

Social Justice and Social Security Committee Pre-Budget Scrutiny 2023-24

September 2022

The Scottish Human Rights Commission was established by the Scottish Commission for Human Rights Act 2006, and formed in 2008. The Commission is the National Human Rights Institution for Scotland and is independent of the Scottish Government and Parliament in the exercise of its functions. The Commission has a general duty to promote human rights and a series of specific powers to protect human rights for everyone in Scotland.

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Introduction

The Commission welcomes the opportunity to provide this written briefing in advance of the Committee's oral evidence session on pre-budget scrutiny on September 22nd.

Previous submissions and publications by the Commission provide further detail on a range of areas relevant to this evidence and we suggest that these should be considered alongside this submission, these can be found [here](#)¹.

In responding to questions posed by the Committee, the Commission will focus on the importance of language; the process of resource generation, allocation and spend; meaningful analysis and the availability of fiscally transparent data.

Poverty is a rights violation: the language of rights matters

There are many definitions of poverty, and each measure can provide useful insight. Historically they have revolved around money, with both absolute and relative measures used in the UK. Multiple Deprivation is another very strong indication of poverty in our society. However, it is a very limited vision, and does not accord with the views of many of those living in poverty themselves. Poverty is about the lack of resources that underpin the development of capabilities that we all need to flourish. These include: money, health, equality, power and hope. Nobel Prize winning economist Amartya Sen describes poverty as the denial of the freedoms needed to live with dignity, and development as the process of gaining those freedoms. Adopting this approach, the opposite of poverty is not wealth, but rather an equal society in which everyone lives with dignity.

In previous work at the Commission on Scotland's first National Action Plan on Human Rights (in 2014), participants in one SNAP event told us of the daily decisions they had to take not to connect central heating, to turn off the electricity and use candles, or to go without food. Often the

decision was between heating or eating. The catastrophe of the cost of living crisis that we are witnessing now is that the 'or' has for many disappeared. Living standards are worsening to such a degree for some that it is no longer a choice of heating or eating – neither are affordable.

Poverty is a cross-cutting theme and is often studied solely through a sociological or economic perspective. However, it is equally important to understand the societal issue of poverty through the lens of economic and social human rights. Poverty represents a failure (a violation) to fulfil the right to an adequate standard of living as is established in international human rights law. Other rights, like the right to education, to work and decent working standards, to health and adequate food and adequate housing, are also affected by poverty. These rights, explicit within the International Covenant on Economic, Social and Cultural Rights (ICESCR), have been ratified (agreed to) by the UK government at the international level and Scotland has already committed itself to legal incorporation of the treaty to provide domestic protection for these rights in Scotland. Poverty, viewed through this lens, is thus best viewed as a cluster of human rights violations in Scotland.

All States who have signed and ratified the Economic, Social and Cultural Rights Convention have the legal obligation to progressively realise economic, social and cultural rights, as well as maximise their available resources in order to ensure that a minimum level of rights is protected. It is understood that: the realisation of these rights does not happen immediately but standards are expected continuously improve. This is also supported by the obligation that the realisation of these rights should not get worse (non-retrogression) and that discrimination in the realisation of these rights is prohibited.

Human rights law is clear that even in times of severe resource constraints – whether caused by a process of economic adjustment or recession – the most vulnerable members of society must be protected. When there is a crisis, such as the current cost of living crisis, some regression of rights may occur. However, any retrogression in rights is also subject to important human rights standards and principles. Retrogressions of rights must:

- be temporary and time-limited
- be necessary and proportionate
- be non-discriminatory and mitigate inequalities
- ensure the protection of a minimum core content of rights
- consider all other options, including financial alternatives such as changes in taxation.

How we talk about poverty is important. Recognising poverty as a human rights issue, transforms traditionally moral or political obligations into firm legal obligations upon the State.

Rights-based resource allocation approach

The Resource Spending Review (RSR) sets out prioritised spend in a range of areas. Health, social care, and social security are all essential areas of the welfare state and directly reflect corresponding human rights and all have the potential to impact on poverty in Scotland. They are all appropriate areas of focus. However, what is not clear from the RSR is what assessment has been made that these are the areas of public service that are most in need of public expenditure and the expected impact outcomes of the different areas of investment?

Taking a rights-based approach requires transparency over this decision-making process. For example, no details have been shared on the assessment of why these areas have been prioritised over others and what intended impact that prioritisation of resources will have on specific outcomes within Scotland. This is necessary in order to ensure that these are indeed the areas most in need, but also to ensure that the minimum core of rights are being delivered for all groups in other policy areas (legal obligation). For example, many of the front-line services that deliver people's rights (including the right to an adequate standard of living) on a day-to-day basis, are provided by local authorities and yet the RSR has set course for a local government decline of 7% in real terms between 2022/23 and 2026/27, leaving a considerable shortfall and weakening of services at local government level. Efficiencies can

only be expected to go so far before they are practically no different to cuts in services.

It will be important when it comes to implementing the forthcoming Scottish human rights legislation, that the Scottish Government recognise that their responsibility to deliver the progressive realisation of rights, including the further sub-duties of using the maximum available resources, fulfilling minimum core obligations, ensuring non-retrogression and non-discrimination cannot be devolved to the local level, without the allocation of adequate resources to fulfil those obligations.

Where the RSR places a particular focus on potential 'efficiency savings', it is important that any such programme of efficiency savings must not have a retrogressive impact on the delivery of rights. As efficiencies may lead to regressive measures being imposed on rights realisation, this will require an extra justificatory burden to show that all other possible avenues for continuing the level of service have been discussed by the Scottish Government, including considerations of raising resources via tax. Any efficiency measures taken must ensure that the Government is still able to respect, protect, and fulfil people's rights.

While efficiency of expenditure is an essential budgeting principle, at this stage, the Commission would argue that the Scottish Government's focus would be more effectively spent on seeking to raise revenue than to believe the funding gap can be closed through efficiency. Not doing so simply reflects an 'austerity mindset' continued.

Undertaking a rights-based approach to resource allocation also supports a more detailed analysis of the interdependency of rights – and enables an exploration of the links between rights and what outcomes they intend to deliver. For example, in examining the right to an adequate standard of living, it is important to consider that one's access to secure, affordable, habitable, accessible, and culturally adequate

accommodation can have a direct impact on someone's physical and/or mental health, which can in turn have an impact on a person's ability to fulfil their right to education or to work, all of which can impact on poverty.

The RSR mentions throughout the document, the potential role of 'preventative spend', especially in relation to health. However, the interdependency of rights highlights that many areas where preventative spending could have an impact on health would not necessarily feature within the allocation of health spending for example. It is therefore important that more holistic determinants of health, as developed primarily through the Marmot Review, and identified preventative health measures are explicitly connected through budget allocations.

Resource generation, allocation, and expenditure should be driven by meeting rights-based outcomes. In other words, the RSR needed to set out what evidence base had been used to underpin the prioritisation of public funding for the coming Parliamentary term.

Although there is a narrative on the National Performance Framework (NPF) and National Outcomes present within the Equality and Fairer Scotland Statement (EFSS) that accompanies the RSR, and the Equalities and Fairer Scotland Budget Statement (EFSBS) that accompanies the budget, it does not explore the prioritisation of resources through the lens of Scotland's National Outcomes. There are no direct connections made between allocated spend and the National Outcomes, and therefore the way that both the NPF and the RSR (and all budget documents) are currently constructed limits accountability because they do not allow for a transparent assessment of impact.

A time for change?

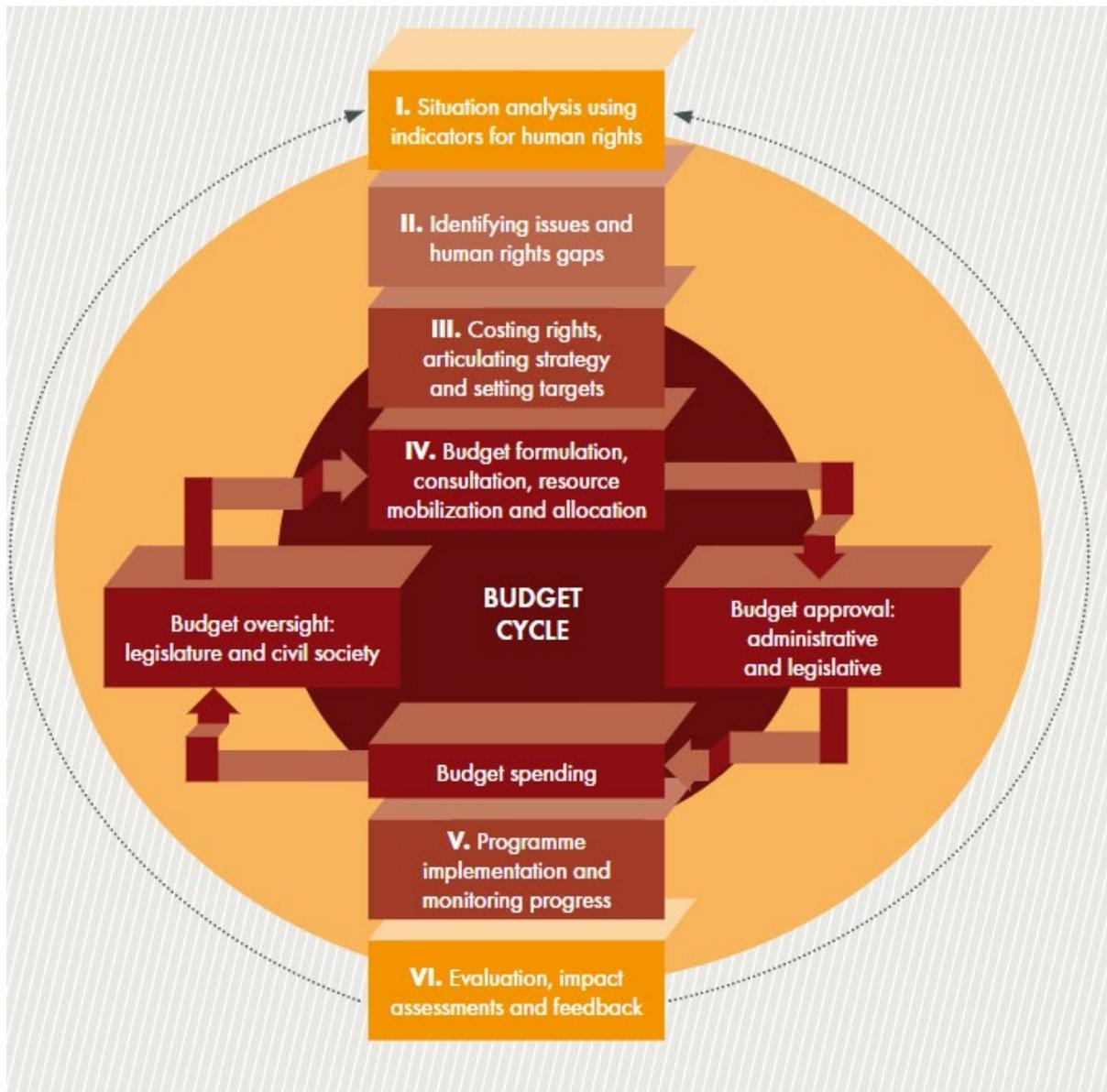
It is almost 25 years since devolution, and we are no longer in the same place or facing the same challenges. However, the budget process rolls over each year, with what could be described as some tinkering around the edges of process improvement. What is required is a commitment to something more radical. Whilst acknowledging the limitations that do

exist within the devolved context, these should not continue to overshadow Scotland's potential within the powers that it does have. There is a need to be politically bold in the way we design our resource generation, allocation and spend.

The Scottish Government has committed to new legislation incorporating a range of UN treaties into Scots law. Successful implementation will require dedicated resources. Emerging from the COVID-19 Pandemic, it is clear that Scottish society is not functioning that well right now with a cost-of-living crisis currently worsening. Predictions from the Resolution Foundation² suggest rises in rates of absolute and relative poverty across the UK not seen since the 1990s. COVID-19 has magnified the structural inequalities already facing many people in Scotland, with intersectionality magnifying these impacts further. The time is ripe for transformative process change.

A Human Rights Based Approach could provide that change by supporting the distribution of resources in a way that puts people first. What is required is a zero-based budgeting exercise, where time can be taken to provide a true assessment of rights realisation across Scotland (as best as possible), and allow this assessment to bring into question whether Scotland is raising enough resources to truly realise people's rights. In clear instances where Scotland is failing to deliver rights, the question must become how to raise more resources, whether that be through efficiency or further resource generation through taxes for example (please see here³ for a range of previous writings about human rights and the role of taxation). It involves thinking through what is required, to how people's rights are impacted by the way that money is raised, allocated, and spent. See Figure 1 below as an example of how we need to reset our approach, from the Office of the High Commissioner for Human Rights⁴.

Figure 1: Human rights indicators, programme and budget cycle



Meaningful analysis

Human rights and equality are often perceived as an add-on consideration in policy issues, rather than being viewed as a central framework to start and to build from. Budget decisions can have discriminatory or positive impacts on different groups of the population and equally they can help to tackle or reinforce structural inequalities. This is why human rights and equalities impact assessments to inform and evaluate budgetary decisions are so crucial.

As a member of EBAG, the Commission has contributed to a review of practice and [recommendations for government](#) on improvements needed for Equality and Human Rights Budgeting (2021-26)⁵. The improvements needed to be made to the process of impact assessment are mentioned throughout the recommendations briefing, this providing a useful summary point:

Currently all policy and spending proposals should include an analysis of the equalities dimensions, existing inequalities, and actions to realise human rights. These are requirements under the Public Sector Equality Duty of the Equality Act 2010, and the Fairer Scotland Duty. What is clear is that current practice of equality and human rights impact assessment is at best variable. It is also clear that the starting point for policy formulation is not an analysis of the equality dimensions and a clear articulation of objective to advance equality and progress the realisation of rights. That fundamental starting point for policy and spending decision-making must anchor the analysis, evidence, and focus of policy decision, drawing together the overarching social justice discourse of the Scottish Government, and the specific actions to realise the outcomes expressed in the National Performance Framework.

One of EBAG's long standing criticisms is that some Scottish Government initiatives appear to retrofit Equality and Human Rights Impact Assessments to their processes rather than integrating them as core parts of policy design, development, and decision-making.

Feedback from the Equality Fairer Scotland Budget Statement Process has also raised concern within EBAG that colleagues within government are not well supported and given sufficient time to undertake this work. It is crucial that the value of this work is better understood as the essential tool for improving policymaking and ensuring fair and effective use of public money that it is. The new mainstreaming strategy on equalities and human rights provides a timely opportunity to restate the requirements for equalities and human rights analysis to be supported, and for integration to be implemented by management.

The nine key opportunities and challenges identified in the Equalities and Fairer Scotland Statements that accompany the budget and the RSR provide a useful lens through which to understand budgetary decisions. They provide a narrative accompaniment to these fiscal documents. Where the Commission and EBAG would like to see this process develop, is for this statement to start documenting the analysis that has informed those fiscal decisions.

The nine key opportunities and challenges represent important issues, however, we feel that they could be enhanced through embedding each within the context of their relevant rights obligations⁶. This could help to public bodies, including the government, to identify what human rights obligations are relevant to each of the opportunities and challenges, providing a legal grounding. Amending the fifth opportunity/challenge to include the right to an adequate standard of living in addition to addressing child poverty, would also allow for a specific focus on the cost-of-living crisis.

They should also have much clearer connections to the National Performance Framework. If the NPF represents Scotland's national priorities, then these should be clearly linked and identifiable. There should be evidentiary links to inform the choices within the Programme for Government and in turn, the budget and its allocations should be linked to them all. Otherwise, there appears to be different and possibly competing agendas or priorities, which makes it harder for public bodies to know what to prioritise.

Once we have established the links between data, challenges, national priorities, policy objectives and spending allocations in the first instance, the process to evaluate the impact can follow. Tangible measurement of progress requires a connective shift in how we make fiscal decisions, starting with evidenced priorities and defined outcomes leading to resourced policy and programmes that can then be reviewed for impact. Connecting the nine priorities with the human rights framework, the National Performance Framework, the Programme for Government, and the Budget are necessary to facilitate this transformational change in measuring budget impact.

Fiscal transparency

In order to make informed analysis about the potential impact of spending allocations for 2023-24 as set out in the Spending Review analysts must have access to timely, transparent, and accessible financial information in a sufficient level of detail. 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.

Transparency is a window into the budget execution of the government, helping the general public to hold the government to account and yet fiscal policies are perceived to be inaccessible to most people. Fiscal transparency requires the provision of comprehensive and accurate information on past, current, and future activities of the government, and the availability of such information can help to improve the quality of decision-making processes. It is an important element in the effective management of public finances, and it helps to build the confidence of the general public in the work of public bodies, thereby contributing to the sustainability of public policy implementation.

In terms of the availability of accessible and transparent data, as the Commission's previous work on [Open Budgets](#) and fiscal transparency has shown, there remains a lack of transparency in the Scottish budget to date, which is problematic.

There has been welcome progress in the last year, with the creation of the 5-year fiscal transparency project led by the Scottish Exchequer and the inclusion of fiscal transparency goals within the [Open Government Partnership Action Plan](#). However, given this acknowledgement and the current focus on the need for fiscal transparency, it is all the more disappointing that the first spending review in almost 10 years lacks transparency. For example, whilst it is understandable why the RSR can only provide Level 2 data for years 3 and 4 of the review, it is not sufficient in terms of transparency to only provide Level 2 data for the forthcoming two years. It also was unfortunate to see it only mentioned

human rights once throughout the entirety of the document despite Scotland's ongoing commitments to legal incorporation.

End

¹ See: <https://www.scottishhumanrights.com/projects-and-programmes/human-rights-budget-work/>

² See: <https://www.resolutionfoundation.org/publications/in-at-the-deep-end/>

³ See:

- https://www.scottishhumanrights.com/media/2317/2022_08_04-fpa-pre-budget-scrutiny-2023-24-web-version.pdf
- <https://www.scottishhumanrights.com/media/2235/tax-policy-and-the-budget-a-framework-for-tax-shrc.pdf>
- <https://www.scottishhumanrights.com/media/1882/shrc-response-to-scottish-government-consultation-on-devolved-tax-policy-framework.docx>
- <https://www.scottishhumanrights.com/media/1697/shrc-submission-to-finance-committee-sep2016.doc>
- <https://www.scottishhumanrights.com/blog/we-need-human-rights-based-taxation-to-help-scotland-build-back/>

⁴ See

https://www.ohchr.org/sites/default/files/Documents/Publications/Human_rights_indicators_en.pdf
page 123

⁵ See <https://www.gov.scot/publications/equality-budget-advisory-group-recommendations-for-equality-and-human-rights-budgeting---2021-2026-parliamentary-session/>

⁶ See below for the amendments to the nine challenges/opportunities suggested in evidence to the EHRCJ Committee pre-budget scrutiny:

1. Support **a rights-based** economic recovery which continues to progress action to tackle structural inequality in the labour market, including through good green jobs and **recognising everyone's right to** fair work.
2. Ensure that the devolved taxation system **maximises available resources, whilst delivering** a system based on ability to pay and that the devolved social security funding increases the resources available to those who need it.
3. Ensure that inequalities in physical and mental health are tackled **through access to available, accessible, acceptable and quality health** and social care services as well as broader public health interventions.
4. Build **human rights compliant** digital services that are responsive to individuals and address inequality of access to digital participation,.
5. **Ensure that everyone has access to an adequate standard of living, especially during times of crisis and** deliver greater progress towards meeting statutory child poverty targets.
6. **Ensure all children are able to realise their right to education** and deliver greater progress towards closing the attainment gap.

7. Improve the availability, affordability and **environmental quality** of public transport services, to ensure those more reliant on public transport can better access it.
8. Ensure that policies, action and spend necessary to mitigate and adapt to the global impacts of climate change deliver a just transition for people in Scotland **and deliver on people's right to a healthy environment.**
9. Better realise the right to an adequate home that is affordable, accessible, of good quality, and meets individual need whilst ensuring that progress on tackling current inequality of housing outcome is addressed.