****

#

#

# The Scottish Human Rights Commission

# Submission to the United Nation’s Committee on Economic Social and Cultural Rights

**PSWG-Adoption of lists of issues (LOIs) for The United Kingdom of Great Britain**

# 20 August 2015

The Scottish Human Rights Commission (SHRC) is the national human rights institution (NHRI) for Scotland, accredited with A status by the International Coordinating Committee of NHRIs. SHRC was established by an Act of the Scottish Parliament and has a general duty to promote awareness, understanding and respect for all human rights and to encourage best practice (including through education, training and awareness raising, and by publishing research). SHRC also has a number of powers including:

The power to conduct inquiries into the policies or practices of Scottish public authorities;

-Recommending such changes to Scottish law, policy and practice as it considers necessary.

-The power to enter some places of detention as part of an inquiry, and

-The power to intervene in some civil court cases.

SHRC is one of the three national human rights institutions in the UK and currently chairs the European Network of NHRIs. SHRC is a member of the UK’s National Preventive Mechanism (NPM) designated in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

## Contact:

Diego Quiroz, Policy Officer, Scottish Human Rights Commission, 4 Melville Street, Edinburgh, EH3 7NS, Scotland, Diego.Quiroz@scottishhumanrights.com, +44 (0)131 240 2989

**Contents**

**Summary of Questions…………………………………………………………….....3**

**Introduction and Scope ….………………..……………………………………......4**

**Background on Questions…………………………………………………………...6**

**References ..………………………………………………………………………...…18**

**Summary of Questions**

**SHRC recommends the Committee asks the United Kingdom:**

**1. To outline the steps it has taken to give full legal effect to ICESCR in domestic law and provide an effective remedy for victims of all violations of economic, social and cultural rights in line with General Comment No. 9.**

**2. To explain how they are planning to ensure that the current public spending cuts are temporary** **covering only the period of crisis, necessary and proportionate, non-discriminatory and ensuring the protection of a minimum core content of rights, at all times, across the UK.**

**3. To indicate its plans to reduce the Gender pay gap and increase gender pay gap transparency in both the public and private sphere across the UK.**

**4. To indicate what steps are being taken to ensure the effective provision of affordable, good quality childcare in Scotland.**

**5. To explain how it is planning to address gender disparities and inequality with regard to access to Modern Apprenticeships in Scotland.**

**6. To explain how it will ensure that the ‘national living wage’ provides a decent living.**

**7. To indicate what the plans are to ensure that zero hour contracts, in both public and private sector, are consistent with the Covenant , in particular enable everyone to realise their rights to family protection and assistance, an adequate standard of living and adequate access to health care, as contained in Articles 10, 11 and 12 of the Covenant respectively.**

**8. To clarify what specific steps it is taking to eliminate employment related discrimination and to ensure equal opportunities and treatment for vulnerable groups, including in the private sector.**

**9. To spell out what steps is taking to ensure that current and future changes to the social security system are compatible with the Covenant’s rights.**

**10. To indicate what is doing, particularly in Scotland, to ensure that appropriate support is provided to the needs of the individual parents** **with learning disabilities, including supplementation of care and training for parents.**

**11. To specify what steps are being taken to address the Covenant rights of the Gypsy/Traveller community in Scotland.**

**12. To indicate what steps are being taken to reduce health inequalities across the UK, particularly in Scotland.**

**13. To explain what steps it has taken to ensure the availability and accessibility of appropriate mental health services for those deprived of liberty in Scotland.**

**14. To describe what steps it has taken to ensure the availability and accessibility of education for children in detention in Scotland.**

**15. To specify what steps it has taken to ensure marginalised groups of children and young people are able to take part in cultural life as a part of their everyday lives in Scotland.**

## Part II. Introduction, Scope and Structure

## Introduction

## 1. SHRC welcomes the opportunity to make this submission to the Committee on Economic, Social and Cultural Rights (hereafter the Committee) in advance of the pre-sessional working group review of the United Kingdom in October 2015.

## 2. This report covers the legal framework, policies and practices in Scotland. The Scotland Act 1998, which established the Scottish Parliament, requires both the Scottish Parliament and Scottish Government to observe and implement all of the UK’s international human rights obligations. Under the terms of the Scotland Act 1998 all issues which are not explicitly reserved to the UK Parliament are devolved to the Scottish Parliament. Consequently issues such as justice, detention, policing, physical and mental health, education and social care are within the powers of the Scottish Parliament. A meaningful understanding of the obligations of the Scottish Parliament and Government to observe and implement the International Covenant on Economic, Social and Cultural Rights (ICESCR) will be crucial to ensuring that law, policy and practice in Scotland are fully compliant.

## Private companies and ICESCR

## 3. SHRC as the national human rights institution for Scotland has been leading the development of Scotland’s First National Action Plan for Human Rights (SNAP). This is the first national action plan of its kind in the UK. SNAP has been developed by a Drafting Group from across the public and voluntary sectors and overseen by an Advisory Council whose members reflect the diversity of Scottish civic life SNAP includes agreed outcomes, priorities and a process for working together from 2013 – 2017 to progressively realise the potential of human rights in all areas of life.

## 4. The Scottish Government, through its commitment to the implementation of SNAP has committed to explore three areas which are relevant for this Committee:

## The potential benefits of incorporation of the UK international obligations in Scotland, which will give proper consideration to economic, social and cultural rights.

## The development of an action plan to implement the UN Guiding Principles on Business and Human Rights.

## Coordinate action across the public, private and third sectors in Scotland to champion climate justice at home and abroad.

## 5. Economic, social and cultural rights are strongly reflected in the development of SNAP and covered in the overall outcomes: better culture, better lives and better world. Specific recommendations were made to incorporate and consider the previous UK Concluding Observations of this Committee.

## 6. Climate change and ICESCR - Similarly to the business architecture, the climate change architecture – both its governance and mitigation and adaptation measures – has significant implications for the enjoyment of human rights, including ESC rights. SNAP has included a specific commitment to champion climate justice at home and abroad.

7. Therefore, SHRC recognises the efforts that have been made by the Scottish Government to promote economic, social and cultural rights though its commitments under SNAP 2013-17.

**Structure of the report:**

8. In selecting material for this report we have followed the ICESCR structure. This submission focuses specifically on Scotland. The report contains a number of questions that we suggest the Committee put to the UK during the periodic review.

**Sources:**

9. This report draws primarily on a three year research project by SHRC which culminated in the publication of Getting it Right: human rights in Scotland in October 2012, and the evidence gathered through the implementation of SNAP. It also draws on other institutional sources, such as our interventions and responses to consultations about proposed legislative changes as well as drawing on data from external sources[[1]](#footnote-1), including reports published by EHRC Scotland, NGOs, Ombudsmen, inspectorates and regulators in Scotland

10. The SHRC would be very pleased to provide any clarification, further information, or other assistance to Committee experts before, during or after the forthcoming session. SHRC would also like to inform the committee that it wishes to attend the pre-session meeting of the Committee in order to provide oral evidence and answer any question the Committee may have in relation to the issues raised in this submission.

**Part III. Background of questions**

**Articles 1 to 5 - General measures of implementation and General Principles**

**Legal Framework**

11. The UK has yet to incorporate ICESCR in our various domestic legal systems, including in Scotland. [[2]](#endnote-1) There is no legal framework which holistically deals with the rights contained in ICESCR. The rights contained in ICESCR are obligations for which the state has responsibility to respect, protect, fulfil and provide a remedy if a violation occurs. Taking this in consideration SHRC has used SNAP as a way to review implementation of international human rights treaties in Scotland and in line with General Comment No 10. According to the existing constitutional framework in Scotland the Scottish Parliament has the devolved competence to legislate with a view to implementing and complying with international legal obligations.[[3]](#endnote-2) It is therefore within the power of the Scottish Parliament to incorporate ICESCR in relation to devolved areas, including education, housing and health. The Scottish Government, through its commitment to implementation of SNAP 2013-2017, has committed to explore the benefits and implications of incorporation of the UK international obligations, including ICESCR in Scotland.

12. As the Committee is aware, the place of human rights in Britain is at a critical juncture. In 2011, the previous UK Government established a Commission on a UK Bill of Rights[[4]](#endnote-3) that reported in December 2012. Following its report members of the UK Government, including the Secretaries of State for Justice and Home Affairs, promoted the repeal of the Human Rights Act (HRA).[[5]](#endnote-4) The current UK Government has included an specific commitment to bring forward proposals for a British Bill of Rights to replace the Human Rights Act in the 2015 Queen’s Speech.[[6]](#endnote-5) The proposal has been couched in adverse language by referring to the “damaging effects of Labour’s Human Rights Act” and the “misuse of human rights laws”.[[7]](#endnote-6) SHRC continues to be concerned about the partisan and regressive character of the proposed human rights framework.[[8]](#endnote-7) It is our view that in the current political environment any new UK Bill of Rights would result in a weaker replacement for the HRA by undermining the universality principle as well as reducing government accountability at home, and internationally.**[[9]](#endnote-8)** The Scottish Government and Parliament opposes the repeal of the HRA.

**13. SHRC recommends the Committee asks the United Kingdom to outline the steps it has taken to give full legal effect to ICESCR in domestic law and provide an effective remedy for victims of all violations of economic, social and cultural rights in line with General Comment No. 9.**

**Dissemination of information regarding the Covenant**

14. The Committee has previously expressed the importance of raising levels of awareness about the Covenant not only among public officials and State agents, but also among the population at large. There has been very little public awareness of the Covenant and its Optional Protocols among judges, public officials, police and law enforcement officers, legal advisers and the public at large. The UK has not yet signed or ratified the Optional Protocol which provides a channel through which to communicate a violation to the Committee. Failure to ratify the Optional Protocol thus prohibits individuals in the UK from seeking redress for a violation of an ESC right at the supranational level.

15. The Committee could also ask the State Party what steps it has taken to disseminate information about the submission of its sixth periodic report, and the implementation of the Committee’s concluding observations across the UK.

**Progressive realisation (and Article 11)**

16. The Institute for Fiscal Studies describes the UK public spending cut as follows[[10]](#endnote-9):

 “*The cut to departmental spending between 2010-11 and 2014-15 has differed from that originally planned in the 2010 Spending Review. Non-investment spending has been cut more than originally intended in cash terms, but inflation has turned out lower than forecast so it has still been cut less than originally expected in real terms (7.8% compared with 8.3%). Real investment spending cuts have turned out much lower than originally planned (13.6% rather than 25.9%) due to lower-than-forecast inflation and decisions since 2010 to top up these spending plans. Beyond 2015–16, the government has penciled in further real terms cuts to total public spending through to 2017–18, then a real freeze up to 2018–19, and then a real terms increase in 2019–20. This profile would take spending in 2019–20 to around the same share of spending as it was in 2000–01. Given OBR forecasts for non-departmental spending, these plans for total spending imply departmental spending would be cut by a further 7.2% between 2015–16 and 2019–20.”[[11]](#endnote-10)*

17. SHRC has raised concerns at national and UN level about the impact of austerity measures in Scotland,[[12]](#endnote-11) particularly the disproportionate and regressive effect of welfare reform and legal aid cuts have on children.[[13]](#endnote-12) Crucially the UK Government has failed to adequately assess the impact of these measures on human rights. Concluding its inquiry on welfare reform, for example, the UK Joint Committee on Human Rights criticised the UK Government for a lack of information on how it had assessed the human rights and equality impact of the new Welfare Reform Act 2012. The Joint Committee further raised concerns that the Welfare Reform Bill (as it was):

“*may risk breaching human rights in leading to destitution (engaging the prohibition of degrading treatment), discrimination and retrogression in the realisation of economic, social and cultural rights.*” [[14]](#endnote-13)

18. the UK Chancellor George Osborne delivered the first Budget from a Conservative government in almost 19 years on 8 July 2015. The Institute for Fiscal Studies (IFS) presented its analysis of the Summer Budget on the following day.[[15]](#endnote-14) The IFS Post-Budget Analysis demonstrates the impact of the introduced reforms across the UK. For example:

“*Most working-age benefits, tax credits and housing benefit will be frozen for the next four years, and once inflation is taken into account that will mean 13 million families losing an average of £260 a year.”*

There are two big consequences of this move, according to the IFS *“the first is to weaken the incentive for families to have someone in work, which runs counter to the government’s aim of moving people off welfare and into employment. The second is to make the tax and benefits system more regressive”.[[16]](#endnote-15)*

**19. SHRC recommends the Committee asks the United Kingdom how are they are planning to ensure that the current public spending cuts are temporary covering only the period of crisis, necessary and proportionate, non-discriminatory and ensuring the protection of a minimum core content of rights, at all times, across the UK.**

**Gender pay gap**

20. The public sector equality duty came into force in 2011.[[17]](#endnote-16) In Scotland, this requires public bodies to have due regard to the promotion of equality between groups of different ‘protected characteristics’.[[18]](#endnote-17) The public sector equality duty imposes a duty on public bodies to have due regard to the need to – (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. In May 2012 the Scottish Ministers made Regulations placing specific duties on Scottish public authorities to enable the better performance of the public sector equality duty (Scottish Specific Duties).[[19]](#endnote-18) Paragraph 7 of the Regulations imposes a duty on listed public authorities that employ 150 employees or more to publish gender pay gap information every two years from 2013 onwards.[[20]](#endnote-19) This is a positive step towards transparency in closing the gender pay gap in Scotland, however, it does not apply to private corporations or those public bodies not listed in the Regulations.

21. Significant difference in pay continues to exist in Scotland. According to the Annual Survey of Hours and Earnings women earn on average £95.60 less per week than men in Scotland.[[21]](#endnote-20) Recent case law also supports this finding in the public sector.[[22]](#endnote-21) The extent to which this pattern is prevalent in the private sector will continue to be difficult to establish without further requirements. Equal pay legislation remains reserved to the UK Government, however, the Scottish Government has continued to support the Close the Gap project, which works with employers, unions and workers to address the gender pay gap in Scotland. A 2015 Research found that the pay gap across the sub-sectors varies but the mean gap is particularly high in

the following sub-sectors: manufacture of textiles (43.8 per cent); printing and production of recorded media (42 per cent); and manufacture of computer, electronic and optical products (39.1 per cent).Although women are slightly better represented in Scottish manufacturing than elsewhere in the UK (see UKCES 2012), the median and mean gender pay gaps are also considerably higher in Scotland (26.5 per cent and 28.9 per cent respectively) than in the UK as a whole (20.8 per cent and 19.0 per cent).[[23]](#endnote-22)

22. In addition, a 2013 report by Heriot-Watt University highlights significant gender segregation in relation to the nature of employment and training undertaken. For example 95.4% of hairdressing apprenticeships were taken up by women in 2011/12, but women accounted for only 2.1% of engineering apprenticeships in the Scottish Government’s flagship modern apprenticeship programme.[[24]](#endnote-23) Where measures have been taken to improve representation of women in certain professions, there is some evidence of an increased representation, however gender inbalance remains an issue in many professions. For example, Section 14 of the Judiciary and Courts (Scotland) Act 2008 places a duty to have regard to the need to encourage diversity in the range of individuals available for selection to judicial appointments. Although the representation of women in the Judiciary has risen since 1998, at present, the Judiciary of Scotland lists of Judicial Office holders (as at 19th May 2015) indicate that nine out of 33 (27%) Senators of the Royal College of Justice are women. One out of six (17%) Sheriffs Principal are women and twenty–nine out of 132 (22 %) full time sheriffs are women. Women therefore represent 23 % overall in these categories. These levels of gender inequality are not representative of the rest of Europe, which observes an almost equal male/ female distribution in the Judiciary (average 49% women). Scotland sits second from the bottom of the 45 EU member states.[[25]](#endnote-24)

**23. SHRC recommends the Committee asks the United Kingdom to indicate its plans to reduce Gender pay gap and increase gender pay gap transparency in both the public and private sphere across the UK.**

**Affordable Childcare**

24. Progress has been made in the last decade to increase the availability and affordability of childcare in Scotland and many examples of good practice exist. For example the Children and Young People Scotland Act 2014 extends childcare to Scotland’s most vulnerable two year olds. However, the lack of affordable high quality child care remains a significant barrier to accessing employment and tackling gender stereotypes.[[26]](#endnote-25) The UK has one of highest costs of childcare for in the world - 26.6% of average family incomes, compared to an OECD average of 11.8%.[[27]](#endnote-26) Scotland has some of the highest childcare costs in Britain and equality of access to affordable care remains inconsistent.[[28]](#endnote-27) The average cost of childcare in Scotland for a 2 year old at nursery for 25 hours per week is £110 and £204 for 50 hours.[[29]](#endnote-28)

25. Help with childcare costs is provided under a Working Tax Credit which is set at a maximum of £122.50 per week. In Scotland, children over the age of 3 are entitled to up to 600 hours of free child care per year (Scotland’s Children and Young People Act 2014), which averages at 20 hours per week only. Parents are responsible to meeting the cost of additional hours which proves difficult for those in low paid employment, particularly when the cost of child care has increased whilst wages have remained static.[[30]](#endnote-29) Furthermore, only 21 per cent of local authorities are able to satisfy the current demand for free child care places, and therefore, without improved infrastructure a rise in allocation is unlikely to be able to be fulfilled. [[31]](#endnote-30)

**26. SHRC recommends the Committee asks the United Kingdom what steps is taking to ensure the effective provision of affordable, good quality childcare in Scotland.**

**Articles 6 to 8 - Labour rights**

**Access to employment**

27. The Scottish unemployment rate is 6 per cent, which is marginally higher than the rate of 5.6 per cent for the UK as a whole.[[32]](#endnote-31) Access to employment remains a significantly more pronounced problem for those who share protected characteristics, such as those who are from the Black Minority Ethnic community, those who are disabled and migrants/asylum-seekers.[[33]](#endnote-32)

28. Although youth unemployment figures have improved in Scotland, research indicates that there remain a high number of young people who are not currently in education, employment or training.[[34]](#endnote-33) In England there is a statutory duty to ensure all young people remain in some form of education or training until the age of 18.[[35]](#endnote-34) There is no such corollary duty in Scotland. The Commission for Developing Scotland’s Young Workforce was established by the Scottish Government in 2013 tasked with bringing forward a range of recommendations designed to improve young people’s transition into employment.[[36]](#endnote-35) In its 2014 Report the Commission highlighted that:

* Young people from Scotland’s black and minority ethnic communities face barriers and embark on a narrower range of pathways than young people from the population as a whole and are more likely to experience unemployment.
* Young people with disabilities are much more likely to experience difficult transitions through education and to be unemployed after they leave education.
* And young care leavers as a group experience some of the poorest educational and employment outcomes of any group of young people in society.[[37]](#endnote-36)

29. Modern Apprenticeships in Scotland are an important mechanism through which to secure routes to employment for young people. The Commission reports that the this mechanism is seriously hindered by significant gender segregation and inequality in access with ethnic minorities and disabled people also appearing to have low levels of access to all forms of apprenticeships.[[38]](#endnote-37)

**30. SHRC recommends the Committee asks the United Kingdom to explain how it is planning to address gender disparities and inequality in access within Modern Apprenticeships in Scotland.**

**Just conditions of work**

31. The UK Government has introduced a ‘national living wage’ via the 2015 Summer Budget. However the IFS estimates that *“[R]eductions in the welfare bill will save the Treasury £12bn by the end of the decade, while the gross increase in pay from the higher minimum wage is £4bn”.* Therefore the national living wage will not compensate for the cuts to welfare as the UK Government has suggested.[[39]](#endnote-38)

32. Prior to the publication of the Summer Budget 2015, the Scottish Government had already adopted the Living Wage scheme, which encourages employers to adopt a sustainable wage for employees.[[40]](#endnote-39) The Scottish Government has urged employers in the private, public and third sectors to follow suit. The Procurement Reform (Scotland) Act 2014 also introduces a mechanism through which paying the Living Wage can inform the procurement tender process (although it is not a binding duty).[[41]](#endnote-40) The recently published Business Pledge is a voluntary scheme introduced by the Scottish Government to encourage businesses to pay the living wage and refrain from entering into adverse practices such as zero contract hours[[42]](#endnote-41), which impact on financial stability and security.[[43]](#endnote-42) As highlighted before, paying a living wage is only one part of the answer to addressing in-work poverty. [[44]](#endnote-43) The SHRC welcome these moves to encourage the living wage and encourage security in employment in Scotland.

**33. SHRC recommends the Committee asks the United Kingdom to explain how it will ensure that the ‘national living wage’ provides a decent standard of living.**

**34. SHRC recommends the Committee asks the United Kingdom to indicate what the plans are to ensure that zero hour contracts, in both public and private sector, are consistent with the Covenant , in particular enable everyone to realise their rights to family protection and assistance, an adequate standard of living and adequate access to health care, as contained in Articles 10, 11 and 12 of the Covenant respectively.**

35. A 2015 study commissioned by the Equality and Human Rights Commission analysed the working conditions and pay for those in the low paid cleaning sector. The study concluded that those in low paid work are more vulnerable to employment exploitation and discrimination.[[45]](#endnote-44) Whilst there are some examples of good practice, the study also revealed that those working in the cleaning sector may be bullied or discriminated against by supervisors, experience problems obtaining their pay, have excessive workloads, and are not treated with dignity or respect.[[46]](#endnote-45) Low pay is prevalent across the sector with wages close to, or at, the National Minimum Wage. A significant number of workers also experienced problems with the under-payment or non-payment of wages.[[47]](#endnote-46) Procurement practices frequently focus on reducing cost and overlook the negative impact this can have on staff turnover, absenteeism, productivity and the quality of service delivery.[[48]](#endnote-47) Migrant workers are more likely to enter this sector and will face multiple barriers in securing employment rights and fair pay, including employers using language barriers to avoid paying employees in full.[[49]](#endnote-48) Migrant workers are not a protected group under the Equality Act 2010 and so face additional barriers to securing non-discrimination in employment matters.

36. Disabled people are more likely to receive a lower wage than non-disabled people with the same level of qualifications.[[50]](#endnote-49) Excluding Disability Living Allowance and Attendance Allowance from income (as these benefits are paid in recognition of disabled people’s higher cost of living), people in families with a  disabled adult are nearly twice as likely to be in poverty as others.[[51]](#endnote-50)

37. Younger adults, especially those who are working and/or renting from a private landlord, are also more likely than in the past to be in poverty.[[52]](#endnote-51) A factor underlying the shift towards young adult poverty is the changing risks of unemployment by age group. During the recession, the unemployment rate for under-25s rose much more quickly than for other adults. Despite falling from 15 per cent to 13 per cent in the past two years, around one in eight under-25s are still unemployed – at least twice the rate of any other age group.[[53]](#endnote-52)

**38. SHRC recommends the Committee asks the United Kingdom what specific steps is taking to eliminate employment related discrimination and to ensure equal opportunities and treatment for vulnerable groups, including in the private sector.**

**Article 9 - Social security**

39. Since the 2010 the UK Government has prioritised the reduction of the public debt, pursuing a programme of austerity and cuts in public spending. Changes to the provision of social security benefits by the UK Government were predicted to have a disproportionate effect on women (especially disabled women and women from minority ethnic groups[[54]](#endnote-53) as well as single parents, 92 per cent of whom are women).[[55]](#endnote-54) Recent research supported by the Scottish Parliament indicates that these cuts are anticipated to have the most severe impact on those in the most deprived areas in Scotland.[[56]](#endnote-55)

40. In 2013 the European Social Committee found the minimum level of incapacity benefit, the state pension and job seeker’s allowance to be manifestly inadequate and in breach of Article 12 of the Charter (the right to social security).[[57]](#endnote-56) The Special Rapporteur on the right to adequate housing has also raised concerns in relation to the impact if the welfare reform on the most vulnerable individuals and groups including schemes such as the Independent Living Fund and the devastating impact on persons with disabilities.[[58]](#endnote-57)

41. The UK Government has failed to adequately assess the impact of these measures on human rights.[[59]](#endnote-58) For example, tax credits are an important source of income for households in in-work poverty. Low paid women are more likely to rely on tax credits than low paid men because the nature of employment undertaken is often part-time and more precarious due to caring responsibilities.[[60]](#endnote-59) This means that the impact of changes to the tax credit system has more severely impacted on women in their role as part-time workers and their children.[[61]](#endnote-60) Concluding its inquiry on welfare reform, the UK Joint Committee on Human Rights criticised the UK Government for a lack of information on how it had assessed the human rights and equality impact of the new Welfare Reform Act 2012.[[62]](#endnote-61) Before passage of the legislation the Joint Committee further raised concerns that the Welfare Reform Bill ‘may risk breaching human rights in leading to destitution (engaging the prohibition of degrading treatment), discrimination and retrogression in the realisation of economic, social and cultural rights.’[[63]](#endnote-62) This is particularly problematic for vulnerable individuals and groups.

42. In a seminal case in 2015 the UK Supreme Court recognised that the introduction of a benefit cap on housing disproportionately impacted on women and children. However, the Supreme Court ruled by a 3-2 majority verdict that the benefit cap (housing benefit) regulations 2012 were not unlawful - no breach of Article 14 ECHR and 3(1) of UNCRC.[[64]](#endnote-63) Three of the five judges concluded that the benefit cap was not compatible with article 3(1) of the UN convention on children’s rights. Lord Carnwarth said that he hoped the government would address the implications of the ruling when it reviewed the benefit cap. Lady Hale, in her dissenting opinion, held that Article 3(1) UNCRC was engaged and the measures were disproportionate.[[65]](#endnote-64) However, as UNCRC and ICESCR have not been incorporated in domestic law, treaty breaches are not within judicial competence to determine.[[66]](#endnote-65)

**43. SHRC recommends the Committee asks the United Kingdom what steps is taking to ensure that current and future changes to the social security system are compatible with the Covenant’s rights.**

**Article 10 – Protection and assistance to family and reproductive rights**

**Right to family life of those with learning disabilities**

44. People with learning disabilities face challenges in exercising their right to family life. The National Parenting Strategy[[67]](#endnote-66), Getting It Right For Every Child[[68]](#endnote-67) and the Scottish Good Practice Guidelines for Supporting Parents with Learning Disabilities[[69]](#endnote-68) each emphasise the importance of supporting parents with learning disabilities. However, evidence demonstrates that the necessary support is often not made available. The Scottish Government have highlighted that,

 “*Disproportionate numbers of parents with learning disabilities have their children removed. Anecdotal evidence indicates that implementation of the Scottish Good Practice Guidelines is at best patchy. Evidence has also shown that human rights to respect for private and family life (article 8 European Convention on Human Rights) and the right of a child not to be separated from its parents on the basis of disability of either the child or one of the parents (article 23, para 4 UN Convention on the Rights of Persons with Disabilities) are sometimes not upheld. Steps are therefore needed to improve the support available to these families.”[[70]](#endnote-69)*

**45. SHRC recommends the Committee asks the United Kingdom what is doing to, particularly in Scotland, ensure that appropriate support is provided to the needs of the individual parents, including supplementation of care and training for parents.**

**Article 11 – Right to an adequate standard of living, including adequate food, clothing and housing**

46. Although there has been an overall decline in poverty rates and standard of living has increased in Scotland over the past ten years, statistics for 2012/2013 showed an upturn in both working-age and child poverty rates.[[71]](#endnote-70) In-work poverty continues to be an issue faced by a high proportion of working people in Scotland.[[72]](#endnote-71) In a 2015 Report commissioned by the Scottish Government research indicates that 52% of working age adults are in poverty.[[73]](#endnote-72) In other words, the majority of people in Scotland who are in employment, or who are living with someone in employment, are also living in poverty. The main reasons cited for in-work poverty are low pay; work intensity; income gained and lost through the tax and welfare system; zero contract hours; child care costs and availability; and unfair employment practices.[[74]](#endnote-73) Employment is no longer a guaranteed route to alleviating poverty within the current regulatory framework in the UK and Scotland. This is indicative of the fact that for children in poverty, 59% are living in households with someone in employment.[[75]](#endnote-74) The Scottish Government has declared its commitment to tackling in-work poverty, including an economic strategy that aims to improve income equality.

47. In 2013 the Special Rapporteur concluded that the UK faces a critical situation in terms of availability, affordability and access to adequate housing, particularly in some geographic areas.[[76]](#endnote-75) There has been a continued decline in investment in housing, particularly social housing, despite commitments to the contrary. There are also persisting disadvantages faced by certain groups in relation to homelessness despite the removal of the priority needs test in the Homelessness (Scotland) Act 2003. For example, there is a shortage of suitable housing for disabled people, victims of domestic abuse, migrants (especially those with no recourse to public funds), and high levels of homelessness amongst offenders. The impact of welfare reform on housing benefit (as discussed above H/HRC/25/54) has been disproportionately severe on the most vulnerable groups in society.

48. Decent conditions, or habitability, of housing are not adequately ensured in the current regulatory framework. The Scottish Government uses two specific measures to track progress on the standard of housing stock. The first is the ‘tolerable standard’ which highlights where it is not reasonable to expect people to continue to live in a house that falls below this standard.[[77]](#endnote-76) Local authorities have a statutory duty and specific powers to deal with houses that fall below the tolerable standard.[[78]](#endnote-77) The tolerable standard applies to both the public and private housing sector, however, there is no coherent or consistent policy or compulsory framework for ensuring or mapping the extent to which the private sector, including privately let properties, comply with the standard. This means there is potentially an extensive deficit in private sector housing. A more robust and properly resourced framework is needed to tackle inhabitable housing in the private sector. The second measure is the Scottish Housing Quality Standard (SHQS). This standard includes a target that all social landlords must make sure that all their accommodation passes the SHQS by 2015. This target does not extend to private owners and private landlords.[[79]](#endnote-78)

49. Despite the standards set in the regulatory framework, there continue to be concerns around the quality of social housing, safety issues, poor standard of repair, and time taken for repairs to happen. Particular groups may also be more severely impacted than others. For example, according to analysis of the 2011 census, people from ethnic minority groups were more likely to be living in flats or temporary structures and also more likely to be living in privately rented accommodation.[[80]](#endnote-79) As a result, ethnic minority groups may be more likely to be subject to poorer living conditions in the ‘hidden’ private sector market.

**Fuel poverty**

50. At the start of 2014, it was estimated that 6.59 million households were living in fuel poverty across the UK- almost exactly one in four UK households.[[81]](#endnote-80) This is an increase of 13% from 5.86 million at the start of 2013. If we compare this figure to the most recently published official statistics on fuel poverty, we see that fuel poverty is up by 49% since 2011. During the same period fuel poverty in Scotland has increased from 795,000 to 890,000 households (up 12%).[[82]](#endnote-81)

51. Fuel poverty continues to be an issue faced by vulnerable groups in Scotland. It was an issue highlighted by the SHRC in the evidence gathering phase of Scotland’s National Action Plan in 2012 and commitments.[[83]](#endnote-82) It was also highlighted by the Special Rapporteur on housing in 2013[[84]](#endnote-83) who noted that according to the Fuel Poverty Advisory Group, nearly 50 per cent of fuel-poor households are pensioners, 34 per cent contain someone with a disability or long-term illness, and 20 per cent have a child aged 5 or under.[[85]](#endnote-84) Age Scotland estimates that in 2013, there were over a quarter of a million pensioner couple households (258,000) living in fuel poverty. Figures previously available from 2012 suggested this figure was nearly half the current level. This evidences a greater vulnerability to factors leading to fuel poverty, principally regarding rising fuel prices and fixed incomes.[[86]](#endnote-85) Available data seems to corroborate that fuel poverty is increasing year by year.

**Food poverty**

52. According to the Trussell Trust, the number of people who used their food banks in Scotland between 1st April 2013 and 31st March 2014 rose to 71,428 which is a 400 per cent increase and five times the number compared to the previous financial year. This includes more than 22,000 children who used their food banks during this time period.[[87]](#endnote-86) The Scottish Government announced an Emergency Funding designed to tackle food poverty in 2014. Citizens Advice Scotland has found that

 “*Between January and March 2014, citizens advice bureaux in Scotland recorded 1,311 new food parcel issues – this equates to one food parcel issue for every 50 clients who received advice. Extrapolating this figure to the number of clients that seek advice at bureaux suggests that bureaux advise on over 5,500 food parcel issues in a year.”[[88]](#endnote-87)*

**Rural poverty**

53. Rural poverty is another issue raised in the preparatory evidence for SNAP.[[89]](#endnote-88) The evidence highlighted the increased risk of isolation for those in poverty in rural areas without adequate access to suitable housing or services.[[90]](#endnote-89) Some groups are more likely to live in rural poverty, especially pensioners, single parents, disabled people, people with mental health issues and migrant workers. Rural areas have been exposed to significant centralisation of public and voluntary sector services. Rural Areas have experienced a loss of vital services such as hospitals and schools; people face high costs in heating and maintaining houses not designed to withstand the elements in exposed areas as well as in public transport, which enable employment and training; migrant workers who have limited understanding of English face additional problems in relation to accessing information and support. The nature of the work in the agricultural sector (long hours, low pay) makes it difficult to access language classes, and service providers in rural areas do not have the same access to interpreters as their urban counterparts.[[91]](#endnote-90)

**54. SHRC recommends the Committee to ask the United Kingdom to explain its plans to guarantee an adequate standard of living across the UK, in particular what measures it is taken to provide effective support and mitigate adverse economic conditions such as food and fuel poverty as well as the lack of accessibility to housing by vulnerable groups in Scotland.**

**Scottish Gypsy Traveller community (Articles 11 and 13)**

55. The lack of appropriate and culturally adequate residential and transit accommodation is often at the root of the stigma and discrimination faced by Gypsies and Travellers across the United Kingdom. [[92]](#endnote-91) According to the 2011 census, the Scottish Gypsy Traveller (SGT) community are much more likely to live in overcrowded accommodation without central heating than the rest of the population in Scotland.[[93]](#endnote-92) The lack of available and suitable stopping places for SGT, problems with sanitation on the sites and the levels of racism directed towards SGT are persistent problems faced by these communities.[[94]](#endnote-93) Official stopping sites reportedly often continue to be inadequate in terms of habitability with poor sanitation, such as an inadequate number of toilets, and a lack of clean water.[[95]](#endnote-94)

56. The UN Committee on the Rights of the Child in its concluding observations in 2008 recognised the numerous efforts that had been made in Scotland to more effectively ensure the right to education, however, the Committee specifically and explicitly stated its concern that significant inequalities persisted.[[96]](#endnote-95) The 2013 *Where Gypsy/Travellers Live* report by the Scottish Parliament found that past commitments to develop an education strategy for Gypsy/Travellers have not been fulfilled to date.[[97]](#endnote-96) The Scottish Parliament encouraged the Scottish Government to explore the inclusion of positive, non-tokenistic representation of Gypsy/Travellers in the curriculum and create an action plan aimed at supporting the transition of young Gypsy/Travellers from primary to secondary education as well as a housing strategy, which embrace Gypsy/Traveller needs. The report also found a profoundly unfair media portrayal of Gypsy/Travellers.

**57. SHRC recommends the Committee asks the United Kingdom to indicate what steps are being taken to address the Covenant rights of the Gypsy/Traveller community in Scotland.**

**Article 12 – Right to health**

58. *The Healthcare Quality Strategy for NHS Scotland* (published in 2010) included commitments to understand the needs of different communities; eliminate discrimination; reduce inequality; protect human rights and build good relations by breaking down barriers that may prevent people from accessing the services they need[[98]](#endnote-97). In 2012, the Scottish Government published an ‘inequalities in healthcare’[[99]](#endnote-98) guidance paper. This is supported by the 2020 Vision route map[[100]](#endnote-99), which prioritizes reduction in health inequalities, with particular focus on minimizing the effects of budget cuts on the most deprived areas of Scotland—who are in many cases the population most at risk of ill-health. The Scottish Government has also produced healthcare policy targets to ‘*ensure that we concentrate effort on areas that will influence our policies and activities and which will have a positive impact on people with protected characteristics*.’[[101]](#endnote-100) SNAP sets out the mainstreaming of human rights into healthcare as a priority.[[102]](#endnote-101)

59. Nonetheless, health inequalities in Scotland continue to impact more severely on people living in poverty, who are more likely to die early and suffer from a range of health problems. Scotland has poor health outcomes attributed to disparities such as poverty, an ageing population and minority groups who face barriers in accessing healthcare, including SGT and ethnic minorities.[[103]](#endnote-102) *Getting it Right?* and the subsequent participation process has identified continuous concerns about the experience of minority ethnic women, including Scottish Gypsy/Travellers, in accessing culturally appropriate health care.[[104]](#endnote-103)

60. WHO has illustrated health inequalities in Scotland as follows:

‘*A boy born today in Lenzie, East Dunbartonshire, can expect to live until he is 82. Yet for a boy born only eight miles away in Carlton, in the east end of Glasgow, life expectancy may be as low as 54 years, a difference of 28 years or almost half as long again as his whole life’*.[[105]](#endnote-104)

 Source: Scottish Parliament, Health and Sport Committee Report on Health Inequalities, 1st Report, Session 4 (2015)

61. The Health and Sport Committee Report identified strong links between

 ‘*low educational attainment, poverty, worklessness or low economic activity, poor quality work and poor quality housing on the one hand, and higher levels of morbidity, reduced life expectancy and poor health outcomes generally. The evidence received also shows that while economic growth brings the potential for increased levels of employment, modern patterns of employment can be characterised by temporary or sporadic work, short term or zero-hours contracts or work that is poorly paid, stressful, low-status and with little autonomy… Economic growth alone, therefore, will not be sufficient to address structural health inequalities. Moreover, the implementation of welfare reform is reducing the income available to*

*the poorest and most vulnerable individuals and families, potentially further impacting on health and wellbeing inequalities’.[[106]](#endnote-105)*

**62. SHRC recommends the Committee asks the United Kingdom to indicate what steps are being taken to reduce health inequalities across the UK, particularly in Scotland.**

**Prisoners**

63. There is a noticeable increase in the number of prisoners with mental health problems in Scotland.[[107]](#endnote-106) In 2010, the UK National Preventive Mechanism rated mental health as the most significant and recurring concern across all types of detention.[[108]](#endnote-107) The “*very high levels of self-harm in women’s prisons”* has also been identified as a particular concern regarding mental health care in prisons.[[109]](#endnote-108) Women charged with incidents of violent and disruptive behaviour may have underlying mental health difficulties. The Mental Welfare Commission for Scotland found in its 2014 report on Women Detained by the Criminal Courts, a significant increase on offences involving fire-raising, particularly associated to situations of suicide attempts and alcohol use.[[110]](#endnote-109) HMIPS found that NHS Greater Glasgow and Clyde should ensure that the mental health team in place in HMP Barlinnie has the necessary resources to deliver the level of mental health interventions identified.[[111]](#endnote-110) Prisoners in HM Edinburgh can also experience substantial delays for interventions.[[112]](#endnote-111)

**64. SHRC recommends the Committee asks the United Kingdom to explain what steps it has taken to ensure the availability and accessibility of appropriate mental health services for those deprived of liberty in Scotland.**

**Immigration healthcare charges**

65. The Immigration Act 2014 introduced NHS charging provisions to persons not ordinarily resident in the UK, including persons who require leave to enter or remain in the UK but do not have it, and persons who have leave to enter or remain in the UK for a limited period. A pre-existing scheme in Scotland continues to apply under the National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989 which also provides an exemption to charges for exceptional humanitarian reasons.[[113]](#endnote-112) Guidance issued by the Scottish Government indicate failed asylum seekers also fall within this definition.[[114]](#endnote-113)

**Article 13 and 14 – Education**

66. All children of school age have a statutory right to education in Scotland and education must be directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential.[[115]](#endnote-114) Local authorities are under an obligation to provide education within their local area in Scotland.[[116]](#endnote-115) The policy framework in Scotland is developed from “Getting it Right for Every Child” which aims to support children in education through a human rights based approach.[[117]](#endnote-116) During the UN Universal Periodic Review in 2012 it was recommended that the UK “adopt a strategy so that children of vulnerable groups are not excluded from the education system”.[[118]](#endnote-117) In Scotland, there are still problems faced by minority groups accessing the education system such as gypsies and travellers.[[119]](#endnote-118)

67. In 2008 the Committee on the Rights of the Child raised concerns about the lack of protection for the provision of education to children in custody in the UK and recommended that the state “provide for a statutory right to education for all children deprived of their liberty”.[[120]](#endnote-119) The Scottish Government has committed to ‘continue to work with secure care providers and HMIE to ensure that the range and standard of educational provision is high.[[121]](#endnote-120) However, there is no explicit reference under Scots law for children in detention. There is no equivalent statutory duty in Scotland as that embodied in section 40 of the Apprenticeships, Skills, Children and Learning Act 2009, which secures education for children in detention in England and Wales.

**68. SHRC recommends the Committee asks the United Kingdom to explain what steps it has taken to ensure the availability and accessibility of education for children in detention in Scotland.**

**Article 15 – Right to science and culture life**

69. A Scotland’s Commissioner for Children and Young People review of children’s right to cultural life found that despite Scotland’s lively community of artists and organisations many children will have little access or exposure to the cultural life as they grow up, particularly those children living in poverty and with disabilities.[[122]](#endnote-121) The 2013 State of Children’s Rights in Scotland report pointed out the wide concern that disabled children still do not have equal access to recreational life and that the current financial climate is having a negative impact on the number of opportunities available.[[123]](#endnote-122)

**70. SHRC recommends the Committee asks the United Kingdom to describe what steps it has taken to ensure marginalised groups of children and young people are able to take part in cultural life as a part of their everyday lives in Scotland.**

**References**

1. SHRC would like to acknowledge the research contribution of Dr Katie Boyle, University of Roehampton on the realisation of this report. [↑](#footnote-ref-1)
2. For a discussion on the dualist system of incorporation see Anthony Aust, *Handbook of International Law,* 2nd Ed. (Cambridge University Press 2010), pp.75-76. An example of a non-incorporated treaty dealing with ESC rights is the International Covenant on Economic Social and Cultural Rights, UN General Assembly, 16 December 1966, United Nations, Treaty Series, vol. 993, 3 [↑](#endnote-ref-1)
3. Paragraph 2(b) of Schedule 5 of the Scotland Act [↑](#endnote-ref-2)
4. See Final Report of the UK Government appointed Commission of Inquiry on a Bill of Rights at <http://enf.org.uk/blog/?page_id=1870> [↑](#endnote-ref-3)
5. At the 2013 Conservative Party Conference, Home Secretary Theresa May said in her speech that “The next Conservative manifesto will promise to scrap the Human Rights Act. ... the Conservative position is clear – if leaving the European Convention is what it takes to fix our human rights law, that is what we should do”. The Guardian, 30 September 2013: ‘Conservatives promise to scrap Human Rights Act after next election’. <http://www.theguardian.com/law/2013/sep/30/conservitives-scrap-human-rights-act> [↑](#endnote-ref-4)
6. See 2015 Queen’s Speech, available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/430029/queens-speech-briefing-pack.pdf> [↑](#endnote-ref-5)
7. Ibid for language used by the Government. For further information see SHRC response to the UK Government appointed Commission of Inquiry on a Bill of Rights at <http://www.scottishhumanrights.com/resources/policysubmissions/borrpublicationsnov2011> [↑](#endnote-ref-6)
8. For further information visit <https://www.conservatives.com/~/media/Files/Downloadable%20Files/HUMAN_RIGHTS.pdf> [↑](#endnote-ref-7)
9. SHRC response to the UK Government appointed Commission of Inquiry on a Bill of Rights at <http://www.scottishhumanrights.com/resources/policysubmissions/borrpublicationsnov2011> [↑](#endnote-ref-8)
10. The Institute for Fiscal Studies was founded in 1969. Established as an independent research institute, IFS was launched with the principal aim of better informing public debate on economics in order to promote the development of effective fiscal policy. Through the establishment of rigorous independent research, for example Post Budget analysis. Today, IFS is Britain’s leading independent microeconomic research institute. Its research remit is one of the broadest in public policy analysis, covering subjects from tax and benefits to education policy, from labour supply to corporate taxation. [↑](#endnote-ref-9)
11. For further information visit http://election2015.ifs.org.uk/public-spending [↑](#endnote-ref-10)
12. See also Pillay, A.G., Chairperson of the Committee on Economic, Social and Cultural Rights, *Open Letter to States Parties to the ICESCR*, 2012, available at: http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRto­SP16.05.12.pdf. [↑](#endnote-ref-11)
13. See for example SHRC statement to the UN HRC on Children in 2014 and Written evidence to the Scottish Parliament on Welfare reform in 2013, available at <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/71521.aspx> [↑](#endnote-ref-12)
14. Joint Committee on Human Rights (2011). Legislative Scrutiny: Welfare Reform Bill, summary. London, UK Parliament. [↑](#endnote-ref-13)
15. For further information see http://www.ifs.org.uk/tools\_and\_resources/budget/505 [↑](#endnote-ref-14)
16. Ibid [↑](#endnote-ref-15)
17. Section 149 of the Equality Act 2010 [↑](#endnote-ref-16)
18. The protected characteristics are listed in section 4 of the Equality Act 2010, namely age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. Section 75 of the Northern Ireland Act 1998 imposes an obligation to have due regard to the promotion of equality of opportunity between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; between men and women generally; between persons with a disability and persons without; and between persons with dependants and persons without [↑](#endnote-ref-17)
19. The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 [↑](#endnote-ref-18)
20. Those public authorities listed in the Schedule to the Regulations [↑](#endnote-ref-19)
21. Close the Gap Statistics, available at http://www.closethegap.org.uk/content/gap-statistics/ [↑](#endnote-ref-20)
22. See for example the recent judgments in North v Dumphries and Galloway Council [2013] UKSC 45 and Birmingham City Council v Abdulla & Ors [2011] EWCA Civ 1412 [↑](#endnote-ref-21)
23. Close the Gap and University of Strathclyde (2015) Making Manufacturing Work for Women

Summary of research findings. See Report at <http://www.closethegap.org.uk/content/resources/Making-Manufacturing-Work-for-Women---Summary-of-research-findings-Close-the-Gap-June-2015.pdf> [↑](#endnote-ref-22)
24. For further information see www.equalityhumanrights.com/sites/default/files/documents/Scotland/Research/part\_1\_final\_report\_170713.pdf [↑](#endnote-ref-23)
25. See Council of Europe report on European Judicial Systems 2014 [↑](#endnote-ref-24)
26. SNAP, ibid [↑](#endnote-ref-25)
27. OECD (2011), *Doing Better for Families, available at http://www.oecd.org/social/soc/doingbetterforfamilies.htm* [↑](#endnote-ref-26)
28. Daycare Trust and Children in Scotland (2012) The Scottish Childcare Lottery, <http://www.childreninscotland.org.uk/docs/Scottish_Childcare_Lottery.pdf> [↑](#endnote-ref-27)
29. Jill Rutter, Childcare Cost Survey 2015, Family and Childcare Trust, p.4, available at http://www.fct.bigmallet.co.uk/sites/default/files/files/Childcare%20cost%20survey%202015%20Final.pdf [↑](#endnote-ref-28)
30. ibid [↑](#endnote-ref-29)
31. Ibid. [↑](#endnote-ref-30)
32. See http://www.gov.scot/Topics/Statistics/Browse/Labour-Market/Publications [↑](#endnote-ref-31)
33. Education Working For All! Commission for Developing Scotland’s Young Workfore, p.14, available at http://www.gov.scot/Resource/0045/00451746.pdf pp.58-59 [↑](#endnote-ref-32)
34. Education Working For All! Commission for Developing Scotland’s Young Workfore, p.14, available at http://www.gov.scot/Resource/0045/00451746.pdf [↑](#endnote-ref-33)
35. The Education and Skills Act 2008 increased the minimum age at which young people in England can leave learning. The Act required them to continue in education or training until the age of 17 in 2013 and the compulsory age has now increased to 18 from 2015. Young people will be able to choose whether to stay in full-time education, undertake work-based learning such as an Apprenticeship, or part-time education or training if they are employed, self-employed or volunteering for more than 20 hours per week, see http://www.politics.co.uk/reference/education-leaving-age [↑](#endnote-ref-34)
36. http://www.gov.scot/Topics/Education/edandtrainingforyoungple/commissiondevelopingscotlandsyoungworkforce [↑](#endnote-ref-35)
37. ibid [↑](#endnote-ref-36)
38. Equality and Human Rights Commission, Modern Apprenticeships, Equality and the Economy, Spreading the Benefits, 2014, available at http://www.equalityhumanrights.com/about-us/devolved-authorities/the-commission-in-scotland/research-in-about-us/devolved-authorities/the-commission-in-scotland/modern-apprenticeships [↑](#endnote-ref-37)
39. Ibid [↑](#endnote-ref-38)
40. The living wage is defined as a wage that gives individuals and families enough income to meaningfully participate in society and that meets socially acceptable standards. [↑](#endnote-ref-39)
41. Section 29 of the Act provides that the Scottish Ministers may publish guidance about the selection of economic operators, including guidance relating to a living wage. Section 15 also imposes a duty to consider the living wage as part of a procurement strategy. [↑](#endnote-ref-40)
42. The Office for National Statistics (ONS) says that 697,000 people were employed on zero-hours contracts for their main job between October and December 2014 That represents 2.3% of the UK workforce. [↑](#endnote-ref-41)
43. See https://scottishbusinesspledge.scot/ [↑](#endnote-ref-42)
44. The intensity of work is also an issue which is leading to in-work poverty. The UK government places expectations on what working adults should be able to achieve based on children reaching certain ages – so expected income levels are dependent one adult working full time, and a second adult or lone parent working full time if children are above 13, working part-time if children are aged 5-12 and not working if children are under 5. However, these baseline assessments do not take into consideration the many barriers faced by working age adults such as the availability of work; disability; or caring responsibilities. GRF report 2013 Tackling in-work poverty by supporting dual-earning families [↑](#endnote-ref-43)
45. ‘The invisible workforce, those in the cleaning sector’, Equality and Human Rights Commission, March 2015, available at http://www.equalityhumanrights.com/about-us/our-work/key-projects/invisible-workforce-employment-practices-cleaning-sector [↑](#endnote-ref-44)
46. Ibid p.7 [↑](#endnote-ref-45)
47. Ibid p.9 [↑](#endnote-ref-46)
48. Ibid p.8 [↑](#endnote-ref-47)
49. Ibid p.32 [↑](#endnote-ref-48)
50. JRF, Monitoring Poverty and Social exclusion in Scotland 2015., http://www.jrf.org.uk/publications/monitoring-poverty-and-social-exclusion-scotland-2015 [↑](#endnote-ref-49)
51. Ibid. See also the work of the Equality and Human Rights Commission highlighting the problems faced by disabled persons in barriers to employment and unfair treatment at work, [http://www.equalityhumanrights.com/publication/research-report-88-barriers-employment-and-unfair-treatment-work-quantitative-analysis-disabled](https://webmail.ul.ie/owa/redir.aspx?C=BuFyjqkNNEmZKl_9QWh8a3oenJZTedIIVUokbSwpXYNZVCxV0zP5KG32u1Zcp0XK0ivD8UevI6c.&URL=http%3a%2f%2fwww.equalityhumanrights.com%2fpublication%2fresearch-report-88-barriers-employment-and-unfair-treatment-work-quantitative-analysis-disabled)  [↑](#endnote-ref-50)
52. Ibid [↑](#endnote-ref-51)
53. Op cit 50 [↑](#endnote-ref-52)
54. Oxfam, 2012, The Perfect Storm: Economic stagnation, the rising cost of living, pubic sector spending cuts, and the impact on UK Poverty: Oxford <http://policy-practice.oxfam.org.uk/publications/the-perfect-storm-economic-stagnation-the-rising-cost-of-living-public-spending-228591> [↑](#endnote-ref-53)
55. Office for National Statistics, 2008, Social Trends, 39. [↑](#endnote-ref-54)
56. Christina Beatty and Steve Forthergill, *Hitting the poorest places the hardest, the local and regional impact of welfare reform*, Sheffield Hallam University, Centre for Regional Economic and Social Research, April 2013, <http://www.shu.ac.uk/research/cresr/sites/shu.ac.uk/files/hitting-poorest-places-hardest_0.pdf> [↑](#endnote-ref-55)
57. European Social Charter, European Committee of Social Rights, Conclusions XX-2 (2013), (GREAT BRITAIN) Articles 3, 11, 12, 13 and 14 of the 1961 Charter, January 2014. In association with the other rights under the thematic review ‘Health, social security and social protection’ the Committee concluded 11 incidences of conformity in relation Articles 3§1, 3§2, 3§3, 11§1, 11§2, 11§3, 13§1, 13§2, 13§3, 14§1, and 14§2 and one incidence of non-conformity under Article 12§1. [↑](#endnote-ref-56)
58. UN Human Rights Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, 30 December 2013, A/HRC/25/54, para.66 [↑](#endnote-ref-57)
59. <http://scottishhumanrights.com/news/latestnews/article/welfarereformafterevidence> [↑](#endnote-ref-58)
60. Scottish Government, 2015 Report para.2.16 [↑](#endnote-ref-59)
61. ibid [↑](#endnote-ref-60)
62. Joint Committee on Human Rights (2011). Legislative Scrutiny: Welfare Reform Bill, summary. London, UK Parliament. See also SHRC Evidence to the Welfare Reform Committee, Scottish Parliament (28 may 2013) available at http://www.scottishhumanrights.com/news/latestnews/article/welfarereformafterevidence [↑](#endnote-ref-61)
63. Ibid [↑](#endnote-ref-62)
64. [2015] UKSC 16 [↑](#endnote-ref-63)
65. Para.229 [↑](#endnote-ref-64)
66. R(on the application of SG and others (previously JS and others)) v Secretary of State for Work and Pensions [2015] UKSC 16 [↑](#endnote-ref-65)
67. http://www.scotland.gov.uk/Publications/2012/10/4789 [↑](#endnote-ref-66)
68. http://www.scotland.gov.uk/Topics/People/Young-People/gettingitright [↑](#endnote-ref-67)
69. http://www.scld.org.uk/sites/default/files/Good%20Practice%20Guidelines%20for%20Supporting%2 0Parents%20with%20Learning%20Disabilities.pdf [↑](#endnote-ref-68)
70. The keys to Life, improving quality of life for people with learning disabilities, the Scottish Government 2013, available at <http://www.gov.scot/Resource/0042/00424389.pdf>, p.79 [↑](#endnote-ref-69)
71. Joseph Rowntree Foundation Report ‘Monitoring Poverty and Social Exclusion in Scotland 2015:(<http://www.jrf.org.uk/publications/monitoring-poverty-and-social-exclusion-scotland-2015>) [↑](#endnote-ref-70)
72. In-work poverty is defined as ‘individuals living in households where the household income is below the poverty threshold despite one member of the household working either full or part time. See http://www.employabilityinscotland.com/barriers/poverty/what-you-should-know-about-tackling-poverty/poverty-and-employment/in-work-poverty/ [↑](#endnote-ref-71)
73. Ibid Para.2.2 Where household income is under 60% of the average household income (before housing costs) [↑](#endnote-ref-72)
74. See Scottish Government 2015 Report, ibid, para.1.3. See also the report issued by Citizens Advice Bureau Scotland, Rob Gowans, ‘An End to In-work poverty’, Parliamentary Briefing, 18 March 2015, available at http://www.cas.org.uk/system/files/publications/In%20Work%20Poverty%20briefing%20-%20Scottish%20Parliament.pdf [↑](#endnote-ref-73)
75. http://www.gov.scot/Publications/2014/07/9247/4 [↑](#endnote-ref-74)
76. UN Human Rights Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, 30 December 2013, A/HRC/25/54 [↑](#endnote-ref-75)
77. An interesting question for further exploration would be how well the ‘tolerable’ standard of living described here would match up to the standard of habitability contained within the right to an adequate standard of living. It would be within the power of the Scottish Parliament to align the tolerable standard with the standard of habitability as defined in ICESCR. [↑](#endnote-ref-76)
78. The Tolerable Standard was redefined in the Housing (Scotland) Act 2006 which amended the Housing (Scotland) Act 1987 and applies to all houses in Scotland. [↑](#endnote-ref-77)
79. Data is, however, collected and reported for all accommodations which allow for comparison across the housing stock. [↑](#endnote-ref-78)
80. http://www.gov.scot/Publications/2015/03/8716/2 [↑](#endnote-ref-79)
81. See Fuel poverty 2014 Report update. Association for the Conservation of Energy. In the whole of the UK the number of children in fuel poverty has increased by 375,000 (up 17%) since the start of 2013, up from 2.2 million to 2.57 million at the start of 2014. [↑](#endnote-ref-80)
82. Ibid [↑](#endnote-ref-81)
83. http://www.scottishhumanrights.com/actionplan/themewherewelive [↑](#endnote-ref-82)
84. Para.59 [↑](#endnote-ref-83)
85. Fuel Poverty Advisory Group, *Tenth Annual Report 2011-2012*, p. 5. [↑](#endnote-ref-84)
86. Age Scotland see http://www.ageuk.org.uk/scotland/latest-news/archive/age-scotland-calls-for-urgent-investment-to-end-fuel-poverty/ [↑](#endnote-ref-85)
87. See http://www.trusselltrust.org/stats [↑](#endnote-ref-86)
88. See Emergency Food Fund: no-one wants people needing food aid. http://www.cas.org.uk/news/emergency-food-fund-no-one-wants-people-needing-food-aid [↑](#endnote-ref-87)
89. http://www.scottishhumanrights.com/actionplan/themewherewelive [↑](#endnote-ref-88)
90. ibid [↑](#endnote-ref-89)
91. The Experience of Rural Poverty in Scotland. Ekos ltd 2009. Available at http://www.gov.scot/Topics/Research/About/Social-Research [↑](#endnote-ref-90)
92. Special Rapporteur, para.69 [↑](#endnote-ref-91)
93. http://www.gov.scot/Publications/2015/03/8716/3 [↑](#endnote-ref-92)
94. http://www.scottish.parliament.uk/S4\_EqualOpportunitiesCommittee/General%20Documents/SPICe\_briefing\_Where\_Gypsy\_Travellers\_live.pdf [↑](#endnote-ref-93)
95. SHRC, Where We Live, p.22 [↑](#endnote-ref-94)
96. See UNCRC, CO 2008 [↑](#endnote-ref-95)
97. See Committee’s report ‘Where Gypsy/Travellers Live’ at <http://www.scottish.parliament.uk/S4_EqualOpportunitiesCommittee/Reports/eor-13-01w.pdf> [↑](#endnote-ref-96)
98. http://www.audit-scotland.gov.uk/docs/health/2012/nr\_121213\_health\_inequalities.pdf [↑](#endnote-ref-97)
99. http://www.audit-scotland.gov.uk/docs/health/2012/nr\_121213\_health\_inequalities.pdf [↑](#endnote-ref-98)
100. <http://www.scotland.gov.uk/Resource/0042/00423188.pdf> [↑](#endnote-ref-99)
101. <http://www.healthcareimprovementscotland.org/previous_resources/policy_and_strategy/equality_outcomes.aspx> [↑](#endnote-ref-100)
102. <http://www.scottishhumanrights.com/application/resources/documents/SNAP/SNAPpdfWeb.pdf>, p.12 [↑](#endnote-ref-101)
103. For example, there is a lack of access to sign language interpreters. [http://www.equalityhumanrights.com/equality-human-rights-commission-requires-nhs-tayside-meet-communication-needs-deaf-patients](https://webmail.ul.ie/owa/redir.aspx?C=BuFyjqkNNEmZKl_9QWh8a3oenJZTedIIVUokbSwpXYNZVCxV0zP5KG32u1Zcp0XK0ivD8UevI6c.&URL=http%3a%2f%2fwww.equalityhumanrights.com%2fequality-human-rights-commission-requires-nhs-tayside-meet-communication-needs-deaf-patients) [↑](#endnote-ref-102)
104. SHRC, Getting it Right? Human Rights in Scotland, Edinburgh available at www.scottishhumanrights.com/: [↑](#endnote-ref-103)
105. World Health Organization. (2008) Closing the gap in a generation - Health equity through action on the social determinants of health. Available at

http://whqlibdoc.who.int/publications/2008/9789241563703\_eng.pdf?ua=1 [↑](#endnote-ref-104)
106. Scottish Parliament, Health and Sport Committee Report on Health Inequalities, 1st Report, Session 4 (2015). [↑](#endnote-ref-105)
107. Responsibility for the provision of healthcare services, including mental health services, to prisoners was transferred from the Scottish Prisons Service to NHS Health Boards on 1 November 2011. For a further discussion See HMCIPS (2007). HM Chief Inspector of Prisons for Scotland Annual Report 2006-7. H. C. I. o. Prisons. Edinburgh, Scottish Government. HMCIPS (2011). Her Majesty's Chief Inspector of Prisons for Scotland Annual Report 2010-2011. Edinburgh, HM Chief Inspector of Prisons for Scotland. SAMH revealed that figures obtained from parliamentary questions showed there were 219 cases of self-harm in Scottish jails in 2010, an increase of 140% from 91 cases in 2004 SAMH (2011). SAMH RESEARCH BRIEFING: MENTAL HEALTH AND CRIMINAL JUSTICE IN SCOTLAND Glasgow, Scottish Association for Mental Health. See also Scottish Prison Commission (2008). Scotland’s Choice: Report of the Scottish Prisons Commissions. Edinburgh. [↑](#endnote-ref-106)
108. The detention of individuals for mental health reasons is governed in Scotland by the Mental Health (Care and Treatment) (Scotland) Act 2003. [↑](#endnote-ref-107)
109. Mental Welfare Commission for Scotland (2011). Mental Health of Prisoners. Edinburgh, Mental Welfare Commission for Scotland. [↑](#endnote-ref-108)
110. See Mental Welfare Commission for Scotland report at <http://www.mwcscot.org.uk/media/190441/women_offenders_final_report.pdf> [↑](#endnote-ref-109)
111. HMCIPS (2011). Her Majesty's Chief Inspector of Prisons for Scotland Annual Report 2010-2011. Edinburgh, HM Chief Inspector of Prisons for Scotland. [↑](#endnote-ref-110)
112. Ibid [↑](#endnote-ref-111)
113. Regulation 6A [↑](#endnote-ref-112)
114. http://www.sehd.scot.nhs.uk/mels/CEL2010\_09.pdf [↑](#endnote-ref-113)
115. Section 1 Standards in Scotland's Schools etc. Act 2000 [↑](#endnote-ref-114)
116. Section 1 of the Education (Scotland) Act 1980 and section 2 Standards in Scotland's Schools etc. Act 2000 [↑](#endnote-ref-115)
117. The Getting it Right for Every Child is a policy framework in Scotland that is based on the Children’s Charter (Protecting Children and Young People Charter 2004), the UN Convention of the Rights of the Child, legislation, standards, procedures, professional expertise and 10 core principles to ensure positive outcomes for every child in Scotland, http://www.scotland.gov.uk/Topics/People/Young-People/gettingitright/background [↑](#endnote-ref-116)
118. See lib.ohchr.org/HRBodies/UPR/.../A\_HRC\_21\_9\_Add.1\_UK\_Annex\_E.doc [↑](#endnote-ref-117)
119. The 2013 Where Gypsy/Travellers Live report by the Scottish Parliament found that past commitments to develop an education strategy for Gypsy/Travellers have not been fulfilled to date. See http://www.gov.scot/Publications/2015/03/8716/3 [↑](#endnote-ref-118)
120. UN Committee on the Rights of the Child (CRC), Consideration of reports submitted by States parties under article 44 of the Convention : Convention on the Rights of the Child : concluding observations : United Kingdom of Great Britain and Northern Ireland, 20 October 2008, CRC/C/GBR/CO/4 [↑](#endnote-ref-119)
121. UN Convention on the Rights of the Child: Scottish Governments detailed response to the UN Committees 2008 Concluding Observations, http://www.scotland.gov.uk/Publications/2009/10/28095627/9 [↑](#endnote-ref-120)
122. See http://www.sccyp.org.uk/ufiles/Right-to-Play.pdf [↑](#endnote-ref-121)
123. Together (2013) State of Children’s Rights in Scotland [↑](#endnote-ref-122)