

# **A Human Rights Law For Scotland**

**- Will it deliver on rights and duties?**



**A Briefing Paper from the Jimmy Reid Foundation  
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The Jimmy Reid Foundation is a Scottish Charitable Incorporated Organisation  
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## **Jimmy Reid on “Alienation”, 1972**

The speech delivered by Jimmy Reid at his inauguration as Rector of Glasgow University in April 1972 became known as the ‘rat race’ speech, and the *New York Times* printed the speech in full, describing it as ‘the greatest speech since President Lincoln’s Gettysburg Address’. As a then communist and leader of the ongoing Upper Clyde Shipbuilders (UCS) work-in to fight for workers’ jobs, the address deals with the alienation we suffer, which remains true today as he included alienation from ourselves and other human beings as well as from nature and society.

“Society and its prevailing sense of values leads to another form of alienation. It alienates some from humanity. It partially dehumanises some people, makes them insensitive, ruthless in their handling of fellow human beings, self-centred and grasping. The irony is, they are often considered normal and well adjusted... Reject the values and false morality that underlie these attitudes. A rat race is for rats. We’re not rats. We’re human beings. Reject the insidious pressures in society that would blunt your critical faculties to all that is happening around you, that would caution silence in the face of injustice lest you jeopardise your chances of promotion and self-advancement. This is how it starts and before you know where you are, you’re a fully paid-up member of the rat-pack. The price is too high. It entails the loss of your dignity and human spirit.”<sup>1</sup>

## **About The Jimmy Reid Foundation**

The Jimmy Reid Foundation has been established in memory of Jimmy Reid and to continue the legacy of radical political thinking his life represented. It is an independent ‘think tank’ and advocacy group for the advancement of education focused on practical policy proposals for transforming Scotland, which are based on analysis and investigation of the current Scottish and global political, cultural and social situation.

The Foundation includes the full range of progressive politics in Scotland, and its work is based on a series of underpinning principles drawn from Jimmy’s own radical political thinking that:

- society should be based on equality and social justice
- people should have the democratic power to influence their workplace and social institutions
- quality of life should be at the forefront of political debate and not an afterthought
- justice can only come from peace and support for human rights
- ideas, learning, arts and culture have the power to transform society and individuals
- all these principles are underpinned by the importance of national identity and a vision for Scotland

This briefing paper has been written by Carole Ewart, a public policy and human rights consultant and member of the Jimmy Reid Foundation Project Board. It builds on the Foundation’s policy papers on human rights published in [2016](#), [2015](#) and [2020](#) and draws on our published work available on its [website](#).

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<sup>1</sup> Copies of “Alienation” are available from the Reid Foundation and reproduced by kind permission of the Reid Family.

## Overview

- This briefing is prompted by the current opportunity to respond to the Scottish Government's proposals to introduce a Human Rights Bill for Scotland on devolved matters. The consultation runs until 5<sup>th</sup> October, and the Bill will be introduced in this session of the Scottish Parliament and expected to be passed by 2026, before the next election.
- Current legislation on human rights, the Human Rights Act 1998 and the Scotland Act 1998, have failed to deliver the change anticipated and understanding the roadblocks is essential to make Scotland a 'rights respecting' country.
- The Scottish Government is carving a distinctive path to advance human rights law by expanding domestic delivery of United Nations' global standards at a time when the UK Government is seeking to limit and curtail rights as well as their enforcement. Scotland's distinctive approach is welcomed, but it is imperative that the current proposals are strengthened to ensure duties are upheld, daily and rights are enforced when duty bearers fail to comply.
- Human rights cover economic, social, cultural, civil, political and environmental rights and, therefore, provide a global set of minimum standards to deliver justice for all of us equally. However, there is frustration that positive words in inadequate legislation will fail to create the architecture of cultural, policy, funding and service changes to make a significant impact.
- Existing policy delivery, such as on Fair Work, must work in tandem with new Human Rights legislation, as the shared objective is to deliver worker's rights.
- The Human Rights Bill cannot be evaluated in isolation. Its operation is interdependent with the implementation of Scotland's second National Action Plan on Human Rights (SNAP 2), published in March 2023, and the outcome of the discussion document issued by the Scottish Human Rights Commission (SHRC) in June 2023, which identifies that the current call for 10 separate Human Rights Commissioners for Scotland reflects a frustration that the rights of some groups are overlooked.
- Human Rights obligations extend to the private sector through the UN's 31 Guiding Principles on Business and Human Rights, which cover issues such as transparency and procurement. Operationalising them in Scotland will be key to determining the success of the Scottish Government's distinctive human rights programme.
- Jimmy Reid Foundation supporters are not 'silent in the face of injustice'. Fifty one years on, it remains true that "A rat race is for rats. We're not rats. We're human beings." Ensuring that people and their families live in dignity, are treated fairly and with respect through human rights standards is a shared responsibility, so securing a robust human rights law is essential for human justice.

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## Abbreviations

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	CAT
Convention on the Elimination of All Forms of Discrimination Against Women	CEDAW
Convention on the Elimination of All Forms of Racial Discrimination	CERD
Convention on the Rights of the Child	UNCRC
Convention on the Rights of Persons with Disabilities	CRPD
Equalities and Human Rights Commission	EHRC
European Convention on Human Rights	ECHR
General Comment	GC
Human Rights Act 1998	HRA
International Covenant on Civil and Political Rights	ICCPR
International Covenant on Economic, Social and Cultural Rights	ICESCR
Scottish Human Rights Commission	SHRC
Scotland National Action Plan on Human Rights	SNAP 2
Sustainable Development Goals	SDGs
United Nations	UN
UN Guiding Principles on Business and Human Rights	UNGPs

## 1. Human Rights Bill Consultation

*Embedding international human rights in Scotland will further emphasise the importance of all people being treated with dignity, and ensure that human rights play an even more central role in our strategies, policies and decision-making processes across all areas of government and the wider public sector.<sup>2</sup>*

The Scottish Government consultation seeks your views on a new Human Rights Bill for Scotland that will incorporate international human rights standards into domestic law on devolved matters. The selected UN treaties have already been “ratified” by the UK, meaning that all laws and policies should currently comply. Failure to comply effectively has been repeatedly confirmed by the UN’s periodic reviews of the UK’s performance, including the devolved Nations, undertaken by the Committee responsible for seven separate Treaties as well as every five years by the UN Human Rights Council in a process called the Universal Periodic Review. This latter process was completed in November 2022 and resulted in the UN making 302 recommendations for action to deliver compliance.

The consultation on a Human Rights Bill for Scotland acknowledges that existing law, inquiries and high-level commitments on human rights have not made the practical difference anticipated, so something must change to make human rights compliance visible and practical for people across Scotland. The new human rights law will, therefore, strengthen existing duties and rights set out in the Human Rights Act 1998 and provisions in the Scotland Act 1998, such as section 57, which requires the Scottish Government to comply with the European Convention on Human Rights (ECHR) in legislation, policy and actions.<sup>3</sup>

### **‘Incorporating’ United Nation’s Human Rights Standards**

The focus is on giving four ratified UN treaties practical domestic effect through “incorporation” into Scot’s law and relate only to devolved matters. In each case, the treaties provide substantial rights and duties that impact on our daily lives. For example, on worker’s rights, the treaties are specific:

- The International Covenant on Economic, Social and Cultural Rights (ICESCR). There is a duty on the Scottish Government to progressively realise to the maximum extent of available resources the right of everyone to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions – Articles 2 and 11.<sup>4</sup>
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). There is a duty on the Scottish Government to eliminate discrimination against women in the field of employment, including the right to promotion, to receive vocational training and retraining, advanced vocational training and the right to equal remuneration, including benefits, and to equal

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<sup>2</sup> [Human Rights Bill consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot)

<sup>3</sup> [Scotland Act 1998 \(legislation.gov.uk\)](https://legislation.gov.uk) However this does not apply to an act of the Lord Advocate when prosecuting any offence, or in their capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland.

<sup>4</sup> [International Covenant on Economic, Social and Cultural Rights | OHCHR](https://www.ohchr.org/)

treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work – Article 11 (1).<sup>5</sup>

- The Convention on the Rights of Persons with Disabilities (CRPD). There is a duty on the Scottish Government to deliver the right of people with disabilities to work, on an equal basis with others, including the opportunity to gain a living by working in an environment that is open, inclusive and accessible to people with disabilities. There is also a duty to respect the right of disabled people to exercise their labour and trade union rights on an equal basis with others – Article 27.<sup>6</sup>
- The International Convention on the Elimination of all Forms of Racial Discrimination (ICERD). There is a duty on the Scottish Government to deliver the right to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration and the right to form and join trade unions – Article 5.<sup>7</sup>

The right to a healthy environment is also included in the proposals, extending to the right to live in non-toxic environments. Drawing on international obligations, the aim is to “meet the recommendations of the Aarhus Convention Compliance Committee and in particular to establish a clear, transparent and consistent framework to implement Article 9(4) of the Aarhus Convention (the right to remedies that are fair, equitable, timely and not prohibitively expensive).” The specific actions mentioned should apply to all of the human rights in the Bill as they include: awareness raising, promoting education and capacity building, access to information, public participation in decision-making, ensuring effective, affordable and timely remedies and suitable policies, planning and action.<sup>8</sup>

Three other ratified UN Treaties have been omitted from the proposed Bill:

- The UN Convention on the Rights of the Child (UNCRC). However, that is the subject of a separate legislation, the UNCRC (Incorporation) (Scotland) Bill, which, after the UK Supreme Court ruling, is still being amended by the Scottish Government, so it only applies to devolved matters.<sup>9</sup> It will then be brought back to Parliament for approval.
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).<sup>10</sup> This Treaty resonates with people because of what happened to some of their relatives and friends during the pandemic.<sup>11</sup> It is useful to note that in 2004, Mr Napier was successful in his case against Scottish Ministers as the court ruled they had acted unlawfully in terms of section 6 of the Human Rights Act 1998 and “*ultra vires* in terms of section 57 of the Scotland Act 1998” by acting in a manner incompatible with

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<sup>5</sup> [Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979 | OHCHR](#)

<sup>6</sup> [Convention on the Rights of Persons with Disabilities | OHCHR](#)

<sup>7</sup> [International Convention on the Elimination of All Forms of Racial Discrimination | OHCHR](#)

<sup>8</sup> Ibid pg 21

<sup>9</sup> [Incorporation of the UN Convention on the Rights of the Child | Together Scotland](#) and [UNCRC \(Incorporation\) \(Scotland\) Bill: Cabinet Secretary's statement - gov.scot \(www.gov.scot\)](#)

<sup>10</sup> [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment | OHCHR](#)

<sup>11</sup> [Terms of reference - COVID-19 Inquiry - gov.scot \(www.gov.scot\)](#) and [Scottish Covid-19 Inquiry \(covid19inquiry.scot\)](#)

Article 3 of ECHR and detaining him in conditions in which he was subject to degrading treatment in May and June 2001. As a result, Mr Napier had suffered loss, injury and damage, and he was awarded £2,450. The judgment was founded not only on the conditions which prevailed in C Hall of H.M. Prison Barlinnie, but upon the whole circumstances including the physical and mental effects and the state of his health. The case was prompted by the failure of the Scottish Prison Service to implement its policy to install integral sanitation in each cell, and evidence was heard about the importance of clean air and the impact on prison officers of prisoners emptying their 'potty' each morning.<sup>12</sup>

- The International Covenant on Civil and Political Rights (ICCPR). The assumption is that it is already reflected in the ECHR, which is given domestic effect through the Human Rights Act. However, not all ECHR rights are given domestic effect through the Human Rights Act, such as Article 13, the right to an effective remedy. Also, there are benefits of specifically including the ICCPR because of the UN Committee's work on developing guidance and rules on interpretation of rights such as Article 2(3a), the right to an effective remedy and access to information under Article 19.<sup>13</sup>

### **Interpreting Human Rights – UN Standards**

In interpreting the human rights for Scotland, the consultation acknowledges the importance of implementing existing UN resources, including the General Comments and recommendations of UN Committees<sup>14</sup>, Concluding Observations of the UN treaty monitoring bodies on UK practice, and "other mechanisms at the international or regional level."<sup>15</sup> This is an important development as it provides a substantial resource on the UK's failings on human rights and how to fix them.

For example, ICESCR General Comment (GC) 23 on Article 7 the right of everyone to the enjoyment of just and favourable conditions of work, includes "Fair wages and equal remuneration for work of equal value" and puts the right in the context of related international legal instruments, including those of the International Labour Organization (ILO) such as Hours of Work (Industry) Convention, 1919 (No. 1); Weekly Rest (Industry) Convention, 1921 (No. 14) and Minimum Wage-Fixing Machinery Convention, 1928 (No. 26). GC 23 is powerful as it places three levels of obligations on the Scottish Government:

1. The obligation to respect the right by refraining from interfering directly or indirectly with its enjoyment.
2. The obligation to protect requires measures to ensure that third parties, such as private sector employers and enterprises, do not interfere with the enjoyment of the right to just and favourable conditions of work and comply with their obligations. This includes taking steps to prevent, investigate, punish and redress abuse through effective laws and policies and adjudication.

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<sup>12</sup> [ROBERT NAPIER v. THE SCOTTISH MINISTERS \(scotcourts.gov.uk\)](https://www.scotcourts.gov.uk/robert-napier-v-the-scottish-ministers)

<sup>13</sup> [International Covenant on Civil and Political Rights | OHCHR](https://www.ohchr.org/en/instruments-treaties)

<sup>14</sup> This could include outcomes from 'Days of General Discussion'.

<sup>15</sup> This could include the work of Special Rapporteurs on Specific Themes such as on the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.



3. The obligation to fulfil requires the adoption of measures necessary to fully realise the right to just and favourable conditions of work. This includes introducing measures to facilitate, promote and provide that right e.g. through collective bargaining and social dialogue.<sup>16</sup>

A road map is offered on what compliance with duties looks like and what positive measures are expected, including:

- Legislation is an indispensable step, and the Scottish Government should “ensure the provision of judicial and other effective remedies that include, but are not limited to, administrative, financial, educational and social measures.”
- To ensure accountability, the Scottish Government “should establish a functioning system of labour inspectorates, with the involvement of social partners, to monitor all aspects of the right to just and favourable conditions of work for all workers, including workers in the informal economy, domestic workers and agricultural workers; to provide advice to workers and employers; and to raise any abuses with competent authorities.” Labour inspectorates should be independent, adequately resourced, staffed with trained professionals, have the authority to enter workplaces freely and without prior notice, make recommendations to prevent or remedy problems, facilitate access to justice for victims and have enforcement powers.
- The Scottish Government should identify indicators and benchmarks to monitor the implementation of the right to just and favourable conditions of work such as disaggregated by sex, age, disability, nationality and urban/rural location.<sup>17</sup>

How Scotland delivers on these UN Treaties, is periodically investigated by the UN. That periodic process is already underway on ICESCR with several evidence sessions in March 2023 in Geneva: attended by civil society from across the UK, including Scotland; attended by the national Human Rights Institutions, including the Scottish Human Rights Commission (SHRC) and the GB Equality and Human Rights Commission (EHRC). Subsequently, the UN Committee on ICESCR issued an extensive List of Issues on the UK, 42 with many sub-headings, and it is anticipated that a hearing in front of the Committee will be held later in 2024 or early 2025. Therefore, this UN process will run concurrently with the passage of the new Human Rights Law for Scotland.

### **Who are the Duty Bearers?**

Despite the ambition to give everyone equal access to rights, an inconsistent approach is taken in the Bill proposals to make it happen. The duties will apply to “certain public authorities”, so clarification is needed. It is reasonable to expect consistency with Section 6 of the Human Rights Act 1998, which is interpreted broadly as it applies to public authorities and those whose functions are of a public nature.

The intent is welcome as it provides a clear set of duties for the chosen public bodies, and the provision extends “so far as possible to private actors” carrying out

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<sup>16</sup>

[tinternet.ohchr.org/ layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11](http://tinternet.ohchr.org/layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11) Paras 58-60

<sup>17</sup> Ibid Paras 50-55

devolved public functions in Scotland. This is a recognition that the private sector has a significant role in delivering public services, such as health, but overlooks the role of the Third sector in delivering public services and services of a public nature, such as in childcare, social care, education and housing services.

### **Delivery of Rights and Duties**

The Scottish Government appears to accept that the delivery of rights and duties has been problematic as it states what specific actions are expected of designated bodies as a consequence of making rights “binding and justiciable” in devolved matters. It proposes that public bodies will “take targeted, concrete and deliberate steps, gather and deploy maximum available resources, and ensure non-retrogression of the rights”.<sup>18</sup>

The process of delivery is proposed to happen in a phased way to allow bodies to prepare for implementation, such as through training and capacity building for staff and boards. The Scottish Government proposes:

- **Initial procedural duty** on public bodies (and, so far as possible, private actors) delivering devolved public functions to build the rights into the fabric of their decision-making. This would apply for a period following the Bill passing to give duty-bearers time to prepare for a subsequent compliance duty. Guidance will be drafted to assist public authorities discharging it. The Scottish Government intends to work closely with stakeholders on the content.
- **Moving to a duty to comply with the rights**, for public bodies (and, so far as possible, private actors) delivering devolved public functions. The duty to comply will be demonstrated by progressively realising the rights and ensuring the delivery of minimum core obligations (MCOs). These will be developed, after the legislation is passed, through a participatory process. The proposal is to place a “duty to comply on duty-bearers in respect of the core ICESCR rights and the right to a healthy environment”.<sup>19</sup> There will be a “reporting duty for duty-bearers to be able to demonstrate the actions they are taking and intend to take to ensure the rights in the Bill are being advanced and built into decision-making.”

There is no scope to vary rights in UN treaties as they are globally understood to be minimum standards already, and that equates to MCOs. There is no hierarchy of rights, as each is important, and all are interdependent. Currently, the UK assures the UN that it is taking targeted, deliberate and concrete steps to comply with ratified UN treaties, so arguably, these obligations for delivery of rights and duties are not new.

The narrative assumes that compliance will be accepted and rolled out by designated bodies, including the private sector, as far as possible, but it is realistic to anticipate some challenges, especially when compliance with rights may result in a cost, e.g. the right to independent living under Article 19 of CRPD may require less input from companies providing care yet the service contract remains in force.<sup>20</sup>

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<sup>18</sup> [Human Rights Bill consultation - gov.scot \(www.gov.scot\)](http://www.gov.scot) Pg 16

<sup>19</sup> Ibid Pg. 29

<sup>20</sup> [Article 19 – Living independently and being included in the community | United Nations Enable](#)

## Leadership by Scottish Government and Scrutiny by Scottish Parliament

The engine of the new human rights law is compliance with duties as well as respect for rights. Therefore, Scottish Ministers and Parliament have leadership and scrutiny roles in ensuring this latest human rights law makes a practical difference.

- Scottish Ministers to publish a Human Rights Scheme to provide an overarching plan for implementation and reporting to Parliament to enable scrutiny of progress. A reporting cycle is to be established for periodic, detailed reports on the matters covered by the Scheme, such as progress on delivering Scotland's Second National Action Plan for Human Rights (SNAP2), embedding human rights in the budget and public awareness activity, including specifically an awareness campaign. It is proposed that the Bill "could set out some specific groups whom Scottish Ministers must consult in preparing the Scheme proposal", including those with "lived experience".
- Scottish Parliament pre-legislative review enhanced as it is proposed that "Public Bills (Government Bills, Members' Bills and Committee Bills) to be accompanied by a statement of compatibility about the extent to which the proposed Bill complies with the specific requirements provided for in the Human Rights Bill".<sup>21</sup>

The reports to Parliament on progress will be essential to monitor impact and outcomes. The content of the reports should mirror the proposed architecture for the equal enjoyment of rights.

- **Guidance and capacity building** across government and public authorities are acknowledged as "essential to ensure effective implementation."
- **Provide a clear set of duties for public bodies** (including, so far as possible, private actors) carrying out devolved public functions in Scotland.
- **Create and promote a multi-institutional approach** so that Government, Parliament, public bodies, courts and independent scrutiny bodies can work together to ensure rights are upheld and create a human rights culture.
- **Routes to remedy** will be enabled which are "accessible, affordable, timely and effective."
- **Effective remedies** are being reviewed. What action the court can take in cases arising from the Bill is under active consideration to provide "structural remedies" so that more people benefit from case decisions. (pg. 45)
- **Standing** is highlighted as important, i.e. who has the legal right to raise an issue with the courts for judicial review. It is explained that the current test for judicial review, 'sufficient interest', enables more people to participate in cases than the narrower Human Rights Act 1998 "victim test". Enabling the SHRC and Scotland's Commissioner for Children and Young People to bring proceedings is cited as an advantage as it "would strengthen the ability of those bodies to support individuals and address systemic issues through the courts." (pg. 43)

Building the capacity of human rights defenders to participate in scrutiny should be an important part of the process too. However, budget cuts increasingly mean that frontline services are prioritised, so the capacity of staff to engage may be limited.

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<sup>21</sup> Pg. 51

Currently, under section 29 of the Scotland Act 1998, MSPs already have a duty to ensure that any Bill complies with the ECHR. Some Bills are controversial from a human rights perspective and deserve rigorous and informed scrutiny such as section 65 of the Victims, Witnesses and Justice Reform (Scotland) Bill which would allow Scottish Ministers to pilot single judge rape trials i.e. the accused would be deprived of a trial by jury. The Bill is currently progressing through the parliamentary process and is widely opposed.

### **Accountability, Exercising Rights and Enforcing Duties**

The Scottish Government is seeking to “build a multi-institutional approach that embeds a culture of human rights-based thinking across the public sector and puts human rights at the heart of decision-making”. In a departure from previous decisions, accessible remedies are proposed when things go wrong, including new powers for the Scottish Human Rights Commission (SHRC) to address rights breaches and improve compliance with duties. The legislation establishing the SHRC in 2006 specifically barred it from advising or representing victims of human rights abuses in claims or legal proceedings.<sup>22</sup>

The challenge for organisations is to avoid problems arising and to get it right first time. However, that means understanding human rights, how to deliver the duties and what needs to be in place to make the right decisions on policy, services and funding. There also needs to be consensus on what human rights are, and that can be problematic.

### **Lived Experience Boards**

The Minister’s Introduction to the consultation asserts that “Scotland is a modern, inclusive nation which respects, protects, and fulfils all internationally recognised human rights.” Whilst this ambition is shared, the reality is quite different, backed up by evidence contained in reports, inquiries, surveys, submissions and reports from regulators and civil society. This prompted the Scottish Government to set up a ‘Lived Experience Board’ to ensure the new Human Rights Bill was informed by the barriers people face to enjoying their human rights and what is proposed is realistic and hits the mark. There are three separate groups within the Lived Experience Board convened by the Human Rights Consortium Scotland, the Scottish Commission for People with Learning Disabilities and Together Scotland. Whilst not one focused on workers’ rights, employment, under-employment, poverty and social injustice were raised along with issues such as enforcement of rights.

The Scottish Commission for People with Learning Disabilities (SCLD) created the Human Rights Lived Experience Board, made up of 15 people who either have learning disabilities or are an advocate/supporter of a person with a learning disability. They focused on what needs to change to create a Bill that works, and its recommendations included:

- The new Human Rights Bill must ensure that incorporation of the UN CRPD into domestic law is followed by an audit of all legislation and policy to ensure compliance with the Convention. This audit should include the Mental Health (Care and Treatment) (Scotland) Act (2003) and the recently published review of this Act.

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<sup>22</sup> Scottish Commission for Human Rights Act 2006, section 8.

- The new Human Rights Bill must use positive, supportive language that enables inclusivity by promoting mandatory human rights-based education and adapted communication and accessibility within public services as a critical aspect of human rights realisation.

SCLD was selected as one of the delivery groups because people with learning disabilities continue to experience systemic discrimination from birth onwards due to institutional and individual stigma and discrimination. In the ‘State of our Rights - the human rights issues facing people with learning disabilities in Scotland (2021–2023)’ the evidence is powerful:

- Before the COVID-19 pandemic, best evidence suggested that people with learning disabilities died 20 years earlier than the general population.
- The Scottish Learning Disability Observatory found that premature mortality from preventable illnesses was 12 times higher for children and young people with learning disabilities, compared to other children and young people. For girls and young women, the risk of death was 17 times higher than their non-disabled peers.
- Data from Scotland shows that people with learning disabilities were at least three times more likely to die from COVID-19 than the general population.
- According to a UK-wide longitudinal study, over a quarter (27%) of people with learning disabilities and 58% of people with more severe learning disabilities used day services before the pandemic started. The same study found that in December 2020, almost all day, respite and community services had stopped.
- Only 4.1% of adults with learning disabilities in Scotland are in paid employment due in part to poor educational opportunities and transition planning alongside negative assumptions about people. As a result of low levels of employment, people with learning disabilities are prevented from establishing economic security.<sup>23</sup>

The report proposes solutions to capitalise on a range of opportunities, including that “the Scottish Government and relevant stakeholders implement the recommendations from the ‘Review of Supported Employment within Scotland’ (2021).<sup>24</sup> SCLD is clear that people with learning disabilities are not demanding anything special or different just to “have their human rights respected, protected and fulfilled in the same way as every other Scottish citizen. The current Scottish legislative framework does not provide this.”<sup>25</sup>

### **Evaluating the Proposals**

Compliance with human rights law fits in with the broader agenda of the Scottish Government and multiple delivery routes such as FairWork, delivery of the Sustainable Development Goals through the National Performance Framework and specific measures such as increased funding for housing announced in the 2023 programme for Government. However, the overarching framework is limited as the only Treaty proposed for full incorporation is ICESCR, and that creates an uneven

<sup>23</sup> [The State of Our Rights \(scld.org.uk\)](https://www.scld.org.uk) Pgs. 28 - 40

<sup>24</sup> Ibid, pg 41

<sup>25</sup> [‘The State of Our Rights’ - report and resources now live - SCLD](#)

playing field for rights. Critics of the proposals argue all four listed Treaties need to be incorporated equally.

The proposed Bill builds on existing law and makes an impact by changing culture, practice and outcomes. Resources will be needed to make that happen and ensure that people have access to an effective remedy. Giving representation and enforcement powers to the SHRC will be key and addresses the advice and representation deficit created in 2006 as the EHRC has always been able to take up cases for people, although is limited given its funding from the UK Government.

## 2. Where are Human Rights in Scotland Now?

### Progress to Date

Twenty five years after the Human Rights Act was passed, which placed obligations on public services and those delivering services of a public nature to comply with the ECHR, there is insufficient explicit evidence of compliance and case examples to show how the law has made a difference. Although people own their human rights, there is a lack of evidence on the levels of public awareness. For people to equally enjoy their human rights, they must know about them sufficiently to claim, exercise and enforce them.

The soft power of human rights law has been shown in a number of ways, such as in the Social Security (Scotland) Act 2018, which included the principle “social security is itself a human right and essential to the realisation of other human rights”.<sup>26</sup> Human Rights are also rooted in the Fairer Scotland Duty, and the Guidance issued by the Scottish Government in 2022 points out, “Approaching this Duty in the right way will also help public bodies meet their obligations under the Human Rights Act 1998 (HRA) and international human rights law and to deliver their services appropriately.”<sup>27</sup>

When Police Scotland was established in 2010, an oath was introduced which included a duty to uphold human rights. The Code of Ethics for Policing in Scotland sets out the standards for those who contribute to policing in Scotland, and one element is the delivery of human rights. It is not a discipline code, but what people aspire to be through a practical set of measures and accepting individual responsibility:

- I shall ensure my actions and policing operations respect the human rights of all people and officers. I understand that I will also enjoy these same human rights...
- I will not encourage, instigate or tolerate any act of torture or inhuman or degrading treatment under any circumstance. Nor will I stand by and allow others to do the same.
- I understand that people have an equal right to liberty and security. I will not deprive any person of that liberty, except in accordance with the law.<sup>28</sup>

Police Scotland does offer an example of how mainstreaming a culture of human rights within an organisation can happen, but it also needs to be evaluated for operational impact and service delivery.

### ICECSR Delivery in Scotland?

The latest periodic review of the UK’s compliance with ICESCR is underway, and the List of Issues (LOIs) produced on the UK is evidence of the benefits of incorporating ICESCR as well as how much still needs to be done to enable compliance. The Committee has identified numerous areas for which more information and statistics are needed, and examples of the issues relating to Scotland include:

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<sup>26</sup> Section 1(b) [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2018/12/section/1/b)

<sup>27</sup> [Supporting documents - Fairer Scotland Duty: guidance for public bodies - gov.scot \(www.gov.scot\)](https://www.gov.scot/supporting-documents/fairer-scotland-duty-guidance-for-public-bodies)

August 2022, pg 20.

<sup>28</sup> [Code of Ethics for policing in Scotland - Police Scotland](#)

- Right to physical and mental health (art. 12) Please provide information on the impact of the COVID-19 pandemic on the National Health Service in all jurisdictions of the UK, including the backlog of operations, procedures, medical examinations and other medical procedures, wait times and the working conditions of health service personnel. (Para 34)
- Right to just and favourable conditions of work (art. 7) With reference to the Committee's previous concluding observations,<sup>29</sup> please provide information on the measures taken, and on their impact, to reduce the use of temporary employment, precarious self-employment and "zero-hour contracts" in all jurisdictions of the State party. Please provide information on measures taken and their impact in addressing the overrepresentation of disadvantaged and marginalized individuals and groups working on zero-hour contracts and increase their options to choose more secure working conditions and employment contracts. (Para 16)
- Right to an adequate standard of living (art. 11) The extent of overcrowded housing in all jurisdictions of the State party, including statistical data disaggregated by region, sex, gender, age, disability, ethnicity, income and other relevant indicators over the last five years. (Para 30 (d) )

The Committee requests that the UK submits in writing the information requested, preferably not exceeding 10,700 words, by 29th March 2024.

### **SHRC and Enforcement of Rights**

The SHRC has powers to undertake training and education and to hold inquiries, but it is specifically barred from undertaking casework or even advising people who are thinking of taking a case.

The SHRC's launch of a discussion paper, 'At a Crossroad, which way now for the human rights system in Scotland?' is an acknowledgement of issues around its remit, which had prompted the Equality and Human Rights Committee of the Scottish Parliament in 2018 to recommend a review of its powers. The SHRC acknowledges the "Lived experience of people in communities across Scotland demonstrates a significant gap between rights and reality. The question for Scotland, as a right respecting country, is how best to truly close this gap."<sup>30</sup>

The SHRC's paper shows the extent of dissatisfaction with the status quo as it lists the 10 different Commissions and Commissioners already proposed to highlight human rights abuses of particular groups such as women and older people and address particular issues such as 'patient safety'. It is inspired by a realisation that the current regulatory and enforcement mechanisms are falling short of expectations. The paper discusses options for increasing the powers of the SHRC and presents three options or a mix of them all. Strengthening the powers of the SHRC can be delivered through the Human Rights Bill with the purpose of securing compliance by duty bearers as well as ensuring people can claim, exercise and enforce their rights.

<sup>29</sup> [E/C.12/GBR/CO/6](#), para. 32.

<sup>30</sup> <https://www.scottishhumanrights.com/news/crossroads-which-way-now-for-the-human-rights-system-in-scotland/> pg. 5.



## SNAP 2

Scotland's National Action Plan on Human Rights (SNAP 2) was launched in March 2023 and is the second strategic action plan to mainstream human rights delivery across Scotland. The first ran from 2013 - 2017 with little evidence of impact. It has taken six years to move to a second SNAP.

SNAP 2 includes the seven UN Treaties, the ECHR and the Human Rights Act in so far as they relate to devolved powers. It covers organisations delivering devolved functions and devolved powers too and understands the importance of rights and duties as well as actions, and lists a number which are realistic and measurable. Examples include:

- “To better respect, protect and fulfil the right to work, carry out a human rights review of people’s experiences and develop a best practice workers’ rights framework. Particular focus on people who experience the greatest barriers to realising their right to work, including disabled people, people with learning disabilities and autistic people, care experienced people, minority ethnic people, lone parents, women, LGBTQIA+ people, older people, and unpaid carers.<sup>31</sup>
- Everyone in Scotland has economic, social and cultural rights, regardless of where they were born or their immigration status. However, migrants – including those with No Resource to Public Funds, EU citizens that have been impacted by Brexit, and those born elsewhere who now live in Scotland – face some of the most serious risks to these rights. Even though immigration is a reserved matter for the UK Parliament, action can be taken in Scotland to help progressively realise the economic, social and cultural rights of migrants in a collaborative way. (pg 43)

The independent SNAP 2 Secretariat has now moved into the Directorate for Equality, Inclusion and Human Rights within the Scottish Government. The momentum for change, generated by the SNAP 2 process as well as the report’s contents, must be maintained as well as progressing concurrently a robust human rights law for Scotland.

### Human Rights and the Private Sector

The 31 UN Guiding Principles on Business and Human Rights (UNGPs) set out the state’s duty to protect human rights and the corporate responsibility to respect human rights.<sup>32</sup> Remedies must also be available to prevent and address human rights abuses. To put the global agenda in a domestic context, the Scottish Parliament hosted a conference in October 2010 to discuss these issues, which was attended by over 80 countries as well as UN staff. The UNGPs provide an integrated framework for making Scotland fairer and more accountable, including:

- UNGP No 8: ‘the UK “should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State’s human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.”

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<sup>31</sup> [SNAP-2-March-2023-FINAL-PDF.pdf \(snaprights.info\)](#) Pg 32

<sup>32</sup> At [GuidingPrinciplesBusinessHR\\_EN.pdf \(ohchr.org\)](#)

- UNGP No 5 the UK “should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.”
- UNGP No 4 the UK “should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the UK, or that receive substantial support and services from UK agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.’
- UNGP No 6 the UK “should promote respect for human rights by business enterprises with which they conduct commercial transactions.”

The UK was the first country to adopt a ‘National Action Plan on Business and Human Rights’ (NAP) in 2013, based on the UNGPs, and has periodically reviewed and updated on progress such as in May 2020. The latest update is based on the three UNGP pillars: duties of the state, expectations for business, and access to remedy.<sup>33</sup> The duties delivered include passing the Modern Slavery Act. There is no separate Scottish document despite a published baseline assessment<sup>34</sup>, so the UK-wide NAP still applies. The Scottish Government is already committed to delivering the UNGPs<sup>35</sup>, which is recognised in SNAP 2:

- Developing a Business and Human Rights Action Plan was an action for SNAP 1 (2013-2017), and although work began on a draft, a final plan has not been published. If Scotland continues with developing a Business and Human Rights Action Plan, it is important that this is coordinated with SNAP as the national human rights action plan.
- Monitor and review Scottish Government’s development and implementation of the emerging Scottish Business and Human Rights Action Plan.<sup>36</sup>

## Conclusion

Integrating all these strands of human rights work and linking them to current initiatives such as Fair Work is essential to provide a strategic focus, delivery and evaluation of a distinctive Human Rights Law in Scotland covering the public, private and third sectors.

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<sup>33</sup> At [UK National Action Plan on implementing the UN Guiding Principles on Business and Human Rights: progress update, May 2020 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/uk-national-action-plan-on-implementing-the-un-guiding-principles-on-business-and-human-rights-progress-update-may-2020)

<sup>34</sup> Advertised in May 2015 at [National Baseline Assessment on Business and Human Rights \(government-online.net\)](https://www.gov.scot/publications/national-baseline-assessment-on-business-and-human-rights/government-online.net/) and progress at [Business and Human Rights – Scotland's National Action Plan for Human Rights \(snaprights.info\)](https://www.gov.scot/publications/business-and-human-rights-scotland-national-action-plan-for-human-rights/snaprights.info/)

<sup>35</sup> [Human rights - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/human-rights/gov.scot/)

<sup>36</sup> Pgs. 42 and 44 [SNAP-2-March-2023-FINAL-PDF.pdf \(snaprights.info\)](https://www.gov.scot/publications/snap-2-march-2023-final-pdf/snaprights.info/)

### 3. Current Issues Through a Human Rights Lens

The following snapshot of issues demonstrates how human rights are at the core of our daily lives. The issues provide evidence to support significant improvement in the delivery of rights and compliance with duties in Scotland.

#### Disabled People's Rights – Evidencing Harm

In August 2023, the Scottish Human Rights Commission presented its evidenced conclusions to the UN Committee on the Rights of People with Disabilities. The Committee session was part of the process to review progress on its 2016-17 inquiry into grave and systemic violations of the UN CRPD in the UK. The UK Government declined to attend the session.<sup>37</sup>

The SHRC acknowledged that the range of devolved powers in Scotland across which the Scottish Government “must implement disabled people’s rights” include education policy, health, justice, social care, some aspects of social security and transport, among many others. However, it stated, “For disabled people, this distinction between ambition and outcomes is extremely acute.” It concludes that “the Scottish Government, and other Scottish public bodies such as local authorities or the new social security agency, have not done enough to progress the protection of disabled people rights. Where there have been developments, they have not been ambitious enough or sufficiently resourced to withstand the socio-economic challenges that have occurred since 2016.”

One of the reasons cited is that “The founding legislation for Scottish social security adopts a human rights based approach with a reference to the right to social security in the legislation. However, this is not accompanied with a duty to comply, which would have strengthened the connection with international standards. There is also a lack of specific remedy for a breach of the right to social security, which limits the opportunity for accountability for disabled people.<sup>38</sup>

Issues on poverty, discrimination and exclusion are considered too, such as that unemployment, underemployment and economic inactivity rates are disproportionately high for disabled people and in 2021, Scotland had the highest disability employment gap in the UK - at 18.5%. And the SHRC recommends the Scottish Government undertake a variety of strategic measures, including that it ‘Fully adopts and properly implements human rights budgeting to ensure sufficient resources are mobilised and appropriately spent to meet disabled people’s needs.’<sup>39</sup>

#### Health and Safety – Evidencing Harm

Currently, the ECHR provides for the right to life under Article 2 and security of person under Article 5. The ECHR is given domestic effect through the Human Rights Act 1998.

In February 2023, NHS Scotland issued a Safety Action Notice, which warned that *reinforced autoclaved aerated concrete* (RAAC) could be present in more than 250 of its buildings. The notice said roofs, walls and flooring made of RAAC were at “risk

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<sup>37</sup> [Government side-stepping UN examination ‘shows contempt for disabled people’ – Disability News Service](#)

<sup>38</sup> [shrc-statement-uncrpd-29th-session-280823-final.pdf \(scottishhumanrights.com\)](#) p.g. 3

<sup>39</sup> Ibid, pgs. 6- 7

of catastrophic structural failure”, which could occur “suddenly” and “without warning”. NHS Scotland has since completed a “desktop survey” of its estate, which has identified 254 NHS buildings that “have two or more characteristics which are consistent with the presence of RAAC” and on-site investigations, which could take up to eight months to complete, are now underway to determine whether RAAC is actually present.

The First Minister has said schools in Scotland will remain open during any required remediation works, and calls are growing for social housing landlords to embark on an urgent programme of inspections to establish whether their stock contains the material. It has been pointed out that “RAAC was widely used in the construction of social housing between the 1950s and 1990s yet no nationwide survey of social housing has been conducted so the extent of the problem is unknown. Thorough checks of housing stock will be the only way to fully understand the size and scale of any problems.”<sup>40</sup>

### **Right to Education – Evidencing Harm**

Under ECHR Protocol 1, Article 2, everyone has the right to education, not just children. Together with Article 14 of the ECHR, this right should be equally enjoyed.

In 2020, Scotland’s poorest schools were four times more likely than private schools to have passing Higher grades changed to a fail by the moderation system deployed by the SQA because of the COVID-19 lockdown. When exams were cancelled for the first time ever in Scotland, the SQA was tasked with awarding grades using teacher estimates and a system of moderation. However, about 75,000 pupils had to be issued with new grades after the SQA moderated teacher estimates for children from poor areas more harshly than those in affluent postcodes.<sup>41</sup>

A report by Audit Scotland has pointed out the increased risks to the college sector’s financial sustainability since 2022. It has laid bare the financial crisis facing the college sector with an 8.5% real terms reduction in Scottish Government funding between 2021/22 and 2023/24, at a time when costs have increased. This same report has outlined the risks, repeatedly voiced by the EIS, regarding cuts to provision and the impact on opportunities for people across Scotland to access further education. There is a growing concern about an apparent de-prioritisation of Education, including FE, which is a vital part of the public sector, particularly for working-class communities.

### **Modern Slavery – Evidencing Harm**

Under Article 4 of the ECHR, no one shall be held in slavery or servitude, and no one shall be required to perform forced or compulsory labour.<sup>42</sup>

The Modern Slavery Act 2015 consolidates and strengthens legislation, increases penalties, and certain commercial organisations must publish an annual statement setting out the steps they take to prevent modern slavery in their business and their

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<sup>40</sup> Scottish Housing News 5<sup>th</sup> September 2023 [Calls grow for RAAC social housing inspection programme | Scottish Housing News](#)

<sup>41</sup> Published October 2020 [Revealed: Poorest Scots schools hit four times harder in SQA results scandal | The National](#)

<sup>42</sup> [European Convention on Human Rights \(coe.int\)](#)

supply chains under section 54, “Transparency in Supply Chains”.<sup>43</sup> Victims have now been found in every local authority area in Scotland, and this suffering encompasses people of all ages and nationalities. In 2019, the majority of slavery victims rescued in the UK were British. Current statistics suggest that one in four victims is a child, and 70% of all victims are female.<sup>44</sup>

In 2022, 621 victims of trafficking and exploitation were identified in Scotland and referred to the UK-wide National Referral mechanism. Of those, 405 were adults (18 and over), and 187 were children (17 and under), with the age of the remainder undetermined. Most referrals were for labour exploitation.<sup>45</sup>

### **Conclusion**

It is easy to focus on the negatives and miss the achievements of current human rights law. However, it is the extent of problems with compliance that is driving the new human rights law for Scotland.

The scrutiny role of Parliament is important, but so are the powers of regulators in evaluating performance, such as the SHRC and Audit Scotland. For the new human rights law to work, there needs to be transparency, accountability and scrutiny of impact and outcomes to ensure Scotland is a ‘rights respecting society’.

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<sup>43</sup> [Publish an annual modern slavery statement - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/publish-an-annual-modern-slavery-statement)

<sup>44</sup> [Scotland Against Modern Slavery](https://www.scotland.gov.uk/topics/modern-slavery)

<sup>45</sup> [Police Scotland hosts major anti-human trafficking conference in partnership with the Santa Marta Group - Police Scotland](https://www.policescotland.gov.uk/news/2022/04/policescotland-hosts-major-anti-human-trafficking-conference-in-partnership-with-the-santa-marta-group)

#### 4. UK Government and Human Rights

The UK and Scottish Governments have pursued distinctive paths to respect and promote human rights, with the former currently choosing a restrictive approach, whereas the latter is actively seeking to extend rights and duties.

The UK Government proposed to abolish the Human Rights Act and introduce a more limited set of rights in a 'Bill of Rights Bill'. However, it was announced in June 2023 that it had abandoned the Bill, which was being driven forward by Deputy Prime Minister Dominic Raab, who resigned in April 2023 after a bullying inquiry found he acted in an "intimidating" and "aggressive" way towards officials. This Bill followed on from the Conservative Party Manifesto commitment to "update the Human Rights Act and administrative law to ensure that there is a proper balance between the rights of individuals, our vital national security and effective government."<sup>46</sup>

Arguably, the UK Government is achieving its ambitions through separate legislation to curtail human rights protections of certain people such as migrants. For example, the Illegal Migration Act 2023 prompted the UN High Commissioner for Human Rights and the UN High Commissioner for Refugees to point out that this new law is at variance with the UK's obligations under international human rights and refugee law. The faults in the legislation include ignoring existing duties which prohibit refoulement and collective expulsions, disregarding the right to due process, to family and private life, and the principle of best interests of children concerned. The effect of the legislation is to extinguish "access to asylum in the UK for anyone who arrives irregularly, having passed through a country – however briefly – where they did not face persecution. It bars them from presenting refugee protection or other human rights claims, no matter how compelling their circumstances. In addition, it requires their removal to another country, with no guarantee that they will necessarily be able to access protection there. It creates sweeping new detention powers, with limited judicial oversight."<sup>47</sup>

External scrutiny of the UK's performance on human rights also appears to be controversial. The UN's periodic reporting of UK compliance is facing several delays because UK Government reports were late such as on ICESCR, CERD and CEDAW. Also, at the recent meeting of the UN Committee on the Rights of Persons with Disabilities in August 2023, the UK Government declined to attend the session but did reiterate its commitment to delivering CRPD.<sup>48</sup>

However, promoting compliance with international human rights law remains a strategic part of the UK's Foreign Policy. In August 2023, the Foreign Secretary James Cleverly was reported to have had 'tough conversations' with China on human rights<sup>49</sup> whilst Home Secretary Suella Braverman repeated her commitment

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<sup>46</sup> [Conservative Party Manifesto 2019 \(conservatives.com\)](https://www.conservatives.com/1537707/press-releases/2019/10/conservative-party-manifesto-2019) Pg 48.

<sup>47</sup> UN Press Release 18<sup>th</sup> July 2023 [UK Illegal Migration Bill: UN Refugee Agency and UN Human Rights Office warn of profound impact on human rights and international refugee protection system | OHCHR](https://www.unhcr.org/press-releases/2023/07/uk-illegal-migration-bill-un-refugee-agency-and-un-human-rights-office-warn-of-profound-impact-on-human-rights-and-international-refugee-protection-system-ohchr)

<sup>48</sup> [Government side-stepping UN examination 'shows contempt for disabled people' – Disability News Service](https://www.bbc.com/news/health-67414444)

<sup>49</sup> [Foreign Secretary visits Beijing to further British interests - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/foreign-secretary-visits-beijing-to-further-british-interests)

to withdrawing the UK from the European Court of Human Rights. In her interview, she did confirm that the UK Government was not currently thinking about that.<sup>50</sup> The consequences would be huge domestically and internationally as it would automatically mean the UK would leave the Council of Europe.

In this context, any attempt by the Scottish Parliament to extend human rights protections to reserved matters in Scotland will be contentious with the UK Government. Although the UNCRC (Incorporation) (Scotland) Bill was passed unanimously by the Scottish Parliament in 2021, the UK Government was unhappy with the 'reach' of the Bill and the consequent duties it could inherit even though it repeatedly assures the UN Committee on the Rights of the Child that it is fully compliant with the CRC. It should be remembered that two legal teams had examined the Bill and assessed it as legislatively competent: in the Scottish Government and the Scottish Parliament.

The UNCRC Bill was referred by the UK Government to the Supreme Court. After hearing a variety of evidence, the Court ruled the Scottish Government must amend the Bill, so it only applies to devolved matters. Two years later, that process is still ongoing.<sup>51</sup>

## **Conclusion**

The distinctive Scottish approach to respecting, protecting and fulfilling human rights is to be welcomed. It builds upon legislation domestic, regional and international law and sets a benchmark for the rest of the UK. However, this distinctive approach needs to make a distinctive impact, and that requires cultural change as well as operational and financial decisions to ensure the spending of public money is human rights compliant. Legal change in isolation is insufficient to make Scotland fairer.

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<sup>50</sup> [Suella Braverman restates wish for UK to leave European court of human rights | Suella Braverman | The Guardian](#)

<sup>51</sup> [Incorporation of the UN Convention on the Rights of the Child | Together Scotland](#) and [UNCRC \(Incorporation\) \(Scotland\) Bill: Cabinet Secretary's statement - gov.scot \(www.gov.scot\)](#)

## 5. Conclusions and Next Steps

*By giving domestic legal effect to these standards, Scotland can ensure that focused attention on fundamental rights like health, housing and an adequate standard of living is not a political choice. This Bill will therefore help to tackle poverty and inequality, aid the delivery of a better environment for our future generations to enjoy, deliver stronger public services and improve the lives of those who are most marginalised and disadvantaged in our society.* Minister's Introduction.

Introducing a Human Rights Bill in Scotland is welcomed and will be delivered in this session of parliament, confirmed in the 2023 programme for Government. The ambition is clearly to make a difference in everyday places by empowering people to own, claim, exercise and enforce their rights. The new law has the power to connect with a variety of policy and service initiatives and strengthen their delivery and impact. For example, the proposed Bill could put the principles of Fair Work on a legal footing through the incorporation of ICESCR. Although the Scottish Government has determined that Scotland will become a Fair Work Nation by 2025, the voluntary nature of the Fair Work agenda makes its impact limited.

The Jimmy Reid Foundation is focused on practical policy proposals for transforming Scotland, which are based on analysis and investigation of the current Scottish and global political, cultural and social situation. Its Policy Papers of 2015, 2016 and 2020 correctly predicted that little progress on human rights delivery would be made without first establishing the fundamentals: clear consequences for public bodies when they fail to comply with existing human rights law; effective remedies for right holders to equally assert their human rights when breaches occur. In its current format, the proposals for a Human Rights Bill are vague on the specifics, but there is an apparent will to make human rights work. We need to build on that Scottish Government commitment by working with wider civil society and those holding human rights duties to champion change.

### Recommendations

- 1. Build interest in the Bill and encourage responses.** The JRF should continue to engage on this issue and promote responding to this consultation with the deadline of 5th October 2023. The focus should be on the enforcement of rights and duties.
- 2. Lived Experience Board on Worker's Rights** The contents of the Bill and delivery of the legislation would benefit from a Lived Experience Board on Workers' Rights, which meets regularly to make informed input as a reaction to what is proposed and promote the agenda of workers such as alternatives to how business operates in the public, third and private sectors. For example, the JRF paper 'Democracy in the Workplace' (2016) proposes establishing and extending democracy at work<sup>52</sup>, to address a common problem about the absence of an effective voice in many workplaces.
- 3. Delivering SNAP 2 Actions** There is a role for the JRF to work with the Scottish Government on the delivery of SNAP Actions, especially to carry out a human rights review of people's experiences and develop a best practice workers' rights framework with particular focus on people who experience the greatest barriers to realising their right to work.

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<sup>52</sup> [Other Publications – The Jimmy Reid Foundation](#)