



Glasgow
Council
for the
Voluntary
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Scottish Council
on Deafness (SCoD)

A society where deaf people have equal access, rights and citizenship

Voluntary
Action
Scotland

**volunteer
glasgow**



**Submission to the Equalities and Human Rights
Committee**

The Scottish Budget

About Us...

Our organisations are working collectively to build knowledge and capacity on human rights within the third sector and to work collaboratively with government, the Scottish Parliament and the public sector so that human rights fulfil their potential to help make Scotland fairer. We define human rights as economic, social, cultural, civil, political and environmental rights, in line with the ECHR and international treaties which the UK has ratified.

About GCVS

GCVS is the main development agency and advocate for voluntary and community organisations in Glasgow and one of the largest Council's for the Voluntary Sector in the UK. We are also one of four key partners – (GCVS, Volunteer Glasgow, Glasgow Social Enterprise Network and the Third Sector Forum) – that form Glasgow's Third Sector Interface – the partnership that supports and represents the third sector in Glasgow and through which the Scottish Government engages with the third sector. For more information visit our website <http://www.gcv.s.org.uk/>

About SCoD

The Scottish Council on Deafness (SCoD) is the lead for all matters concerning deaf people and their issues in Scotland, representing organisations working with and on behalf of deaf people: Deaf /Sign Language users, Deafblind, Deafened, and Hard of Hearing people. SCoD's membership provides an effective working partnership between the Third, Public and Private Sectors and the Scottish Government. For more information visit our website <http://www.scod.org.uk/>

About VAS

Voluntary Action Scotland is the national network organisation that champions, connects and develops Scotland's Third Sector Interfaces (TSIs) to support the third sector locally. VAS gives a national voice to the TSIs local impact. We advocate for the best possible environment in which the third sector locally can thrive and contribute to better and fairer outcomes for the people we serve. For more information visit our website <http://www.vascotland.org/>

Volunteer Glasgow

In addition to promoting and supporting volunteering across the public and third sectors, Volunteer Glasgow has a successful track record in providing community development, befriending/mentoring, learning, employability, carer support, and training/advisory services. An active partner and co-lead for the *Work & Worth* priority for the city's Poverty Leadership Panel, Volunteer Glasgow also chairs the city's Strategic Volunteering Framework Governance Group for the Community Planning Partnership. For more information visit our website <http://www.volunteerglasgow.org/>

1. Overview

The Equalities and Human Rights Committee has sought views about the impact of budgetary decisions on the protection and advancement of equalities and human rights. In this submission we focus on the impact of budgetary decisions on human rights which should be equally enjoyed.

The Scottish Government's capacity to realise human rights is significantly facilitated by its budget – what money is available, what money is spent and how, what evaluation for impact is undertaken. The Scottish Government has repeatedly stated its objective to fulfil its human rights obligations – civil, political, economic, social, cultural and environmental – and therefore due attention must be given to its budget as well as its policy development and implementation. An explicit statement and a distinct methodology on human rights must underpin the process and evidence gathered to monitor impact in the short, medium and longer term.

We understand that The Committee's main report will be delivered in advance of the budget publication, so this submission focuses on how budgetary decisions should protect and advance human rights. Whilst a range of budget headings are of interest, including of course the new tax and social security system devolved to Scotland, the focus needs to be on the entire budgetary process.

Despite human rights activity in Scotland, more needs to be done to acknowledge what policy and resources exist as well as make them strategically powerful. Procurement law, introducing a socio-economic duty, promoting the living wage, acknowledging private sector activities on business and human rights are just a few. Agreeing and setting the budget to be human rights compliant underpins them all.

Participatory Budgeting offers the best way forward, based on robust evidence. Therefore, there needs to be clarity of current spend, cost base and quality comparators. This requires the pro-active publication of information to enable better informed decision making and that links the process to the Scottish Government's 'Open Data Initiative'.¹ The participation needs to be inclusive, so integrate Human Rights Budgeting² with the established 'gender budgeting' processes and outcomes³. A range of organisations can inform the process including The Poverty and Inequality Commission which 'creates a new platform for radical ideas' and has a key role in "scrutinising how governmental budgets, policy and practice can have the strongest impacts on poverty and inequality".⁴

There is an opportunity to raise human rights compliance in budget setting with the UK Parliament as the exercise of reserved powers can make Scotland fairer. For example, the majority of social security powers and budget remain with the UK Government and Westminster Parliament. Therefore, it is proposed that a co-

¹ See <http://www.gov.scot/Topics/Economy/digital/digitalservices/datamanagement/OpenData>

² See SHRC website at <http://eqhria.scottishhumanrights.com/eqhriaresbudgetan.html>

³ For example, see website of the Scottish Women's Budget Group at <http://www.swbg.org.uk/>

⁴ Third Force News, 5th September 2017 http://thirdforcenews.org.uk/tfn-news/third-sector-groups-unite-against-poverty?utm_medium=email&utm_campaign=TFN%20digest%20Tuesday%2005%20September%202017&utm_content=TFN%20digest%20Tuesday%2005%20September%202017+CID_5edd56bb5c069980274f8bf3212ad9e0&utm_source=Email%20marketing%20software&utm_term=Third%20sector%20groups%20unite%20against%20poverty#wEVh2U0YFMH0ieoQ.99

ordinated approach is sought with the Joint Committee on Human Rights at the UK Parliament.⁵

2. Making Scotland Fairer

The Scottish Government has pointed out that ‘Over a million people are living in poverty in Scotland, including one in four children; and inequalities of income and wealth are far too wide. This unfairness simply isn’t acceptable in a country as rich as Scotland.’⁶ We agree that is unacceptable but we also realise that income disparity and poverty are stubborn problems which have failed to be addressed despite investment in strategies and clear political commitment.

In addition to information available from the Third Sector in Scotland, there is independent research which confirms the necessity of seeking greater impact with the spend of the Scottish budget. The Equalities and Human Rights Commission (EHRC) in Scotland has published ‘Is Scotland Fairer?’ which is “the biggest ever study into progress on equality and human rights published in Scotland. Based on the findings of the report, we outlined seven key equality and human rights challenges for improvement in Scotland.” First on the list is “Improve the evidence and the ability to assess how fair society is” which is crucial in planning future budgets, but other challenges can be immediately addressed such as “Encourage fair recruitment, development and reward in employment”.⁷

Given our work we believe the Equalities and Human Rights Committee (The Committee) can immediately address another challenge which is to “Encourage democratic participation...”⁸. For example, the Scottish Household Survey data on volunteering rates in Scotland suggest that inequality of participation is widening. Those sections of the population living in the poorest 20% of SIMD datazones in Glasgow are volunteering significantly less in 2015 than they did in 2012. There are many reasons for this, not least the need for people to ensure first and foremost that their basic needs are met in terms of housing, food and heat/light/power before they can consider volunteering for the benefit of themselves and others. The Committee should ensure that the budget setting process does not further exacerbate inequalities in participation by reducing direct or indirect support to enable and support people to volunteer. Freedom to volunteer is a human right and is a gateway to enjoying other human rights, for example Articles 22 and 25 of the International Covenant on Civil and Political Rights⁹. Therefore, both the Scottish Parliament and the Scottish Government have a duty to consider the impact of their budget decisions on the right to volunteer.

The Committee’s ‘Report on Draft Budget 2017-18’, acknowledged that “human rights are broader than equalities” and that “human rights does not explicitly feature, although it is referred to alongside equalities”. We therefore welcome the commitment that the

⁵ For the updated membership of the Committee see News release of 30th October 2017 <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news-parliament-2017/membership-agreed-17-19/>

⁶ ‘The Socio-Economic Duty A Consultation’ pub by Scottish Government July 2017 pg. 2 available at <http://www.gov.scot/Resource/0052/00522478.pdf>

⁷ ‘Scotland Annual Report 2016/17’ pub by EHRC Scotland pg. 9 pub 6th October 2017 available at https://www.equalityhumanrights.com/sites/default/files/ehrc_scotland_annual_report_2017_final.pdf

⁸ Ibid.

⁹ Available at UN website <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> and see preamble to the UN’s Universal Declaration on Human Rights and Fundamental Freedoms at http://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf

Committee would work with the Scottish Government “with a view to providing greater transparency”.¹⁰

Different outcomes can and must be achieved. Consideration needs to be given to achieving better outcomes by changing how the Scottish Budget is allocated and attaching conditions on how the allocations are spent.

3. Rights Holders

Human rights equalise the relationship between government, parliament and the people. Human rights empower people as they shift the debate from benevolence and ‘asks’ to a strategy for delivering rights and duties. People need to be aware of their rights and know how to exercise them to enjoy them equally. The experience will be fundamentally disempowering unless duty bearers know and acknowledge those rights across their functions.

People are rights holders as well as duty bearers if they work for a public sector body or work for a body which is delivering services of a public nature. Therefore, what people think of and know about human rights is crucial to delivering human rights. A Scottish Government opinion poll revealed that ‘one in five Scots believe human rights are for minority groups only’ and ‘two in five Scots say they have no bearing on their everyday life’¹¹. Therefore, there is a need to train staff and inform the public about what human rights mean if the budget setting process is to be meaningful and powerful in making Scotland fairer.

4. Duty Bearers

‘Human rights impose moral and legal obligations on states, and these obligations extend also to budgeting.’¹² The Committee can drive forward compliance with a human rights compliant budget setting process. There are two challenges: accepting that human rights compliance is a feature of budget setting in Scotland; understanding what human rights are and mean for prioritising the spend of the public pound.

Research has been commissioned, projects undertaken reports have been published but have failed to make a real impact in the Scottish budget process. For example, the SHRC has pointed out that “As public policy, fiscal policy is subject to human rights accountability and obligations. The standards and principles that come from human rights treaties should be taken into account in the design and implementation of fiscal policy including budget-setting and taxation decisions.” In the report for the SHRC it was stated that “The Scottish budget is not rights-based. The public budget is the principal economic policy document of any government. Effective realisation of human rights in Scotland cannot occur unless that budget is brought within the human rights framework.”¹³

The Scottish Government is the duty bearer and is responsible for compliance with treaties which have been ratified by the UK, in respect of devolved matters. Ratification means that all our laws and policies should comply. In respect of devolved

¹⁰ Paras 22-25. Published 27th January 2017, SP Paper 76 2nd Report, 2017 (Session 5) available at http://www.parliament.scot/S5_Equal_Opps/Reports/EHRiCS052017R02.pdf

¹¹ YouGov poll during 30 Oct – 03 Nov 2015 of 1,026 online interviews & are representative of all adults in Scotland (aged 18+).

¹² For more information see <https://www.law.ox.ac.uk/research-subject-groups/human-rights-and-budgeting>

¹³ ‘Human Rights Budgeting and Budget Analysis’, Authored by Ann Blyberg for the Scottish Human Rights Commission

powers, a wide range of ratified treaties are relevant as to how the Scottish Budget is allocated and spent including:

- International Covenant on Civil and Political Rights (ICCPR)
- Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW)
- Convention on the Rights of the Child (UNCRC)
- Convention on Economic, Social and Cultural Rights (CESCR)
- Convention Against Torture (CAT)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).
- Convention on the Rights of Persons with Disabilities (CRPD)

For example, under Article 2 of ICESCR, the Scottish Government must “progressively realise” the listed rights to “the maximum extent of available resources”. ICESCR includes basic human rights such as the right to an “adequate standard of living”, the right to “adequate food, clothing and housing”. The State has a duty to deliver on these rights and to ensure “the continuous improvement of living conditions”.¹⁴ Governments are permitted to realise this equal enjoyment of rights “by all appropriate means, including particularly the adoption of legislative measures.”¹⁵

The UN Committee on Economic, Social and Cultural Rights provides a lot of detail about what it expects of Governments:

“Article 2 is of particular importance to a full understanding of the Covenant and must be seen as having a dynamic relationship with all of the other provisions of the Covenant. It describes the nature of the general legal obligations undertaken by States parties ... obligations of conduct and obligations of result. ..., while the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes various obligations which are of immediate effect” and that includes taking steps which should be “deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.”¹⁶

Ensuring the budget is human rights compliant is one such deliberate, concrete and targeted step.

The UNCRPD requires the UK and Scottish Governments to “collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the Convention (Article 31);” Article 4 (1a) commits UK and Scotland “To adopt all appropriate legislative, administrative & other measures for implementation of UNCRPD; and Article 19 is the right to independent living.

Delivering these duties costs money so deciding the budget determines whether or not these rights can be respected, protected and fulfilled.

5. Reflecting Political Commitments in Budget Setting

¹⁴ Article 11(1) of ICESCR at UN website

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

¹⁵ Article 2 (1), Ibid

¹⁶ Paras 1-2 of General Comment 3 available at

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGE C%2f4758&Lang=en

There is a challenge in connecting repeated and explicit political commitments with the process of budget development. A change of culture as well as a change in practice in budget setting is needed, underpinned by knowledge of human rights in respect of rights holders and duty bearers.

The Scottish Government acknowledges that respect for human rights and ensuring they are equally enjoyed is the foundation of a fair society.

...The basic principle of ensuring true equality of opportunity – of enabling everyone to contribute fully to society – is an issue of human rights. It's about ensuring people are free from discrimination and fear – and it's also about tackling the social and economic disadvantage which harms people's health and wellbeing and reduces access to educational opportunities. Human rights are therefore central to our concept of inclusive growth – the concept we have put at the heart of our strategy of building a stronger economy and a fairer society. That's why I so warmly welcome the growing interest in the role that human rights – including economic and social rights - can play in achieving the wealthier and fairer society we are seeking to create.¹⁷

The Scottish Parliament and the Scottish Government have supported Scotland's National Action Plan on Human Rights (SNAP) since it was launched by the Scottish Human Rights Commission (SHRC) in 2013. Being able to evidence how human rights have influenced the budget setting process is a key way to give practical effect to SNAP.

6. Socio-Economic Duty

In 2017, Scotland will become the first part of the UK to introduce the socio-economic duty to tackle inequalities of outcome and make Scotland fairer, especially on reducing poverty, promoting inclusion and equalising opportunity. The consultation on the proposed 'Socio-Economic Duty' (The Duty) acknowledged the inter-relationship with ICESCR. Funding to deliver The Duty across the public sector and those delivering services of a public nature, should be properly costed and made available through the Scottish Budget.

The consultation on The Duty proposed a narrow but significant group of bodies for coverage but the definition of those bodies covered by Section 6 of the Human Rights Act 1998 is much broader and will more effectively realise the human rights obligation of progressively realising to the maximum extent of available resources the rights contained in ICESCR.

7. No Hierarchy in Monitoring Compliance and Impact

There is an apparent tendency to elevate compliance with the Equality Act 2010 over the Human Rights Act 1998 and the human rights provisions of the Scotland Act 1998. This is unhelpful as a coordinated approach will achieve better results. For example, compliance with the Public Sector Equality Duty (PSED), is now being monitored for impact with the City Regions Deals. There is no equivalent initiative for human rights compliance.

In September 2017, the Equalities and Human Rights Commission (EHRC) Scotland launched a programme of work "to engage and collaborate with Councils to ensure that the benefits of City Region Deals (and any other form of major investment) are shared

¹⁷ Speech by the First Minister, 9th December 2015 available at the Scottish Government website <https://news.gov.scot/speeches-and-briefings/snap-human-rights-innovation-forum>

equally by everyone in Scotland's communities, particularly women, disabled people and ethnic minorities." The EHRC is delivering a "targeted package of support free to assist them (i) to make sure their strategic and operational plans pay due regard to the Equality Duty (s. 149(1)(b) of the Equality Act 2010) and maximise opportunities to advance equality of opportunity in (for example) employment, housing and urban planning; (ii) by providing expert advice on equality in procurement, harnessing the powers to set equality conditions in award criteria and contractual conditions; and (iii) by developing a measurement framework, building on the North Ayrshire Inclusive Growth model, which enables partnerships to capture and reflect the equality gains they have made."¹⁸

It is useful to note that the Cabinet Secretary for the Economy, Jobs and Fair Work, Keith Brown MSP has included within the City Region Deal offer letters the following paragraph on equalities, "The Council will work with the Equalities and Human Rights Commission and others to explore opportunities to create inclusive growth, a fairness priority set out in Scotland's Economic Strategy and a Fairer Scotland to allow the benefits of growth to be shared by all, in line with the duty to have due regard to the need to advance equality of opportunity under the Equality Act 2010." A similar requirement in the offer letter should have been included for human rights compliance and consideration should be given to delivering a retrospective obligation for explicit compliance.

8. Private Sector as Duty Bearer

The SNAP Action Group 'Better World' has been managing the development of Scotland's Action Plan on Business and Human Rights (NAP). Therefore, there is a recognition that duty bearers for human rights are the State as well as private business. This creates significant opportunities to use the Scottish Budget to reward private companies, which are human rights respecting, with public sector contracts.

NAPs are being developed by countries across the globe to deliver the UN's 31 Guiding Principles on Business and Human Rights (UNGPs) which establish an even playing field for companies committed to deliver commercial success with human rights delivery.

In September 2016 The Committee wrote to the Minister Angela Constance about the slow pace of developing the Scottish NAP particularly as the UK NAP, launched by the UK Government, has been operational since 2013 and updated in 2016. It is timely to ask the Minister for an update on progress. It is useful to note that the Joint Committee on Human Rights at the UK Parliament published a report in March 2017 on business and human rights which observed that the UK NAP 'is modest in scope and fails to incorporate best practice regarding having measurable objectives.'¹⁹ The UK Government is still to respond to the report.

9. Procurement

The public sector spends over £10 billion each year on goods, works and services. The size of that spend means that, if we are to deliver sustainable economic growth, it is essential that we continue to use the power of public spending to deliver greater public

¹⁸ EHRC Paper submitted to CoSLA 'City Region Deal 'Equality and Investment' Project supporting Local Government' available at http://www.cosla.gov.uk/sites/default/files/documents/17-10-27_item_02_ehrc.pdf

¹⁹ Human Rights and Business 2017: Promoting Responsibility and Ensuring Accountability available at <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/inquiries/parliament-2015/inquiry/>

*value, drive efficiencies and help public bodies achieve their overarching purpose and strategic objectives.*²⁰

In setting the budget, public money is spent on contracts procured by the Scottish Government directly and by public authorities, very often from the private sector. Linking public spend with human rights compliance is reasonable and is part of the functions of the duty bearer. Despite legislation and guidance, there is concern about the actual impact. In the 'Scottish Government Statutory Guidance on the Selection of Tenderers and Award of Contracts Addressing Fair Work Practices, including the Living Wage, in Procurement', it appears that you **cannot** make paying the living wage a mandatory requirement for appointment to a public contract:

*In respect of how to apply the Living Wage in procurement processes the Scottish Government has obtained clarification from the European Commission. This confirms that contracting authorities are unable to make payment of the Living Wage a mandatory requirement as part of a competitive procurement process where the Living Wage is greater than any minimum wage set by or in accordance with law. In the UK, this is the National Minimum Wage. It is also important to take account of developing case law decisions on this matter. There have been a number of rulings of the Court of Justice of the European Union, including the most recent ruling at the time of the preparation of his guidance; Bundesdruckerei v Stadt Dortmund (C549/13), which reinforces this position. It is, therefore, not possible to reserve any element of the overall tender score specifically to the payment of the Living Wage.*²¹

However, the same Guidance also acknowledges that:
*Section 9 of the Act places a sustainable procurement duty on a contracting authority before carrying out a regulated procurement, to consider how in conducting the procurement process it can improve the economic, social, and environmental wellbeing of the authority's area. Wellbeing of the authority's area includes, in particular, reducing inequality in the area. A contracting authority can contribute towards improving the social wellbeing element of its sustainable procurement duty by adopting a policy to promote fair work practices in relevant public contracts.*²²

10. Next Steps

We urge The Committee to recommend that the process of setting the budget should use recognised frameworks which assess human rights compliance. These frameworks adopt an inclusive approach which requires quality information and data to inform decision making. The frameworks include:

Human Rights Budgeting: The SHRC has produced a list of case examples where human rights budgeting has been used eg to advance the right to health and to housing.²³

EqHRIA: An Equality and Human Rights Impact Assessments tool that has been jointly developed by the EHRC Scotland and the SHRC. It is not prescriptive but sets out 10 steps.²⁴

²⁰ Guidance under the Procurement Reform (Scotland) Act 2014, Section 1.2, published by the Scottish Government 2016 and available at <http://www.gov.scot/Resource/0049/00496919.pdf>

²¹ Please see para 18 on page 5 of the Scottish Government Guidance <http://www.gov.scot/Resource/0048/00486741.pdf>

²² Para 20, Ibid.

²³ See SHRC website at <http://eqhria.scottishhumanrights.com/eqhriaresbudgetan.html>

²⁴ For more information go to the SHRC website <http://www.scottishhumanrights.com/eqhria>

CRWIA The Child Rights and Wellbeing Impact Assessment (CRWIA) 'is a policy development and improvement approach' used by Scottish Government officials from June 2015. The CRWIA can be undertaken as part of a joint impact assessment eg with an EqHRIA 'if there is cross-referencing of issues relevant to each impact assessment, and that outputs are published separately'. The CRWIA policy development and improvement approach has been made available for public authorities, such as the Scottish Parliament, and children's services to adapt for their own uses.²⁵ In addition Scotland's Commissioner for Children and Young People has developed a model for carrying out a children's rights impact assessment which includes a set of template forms.²⁶

HRBA: Human Right Based Approach is about about empowering people to know and claim their rights and increasing the ability and accountability of individuals and institutions who are responsible for respecting, protecting and fulfilling rights. A HRBA is delivered using the PANEL Principles.²⁷

PANEL Principles: There are five principles: participation, accountability, non-discrimination and equality, empowerment and legality.²⁸ These principles determine how human rights are achieved and public-sector obligations delivered. They are also the foundation for evaluations of those interventions.

FAIR: Another process that helps to deliver a HRBA. It consists of: Facts and the need to establish them in respect of the individual; Analysis of rights at stake; Identification of shared responsibilities; and Review of actions.²⁹

SNAP: Scotland's National Action Plan on Human Rights, which was launched in 2013 and has been the subject of reports and debates in the Scottish Parliament and at the Justice Committee in Session 4.³⁰

The above list is not complete but does give a snapshot of all the different human rights initiatives that can be used. In delivering these frameworks it is crucial that the process is accessible, for example to the 1 million people in Scotland who are deaf and hard of hearing. The Principles of Inclusive Communication should always be used³¹ and guidance is readily available from the Scottish Accessible Information Forum³² – not just available in Easy Read.

A specific ask of The Committee is that human rights approaches are mandated for inclusion in any participatory budgeting processes undertaken to decide how the 1% of public sector budgets are spent.

For further information please contact: Janis McDonald, Chief Officer of the Scottish Council on Deafness (SCoD) janis@scod.org.uk Tel: 0141 248 2474

²⁵ For more information see Scottish Government website <http://www.gov.scot/Topics/People/Young-People/families/rights/child-rights-wellbeing-impact-assessment>

²⁶ For more information see CYPCS website <https://www.cypcs.org.uk/policy/cria#>

²⁷ For more information go to the SHRC website

<http://www.scottishhumanrights.com/careaboutrights/whatisahumanrightsbasedapproach>

²⁸ Ibid

²⁹ For more information go to the SHRC website

<http://www.scottishhumanrights.com/eqhria/eqhriatrainingfair>

³⁰ For more information go to the SHRC website <http://www.scottishhumanrights.com/actionplan>

³¹ <http://www.gov.scot/Publications/2011/09/14082209/0>

³² <http://www.saifscotland.org.uk/#sthash.FWiq1yfq.dpbs>