



The Scottish Parliament
Pàrlamaid na h-Alba

Ms Christina McKelvie, MSP
Minister for Equalities and Older
People

The Scottish Government

Via email only

Equalities Human Rights and Civil Justice
Committee
The Scottish Parliament
T2.60
Edinburgh
EH99 1SP
EHRCJ.committee@parliament.scot

10 November 2022

Dear Minister,

Budget 2023-24: Pre-Budget Scrutiny

I am pleased to set out the Equalities, Human Rights and Civil Justice Committee pre-budget scrutiny views for the forthcoming Scottish Government's draft budget 2023-24.

This year, the Committee's scrutiny continued its focus on human rights budgeting. We have structured our views under the following headings for clarity:

- Transparency
- Participation
- Accountability

On transparency, the Committee's work concentrated on ensuring that the Scottish Parliament and the public are provided with accessible information about budget decisions and have opportunities to meaningfully engage in the budget process. As part of that engagement process, the Committee explored to what degree the process actively engages with marginalised groups and those with protected characteristics, and how the Scottish Government can promote participation. The Committee also examined whether the budget process includes sufficient oversight to ensure accountability for budget decisions.

Should you have any questions, please contact the Clerk to the Committee at EHRCJ.committee@parliament.scot.

We look forward to receiving your response once you have had the opportunity to consider the Committee's recommendations.

With best wishes

Yours sincerely,

Joe FitzPatrick MSP
Convener
Equalities, Human Rights and Civil Justice Committee

Budget 2023-24: Pre-Budget Scrutiny

Introduction

1. This year, for the second year running, the [committee's pre-budget scrutiny](#) focused on **human rights budgeting**. This year, our scrutiny was supported by work carried out as part of a SPICe academic fellowship, by Rob Watts of the Fraser of Allander Institute. As part of this, he published [a SPICe briefing](#) which used a practical case study exploring human rights budgeting in the context of learning disabilities.
2. We issued a call for views, [with full responses available here](#). A [summary of written views](#) was produced by SPICe.
3. The Committee received a briefing in private with Rob Watts, accompanied by People First who spoke about the budget from the perspective of those with learning disabilities. This was followed by a round-table evidence session on [25 October 2022](#) looking at the practicality of applying a human rights approach to the Scottish Budget, and evidence from the Minister on 1 November 2022.
4. This letter highlights some of the issues covering the following areas:

A human rights approach to budgeting

5. Human rights budgeting in the context of the budget process assesses the process against three principles, which are based on international human rights standards:

Transparency	Do Parliament, civil society and the public have accessible information about budget decisions?
Participation	Does civil society have opportunities for meaningful engagement in the budget process? Does the budget process actively engage with marginalised groups who are least likely to have their rights realised?
Accountability	Does the budget process include sufficient oversight to ensure accountability for budget decisions?

6. Human Rights Budgeting means that the actual content of a budget (i.e. the decisions taken around how money is raised, allocated and spent) should be in line with the government's human rights obligations. These obligations provide criteria against which to assess a budget.

Progressive realisation

Governments must take steps towards the full realisation of economic, social and cultural rights over time.

Minimum core obligations

These are the minimum protections that governments should guarantee everyone.

Non-retrogressive measures

Human rights principles state that governments should not take active steps to deprive people of rights that they used to enjoy.

Non-discrimination

All forms of discrimination must be prohibited, prevented and eliminated. This principle implies that budgets should be allocated in a way that reduces systemic inequalities.

Maximum available resources

Governments are obliged to take steps to progressively realise rights to the “maximum of its available resources”.

7. The Committee understands that no government has formally applied the principles of human rights budgeting, either to its budget process or to the content of budgets themselves. However, we wanted to explore these principles and how they apply to the Scottish Government budget.
8. To establish an understanding of the current situation, this letter is structured based around the three principles. We hope that this might help to provide a baseline for future scrutiny. Within these principles were several themes which overlapped, which will be highlighted accordingly.

Conclusions and recommendations on the overall approach

9. The Committee recognise the benefits of looking at the budget process, and the wider policy-making process, using the three principles of human rights budgeting as a framework. It allows for a structure and criteria within which it is possible to get some understanding of progress, and where there may be room for improvement.
10. The Committee also hopes that the Scottish Government agrees that a commitment to demonstrating where its human rights obligations have been reflected in the Budget process is essential.
11. **The Committee recommends that the Scottish Government consider demonstrating adherence to the three principles of human rights budgeting within its Budget documentation, across all portfolio areas.** This might mean policy statements which explain, for instance, how data and lived experience has been used to inform decision-making and should indicate where engagement and impact assessments have resulted in changes to the budget with detail on how the process has upheld the Scottish Government’s human rights obligations.

12. The Committee recommends that the Scottish Government consider how it can better produce **measurable** outcomes and ensure that enough data is collected to determine whether those outcomes are being met.

Transparency

13. Evidence on transparency fell into two main themes – data quality and availability, and transparency around the decision-making process (including how data is used).
14. Many submissions made similar points around the need for widespread, regular, sustained, longitudinal and disaggregated data, which is published regularly and made available to the public (in line with research ethics practice standards).
15. Specific areas identified where data, particularly that which can be disaggregated, is lacking included:
- Service demand and unmet need.
 - Health inequalities.
 - Intersectionality.
16. **Audit Scotland** said that improvements are needed in data availability, tools and skills to support performance monitoring, strategic decision-making and planning service improvements. It did say, however, that “Councils are at an early stage of understanding how data can be better used to inform decisions, and understand user and community needs to achieve better outcomes”. In oral evidence, Jillian Matthews from Audit Scotland explained that local data isn’t often joined up effectively at a national level, leaving an incomplete picture. Conversely, national data doesn’t always support local authority duties. Jillian also spoke about data gaps in social care, which are much wider than in health care, and how these data gaps contribute to challenges in understanding unmet need. Many measures give a picture of local current demand but understanding national and unmet demand is far more challenging.
17. In oral evidence, the **SCLD** said that there are limitations in the scope of data collected in line with the Equality Act. For instance, although disability figures are useful these aren’t disaggregated which means a lack of detail on specific disabilities, which may have very different support needs. They highlighted that certain groups that fall within certain protected characteristics face further barriers than the wider cohort with that characteristic, and it is important to have data around the most at-risk groups.
18. Sara Cowan, speaking on behalf of the **Scottish Women’s Budget Group (SWBG)**, spoke about current ongoing Scottish Government reviews on equalities data (equality data consultation, public sector equality review, mainstreaming strategy), and emphasised the importance of these review processes being connected to ensure that the best quality of data is collected. She said that consistency and the ability to use data intersectionally was crucial to improving the analysis process.

19. The **EHRC** and **SHRC**, among others, highlighted the challenges presented by a lack of fiscal transparency in the Scottish Government's budget process. The SHRC said "there remains a lack of transparency in the Scottish budget to date, which is problematic". They suggested that the Committee ask the Scottish Government about the "Current progress of its Fiscal Transparency project and what consideration has been given to providing the types of data set out in answer to this question",

20. They also said that:

"analysts must have access to timely, transparent, and accessible financial information in a sufficient level of detail. This is required to facilitate a human rights analysis of the budget and determine its impact on the progressive realisation of economic and social rights. The more detailed the information, the more in depth the analysis can be and the clearer a causal connection can be made between budgetary decision-making and the progressive realisation of rights."

21. The **SCLD** also spoke about outcomes, referencing a [Fraser of Allander Institute report on learning disability](#), which explored the [Keys to Life](#) strategy and highlighted a lack of disaggregated data on disability and learning disability, delays in stats publication, and policy based on out-of-date Census data. SCLD explained that these failings effectively make those with learning disabilities invisible in policymaking and decision-making. We noted that data on disability is collected in the Household Survey, but that it is not possible to further disaggregate data on learning disability meaning policy doesn't take account of the specific and varying needs of learning disabled people

22. In the context of addressing structural inequalities, distributional analysis was mentioned in several submissions, however the ability to carry this out effectively was seen as limited because of some of the data issues identified. The **SWBG** and **EHRC** both suggested that the EQIA process should be able to identify some of these issues, but many respondents suggested that current use of EQIAs and Fairer Scotland Duty Assessments was varied in practice and effectiveness.

23. Other transparency issues highlighted included a lack of effective communication, a lack of sufficient detail to accompany Level 4 figures, a lack of read across between national and local government budgets, challenges in making comparisons to previous budgets, a lack of transparency around Budget-setting decisions, and a concern that EQIAs can often be retrofitted to the policy process rather than being an integral part of the decision-making process. There were also calls for the Scottish Government to commit to undertaking the Open Budget Survey. The **ALLIANCE** expressed specific concerns around the ability to understand whether budgets are increasing or decreasing in real terms.

24. The Minister spoke about the equality data improvement project and confirmed that the equality evidence strategy for 2023-25 is due to be published in Spring 2023. She drew attention to data being a long-standing challenge:

“Since my first ever outing to a committee 15 years ago in the Parliament, we have been looking at how we collect, use, disaggregate and share data in order for us to obtain better outcomes.”

25. When asked about her role in ensuring that equalities data is considered in all aspects of the Budget, she said:

“It is not for me to respond on behalf of those Government ministers, but that mainstreaming work is being done right across the whole of Government. An audit was done of equality data that had been collected and published in key datasets and of how that was then used to produce official and national statistics and update the national performance framework—because it is all linked to those indicators—and to inform significant ministerial decision making.

Another piece of work is on-going. We are reviewing the public sector equality duty, doing the equality data improvement project and the mainstreaming work: those all work together to make all the changes that we need to see.”

26. The Minister expressed an openness to ideas on how data collection and disaggregation can be improved, and concluded:

“We are of the belief that the data needs to be improved all the time. It is another living document that we need to keep working on and improving all the time, and we are doing that.”

27. On the equality data improvement project, Scottish Government official Rob Priestley outlined further detail:

“We are developing an equality and human rights mainstreaming strategy, which will cut across the Scottish Government and the wider public sector. Our initial work on that has involved conducting a number of deep dives with stakeholders. Areas that have been discussed include levers, culture and competence. We are carrying out further engagement just now.”

Conclusions and recommendations on transparency

28. The Committee notes the Minister’s comments around long-standing issues with data, and commitments to improving this through mainstreaming. However, evidence, including that heard in our past Budget scrutiny, suggests that long-standing issues are not being resolved. **We ask that the Scottish Government confirm what improvements have been made in data collection in the past 15 years and provide detail on why data gaps remain.**

29. Whilst we appreciate a culture of continuous improvement, **we ask that the Scottish Government make a commitment to setting a target date by which it will be able to collate and share full, consistent, and disaggregated equalities data across all portfolio areas and keeps the committee informed about this data collection process.**

30. Following concerns raised about the lack of connection between spending, outcomes, data, and the decision-making process, **we ask that the Scottish Government consider how Budget documents can better outline these links to increase transparency.**
31. Following the Minister's expression of being open to exploring new ways of collating and disaggregating data, **we ask the Scottish Government to consider how its standard populations surveys such as the Scottish Household Survey can be improved to provide disaggregated data within protected groups.**
32. **The Committee welcomes the Minister's openness in exploring how this may be achieved and asks that she ensure that both stakeholders and protected groups they represent are able to participate in developing improvements.**

Participation

33. Participation was a running theme in evidence and was linked to both transparency and accountability. Most submissions spoke about the need to understand and reflect lived experience, including intersectionality, and the importance of improved public engagement, a transparent and jargon-free process, and accessible documentation (including in accessible languages such as BSL, Easy Read etc).
34. Oonagh Brown from the **SCLD** said that the public should be involved in the Budget process at all levels, and suggested that there could be lessons learned from the approaches used for managing charity finances as part of the [SCLD Our Future Leaders](#) programme.
35. Callum Chomczuk of the **CIH** said that setting human rights outcomes and minimum core standards should drive the process. He cited the partnership approach used within social housing wherein tenants are involved in the decision-making process.
36. Clare Gallagher (**CEMVO**) said that a strategic approach to budget setting was needed, that included participation at the start of the process not just the end. If decision-makers want to understand lived experience, the process would need to change to allow for this. She suggested that in thinking about and involving the least represented group of people, other under-represented groups would inevitably be supported. She also explained that the consultation process should be about more than giving information then expecting people to come forward with their views – ideally with decision-makers going into communities, with information that is accessible and in different languages.
37. Sara Cowan described the Resource Spending Review as 'dense' and said that it could be difficult for people to link Budget documents back to the impacts on their everyday life. She said the **SWBG** recommended the publication of a Citizens' Budget each year to help people to start feeling a connection to the Budget process, including visual breakdowns of the

process. Sara went on to call for a human rights approach to budgeting to address structural inequality but said that a focus on gender was also important, alongside a participative approach, including for preventative spend/policy, to ensure intersectional differences were understood.

38. Maggie Wilson and Fraser Haldane of **People First** spoke about their experience of participating in consultation on new legislation for learning disabilities and autism but feeling like the outcomes did not reflect their concerns. Fraser said:

“There is no specific strategy for learning disability anymore – it is combined with Autism and Neurodiversity but these are very different experiences that require different approaches. It means that learning disability is once again overlooked when budgeting decisions are made.”

39. On making the wider range of budget documents available in accessible formats, the Minister said:

“We produce a number of documents in different formats, including XXL, Moon and easy read, and usually the team at the Scottish Commission for People with Learning Disabilities helps us with that. We are looking at ways to do that in an easy read version. I will come back to you on that, because we heard that point raised last week and we initially thought, “We produce the documents in those formats,” but when we realised that people were looking for the deeper documents that help them to understand what the budget means”.

40. On participation and lived experience, the Minister stated that “Policy development and policy outcomes are incredibly important and must be informed by lived experience”. She went on to speak about the value of third-sector support in understanding lived experience and intersectionality, and gave an example:

“As a privileged white woman, I would not speak for the women in Scotland’s diverse minority ethnic communities, so stakeholder engagement is incredibly important. During the summer, I spent a good amount of time meeting with stakeholders from organisations such as Amina—the Muslim women’s resource centre—and Shakti Women’s Aid; I spent almost a full day at Shakti in Edinburgh. We spoke about disaggregated data...

I sat with my mouth shut and my ears open to hear those stories and about the issues that those women had, and I did the same during my visit to the Saoirse project. There were women who came from areas of multiple deprivation and who were also carers, victims of domestic violence and had addictions. We see the deepest inequality at those intersections, and so that is where we focus our work; partnership and intersectionality are criteria for organisations receiving money from the delivering equally safe fund. Organisations such as Shakti, Saheliya, Waverley Care, and a number of other organisations that were

involved, allowed me—as someone who does not have first-hand experience—to understand what happens, how it happens and how we can use those experiences to inform and improve our approaches.”

41. In reference to the concerns raised in evidence about certain groups not feeling represented in the Budget process and legislation, the Minister said:

“I want to speak to the minister responsible to see whether we should be looking at that issue to ensure that organisations and, more important, the people they represent—the stakeholders within those organisations—get to hear their voice in all of this.”

Conclusions and recommendations on participation

42. The Committee welcomes the Minister’s commitments to reflecting lived experience within policy but remains concerned about whether this commitment is replicated within other portfolio areas. **We look forward to the Minister’s response following consultation with her counterparts within other portfolio areas and ask that the Minister provides us with regular updates on the development of the equality and human rights mainstreaming strategy.**
43. We note and welcome the Minister’s interactions with those who support and represent minority groups, including hearing about the success of projects such as Saoirse, and of engaging with organisations including People First, Scottish Women’s Aid, DataKirk, Amina, Shakti Women’s Aid, Saheliya, the Ahlul Bayt Society, JustRight Scotland and Waverley Care. **We ask the Scottish Government to explore how this level of support and engagement can be replicated elsewhere and with other minority groups, including through faith-based settings. We also ask that the Scottish Government’s budget decisions reflect the importance of the voluntary sector in supporting Scotland’s most marginalised people.**
44. The Committee would specifically appreciate an update on the consultation process for the forthcoming legislation on learning disability, autism and neurodivergence, and some assurance that concerns raised by People First are being addressed.
45. The Committee asks that the Scottish Government reflect stakeholders’ requests for accessible Budget documentation in time for the publication of the Scottish Budget 2023-24, including information which helps individuals to better understand the impact of the Budget on their own lives.

Accountability

46. On accountability, witnesses acknowledged the Scottish Government’s stated commitments to realisation of human rights but suggested that there was little evidence to support that this approach was being taken in practice. The discussion covered the RSR and other budget documents, as well as wider policy including revenue-raising and working with local authorities. A lack of

detail on what work had been done to understand the impact of spending decisions, on the EQIA process, on the effectiveness of outcomes, and on the link between specific spending decisions and human rights were all notable themes. Many of these themes tie back to transparency.

47. The **SWBG** said “there is a lack of connection between this statement, the Programme for Government and critically the National Performance Framework which sets out Scotland’s priorities as a nation”, and the EHRC pointed out that:

“... despite what appears on the face of it to be a comparable exercise across the RSR and most recent budget, there is not obviously any attempt to align the RSR ‘opportunities and challenges’ and budget ‘key risks’. Although there is a degree of overlap between some of these, it is not immediately clear whether this is by design or accident”.

48. Jillian Matthew of **Audit Scotland** said that understanding outcomes was crucial in addressing structural inequality. It should be clear at the outset who a policy intervention is going to reach, and how the funding for that and wider budget relates to that. She noted that additional investment is going into certain areas, but it’s hard to track what is being achieved with that funding as many of the stated aims are “outputs not outcomes” (i.e. teacher numbers, not educational attainment). There is often no detail on where specific funding will be targeted and what it is expected to achieve. She suggested that the Scottish Government needs to invest differently in different types of services, and consider longer term aims.
49. The **SCLD** also spoke about outcomes, referencing a Fraser of Allander Institute report on learning disability, which explored the Keys to Life strategy and highlighted a lack of disaggregated data on disability and learning disability, delays in stats publication, and policy based on out-of-date Census data. SCLD explained that these failings effectively make those with learning disabilities invisible in policymaking and decision-making.
50. Rob Watts indicated that there could be a mismatch between progressive realisation and minimum core. He explained, for example, that data from local authorities shows that support for adults with learning disabilities in Scotland has increased in real terms and this increased funding could be seen as evidence of budget decisions that enable progressive realisation of rights. However, he told us, it is not clear what outcomes are intended to be achieved with this increased funding and how they relate to human rights. Furthermore, the evidence on outcomes for people with learning disabilities has shown little change in outcomes over time.
51. He explained that it is also difficult to assess, without agreement across Parliament and civil society of what minimum core obligations mean in practice, how the Scottish Government can know if they are meeting their minimum core obligations without explicitly stating what they are. Many people with learning disabilities, for example, are in hospital for many years despite having no medical need to be there. This restricts their liberty and right to live independently in the community. There is a clear link to budget

decisions in providing suitable care packages and issues around delayed discharge.

52. Clare Gallagher of **CEMVO** pointed out that minimum core standards are a pillar in UN law and suggested that the Scottish Government should use human rights as a 'golden thread', linking aspirations, data, and outcomes together. CEMVO's view is that there is currently not a consistent approach – data collection forms are very varied, and they set no benchmarking framework. i.e., different questions are being asked by different people, and not capturing a full picture, and this is the case even between different Scottish Government directorates.

53. Fraser Haldane from **People First** spoke about the need to review the impact of past spending and consider alternative ways to deliver support:

“If you take away some of the stuff that’s not working then you will have the money to pay for what people need. The process of Guardianship costs time and money with doctors’ reports and solicitors and the court process itself. This money could be spent on developing a system of supported decision-making so that people with a learning disability are truly supported to make decisions rather than having that right taken away.”

54. Most submissions spoke about tax reform, and about linking revenue-raising directly to outcomes. **Audit Scotland** said that “there is currently an implementation gap between the government’s good intentions and realising rights” and explained that:

“Long-term outcomes are different to more immediate outputs and this continues to cause some confusion. Outputs are the tangible measures that can indicate progress towards long term goals, but they are not the outcome objectives themselves.”

55. Callum Chomczuk of the **CIH** spoke about the unintended impacts of policies when a full human rights assessment isn't carried out. He used the example of the social housing rent freeze which he said if continued will see social landlords unable to invest. He explained that affordability of housing is a part of housing human rights, but it's only one part. Not having a full overview of the human rights implications of policy changes in this instance 'undermines the rights of not just tenants, but also of future tenants'.

56. There was some concern about cohesiveness between the Equality and Fairer Scotland Statement and other frameworks, strategies, and documents.

57. On the NPF, many submissions linked back to data challenges and suggested that some outcomes were more measurable than others. The **SHRC** said that the Scottish Government should consider aligning the NPF more closely with the Budget process as part of the next NPF review.

58. Clare Gallagher of **CEMVO** suggested that human rights are often the goals in policy, but not the reality. She said that an understanding among people in

decision-making roles is important, but also that right-holders needed more knowledge too – people don't know their rights. She said that if more was done to help people understand their rights, they would be better placed themselves to know when they weren't being met, and to ask that they were.

59. When asked to confirm the links between Equalities Impact Assessments and the Budget process, the Minister explained:

“There are a number of legislative and non-legislative ways in which we do that. Obviously, there is the fairer Scotland duty, we have our processes, and there is equality impact assessment development. The work that I have been doing over the past few years has included looking at EQIAs to find the gold standards and ensure that they are used all the way through Government. That is a big part of the mainstreaming team's work. We have offered a number of opportunities to other colleagues across Government to take part in training and experience the way to do EQIAs that details the outcomes that we want to see. That is the important part. It is not just about completing the document; it is about what that does and how we can measure progress against it.

“The most effective place for EQIAs is throughout the cycle of the development. They should not be done at the end of the process or just at the beginning of it. The document has to be a living document, so it always has to go through all the processes. That is done so that it informs our decision making as we go a step at a time, whether we are talking about annual budget allocations, the help that we give to people, or seeing outcomes.

“... We measure against our national performance framework. What have we committed to making progress on in that? How does that map across to what we are doing with an EQIA and what that EQIA does to inform policy making and create better outcomes? We go all the way through that.

“We have committed to doing work around the emergency budget, and we have done work around the resource spending review. These are pretty exceptional times in which to do that. The fairer Scotland budget statement comes along with that.”

60. In the context of ensuring that the EQIA process takes place at the start of policy development, the Minister said:

“With regard to the equality and fairer Scotland budget statement, work is being done to reverse the process a bit, so that outreach is done not at the end of the process but at the beginning. The budget scrutiny in this place is an example. Pre-budget scrutiny includes all the questions that members have asked me today about the process and how people can engage with it, and how we do much better at ensuring that stakeholders' voices are heard. A number of the recommendations

from the previous iteration of Angela O'Hagan's EHRBAG group centred on how we improve those processes.

... Much of what we are doing is around ensuring that we take a participation, accountability, non-discrimination and equality, empowerment and legality—PANEL—principles approach at the beginning of every policy development. Every policy development will have a financial impact, so not looking at the budget at that point would seem to be a bit myopic.”

61. As noted under *Transparency*, the Minister confirmed that she does not have responsibility for other ministers' oversight of equalities. When asked about this, in the context of the Budget process and health and social care in particular, she said:

“The equality budget advisory group helps us to understand some of that. Also, the equality and fairer Scotland budget statement ... becomes incredibly important with regard to how we do what we do and how we ensure that the processes are transparent enough for people to understand and so that they see themselves in the process. I will take your comments back. I cannot comment on how the Minister for Mental Wellbeing and Social Care is working on that, but I give you a commitment to look at that and come back with a more detailed response. I will look for that across the whole of Government.

“... the work that we are doing with the mainstreaming team is important in ensuring that those processes are done in a way that means that people's lives are reflected and real human stories are carried through those decision-making processes so that we do not have the issues that stakeholders commented on in the committee's last meeting. We take all that very seriously, and I inject that into the work that I do. I am not silent on any of that, as you can imagine, and neither are other ministers. The Government is committed to doing that better, so we will come back to you with a more detailed response.”

Conclusions and recommendations on accountability

62. Although the Minister outlined ongoing processes which aim to connect equalities and human rights to the Budget process, and to using PANEL principles in policy development, the evidence we received suggests that this is far from being realised. **The Committee asks the Scottish Government to provide further detail on examples where the Equality and Fairer Scotland Duty is reflected in policy and funding decisions, with a clear demonstration of the links in documentation.**

63. **The Committee asks the Scottish Government for further detail on how stakeholders' concerns around transparency, accountability and measurability are being considered during the review of the National Planning Framework.**

- 64.** In reference to the Minister's clarification that she has no oversight over other portfolio decisions, **we ask the Scottish Government to confirm how it ensures that a consistent and high-standard approach to equalities and human rights is maintained across all portfolio areas and budgetary decisions and how they ensure that outcomes are measurable.**
- 65.** Finally, **we ask the Scottish Government what it is doing to make sure that people have a full understanding of their own equalities and human rights, and to establish and articulate minimum core standards.**