

Finance and Constitution Committee Pre-budget scrutiny 2021-22

5 August 2020

The Scottish Human Rights Commission was established by the Scottish Commission for Human Rights Act 2006, and formed in 2008. The Commission is the National Human Rights Institution for Scotland and is independent of the Scottish Government and Parliament in the exercise of its functions. The Commission has a general duty to promote human rights and a series of specific powers to protect human rights for everyone in Scotland.

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Introduction

The Commission welcomes the opportunity to respond to the Finance and Constitution Committee's pre-budget scrutiny with a particular focus on the impact of COVID-19 on the Scottish Government's Budget 2021-22. Resources and rights are inextricably linked to improved outcomes for rights-holders. It is vital, therefore, that decisions about economic recovery from COVID-19 and the forthcoming 2021-22 budget are informed by and rooted in a comprehensive and robust rights-based analysis. This submission focuses on the following issues raised in the Committee's call for views:

- Choosing priorities in Budget 2021-22 in addressing the impact of COVID-19
- Improving transparency and accountability in a rapidly changing fiscal environment
- Differential impact of COVID-19 in Scotland
- Implications for taxation

Previous submissions and publications by the Commission provide further detail on a range of areas relevant to this call for views and we suggest that these should be considered alongside this submission.

- Human Rights Budget Work: What, Why and How?: [Collated Briefing Papers](#)
- Submission to Scottish Government [consultation on devolved taxes](#)
- Submission to the Finance Committee: [A Scottish Approach to Taxation](#)
- COVID-19 Briefing Paper : [Implications for the Human Right to Social Security in Scotland](#)
- Submission to Scottish Parliament Finance Committee Inquiry: [Impact of COVID-19 on public finances and Fiscal Framework](#)
- Submission to Advisory Group on Economic Recovery: [Human Rights and Economic Recovery](#)

- Summary Report: [Open Budget Survey Results for Scotland's 2017-18 Budget \(Summary\)](#)

Choosing priorities in Budget 2021-22 in addressing the impact of COVID-19

COVID-19 impacts in Scotland

The COVID-19 pandemic has exposed the harmful effects of longstanding inequalities and indirect discrimination on people's rights in Scotland — especially their economic and social rights. It has shone a light on the negative impact of ten years of contractionary fiscal policy (i.e. austerity) on Scotland's public infrastructure; highlighted the inadequacy of our existing social safety net; and shown how little 'value' society had placed on the jobs now on the frontlines responding to COVID-19.

It's clear from emerging evidenceⁱ that the impact of the pandemic is not being felt the same by everyone. Scottish Government analysis anticipates that the following groups will be hardest hit financially: low earners; younger people; women; minority ethnic people; disabled people; those living in more deprived areas; and lone parents. 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 lockdownⁱⁱ. 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 exacerbatedⁱⁱⁱ.

Changing discourse on economic policy

Much current discourse is questioning "how do we build back better?" There is clear evidence of a recognition that things were not working for everyone before and that an appetite exists for wholesale change. However, truly building back better means that tackling Scotland's pre-

existing inequalities must be at the heart of how we move forward as a society. If there is not the genuine desire to tackle the structural and systemic causes of these inequalities, many of which are economic, then any proposed solutions will in all likelihood fail to deliver transformational change. Hard questions need to be asked about what has created such extremes in wealth inequality, as well health inequalities and other inequalities based on gender, race, disability and socio-economic status in particular. All possible levers available to the Scottish Government to address these inequalities moving forward need to be examined and must be connected to the government's budgetary commitments moving forward.

Human rights budgeting in response to the pandemic

The Commission has long advocated for taking a human rights based approach to budgeting, most recently calling (in response to the Advisory Group on Economic Recovery), for this approach to support Scotland's economic recovery and future budgeting processes (including how parliament scrutinises the budget).^{iv} This means using human rights principles to shape the budgetary process, whilst using the human rights standards to shape the budget's goals. Human rights standards and principles can guide transparent, accountable and participatory decisions that require balancing competing interests and priorities. In the context of COVID-19, a time when trust and public confidence is both fragile and critical, this is more important than ever.

Taking a human rights based approach to the budget to support Scotland's economic recovery would involve setting out Scotland's core human rights obligations across all rights: civil, political, economic, social, cultural and environmental. Then, with the meaningful participation of rights-holders, and with reference to all available guidance^v, exploring the resources required to improve rights realisation in accordance with Scotland's fiscal envelope.

'Building back better' must also involve considering whose voices are heard in, and how different groups are affected by, the Scottish Government's fiscal decisions — with reference to human rights standards to make that assessment. Human rights standards, by

themselves, do not provide all the answers on what specific choices and trade-offs the government should make, although they do provide a guiding decision making framework. How choices are discussed and made is therefore key in determining the extent to which different human rights obligations are met or not.

Impact assessments

An important mechanism for enabling equality and human rights considerations to be embedded into the policies, practices, procedures and priorities of both government and public bodies in Scotland are equality and human rights impact assessments (EQHRIAs)^{vi}.

In an environment where there are financial constraints, a human rights framework can provide objective guidance which will assist balanced decision making on the use of resources. This is particularly relevant for Budget 2021-22 as it addresses the impact of COVID-19 and sets the path for longer term economic recovery.

These criteria, as derived from Article 2(1) of the International Convention on Economic, Social and Cultural Rightsⁱⁱ, for resource allocation include:

- prioritising the fulfilment of basic levels of rights enjoyment for all (Minimum Core);
- allocating resources in a way that reduces inequalities by meeting the needs of vulnerable and marginalised groups (Non-discrimination); and
- a general increase in allocation of resources, in line with increased revenue, to achieve the further realisation of rights (Progressive Realisation)
- no unjustified reduction in allocation leading to regression in the realisation of rights. (Non-regression)

This is done by identifying and using the *maximum available resources* for the progressive realisation of rights.

The adoption of a human rights based approach can set legal 'red lines' below which state actions must not fall, for example by ensuring the

cumulative effects of policy and practice do not allow people to fall into situations of poverty.

It also ensures there is no disproportionate impact upon the most vulnerable by requiring a reasonable balance to be struck between any such impact and the potential cost savings. In this way better outcomes and improved performance will be achieved through taking account of the rights of individuals whose interests may otherwise be overlooked.

EQHRAs can also encourage individuals and communities to participate in decision making processes, giving them ownership of decisions and transforming institutional cultures and decision making.

The Commission recommends approaches to human rights impact assessment are further explored by the Scottish Government as an overarching or integrated framework or guiding tool for the proliferation of impact assessment methodologies.

Subject Committee Guidance

The Finance and Constitution Committee guidance to the subject committees on the budget process and the requirements on pre-budget report production has provided concrete guidance for Committees. This could be further revised to better support human rights budgeting and budget scrutiny.

Some recent publications could support this revision including:

- Scottish Government informal guidance for policy makers on equality and human rights budgeting^{vii}, published in August 2019 in collaboration with the Equality Budget Advisory Group.
- The Commission's response to the Justice Committee Pre-Budget Scrutiny 2020-21 Consultation^{viii}, sets out a practical example of how Committees could better connect their pre-budget scrutiny to the human rights obligations of government and parliament.
- The Commission's 2019 publications on Human Rights Budget Work: What, Why and How?^{ix}, also set out the processes by which human rights based budgeting decisions can be developed and

delivered to support priorities that address the impact of COVID-19.

Improving transparency and accountability in a rapidly changing fiscal environment

The promotion of accountability for meeting obligations is continuous in a human rights based approach. Accountability means monitoring, review and oversight of what is actually going on. A human rights compliant fiscal framework requires accountability mechanisms that are both *proactive* - allowing participation at the point of design and *reactive* – allowing for aggrieved parties to raise their concerns regarding tax law and policy. Accountability also means judicial and non-judicial remedies (within and out-with the court system) and these are only useful if people know they can use them, and have effective access to them.

Fiscal transparency is key to accountability. However, recent research by the Commission^x has shown that despite improvements made since the Budget Process Review Group reported its recommendations in 2017, fiscal transparency in Scotland remains below what is considered to be acceptable by international best practice standards. Public participation in formulating policy - on tax and spending - contributes to a more open relationship between government and civil society and can lead to both a more balanced distribution of public resources and greater accountability. However, at present the lack of fiscal transparency hinders public participation.

Differential impact of COVID-19 in Scotland

Employability and skills to improve Scotland's tax base

Scotland's tax base is small, and it cannot afford for large sections of the population to become and/ or remain unemployed. Pre COVID-19, only 2.5 million of the potential 4.5 million working age adults in Scotland earned enough to pay tax, with 300,000 fewer women tax payers than men ^{xi, xii}. This highlights that Scotland is a low wage or no wage economy with an incredibly tight tax base^{xiii}. This is of concern when

early analysis reveals that the government anticipates that the low earners will be one of the groups hardest hit by the pandemic ^{xiv}.

It is clear from the current analysis of the labour market impacts, that some employment sectors may take considerably longer than others to recover, due to the need for continued social distancing, for example tourism and the entertainment sector. It may also be the case that considerable proportions of the working age population will not be able to return to their previous employment and will require opportunities to re-train and learn new skills.

It will therefore be important as the Scottish Government develops its plans for economic recovery, that suitable investment is set out in the forthcoming Scottish budgets to facilitate the delivery of employability and re-training services that are targeted at those who require them most and aligned with the social and economic needs of Scotland post COVID-19.

Impact on devolved social security entitlements

The Commission's recent briefing paper on COVID-19 sets out the [implications for the human right to social security in Scotland](#). The paper provides information about the right to social security as set out in international law and provides insight into the current effect of COVID-19 on people's enjoyment of socio-economic protections, specifically their right to social security.

The briefing highlights that the recently devolved powers do offer the Scottish Government the opportunity to diverge further in policy from the UK and provide additional support in Scotland, but that this would not be without financial cost. COVID-19 has already resulted in a steep increase in the numbers of people in Scotland claiming the reserved entitlement of Universal Credit. Whilst the increased cost of Universal Credit will be borne by the UK Government, some Scottish entitlements (e.g. Best Start Grant and Council Tax Reduction for example) are passported from Universal Credit (i.e. entitlement to Universal Credit means entitlement to other provisions). Those costs will be borne by the

Scottish Government alone and therefore these additional entitlements will bring additional cost to Scotland.

Implications for taxation

The Commission has previously submitted evidence to the Committee and the Government on a human rights based approach to taxation in Scotland^{xv}. Whilst there is ongoing uncertainty about the exact impact of COVID-19 on future devolved tax revenue^{xvi}, it is very clear that it will be considerable. The issue of how and who we tax in Scotland has been explored before, with limited steps taken towards a more progressive system of taxation. Scotland can choose to approach COVID-19 economic recovery by creating a more progressive system that maximises available resources in line with its human rights obligations. Public and political support^{xvii} for the willingness to put conditions on financial bailouts for those who are resident in tax havens for example, highlights growing political will to explore the fairness of how revenue is generated as we enter the recovery phase.

Human rights law is also clear that even in times of severe resource constraints – whether caused by a process of economic adjustment, recession or a pandemic induced economic crisis – vulnerable members of society must be protected. Therefore, fiscal policy should ensure equality, through being progressive and assisting the most disadvantaged individuals and groups in society.

The Center for Economic and Social Rights in New York^{xviii} has published a “Comprehensive Response to COVID-19 Demands Redistributive Fiscal Policies” which sets out a range of fiscal policy options recommended by the Initiative for Human Rights Principles in Fiscal Policy^{xix}. Many of their proposed options would be relevant for consideration and should be encouraged within the UK context. Whilst acknowledging that the majority of levers will not be in the gift of the Scottish Government, there are some areas where Scotland would also have devolved capacity to explore, see Box 1 below.

Box 1 Human rights based fiscal options^{xx}

1. Taxes on wealth and corporate revenues from sectors making extra profits due to the pandemic (such as the digital economy, the financial sector in general, pharmaceuticals, and insurance companies with extraordinary returns).
2. Budgetary reallocations (for example, from military and other non-priority expenditures to sectors such as health and social security), and the suspension of unnecessary tax exemptions not yet in force.
3. Coordinated funding by central banks, based on future tax reforms that eliminate preferential tax privileges, correct the weaknesses of tax collection, and make tax systems more progressive, especially through increasing income tax for top earners and through wealth taxes.
4. Effective policies against tax avoidance and evasion, which have deprived States of valuable resources that are more needed than ever; and refraining from granting benefits of any kind to corporations that do not comply with their tax duties and/or make use of tax havens^{xxi}.
5. Countries should consider assuming a coordinated position in international negotiations on tax issues, to end the race to the bottom in corporate taxation^{xxii}. **This would be equally relevant in the context of Brexit.
6. Reform of restrictive fiscal rules, through escape clauses^{xxiii} and prioritisation of expenditures to respond to the emergency.

The Committee should also encourage discussion with the UK Government Treasury Committee's current inquiry^{xxiv} into 'Tax after coronavirus'. A UK system which is better able to prevent (in the first instance) and retrieve (where prevention has failed) lost revenue through tax evasion, avoidance and debt would mean a potentially substantial revenue injection (tens of billions of pounds), which the Scottish Government would benefit from through the Barnett Consequential.

End.

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- ⁱ See <https://data.gov.scot/coronavirus-covid-19/index.html>
- ⁱⁱ See <https://www.equalityhumanrights.com/sites/default/files/research-report-94-cumulative-impact-assessment.pdf#:~:text=Cumulative%20Impact%20Assessment%3A%20A%20Research%20Report%20by%20Lanman,Rights%20Commission%20.%20Howard%20Reed%20and%20Jonathan%20Portes>
- ⁱⁱⁱ COVID-19 Committee Call for Evidence on Refining and Reducing Lockdown 29th May 2020
- ^{iv} The Commission's submissions are available at:
<https://www.scottishhumanrights.com/media/2035/advisory-group-on-economic-recovery-call-for-views-vonline.pdf>
https://www.scottishhumanrights.com/media/2034/20_05_fincom_covid_publicfinances_humanrights_vfinal.pdf
<https://www.scottishhumanrights.com/covid-19/economic-social-and-cultural-rights/>
- ^v For example see the current UN recommendations relevant to COVID-19 for the UK
https://www.ohchr.org/Documents/Events/COVID-19/Infographics/UNITED_KINGDOM_OF_GB_AND_NORTHERN_IRELAND.pdf and more generally - General Comments and recommendations produced by Treaty Body Committee and Special Procedures:
<https://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>
- ^{vi} See <http://eqhria.scottishhumanrights.com/>
- ^[i] See <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>
- ^{vii} See Tackling inequality: guidance on making budget decisions:
<https://www.gov.scot/publications/improving-peoples-wellbeing-6-key-questions-ask-making-budget-decisions/>
- ^{viii} See https://www.scottishhumanrights.com/media/1921/submission-response-to-justice-committee_pre-budget-scutiny.docx
- ^{ix} See <https://www.scottishhumanrights.com/media/1902/hrbw-collected-briefing-papers-vfinal.docx>
- ^x See <https://www.scottishhumanrights.com/media/2013/scotland-2019-obi-summary-report-vfinal.pdf>
- ^{xi} O'Hagan, A, Dec 2018, How does austerity impact women's human rights? See <https://wbg.org.uk/wp-content/uploads/2018/12/Angela-OHagan-remarks-4-December-2018.pdf>
- ^{xii} Two million workers are earning less than 12,000 per year or not earning from waged income at all.
- ^{xiii} See <https://wbg.org.uk/wp-content/uploads/2018/12/Angela-OHagan-remarks-4-December-2018.pdf>
- ^{xiv} See <https://www.gov.scot/publications/wealth-and-assets-in-scotland-2006-2018/>
- ^{xv} Submission to Scottish Government [consultation on devolved taxes](#); Submission to the Finance Committee: [A Scottish Approach to Taxation](#)
- ^{xvi} See https://www.scottishhumanrights.com/media/2034/20_05_fincom_covid_publicfinances_humanrights_vfinal.pdf
- ^{xvii} See <https://www.independent.co.uk/news/business/news/scotland-tax-have-ban-coronavirus-bailout-fund-a9526006.html>; <https://www.theguardian.com/politics/2020/may/21/scotland-bans-covid-19-support-firms-tax-havens>; <https://www.taxjustice.net/2020/05/21/scotland-joins-wave-of-countries-blocking-tax-haven-tied-corporations-from-receiving-covid-19-bailouts-tax-justice-network-responds/>
- ^{xviii} A key partner in the Commission's human rights budget work project.
- ^{xix} See <https://derechospoliticafiscal.org/es/>
This is drawn from current work of the Initiative who are developing an instructive resource: Rights Principles and Guidelines in Fiscal Policy: <https://derechospoliticafiscal.org/index.php/es/principios-iii#principio-09>
- ^{xx} See <https://www.cesr.org/comprehensive-response-covid-19-demands-redistributive-fiscal-policies>
- ^{xxi} See <https://www.bloomberg.com/news/articles/2020-04-18/denmark-extends-business-aid-to-increase-spending-by-15-billion>
- ^{xxii} See <https://www.cesr.org/sites/default/files/OCDE%20Submission%20-%20Blast%20ES.pdf>
- ^{xxiii} See <https://derechospoliticafiscal.org/index.php/es/principios-iii#principio-09>
- ^{xxiv} See <https://committees.parliament.uk/work/465/tax-after-coronavirus/>