

## Equalities and Human Rights Committee, Inquiry COVID-19

22 July 2020

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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'

## Table of Contents

1. Introduction.....	4
2. Review and Accountability .....	7
2.1. General – review periods etc .....	7
2.2. Complaints procedures .....	9
2.3. Routemap and Human Rights.....	10
2.4. Test and Protect Strategy .....	11
3. Health and Mental Health Services.....	12
3.1. Chief Medical Officer Guidance on Clinical decision making...12	
3.2. Chief Medical Officer Guidance on Restraint .....	13
4. Social Care .....	13
4.1. Care homes .....	15
5. Poverty and Economic and Social Rights .....	17
5.1. Right to Food .....	18
5.2. Right to Housing .....	19
5.3. Right to Social Security.....	22
6. Worker’s Rights .....	24
7. Justice .....	25
7.1 Policing .....	25
7.1. Trials.....	27
7.2. Prisons.....	28
8. Economic Recovery and “building back better” .....	30

8.1.	Human rights and economic development .....	30
8.2.	Human rights based approach to Scotland's economic recovery 31	
8.3.	Human rights and the "Wellbeing Economy" .....	32

## 1. Introduction

This document for the Equalities and Human Rights Committee draws together a top-line of analysis in a number of areas on which the Commission has worked over the past months.<sup>1</sup> The areas covered reflect our mandate, areas where we have felt a human rights analysis can add value to policy choices or accountability and areas where our analysis has been proactively sought by others. This document does not reflect the full breadth of human rights impacts that have been felt and are likely to be felt throughout this pandemic. We will continue to highlight areas of human rights concern as well as constructively engage in how rights can inform a recovery process over the coming weeks and months.

The COVID-19 experience has brought out our shared humanity and the power of acting collectively and collaboratively across society towards a shared goal. In doing so human rights law can provide both an invaluable set of agreed standards and an orientation of approach for our legislative and policy responses.

The human rights impacts of this crisis have been significant and felt acutely and disproportionately by some groups, such as people already living in poverty or pushed into poverty, women, children, disabled people, older people, people with chronic health conditions, people seeking asylum and black and minority ethnic people.

Human rights laws are designed to guide and govern state actions and choices, ensuring that principles of dignity and equality underpin all that states do. Rights can assist with difficult choices in balancing different interests and rights and guide us towards the universally agreed end goal to uphold the human dignity of everyone.

Over the last 3 months there have been rapid changes to society as we all work together in different ways to overcome the challenges brought by COVID-19. The emergency measures impact on all of our rights – whether our rights to work, to education, to private and family life, to freedom of association, due process, freedom from detention, or to an adequate standard of living or health, to name only a few.

Whilst in many instances restrictions on our rights have in broad terms been understood by policy makers and the public to be necessary for the protection of health and life, each measure requires to be continually assessed to ensure it is necessary and proportionate on an ongoing basis. Alongside this human rights law confers ongoing positive obligations on the state to progressively realise and not regress from economic, social and cultural rights such as the rights to health, education, and an adequate standard of living which encompasses housing and food.

The Commission has been working over the last months to inform and influence a rights based underpinning to the response to COVID-19. We have worked with Government and others to provide a rights based analysis of a broad range of issues such as the operation of the criminal justice system, prisons, policing, and health and social care decision making. We are also highly concerned about the impact of the crisis on those living in poverty and those using social care services as well as the potential for long term exacerbation of poverty and deepening inequalities. Human rights standards provide a valuable tool to navigate these challenges and should assist us to re-build a fairer society which places rights and environmental protection at its core.

The experience of this crisis and the rapid development of law and policy highlights the ever pressing need for an embedding of a rights based approach to policy making which can then be rapidly accelerated and further put into practice in times such as these. Whilst we have experienced a willingness from government and parliament to engage with the Commission on the human rights implications of a range of measures it is clear that a meaningful consideration of rights, in particular beyond European Convention on Human Rights (ECHR) compliance, is not deeply embedded within law, policy and decision making processes. This means rights considerations are not consistently or coherently applied across all areas of policy, risking leaving some members of society vulnerable to poorer outcomes. This is all the more important since many policy areas have been regulated through secondary legislation issuing from the executive during the COVID-19 crisis.

The pandemic has shone a spotlight on the longstanding inequalities we face as a society and brought out the need for targeted resource in areas such as health, social care and low paid sectors of the economy. Economic and social rights necessitate investment in these areas and makes explicit asks of policy makers to ensure maximum available resources are being used towards the progressive realisation of these rights – rights to health, social security, education an adequate standard of living, including food and housing. The development of new human rights legislation, as is being taken forward by the National Taskforce for Human Rights Leadership, affords us an opportunity to more deeply embed human rights, and in particular Economic, Social and Cultural Rights (ESCR), into our decision making and accountability mechanisms.

### **Overarching Recommendations**

The Scottish Government must demonstrate how human rights have systematically informed all of its law policy and decision making in response to the pandemic including where relevant through Human Rights Impact Assessment.

Human rights must underpin decisions relating to economic recovery (see below) in alignment with the National Performance Framework and the Government's ambition to show human rights leadership in securing rights for all.

The work of the National Taskforce for Human Rights Leadership must take account of the lessons learned from the impacts of this pandemic in taking forward its work. The new human rights framework must be regarded as central in a direct response to the experience of the pandemic and informing plans for recovery.

The specific rights of women, disabled people, older people, children and black and minority ethnic people must be further protected and implemented alongside economic, social, cultural and environmental rights in responding to the experience of this pandemic.

## **2. Review and Accountability**

### **2.1. General – review periods etc**

The Coronavirus Act 2020 ('the UK Act'), the Coronavirus (Scotland) Act 2020 ('the Scottish Act'), the Coronavirus (Scotland) (No.2) Act 2020 (the 'second Scottish Act') and associated secondary legislation are emergency legislative measures introduced to respond to the challenges of COVID-19.<sup>2</sup>

As these emergency powers have significantly impacted the rights and freedoms of individuals, it is important that they are lawful, necessary, proportionate and time-limited. The Commission therefore welcomed the requirement to review and to report on the necessity of provisions in the Scottish Act, the second Scottish Act and related Scottish Statutory Instruments every two months. The Commission also welcomed the Scottish Government's commitment to report on the same terms on the provisions of the UK Act for which the Scottish Parliament gave legislative consent.

The Commission is concerned, however, that the Scottish Government's first review of the Scottish Act and the relevant provisions of the UK Act does not adequately address whether measures are necessary and a proportionate means of achieving a legitimate aim, such as protecting public health.<sup>3</sup> The detailed report does not include sufficient information about the impact of the measures, particularly whether they have a disproportionate effect on vulnerable groups.

Where measures have not been used during the reporting period, we would expect to see compelling evidence for their continued necessity in law. For example, while the Commission is pleased to note that the emergency powers relating to the care of adults with incapacity have not been brought into force,<sup>4</sup> the Scottish Government's review simply states that these powers remain necessary.<sup>5</sup> It remains unclear why these measures cannot be removed.

In line with human rights law, measures should be no more than are absolutely necessary and consideration should be given as to whether

less restrictive measures could be put in place. In addition, whether a measure is proportionate or not may change over time. For example, measures which may have been necessary at the start of the pandemic may no longer be proportionate based on updated scientific and public health evidence and the capacity of the state to respond to the situation.

The Commission recognises the challenges facing the Scottish Government in monitoring the measures and welcomes its commitment to developing processes to analyse the impact of measures, including consultation with stakeholders.

### **Recommendations**

The Commission considers that a more detailed analysis of the ongoing proportionality of the emergency measures is vital as the circumstances and context change. Before the next review (due following the second reporting period ending 31 July 2020), the Scottish Government must prioritise its information gathering processes to support an analysis of the ongoing necessity and proportionality of the measures. In each instance we would expect the least restrictive approach to be taken to achieve the aim of the protection of life and health. We also call on the Scottish Government to share the information gathered on the impacts of the emergency measures on affected groups, to ensure a more robust analysis.

We recommend the Parliament carry out more detailed scrutiny of the second report, including consideration of whether to suspend or bring forward the expiry of provisions within the legislation.



## **2.2. Complaints procedures**

The Commission was concerned to learn of examples of local authority websites reporting that complaints processes had been suspended during the COVID-19 pandemic.

The Commission was pleased to receive reassurances from both the SPSO and CoSLA that the local authorities in question had continued to receive complaints, but had in fact suspended only the usual timelines for consideration of these. We note too that the information about complaints on the local authority websites concerned has now been changed to reflect the situation as we understand it.

We appreciate that the provision of such services is a challenge when public authorities such as councils are facing significant and sustained pressures in delivering support to their communities during the pandemic. However, in our view a full suspension of complaints processes would neither be proportionate and nor would it comply with the requirements of the Public Services Reform (Scotland) Act 2010 or the SPSO's Statement of Principles on complaints handling. The Commission wrote to both the Scottish Public Services Ombudsman, and the Convention of Scottish Local Authorities to voice our concerns with respect to this situation<sup>6</sup>.

Complaints processes provide an essential procedural safeguard for individuals wishing to resolve issues affecting their rights, through engagement with a public authority. Resolution can range from relatively fast, informal responses, right through to formal review, and redress processes. Effective, transparent and timely complaints processes become particularly important in an environment in which quick decision making is engaged, and where the consequences for rights can be far reaching, for example in relation to social care, housing or health.

## Recommendations

Public authorities must communicate clearly about the availability of complaints services during crisis and emergency situations, including with respect to the timescales which will apply and how these will be communicated to complainants.

Public authorities must develop clear triage systems to respond to complaints which engage specific ECHR rights, such as the right to life, the prohibition on torture, cruel, inhuman and degrading treatment, the right to liberty, access to justice, the right to private and family life, and the prohibition on discrimination. This is in line with the SPSO's guidance to continue screening incoming complaints to identify any that fall into the category of 'essential work.' These may include complaints that concern COVID-19 or its impact and relate directly to current service provision for vulnerable people, and complaints where there is a real and present risk to public health and safety.

### 2.3. Routemap and Human Rights

It is already clear from existing evidence that different parts of society have been disproportionately impacted by "lockdown"<sup>7</sup> and related measures as they continue to apply. By way of an example, the following groups are predicted to be hardest hit financially, impacting upon their right to an adequate standard of living and their access to other rights:

- Low earners <sup>8</sup>
- Younger people <sup>9</sup>
- Women <sup>10</sup>
- Minority ethnic people <sup>11</sup>
- Disabled people <sup>12</sup>
- Those living in more deprived areas <sup>13</sup>
- Lone parents <sup>14</sup>

When an intersectional lens is placed over this data, it reveals that it is most likely that women, disabled people and those of many minority ethnicities who are be more likely to be low earners have been most

badly impacted in financial terms by the lockdown.<sup>15</sup> In relation to the Route map out of lockdown the Commission has previously articulated how decisions must be guided by the scientific advice but, as is recognised by Government, decisions 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.<sup>16</sup>

The Commission would expect therefore that changes to restrictions reflect this rights based approach- prioritising goods and services which support the delivery of rights for those who most require them above other social goods where this is possible within a phased approach. In order to achieve this the Commission therefore recommends that a human rights impact assessment should be developed and undertaken by Government with each current and future phased change 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 changes to restrictions are directed appropriately.

### **Recommendations**

All changes to restrictions and services by government and other public bodies or those providing public services must reflect a rights based approach, prioritising areas which support the delivery of rights for those who require most above other social goods within a phased approach. This should be reflected in robust impact assessments which inform decision making. There is a need to build human rights capacity across Government to ensure this approach is embedded.

## **2.4. Test and Protect Strategy**

The Commission notes that the Scottish Government's approach has been centred largely on manual contact tracing, with the development of digital infrastructure to capture information. In addition, the UK Government is developing contact tracing technology.

While the Commission supports the Scottish Government's measures to test, trace, isolate and support as a means of controlling the spread of coronavirus, the human rights implications of tracing technology should remain at the centre of policy making in this area.<sup>17</sup>

We are aware that the Scottish Government has no plans to use a contact tracing app at this stage and instead is developing the capacity of existing health protection teams with experience of contact tracing and who will contact those who have come into recent close contact with persons who test positive for COVID-19. Those individuals are then asked to self-isolate, thereby breaking the chain of transmission. We consider this method, although not without risk, presents fewer privacy concerns than the use of contract tracing apps.

### **Recommendations**

The Commission considers that as contact tracing technology is developed in future, a number of safeguards must be put in place to protect individuals' human rights. The Commission considers it essential that limits around the use of the technology are set out clearly in law, are proportionate, time-bound and subject to ongoing review and independent scrutiny.

## **3. Health and Mental Health Services**

### **3.1. Chief Medical Officer Guidance on Clinical decision making**

Clinical decision-making engages a range of human rights, such as the right to life, the right to non-discrimination, the right to health, the right to autonomy and participation in decision-making, and the right to equal treatment in situations of risk and humanitarian emergencies. In order to strengthen reference to human rights legal obligations, standards and principles which underpin the duties of medical professionals, the Commission contributed to the Chief Medical Officer's (CMO) Directorate *COVID-19: Clinical Advice* and *COVID-19: Ethical Advice and Support*

*Framework.*<sup>18</sup> Specifically, the Commission made recommendations to assist those making difficult clinical decisions, such as including an explicit requirement not to apply blanket policies in areas such as anticipatory care planning and Do Not Attempt Cardio Pulmonary Resuscitation decisions.

The Commission welcomes the CMO's collaborative approach in agreeing to update its guidance on the basis of the Commission's specific recommendations.

### **3.2. Chief Medical Officer Guidance on Restraint**

As part of its response to the COVID-19 crisis, the CMO has issued *Clinical Guidance for NHS Scotland: Using Physical Restraint for Patients with Confirmed or Suspected COVID-19.*<sup>19</sup> The Commission, Equality and Human Rights Commission (EHRC) and the Commissioner for Children and Young People in Scotland (CYPSC) have written a joint letter to the CMO Directorate, highlighting concerns about the lack of clarity regarding the scope and application of the guidance. The physical restraint of patients in care settings can engage a number of human rights, such as the right to life, the right to freedom from inhuman and degrading treatment and the right to private and family life. Those within inpatient mental health and learning disability settings are particularly vulnerable during this crisis. It is therefore vital to provide frontline staff with clear and robust advice about the key human rights and non-discrimination legal principles which govern the lawful use of physical restraint and how to apply these during this particularly challenging time.

At the time of writing, the Commission is seeking to engage constructively with the CMO Directorate to improve the Guidance.

## **4. Social Care**

The access to and provision of social care engages a wide-range of human rights issues under both the European Convention of Human Rights (ECHR), and the Convention on the Rights of Persons with Disabilities (CRPD). The adequacy, quality, cost, level of involvement, accessibility, choice and control in the support available for disabled

people, older people children and young people and family carers have direct impacts on the enjoyment of human rights. These include, but are not limited to, the right to life; the prohibition on torture, cruel, inhuman and degrading treatment; the right to liberty; access to justice; the right to private and family life; the prohibition on discrimination; equality before the law; respect for autonomy and the right to live independently in the community. There are also significant rights issues in play for people who work in social care, especially in relation to rights to life, health and just and favourable conditions of work.

Social care has been among the most significantly and seriously affected sectors in the course of the pandemic. A BBC Scotland Freedom of Information request in April 2020 found that in the region of 4000 care packages had been ceased or reduced across Scotland compared to January 2020.<sup>20</sup> This number is likely to be a significant underestimate since several Health and Social Care Partnerships failed to provide data, and others provided it in a form that was not comparable. Research by Inclusion Scotland found that ‘almost half of people responding on this issue told us that said that the COVID-19 pandemic has had an impact on the social care support they get, formal and informal. Around 30% of respondents told us their support had either stopped completely or had been reduced.’ In Glasgow, where only people with ‘critical’ needs are receiving support, almost 2000 people’s care packages have been affected. More than half of the members of Glasgow Disability Alliance who took part in their lockdown surveys report that they are worried about food, money and medication. 80% were not aware of local services they could access, and 90% were worried about their physical or mental health.

This has had, and in some instances continues to have, a severe impact on the enjoyment of rights by a whole range of groups and individuals including disabled people, older people, people with learning disabilities, people with dementia, family carers, including parent carers, young carers and others. These impacts were predictable. The strain in the social care system, in terms of underfunding, understaffing, limited participation and voice for people, their families, and to some extent, even providers, has been known and understood for some time. The

identity of the workforce is well-understood, in terms of gender and immigration status.

The Commission is intending to publish a more detailed briefing with recommendations on community-based services which will be available on our website in August 2020.

### **Recommendations**

In situations of emergency where resources are stretched, disabled people, family carers, older people and children and young people must be involved in a meaningful conversation about prospective decisions to cut their care packages (CRPD Article 11). This is especially the case where people need support to make decisions or another person has power of attorney or is a welfare guardian.

Transparency and communication around the legislative and service changes where relied upon by Health and Social Care partnerships must be improved.

In planning for the resumption of pre-pandemic services, local authorities and Health and Social Care Partnerships must fairly and systematically assess need. It should not be assumed that family supports which have been in place during the crisis are sustainable over the long term.

Disabled people, family carers, older people and children and young people must be informed in an accessible and timely manner of the next steps in relation to the resumption of their pre-pandemic care package.

## **4.1. Care homes**

It is now well documented that the coronavirus outbreak has significantly impacted the residents and staff of Scotland's care homes. Data released by the National Records of Scotland show that 47% of COVID-19 deaths registered to date related to deaths in care homes.<sup>21</sup>

Questions have arisen over whether the approach taken to COVID-19 in

care homes has been sufficient and appropriate. Among those are questions over whether residents of care homes were afforded equal access to hospital treatment; whether clinical guidance from the outset of the pandemic was appropriate; whether personal protective equipment (“PPE”) was made available to all those who required it for the protection of both staff and residents; and whether the availability and distribution of coronavirus testing of care home residents and staff (including patients being transferred from a hospital setting to a care home) was adequate.<sup>22</sup>

The First Minister confirmed to the Scottish Parliament on 27 May 2020 that there will be a public inquiry into the handling of all aspects of the pandemic, including what has happened in care homes.<sup>23</sup> The Commission welcomes that commitment and has published a briefing which sets out the human rights framework as it applies to the issues we understand to have arisen in Scotland’s care homes and details the requirements of human rights law to ensure effective investigations are carried out.<sup>24</sup>

The Commission believes the issues we understand to have arisen in care homes could engage state responsibility under Article 2 ECHR, which protects the right to life. As such, effective investigations into deaths of care home residents and staff must be carried out. There are a number of different processes that may be appropriate, for example pursuing a remedy in the civil courts or, in certain cases, a criminal law remedy may be required. Other procedures, such as a fatal accident inquiry, may also be appropriate. While investigations into individual deaths are, of course, required, a public inquiry will be appropriate to investigate overarching policy decisions that impact on the right to life. Given the gravity, breadth and scale of the issues impacting on care homes, particularly during the early stages of the pandemic, the Commission is of the view that a human rights based public inquiry or investigation is welcome.

In the health care context, regardless of the specific process, the procedural obligation under Article 2 requires an effective system capable of determining responsibility and ensuring accountability. This system must not only exist in theory, but also operate effectively in



practice. There is a requirement of independence of the domestic system set up to determine the cause of death. The proceedings must also be completed promptly and within a reasonable time and there should be involvement of a deceased's person's family.<sup>25</sup>

The situation experienced in care homes raises issues under other rights protected by the ECHR, including Article 3 (which guarantees freedom from torture or inhuman or degrading treatment or punishment), Article 8 (the right respect for private and family life, home and correspondence which includes a protection of physical and psychological integrity), and Article 14 (freedom from discrimination in respect of protected convention rights). Rights contained in other international human rights treaties, which the UK has signed and ratified, are also important in this context. In particular, the right to the highest attainable standard of physical and mental health protected by Article 12 of ICESCR; and Articles 5 and 11 of CRPD. Article 11 CRPD establishes the obligation on states parties to take all possible measures to ensure the protection and safety of persons with disabilities in the national response to situations of risk and humanitarian emergencies, and Article 5 affirms equality before and under the law.

### **Recommendations**

The Commission welcomes the commitment to hold a public inquiry. The Commission believes the Scottish Government should further commit to taking a human rights based approach to any public inquiry which specifically gives consideration as to whether human rights standards and principles have been met.

## **5. Poverty and Economic and Social Rights**

The crisis has had, and will continue to have, significant impacts on people experiencing poverty and the non-realisation of their economic, social and cultural rights<sup>26</sup>. We already know that many groups who were already facing socio- economic disadvantage are being disproportionately impacted – such as disabled people and people with

long-term conditions, black and minority ethnic (BAME) groups, women (in particular women who are lone parents and who are in low-paid work), and unpaid carers. Additionally more people's incomes are being affected on a daily basis, increasing the numbers of people finding themselves in situations of poverty and exacerbating the situation of those already in poverty.

As well as the rights to social security and an adequate standard of living, housing and food as outlined further below, the Commission also notes the significant impact of the crisis on the realisation of the right to health. For example, it is of concern that people in situations of poverty and those on lower incomes are often at risk of higher risk of exposure to COVID-19 and furthermore existing health inequalities and the higher propensity of underlying health conditions puts these groups at risk of more severe outcomes if they contract the virus. The measures taken to control the virus, including the downscaling of broader health services, are impacting disproportionately on those experiencing health inequalities and risk exacerbating those inequalities in the longer term.<sup>27</sup>

The UN Committee on Economic, Social and Cultural Rights has repeatedly highlighted the need for socio-economic protections available in international human rights law to be incorporated into national law. Now more than ever the Commission regards these protections as vital in providing a framework to guide decision making coming out of this crisis. 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 and pays particular regards to the rights of women, disabled people and black and minority ethnic groups.

## **5.1. Right to Food**

An assessment of the current situation against the standards set out in the UN General Comment on the right to adequate food shows that the pandemic has had a significant impact on the realisation of the right in a range of areas.<sup>28</sup> The Commission has published a full briefing on the realisation of the right to food during the pandemic [here](#).

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, school closures, 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 fully understood.

The Commission welcomes the swift mobilisation of the community sector but considers that ongoing reliance on this emergency provision will not present a rights based solution to the issue of food insecurity.

### **Recommendations**

It will be important to develop and implement a range of models, with the participation of people affected, which respond to the different challenges people face with regard to food insecurity. 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.

Guidance to local authorities on how they delivery food supplies to families with children who would ordinarily be eligible for free school meals should be updated to prioritise the delivery of cash-based approaches to support the realisation of people's right to food.

## **5.2. Right to Housing**

Adequate housing is a universal human right, applicable to all without discrimination and plays an essential role in the realisation of the right to an adequate standard of living. It is also inextricably linked to the realisation of many other rights, including the rights to health, work, and education. The current crisis has highlighted the essential nature of adequate housing for all. Good quality, affordable housing aimed at those most in need can be the difference between good and bad

physical health, the ability to pay for heating, buy nutritious foods and access education and employment.

Despite Scotland's wealth as a nation, attempts to eradicate homelessness and provide those in need with housing security have not yet fully succeeded.<sup>29</sup> Concern over both homelessness and the inadequate provision of housing have been repeatedly raised by a variety of United Nations (UN) Treaty Body Committees<sup>30</sup>, as well as by the UN Special Rapporteur on Extreme Poverty and Human Rights.<sup>31</sup> There is little doubt that as the pandemic financial support schemes end and the resulting job losses follow in the predicted economic downturn, many more people will require housing support.

At this moment in time, however, COVID-19 does appear to have had some positive impacts in terms of action to tackle and prevent homelessness. This has come as a direct result of some policy changes for example regarding evictions, as well as some expedited and resourced action by the Scottish Government and local authorities, and significant community efforts<sup>32</sup> to protect the health and welfare of people in or at risk of a housing crisis. The government's response has highlighted that where there is political will to allocate adequate and necessary resources, outcomes can be improved. The question now, is whether this temporary funding can be translated into a more permanent commitment and to long term policy change.

Placing Scotland's international human rights obligations at the centre of socio-economic recovery policy development could provide a catalytic change point for the future delivery of rights based goods and services, including housing provision and help to support the eradication of homelessness in Scotland.

Build Back Better should begin with human rights based budgeting. The speed of response and allocation of resource to support people to realise their right to housing during lockdown, has shown that where there is political will to prioritise resources, outcomes can be achieved, and done so at speed.

## **Recommendations**

The Government must follow the UN's COVID-19 guidance on homelessness, and immediately provide accommodation to all homeless people living in 'rough' or on the streets with a view of transitioning them to permanent housing so that they do not return to a situation of homelessness once the pandemic is over.<sup>33</sup>

Government and local authorities must ensure provisions are made to specifically help particularly vulnerable groups realise their right to housing. This includes ensuring the provision of adequate and safe alternative accommodation and access to support services for anyone suffering from domestic abuse.

The government should consider a continuation of the protections against evictions especially while household incomes remain under stress as Scotland recovers from the COVID-19 pandemic.

As a result of pre-existing inequalities, particularly in health, income and housing, Scottish Gypsy/Travellers are potentially especially at risk from COVID-19. Government guidance was produced at an early stage of lockdown to support Scottish Gypsy/Traveller communities. The effectiveness of the actions taken in line with this guidance should be monitored.

There is a need to restart affordable housing supply and increase the proportion of socially rented to privately rented housing available. The Committee should also ask the government if it is exploring all options including the repurposing of empty properties and the development of low-carbon, energy efficient new homes.

A human rights based approach to Scotland's socio-economic recovery must be taken to ensure that decisions are transparent, participative and based on Scotland's legal human rights commitments.

### **5.3. Right to Social Security**

The right to social security is enshrined in international human rights law<sup>34</sup> and provides, in basic terms, the right to access and maintain welfare, whether in cash or in kind, without discrimination of any kind, in order to secure protection from social risks and contingencies such as is current. However, beyond guaranteeing a basic means for survival, the right to social security is essential for the realisation of the right to an adequate standard of living and provides the opportunity for people to participate in society. COVID-19 has highlighted the extent of pre-existing and systemic inequalities in Scotland, with the most vulnerable falling through, what is becoming increasingly apparent, an inadequate social security 'safety net'.

With its new financial and social security powers the Scottish Government has begun to take a series of steps to bridge the gaps left by the well documented issues with Universal Credit.<sup>35</sup> However, due to the impact of COVID-19, in particular on the capacity of Social Security Scotland, the planned social security programme has been delayed, most notably the introduction of the Scottish Child Payment.

The government has dedicated resources, quickly, to support a range of national and local authorities programmes and actions which have been welcomed, this includes a £100m boost to Local authorities<sup>36</sup> to increase funds available through: the Scottish Welfare Fund (access to crisis grants); council tax reduction scheme; discretionary housing payments (in part to compensate for the 'bedroom tax') and free school meals.<sup>37</sup> There has also been a one off top up payment for unpaid carers. Administrative changes have also been introduced to facilitate late applications for various entitlements that may have been delayed due to COVID-19.

Whilst welcoming the intent all of these changes in provisions and administration, the Commission has some concerns and recommendations in a number of areas related to these provisions, which the Committee should raise with government.

## **Recommendations**

Social Security Scotland should monitor the ways in which COVID-19 is delaying re-determination, and ensuring that equalities data around discretionary decisions on re-determinations and appeals is collected and monitored to ensure non-discrimination of access to this entitlement.

The impact of both the Digital Strategy and the Connecting Scotland programme should be assessed to ensure they are bridging the 'digital divide'. It is important that their potential and actual impact are assessed to ensure that they are targeting the right people and do not have any unintended consequences.

The levels of contact social security advice services are receiving should be monitored to ensure that adequate resourcing is provided to enable such advice services to provide the necessary level of support for people regarding their rights to social security.

The provision of the Scottish Child Payment should be expedited. This should include looking at provision through the power to 'top up' an entitlement as provided for by the Social Security (Scotland) Act. In the event DWP are unable to provide the payments due to the huge increase in Universal Credit claims, other avenues must be explored, including increasing the lump sum paid through the Best Start Grant and the Scottish Welfare Fund.

Consideration should be given to building on the one-off increase to Carer's Allowance Supplement provided in June 2020, with an additional top-up during the next round of payments in December 2020. This should also be considered as a step towards permanently increasing the value of the payment in the longer-term to support carers' right to an adequate standard of living.

## 6. Worker's Rights

The right to work and the right to fair treatment at work is a universal human right and is key to the realisation of other human rights such as the right to an adequate standard of living, the right to social security and the right to health.

While the Commission acknowledges that employment rights and financial support for business and self-employed persons are a reserved matter, we cannot ignore the impact of COVID-19 on working people and on Scotland's economy. We note that the right to work and to fair treatment at work is a key area of concern when addressing the challenges presented by the pandemic.

The measures taken by the Scottish Government to protect public health have affected individuals' right to work. Those experiencing in-work poverty and those in insecure employment, in particular women, BAME groups, young people and migrant workers, will be affected by changes to their employment and uncertain job prospects. Single parents and unpaid carers, predominantly women, are disproportionately affected by difficulties caring for children and families while working from home.

The Commission notes employers have an important role to play in ensuring physical distancing in workplaces and that there is adequate provision of PPE where required. The Commission welcomes the Scottish Government's commitment to working with employers, trade unions and workplace regulators to ensure fair and safe workplaces, in particular adopting the Fair Work principles agreed with the STUC.<sup>38</sup> The Commission is pleased to note the guidance encourages employers and employees to discuss working arrangements, since participation of workers is a fundamental principle of a human rights based approach.



## **Recommendations**

In distributing financial assistance to businesses, the Commission recommends that the Scottish Government fully considers how to protect the working conditions of vulnerable groups disproportionately affected by the current situation, including women, BAME groups, disabled persons, low earners and young people. The Commission believes current inequalities in the labour market must not be exacerbated in its plans for economic recovery.

The Commission recognises the need for clear guidance for employers in undertaking fair and non-discriminatory decision-making.

The Commission recommends making financial support to businesses conditional on employers implementing fair work and non-discrimination principles.

## **7. Justice**

### **7.1. Policing**

For the last three months, Police Scotland have had significant additional responsibilities and powers given by UK and Scottish legislation. The Commission, mindful of the extraordinary nature of the powers, gave this issue a priority and focused on scrutinising their application. We also expressed concerns about the introduction of legislation without the appropriate legislative scrutiny and without the opportunity for training, dissemination and communication which would be necessary in normal circumstances<sup>39</sup>.

The Commission was invited to become a member of an Independent Advisory Group (IAG), created at the request of Police Scotland and chaired by John Scott QC, Solicitor Advocate. The Group's mandate is to ensure that use of powers by Police Scotland is compliant with international human rights law, Police Scotland values and the purpose of safeguarding public health. The Group is currently meeting weekly, via teleconference, and provides regular updates to the Scottish Police

Authority (SPA) Board and Scottish Parliament. The Commission provided a written guide for the IAG on examining the new police powers through a human rights lens.<sup>40</sup>

It is difficult to obtain definitive information on policing activity during the lockdown as the data is currently being collected and assessed. However, the preliminary findings from the IAG are that the vast majority of the public have been compliant with the legislation and supportive of police.<sup>41</sup> The data also shows that the overall proportion of complaints increased 22% in the two months after lockdown, but the majority of these complaints (71%) were resolved through explanation, apology and assurance.<sup>42</sup> The evidence obtained suggests that most of the Operation Talla (Police Scotland's response to Covid) related complaints were of a non-criminal nature.

We remain concerned about the lack of more detailed information, including the data about those arrested under the emergency legislation. Between 18 March and 15 June, 22,434 detainees passed through Police Scotland's police custody centres (official figures). That includes cases of detainees who are either showing coronavirus symptoms, claiming to have symptoms or are in self-isolation and so treated as if they have the virus and recorded accordingly. We have engaged with Independent Custody Visiting Scotland (ICVS) and Her Majesty's Inspectorate of Constabulary in Scotland (HMICS) on this issue. HMICS have identified restricted access to solicitors for detainees in police custody in Scotland and ICVS raised important issues including the excessive time that people suspected of having coronavirus are spending detained in police transportation vehicles and the lack of wash or shower in line with Government guidelines. The Commission is also aware of anecdotal complaints regarding access to health services and medication of detainees in custody centres in the Aberdeen area.

For the immediate future there are challenges for policing as levels of demand in traditional policing matters are returning to normal. This has to be balanced with the use of the new powers in a context of easing of restrictions but uncertainty. Although Police Scotland have not used their emergency powers to prevent large scale public assembly (including protests) taking place at the moment, the issue of policing such

scenarios in the pandemic will continue. We will continue to keep these matters under consideration.

### **Recommendation**

The Commission urges the Committee to continue to engage with the IAG and to monitor the implementation of the Group's recommendations which will be issued on conclusion of its work.

## **7.2 Trials**

The Commission engaged with the Cabinet Secretary and other stakeholders to discuss workable solutions to the challenges that COVID-19 poses to Scotland's criminal justice system. While we note that jury trials are not specifically required under Article 6 of the ECHR (the right to a fair trial), they are a key part of Scotland's criminal justice system and the Commission therefore welcomed the Scottish Government's decision to explore measures which retain the use of jury trials.<sup>43</sup> We also noted that increases to the length of time a person accused of a crime will spend in custody may engage Article 5 of the ECHR (the right not to be arbitrarily deprived of liberty, which includes the right to a trial within a reasonable period of time or to be released pending trial) as well as rights relating to their lives and physical/mental wellbeing arising from extended periods of custody during a pandemic (see below). We noted that cases where a person is remanded in custody should be prioritised. The Commission also noted that Article 6 of the ECHR may be engaged (the right to a fair trial, including the right to a trial within a reasonable time). We acknowledge that delays are inevitable under emergency circumstances however whether the delay is reasonable will depend on the circumstances of each case. For example, the question of whether a period of time spent in pre-trial detention is reasonable requires a case by case assessment, taking into account factors such as the presumption of innocence and the balance between the public interest and the right to individual liberty.

The Commission supports options such as modified jury trials and streaming proceedings to a separate media room, to allow criminal cases to proceed.<sup>44</sup> We also support the Scottish Criminal Bar

Association's practical proposals for conducting jury trials, such as reducing juror numbers and using courtroom space creatively to allow social distancing.<sup>45</sup> The Commission welcomes the Lord Justice Clerk's review into the practical and operational requirements for resuming jury trials, which we expect to ensure the rights of victims, witnesses and those awaiting trial are upheld.

### **Recommendations**

The Commission remains concerned by the substantial increase of the pre-COVID-19 backlog in cases and we recommend sufficient resourcing of the Scottish Courts and Tribunals Service to enable criminal trials to proceed in a safe and timely manner.

## **7.3 Prisons**

The Commission is a member of the UK National Preventive Mechanism (NPM), which was established in 2009 to monitor and inspect places of detention in the UK in order to prevent torture and ill-treatment for those deprived of their liberty (there are 21 members across the UK).<sup>46</sup> NPM members work collectively to fulfil the UK's duties under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) by regularly examining the treatment of persons deprived of their liberty in places of detention and making recommendations to relevant authorities on this issue.

Our response to the current situation has focused on supporting the NPM members and engaging with the Scottish Government and Parliament to inform and influence a rights based underpinning to the response to Coronavirus. We have also focused on supporting the UK NPM and engaging with the Scottish Government and Parliament on their response to COVID-19 and the impact of it, and emergency legislation, on the rights of prisoners.

Following the issuing of a statement of principles on prisoners and COVID-19 in March this year by the Committee for the Prevention of Torture, on 2nd April, the Commission wrote to the Scottish Government

about the vital importance of efforts to uphold the rights of people in detention and deprived of their liberty during the coronavirus outbreak. In the letter the Commission provided a number of recommendations directly applicable in the current emergency situation.<sup>47</sup> While some of the issues raised in this letter were at the forefront of the operational planning we wanted to emphasise some of the steps that the Government and detention authorities should take to mitigate the existing risks.

The Commission and HMIPS engaged in direct dialogue with the Cabinet Secretary for Justice on some of the issues raised as progress was slow. The Commission was particularly concerned about people confined to their cell for extended periods of time, with very limited access to shower facilities and time out of cells, including access to outdoor exercise. We were also concerned about lack of family contact and access to a lawyer by people in detention. It is crucial that the right to family life is maintained for people in detention during this difficult period.

The Commission wrote to the Justice Committee at the Scottish Parliament on 18 May 2020 to express our serious concerns and urge the Scottish Government to take action to ensure that any further restrictions to prisoners as a consequence of the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2020 were fully compliant with human rights obligations.<sup>48</sup>

As a further step the Commission wrote to the Cabinet Secretary for Justice to ask for an update on actions taken on isolation, family contact and access to legal and advocacy assistance on the 23 June. The Justice Committee discussed and shared our concerns on 16 June 2020 and also wrote to the Cabinet Secretary and the Scottish Prison Service to seek a response to the issues raised.

The Cabinet Secretary has responded to the Justice Committee.<sup>49</sup> An important issue raised with the Cabinet Secretary was the lack of transparent and accessible data currently available to enable adequate monitoring of prison conditions and their compliance with human rights standards. We are concerned that despite repeated requests the

Commission has not been able to access meaningful data and welcomes any efforts by the Committee to improve this.

## **8. Economic Recovery and “building back better”**

Resources and rights are inextricably linked. It is vital, therefore, that decisions about economic recovery from COVID-19 are informed by and rooted in a comprehensive and robust rights based analysis. Human rights based policies backed by targeted financial resource will be critical to ensure that inequalities are not exacerbated in both the short and longer terms. The UN Secretary-General has suggested that those countries with previous investment in protecting economic and social rights are witnessing a more resilient response to the impacts of this pandemic and 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>50</sup>

A more detailed analysis of human rights and economic recovery has been submitted to the Advisory Group on Economic Recovery.<sup>51</sup> Below are some of the key points raised in that submission.

### **8.1. Human rights and economic development**

The economy and economic development is incredibly important for human rights. It produces revenue and supports the creation of employment, services, infrastructure and technology, all of which are necessary for the realisation of human rights. Human rights are also important to economic development. Recent research<sup>52</sup> has highlighted that not only are human rights the ‘right thing to do’ in normative terms, but they are also ‘the smart thing to do in economic terms’. The research found little evidence to support the common assumption that there is a ‘trade-off’ between economic development and human rights or that human rights is an expense that governments can only afford when times are good. In fact, it concluded that the opposite appears to be the case. Rather than human rights being a passive outcome, they are an active and essential part of an effective economic growth model.<sup>53</sup>

## 8.2. Human rights based approach to Scotland's economic recovery

Taking a rights based approach to Scotland's economic recovery means using human rights standards and principles to 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 both fragile and critical.

This approach would involve setting out Scotland's core human rights obligations across all rights: civil, political, economic, social, cultural and environmental. Then, with the wide and meaningful participation of rights-holders, the Government would explore the necessary law, policy and budgetary resources required to improve rights realisation gradually, and in accordance with Scotland's fiscal envelope.

With regard to the economy, the focus in Article 2(1) in the International Covenant on Economic, Social and Cultural Rights<sup>54</sup> on the need for governments to **maximise their available resources** means that taking a rights based approach stresses the important role that governments play in the redistribution of resources and progressive taxation in order to invest in public goods and services, that as a society we agree are necessary to secure the realisation of rights.

This approach to the economy also involves considering whose voices are heard in, and how different groups are affected by, a government's ongoing fiscal decisions, with reference to human rights standards in order to make that assessment. Ensuring that the process for taking fiscal decisions is democratic and participatory is a crucial aspect of human rights budget work. Human rights standards, by themselves, do not provide all the answers on what specific choices and trade-offs the government should make. So how choices are discussed and made is key in determining the extent to which different human rights obligations are met or not.

### **8.3. Human rights and the “Wellbeing Economy”**

A human rights based approach to the economy is closely aligned to the terms of a “wellbeing economy”, in that it asserts that there are values, goals and objectives which extend beyond purely economic ideas that the economy should serve. This requires a willingness to challenge and re-think some of the assumptions that current fiscal policy and the economy are built on.

However, current critique<sup>55</sup> of the ‘wellbeing’ approach is that it has not yet identified the following: what is meant by ‘wellbeing’; how spending could contribute to specific aspects of wellbeing; and importantly – how this approach could be monitored and evaluated for any contribution of policy to those changes. If wellbeing were to be explicitly seen through a human rights lens, it would be defined as an economy that respects, protects and fulfils people’s rights. These rights provide a strong legally grounded framework to guide fiscal policy and come with a wealth of pre-existing international guidance<sup>56</sup> on the core content of the rights, the corresponding obligations on states, and relevant human rights based indicators to measure progressive realisation.<sup>57</sup>

#### **Recommendations**

Government must “build back” in a way that does not further exacerbate the pre-existing inequalities that COVID-19 has highlighted.

The development of a ‘wellbeing’ economy should be underpinned by the existing universal human rights framework which can help to guide their decision making and ensure that the actions it takes are accountable, transparent, participative and grounded in agreed upon international standards of what is deemed necessary, for a life of dignity.



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<sup>1</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>2</sup> See the Commission's briefings on the [Coronavirus 2020 Act](#), the [Coronavirus \(Scotland\) Act 2020](#) and the Commission's [Letter to Equalities and Human Rights Committee on COVID-19 Emergency Legislation](#) of 27 April 2020.

<sup>3</sup> See the Scottish Government's first report to the Scottish Parliament here:

<https://www.gov.scot/publications/coronavirus-acts-two-monthly-report-scottish-parliament/>.

<sup>4</sup> See Schedule 9 of the Coronavirus Act 2020 and Section 4 and schedule 3 of the Coronavirus (Scotland) Act 2020. The Commission has worked closely with the Mental Welfare Commission to develop a human rights framework for scrutiny of the use of these emergency provisions in relation to adults with incapacity, should these be brought into force in future.

<sup>5</sup> Ibid, see paragraph 7.1.2.7

<sup>6</sup> See letters to [SPSO](#) and [CoSLA](#) on suspension of local authority complaints procedures. [SPSO's response](#) and [COSLA's response](#)

<sup>7</sup> "Lockdown" in this context referring to the period in which restrictions and measures as set out in the Coronavirus 2020 Act, the Coronavirus (Scotland) Act 2020 and related legislative measures and guidance to both the delivery of services and the public in response to COVID-19 are in place, including the period in which subsequent variations and changes to such measures are made in accordance with the Scottish Government Routemap.

<sup>8</sup> <https://www.gov.scot/publications/wealth-and-assets-in-scotland-2006-2018/>

<sup>9</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.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>10</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>11</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>12</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.

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Scottish Household Survey 2018.

13 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.

14 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)

15 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-%2BLabour%2BMarket%2B-%2BEconomic%2BImpact%2Bof%2BCoronavirus%2Bon%2BIndividuals%2Band%2BHouseholds%2B-%2BSummary%2Bfor%2Bpublication.docx>

16 COVID-19 Committee Call for Evidence on Refining and Reducing Lockdown 29th May 2020

17 See the Commission's briefing on COVID 19: Human Rights implications of digital contact tracing technology

18 See the [Commission's COVID 19 Guidance: Clinical Advice](#).

19 See the CMO's [Clinical Guidance for NHS Scotland: on Using Physical Restraint for Patients with Confirmed or Suspected COVID-19](#).

20 BBC Disclosure, 27<sup>th</sup> April 2020, 'I have lost care support because of coronavirus', available at

<https://www.bbc.co.uk/news/uk-scotland-52415302>

21 <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/general-publications/weekly-and-monthly-data-on-births-and-deaths/deaths-involving-coronavirus-covid-19-in-scotland>

22 See, for example: 'Care home coronavirus deaths in Scotland overtake hospitals', The Guardian, 3 June 2020; Official Report, Meeting of the Parliament (Hybrid) 3 June 2020, First Minister's Question Time; Official Report, Meeting of the Parliament (Virtual) 27 May 2020, First Minister's Question Time; Official Report, Meeting of the Parliament (Hybrid) 24 June 2020, First Minister's Question Time.

23 Official Report, Meeting of the Parliament (Virtual) 27 May 2020, First Minister's Question Time. Available at: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12660&i=114533>

24 See the Commission's Briefing: Care homes and human rights during COVID-19,

<https://www.scottishhumanrights.com/news/briefing-care-homes-and-human-rights-during-covid-19/>

25 *Lopes de Sousa Fernandes v Portugal*, at para. 214-221.

26 The key legal instruments giving protection to these rights include the International Convention of Economic, Social and Cultural Rights 1966 (ICESCR) and the European Social Charter 1961 (the revised European Social Charter 1996 has not been ratified by the UK).

27 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>

28 See the Commission's briefing on here: <https://www.scottishhumanrights.com/media/2050/the-impact-of-covid-19-on-the-right-to-food-final.pdf>

29 <https://www.gov.scot/publications/foi-202000020177/>

30 ICESCR 2016

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolNo=E/C.12/GBR/CO/6&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=E/C.12/GBR/CO/6&Lang=En)

CRC 2016

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolNo=CRC/C/GBR/CO/5&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CRC/C/GBR/CO/5&Lang=En)

CEDAW 2019

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolNo=CEDAW/C/GBR/CO/8&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CEDAW/C/GBR/CO/8&Lang=En)

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CRPD 2017

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GBR/CO/1&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GBR/CO/1&Lang=En)

31 P Alston, 'Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights' (OHCHR, 2018) as found at <[https://www.ohchr.org/documents/issues/poverty/eom\\_gb\\_16nov2018.pdf](https://www.ohchr.org/documents/issues/poverty/eom_gb_16nov2018.pdf)> (2

32 Scotland's Homelessness Network – Briefing as found at <https://mailchi.mp/f25090e29ede/all-in-for-change-3904905>.

33 [https://www.ohchr.org/Documents/Issues/Housing/SR\\_housing\\_COVID-19\\_guidance\\_homeless.pdf](https://www.ohchr.org/Documents/Issues/Housing/SR_housing_COVID-19_guidance_homeless.pdf)

<sup>34</sup> For example, Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 12 of the European Social Charter 1961

35 For example the low level of support provided by Universal Credit; the five week wait to commence Universal Credit; the increased risk of domestic abuse and in particular financial abuse due to the single payment point in a household receiving Universal Credit; the benefit cap; the two child limit and the 'bedroom tax': see <https://www.cas.org.uk/news/universal-credit-5-week-wait-leads-people-debt-stress-foodbanks-and-ill-health>; <https://www.bbc.co.uk/news/uk-52433520>; <https://wbg.org.uk/wp-content/uploads/2019/06/Benefits-or-barriers-4-nations-report.pdf>

36 See [https://www.parliament.scot/S5\\_Local\\_Gov/20200421ACToConvener.pdf](https://www.parliament.scot/S5_Local_Gov/20200421ACToConvener.pdf)

37 In Scotland, every child who attends a local council school can access free school lunches in primary 1, 2 and 3, irrespective of a family's financial circumstances.

38 See <https://www.gov.scot/publications/coronavirus-covid-19-fair-work-statement/>.

<sup>39</sup> See SHRC Paper to Independent Advisory Group Considering Police Scotland Use of Temporary Emergency Powers: Human Rights Guide to Examining New Police Powers in Response to COVID-19 available at: <http://www.spa.police.uk/assets/617667/humanrightsguide>

40 The paper can be found at: <http://www.spa.police.uk/assets/617667/humanrightsguide>

41 In the 83 days from 27th March to 17th June 2020, a total of 53,112 interventions using the emergency policing powers were recorded on the Police Scotland Coronavirus Intervention (CVI) system. Only 6.1% of all recorded interventions involved issue of a Fixed Penalty Notice (FPN) and 0.5% involved use of arrest powers.

42 Police data from Operation TALLA Information, Assurance and Liaison Group (complaints). Complaints were resolved through FLR, which suggests that they were primarily non-criminal, trivial and minor in nature.

43 See the Commission's Outline Views on COVID-19 and Criminal Trials at

[https://www.scottishhumanrights.com/media/2015/20\\_04\\_covid19-criminal-trials\\_briefingvfinal.pdf](https://www.scottishhumanrights.com/media/2015/20_04_covid19-criminal-trials_briefingvfinal.pdf).

<sup>44</sup> For further information on the implications of reducing jury sizes, see

[https://www.parliament.scot/S5\\_JusticeCommittee/Inquiries/JUSTICE\\_SCOTLAND.pdf](https://www.parliament.scot/S5_JusticeCommittee/Inquiries/JUSTICE_SCOTLAND.pdf)

<sup>45</sup>

[https://www.parliament.scot/S5\\_JusticeCommittee/Meeting%20Papers/Scottish\\_Criminal\\_Bar\\_Association\(1\).pdf](https://www.parliament.scot/S5_JusticeCommittee/Meeting%20Papers/Scottish_Criminal_Bar_Association(1).pdf)

46 In Scotland, the members are: Care Inspectorate (CI); Her Majesty's Inspectorate of Constabulary in Scotland (HMICS); Her Majesty's Inspectorate of Prisons for Scotland (HMIPS); Independent Custody Visiting Scotland (ICVS); Mental Welfare Commission for Scotland (MWCS) and the Scottish Human Rights Commission (SHRC). We are the chair of the Scottish working group

47 The letter to the Cabinet Secretary for Justice on is available at: <https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2020/04/NPM-letter-to-Cabinet-Secretary-for-Justice-re.-COVID-19.pdf>.

48 See <https://www.scottishhumanrights.com/news/breaches-of-human-rights-in-prisons-during-the-pandemic/>.

49 Cabinet Secretary for Justice response to the Justice Committee is available at:

[https://www.parliament.scot/S5\\_JusticeCommittee/Inquiries/Response\\_to\\_Justice\\_Committee\\_SHRC\\_2406.pdf](https://www.parliament.scot/S5_JusticeCommittee/Inquiries/Response_to_Justice_Committee_SHRC_2406.pdf).

50 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)

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51 See the Commission's Submission here: <https://www.scottishhumanrights.com/media/2035/advisory-group-on-economic-recovery-call-for-views-vonline.pdf>. See also section 5 and Schedule 4 of the Coronavirus (Scotland) Act 2020, which suspend time limits contained in the Criminal Procedure (Scotland) Act 1995.

52

[https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/working\\_papers\\_2016/the\\_economics\\_of\\_human\\_rights\\_2016.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/working_papers_2016/the_economics_of_human_rights_2016.pdf)

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[https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/working\\_papers\\_2016/the\\_economics\\_of\\_human\\_rights\\_2016.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/working_papers_2016/the_economics_of_human_rights_2016.pdf)

54 <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

55 See Reference 26 in [https://www.parliament.scot/S5\\_Finance/General%20Documents/Budget\\_Report.pdf](https://www.parliament.scot/S5_Finance/General%20Documents/Budget_Report.pdf) making reference to commentary by the Fraser of Allander:

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12492&mode=pdf>

56 See <https://www.ohchr.org/EN/Countries/ENACARegion/Pages/GBIndex.aspx>

57 See <https://www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx>