

COVID–19: Implications for the Human Right to Food in Scotland

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Introduction

1. COVID–19, and the legislative and policy responses to it, continue to have a huge effect on all areas of our society, including on the ability of people to enjoy their economic, social and cultural rights as provided by international law. On 23 March, the UK and Scottish Government implemented a ‘stay at home’ restriction to combat the spread of COVID–19.¹ While the imposed ‘lockdown’ has succeeded in controlling the spread of the virus throughout Scotland, it has also impacted on the realisation of people’s socio-economic human rights, such as the right to food. The combination of restrictions on movement and substantial and sustained economic pressures on individuals and families have meant that the right to food in Scotland has never needed more focus or stringent government protection and implementation.
2. The right to food is protected by a range of international human rights treaties, most prominently by Article 11 of the International Covenant of Economic, Social and Cultural Rights (ICESCR), signed and ratified by the UK in 1976.² ICESCR creates binding obligations on States parties, including both the UK and Scottish Governments and other public authorities,³ to ensure people have access, in a dignified and culturally appropriate manner, to nutritious, sustainable and safe food at all times.⁴ At its core, the right to food envisages a world ‘free from hunger’, obligating States to adopt proactive measures to support the food system, ensuring adequate, sustainable and high-quality food production, distribution, and consumption. The right to food is also strongly connected to the rights to health, an adequate standard of living and housing.
3. An assessment of the current situation against the standards set out in the UN General Comment on the right to adequate food⁵ shows that the pandemic has had an impact on the realisation of the right in a range of areas. The economic and physical accessibility of food has become significantly more challenging due to a combination of factors, including the restrictions on

movement, increased job insecurity, disruption to supply chains and restrictions upon specific groups, for example people in the shielding category. Related to this are the increased barriers to accessing food being experienced by specific groups of people such as asylum seekers and refugees, disabled people, carers, and women and children. There will undoubtedly be further impacts on specific groups and intersections of people which are not yet properly understood.

4. In addition, while the pandemic has seen immense efforts by public authorities and the voluntary sector to ensure that food is distributed to the people who need it, this has at times been at the cost of both nutritional value and cultural appropriateness, core standards of the right to food. For example, people from BME communities,⁶ refugees and asylum seekers, and other communities such as Gypsy/Travellers⁷ have noted that the food supplied is not in line with either cultural requirements or with limited facilities for cooking and eating.
5. There is a risk that the crisis will further institutionalise dependency on food bank models, rather than those which support dignity and choice, such as cash first models. It should be noted that there may not be a one size fits all response to food insecurity, but rather a need to assess, in partnership with rights holders, the best and most dignified ways to meet needs for food. For example, cash first models may not be accessible to asylum seeker communities because of UK Government restrictions on recourse to public funds and disabled people may need and want different types of support to access food.
6. While there is no doubt that COVID–19 has had a negative impact upon people’s daily lives and enjoyment of human rights generally, it also provides a key opportunity for Scotland to take stock of its situation and re-evaluate our approach to realising the right to food alongside wider socio-economic rights. As Scotland continues the easing of ‘lockdown’ restrictions and starts assessing the short and long-term damage of COVID–19, it is imperative that socio-

economic rights protections and human rights based decision making are placed at the heart of recovery. The recovery offers an opportunity to rebuild, plan, fund and deliver services in way which better realises people's rights and addresses inequalities. This briefing will assess the current situation against the standards set out in the right to food and make recommendations for change. The appendix to this document provides more detail on the right to food and the obligations of States in relation to it. The Commission and Nourish Scotland have also made an animation to explain the right to food, available [here](#).

The Impacts of COVID–19 on the Right to Food

Food insecurity

7. The impact of COVID–19 on the ability of people in Scotland to enjoy their right to food is still unfolding. Despite action from the Scottish Government and other actors to address food insecurity, such as the £70m Food Fund and other schemes,⁸ it is clear that what was already an unacceptably high level of household food insecurity in Scotland has increased further, and that some people not eligible for support through the locally and nationally procured programmes have not been reached.

8. Food security exists when 'all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life.'⁹ While the right to food covers a much broader set of issues than food insecurity, measures of its prevalence are widely accepted as important indicators of the realisation of the right to food in Scotland. In recent years food insecurity in Scotland has been increasing. Data for 2018/19 shows at least 159,849 food parcels were given out by 84 independent food bank projects, on top of the 210,605 food parcels provided by food banks in the Scottish Trussell Trust network.¹⁰ Scottish Government commissioned research identified 744 organisations responding to food insecurity through the provision of free or subsidised food at 1,026 venues across Scotland.¹¹

9. Recent reform of social security payments and the prevalence of insecure, low paid work, taken together with the rising costs of living have led many people in Scotland to experience financial hardship.¹² The COVID–19 health pandemic has amplified these existing issues, exacerbating already high levels of food insecurity. The economic and physical accessibility of food has become particularly difficult, with poverty increasing as a result of ‘lockdown’ measures and difficulties in accessing support, such as community food projects, that might have previously been available. A recent survey taken by Citizens Advice found that a third of adults in Scotland are currently concerned about paying for food and other essentials.¹³ Food banks in the Independent Food Aid Network (IFAN) in Scotland reported a 246% increase in the number of parcels distributed in April 2020, as compared to the same period in the previous year.¹⁴ The IFAN network also summarised the reasons for food bank use in 2019 and 2020 and found that the most commonly reported reasons for use were as follows:

- Newly unemployed and awaiting first Universal Credit payment
- Benefit levels insufficient to afford food
- Income insufficient to afford food
- Unable to access voucher scheme to replace free school meals

Other reasons included benefit changes which had resulted in delays to accessing monies, self-employed people awaiting income support and the voucher scheme to cover free school meals being insufficient. It is predicted that when as the Job Retention Scheme is phased out demand may increase even further.¹⁵

10. In April 2020, the Food Foundation reported the results of their commissioned YouGov survey, finding that more than three million people reported going hungry in the first three weeks of the UK's COVID-19 lockdown. The same survey estimated that in mid-April 2020, over 600,000 adults in Scotland were facing food insecurity. This means that around 14% of the adult Scottish population are either skipping meals, having one meal a day, or being unable to eat for a whole day.¹⁶ The report highlights that not only has COVID-19 worsened food security for the economically vulnerable, it has also created a new economic vulnerability for people with a previously secure income.

Non-discrimination in the enjoyment of the right to food

11. Evidence and data suggest that challenges in accessing nutritious, culturally appropriate food during the pandemic have fallen disproportionately on specific groups and on people with intersectional identities. These include disabled people, older people, women and children, people on low or no income, asylum seekers and refugees. As with all human rights, the right to food must be realised without discrimination and the General Comment on the right to food sets out that 'food should be accessible to all, including to the physically vulnerable, such as children, people with illnesses, disabled people or older people'.

12. Disabled people have faced additional barriers to accessing food during the pandemic, because of a range of factors. These include an increased likelihood of living in poverty, the relative inaccessibility of online food ordering systems provided by supermarkets, and the relatively narrowly drawn parameters of the shielding categories, which lock out some disabled people who need support to access food.¹⁷ Evidence from Inclusion Scotland has found that 64% of the 822 people surveyed reported that the COVID-19 pandemic had had an adverse impact on getting the food or medicines they need.¹⁸ Glasgow Disability Alliance have delivered more than 500 food and medicine parcels to members of the organisation who have faced barriers in accessing food.

13. Children and young people are also disproportionately affected by food insecurity and also by the gap between food provided and their nutritional needs, given that much emergency food provision has to prioritise a longer shelf-life. During the pandemic, children and young people living in low-income families are also particularly reliant on the food made available through local authority provision to replace free school meals. While the large scale response to providing food for low-income families is welcome, there is widespread variation in the model of delivery and the types of food provided.¹⁹ The Commission is concerned that this may impact the quantity, quality and nutritional value of food for families, as well as the way in which it can be accessed. The Child Poverty Action Group have called for a cash first approach as the most effective and dignified way of providing support, as this enables families to source the best food for their family locally, giving them choice.²⁰ The Children and Young People's Commissioner calls for direct payments of £20 per child per week to be made available for all families eligible for free school meals, including those who have become eligible since March, in addition to other supports such as food delivery.

Non-retrogression of rights

14. Despite the vast amount of ongoing work to survey the effect of COVID-19, its long-term impacts are likely to be far reaching and without concerted and targeted government action likely to impact most on those already experiencing poverty. The Bank of England and UK government have been clear to highlight a likely recession similar to or worse than that caused by the 2008 financial crash.²¹ The subsequent austerity measures imposed throughout the UK have been evidenced as a primary cause for the spike of food insecurity,²² as well as having a well-documented and disproportionate impact on specific groups such as disabled people, people from BME communities, single parents and women.²³

15. When there is a crisis, such as the current pandemic there is a possibility of some retrogression of rights. However, any retrogression in rights is subject to important human rights standards and principles. Retrogressions of rights must, for example:
- be temporary and time-limited
 - be necessary and proportionate
 - be non-discriminatory and mitigate inequalities
 - ensure the protection of a minimum core content of rights
 - consider all other options, including financial alternatives.
16. From a rights perspective, the economic damage caused by the health pandemic must not be shouldered by those least able to bear the cost. For Scotland's recovery to be meaningful, it must place socio-economic rights, such as the right to food, at the heart of any governmental decision-making and ensure the rights laid down by the ICESCR are fully realised for all.

Recommendations

17. The Poverty and Inequality Commission have outlined the need for more 'visible leadership' around emergency food provision. The Commission is of the view that, due to current circumstances, this would be beneficial not only for increasing the co-ordination and efficiency of delivering emergency food provision in Scotland but also in shifting towards a rights based approach to tackling food insecurity as we move into a renew and recovery phase. Furthermore, it would provide concrete assurance the Scottish government is aware of the scale of the issue and are committed to realising the right to food for all on a sustained basis.
18. The current crisis has laid bare the dependence of the Scottish population on community based action to ensure their core socio-economic rights are met. The independent community sector have mobilised swiftly and successfully to secure emergency food provision.²⁴ The Commission is concerned however that ongoing

reliance of Scottish people on charitable food support is precarious and should not be institutionalised into society where more rights based support must be secured.

19. It is unlikely that there is a one-size fits all approach to resolving economic and physical access to food. Instead it will be important to develop and implement a range of models, with the participation of people affected, which respond to the different challenges which people face. These could include cash first and voucher options, and other options such as access to the Scottish Welfare Fund, providing Crisis Grants and Community Care Grants. It is welcome that there has been a significant increase in the size of the Scottish Welfare Fund since the crisis began. Investment and development of schemes such as these, as well as increasing people's incomes on a sustained basis, presents a more rights based approach to food insecurity than ongoing and increasingly institutionalised reliance on emergency food bank provision.
20. As is well-established by evidence from community food organisations and food banks, the relationship between access to food and adequate social security is critical. While not all decisions on social security are within the competence of the Scottish Parliament, as the Commission has argued before, for those that are, a rights based approach which ensures an adequate and non-discriminatory set of entitlements which increase in line with living costs can go much of the way to reducing food insecurity.
21. The UN Committee on Economic, Social and Cultural Rights have highlighted the need for socio-economic protections available in international human rights law to be incorporated into national law.²⁵ Now more than ever, these protections and a framework to guide decision making around food provision are essential. The Commission supports the full incorporation of the right to food into Scots law as consistent with international best practice²⁶ and in alignment with the recommendations of the First Minister's

Advisory Group on Human Rights Leadership, which reported in December 2018, and of which the Commission was a member.²⁷ The work of the National Taskforce on Human Rights Leadership will be instrumental in taking this work forward to secure a rights framework for Scotland which tackles issue of socio-economic disadvantage and inequality.

Appendix: The Right to Food in International Law

22. At the international level, the first formulation of the right to food was contained within Art. 25 of the Universal Declaration of Human Rights (UDHR), adopted universally in 1948. Art. 25 of the UDHR sought to capture the rights of all to have an 'adequate standard of living', aiming to secure for everyone the essentials needed to survive 'including food, clothing, housing and medical care...'. Since the adoption of the UDHR, the right to food has been laid down in subsequent binding treaties such as the Convention on the Rights of the Child (Art. 27). The key international provision on the right to food is Art. 11 of the ICESCR.

Art. 11 of the ICESCR

1. The States Parties to the present Covenant recognize **the right of everyone to an adequate standard of living** for himself and his family, including **adequate food**, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate **steps to ensure the realization of this right**, recognizing to this effect the essential importance of international cooperation based on free consent.

2. The States Parties to the present Covenant, recognizing the **fundamental right of everyone to be free from hunger**, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

23. In order to provide States party to the Covenant with more detailed guidance on meeting the right to food, the UN Committee on Economic, Social and Cultural Rights (the Committee), which monitors the implementation of ICESCR by States Parties, has given an authoritative interpretation of Art. 11.²⁸ The Committee outlined that ‘the right to food is realised when every man, woman and child alone or in community with others, has physical and economic access to adequate food or means for its procurement’. Moreover, the right was broken down into the following elements.

- **Availability** requires food should be available to purchase or from natural resources, either through the production of food, by cultivating land or animals, or through other ways of obtaining food, such as fishing, hunting or gathering.

- **Accessibility** requires economic and physical access to food to be guaranteed.

Economic accessibility means that food must be affordable. Individuals should be able to afford food for an adequate diet without compromising on any other basic needs, such as adequate housing. For example, the affordability of food can be guaranteed by ensuring that the minimum wage or social security payments are sufficient to meet the cost of nutritious food and other basic needs.

Physical accessibility means that food should be accessible to all, including to the physically vulnerable, such as children, people with illnesses, disabled people or older people. Access to food must also be guaranteed to people in remote areas and to victims of natural disasters such as floods, as well as to prisoners.

- **Adequacy** means that the food must satisfy dietary needs, taking into account the individual’s age, living conditions, health, occupation, sex, etc. This means food must contain nutrients necessary for physical and mental development in children. Food which contributes to obesity and other illnesses can also be deemed inadequate.

State Obligations in Relation to the Right to Food

24. The general obligations set out by the ICESCR are contained in Art. 2(1). It provides, 'Each State Party to the present Covenant undertakes to take steps... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.'²⁹ This confers both immediate obligations 'to take steps' as well as progressive obligations to realise the right over time within a State Parties maximum available resources. Furthermore, the Committee have noted that non-discrimination, as contained in Art. 2(2) of the ICESCR, applies uniformly throughout the rights contained within the Covenant.³⁰
25. Alongside taking steps towards realising the right to food over time, the Committee have highlighted elements of core rights which must be met immediately. These have been termed 'minimum core' obligations.³¹ For the right to food, the Committee explicitly states the minimum essential level of the right to food involves securing for all people 'access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger'.³² Importantly, the Committee has gone on to clarify that minimum core obligations apply irrespective of a State's resources, in times of war, and health pandemics.
26. The legal concept of progressive realisation is not always tangible. In order to aid States in understanding their commitments to the ICESCR, the Committee adopted the legal framework of protect, respect and fulfil. Initially proposed by the first UN Special Rapporteur for the right to food, the commitment of States to respect, protect, and fulfil applies to all human rights and enables governments and civic organisations alike to break down human rights into clear and tangible obligations. In respect of the right to food, respect, protect, and fulfil means:

The obligation to respect the right to food

- States must respect people's existing access to food and means of obtaining food. This means States must not interfere with, prohibit or prevent access to food. States should also regularly review their national policies and programmes related to food to ensure that they effectively respect the equal right of everyone to food.

The obligation to protect the right to food

- States must protect individuals' enjoyment of the right to food against violations by third parties (e.g. other individuals, groups, private enterprises and other entities). For example, the obligation to protect includes ensuring that food put on the market is safe and nutritious.
- Furthermore, States should take any legislative and other measures needed to protect people.
- A State must also consider its international legal obligations regarding the right to food when entering into agreements with other States or with international organisations.

The obligation to fulfil the right to food

- The obligation to fulfil (facilitate & provide) means that States must be proactive in strengthening people's access to and use of resources and means of ensuring their livelihoods, including food security. Other possible measures could be implementing and improving food and nutrition programmes.
- Facilitating the full realisation of the right to food also requires States to inform people about their human rights and strengthen their ability to participate in development processes and decision-making in connection to food.
- Whenever individuals or groups are unable, for reasons beyond their control, to enjoy the right to food by the means at their disposal, States have the obligation to provide it ('fulfil' duty), for example by providing food assistance or ensuring adequate social safety nets for the most deprived people

27. Finally, the Committee has clarified that the right to adequate food is inclusive and must not be interpreted in a narrow or restrictive sense. For example, equating it with a 'minimum package of

calories, proteins and other specific nutrients'.³³ This is an essential distinction to make when assessing the meaning of the right to food, as it greatly affects the way in which the right is understood and applied. It eliminates the notion the right to food is exclusively about food production and abundance, instead focusing the right to food on individual entitlements.

¹ Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020

² International Covenant on Economic, Social and Cultural Rights (Article 11(1)) herein after ICESCR.

³ Scotland Act 1998, Para 7(2)(a) Schedule 5

⁴ UN Committee on Economic, Social and Cultural Rights, 12 May 1999, General Comment on the Right to Adequate Food, E/C.12/1999/5 available at

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f5&Lang=en

⁵ See anexe for a full articulation of the standards

⁶ For example see Radiant and Brighter, 2020, Response to the Scottish Parliament Equality and Human Rights Committee Inquiry on COVID-19

⁷ See Adequate Standard of Living Reference Group, 2020, Response to the Scottish Parliament Equality and Human Rights Committee Inquiry on COVID-19

⁸ <https://www.gov.scot/publications/coronavirus-covid-19-food-fund-guidance-to-local-authorities/>

⁹ Committee on Food Security, The Food and Agriculture Organisation, 2009, Declaration of the World Summit on Food Security

¹⁰ Trussell Trust, End of Year Statistics 2018/2019 available at <https://www.trusselltrust.org/news-and-blog/latest-stats/end-year-stats/>

¹¹ Scottish Government, 2020, Mapping Organisations Responding to Food Insecurity, available at <https://www.gov.scot/publications/mapping-organisations-responding-food-insecurity-scotland/>

¹² <https://www.scottishhumanrights.com/economic-social-cultural-rights/right-to-food/>

¹³ Fieldwork was conducted between 25-27 March 2020.

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

¹⁴ Independent Food Aid Network, June 2020, IFAN Scotland June 2020 data release, available at

<https://uploads.strikinglycdn.com/files/378499b3-c557-4d97-879e-a3a1692bed01/Scotland%20breakdown%20for%20IFAN%20data%20release%20June%20160620V2.pdf>

¹⁵ <https://povertyinequality.scot/wp-content/uploads/2020/06/Food-insecurity-SPIRU-final-report-June.pdf>

¹⁶ https://foodfoundation.org.uk/wp-content/uploads/2020/04/Report_COVID19FoodInsecurity-final.pdf

¹⁷ GDA Survey results

¹⁸ <https://inclusionScotland.org/covid-19-evidence-survey/>

¹⁹ BBC Scotland, <https://www.bbc.co.uk/news/uk-scotland-52286500>

²⁰ Child Poverty Action Group, 2020, Submission to the Education and Skills Committee Inquiry on Vulnerable Children and the Pandemic,

https://www.parliament.scot/S5_Education/General%20Documents/20200501Child_Poverty_Action_Group_in_Scotland.pdf

²¹ <https://www.bbc.co.uk/news/business-52566030>

²² <https://www.stateofhunger.org/wp-content/uploads/2019/11/State-of-Hunger-Report-November2019-Digital.pdf>

²³ Equality and Human Rights Commission, 2018, Research Report 111, The impact of welfare reform and welfare-to-work programmes; an evidence review, <https://www.equalityhumanrights.com/sites/default/files/research-report-111-cumulative-impact-assessment-evidence-review.pdf>

²⁴ Local action to tackle food insecurity during the coronavirus crisis, Poverty and Inequality Commission tasked the Scottish Poverty & Inequality Research Unit (SPIRU), 2020, <https://povertyinequality.scot/wp-content/uploads/2020/06/Food-insecurity-SPIRU-final-report-June.pdf>

²⁵ Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland; Committee on Economic, Social and Cultural Rights, 14 July 2016, (E/C.12/GBR/6)

²⁶ See SHRC response to Good Food Nation consultation, April 2019, <https://www.scottishhumanrights.com/economic-social-cultural-rights/right-to-food/#the-right-to-food-in-scotland-26110>

²⁷ Recommendations for a new human rights framework to improve people's lives Report to the First Minister, December 2018, <https://humanrightsleadership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf>

²⁸ See General Comment No 12 on the right to adequate food, UN Doc E/C12/1999/5.

²⁹ Article 2(1) ICESCR

³⁰ Article 2(2) ICESCR

³¹ See General Comment No. 3: The Nature of States Parties' Obligations, UN Doc E/1991/23

³² See General Comment No 12 on the right to adequate food, UN Doc E/C12/1999/5.

³³ <https://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>