
Incorporation of International Human Rights

Briefing Series:

The Right to Health

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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 health is found in Article 12 of the [International Covenant on Economic, Social and Cultural Rights](#)¹ (ICESCR), which protects the range of economic, social and cultural rights¹ (known as ‘ESC rights’) necessary for all people to live their lives in dignity. The UK committed to give effect to the rights set out in ICESCR in 1976.

ICESCR – 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.*
2. *The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:*
 - (a) *The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;*
 - (b) *The improvement of all aspects of environmental and industrial hygiene;*
 - (c) *The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*
 - (d) *The creation of conditions which would assure to all medical service and medical attention in the event of sickness.*

The UK has agreed to give effect to four additional international treaties that include a general right to health. These include:

- the [International Convention on the Elimination of all forms of Racial Discrimination](#)¹ (CERD, Articles 5(e)(iv), 11(1)(f), 12);
- the [Convention on the Elimination of Discrimination against Women](#)² (CEDAW, Articles 12, 14(b));
- the [UN Convention on the Rights of the Child](#)³ (UNCRC, Article 24); and
- the [UN Convention on the Rights of Persons with Disabilities](#)⁴ (CRPD, Articles 25, 26).

KEY PROVISIONS

ICESCR Article 12 provides the most comprehensive treatment of the right to both physical and mental health in international law. The right to health should not be understood as a right to be healthy but rather to ensure the conditions that enable people to get the best out of their own biology to the maximum of the available socio-economic resources of the state.⁵ Physical and mental health cannot be guaranteed without the promotion of the wide range of conditions that are necessary to securing the full range of ESC rights, including all component parts of the right to an adequate standard of living, the

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

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

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

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

5. CESCR, *General Comment No. 14*, The right to the highest attainable standard of health (article 12), UN Doc E/C.12/2000/4 (2000), paras 8-9

right to work and the right to education, to name a few. As with all ESC rights, upon joining ICESCR the state should ensure that a minimum core or baseline provision is available to all people. ICESCR also requires the state to progressively develop the ways in which it respects, protects and fulfils this right.

Minimum core

The baseline or minimum level – known as the minimum core – of the right to health reflects the inter-relationship between the right to health and other rights. The minimum core must be delivered in line with the principle of non-discrimination and is guided by four essential standards recognised as the [AAAQ Framework](#): availability, accessibility, acceptability and quality:⁶

- **Availability.** There must be functioning public healthcare facilities, goods, services and health programmes available in sufficient quantity. The nature of these facilities, goods, services and programmes will depend on the state's available resources but the state should progressively realise its health services provision in line with its development.
- **Accessibility.** All health facilities, goods and services must be accessible to all people on the basis of non-discrimination. Accessibility is explained further below.
- **Acceptability.** Health facilities, goods and

services must align with medical ethical standards and be culturally appropriate.

- **Quality.** Health facilities, goods and services must be scientifically and medically of the highest quality.⁷

Civil and political rights, such as the rights to association, assembly and movement, are also integral to ensuring the minimum core of the right to health.⁸ A clean and safe physical and natural environment is equally important.⁹ To a great extent, guaranteeing the right to health requires the fulfilment of freedoms that are recognised as part of other rights, such as the right to privacy, the right to access information and the right to be free from bodily interference, among countless other considerations.

Accessibility

In addition to basic access to health services and facilities that are fit-for-purpose, accessibility is understood as a multidimensional concept including:

- Accessibility on the basis of non-discrimination, including for the most vulnerable;
- Physical accessibility in terms of being safe for vulnerable groups and disabled people as well as geographically accessible for all parts of the population;
- Health services must be affordable for all people (economic accessibility);
- Information accessibility – reflecting the

6. See, for example, Public Health Scotland, [Overview of the Right to Health](#); Danish Institute for Human Rights, [The AAAQ Toolbox, Developing Indicators on the Right to Health](#); Medical Human Rights Network, [AAAQ Framework for the right to health](#).

7. CESCR, [General Comment No. 14](#), para 12

8. CESCR, [General Comment No. 14](#), para 3

9. ICESCR article 12 (b). CESCR, [Factsheet No.16](#) (Rev.1), p 11

right to receive and impart information and ideas about health issues and in confidence.¹⁰

KEY POTENTIAL IMPACTS OF INCORPORATION

The public health services provided by NHS Scotland underpin the delivery of the right to health in Scotland. The Scottish Human Rights Commission (SHRC) has identified a number of gaps in the provision of the right to health in Scotland. In particular, the failure to meet the minimum core requirements identified under the AAAQ framework.¹¹ [Incorporation](#)¹² of the right to health will place a stronger obligation on the Scottish Government to think holistically about how to [respect, protect and fulfil](#) the right across the wide range of facilities and services that contribute to the physical and mental health of the Scottish population.

At present, people are often unable to enforce their right to health because they are unaware of what the right means in their daily experiences or do not have the ability to access different healthcare systems. Incorporation will encourage a more in depth understanding of the right to health through directed education about how to access the different aspects of the right. A legalised right to health will also

demand widespread information about how to enforce the right when it is not adequately fulfilled.

To secure the protection of the right to health, incorporation will also push the government to think about the relationship between the right and other factors, including the natural environment, working environments and social determinants. For example, fulfilling the right to health demands both broader environmental protection and effective oversight of health and safety regulations in workplace environments.¹³ Incorporation will drive education about social determinants relating to health and transmittable diseases, which will lead to more effective implementation.

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 health 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

10. CESCR, [General Comment No. 14](#)

11. Scottish Human Rights Commission, [SNAP 2: Proposal for Scotland's Second National Action Plan for Human Rights](#), September 2019, p 32

12. [What and Why of Incorporation?](#), Incorporating Human Rights in Scotland, project website (2020)

13. For more discussion, see Environmental Rights Centre for Scotland - How the human right to a healthy environment advances our right to health, available at: https://www.ercs.scot/wp/wp-content/uploads/2021/10/Rights-to-a-healthy-environment-and-health_Sept21.pdf

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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USEFUL RESOURCES

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/>

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 (2019),

https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/41/39/Add.1

Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14, The right to the highest attainable standard of health (art. 12), UN Doc E/C.12/2000/4 (2000), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&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

--- General Comment No. 22 on the right to sexual and reproductive health (art. 12), UN Doc. E/C.12/GC/22 (2016),

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f22&Lang=en

Danish Institute for Human Rights, The AAAQ Toolbox, Developing Indicators on the Right to Health, <https://www.ohchr.org/Documents/Issues/SForum/SForum2015/LenaKahler.pdf>

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>

First Minister's Advisory Group on Human Rights Leadership, Final Report, 10 December 2018,

<https://humanrightsleadership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf>

Human Rights Consortium Scotland, resources for civil society around human rights incorporation in Scotland 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>

Medical Human Rights Network, AAAQ Framework for the right to health,

<https://www.ifhhro.org/topics/aaaq-framework/>

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

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

Office of the High Commissioner for Human Rights (OHCHR), 'What are human rights?'

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

Public Health Scotland, Overview of the Right to Health,

<http://www.healthscotland.scot/health-inequalities/the-right-to-health/overview-of-the-right-to-health>

Scottish Human Rights Commission (SHRC), SNAP 2: Proposal for Scotland's Second National Action Plan for Human Rights, September 2019,

http://www.snaprights.info/wp-content/uploads/2019/09/SNAP-2_Online.pdf

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