



European Network of  
National Human Rights Institutions

# Implementing the Council of Europe Recommendation on National Human Rights Institutions: The State of Play

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The situation in United  
Kingdom - Scotland



# United Kingdom – Scotland Country Report

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## Overview

### Name of NHRI and mandate:

- Scottish Human Rights Commission (SHRC)
- Multi-mandate NHRI, NPM and NMM.

### Sources:

- NHRI: [ENNHRI, State of the Rule of Law in Europe in 2022, Scotland Country Report](#)
- Sub-Committee on Accreditation (SCA): [SCA Report June 2021](#)

### Good practices and improvements:

- **CM Principle 1: establishment of an NHRI in compliance with the Paris Principles:** The Scottish Human Rights Commission is an NHRI accredited with A-status.
- **CM Principle 3§7: contribute to the effective implementation of international human rights treaties:** as reported by the NHRI, it has been playing a leading role in the Scottish Government's commitment to introducing a new human rights bill which will strengthen implementation in Scotland of the four UN treaties already ratified by the UK, while the new statutory framework will also introduce a specific Right to a Healthy Environment as well as rights of older people and LGBTI people. The Commission reports it will continue to play a part in monitoring and enforcing its implementation once enacted and is considering which powers may be necessary to support effective implementation.

## Key areas where improvement is needed:

- **CM Principle 3: broad human rights mandate:** While the SHRC interprets its mandate broadly, the SCA (2021) recommends the enabling legislation of the SHRC should be amended to include a more expansive definition of human rights and to extend the NHRI's mandate to the acts and omissions of private entities.
- **CM Principle 4: selection and appointment:** In line with the recommendation of the SCA (2021), the legislative framework should be amended to include provisions for broader and more transparent selection and appointment process of the SHRC members.
- **CM Principle 6,7 & 10: independent and adequate budget and staffing:** The enabling legislation of the SHRC provides it with strong financial autonomy. Still, the NHRI reports that on occasion, the Parliamentary Corporate Body does review and interrogate individual budget lines in practice. Moreover, in line with the SCA recommendations (2021) and the NHRI's information and advocacy, national authorities should ensure that the NHRI is provided with further funding to fulfil the full breadth of its mandate, including its new competencies.
- **CM Principle 8: adequate access to information:** the Scottish Human Rights Commission addresses concerns over the NHRI's adequate access to draft legislation, as it reports the NHRI's involvement only at the stage of public consultations and not at earlier stages.

## Specific findings per Principle

The tables below include data on the assessment of the implementation of each Principle (i.e. the individual parts) within the Recommendation from three sources: the National Human Rights Institutions, the Sub-Committee on Accreditation of GANHRI and the Council of Europe independent bodies. Overall, the findings are considered in four overall groups: the establishment of NHRIs; the strengthening of NHRIs; a safe and enabling environment for NHRIs; and cooperation with and support for NHRIs.

### I. Establishment of NHRIs

<b>Principle 1</b>	Member States should ensure that NHRIs are in place and that they are established, accredited and function in full compliance with the Paris Principles
<b>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</b>	<i>SCA Report June 2021, p. 32</i> The SCA recommends that SHRC be re-accredited with A status.
<b>Principle 2</b>	Member States should provide a firm legal basis for NHRIs, preferably at the constitutional level, and/or in a law which defines the mandates and functions of such institutions, guarantees their independence and provides them with the means necessary to accomplish their functions effectively, both at national and international levels, bearing in mind existing standards and recommendations on NHRIs, in particular the Paris Principles and their interpretation developed by GANHRI's Sub-Committee on Accreditation.

<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by the NHRI in 2023</i></p> <p>The Scottish Human Rights Commission (the Commission) was established under the powers of the Scottish Parliament, as laid out in the Scotland Act 1998 (an Act of the UK Parliament which received Royal Assent on 19 November 1998 the official version of which can be accessed at the <a href="#">Office of Public Sector Information</a>). The duties, powers and functions of the Commission are laid out in the <a href="#">Scottish Commission for Human Rights Act 2006</a> (the SCHR Act). The SCHR Act was adopted by the Scottish Parliament on 2 November 2006 and received Royal Assent on 8 December 2006.</p> <p>The parts of the SCHR Act establishing the Commission came into force on 8 November 2007 through the <a href="#">Scottish Commission for Human Rights Act 2006 (Commencement No. 1) Order 2007</a>.</p> <p>The remainder of the SCHR Act came into force on 1 April 2008 through the <a href="#">Scottish Commission for Human Rights Act 2006 (Commencement No. 2) Order 2008</a>.</p> <p>The SCHR Act was amended by the <a href="#">Scottish Parliamentary Commissions and Commissioners etc. Act 2010</a> which changed the tenure of members of the Commission to avoid reappointment, thereby strengthening the independence of the Commission.</p> <p>The legitimacy of the Commission is underlined by the constitutional order established with devolution, which in effect requires that all legislative and executive authority in Scotland be exercised in conformity with the European Convention on Human Rights (ECHR). The <a href="#">Scotland Act 1998</a> created a Scottish Parliament and a Scottish Executive (now known as the Scottish Government) and required that both act in compliance with the ECHR (sections 29 and 57 of the Scotland Act 1998). Consequently, compliance with human rights obligations is part of the fabric of the Scottish Parliament, and all legislative proposals must be assessed for and certified as being in compliance with Convention rights. From the earliest days of the Scottish Parliament, there has been recognition</p>
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	<p>that a National Human Rights Institution would be essential to assist public authorities in meeting their obligations and promoting a human rights culture in Scotland.</p>
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## II. Strengthening of NHRIs

<p><b>Principle 3.1</b></p>	<p>Member States should ensure that the <b>mandate</b> given to NHRIs to protect and promote human rights is <b>as broad as possible and in full compliance</b> with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> <li>- <b>monitor and analyse</b> the human rights situation in the country, <b>publish reports</b> on these findings and <b>address recommendations</b> to public authorities at national, regional and local levels and, when applicable, to private entities, and present an <b>annual report</b> to the relevant authorities, including before parliament, for its consideration.</li> </ul>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by NHRI in 2023</i></p> <p>Under Schedule 1 paragraph 15 of the SCHR Act the Commission is required to keep proper accounts and prepare annual reports for each financial year (read the <a href="#">annual report 2021-2022</a>). These are sent to the Auditor General for audit and then laid before Parliament.</p> <p>The Commission has been invited to give evidence to the <a href="#">Equalities and Human Right Committee</a> of the Scottish Parliament on its Annual Report and future plans on a number of occasions in recent years, most recently in December 2022. The Committee has no authority to direct or influence the Commission and in addition to being an opportunity for accountability, the Commission regards this as an influencing opportunity with Committee members.</p>

<p><b>Principle 3.2</b></p>	<p>Member States should ensure that the <b>mandate</b> given to NHRIs to protect and promote human rights is as <b>broad as possible and in full compliance</b> with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> <li>- <b>freely address public opinion, raise public awareness</b> on human rights and <b>carry out education and training</b> programmes;</li> </ul>
<p><i>No information</i></p>	
<p><b>Principle 3.3</b></p>	<p>Member States should ensure that the <b>mandate</b> given to NHRIs to protect and promote human rights is as <b>broad as possible and in full compliance</b> with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> <li>- <b>fully address all alleged human rights violations</b> by all administrative authorities, other relevant State entities and, when applicable, private entities</li> </ul>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by the NHRI in 2023:</i></p> <p>The extent to which the domestic human rights framework, founded on the Human Rights Act 1998, places duties on private actors remains unclear (e.g. <a href="#">SERCO case</a>).</p> <p>The SHRC has advocated strongly for further protection of human rights from business activities. This is reflected in the important advancement with the UNCRC Incorporation Scotland Bill (still due to come into force), which establishes that private actors that have been contracted to provide services on behalf of a public authority are required to comply with the UNCRC.</p>



<p><b>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</b></p>	<p><i>SCA Report June 2021, p. 32</i></p> <p>The SCA acknowledges that the SHRC interprets its mandate more broadly than the formal reading of the definition of human rights set out in Section 2(2) of the SCHR Act. It encourages the SHRC to continue to interpret its mandate in a broad, liberal and purposive manner to promote a progressive definition of human rights, which includes all rights set out in international, regional and domestic instruments, including economic, social and cultural rights.</p> <p><i>SCA Report June 2021, pp. 32-33</i></p> <p>The SCA recommends that the SHRC advocate for appropriate amendments to its enabling law to include a more expansive definition of human rights and to extend to acts and omissions of private entities.</p>
<p><b>Principle 3.4</b></p>	<p>Member States should ensure that the <b>mandate</b> given to NHRIs to protect and promote human rights is as <b>broad as possible and in full compliance</b> with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> <li>- have <b>unfettered access to all relevant premises</b>, including places of deprivation of liberty, and to all relevant individuals, in order to be able to carry out a credible examination of all issues covered by their mandate and to all relevant information, subject to possible restrictions stemming from the protection of other rights and legitimate interests and with due respect for the confidentiality of information obtained;</li> </ul>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by the NHRI in 2023:</i></p>

	<p>As noted in the SCA report, our inspection power is subject to significant limitations.</p> <p>The practice of routine inspection at the invitation of HMIPS was suspended during the Covid-19 pandemic. This provided an opportunity to review the inspection standards. That review is on-going.</p>
<p><b>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</b></p>	<p><i>SCA Report June 2021, p. 32</i></p> <p>Section 11 of the SCHR Act empowers the SHRC to visit places of detention for inquiry purposes only. The power is limited to planned visits.</p> <p>The SCA acknowledges the effective work SHRC is doing as member of the national preventive mechanism (NPM) under the Optional Protocol to the Convention against Torture (OPCAT). The SCA recognises that the SHRC was routinely involved in the inspection of Scotland’s prison estate at the invitation of Her Majesty’s Inspectorate of Prisons in Scotland (HMIPS). The SCA is of the view that the SHRC should be enabled to conduct unannounced and unaccompanied visits to places of detention as part of its protection mandate including in cooperation with other relevant bodies.</p>
<p><b>Principle 3.5</b></p>	<p>Member States should ensure that the <b>mandate</b> given to NHRIs to protect and promote human rights is as <b>broad as possible and in full compliance</b> with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> <li>- <b>monitor existing and draft policies and legislation</b> with human rights implications before, during and after their adoption in order to <b>advise</b> the State about the impact of such policies and legislation on human rights and on the activities of human rights defenders, including by <b>making relevant and concrete recommendations</b>.</li> </ul>

<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by the NHRI in 2023:</i></p> <p>Section 4 of our enabling law provides the power to SHRC to review any area of the law of Scotland, or any policies or practices of any Scottish public authorities.</p> <p>The Commission routinely monitors the policy and legislative landscape in Scotland, engaging with these processes where strategically relevant and/or for significant emerging issues (e.g. Covid response) to inform policy and/or legislative development and monitor their impacts.</p> <p>Legislative examples:</p> <ul style="list-style-type: none"> <li>• <a href="#">Incorporation policy work &amp; legislative development</a></li> <li>• <a href="#">Historic Abuse &amp; Financial Redress</a></li> <li>• <a href="#">Response to COVID-19 work</a></li> <li>• <a href="#">Biometrics Commissioner</a></li> <li>• <a href="#">Good Food Nation Bill</a></li> <li>• <a href="#">Scottish Mental Health Law Review</a></li> </ul> <p>Policy examples:</p> <ul style="list-style-type: none"> <li>• <a href="#">Human rights budget work</a></li> <li>• <a href="#">Housing Rights in Practice</a></li> <li>• <a href="#">COVID-19, Social Care and Human Rights: Impact Monitoring Report</a></li> <li>• <a href="#">Response to COVID-19 work</a></li> <li>• <a href="#">Death in Custody Review</a></li> </ul>
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<p><b>Principle 3.6</b></p>	<p>Member States should ensure that the <b>mandate</b> given to NHRIs to protect and promote human rights is as <b>broad as possible and in full compliance</b> with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> <li>- <b>contribute to an effective justice system</b> for all, through awareness-raising measures and facilitating access to rights and remedies and, as applicable, by providing legal assistance, being a party before the courts or, when applicable, receiving individual complaints;</li> </ul>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 1</i></p> <p>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. This new power will only exist in relation to children’s rights however there may be support for expanding the power more generally through the planned incorporation Bill. Currently the SHRC is limited to intervening in legal proceedings but cannot bring cases directly.</p>

<p><b>Principle 3.7</b></p>	<p>Member States should ensure that the <b>mandate</b> given to NHRIs to protect and promote human rights is as <b>broad as possible and in full compliance</b> with the Paris Principles and that it allows them, inter alia, to:</p> <p>- <b>encourage the signature, ratification of and accession</b> to international human rights treaties and <b>contribute to the effective implementation</b> of such treaties, as well as related judgments, decisions and recommendations as well as to <b>monitor States' compliance with them</b>.</p>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by the NHRI in 2023:</i></p> <p>The Scottish Government has committed to introducing a new human rights bill which, subject to the limits of devolved competence, will strengthen implementation of the rights, contained in four treaties already ratified by the UK, namely:</p> <ul style="list-style-type: none"> <li>• the International Covenant on Economic, Social and Cultural Rights</li> <li>• the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)</li> <li>• the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and</li> <li>• the Convention on the Rights of Persons with Disabilities (CRPD)</li> </ul> <p>The new statutory framework will also introduce a specific Right to a Healthy Environment as well as rights of older people and LGBTI people.</p> <p>The SHRC has played <a href="#">a leading role</a> in developing the proposals for the Bill. The Commission has also clarified what the key legal features are that the legislation needs to have to ensure it is a strong and <a href="#">word-leading human rights legislation</a>. The Commission will continue to play a part in monitoring and enforcing its implementation once enacted and is considering which powers may be necessary to support effective implementation.</p>

<p><b>Principle 4</b></p>	<p>The process of <b>selection and appointment of the leadership of a NHRI</b> should be competence based, transparent and participatory, in order to guarantee the independence and pluralist representation of these institutions. It should also be based on clear, predetermined, objective and publicly accessible criteria.</p> <p>The duration of the appointment should be clearly set out in the founding legislation, so that the leadership posts of the NHRI do not stay vacant for any significant period of time.</p>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by the NHRI in 2023</i></p> <p>The Scottish Parliament advertises vacancies through national, local and social media. In the last round of applications, the advert stated, "The Scottish Parliament is committed to promoting equality of opportunity and treatment and to eliminating unfair discrimination in its employment/ appointment practices." On application, personal information (name, address etc) is kept separate from the rest of the application form, and is not seen by the selection panel, to ensure anonymity during short-listing.</p> <p>The appointment to the post of Chair and other Members is by publicly advertised, competitive recruitment.</p> <p>Paragraph 1 of Schedule 1 to the SCHR Act provides that the Commission consists of the following members:</p> <ul style="list-style-type: none"> <li>• A member appointed to chair the Commission; and</li> <li>• Not more than 4 other members.</li> </ul>

<p><b>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</b></p>	<p><i>SCA Report June 2021, p. 33</i></p> <p>While acknowledging that, in practice, the selection and appointment processes for the Chair and members are conducted in an open and transparent manner, the SCA is of the view the selection and appointment processes, as provided for in the enabling law, are not sufficiently broad and transparent. In particular, they do not require the advertisement of vacancies; establish clear and uniform criteria; ensure that such criteria are uniformly used to assess the merit of all eligible applicants; and promote broad participation in the application, screening, selection and appointment process.</p> <p>The SCA encourages the SHRC to continue to advocate for amendments to its enabling law to ensure the formalization of a process that would meet these requirements.</p>
<p><b>Principle 5</b></p>	<p>To ensure <b>independence</b>, the enabling legislation of a NHRI should contain an <b>objective dismissal process for the NHRI leadership</b>, with clearly defined terms in a constitutional or legislative text. The dismissal process should be fair and ensure objectivity and impartiality and should be confined to only those actions which impact adversely on the capacity of the leaders of NHRIs to fulfil their mandate.</p>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Text below is taken from Scottish Parliament Corporate Body instructions to commissioners:</i></p> <p>According to Paragraph 5 of Schedule 1 to the SCHR Act, the Chair may be relieved of office by His Majesty at the Chair’s request or may be removed from office by His Majesty if condition A or B (set</p>

	<p>out below) is satisfied. Other Members may be relieved of office by the SPCB at the member's request or removed from office by the SPCB if condition A or B is satisfied.</p> <p>Condition A: the SPCB is satisfied that the member has breached the terms of appointment and the Scottish Parliament resolves that the member should be removed from office for that reason.</p> <p>Condition B: the Scottish Parliament resolves that it has lost confidence in the member's willingness, suitability or ability to perform that member's functions</p> <p>For the Scottish Parliament to so resolve it must be the view of at least two thirds of those members voting.</p> <p>The 2006 Act provides that the members of the Commission may be removed from office as noted above.</p> <p>The Commission members terms and conditions of appointment provide the following-</p> <p><i>Tenure</i></p> <p>The Scottish Parliament Corporate Body has determined that you will hold office for six years. Your term of office will begin on x and will end on y.</p> <p>You may resign from office at your own request giving at least three months' notice to the Scottish Parliament Corporate Body.</p> <p>You may be removed from office by the Scottish Parliament Corporate Body if it is satisfied that you have breached your terms of appointment and the Parliament resolves that you should be removed</p>
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	<p>from office for that reason or if the Parliament resolves that it has lost confidence in your willingness, suitability or ability to perform your functions. Any such resolution, if passed on division, must be voted for by not less than two-thirds of those voting.</p> <p>The legislation establishing the officeholders provides that in the exercise of their statutory functions, the officeholders are not under the direction or control of the SPCB, Scottish Ministers or MSPs.</p> <p>The previous Chair of the Commission discussed with SPCB officials the possibility of establishing a process for dealing with matters that could ultimately trigger a Motion seeking the removal of an officeholder. It was reiterated by the Chair of the Commission that any such procedures would require to be robust enough to ensure no interference with the independence of Commissioners. No further action by the SPCB has been taken however the Commission notes previous SCA recommendations in this regard and is seeking further clarity as to the domestic legal protections that may apply in such circumstances.</p> <p>In February 2023, the SPCB has published a new draft Code of Conduct for office holders. Commissioners of SHRC have been invited to feed in to this process.</p>
<p><b>Principle 6</b></p>	<p>Member States should provide NHRIs with adequate, sufficient and sustainable resources to allow them to carry out their mandate, including to engage with all relevant stakeholders in a fully independent manner and freely determine their priorities and activities.</p>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2021, p. 2</i></p>

	<p>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.</p> <p><i>Information provided by the NHRI in 2023</i></p> <p>Where the Commission is seeking approval for a determination that is not related to a new statutory function and it will have a significant financial impact on its baseline budget, independent evidence should be submitted as part of the determination. A significant financial impact means (i) 14% of staffing costs for a staffing determination or (ii) 30% of non-staff costs for e.g. an accommodation determination.</p> <p>However, on occasion, SPCB does review and interrogate individual budget lines in practice, for example, when the Commission did its intervention on the Ali Serco legal case, SPCB interrogated what we had done and the amount of money we had spent on legal fees for this.</p> <p><i>Please see Principle 10 for a fuller discussion of the Commission resource limitations.</i></p> <p>The Commission's budget for 2022-23 was £1.28m. Budget bid for 2023-2024 is £1.37m which is a reduction in real terms due to the current rate of inflation. See Section II. Strengthening (Point 10) for further information of current resource concerns.</p>
<p><b>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</b></p>	<p><i>SCA Report June 2021, p. 34</i></p> <p>While acknowledging that the SHRC's budget has been sufficient to allow it to largely meet the terms of its mandate, the SCA encourages the SHRC to continue to advocate for additional funding to ensure that it can effectively carry out the full breadth of its mandate.</p>

<p><b>Principle 7</b></p>	<p>NHRIs should have the <b>authority</b> to <b>determine their staffing profile and recruit their own staff</b>, as well as <b>sufficient resources</b> available, in order to fulfil their mandate, so as to permit the employment and retention of staff and to ensure that they receive adequate training.</p>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by the NHRI in 2023</i></p> <p>Paragraph 11 of Schedule 1 of the SCHR Act provides that the Commission may, with the consent of the SPCB as to numbers, appoint staff. The Commission may, with the approval of the SPCB, determine the terms and conditions of appointment of staff, make arrangements for the payment of pensions, allowances and gratuities to any person who has ceased to be a member of staff. According to paragraph 12 of Schedule 1 of the SCHR Act the Commission may enter into arrangements for the sharing of premises, staff, services and other resources with any other public body.</p> <p>The staffing structure and the number of staff are agreed with the SPCB. The Commission recruits staff by competitive recruitment. The Commission is advised by an external and independent human resources consultant, helping to ensure good practice and employment law are followed throughout recruitment.</p> <p>In practice the Commission does not share any staff with other public bodies but co-locates with the Scottish Public Services Ombudsman and the Children and Young People’s Commissioner Scotland and shares logistical resources and services to ensure economic efficiency.</p> <p><i>See the section on Principle 10 below for a note on sufficiency of staffing resources.</i></p>

	<p>The Commission has struggled with staff retention in recent years, a point flagged by our Auditors report this financial year. In response to the Auditors request – questions around reasons for staff retention will be addressed as part of the upcoming Governance review.</p>
<p><b>Principle 8</b></p>	<p>Member States should ensure that NHRIs enjoy <b>adequate access to information and to policy makers and legislators</b>, including timely consultations on the human rights implications of draft legislation and policy strategies.</p>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>ENNHRI, State of the Rule of Law Report in Europe in 2021, p.2</i></p> <p>The Commission works constructively with the Scottish 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. We also work to facilitate and develop a National Action Plan on Human Rights with a large range of both governmental and non-governmental stakeholders.</p> <p>The engagement with the Scottish Government is ordinarily on a purely voluntary basis, there being only a few circumstances in which we are a statutory consultee.</p> <p>Current concerns exist that the Commission’s input is only sought at the stage of public consultation with proposals already formulated, and our input is thereafter amalgamated with - and balanced against - that of a range of other stakeholders. We are working towards seeing our NHRI status reflected in earlier engagement with our advice given appropriate weight.</p>

<p><b>Principle 9</b></p>	<p>Member States should <b>implement the recommendations of NHRIs</b> and are encouraged:</p> <ul style="list-style-type: none"> <li>- to make it a legal obligation for all addressees of NHRI recommendations to provide a reasoned reply within an appropriate time frame,</li> <li>- to develop processes to facilitate effective follow-up of NHRI recommendations, in a timely fashion and</li> <li>- include information thereon in their relevant documents and reports.</li> </ul>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by the NHRI in 2023</i></p> <p>The Scottish NHRI reports there is not a legal requirement to respond to the NHRI's recommendations.</p> <p>It is not clear if any recommendations issued under section 4 required to be carefully considered and if an answer is required from the relevant public authority.</p> <p>The enabling legislation does not require public, private or voluntary bodies to respond to any request for information or evidence. Any recommendation issued by the Commission is not legally binding and authorities are not formally required to respond to the Commission's recommendations and reports.</p>

<p><b>Principle 10</b></p>	<p>When member States grant NHRIs <b>additional competences</b> to perform functions foreseen by international conventions in the field of human rights, such as the United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Convention on the Rights of Persons with Disabilities, the NHRI should <b>have access to sufficient resources to develop the capacity to effectively discharge its functions</b>, including having appropriately qualified and trained staff.</p>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by the NHRI in 2023:</i></p> <p>In response to the SCA 2015 Recommendation 5 and the context of the development of new human rights legislation and a rapidly developing human rights culture in Scotland, the Commission developed a business case for increased resources in 2019. This followed from an extensive and robust process involving both external and internal stakeholders.</p> <p>The business case presented evidence of the internal and external context for growth, alongside an overview of the Commission’s Strategic Plan 2020-2024, a proposed new staffing structure and budget for an ‘Optimal Model’ for expansion. Alternative options were also provided with an accompanying assessment of the impact of these alternatives on our future delivery capacity.</p> <p>In response to this business case, the Scottish Parliament Corporate Body agreed to a temporary increase of funds that is sufficient to fund what the Commission saw as a ‘Minimal Model’ of expansion for a period of two years. This modest increase in resources provided important and necessary additional senior management capacity in relation to the delivery of our strategy and legal work but did not enable us to respond in any significant way to the growing demands for our advice, expertise and input.</p>

The Commission informed the SCA that it was intending to ask the SPCB to make the temporary funding permanent, as a minimum, to allow us to continue to service the strategic priorities of the organisation as well as request resources for an expansion in FTE staff. This request was made and was subject to the completion of an independent review. [SPBC minutes](#) show that “the Officeholders’ Contingency Fund for 2022/23 was increased by £300k to ensure funding was available for the SHRC once the outcome of the independent review was known. The £300k included funding to make temporary post permanent including the two posts mentioned above (£171k), increasing the FTE capacity in permanent roles (£20k) creating 4 new posts (£97k for 6 months) and IT and recruitment costs (£12k).

However, the independent review was not undertaken, and these resources have not been made available to the Commission for 2022/23.

Since taking up office, the current Chair has internally restructured the Commission’s senior staff structure within existing budget, with the removal of both the Head of Strategy and Legal, and the Head of Legal and Policy positions and the creation of an Executive Director role.

The Commission’s budget (including contingency funding) for 2022-23 was £1.28m. Given the current rate of inflation, £1.28m in 2022 is equivalent in purchasing power to about £1.41m in 2023. The Commission has made a bid for £1.37m for the next financial year (2023-24) which includes making two fixed term contracts permanent (one position currently filled, one awaiting recruitment). This is therefore a decrease in budget in real terms.<sup>1</sup>

The Commission believes that increased resources would significantly increase its impact and will be necessary and critical for the development and implementation support required for a new human rights framework law in Scotland.

	<p><sup>1</sup> £1.37m budget ask for 2023-24 also represents a real term decrease compared to the Commission's inaugural budget in 2008. Had the Commission's budget risen in line with inflation it would now be approximately £1.49m.</p>
<p><b>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</b></p>	<p><i>SCA Report June 2021, p. 34</i></p> <p>The SHRC informed the SCA that it requires additional resources in preparation for and implementation of the increasing tasks it would receive in view of the planned incorporation of several UN treaties into Scots law.</p>



### III. Safe and Enabling Environment

<p><b>Principle 11</b></p>	<p>Member States should ensure that NHRIs can <b>operate independently</b>, in an environment which is conducive to them carrying out their mandate in an effective manner and in a climate of <b>impartiality, integrity, transparency and fairness</b>.</p>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by the NHRI in 2023</i></p> <p>Paragraph 3 of Schedule 1 to the SCHR Act provides that the Commission, in the exercise of its functions, is not subject to the direction or control of:</p> <ul style="list-style-type: none"> <li>• Any member of the Parliament</li> <li>• Any member of the Scottish Executive (now known as the Scottish Government);</li> <li>• The Parliamentary Corporation (known as the Scottish Parliament Corporate Body (SPCB)).</li> </ul> <p>The Commission does not receive instruction from the Crown, the Government or the Parliament on the exercise of its functions. No member of the Scottish Parliament is eligible for appointment to the Commission, nor is any member of the lower house of the UK Parliament, or of the European Parliament.</p> <p>The Commission is not accountable to the Crown, the Government or any ministry.</p> <p>Paragraph 2 of Schedule 1 to the SCHR Act provides, in addition, that the Commission is not a servant or agent of the Crown (His Majesty King Charles, i.e. the State).</p> <p>The Commission selects, appoints and directly employs and manages its own staff, who are not classified as civil servants (as the Commission is a Parliamentary Body rather than a Non-Departmental Public Body and there is no accountability of the Commission to Scottish Ministers).</p>

	<p>This is subject to the SPCB's consent as to numbers of staff and the SPCB's approval of terms and conditions.</p> <p>The Commission is financially accountable to the Scottish Parliament, and operates within the normal conventions of financial responsibility, transparency and accountability applicable to any publicly funded body. Under paragraph 14 of Schedule 1 to the SCHR Act the Commission is required to prepare proposals for its use of resources and expenditure and submit these to the SPCB for approval. Under Schedule 1 paragraph 15 of the SCHR Act the Commission is required to keep proper accounts and prepare annual reports for each financial year. These are sent to the Auditor General for audit and then laid before Parliament.</p>
<p><b>Principle 12</b></p>	<p>Member States should <b>foster awareness</b> and the co-operation of all relevant public authorities in relation to the mandate, independence and role of NHRIs, including through training and awareness-raising activities.</p>
<p><i>No information</i></p>	

<p><b>Principle 13</b></p>	<p>Member States should take all measures necessary <b>to protect and support NHRIs</b> against threats and harassment and any other forms of intimidation, including through ensuring <b>functional immunity</b>. Any cases of alleged reprisals or intimidation against NHRIs, their membership and staff, or against those who co-operate or seek to co-operate with them, should be promptly and thoroughly investigated and the perpetrators brought to justice.</p>
<p><i>No information</i></p>	
<p><b>Principle 14</b></p>	<p>Member States should ensure that <b>confidential information collected</b> by NHRIs in the context of their mandate is <b>privileged and is not unduly made public</b>.</p>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by NHRI in 2023</i></p> <p>The lack of any quasi-judicial function in respect of complaints, together with the restrictions imposed by our enabling act (section 6: 'No power to assist in claims or legal proceedings') mean that the Commission's handling of information pertaining to individuals is very limited.</p> <p>Systems are in place to ensure that where such information is held or processed, it is treated in confidence and in line with the requirements of the Data Protection Act 1998.</p> <p>As a Public Authority listed in Schedule 1 of the Freedom of Information (Scotland) Act 2002, the Commission is required to provide information to third parties upon request. This general duty is subject to certain absolute and qualified exemptions which provide adequate and appropriate safeguards for the confidentiality of the information we hold.</p>

## IV. Co-operation and Support

<p><b>Principle 15</b></p>	<p>Member States should <b>take effective measures to enable NHRIs to communicate and co-operate</b> with, in addition to the various levels of administration in the member States, in particular:</p> <ul style="list-style-type: none"> <li>a. counterpart institutions, where appropriate through networking and exchange of information and practices, as well as through regular meetings such as those taking place within the framework of ENNHRI and GANHRI;</li> <li>b. civil society stakeholders, in particular non-governmental organisations and human rights defenders, who should enjoy easy and safe access to NHRIs as part of an enabling environment;</li> <li>c. other human rights structures, including regional, local and/or specialised institutions, notably Ombudsman institutions and equality bodies and their respective networks, where appropriate through jointly organised activities;</li> <li>d. international and regional organisations working in related or similar fields.</li> </ul>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by NHRI in 2023:</i></p> <p>The Commission is part of various groups and networks, some of these are funded or facilitated by the state for example: <a href="#">Equality and Human Rights Budget Group</a>; <a href="#">Open Government Action Plan</a> working group; <a href="#">Scotland's National Action Plan for Human Rights</a>; <a href="#">Human Rights legislative Taskforce</a> and several temporary working groups across a range of areas, for example: Abortion buffer zones research advisory group, National Performance Review, fiscal transparency improvement project.</p>

	<p>Other groups to which we are members such as UKIM and NPM, the state provides no specific funding for.</p>
<p><b>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</b></p>	<p><i>SCA Report June 2021, p. 32</i></p> <p>The SHRC is encouraged to continue to actively engage with the OHCHR, GANHRI, ENNHRI, other NHRIs, as well as relevant stakeholders at international, regional and national levels, in particular, in order to continue strengthening their institutional framework and working methods.</p>