is essential to ensuring that all people live their lives in dignity.

As with most human rights, the right to culture can be limited but only to the extent necessary to promote general welfare in a democratic society or to ensure against the infringement of others' human rights.<sup>9</sup> For example, there may be licensing requirements to use public spaces for large cultural events.

## KEY POTENTIAL IMPACTS OF INCORPORATION

**Incorporation** of the right to culture would reinforce the growing attention to celebrating different cultural beliefs and practices in Scotland. The rich culture of first and second-generation migrants has contributed to stronger awareness and appreciation of different cultures in Scotland. For example, the 2011 census recorded that 4 per cent of the population identified as non-white, including 2.7 per cent of the population identifying as Asian, Asian Scottish or Asian British with a further

1 per cent identifying as African, Caribbean or Black.<sup>10</sup> In requiring the state to educate the populations about their rights, incorporation would encourage a more extensive understanding of cultural and religious diversity using the **respect, protect and fulfil** framework and strengthening existing efforts such as the Scottish Curriculum for Excellence.<sup>11</sup>

Scotland is home to a small number of internal ethnic minorities.<sup>12</sup> In the 2011 census for example, roughly 1 per cent of the population (approximately 57,000) identified as Scottish Gaelic speakers with a larger minority speaking Scots, approximately 1.5 million.<sup>13</sup> In both cases, these populations are predominantly located in the Highlands and Islands and, in the case of Gaelic, particularly in the Outer Hebrides.<sup>14</sup> Increasing the fluency in Scottish Gaelic among the population has been a government focus for some time and resulted in the Gaelic Language (Scotland) Act 2005. The Education (Scotland) Act 2016 also places a duty on education authorities to promote and support Gaelic Medium Education and Gaelic Learner Education. Ensuring a broad range of historical teaching also supports the right to culture, such as specifically affects women and ethnic minorities.

9. ICESCR, articles 4 and 5

10. Scottish Government Census, [Ethnicity](#), 2011

11. Scottish Education, [Curriculum for Excellence, Experience and Outcomes, Religious and Moral Education](#)

12. Under the Race Relations Act 1976

13. Scottish Government [Census, 2011, Languages](#)

14. See Robert Dunbar, 'Language Legislation and Policy in the UK and Ireland: Different Aspects of Territoriality in a "Celtic" Context' (2016) 23 *International Journal on Minority and Group Rights* 454

An often unrecognised dimension of the right to culture are the unique practices and language developed as part of disabled, blind and Deaf/deaf communities. Not only could existing barriers to accessing all forms of culture and cultural heritage be broken down but the cultural identity developed within these communities could also be developed and promoted alongside other distinctive cultural groups.<sup>15</sup> Incorporation offers an opportunity to recognise and cure long-standing gaps in the delivery and enforcement of human rights for historically marginalised groups.

## 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 new framework will include incorporation a range of internationally recognised human rights, including the right to cultural and other rights set out in ICESCR as well as civil and political rights and special attention to individuals or groups of individuals 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.

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15. See, for example, John Lawson, 'Disability as Cultural Identity' (2001) 11 *International Studies in the Sociology of Education* 203; GROW, Léa Felten & Adèle Lassourd, [Disability as a Complex Cultural Identity](#)

## USEFUL RESOURCES

Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 12, Right of everyone to take part in cultural life (art. 15, para. 1(a)), UN Doc E/C.12/GC/21 (2009), [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f21&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f21&Lang=en)

--- General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2), UN Doc. E/C.12/GC/20 (2009), [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f20&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f20&Lang=en)

GROW, Léa Felten & Adèle Lassourd, Disability as a Complex Cultural Identity, <https://www.growthinktank.org/en/disability-as-a-complex-cultural-identity/>

European Parliament, Access to Culture Life for People with Disabilities, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/644200/EPRS\\_BRI\(2019\)644200\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/644200/EPRS_BRI(2019)644200_EN.pdf)

Human Rights Consortium Scotland, resources for civil society around human rights incorporation in Scotland, [Incorporating International Human Rights – Human Rights Consortium Scotland \(hrcscotland.org\)](https://www.hrcscotland.org/)

*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>

Scottish Education, Curriculum for Excellence, <https://education.gov.scot/education-scotland/scottish-education-system/policy-for-scottish-education/policy-drivers/cfe-building-from-the-statement-appendix-incl-btc1-5/what-is-curriculum-for-excellence>

Scottish Education, Curriculum for Excellence, Experience and Outcomes, Religious and Moral Education, <https://education.gov.scot/education-scotland/scottish-education-system/policy-for-scottish-education/policy-drivers/cfe-building-from-the-statement-appendix-incl-btc1-5/experiences-and-outcomes/#rme>

Scottish Government, Census at a Glance, 2011,  
<https://www.scotlandscensus.gov.uk/census-results/at-a-glance/>

United Nations Education, Scientific and Cultural Organization, Right to Culture, Questions and Answers,  
[http://www.unesco.org/culture/culture-sector-knowledge-management-tools/10\\_Info%20Sheet\\_Right%20to%20Culture.pdf](http://www.unesco.org/culture/culture-sector-knowledge-management-tools/10_Info%20Sheet_Right%20to%20Culture.pdf)

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