

SCOTLAND'S HUMAN RIGHTS RECORD

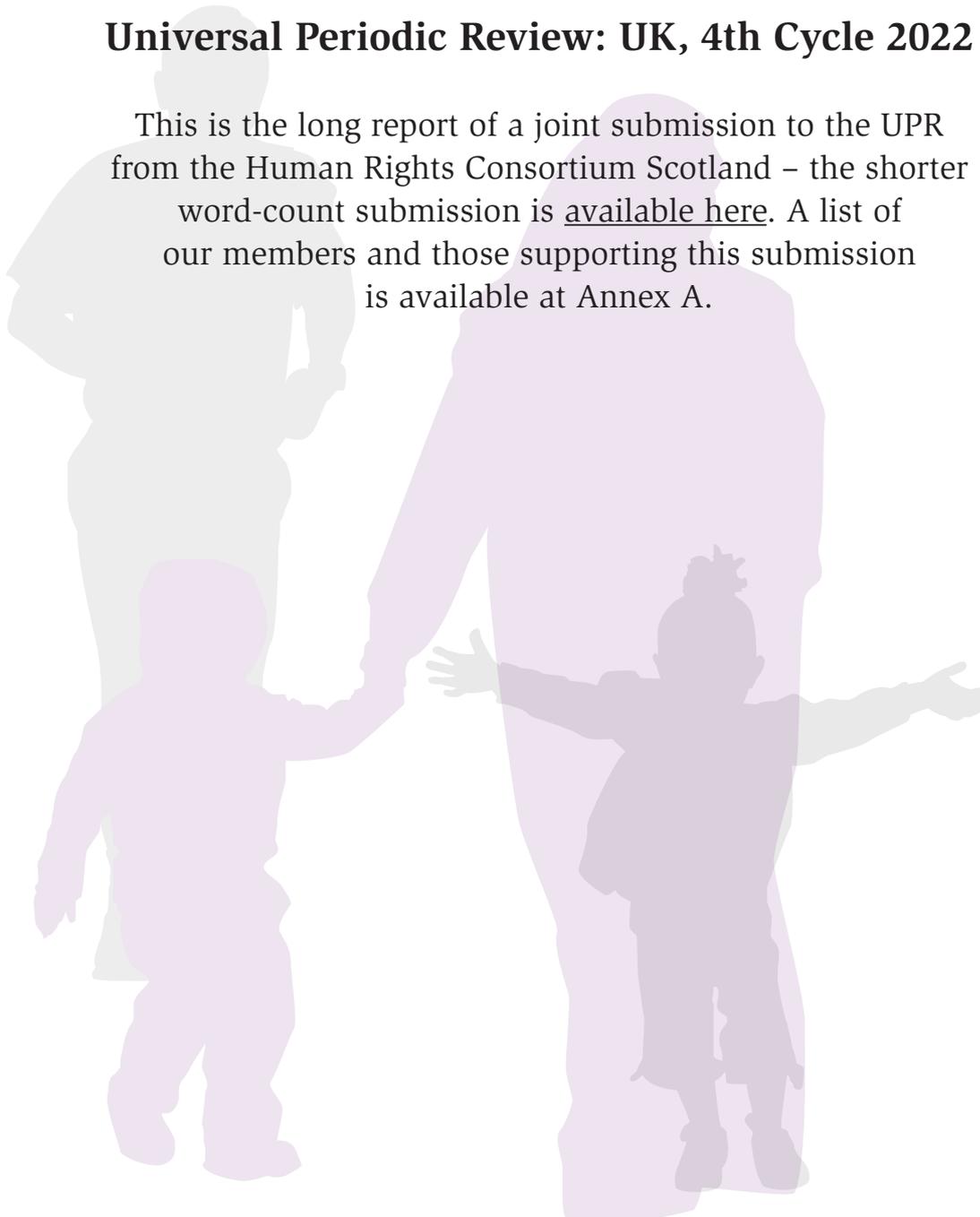


 Human Rights
Consortium
Scotland

SCOTLAND'S HUMAN RIGHTS RECORD

Universal Periodic Review: UK, 4th Cycle 2022

This is the long report of a joint submission to the UPR from the Human Rights Consortium Scotland – the shorter word-count submission is [available here](#). A list of our members and those supporting this submission is available at Annex A.



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INTRODUCTION

This submission is focused on the human rights of people who live in Scotland. Whilst the UK is the state party to the Universal Periodic Review (UPR), many important decisions impacting people's human rights in Scotland are made at a devolved level. Recommendations are for the Scottish Government unless stated otherwise.

This submission is drawn from contributions from over 240 participants in a series of civil society workshops in November-December 2021, together with other research, statistics and lived experience evidence – there are more details in Annex B.

FOLLOW UP TO PREVIOUS REVIEW

In the period of 2017-2022 since the third UK UPR cycle, the UK has been significantly impacted by the COVID-19 pandemic, by withdrawal from the EU, and by ongoing austerity measures. We note that there have been some positive developments around protection of human rights in Scotland such as:

- Voting rights extended to all who have legal residence in Scotland (excepting people in prison long-term)
- Age of criminal responsibility raised from 8 years old to 12 years old
- Equal protection from assault for children – ending lawful corporal punishment of children
- Ending Destitution Together: strategy for refugees in Scotland
- New Scottish social security system and benefits, including doubling Scottish Child Payment
- Housing First policy, recognising everyone's right to housing regardless of circumstances

The Consortium considers that this period has however seen: continued rights infringements and discrimination against particular groups; persistently high levels of poverty; systemic racism; regression on human rights law at a UK level; negative rhetoric on rights in public debates; and a lack of consideration of human rights in COVID-19 measures.

COOPERATION WITH TREATY BODIES

Recommendation 134.55 partially met: We welcome the UK and Scottish Governments' positive engagement with Scottish civil society to inform the State Party report to this cycle of the UPR. We are concerned however, that there needs to be greater commitment to implementation of recommendations. In particular, the UK Government only accepted 42% of recommendations from the last cycle¹. The UK Government did not give proper consideration to the report by the UN Special Rapporteur on Extreme Poverty and Human Rights after his visit to the UK in November 2018². Monitoring of implementation of the UNCRPD found that there were 'grave and systematic violations' of disabled people's human rights but this was largely dismissed by the UK Government³.

Recommendations

- > The UK Government should reiterate and demonstrate its commitment to full engagement with international rights monitoring through supporting more recommendations and creating action plans to then implement them.**

DOMESTIC HUMAN RIGHTS FRAMEWORK

HUMAN RIGHTS LEGAL PROTECTIONS

Recommendations 134.68-76 have not been met:

In the previous UK UPR, there were a significant number of recommendations around maintaining human rights protections in law. We consider that recent proposals from the UK Government, if implemented, will be a significant roll-back on human rights legal protections in the UK⁴.

An Independent Review of the Human Rights Act (HRA) 1998, commissioned by the UK Government, published its report in December 2021⁵. This Review received over 150 submissions and developed its recommendations after nine months of detailed consideration. The Review concluded that the HRA was by and large, working well with some small recommendations for change. This is a sentiment shared across Scottish civil society.

Despite this, and in the face of much evidence to the contrary, the UK Government states that human rights has suffered from ‘mission creep’, that there has been an incremental expansion of rights’ and that there are many spurious human rights claims. The UK Government published proposals to replace the Human Rights Act with a new Bill of Rights⁶. The proposals for this new Bill of Rights will water down human rights accountability through distancing UK courts from European Court of Human Rights case law, by introducing an additional ‘permissions stage’ to be able to take a case, and by allowing courts to deny someone equal remedy on the basis of their ‘past conduct’. These proposals include reducing courts’ ability to require positive obligations, and reduce the place of compatibility with human rights as a baseline check on legislation. In addition, these proposals give scant attention to the distinctive law and human rights culture in Scotland.

It is welcome that the UK will remain party to the ECHR but of great concern that the Government proposes to go backwards on the UK's legal protection of ECHR rights.

INTERNATIONAL HUMAN RIGHTS TREATIES IN DOMESTIC LAW

Recommendations 134.1-50 no further progress:

The UK ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, but no other progress has been made. The UK has not yet ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).

INCORPORATION OF INTERNATIONAL HUMAN RIGHTS

Recommendation 134.59, 60, 65: good progress in Scotland but not yet fully met

Within Scotland, in March 2021 the Scottish Parliament unanimously passed a Bill to incorporate the UN Convention on the Rights of the Child into Scots law. This was widely celebrated and supported, not least by many children and young people. The UK Supreme Court ruled in June 2021, that parts of the Bill had to be amended to reflect the devolution settlement within the UK⁷. However, many months later, the Scottish Government has not yet introduced amendments to the Bill so that it can be made law and begin to make a positive difference to children's rights.

The Consortium strongly welcomes the Scottish Government's commitment to incorporate four more of our international rights treaties directly into Scots law: the International Covenant of Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of Racial Discrimination (ICERD); the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW); and the UN Convention on the Rights of Persons with Disabilities (UNCRPD). The Scottish Government also plans to put the right to a healthy environment, and particular additional protections and rights for older people and LGBTI people into law. There will be new duties and requirements on public authorities to ensure that these are embedded into government decision-making and approaches, and requirements around monitoring and reporting⁸. The framework should include new routes and supports to remedy that make justice affordable, effective, accessible and timely. It is therefore vitally important that this enhanced human rights framework is directly informed by people's lived experience of rights, is as effective and empowering as possible, and is accompanied by the resourcing and leadership to drive a human rights culture across Scotland.

COLLECTING AND MONITORING DATA AROUND HUMAN RIGHTS

The significant gaps in published data in Scotland is hindering the monitoring and scrutiny of the fulfilment and progressive realisation of human rights. Very often, data is simply not collected, such as the extent of racism in schools or disabled people's access to the courts. Data collection is also too often prescriptive and limited to pre-determined blanket categories, leading to generalised data that masks and misses minority experience. For example: there is a general lack of adequate data on rights realisation of People of Colour and minority ethnic groups, particularly in relation to the health consequences of the pandemic, access to

justice, mental health, housing, social security take up, prisons and policing. Where data on experiences of migrants is collected, too often this is in large categories such as African or Asian, and ignores the significant differences for people depending on which part of Asia or Africa that they are from. There is a lack of disaggregated data around the rights of D/deaf people and disabled people, which misses the barriers to services for people with different impairments, and misses where these barriers are heightened by intersectional discrimination and inequalities. There is a significant lack of gender-sensitive sex-disaggregated data which then hinders good policy making around areas such as employment, skills, enterprise and entrepreneurship, education, and care.

NATIONAL ACTION PLAN ON HUMAN RIGHTS

Recommendation 134.79: good progress in Scotland but more to be done

Scotland's National Action Plan on human rights (SNAP) takes a multi-institutional and collaborative approach to driving progress on human rights⁹. After a period of evaluation, a new governance structure including people with lived experience, is being established. SNAP now needs Government commitment, leadership and resourcing in order to drive the change needed. In addition, there is no national action plan on human rights at a UK level.

SCOTTISH HUMAN RIGHTS COMMISSION

It is important that our National Human Rights Institution has all the powers and resources that it needs, particularly if it is to play its part in economic, social, cultural and environmental rights being fully protected. The SHRC should be given additional powers including to take a court case and intervene in court cases, and it should be properly resourced for the expansion of its role.

Recommendations

- > **The UK Government shelve proposals to replace the Human Rights Act.**
- > **The UK Government ratify all UN human rights treaties and optional protocols, removing reservations, and ratify the Istanbul Convention without delay.**
- > **Urgently introduce UNCRC (Incorporation) (Scotland) Bill amendments**
- > **Commit to resourcing and leadership for the full incorporation of ICESCR, CEDAW, UNCRPD and ICERD, the right to a healthy environment, and extra protections for older people and LGBTI people into Scots law by 2025. Ensure that access to justice is affordable, accessible, timely and effective for all.**
- > **Address gaps in published human rights data.**
- > **Sufficient resourcing and leadership of SNAP.**
- > **The Scottish Human Rights Commission be given enhanced powers and resourcing.**

HUMAN RIGHTS SITUATION ON THE GROUND

RESPONSE TO COVID-19 PANDEMIC

Government handling of the COVID-19 pandemic has exacerbated existing rights infringements and inequalities. Many government authorities gave very little consideration to the impacts on fundamental human rights when they made COVID-related decisions¹⁰ and this is a concern that continues around government decisions about the removal of restrictions or access to testing. Transparency of decision making during the pandemic and on recovery plans remains a concern for many. Public services and restrictions were introduced overnight with scant regard to the impact on minority groups, and legislation significantly reduced

people's ability to have a say over their own lives¹¹. For example, legislation allowed decisions about mental health detention, care placements and accommodation without any need to consider the person's own views. Furthermore, even after the initial urgency of COVID-19, legislation was rushed through both the UK and Scottish Parliaments with very little time for scrutiny or debate. This was compounded by pandemic preparedness not taking a human rights or gendered approach.

HUMAN RIGHTS AND CARE

During the pandemic, there was a lack of consideration of the human rights of those who receive care. People were moved from hospitals to care homes without any testing for COVID-19. People who worked in care homes did not have proper access to Personal Protective Equipment. People who lived in care homes were denied the right to see their family for weeks or months at a time, often going far beyond the levels of risk that might have warranted such restrictions. Too often care homes neglected people's dignity and choices within their own homes.

In addition, many disabled and older people who received care and support at home had services drastically reduced or removed altogether with little warning. This had significant impacts on their human rights and had huge impacts on many unpaid carers who found their right to health, to work and to education severely limited. The vast majority of these unpaid carers are women. Government authorities abdicated their responsibilities to provide proper support and care, and instead placed the burden on many unpaid carers. Although COVID-19 is now significantly reduced, much of the state support needed by those who need care and by unpaid carers remains woefully low and has not been reinstated to pre-pandemic levels, let alone being sufficient to protect people's rights¹².

RIGHT TO LIFE

6 in 10 people who died with COVID-19 between March 2020 and January 2021 were disabled¹³. There were disproportionately high deaths and adverse health outcomes for Black, Asian and minority ethnic people¹⁴. Infection and death rates were higher for people with learning disabilities¹⁵.

Some people were called, without any rationale and sometimes by non-clinical staff, to ask them to sign a 'Do Not Resuscitate' order, whilst others found that these had been placed in their medical records without their knowledge. Disabled people and older people were sometimes told that they would not be taken to hospital if they contracted COVID-19.

INCLUSIVE COMMUNICATIONS

The move to digital services and participation during COVID-19 meant that digital exclusion, whether due to barriers such as poverty, mental health, language, digital literacy or other, led to people's access to health and wellbeing services and information being significantly impaired. In particular, mental health tribunals during COVID were by phone only, leading to a lack of participation of the person impacted most, and a lack of transparency of 'who was in the room'. This also applied to tribunals for those based in The State Hospital, and to parole board hearings for those in The State Hospital, where it appears that videoconference instead of in-person hearings may continue for some time. Proof of EU citizens' pre-settled or settled status remains digital only, leading to disadvantage and discrimination in accessing employment, housing and health.

There were delays in information about COVID-19 measures being available in other languages or formats¹⁶. The Scottish Government included BSL interpretation in their COVID briefings, but the UK Government did not¹⁷. More broadly,

inclusive communications continues to be an afterthought for many public authorities¹⁸.

Recommendations

- > **COVID-19 Inquiries should take a human rights-based and gendered approach.**
- > **Take a human rights-based approach to policies related to care and carers.**
- > **Public services should never be digital-only but adopt inclusive communications**

RIGHT TO PARTICIPATION

Participation is a core principle across human rights treaties but attempts at involving people with lived experience in policy and law decisions are often seen as tokenism¹⁹. Rights holders have called for new human rights law in Scotland to lead to an increase in the voices of marginalised people being heard. Civil society organisations such as Disabled People's Organisations (DPOs), who often are vital to enabling participation, often struggle to access long-term and sufficient funding. Despite inquiry recommendations that address this²⁰, resourcing for civil society and community groups is too often short-term, patchy, based on damaging competitive tendering and without core costs being met. There is a postcode lottery of some areas being eligible for more resources than others, and sometimes specialist or community groups for particular minority groups miss out on funding to larger mainstream services.

Independent advocacy is a crucial tool for people's voices to be heard²¹. Advocacy services provide the support that is needed to address the power balance in any meeting, so that an individual's voice can be heard in decisions about their life. However, there are significant shortfalls in the provision

of advocacy in several areas including; physical disabilities, sensory impairment, people in prison, BME communities, drug and alcohol addiction, homelessness; and for people affected by HIV/AIDS²².

Recommendations

- > Adopt a policy of 3-year minimum funding for third sector organisations, and address shortages of independent advocacy.**

MIGRANTS, REFUGEES AND TRAFFICKING

IMMIGRATION SYSTEM

Recommendations 134.121; 134.163; 134.214 & 216: have not been met

The Nationality and Borders Bill (currently being considered by the UK Parliament) is an anti-refugee Bill which presents the biggest threat to refugee rights in the UK that we have seen for decades. The Bill undermines the UN Refugee Convention by proposing to assess people's asylum claims on the basis of the routes they took to the UK, criminalising people for seeking safety. The Bill also demands that people disclose abuse and violence they have been subject to – to strangers, in a new and unfamiliar environment, within a short deadline – or risk their personal 'credibility' in the eyes of a hostile UK state. Children will be subject to an invasive Home Office age assessment regime that violates their identity and bodily integrity.

ACCOMMODATION

During COVID-19, many asylum seekers were moved with little notice out of communities to be housed in institutional accommodation²³. When the government should have been protecting their right to life and health by enabling them to

live at a distance to others, instead they moved them into institutional accommodation where they had to share living and eating space, had even less money for living costs, and poor support for their mental health. Now the Nationality and Borders Bill focuses significantly on institutional accommodation centres for people seeking asylum, suggesting an expansion of their usage and a move away from community accommodation in the longer term. People are often moved to new asylum accommodation with little notice and far from their communities, including children who then have to move schools. Accommodation for people in the asylum system is often of poor standard²⁴.

DESTITUTION OF ASYLUM SEEKERS

Asylum seekers are now being dispersed across Scotland with little regard for the support infrastructure that is necessary. Refugee survivors of torture have a right to rehabilitative support but many are being accommodated far from rehabilitative services available in Scotland, and these services are far from sufficient to meet need.

Refugees have economic and social rights equal to others. However, people in Scotland with No Recourse to Public Funds have very limited protection of their rights to health, education and an adequate standard of living. This NRPF status leaves many individuals and families destitute and reliant on charities to survive.

We welcome the Scottish Government's Ending Destitution Together: Strategy. It is very important that this Strategy is resourced well, is sustainable and is regularly reviewed, and that negative impacts of the UK's hostile immigration system are mitigated by the Scottish Government. They must do everything in their power to address these gaps, and not wait on the UK Government to do so.

Currently, people seeking asylum can only work if they have been waiting more than 12 months on a claim and their job is listed on the highly restrictive Shortage Occupation List. Alongside a regrettable loss of their skills to the UK workforce²⁵, people must instead exist on a meagre government allowance of just £5.84 a day, which causes destitution and declining mental health. In common with many other countries, and supported by the UK public²⁶, people in the asylum system should be allowed to work after 6 months in the UK.

IMMIGRATION DETENTION

Recommendations 134.215, 217, 218 & 219: some progress but have not been fully met

Possibly due to impacts of the pandemic, more people were held for only a short-time in immigration detention than in previous years. However, 64% of the people detained were for more than 28 days; 14% (166 people) had been detained for six months or more and 4% (49 people) had been detained for a year or more²⁷. Two people had been in detention for more than three years. Unlike most other European countries, there continues to be no time limit on immigration detention in the UK.

TRAFFICKING

Recommendations 134.143, 144 & 146: some progress but have not been fully met

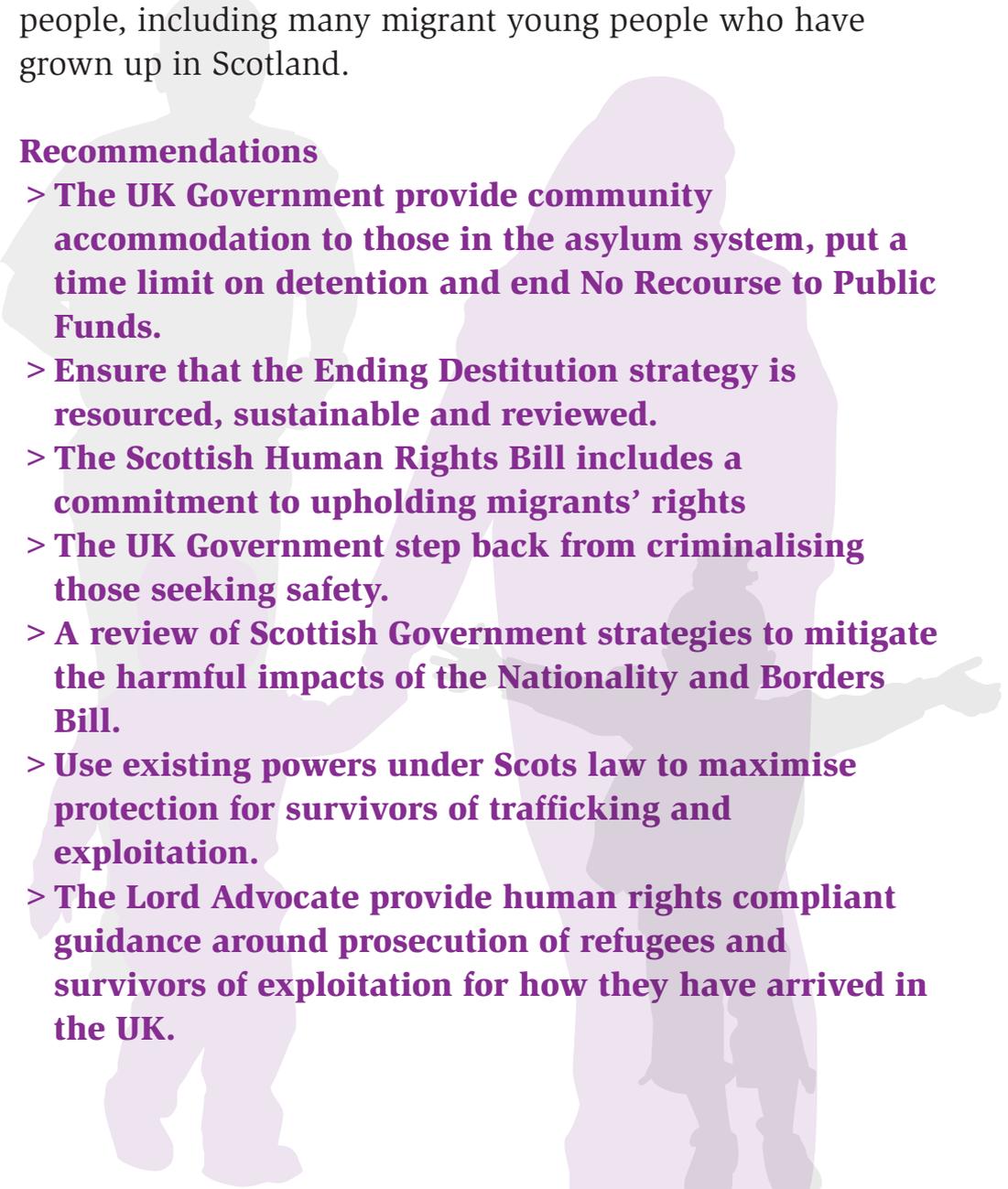
The Scottish Government worked with police, local authorities and victims of trafficking to develop a Trafficking and Exploitation Strategy. However, human trafficking continues to rise in Scotland²⁸ and there are too many children and young people arrested or remanded on drugs offences despite being trafficking survivors. From April 2016 to December 2020, 155 potential trafficking survivors faced charges in Scotland, and 21 of them were children. From April 2016 to Dec 2020, 14 Vietnamese nationals were held in young offenders institutes by the

Scottish Prison Service and ten of them were under 18 years old²⁹.

MIGRANTS' ECONOMIC, SOCIAL AND CULTURAL RIGHTS

There are practical and policy barriers to migrants accessing their right to education. Migrants and others with communication and language barriers have a lack of access to information on entitlement and support for further and higher education, and mechanisms to represent themselves or secure advocacy. The residency requirements for funded places at college & university exclude many migrant young people, including many migrant young people who have grown up in Scotland.

Recommendations

- > **The UK Government provide community accommodation to those in the asylum system, put a time limit on detention and end No Recourse to Public Funds.**
 - > **Ensure that the Ending Destitution strategy is resourced, sustainable and reviewed.**
 - > **The Scottish Human Rights Bill includes a commitment to upholding migrants' rights**
 - > **The UK Government step back from criminalising those seeking safety.**
 - > **A review of Scottish Government strategies to mitigate the harmful impacts of the Nationality and Borders Bill.**
 - > **Use existing powers under Scots law to maximise protection for survivors of trafficking and exploitation.**
 - > **The Lord Advocate provide human rights compliant guidance around prosecution of refugees and survivors of exploitation for how they have arrived in the UK.**
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PRISONS

RIGHT TO VOTE

Recommendation 134.161: potentially met in full in Scotland

This recommendation stated that the blanket ban on prisoner voting should end, echoing rulings of the European Court of Human Rights. The Scottish Parliament voted to end this blanket ban, enabling those in prison on sentences of 12 months or less, to vote. Some have argued, however, that based on *Frodal v. Austria* that this still does not fulfil the European Court of Human Rights requirement that disenfranchisement must be an “exception”, rather than the rule, and thus a more tailored ban is required. The current Scottish legislation requires that the prisoner voting rights are reviewed by the Scottish Parliament by 4 May 2023.

DEATHS IN PRISON

Recommendation 134.160: has not yet been fully met

Scotland has one of the highest rates of deaths in prison in Europe, and deaths in prison have been rising over the past five years. Between 2005 and 2019, an average of 24 people died each year in prison, but between 2016 and 2019 the average rose to 33³⁰. Inquiries into those deaths sometimes take years to begin. An Independent review into prison deaths has now made recommendations to the Scottish Government for urgent improvement³¹.

PRISON POPULATION

Recommendations 134.137, 158-160, 162: some progress but not yet been fully met

There have been some positive developments: in 2018 Her Majesty’s Inspectorate of Prisons in Scotland (HMIPS) launched new inspection standards³² with human rights embedded throughout which is greatly welcomed; new legislation was introduced to reduce custodial short

sentences with a welcome decrease in short sentences of less than 12 months from 83% to 75%³³.

However, Scottish prisons continue to be substantially overcrowded. As of 31 January 2020, there were 104.3 inmates per 100 places in Scottish prisons, and this compares to a median figure of 90.3 amongst all Council of Europe states. As of 1 March 2022, 10 of 15 prisons in Scotland are overcrowded, with 2 of them at 125% occupancy. Single cell occupancy figures are not publicly available, however, evidence given recently to the Scottish Parliament³⁴ advised that in Scotland's largest prison, more than 90% of prisoners were doubling up in cells that were designed only for one person, which breaches the minimum desirable space standard of 5m² per prisoner set by the Council of Europe European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Overcrowding impacts people's dignity, physical and mental health, and safety.

The Covid-19 pandemic has seen a significant rise of remand use in Scotland, with the delay in trials causing the remand prison population to climb. This figure continues to rise and as at 18 March 2022 sits at 26.4%³⁵. Often remands are the result of lack of information or lack of services in the community to support people on bail, and the Consortium heard examples of people being put on remand because they are homeless with no permanent address. Remand affects physical and mental health, family relationships, employment and housing, and financial wellbeing³⁶. The Scottish Government has acknowledged that remand is a significant issue and is currently consulting on the Bail and Release from Custody (Scotland) Bill which aims to address this.

PRISON CONDITIONS

The Consortium heard evidence about the ongoing lack of attention and care given to mental and physical health in Scottish prisons. There is too often a gap in medical information and care being put in place for people on arrival in prison. There is also a lack of care to identify and provide the support needed for those with additional support needs, including particular communication needs – this is particularly an issue as the prison population gets older. There are long delays to access drug replacement therapies. We highlight too the repeated recommendations to the Scottish Government to significantly improve mental health support for female prisoners, particularly those with severe mental health problems. There is still no high secure mental health accommodation for women in Scotland despite recommendations that it should have been provided by end 2021³⁷.

During COVID-19, prisoners were let out of their cells for such short amounts of time that it amounted to to ‘de facto solitary confinement’. Repeated extension of amendments to The Prison and Young Offenders Institutions (Coronavirus)(Scotland) Rules 2021 involved restrictions on time in cell, purposeful activity, visits and recreation that HMIPS repeatedly cited as causing tensions with ECHR Articles 2,3, and 8. As court backlogs clear and the prison population rises further, it is important that people in prison have at least equal access to periods out with their cells than existed pre-pandemic and that this is regularly monitored and scrutinised.

Recommendations

- > **Urgently implement recommendations of the Independent Review of Deaths in Prison Custody³⁸.**
- > **Reduce the prison population and use of remand, thus reducing prison overcrowding.**

> **People in prison have at least equal access to periods outside their cells than existed pre-pandemic, and this should be regularly monitored and scrutinised.**

WOMEN'S RIGHTS

GENDER PAY GAP

Recommendations 134.175-177 & 179 not met:

There remains a 10% gap between men's and women's average hourly rates, and a 30% gap when you compare women's part-time average hourly rate to men's full-time hourly rate³⁹. This gap is caused by occupational segregation, lack of flexible working and discrimination in pay and grading systems. The gender pay gap is wider for Black and minority ethnic women, disabled women and older women. Covid-19 has disproportionately affected women's employment, putting women at greater risk of poverty and widening gender pay gaps⁴⁰. Public sector employers are required to publish their gender pay gap under the Public Sector Equality Duty, however, there is little evidence of them taking meaningful action to address their pay gaps. Large private and third sector employers are required to report their pay gap under UK regulations, and similarly, the vast majority of employers are not taking steps to address their pay gap⁴¹.

VIOLENCE AGAINST WOMEN

Recommendations 134.181 significant progress

Controlling and coercive behaviour was criminalised by the Domestic Abuse (Scotland) Act 2018, and is the first law that puts children, now identified as potential victims, on the face of the law in the form of an aggravation that will allow the judiciary to impose harsher sentences when children are involved.

Recommendations 134.180, 182-187 some progress but not yet fully met

On any given day, over 1100 women, children and young people receive support from Women's Aid services in Scotland. These services are stretched and frequently do not have refuge accommodation available for those who need it⁴². Women's Aid groups too often have short-term, insecure funding which is insufficient to support all those who need help.

The minimum age for marriage in Scotland is 16 and no parental/guardian consent is required⁴³. Child marriage is strongly linked with violence against girls⁴⁴.

RAPE AND SEXUAL OFFENCE CONVICTIONS

Only 43% of rape and attempted rape trials result in a conviction, compared to an 88% overall conviction rate. In 2019-20 there were 2,343 rapes and attempted rapes reported to the police, but only 300 prosecutions and just 130 convictions⁴⁵. The conviction rate for rape and attempted rape in Scotland has remained stubbornly lower than for any other crime type, despite all previous efforts to address it. The Scottish Courts and Tribunals Service conducted an independent review into how to improve the management of sexual offences cases in Scotland⁴⁶. This Review made a number of important recommendations to improve how sexual offences are handled within the Scottish justice system, which now need implemented in full.

Recommendations

- > **Implement recommendations of the review into Improving the Management of Sexual Offences Cases**
- > **Introduce a new system of funding for specialist domestic abuse services so that they can provide needs-led, rights-based support to every woman, young person and child who needs it.**

-
- > **Require listed public bodies to take action to address their gender pay gap.**
 - > **The UK Government to require large employers to take action to address their gender pay gap.**
 - > **Raise the minimum age of marriage to 18 in line with international standards.**

CHILDREN'S RIGHTS

Recommendations 134.193-199 fully met in Scotland

The Scottish Parliament passed Children (Equal Protection from Assault) (Scotland) Act 2019, ending the lawful physical punishment of children and young people.

CHILDREN IN JUSTICE SYSTEM

Recommendations 134.205-208 Good progress but not yet fully met

The minimum age of criminal responsibility was recently raised from 8 to 12 years old. However, this still remains below the international standard of 14 years. In addition, a child under 12 years old cannot be held criminally responsible, but the act itself is still a criminal act and extensive investigative interviewing still takes place, including holding the child in custody whilst this is carried out.

Although Scotland has a Children's Hearing System, 37% of children who come into contact with the formal justice system go to court⁴⁷. In 2017-18, this included one 13-year-old, one 14-year-old, nine 15-year-olds, 384 16-year-olds and 1,381 17-year-olds. This is particularly concerning given the lack of amendments made to Court processes for children, meaning the process is more likely to be traumatising and difficult to participate in, raising questions about whether children have a fair trial⁴⁸.

Currently if a child accepts the grounds for referral within the Children’s Hearings system, even when they have no access to legal advice, this is equivalent to a conviction and comes into management of offenders’ rules around how long it stays on their record. ‘Relevant information’ even if a child is under 12 years old, can be held on police systems and on their record for the rest of their lives.

Ensuring that in Scotland, children are not in prison-like settings or Young Offenders Institutions was a promise made by the Independent Care Review and accepted by the Scottish Government. However, many children aged 16 and 17 years old are still being held in prison-like settings, including a high proportion who are on remand. For example, in February 2022, sixteen 16 and 17 years old were held in a Young Offender’s Institution, 13 of whom had not been tried⁴⁹.

We welcome the commitment by the Scottish Prison Service to stop the routine body searching of under 18s in custody. However, strip searches of children are still being carried out – between January 2017 and February 2022, there were 3067 strip searches of children in police custody⁵⁰.

From 2018-2020, nearly 6,000 children were held overnight in police cells, including 95 children aged 13 or under, and three of those under 11 years old. 1,518 children were in police custody for more than 24 hours⁵¹. Police custody is not an appropriate setting for children where they cannot get the support or care that they need.

FREEDOM OF RELIGION AND BELIEF

All state-funded schools are under a statutory duty to provide ‘religious observance’ to pupils with a focus on Christianity. Parents have a right to withdraw their child from religious observance but pupils do not have an

equivalent right.⁵² As highlighted by the Committee in its 2016 Concluding Observations to the UK, there are concerns this breaches children's rights under Articles 12 and 14 UNCRC.

USE OF RESTRAINT AND SECLUSION

A 2018 investigation by the Children and Young People's Commissioner Scotland (CYPCS) identified 2674 incidents of restraint and seclusion in schools⁵³. It found local authorities' policies and practices were inconsistent, inadequately reflected children's rights, incidents were largely unmonitored, children were rarely involved in the development or revision of policies, and that restraint and seclusion were disproportionately used against children with additional support needs. Many of the children affected have learning disabilities or autism.

There is currently no specific legal protection around the misuse of restraint and seclusion in schools. Scottish Government has committed to produce new human rights-based guidance on the use of restraint and seclusion practices in schools, and measures to support consistent recording and monitoring of incidents. The guidance has not yet been published. Despite calls, Scottish Government has not taken steps to ensure monitoring and regulation of restrictive practices at national level across care homes, foster care, school clubs, hospitals, immigration detention centres and Young Offenders Institutions. There is a lack of data and consistency across all settings.

HARMFUL DEVICES

Mosquito devices are machines that give off a sound which most adults can't hear, but which causes children and young people discomfort and distress. They have been used in Scotland to make young people leave public spaces, including train stations. Selling and using them is a breach of international human rights law⁵⁴. Despite recognition of

this, both the UK and Scottish Governments have failed to ban these devices in law.

RIGHT TO EDUCATION

An independent review found that Additional Support for Learning legislation is not consistently implemented, is over-dependent on committed individuals, and is not ensuring that all children and young people who need additional support are being supported to fulfil their potential⁵⁵. D/deaf children often have to travel miles from home to go to school, affecting their education and wellbeing. Children with learning disabilities do not have the same access to education as their non-disabled peers – schools often have low aspirations for these children, leading to low levels of attainment and being less likely to go on to a positive follow-up destination. The transition from school for D/deaf and disabled young people was really difficult before COVID-19 due to gaps and barriers to services, education and employment but after COVID-19, it is now ‘absolutely dire’⁵⁶. Young people are being left in their family home with no paid care, no options, and no career based and future planning.

Recommendations

- > **Make sure that the way we treat children in conflict with the law is rights-based.**
- > **Raise the minimum age of criminal responsibility to at least 14 years old.**
- > **End the practice of children being dealt with by adult courts, being held in police cells overnight, and being placed in Young Offenders’ Institutions, ensuring that the detention of children is the option of last resort.**
- > **Ensure that no child admits to an offence with long-term implications without legal advice.**
- > **Commit to legislative change to ensure all children have the right to withdraw from religious observance.**

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- > **Ensure that restraint is only used as a measure of last resort, and that isolation and seclusion are no longer used.**
 - > **Implement recommendations of the review of Additional Support for Learning.**
 - > **Ban mosquito devices.**

LGBTI PEOPLE

LGBTI people and organisations are experiencing increased levels of harassment, discrimination, stigma and abuse, particularly on social media but also in-person. There is concern that this both demonstrates, and is leading to, potential roll-back and de-prioritisation of LGBTI rights progress in recent years, and concern about a lack of leadership and courage to champion LGBTI rights by government.

Since 2014-15, homophobic hate crime reports have tripled and transphobic hate crimes have quadrupled across the UK⁵⁷ – there are high levels of distrust of LGBTI people of the police and a lack of understanding of hate crime reporting. Low level harassment is often not reported but affects safe housing – especially an issue during COVID lockdowns.

Gender recognition laws in Scotland are out of step with international best practice, to allow trans people to change the sex on their birth certificate more easily and without intrusive medical and bureaucratic requirements. The Gender Recognition Reform Bill should be passed, particularly recognising that delay has increased the impacts of toxic debate and misinformation on human rights and LGBTI activists.

Many LGBTI people have been harmed by conversion practices. Conversion practices need a full and comprehensive ban in law. This must cover sexual orientation and gender identity, apply to adults and children, cover all settings, and include “consensual” conversion practices. Any ban should have both legislative and civic measures, with adequate support for survivors and informed by their voices.

Recommendation 134.135 not fully met

There are long waiting times for NHS gender identity services of up to 47 months between referral and first appointment⁵⁸. Trans people cannot access transition-related surgical services in Scotland, but instead need to travel to England for surgery. These services are urgent and are not given parity with other services.

Recommendations

- > **Pass the Gender Recognition Reform Bill without any further delay.**
- > **Introduce legislation to ban conversion therapy.**
- > **Address the long waiting time and lack of gender identity-related services in Scotland.**
- > **Show leadership to champion LGBTI people’s rights.**

RACISM, RACIAL DISCRIMINATION AND HATE CRIME

Recommendations 134.90, 92, 97, 98, 110, 111, 114,117,118,121 some progress but much to be done

In gathering evidence to inform this submission, we heard consistently about the lack of recognition of systemic racism in Scotland, with a self-perception of friendliness which often masks or downplays people’s lived experience of racism⁵⁹. For example, one third of black, Asian and minority

ethnic (BAME) people in Scotland report experiencing racial discriminations. The employment rate for BAME Scots is 15% lower than the white population, and BAME Scots are much more likely to live in poverty, and on average BAME employees are paid 10% less than their white counterparts⁶⁰. We need far greater accountability on sustained action to address racism within Scotland.

There are still underlying issues with institutional racism across the education system within Scotland. Children and young people are being turned off of school and experiencing negative impacts on their health and wellbeing because of racism. Sometimes this racism is reduced to talk of ‘bullying’ and is seen as somehow less important. There were 2,251 racist incidents recorded in Scotland’s schools over the last 3 years (though it is likely that incidents are underreported). 71% of teachers do not feel confident recognising incidents of racial discrimination within their school, and almost half (48%) of teachers are aware of a pupil, or pupils, expressing negative attitudes relating to skin colour⁶¹. There are also gaps in provision of religiously or culturally appropriate food in schools such as Halal and Kosher food (and in healthcare settings). Rights holders speak particularly about negative experiences in rural schools where numbers of pupils from religious minorities or minority ethnic groups are much smaller.⁶²

Recommendations

- > Ensure that there is a national policy on racist incident reporting in schools to ensure that there are consistent policies on prevention, action, monitoring, assessment, evaluation, staff training and enforcement to effectively challenge institutional racism and support minority ethnic children in Scotland’s schools.**
- > Ensure that the Race Equality Framework is prioritised and properly resourced to bring sustained action that reduces racism.**

MENTAL HEALTH

MENTAL HEALTH SERVICES

There is significant shortage of mental health services in Scotland⁶³, so that services are often available only for those in crisis. There is a particular shortage of services for people from minority ethnic communities, people with communication and language barriers, LGBTI people, older people and Care Experienced people. Mental health support is too often inconsistent or for very short periods. Much of the burden of providing community mental health support is falling to small, under-funded organisations.

Shortages in Children and Adolescent Mental Health Services (CAMHS) are severe, with increased demand but in 2021, around 30% of children were not seen by CAMHS within 18 weeks of referral⁶⁴. About 23% of CAMHS referrals were rejected, despite being referred by their family doctor⁶⁵. Too many children and young people are in adult hospital mental health wards – there were 86 admissions involving 62 children and young people in 2020-2021⁶⁶.

There is a significant lack of community and specialist support and beds so people with mental ill-health are stuck in secure facilities or hospital for far longer than they should be.

MENTAL HEALTH DETENTION

Recommendation 134.137 not met

Mental health detention in Scotland is significantly increasing, with 10.5% more in 2020-2021 than in 2019-20, and higher than the average year-on-year increase in the previous years of 4.5%⁶⁷. There is a lack of effective safeguards, with too many people detained without the involvement of a Mental Health Officer⁶⁸.

In forensic mental health services, civil society speak about inconsistent policy around rights within wards in different security levels, so that in some medium-secure settings there is access to phones and laptops, but often not in low-secure settings.

MENTAL HEALTH LAW

The Scottish Mental Health Law Review is considering steps needed to implement the UNCRPD. Many people affected by the mental health system have little say in decisions made about them, and few avenues for accountability and redress. This includes decisions about medication, over-medication and non-medication treatments, where they live, monitoring, detention, and about the support that is provided. Mental health law permits the compulsory treatment of a person to begin before that person can appeal, and this treatment can last for 28 days.

Recommendations

- > **Take steps to ensure that every person in need of mental health services gets the support that they need without delay.**
- > **Commit to a UNCRPD-compliant national mental health law framework.**
- > **Explore reasons for the increase in mental health detention and ensure that proper safeguards are operating well.**

DISABLED PEOPLE'S RIGHTS, INCLUDING PEOPLE WITH LEARNING DISABILITIES

This report includes barriers to rights for disabled people across many of the issues included in this report.

We further note that people with a learning disability and people with autism have for too long had their human rights impacted by being included inappropriately within mental health law provisions. The Independent Review of Learning Disability and Autism in the Mental Health Act (the Rome Review) published its final report in December 2019⁶⁹. This included recommendations that learning disability and autism be removed from the definition of mental disorder in Scots law, and that Scotland work towards law that removes discrimination in detention and compulsory treatment on the basis of disability. The Scottish Government has not yet responded in detail to this.

Too many people with learning disabilities are living in a hospital setting without clinical need. Institutional living risks exacerbating individuals' mental distress and ill health, as well as infringing upon their right to family life and risks their freedom from inhuman and degrading treatment. For example, in 2018 67 people with learning disabilities, and complex needs were subject to a delayed discharge. Of these, 22% had been in hospital for more than ten years and another 9% for five to ten years⁷⁰.

Recommendations

- > **Implement all recommendations of the Rome Review and set out steps towards their implementation⁷¹.**
- > **Ensure that no person is living in hospital without clinical need.**

HUMAN RIGHTS AND THE ENVIRONMENT

Recommendation 134.136 Not met

Everyone has the right to live in a safe, clean, healthy, and sustainable environment. Yet, we are facing a climate

emergency⁷², a sharp decline in biodiversity, unsafe levels of air pollution and food insecurity⁷³. It is also difficult to access justice on the environment and the Aarhus Convention's governing bodies have made their 10th finding that Scotland is in breach of Article 9(4) that access to justice should 'not be prohibitively expensive'.

Recommendation

Put the right to a healthy environment with substantive and procedural elements into Scots law by 2025 and measures to ensure full compliance with the Aarhus Convention.

ADEQUATE STANDARD OF LIVING

Recommendations 134.163-164, 168 & 177 not met

Up to 14.5 million people in the UK were in poverty before the pandemic, and around another 700,000 people were plunged into hardship during the pandemic⁷⁴. One in six working households – or 17.4 per cent – are living in poverty⁷⁵. Around one in three people in the UK have difficulty in affording adequate food. A large proportion of those who use food banks are disabled people, and many are living in destitution⁷⁶.

This level of poverty is only set to get worse – the cost of living is rising sharply in the UK. It is estimated that more than 40% of households in large parts of Scotland will move into fuel poverty in coming months, an increase of 43% on 2019 figures⁷⁷. There will be a 150% total rise in Britain's fuel poor by November 2022⁷⁸. It is feared that 400,000 more people could be pulled into poverty by real-terms cut to benefits in April 2022⁷⁹.

However, social security amounts have declined 9% compared to inflation over the last five years. Unless benefits keep in line with inflation, it is estimated that nine million households on low incomes will experience a real-terms cut of £500 a year on average⁸⁰.

BENEFITS CAP

The Government's benefits cap policy that limits the total amount of social security benefit you can get is only increasing poverty in the UK. The way the cap is designed also means that some of the most vulnerable groups in the UK who are already most at risk of being pulled into poverty – such as lone parents with young children (most of whom are women), larger families (who are disproportionately from Black and minority ethnic backgrounds) and people who are not fit to work – are the most likely to have their support capped. 63% of those impacted by the annual cap on household benefits have been lone parents, 90% of whom are women⁸¹.

2-CHILD LIMIT

UK Child Tax Credits are not available for third or subsequent children unless there are multiple births or a child is conceived through rape. This policy pushes larger families into poverty and undermines autonomy over the number and spacing of children. Policies which punish women and their children for reproductive choices or require the disclosure of trauma at a time and in circumstances not of their choosing are incompatible with respect for human rights and dignity.

RIGHT TO ADEQUATE HOUSING

1.5 million people in Scotland are living in overcrowded, dangerous, unsafe or unaffordable homes. 13,192 households are in temporary accommodation, including 7510 children⁸². Too many people have no permanent place to live because of the lack of good quality, affordable social

housing in Scotland. If you have a disability, receive social security benefits, are a refugee, or a person of colour you are even more likely to face discrimination or struggle to find a decent home. There is a chronic shortage of accessible and adapted housing⁸³. Scotland cannot end homelessness and meet this need for decent housing without significantly increasing the supply of social housing.

People's legal rights to housing are being routinely breached and there is lack of monitoring and accountability for this. In 2020/21, there were 605 instances of households not being offered temporary homeless accommodation when they were entitled to it⁸⁴. Whilst people's legal rights to temporary accommodation have improved, as the law limiting the amount of time households spend in accommodation deemed to be unsuitable was extended from just households with children to all households, this law is regularly broken by local authorities and the government has admitted that they do not have accurate data on the extent of the issue.

Recommendations

- > The UK Government do more to reduce poverty, including by ending the 2-child limit and the benefits cap, and raising the level of benefits in line with inflation.**
- > Deliver on commitment to secure delivery of 110,000 affordable homes over the next ten years, with at least 77,000 for social rent, including housing accessible to disabled people.**
- > Make sure that people's legal right to housing is upheld. Accurate monitoring should be put in place immediately and there should be greater accountability for when public bodies break the law.**

ANNEX A

Human Rights Consortium Scotland member organisations are:

A Way Home Scotland
Ability Borders SCIO
Action for ME
Advocacy Highland
Advocacy North-East
Advocacy Western Isles
Advocard
Advocating Together
African and Caribbean Elders in Scotland (ACES)
Age Scotland
Alcohol Focus Scotland
Amina -the Muslim Women Resource Centre
Amnesty International
Angus Independent Advocacy
ARC Scotland
Art27 CIC
Article 12
ASH Scotland
Autism Rights Group Highland
Because We Matter
BEMIS
Bridges Programme
British Institute of Human Rights
CAAG Poverty Alliance
Campaign for Freedom of Information in Scotland
Carr Gomm
C-Change Scotland
CEMVO
Central Scotland Regional Equality Council (CSREC)
Children 1st
Children in Scotland



Children's Parliament
Circles Advocacy
Citizens' Rights Project
CLAN Childlaw
Close the Gap
Clydebank Women's Aid
Coalition of Racial Equality & Rights (CRER)
Community Enterprise Ltd
Connect Perth @ Perth City Centre Community Hub Limited
Corra Foundation
Dalkeith & District Citizens Advice Bureaux
Deaf Equality & Accessibility Forum South Lanarkshire
Deafblind Scotland
Disability Agenda Scotland
Disability Equality Scotland
Dumfries & Galloway Advocacy Service
Dundee Federation of Tenants' Associations
EachOther G3A
East And Southeast Asian Scotland C.I.C
East Lothian Play Association
Edinburgh Development Group
ELREC
Empower Women for Change
Energy Action Scotland
Engender
Environmental Rights Centre for Scotland
Equality Network
Faith in Older People
Fareshare Scotland
Fife Centre for Equalities
Fife Migrants Forum
Forth Valley Advocacy
Forth Valley Migrant Support Network
Freedom from Torture Edinburgh Local Group
GCVS
Glasgow Community Food Network



Glasgow Disability Alliance
Global Justice Now
Headway East Lothian
Highland Migrant and Refugee Action (HiMRA)
HIV Scotland
Homeless Action Scotland
Howard League Scotland
HUG (Action for Mental Health)
Humanist Society Scotland
In Control Scotland
Include Me
Inclusion Scotland
Independent Advocacy Perth
Independent Age
Inspired Community Enterprise Trust LTD (The Usual Place)
Inspiring Scotland
Interfaith Scotland
International Voluntary Service
Just Fair
Just Festival Edinburgh
Justice
JustRightScotland
Lanarkshire Community Law Centre
LGBT Health and Wellbeing
LGBT Youth
Love @Care Ltd
Making Rights Real
Maryhill Integration Network
Media Education CIC
Mental Health Rights Scotland
Migrant Voice
Mongol Identity
Move On
Nourish Scotland
Outside the Box
Parent Advocacy and Rights

A large, faint, purple-toned silhouette of a man, a woman, and a child holding hands, positioned behind the list of organizations. The man is on the left, the woman is in the center, and the child is on the right, all with their arms extended towards each other.

Partners in Advocacy
Patients' Advocacy Service
Patients Council
PKAVS Minority Communities Hub
Play Scotland
Positive Help
Positive Prisons
Poverty Alliance
Psychiatric Rights Scotland
Radiant and Brighter
Rape Crisis Scotland
Reach Advocacy
Realising Rights
Refugees for Justice
REH Patients Council
RNIB Scotland
Safe in Scotland
SCID
SCLD
Scotland's Learning
Scottish Arthritis Care
Scottish Association of Sign Language Interpreters
Scottish Association of Social Work
Scottish Borders Social Enterprise Chamber CIC
Scottish Care
Scottish CND
Scottish Community Development Network
Scottish Council of Jewish Communities
Scottish Mental Health Cooperative
Scottish Partnership for Palliative Care
Scottish Recovery Consortium
Scottish Refugee Council
Scottish Women's Aid
Scottish Women's Rights Centre
Scottish Youth Parliament
SCVO



Secure Scotland
Self-Directed Support Scotland
Shared Lives Plus
SIAA
Stonewall Scotland
Strathclyde Students' Union
STUC
Take Control South Lanarkshire
Talking Mats Ltd
The ALLIANCE
The Bingham Centre
The Community Policy Forum
The Paristamen CIO
The Scottish Women's Convention
Third Generation Project
Together Scotland
UNICEF UK
Unison
United Nations Association Scotland
Visibility Scotland
VOX Scotland
Welfare Scotland
West of Scotland Regional Equality Council
Who Cares? Scotland
Women for Independence
Y People
Youthlink Scotland
Zero Tolerance

Additional organisations supporting this submission are:

Grampian REC Ltd
Sikh Sanjog

ANNEX B

METHODS

To inform this joint submission, we worked together with the Scottish Human Rights Commission to convene a series of online civil society workshops. In November-December 2021, we held workshops with 166 participants from organisations from across Scotland, around:

- Religion and belief, and human rights
- Women's rights
- Children and young people's rights
- Race and human rights
- Mental health and human rights
- LGBTI rights
- Criminal justice and human rights
- Migrants' rights

We also held a 'big picture' workshop to capture cross-cutting issues around human rights in Scotland on 7th December 2021 – there were 74 participants in this workshop.

A full collation of all the issues raised in these workshops is available on our website at www.hrcscotland.org. Contributions from these workshops were combined with comments from Consortium members by email and from previous Consortium reports and meetings.

On 31st March 2022, we submitted a shortened version of this report to the UN Human Rights Council to inform the Universal Periodic Review of the UK in 2022.

We would like to thank our research student Sophia Simmill for her detailed work that helped to draft this submission, and to all our members and civil society organisations for their invaluable contributions and work.

FOOTNOTES

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