

Scotland

Scottish Human Rights Commission (SHRC)

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

The Scottish NHRI was last reaccredited with A status in March 2015. The SCA acknowledged the existence of good practices in the selection and appointment processes of the Chair and members of the NHRI and suggested to formalise such broad and transparent processes in the enabling law. The SCA also recommended to include in the NHRI's enabling law requirements for an independent and objective dismissal process. Finally, the SCA, while expressing appreciation for the NHRI's work, encouraged the NHRI to continue advocating for an appropriate provision of funding and for amendments to its enabling law to include a broader human rights mandate and ensure a free determination of the form and content of all the NHRI's reports.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

Brexit has had an impact on the environment in which SHRC operates, and the loss of the protections contained in the EU Charter on Fundamental Rights will result in a reduction in the protection of substantive rights.

SHRC sits on the National Taskforce for Human Rights Leadership. The taskforce is working to establish a statutory framework for human rights that will incorporate international human rights into Scots law. This work is, in part, in response to the loss of rights protections caused by Brexit.

References

- EHRC published legal advice received from senior independent counsel Jason Coppel QC. <https://www.equalityhumanrights.com/sites/default/files/eu-withdrawal-bill-legal-advice-jason-coppel-qc.pdf>
- Discussion Paper on Brexit Colin Murray, Aoife O'Donoghue and Ben Warwick: http://www.nihrc.org/uploads/publications/Discussion_Paper_on_Brexit.pdf
- <https://www.gov.scot/groups/national-taskforce-for-human-rights-leadership/>

Human rights defenders and civil society space

SHRC has not carried out specific work in this area; however, we draw attention to calls for the third sector and civil society in Scotland to be appropriately and sustainably resourced, supported and trained.

The Scottish Council for Voluntary Organisations (SCVO) State of the Sector report 2020 indicates that of the £6.06bn Scottish civil society income, a third comes from the public sector who are often duty bearers. While it is welcome that duty bearers are funding core human rights work, it is important that there are procedural safeguards in place to ensure civil society are able to hold duty bearers to account and express their views freely.

References

- See, for example, submission of the Health and Social care Alliance Scotland (the ALLIANCE) to the Equalities and Human Rights Committee call for evidence on Human Rights and the Scottish Parliament, 16 March 2018. Available at: https://www.parliament.scot/S5_Equal_Opps/Submission_from_Health_and_Social_Care_Alliance_Scotland.pdf
- SCVO State of the Sector report 2020 available at: <https://scvo.org.uk/policy/sector-stats>

Checks and balances

Brexit legislation passed at UK level presents concerns around parliamentary scrutiny and oversight. The European Union (Withdrawal) Act 2018 gave Ministers wide delegated powers and what are known as Henry VII powers. Delegated powers allow Ministers to use 'delegated legislation', usually in the form of statutory instruments, to address issues that would otherwise need to be dealt with in primary legislation. Henry VII powers are clauses

that enable Ministers to amend or repeal provisions in Acts of Parliament using secondary legislation. These powers are controversial as they can shift power to Ministers. There are concerns around legislative changes being made routinely by way of statutory instrument. Statutory Instruments progress very quickly, are difficult to track and they are subject to a much less parliamentary scrutiny. Brexit legislation affords powers to Ministers at both Westminster and devolved levels.

SHRC supported the drafting and launch of the Scotland Declaration on Human Rights, calling for human rights and equality to be at the heart of Scottish society following Brexit. The Declaration was signed by 170 civil society organisations across Scotland.

References

- <https://www.scottishhumanrights.com/other-issues/exiting-the-eu/>. See also resources produced by SULNE (Scottish Universities Legal network on Europe)'s position papers <https://sulne.ac.uk/position-papers/>
- <https://humanrightsdeclaration.scot/>

Functioning of justice systems

SHRC highlighted some concerns regarding the legal aid system in Scotland in its parallel report in relation to the UK's compliance with the International Covenant on Civil and Political Rights. Although the legal aid budget increased in 2018/19, the increase was allocated to administrative costs rather than legal aid itself. Independent research into Legal Aid firms also highlights some key concerns with the system, including poor rates of pay, "undue bureaucracy and extreme micromanagement performed by the Scottish Legal Aid Board".

References

- <https://www.lawscot.org.uk/media/10079/legal-aid-financial-health-report-february-2017.pdf>
- Scottish Government (2016), 'The Court Fees (Miscellaneous Amendments) (Scotland) Order 2016 Equality Impact Assessment'. Available at: <https://www.gov.scot/publications/court-fees-miscellaneous-amendments-scotland-order-2016-equality-impact-assessment/>

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

The Coronavirus Act 2020 is in force and applies across the UK. The Equality and Human Rights Commission has provided an explanation of the measures contained in the UK Act.

In addition to the UK Act, two pieces of emergency legislation have been passed by the Scottish Government. Those are the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No. 2) Act 2020. The two pieces of legislation build on the UK Act. Both Scottish Acts are time limited and will expire on 30 September 2020; however there is the option to extend meaning the legislation can be in place for a maximum of 18 months.

SHRC has published a number of briefings and letters. The following are most relevant to rule of law:

- Briefings on emergency legislation highlighting the importance of all measures being time limited, linked specifically to the public health crisis, and subject to ongoing independent review and monitoring. (30 March 2020; 2 April 2020)
- Letter to the Cabinet Secretary for Justice as part of the UK National Preventive Mechanism (NPM) highlighting the vital importance of efforts to uphold the rights of people in detention and deprived of their liberty during the COVID-19 outbreak. (2 April 2020)
Statement welcoming Scottish Government announcement on prisoner release. (21 April 2020)
- Briefing on issues relating to the conduct of criminal trials during the outbreak. Scotland's criminal justice system requires jury trials for the most serious offences. (30 April 2020)
- Letter to Scottish Parliament Justice Committee expressing serious concerns about ongoing prison conditions (18 May 2020)
- Briefing on the human rights implications of digital contact tracing technology.

SHRC is participating in the following scrutiny/ oversight activity:

- Together with EHRC and CYPCS (Scotland's Childrens Commissioner), called on Scottish Parliament's Equality and Human Rights Committee to hold an urgent

inquiry into equality and human rights implications of COVID-19 measures.

Committee announced long running inquiry.

- Member of Scottish Police Association independent advisory group looking at Police Scotland's use of new emergency powers. SHRC submitted human rights framework document.
- Member of the Mental Welfare Commission CV-19 Advisory Group regarding mental health measures.

References

- <https://www.scottishhumanrights.com/COVID-19/>

Most important challenges due to COVID-19 for the NHRI's functioning

COVID-19 presents a number of challenges, most notably the potential to impact on staff through ill health and/or caring responsibilities.

SHRC ordinarily works with Her Majesty's Inspector for Prisons in Scotland (HMIPS) to support a human rights based approach to the inspection of prisons and assists HMIPS to undertake inspections to ensure that the human rights of prisoners are being respected. Due to COVID-19, HMIPS has taken the decision to suspend routine prison inspections and only liaison visits on a risk assessed, essential visit basis are maintained. HMIPS are developing a remote monitoring framework and SHRC remains in close contact with HMIPS during this time. SHRC's work on prisons and detention during this time is highlighted in response to question 7(a) above.

SHRC is co-chairing a review into deaths in custody in Scotland. The review has been delayed due to COVID-19; however, SHRC is progressing the initial human rights analysis needed to form the foundation for the review.

SHRC has developed an internal COVID-19 work plan to allow us to prioritise work in this area. On top of the information already provided, SHRC is developing a series of briefing papers on areas such as housing, social security and PPE. We are continuing to monitor legislative developments and provide appropriate scrutiny where necessary.

Other relevant developments or issues having an impact on the national rule of law environment

As mentioned in response to question 1, SHRC sits on the National Taskforce for Human Rights Leadership. The taskforce is working to establish a statutory framework for human rights that will incorporate international human rights into Scots law. This work is, in part, in response to the loss of rights protections caused by Brexit. SHRC has been calling for the incorporation of international treaties into Scots law for a number of years and there is a political commitment to continue this work. SHRC believes the current health crisis highlights the need for incorporation of economic and social rights into domestic law.

References

- <https://www.gov.scot/groups/national-taskforce-for-human-rights-leadership/>

