

**Response to Scottish Government Consultation on the Socio-Economic Duty**

**September 2017**

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.

**Introduction**

1. The Scottish Human Rights Commission (the Commission) welcomes the opportunity to contribute to the discussion around the introduction of the socio-economic duty (the duty). The introduction of the duty is undoubtedly a positive development, as it focuses public attention and the minds of decision makers on the significant socio-economic disadvantage still faced by a large proportion of the Scottish population. That said, the duty is not a panacea and must be considered alongside a much wider conversation around the importance and enforceability of economic, social and cultural rights (ESC rights) currently taking place in Scotland.
2. The Commission appreciates that the proposed socio- economic duty must be understood in the context of other public sector reforms aimed at reducing inequalities and delivering on national outcomes. We believe that a deeper understanding of poverty as a human rights issue, addressed using a human rights based approach, would both support and enhance the delivery of the stated underlying principles of these reforms (prevention, people, partnership and performance). Taking an approach which builds upon the foundations of the Human Rights Act 1998 to enhance the status and enforceability of ESC rights would ultimately provide an overarching and more holistic framework through which to ensure that international obligations, including Sustainable Development Goal (SDG) targets, are met and public bodies play their part in ensuring human rights, such as the right to an adequate standard of living, are realised in practice.

**Economic, social and cultural rights**

1. Poverty is a human rights issue. It is both a symptom and systemic cause of violations of international human rights that are established in law – including rights associated with work, education, health and housing and an adequate standard of living. Under the Scotland Act 1998, both the Scottish Government and Parliament must act compatibly with the European Convention on Human Rights (ECHR) through the Human Rights Act 1998.[[1]](#footnote-1) In addition, they must observe and implement all of the UK’s international human rights obligations[[2]](#footnote-2) such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the European Social Charter.
2. ICESCR was ratified by the UK in 1976, and it requires the UK to respect, protect and fulfil a range of ESC rights, including:

* **Work**, under ‘just and favourable conditions’, with the right to form and join trade unions (Articles 6, 7 and 8);
* **Social security**, including social insurance (Article 9);
* **Family life**, including paid parental leave and the protection of children (Article 10);
* **An adequate standard of living**, including adequate food, clothing and housing, and the ‘continuous improvement of living conditions’ (Article 11);
* **Health**, specifically ‘ the highest attainable standard of physical and mental health’ (Article 12);
* **Education**, including free universal primary education, generally available secondary education and equally accessible higher education. This should be directed to "the full development of the human personality and the sense of its dignity" and enable all persons to participate effectively in society (Articles 13 and 14);
* **Participation** in cultural life (Article 15).

1. Although ESC rights are already given a degree of legal protection in Scotland, for example through existing legislation on housing and education, individuals cannot directly challenge breaches of these international human rights standards in the Scottish courts in the same way they can rely on the Human Rights Act 1998. The Commission has long advocated that international human rights standards beyond the ECHR, such as the rights set down in ICESCR, should be incorporated into Scots law, allowing the Scottish courts to directly address alleged breaches. The Commission is running a series of workshops throughout 2017 and 2018 aimed at broadening understanding and support for economic and social rights in Scotland and has published a number of [publications and resources](http://www.scottishhumanrights.com/economic-social-cultural-rights/strengthening-economic-social-cultural-rights/) on the topic.
2. Although the Commission welcomes the introduction of the duty, the Commission is clear that it is not a mechanism for fully delivering and implementing ESC rights. The duty is one of process, not of outcome, and is applicable only to certain bodies when taking strategic decisions. The proposed duty relates to public bodies demonstrating that they understand the socio-economic inequality gaps that exist and that they have taken account of them in key decisions they make. Clearly this differs from a duty to reduce socio-economic inequalities in outcome or ensuring that ESC rights are taken account of and progressively realised in practice. Further, the duty does not confer direct rights on individuals.
3. While the introduction of the duty is positive, the Commission encourages the Scottish Government to give further consideration to embedding ESC rights protection in law, ensuring all ESC rights are realised for everyone in Scotland. The Commission welcomes the First Minister’s recent announcement of a new process to make recommendations on how best to protect economic, social, cultural, environmental and other rights[[3]](#footnote-3) and looks forward to fully engaging with that process.

**Scottish Human Rights Commission**

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1. Scotland Act 1998, s29 (2), s57 [↑](#footnote-ref-1)
2. Scotland Act 1998, Schedule 5, para. 7(2). [↑](#footnote-ref-2)
3. <https://www.snp.org/nicola_sturgeon_speech_20_years_since_scotlands_devolution_referendum> [↑](#footnote-ref-3)