

## Scotland

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### *Scottish Human Rights Commission (SHRC)*

#### **Accreditation status and SCA recommendations**

The Scottish NHRI (Scottish Human Rights Commission - SHRC) 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.

The Scottish NHRI will be reviewed by the SCA in June 2021.

#### **Independence and effectiveness of the NHRI**

##### **Changes in the regulatory framework applicable to the Institution**

In March 2021 the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill was passed by the Scottish Parliament. When it passes into law the Bill will incorporate the UNCRC directly into Scots law. The Bill introduced a new power that allows SHRC to bring legal proceedings itself where it is believed a public authority has acted unlawfully under the Act. Previously the SHRC was limited to intervening in legal proceedings but could not bring cases directly. (1)

#### ***References***

- (1) <https://www.parliament.scot/-/media/files/legislation/bills/current-bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/stage-3/bill-as-passed.pdf>

## Enabling space

An internal evaluation of the SHRC's enabling environment is ongoing. In this context, in view of the accreditation session in June 2021, the Commission has called on civil society organisations (CSOs) to make submissions assessing whether the regulatory framework, resources enable the institution to function effectively and independently. (1)

SHRC works constructively with civil society, government, Committees of the Scottish Parliament and public bodies through a variety of working groups, advisory groups, capacity building projects and through making recommendations for changes to law and practice. SHRC also works to facilitate and develop a National Action Plan on Human Rights with a large range of both governmental and non-governmental stakeholders.

SHRC has full autonomy where the budget is concerned and is financially independent of both Parliament and Government. Individual budget lines are not interrogated by either Parliament or Government.

### *References*

- (1) <https://www.scottishhumanrights.com/news/accreditation-as-a-national-human-rights-institution/>

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

In March 2021, the SHRC welcomed (1) the **Scottish Government's commitment to introduce a new human rights Bill**, incorporating four international human rights treaties fully and directly into Scots law:

- the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- the Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- the Convention on the Rights of Persons with Disabilities (CRPD)

This followed recommendations included in a Report from the National Taskforce on Human Rights Leadership (2), of which the SHRC is a member. The Taskforce Report mentions the SHRC several times, and notably there is a recommendation that the SHRC 'should be given additional

powers including taking test cases and conducting investigations and any further extended powers should be considered’.

On the other hand, the SHRC warned of potential risks to the protection of people’s rights in Scotland as a result of the **UK Government’s latest review of the Human Rights Act** . The changes being considered could in the Commission’s opinion make it harder for people to enforce their rights in Scotland.(3)

### *References*

- (1) <https://www.scottishhumanrights.com/news/a-new-era-for-human-rights-commission-welcomes-scottish-government-commitment-to-ground-breaking-new-human-rights-law-for-scotland/>
- (2) <https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2021/03/national-taskforce-human-rights-leadership-report/documents/national-taskforce-human-rights-leadership-report/national-taskforce-human-rights-leadership-report/govscot%3Adocument/national-taskforce-human-rights-leadership-report.pdf?forceDownload=true>
- (3) <https://www.scottishhumanrights.com/news/commission-sounds-alarm-bell-on-risks-to-human-rights-act/>

## **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.

Over the past year, the SHRC has alerted on impacts of measures taken to counter the COVID-19 outbreak on the right to freedom of assembly (see also the dedicated COVID-19 section below).

The Commission regularly includes civil society actors and organisations in their initiatives and projects. Examples include a project entitled “All Our Rights in Law” in which the Commission worked in partnership with Scotland’s main human rights civil society network, the Human Rights Consortium Scotland, to deliver a public engagement project to support people to inform and

feed into the development of proposals for a new human rights legal framework for Scotland, mentioned above. Another example is SHRC's International Treaty Monitoring work; SHRC has hosted a series of roundtables and workshop discussions with NGOs to contribute to its international treaty monitoring reports including recently developing relationships with race equality organisations across Scotland to gather evidence and identify issues to inform its report on the implementation of CERD in Scotland. The Commission is currently facilitating workshops with civil society on the upcoming UPR of the UK.

Overall, the SHRC has developed relationships with a wide and diverse range of NGOs in Scotland. The database of the Commission includes around 450 NGOs working on women's rights, children and young people's rights, disabled people's rights, economic, social and cultural rights, black and ethnic minority people's rights, LGBTQI people's rights and older people's rights. Relationships are also kept with trade unions, faith groups, community development and grassroots NGOs, as well as NGOs working on specific topics and issues including prisons and detention, mental health, climate change and others.

## Checks and balances

The SHRC has been undertaking thorough work on a **human rights-based approach to budgeting** (1), i.e. thinking through how people's rights are impacted by the way public money is raised, allocated, and spent. The SHRC has underlined in this respect that budget decisions should reflect human rights standards and the process of formulating, approving, executing, and auditing the budget should reflect human rights principles.

In the COVID-19 context, the Commission further called for **transparency in public finances** and a rights-based approach to economic recovery. The SHRC submitted evidence to inquiries held by the Scottish Parliament's Finance and Constitution Committee, and the Scottish Government's Advisory Group on Economic Recovery emphasising the need for transparency, participation and accountability in fiscal decision making (2).

The SHRC has acted as an intervener in a case relating to the conduct of an **outsourcing company contracted by the state** to provide housing services. The case, *Ali v Serco Group Plc.*, concerns the company's practice to **legally evict vulnerable asylum seekers by changing the locks of their flats**. The SHRC had first intervened in the *Ali v Serco* case in 2019 (3), setting out its analysis and concerns over the protection of human rights where services are delivered by private contractors, on which the current **legislation lacks clarity**. The SHRC Intervened again to support the permission to appeal in the case, which was eventually refused by the UK Supreme Court (4). The Commission reacted to the decision by stressing that the case would have

benefited from further clarification from the Supreme Court and stressed the worrying implications of the Court's judgment for the protection of human rights, particularly when public services are contracted out.. The SHRC believes that, to ensure clarity in practice, the state (including Scottish public bodies) should make human rights obligations explicit in relevant contracting arrangements with third parties, ensuring that contracts are appropriately monitored.

### *References*

- (1) <https://www.scottishhumanrights.com/projects-and-programmes/human-rights-budget-work/>
- (2) <https://www.scottishhumanrights.com/news/commission-calls-for-transparency-in-public-finances-and-a-rights-based-approach-to-economic-recovery/>
- (3) <https://www.scottishhumanrights.com/news/commission-disappointed-with-supreme-court-decision-on-serco-appeal/>
- (4) <https://www.scottishhumanrights.com/news/human-rights-arguments-to-be-heard-by-court-in-serco-lock-change-appeal/>

## Functioning of the justice system

The SHRC supported a recent Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing, recommending **substantial reform of the way police complaints are handled to improve access to justice, accountability and public confidence** (1). The Commission particularly welcomed several recommendations to address human rights concerns in relation to police complaints (2):

- the Police Scotland Code of Ethics, which sets out the standards expected of all of those who contribute to policing in Scotland and expressly references human rights, should be incorporated into law;
- all deaths and serious injuries in police custody, deaths following police conduct and other serious criminal allegations against the police, should be reported to the independent Procurator Fiscal;
- meaningful victim involvement and constructive engagement with complainers must be supported. To facilitate this the report recommends access to free, non-means tested legal advice, assistance and representation for the immediate family of someone who died in

- custody, from the earliest point following the death and throughout any subsequent Fatal Accident Inquiry or Public Inquiry;
- the independent Police Investigations and Review Commissioner (“PIRC”) should be given greater powers to improve independence and public confidence.

The SHRC has been alerting on the **use of biometric data for law enforcement** (3). It welcomed the passing of the Scottish Biometrics Commissioner Act by the Scottish Parliament, creating a new Biometrics Commissioner to oversee the acquisition, retention, use and destruction of biometric data by police in Scotland. The Commissioner will also oversee a Code of Practice to guide the use of biometric data such as fingerprints, DNA, and facial and voice recognition. The SHRC had previously raised concerns about the lack of legislative framework in this area, contributed evidence to Parliament on the human rights issues engaged, and contributed to the work of the Independent Advisory Group on biometrics.

The SHRC is a co-chair of the Independent Review into the Response to Deaths in Prison Custody. The Review was instructed by the Cabinet Secretary for Justice to enable the identification of and to make recommendations for areas for improvement to ensure appropriate and transparent arrangements are in place in the immediate aftermath of deaths in custody with Scottish prisons, including deaths of prisoners whilst in NHS care. (4) The Review will report in late summer/early autumn 2021.

### *References*

- (1) <https://www.scottishhumanrights.com/news/commission-commends-human-rights-emphasis-in-angiolini-review/>
- (2) <https://bit.ly/3lnN9Gf>
- (3) <https://www.scottishhumanrights.com/news/commission-welcomes-scottish-biometrics-commissioner-act/>
- (4) <https://www.scottishhumanrights.com/projects-and-programmes/deaths-in-custody-review/>

## Impact of measures taken in response to COVID-19 on the national rule of law environment

### Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

#### General human rights impacts

The SHRC has published numerous statements, letters, reports, underlining the general human rights impacts of COVID-19 pandemic and related governmental response. Notably, the Commission flagged the risks drawing from **emergency laws** put in place to counter the crisis (1). The Commission also stresses the need for any legislative measures to be lawful, necessary, proportionate and time limited, in line with human rights laws.

It submitted several recommendations to public bodies in charge of the relevant measures, e.g. In July 2020 a 'Submission to Inquiry into COVID-19 and Human Rights' by the Scottish Parliament Equalities and Human Rights Committee (2) recommended the following:

- The Scottish Government must demonstrate how human rights have systematically informed all of its law policy and decision making in response to the pandemic including where relevant through Human Rights Impact Assessment;
- Human rights must underpin decisions relating to economic recovery in alignment with the National Performance Framework and the Government's ambition to show human rights leadership in securing rights for all;
- The work of the National Taskforce for Human Rights Leadership must take account of the lessons learned from the impacts of this pandemic in taking forward its work. The new human rights framework must be regarded as central in a direct response to the experience of the pandemic and informing plans for recovery;
- The specific rights of women, disabled people, older people, children and black and minority ethnic people must be further protected and implemented alongside economic, social, cultural and environmental rights in responding to the experience of this pandemic.

#### Persons deprived of liberty

The SHRC identified the human rights impacts on persons deprived of liberty as one of the most important issues to address in the COVID-19 context (3). In 2020 and still in 2021, the Commission addressed several letters to the [Cabinet Secretary for Justice](#) to highlight concerns about the **conditions in prisons** during COVID-19, and stated that some measures qualified as breaches of human rights (4). The SHRC expressed particular concern over people confined to their cell for

extended periods of time, with very limited access to shower facilities and time out of cells, including access to outdoor exercise.

The Scottish members of the UK National Preventive Mechanism (of which the SHRC is a member) stressed similar concerns in a letter to the Cabinet Secretary for Justice in April 2020 (5).

The SHRC also underlined issues about **conditions in care homes** during the pandemic. The Commission produced a briefing (6) setting out the human rights framework as it applies to the issues that have arisen in care homes, and detailing the requirements of human rights law to ensure effective investigations are carried out by the state.

### Justice and policing

Another area of concern is the challenge the coronavirus pandemic poses to Scotland's **criminal justice system** (7), and the **new police powers**, more likely to impact particular groups, including those living in poverty, disabled people, homeless people, ethnic and religious minorities, LGBTI people, women and children in situations of domestic violence, the elderly and young people, migrants and refugees (8).

The Scottish authorities established an Independent Advisory Group to review Police Scotland's use of new temporary police powers in the current health emergency (IAG), of which the SHRC is a member. In that framework, the SHRC issued a Human Rights Guide to Examining New Police Powers in Response to COVID-19 (9).

The SHRC produced for the IAG an insight paper on the **right to peaceful assembly** (10), underlining the significant implications of the pandemic on such democratic freedoms. The briefing set out the human rights framework surrounding the right to peaceful assembly as protected by Article 11 ECHR, stressing the conditions that interferences with the right must meet, and discussing particular issues such as the relationship with other ECHR rights (e.g Arts 9 &10) and blanket bans on demonstrations.

### Economic, social and cultural rights

COVID-19 has put pressure on all areas of our society, with increased need for health and social care, rising unemployment, and an increasingly uncertain economic future. The pandemic has magnified the prevailing and persistent structural inequalities, providing a stark illustration of the effects of indirect discrimination that have been harmful for people and their human rights, especially their economic and social rights. This has resulted in the most vulnerable in society disproportionately suffering the most severe consequences of the virus. Death rates from COVID-

19 are documented as being 2.3 times higher for those living in the most deprived areas of Scotland and poverty is the greatest driver of homelessness in all of its forms.

The SHRC highlighted numerous impacts of the pandemic on economic and social rights; notably the **right to food** (11), the **right to adequate housing** (12) and the **right to social security** (13).

An important area of concern as highlighted by the SHRC is the impact **health and social care**. Beyond concerns over the situation in care homes (detailed above), the Commission published an Impact Monitoring Report on 'COVID-19, Social Care and Human Rights' (14), detailing how legislative, policy and practice decisions taken by public authorities have affected the rights of people who access, or wish to access social care, unpaid carers, and people who work in social care.

The report found that COVID-19 has had a profound impact on the way in which social care support has been delivered in Scotland, leading to significant gaps in the realisation of rights for people who rely on such support, including unpaid carers. The report makes 24 recommendations, some of which call for urgent action to resolve immediate human rights concerns.

The SHRC put an emphasis on the specific **challenges faced by students** at Scottish universities (15). The Commission expressed concern over the restrictions placed on many students, particularly those living in student accommodation, living alone for the first time without family or other supports, and lacking clear information on the restrictions which apply to them. The SHRC consequently published a Report on 'COVID-19: Human Rights Considerations Related to Students' (16) with a set of recommendations.

### [Economic recovery](#)

The SHRC made several submissions to relevant bodies in order to alert on COVID-19 impacts on public finances and fiscal framework (17) and published a report calling for a human rights based approach to budget setting and spending decisions following the coronavirus pandemic (18), to ensure **social and economic recovery**.

The report includes a series of recommendations to the Scottish Government, Scottish Parliament and oversight bodies are set out to improve practice in all areas. The Commission also stressed the need to acknowledge and address the disproportionate impact of the pandemic on **vulnerable groups**, including disabled people, women and people living in poverty.

## References

- (1) <https://www.scottishhumanrights.com/news/commission-flags-human-rights-implications-of-coronavirus-emergency-laws/>
- (2) <https://www.scottishhumanrights.com/news/evidence-submitted-to-scottish-parliament-inquiry-into-covid-19-and-human-rights/>
- (3) <https://www.scottishhumanrights.com/covid-19/prisons-places-of-detention/>
- (4) <https://www.scottishhumanrights.com/news/breaches-of-human-rights-in-prisons-during-the-pandemic/>
- (5) <https://www.scottishhumanrights.com/news/letter-to-cabinet-secretary-for-justice-on-rights-of-people-in-detention-during-covid-19-outbreak/>
- (6) <https://www.scottishhumanrights.com/news/briefing-care-homes-and-human-rights-during-covid-19/>
- (7) [https://www.scottishhumanrights.com/media/2015/20\\_04\\_covid19-criminal-trials\\_briefingvfinal.pdf](https://www.scottishhumanrights.com/media/2015/20_04_covid19-criminal-trials_briefingvfinal.pdf)
- (8) <https://www.scottishhumanrights.com/media/2037/evidence-to-justice-committee-062020-shrc-police-scotland-use-of-temporary-powers.pdf>
- (9) <https://www.scottishhumanrights.com/media/2038/iag-shrc-human-rights-vfinalforweb.pdf>
- (10) [https://www.scottishhumanrights.com/media/2101/article-11\\_right-to-freedom-of-assembly-iag.pdf](https://www.scottishhumanrights.com/media/2101/article-11_right-to-freedom-of-assembly-iag.pdf)
- (11) <https://www.scottishhumanrights.com/news/the-right-to-food-in-scotland-during-covid-19/>
- (12) <https://www.scottishhumanrights.com/media/2066/shrc-right-to-housing-220720.pdf>
- (13) <https://www.scottishhumanrights.com/media/2065/social-security-briefing-shrc-220720.pdf>
- (14) <https://www.scottishhumanrights.com/media/2102/covid-19-social-care-monitoring-report-vfinal.pdf>

- (15) <https://www.scottishhumanrights.com/news/statement-human-rights-of-students-at-scottish-universities/>
- (16) <https://www.scottishhumanrights.com/media/2127/covid19-student-briefing-vfinal.pdf>
- (17) [https://www.scottishhumanrights.com/media/2034/20\\_05\\_fincom\\_covid\\_publicfinances\\_humanrights\\_vfinal.pdf](https://www.scottishhumanrights.com/media/2034/20_05_fincom_covid_publicfinances_humanrights_vfinal.pdf)
- (18) <https://www.scottishhumanrights.com/news/new-report-leads-to-call-for-human-rights-to-be-at-the-heart-of-post-covid-budget-decisions-to-ensure-social-and-economic-recovery/>

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

COVID-19 presented 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 initially took the decision to suspend routine inspections. Inspections have now resumed; and SHRC is considering the most impactful way to re-engage with prison inspections.

