

## Health and Social Care Alliance Scotland (the ALLIANCE)

Response: Equalities and Human Rights Committee call for evidence on Human Rights and the Scottish Parliament



16 March 2018

---

### About the ALLIANCE

The Health and Social Care Alliance Scotland (the ALLIANCE) is the national third sector intermediary for a range of health and social care organisations. The ALLIANCE's vision is for a Scotland where people of all ages who are disabled or living with long term conditions, and unpaid carers, have a strong voice and enjoy their right to live well, as equal and active citizens, free from discrimination, with support and services that put them at the centre.

The ALLIANCE has over 2,200 members including large, national support providers as well as small, local volunteer-led groups and people who are disabled, living with long term conditions or providing unpaid care. Many NHS Boards are associate members and many health and social care professionals are Professional Associates. Commercial organisations may also become Corporate Associates.

We welcome the opportunity to respond to the Committee's call for evidence on human rights and the Scottish Parliament. Rights sit at the heart of our work to support transformational change, ensure people are at the centre and champion the third sector. The ALLIANCE co-convenes the Health and Social Care Action Group of Scotland's National Action Plan for Human Rights<sup>1</sup> and regularly produces publications and delivers events with a human rights focus<sup>2</sup>. We are also a partner of the Scottish Human Rights Commission and the Centre for Economic and Social Rights in a new initiative on human rights budgeting<sup>3</sup>.

---

<sup>1</sup> <http://www.healthandsocialcare-snap.com/>

<sup>2</sup> See, for example, <https://www.alliance-scotland.org.uk/wp-content/uploads/2017/11/ALLIANCE-Being-Human-publication-2017-1.pdf>

<sup>3</sup> <http://www.scottishhumanrights.com/news/new-project-launched-to-put-human-rights-at-heart-of-public-sector-budgets/>

## **Participation and engagement: Can the Scottish Parliament empower people to make them more aware of their rights under domestic and international human rights law and to build a strong human rights culture in Scotland?**

### **Increasing awareness and understanding**

The ALLIANCE recognises that progress has already been made in Scotland to raise the profile of human rights; however much more could be done and we believe the Scottish Parliament has a key role to play.

The 2013 creation of Scotland's National Action Plan for Human Rights (SNAP)<sup>4</sup> has already gone some way to increasing awareness and understanding of rights-related issues, including in the sphere of health and social care, and how rights pertain to people who are disabled, living with long term conditions and unpaid carers. That said, evidence would suggest that further work is required to make people more aware of, and empowered to claim, their human rights.

A survey conducted by YouGov<sup>5</sup> in 2015 highlighted that:

- One in five adults in Scotland (22%) thought that human rights are designed to protect minority groups, rather than everybody
- Over two in five people (44%) believed that human rights had little bearing on their everyday life

More recent research for the Scottish Human Rights Commission found that while 42% of people over 16 in Scotland are supportive of rights, the majority remain either conflicted, opposed or disengaged and have low detailed knowledge of rights<sup>6</sup>.

### **Empowerment to claim rights**

As we know, despite many checks and balances in Scotland, there is still inadequate redress when people's rights are infringed. It is important to make the distinction between helping people become more aware of their rights and the act(s) of claiming them. Although gaining knowledge about rights is empowering, information on its own is not enough and can be meaningless unless accessible structures and processes exist for people to claim their rights in practice. This requires the Scottish Parliament and other public bodies to not just lend their efforts to increasing the population's awareness and understanding of rights, but to also have a good understanding of their own obligations as duty bearers, and how to meet them.

---

<sup>4</sup> <http://www.snaprights.info/>

<sup>5</sup> <https://news.gov.scot/news/fly-the-flag-for-human-rights>

<sup>6</sup> [http://www.scottishhumanrights.com/media/1754/building\\_a\\_human\\_rights\\_culture\\_scotland.pdf](http://www.scottishhumanrights.com/media/1754/building_a_human_rights_culture_scotland.pdf)

## **Building a strong culture**

Despite a welcome increase in the use of human rights language and terminology across many policy sectors in Scotland, including health and social care, this is not matched by a comparable growth in rights-based practice. As one of Scotland's principal duty bearers, the Scottish Parliament can play an important role in leading by example when it comes to human rights. Helping to build a strong national rights-based culture requires institutions to 'walk the talk' and demonstrate efforts to take a rights-based approach in their own operations, for example by adopting Equalities and Human Rights Policies, appointing officers with meaningful authority to engage in organisational change and facilitating access to specialist support and resources when required.

While cultural change could develop organically over time, the ALLIANCE believes a stronger course of action would be for the Committee and wider Scottish Parliament to create a concrete human rights action plan, allocating a budget, and using outcomes focused approaches and 'SMART' objectives against which progress can be measured.

## **Parliamentary procedure and process: What further steps can the Scottish Parliament take to ensure that people's human rights are being taken into consideration when the Scottish Government and public authorities are creating policies?**

### **Ensuring consistency across the Scottish Parliament**

As recognised by the Scottish Human Rights Commission in their 2013 report "Getting it Right"<sup>7</sup>, "both the Scottish Government and Scottish Parliament are required to consider the whole range of international human rights obligations by observing and implementing them." In its current Programme for Government, the Scottish Government has also reiterated its ambition to consider how rights can be further embedded<sup>8</sup>. It is therefore crucial that the Scottish Parliament use all available means to ensure rights are taken into consideration by the Scottish Government and other public bodies.

However, while the Scottish Parliament has consciously adopted rights-based approaches to policy and law making in some cases, in others it has been more reluctant to engage with some human rights issues. There needs to be greater consistency in the approach and the Committee can play a strong leadership role in clarifying for staff and Parliamentarians the opportunities and benefits to be drawn from including a human rights-based approach in major policy responses.

---

<sup>7</sup> <http://www.snaprights.info/wp-content/uploads/2016/01/Getting-it-Right-An-Overview-of-Human-Rights-in-Scotland.pdf>

<sup>8</sup> <http://www.gov.scot/Resource/0052/00524214.pdf>

## **Training and tools for Parliamentarians and staff**

Equalities and human rights are everyone's business, touch every aspect of our lives and are therefore relevant across all Scottish Parliament work. We would therefore welcome a new approach that progressively introduced mainstreaming of explicitly dedicated time across all Parliamentary work to consideration of equalities and human rights issues.

However, in order to make this work meaningful and effective, there needs to be greater awareness and understanding of rights across the whole of Parliament – elected members and staff. As noted in the paper produced for the Committee by Michael Potter<sup>9</sup>, and the report of the Commission on Parliamentary Reform<sup>10</sup>, the ALLIANCE believes training on international human rights law, principles and practice; CPD; ongoing support and readily available access to independent expertise should be incorporated into Parliamentary operations.

In addition to general training across Parliament, individual Committees and Cross-Party Groups could commission tailored training and support, for example the Health and Sport Committee on the rights to health and social care; the Social Security Committee on the right to social security; and so on. Adopting such an innovative approach could make the Scottish Parliament a world leader in human rights.

## **Human Rights Rapporteurs**

The recasting of the remit of the then Equal Opportunities Committee to specifically include human rights was a welcome step to ensure that rights feature more prominently and frequently on the Scottish Parliament's agenda. Of course, rather than working in isolation, a fundamental part of the Committee's ongoing role will be to support and work collaboratively with the full range of parliamentary Committees to ensure that human rights are mainstreamed into their approach to legislative scrutiny and broader work. The ALLIANCE notes the Scottish Human Rights Commission's recommendation<sup>11</sup> that the designation of a 'Human Rights Rapporteur' for each Committee could be a positive step in the broader mainstreaming of human rights across Parliament. To be fully effective, Rapporteurs need to be properly trained, have access to adequate resources and support, and their recommendations would need to carry weight within each Committee.

---

<sup>9</sup>

[http://www.parliament.scot/S5\\_Equal\\_Opps/Inquiries/Human\\_Rights\\_Scrutiny\\_Scotland\\_NIA\\_final.pdf](http://www.parliament.scot/S5_Equal_Opps/Inquiries/Human_Rights_Scrutiny_Scotland_NIA_final.pdf)

<sup>10</sup> <https://test123582.files.wordpress.com/2016/10/commissiononparliamentaryreformreport-june20171.pdf>

<sup>11</sup> <http://www.scottishhumanrights.com/media/1694/shrc-parliament-review-commission-apr-2017.doc>

## **Civil society participation**

While the Committee's remit now allows for greater consideration of the human rights implications of the development of new legislation, we also believe its role should extend into considering the relationship between the rhetoric of a human rights based approach and the lived reality of policy implementation.

The Committee should encourage all Committees to hear directly from stakeholders and people affected by policy and law to inform their consideration of inquiries and legislative changes through a human rights lens. One example of this in practice was in March 2017, when the ALLIANCE worked closely with the Health and Sport Committee to support twenty of our Involvement Network members<sup>12</sup> to speak directly to MSPs about NHS governance and their experiences. This involved practical rights-based arrangements like providing travel expenses and overnight stays so that people could attend. The Parliament has much greater scope to do this across its remit by working directly with the third sector and other bodies.

## **Support and training for the third sector**

In order to effectively play its role to support the realisation of rights in Scotland, the third sector needs to be resourced, supported and trained. The Scottish Parliament can play an important role by encouraging the Scottish Government and other public bodies to ensure adequate and sustainable funding for the third sector is available.

## **Legislative and policy scrutiny**

The Scottish Parliament could support greater consideration of human rights by public bodies by using its powers to require effective and transparent Equalities and Human Rights Impact Assessments<sup>13</sup> of primary and secondary legislation. The Standing Orders of the Parliament require that a person in charge of a bill must provide a policy memorandum which includes an assessment of the effects, if any, of the bill on human rights and other matters. However, the Scottish Human Rights Commission has concluded that to date, these policy memoranda are “often limited in their scope”<sup>14</sup>.

With regard to existing legislation, the Committee could support the Public Audit and Post-Legislative Scrutiny Committee to review whether the noted policy intent of rights-based approaches have been implemented. One example is the Social Care (Self-directed Support) (Scotland) Act 2013<sup>15</sup>, which explicitly places a set of human

---

<sup>12</sup> <https://www.alliance-scotland.org.uk/membership/involvement-network/>

<sup>13</sup> See, for example, <http://eqhria.scottishhumanrights.com/>

<sup>14</sup> <http://www.snaprights.info/wp-content/uploads/2016/01/Getting-it-Right-An-Overview-of-Human-Rights-in-Scotland.pdf>

<sup>15</sup> <http://www.legislation.gov.uk/asp/2013/1/contents/enacted>

rights principles at its heart. As noted in *Self-Directed Support: Your Choice, Your Right*<sup>16</sup> “these principles are not just aspirational statements of the ideal but are the legislative underpinning and barometer by which the success or otherwise of implementation is judged.” Another example is the *Public Bodies (Joint Working) (Scotland) Act 2014*<sup>17</sup>, which is underpinned by and linked to a set of rights-based principles and Health and Wellbeing Outcomes. A third example is the *Children and Young People (Scotland) Act 2014*<sup>18</sup>, which contains news duties on Scottish Ministers and public bodies in relation to the rights of children and the UN Convention on the Rights of the Child (UNCRC).

In the coming years, the ALLIANCE recommends that the Scottish Parliament also pay close attention to the implementation of the *Social Security (Scotland) Act* when it comes into force and development of the Social Security Agency. Again, the aim of both is to have human rights at their core<sup>19</sup>.

The Equalities and Human Rights Committee also has a role to play in overseeing how human rights are being implemented in national policy. For example, ‘A Fairer Scotland for Disabled People’<sup>20</sup>, the Scottish Government’s delivery plan that is “firmly rooted” in the UN Convention on the Rights of People with Disabilities (UNCRPD). As we know, for many people in Scotland – including people who are disabled and living with long term conditions – human rights remain unrealised. The Committee is well placed to review whether the five ambitions and ninety-three actions in the delivery plan is giving full effect to the UNCRPD.

Elsewhere, the vision for a Fuel Poverty Strategy that was recently circulated for consultation by the Scottish Government notes that the Scottish Government’s work on fuel poverty “may also contribute to the progressive realisation of the right to an adequate standard of living”<sup>21</sup>. The Scottish Parliament can play an important role in reviewing the Strategy – and associated legislation on fuel poverty – in line with international standards.

---

<sup>16</sup> <https://www.centreforwelfarereform.org/uploads/attachment/579/selfdirected-support-your-choice-your-right.pdf>

<sup>17</sup> <http://www.legislation.gov.uk/asp/2014/9/contents/enacted;>  
<http://www.gov.scot/Resource/0046/00466005.pdf>; <http://www.gov.scot/Resource/0047/00470219.pdf>

<sup>18</sup> <http://www.legislation.gov.uk/asp/2014/8/contents/enacted>

<sup>19</sup> <https://beta.gov.scot/publications/social-security-principles-and-a-rights-based-approach/>

<sup>20</sup> <http://www.gov.scot/Resource/0051/00510948.pdf>

<sup>21</sup> <http://www.gov.scot/Resource/0052/00527441.pdf>

## **Strengthen international connections and ensure non-regression**

ALLIANCE members have expressed concern about the long-term impact of Brexit on the rights of people living across the UK<sup>22</sup>. The relationship between the European Convention on Human Rights (ECHR) and the Scottish Parliament is well established, with Scottish courts able to invalidate Acts of the Scottish Parliament if they are judged not to be compatible with the ECHR. Whilst Brexit does not immediately affect rights under the ECHR, commentators have suggested that the chances of the UK leaving the ECHR system will “depend upon whether Brexit decreases or increases Euro-scepticism in British politics over the next few years”<sup>23</sup>. In our view, this offers stronger protection than the Human Rights Act (HRA), particularly considering the prospect of threats to the HRA and the mooted “British Bill of Rights”. Members of the Scottish Parliament should seek to strengthen its relationship with European human rights institutions and communicate the benefits of retaining these relationships with the wider public.

We would also recommend that the Scottish Parliament connect directly with UN human rights bodies like the Office of the High Commissioner for Human Rights<sup>24</sup>, Treaty Bodies and Special Procedures, as well as other international networks that can provide support and expertise in international human rights. For example, the World Health Organisation has progressed initiatives on health and human rights<sup>25</sup>, the Food and Agriculture Organisation on food and human rights<sup>26</sup>, and the International Labour Organisation on work-related rights<sup>27</sup>.

### **Accountability: Could the Scottish Parliament do more to ensure that international human rights laws, for example, the United Nations Convention on the Rights of the Child (UNCRC) and other international human rights obligations are being followed in Scotland?**

The ALLIANCE believes that the Scottish Parliament could do more to ensure that international human rights laws and obligations are observed in Scotland. We support the statement by the Equalities and Human Rights Commission (EHRC) in response to the most recent Universal Periodic Review (UPR) of the UK:

---

<sup>22</sup> <https://www.alliance-scotland.org.uk/blog/opinion/post-brexit-concerns-highlighted-by-alliance-members/>

<sup>23</sup> <http://www.e-ir.info/2017/07/27/implications-of-brexit-for-the-european-convention-on-human-rights/>

<sup>24</sup> <http://www.ohchr.org/EN/pages/home.aspx>

<sup>25</sup> [http://www.who.int/mental\\_health/policy/quality\\_rights/en/](http://www.who.int/mental_health/policy/quality_rights/en/)

<sup>26</sup> <http://www.fao.org/right-to-food/en/>

<sup>27</sup> <http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/governance/fprw/lang--en/index.htm>

“...the Scottish Parliament needs to go further to embed all seven UN conventions which the UK has ratified into Scots law. A significant number of human rights, including comprehensive rights for disabled people, will not be delivered for the people of Scotland until these UN conventions are incorporated into our domestic law.” **Protecting human rights: Key challenges for the UK’s third Universal Periodic Review, EHRC, 2017**<sup>28</sup>

## **Incorporation**

Incorporating international human rights law, in particular social and economic rights, into domestic law, policy and practice would support the realization of a healthier and fairer Scotland. While we currently have a direct route to enforcing the ECHR through our domestic legal system, other international human rights are not yet part of (or ‘incorporated’ into) Scotland’s laws, despite inclusion in binding international commitments made by the UK that apply to Scotland. This includes treaties that protect fundamental rights to health, education, employment, social security, independent living and an adequate standard of living, amongst others.

## **Oversight of international obligations and national accountability mechanisms**

Even until full incorporation is achieved, the Scottish Parliament can play a significant role in progressing the realisation of human rights by overseeing Scotland’s obligations in line with international human rights bodies like the UN’s Universal Periodic Review (UPR) and Treaty Bodies.

As members of the Equalities and Human Rights Committee know, the Scottish Government currently produces information for the UK State Party reports to the UPR and the independent Committees that oversee treaties like the UNCRC and the UNCRPD. There is a publicly available timetable<sup>29</sup> of when UK (including Scotland) reports will be examined. The UN bodies produce concluding observations and recommendations, often including concrete action that the state should take to better realise human rights.

The Equalities and Human Rights Committee can help strengthen Scotland’s approach to its international obligations by aligning its focus with this UN system, including reviewing reports for itself, holding evidence sessions and enquiries into the action taken by the Scottish Government and other public bodies. The Committee can also play a role in ensuring that adequate state resources and support are provided to civil society, the third sector and national human rights

<sup>28</sup> <https://www.equalityhumanrights.com/sites/default/files/protecting-human-rights-uk-third-universal-periodic-review-december-2016.pdf>

<sup>29</sup> [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx)



institutions to participate freely, meaningfully and actively in these processes. Third sector organisations also produce 'shadow reports' and provide oral evidence for the UN bodies' consideration. This brings an important perspective independent of the state, however without adequate and sustainable funding the third sector is not able to make this crucial contribution to the process to the best of its abilities.

Finally, as well as playing a role in empowering people in Scotland to be aware of their rights, the Committee and Scottish Parliament could identify ways to use its powers to ensure accountability mechanisms exist and are effective. Empowerment of people to claim their rights necessitates open and transparent administrative and legislative frameworks of accountability and redress for when things go wrong, and a wide range of support – like Legal Aid and independent advocacy – for people to be able to participate freely, meaningfully and actively in these systems.