

## COVID-19 Committee Call for Evidence on Refining and Reducing Lockdown

29<sup>th</sup> May 2020

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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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*"This is not a time to neglect human rights; it is a time when, more than ever, human rights are needed to navigate this crisis in a way that will allow us, as soon as possible, to focus again on achieving equitable sustainable development and sustaining peace."*

UN Secretary-General Report, 'Human Rights and COVID-19: we are all in this together'

# 1. Human Rights Based Approaches

- 1.1. The Scottish Human Rights Commission welcomes the opportunity to contribute to the COVID-19 Committee's Call for Evidence on refining and reducing lockdown. The Commission notes that the Committee is particularly interested in establishing a framework for decision-making which will enable difficult choices to be made in a context of competing interests and challenging trade-offs. Whilst we do not provide detailed comments on the routemap, we set out here the guiding principles of a human rights based approach which provide a valuable tool, grounded in law, for assessing the framework and measures.
- 1.2. The Commission believes that the legislative, policy and practice responses to the pandemic should be grounded in human rights laws and standards, and the period of easing restrictions is no exception to this. The human rights framework both articulates the legal obligations upon governments as well as providing a set of standards and principles which provide a framework for the balancing of competing interests. In the context of COVID-19, human rights standards and principles provide a means of taking transparent, accountable and participative decisions that require the balancing of competing interests and priorities, at a time when trust and public confidence is critical.
- 1.3. Human rights based approaches call for implementation of domestic and international human rights obligations. They also require that processes are in place to enable the full participation and empowerment of the people whose rights are affected, robust scrutiny and accountability is undertaken, and efforts are made to support and protect the rights of those groups of people who are disproportionately affected by measures taken. The Commission captures the importance of these principles in taking a human rights based approach through the PANEL acronym (Participation, Accountability, Non-discrimination, Empowerment and Law).
- 1.4. This pandemic has clearly illuminated the indivisibility and interdependence of all human rights. As restrictions have

engaged our “civil and political” rights protected by the European Convention on Human Rights (ECHR) and Human Rights Act 1998, so too have “economic, social and cultural” (ESCR) rights been heavily impacted- rights to health, work, education, an adequate standard of living- food and housing<sup>i</sup>. Challenging choices have been made about the balancing of all of these rights but the ESCR impacts have undoubtedly hit the hardest across many communities.

- 1.5. The pandemic highlights the fundamental nature of socio-economic rights for our dignified existence as human beings and as a society, and gives yet further weight to calls to incorporate these rights into our domestic law in Scotland. The UN Secretary-General has noted that countries that have previously invested in protecting economic and social rights are more likely to be resilient to the impacts of this pandemic and that the promotion and protection of these rights in economic recovery processes need to be viewed as a critical aspect of a future prevention and preparedness strategy.<sup>ii</sup>
- 1.6. Incorporation of ESC rights into domestic law in Scotland will secure a more comprehensive and systematic approach is taken to the implementation of rights in practice- securing a commitment to dignity for all in the longer term as we seek to re-build following this crisis.<sup>iii</sup> We refer the Committee to our report to the Advisory Group on Economic Recovery for a fuller explanation of a rights based approach to rebuilding the economy in the wake of COVID-19.<sup>iv</sup>
- 1.7. Our previous briefings<sup>v</sup> note the importance of human rights principles in both decision-making and in the scrutiny of decisions. In general, and in terms of the ECHR, measures must be lawful, necessary, proportionate and time limited. This means they must go no further than is strictly necessary, and should be linked to scientific and public health evidence. In international law, in terms of ESCR, the following 4 requirements have been established in relation to any retrogressive, or backwards, measure impacting rights:

- that it is temporary and covering only the period of crisis;
- that it is necessary and proportionate, in that any other measure would be more detrimental to the realisation of ESC rights;
- that it is not discriminatory and includes all possible steps to mitigate inequalities and disproportionate impact on the most marginalised;
- that the minimum core content, which the International Labour Organisation states as being the “social protection floor”, is upheld at all times<sup>vi</sup>.

Engaging with these principles in relation to its review and scrutiny will assist the Committee to take a human rights based approach to its work.

- 1.8. The Commission has also published a number of briefings on other thematic areas including health and social care, prisons, justice and economic recovery, which may be of assistance to the Committee in its scrutiny.<sup>vii</sup>

## **2. COVID-19 Framework for Decision Making: Scotland’s Route Map Through and Out of the Crisis<sup>viii</sup>**

- 2.1. The Commission welcomes the publication by the Scottish Government of its ‘Route Map Through and Out of the Crisis.’ We provide some general comments on the content and principles of the Route Map below.

- 2.2. It is already clear from existing evidence that different parts of society are disproportionately impacted by “lockdown” and related measures. For example, the following groups will be hardest hit financially, impacting upon their right to an adequate standard of living and their access to other rights:

- Low earners <sup>ix</sup>
- Younger people <sup>x</sup>
- Women <sup>xi</sup>
- Minority ethnic people <sup>xii</sup>
- Disabled people <sup>xiii</sup>
- Those living in more deprived areas <sup>xiv</sup>
- Lone parents <sup>xv</sup>

2.3. When you place an intersectional lens over all of this data, it reveals that it is most likely that women, disabled people and those of many minority ethnicities are be more likely to be low earners and most badly impacted in financial terms by the pandemic.<sup>xvi</sup> Whilst decisions about lifting restrictions must be guided by the scientific advice, as is recognised by government, they must also be guided by a drive to ensure those in the most vulnerable positions in society have their rights secured and inequalities are reduced rather than exacerbated.

2.4. The Commission would expect therefore that changes to restrictions reflect this rights-based approach- reinstating goods and services which support the delivery of rights for those who most require them above other social goods where this is possible. For example, whilst previous measures restricted access to social care provision and legislation and guidance eased the requirement to provide a full assessment under the Social Work Scotland Act 1968 it would be expected that steps are rapidly taken in Phase 1 to reinstate full provision of community and social care for the fulfilment of the rights of disabled people, older people and carers etc.<sup>xvii</sup>

2.5. The Commission welcomes the acknowledgement of the role and importance of human rights in decision-making related to the Government's response to COVID-19. However, it is important that this acknowledgement translates into systematically applying a rights based approach in practice. Doing so will aide decision making and ensure that the most marginalised and vulnerable in society are given due consideration in decision making, securing

better outcomes for all and ensuring existing inequalities are not further exacerbated. The Commission therefore recommends that a human rights impact assessment should be developed and undertaken by Government at each phase where possible. This will assist in answering salient questions as to the types of rights engaged, the experiences of rights holders and the process of deciding whether restrictions remain proportionate and easements are directed appropriately. There is a need to build human rights capacity across government to ensure this approach is embedded.

2.6. The Commission has already set out that restrictions must be lawful, necessary, proportionate and time-limited. We have also highlighted the importance of meaningful review and scrutiny. We therefore welcome the Government's decision to link changes in the levels of restrictions to scientific advice, and the current statutory 3 weekly review in Part 1 of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020.

2.7. However, the Commission notes that the regulations remain in place until September, unless amended, and notes that gradual changes to the restrictions upon movement have significant potential for confusion. As we have noted in our previous briefings, both the police and the public must have clear information as to what the powers are and what is expected of them under the legislation and/or as a matter of public health guidance.<sup>xviii</sup>

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i See for example, Mitigating the wider health effects of covid-19 pandemic response, published 27 April, BMJ 2020;369:m1557 analysing impacts on social determinants of the right to health.

<https://www.bmj.com/content/369/bmj.m1557> ; and

UN Secretary-General Report, 'Human Rights and COVID-19: we are all in this together' see:

[https://www.un.org/sites/un2.un.org/files/un\\_policy\\_brief\\_on\\_human\\_rights\\_and\\_covid\\_23\\_april\\_2020.pdf](https://www.un.org/sites/un2.un.org/files/un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf)

ii UN Secretary-General Report, 'Human Rights and COVID-19: we are all in this together' see:

[https://www.un.org/sites/un2.un.org/files/un\\_policy\\_brief\\_on\\_human\\_rights\\_and\\_covid\\_23\\_april\\_2020.pdf](https://www.un.org/sites/un2.un.org/files/un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf)

iii See recommendations of the First Minister's Advisory Group on Human Rights Leadership

<https://humanrightsleadership.scot/> and work of the SHRC <https://www.scottishhumanrights.com/economic-social-cultural-rights/strengthening-economic-social-cultural-rights/>

iv Please see our website for a collated page on all aspects of our work on COVID-19 Scottish Human Rights Commission <https://www.scottishhumanrights.com/covid-19/>

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<sup>v</sup> See Scottish Human Rights Commission, 30<sup>th</sup> March 2020, Briefing: COVID-19 Emergency Legislation, Scottish Human Rights Commission, Briefing: 2<sup>nd</sup> April 2020,

<sup>vi</sup> Letter from Ariringa G Pillay to All States Parties to the International Covenant on Economic, Social and Cultural Rights dated 16 May 2012 -

<http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf>

<sup>vii</sup> Please see our website for a collated page on all aspects of our work on COVID-19 Scottish Human Rights Commission <https://www.scottishhumanrights.com/covid-19/>

<sup>viii</sup> Scottish Government, May 2020, 'COVID-19 Framework for Decision Making: Scotland's Route Map Through and Out of the Crisis' available at

<https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2020/05/coronavirus-covid-19-framework-decision-making-scotlands-route-map-through-out-crisis/documents/covid-19-framework-decision-making-scotlands-route-map-through-out-crisis/covid-19-framework-decision-making-scotlands-route-map-through-out-crisis/govscot%3Adocument/covid-19-framework-decision-making-scotlands-route-map-through-out-crisis.pdf>

<sup>ix</sup> <https://www.gov.scot/publications/wealth-and-assets-in-scotland-2006-2018/>

<sup>x</sup> See: ONS, Annual Population Survey, 2018.

[https://abiadams.com/wp-content/uploads/2020/04/UK\\_Inequality\\_Briefing.pdf](https://abiadams.com/wp-content/uploads/2020/04/UK_Inequality_Briefing.pdf);

<https://www.ifs.org.uk/publications/14791>

ONS, [EMP17: People in employment on zero hours contracts](https://www.gov.scot/publications/wealth-and-assets-in-scotland-2006-2018/)

<https://www.gov.scot/publications/wealth-and-assets-in-scotland-2006-2018/>

<https://www.ipsos.com/ipsos-mori/en-uk/financial-impact-covid-19-already-being-felt-britons-especially-younger-generations>

<https://www.cas.org.uk/publications/scotpulse-survey-results-march/april-2020>

<https://www.ifs.org.uk/publications/14791>

<sup>xi</sup> See: Scottish Household Survey, 2018;

ONS, Annual Population Survey, January - December 2019.

ONS, Annual Population Survey, January - December 2019.

ONS, Annual Survey of Hours and Earnings, 2019.

<https://www.tuc.org.uk/research-analysis/reports/sick-pay-all>

[https://www.scotlandscensus.gov.uk/documents/analytical\\_reports/HH%20report.pdf](https://www.scotlandscensus.gov.uk/documents/analytical_reports/HH%20report.pdf)

<sup>xii</sup> See: ONS, Annual Population Survey.

ONS, Annual Population Survey, Oct 2018 – Sept 2019.

<https://www.scotlandscensus.gov.uk/ods-web/standard-outputs.html>

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/ethnicitypaygapsingreatbritain/2018>

ONS, 2020, *Coronavirus and Homeworking*.

Scotland's Census 2011.

<https://www.theguardian.com/society/2020/apr/10/uk-coronavirus-deaths-bame-doctors-bma> ;

<https://www.independent.co.uk/news/uk/politics/coronavirus-deaths-doctors-inquiry-government-labour-marsha-de-cordova-a9460871.html> ; <https://www.bbc.co.uk/news/uk-england-oxfordshire-52292569>

<sup>xiii</sup> See: <https://www.gov.scot/publications/poverty-income-inequality-scotland-2016-19/>

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/adhocs/008588averagehourlypaybysexanddisabilitystatusukapril2013todecember2017>

<https://www.gov.scot/publications/disabled-people-labour-market-scotland-2018/>

ONS, Annual Population Survey, Oct 2018 – Sept 2019.

Scottish Household Survey 2018.

<sup>xiv</sup> See: <https://www.gov.scot/publications/wealth-and-assets-in-scotland-2006-2018/>;

Scottish Health Survey, 2017-18 combined.

[https://www.scotlandscensus.gov.uk/documents/analytical\\_reports/HH%20report.pdf](https://www.scotlandscensus.gov.uk/documents/analytical_reports/HH%20report.pdf)

Scottish Household Survey 2018.

<sup>xv</sup> See: <https://www.gov.scot/publications/wealth-and-assets-in-scotland-2006-2018/>

[https://www.scotlandscensus.gov.uk/documents/analytical\\_reports/HH%20report.pdf](https://www.scotlandscensus.gov.uk/documents/analytical_reports/HH%20report.pdf)

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<sup>xvi</sup> See <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2020/02/additional-poverty-statistics-2020/documents/economic-impact-of-coronavirus-led-labour-market-effects-on-individuals-and-households/economic-impact-of-coronavirus-led-labour-market-effects-on-individuals-and-households/govscot%3Adocument/Covid-19%2B-%2BLa%2Bour%2BMarket%2B-%2BEconomic%2BImpact%2Bof%2BCoronavirus%2Bon%2BIndividuals%2Band%2BHouseholds%2B-%2BSummary%2Bfor%2Bpublication.docx>

<sup>xvii</sup> See Inclusion Scotland report- <https://inclusionScotland.org/press-release-mental-health-in-lockdown-disabled-scots-hit-hard/>

<sup>xviii</sup> See SHRC report to Independent Advisory Group Considering Police Scotland Use of Temporary Emergency Powers. (publication imminent at <https://www.scottishhumanrights.com/covid-19/>)