

# **Equalities and Human Rights Committee, Pre-Budget Scrutiny 2021-22 Inquiry**

**17 September 2020**

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

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## **Introduction**

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 that have been on the frontlines responding to COVID-19.

As the Committee is fully aware, the impact of the pandemic is not being felt the same by everyone. 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.<sup>i</sup>

The Commission has previously articulated how decisions taking Scotland out of lockdown must be guided by the scientific advice, however, 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>ii</sup>.

The Commission welcomes both the Committee's focus on scrutinising decision making processes, including the role of Impact Assessments and a focus on embedding equalities and human rights as part of our economic recovery through its scrutiny of the Scottish Government's Budget for 2021-22, as well as the opportunity to respond as part of its pre-budget scrutiny.

## **Making equalities and human rights central to budget decisions**

### **Scrutiny and fiscal transparency**

Understanding how allocated funds have been utilised is central to understanding the relationship between resource and impact. This issue

was raised by the Budget Process Review Group (BPRG) report<sup>iii</sup> in 2017 which made clear recommendations to improve scrutiny and the integration of equality and human rights. Fiscal transparency is critical to that process of scrutiny and accountability.

Research published by the Commission<sup>iv</sup> in late April 2020 showed that Scotland performs well when it comes to legislative and auditory budgetary oversight. However, the research also revealed that despite improvements made since the BPRG report, Scotland remains below what is considered to be acceptable by international best practice standards, with regards to fiscal transparency and public participation.

The research was completed prior to the emergence of COVID-19. However, its findings and recommendations are particularly relevant, as budgetary decisions responding to and recovering from the pandemic continue to be made in a rapidly changing fiscal climate. These decisions will have significant impacts on the ways in which resources are generated, allocated and prioritised, and the extent to which people's rights are respected, protected and fulfilled. The Commission's report included a series of recommendations, of which the following in Box 1, have particular relevance for Committees.

### **Box 1: Relevant Open Budget Index Recommendations**

- The Scottish Parliament should have access to all relevant budget documentation for Scotland and should put pressure on the government to produce those documents for future budgets. This is important as Scottish fiscal responsibilities continue to increase.
- Pre-budget scrutiny through legislative committees could be improved with a more explicit focus on outcomes-based scrutiny (notwithstanding progress made since 2017).
- Better legislative oversight is required during the implementation stage of the budget cycle.
- Parliamentary policy / subject inquiries could consistently and routinely address budgetary elements to improve budgetary focus and scrutiny.

## **Sufficiency of the equality and human rights budget**

With regard to the question of the sufficiency of the 2020-21 Equality and Human Rights allocation, the Commission has welcomed the increased revenue of this budget and the range of commitments that were included within 2020-21 budget documentation. The Commission would, however, like to raise an issue that lies in the question itself - that is - of the focus only on equalities and human rights resource within this budget allocation rather than across government portfolios. This call for evidence talks of making equalities and human rights central to budget decisions, but for this to happen, there needs to be an acknowledgement, reflected through the scrutiny process, that equalities and human rights have relevance in budget decisions that go beyond the budget allocation for equalities and human rights specific projects. Parliamentary Committees too, need to expand how they approach equality and human rights analysis, as an approach to policy making itself, rather than (solely) discrete areas of policy, programme and spend within the overall whole.

The current Programme for Government<sup>v</sup> talks of an intention to “*redouble our efforts to mainstream equality and human rights*”. This can only happen once there is a genuine understanding of what Scotland’s human rights obligations are and their relevance to policy development and resource allocation. “Embedding” human rights in budgetary decisions begins with law and policy. It’s part of a wider process within which the government is required to consider their human rights obligations as part of policy development, from which budgetary considerations follow. This means considering equalities and human rights across government portfolios, which does not currently happen.

One resource available to Committees to support this thinking is the Equality Fairer Scotland Budget Statement (EFSBS). The Equality Budget Advisory Group (EBAG) (of which the Commission is a member) has been encouraging Committees to consider how they use the EFSBS to support their work. Part of EBAG’s programme of improving processes, has included looking internally at how the EFSBS is used and how it can be built upon. Last year EBAG wrote to Committees to

ask for feedback on how they use it, in order to support improvements. We received few responses.

EBAG has been working with government and parliament to support them to achieve greater competence and visibility of equality and human rights analysis in practice. EBAG has written to Committee Convenors asking them to engage more directly in equalities and human rights analysis and has also held a number of constructive discussions with Scottish Government probing particularly on this issue and their corresponding impact assessment processes. The National Advisory Council on Women and Girls (NACWG)<sup>vi</sup> has also called for more 'gender competence' and an intersectional approach to policy making. The approach of the Social Renewal Advisory Board<sup>vii</sup> has sought to follow the direction to embed human rights and equality analysis as set out in the Scottish Government publication in May 2020 "COVID-19 – Framework for Decision Making: Scotland's route map through and out of the crisis"<sup>viii</sup>.

### **Ensuring stakeholder confidence that money is being allocated following due consideration of equality and human rights impacts**

It is important that the Scottish Government has been able to make quick financial decisions to support its economy, citizens and public services, at this difficult and uncertain time. It is equally and critically important that there is full transparency over the decisions that have been made to enable legislative, auditory and public oversight and ensure that the Scottish Government remains accountable for its decisions.

The Scottish Government must be held to account to provide regular and comprehensive updates about changes to its funding position, its spending decisions, and evolving budgetary risks. These updates should include an equality and human rights impact assessment (EQHRIA) of policy decisions, including budgetary ones, in order to fully understand the impact on individuals, especially the most marginalised. This analysis must also set out where previously committed funds are now no

longer being spent and the impact (and possible unintended consequences) of those changes.

EQHRIAs are 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. EQHRIAs can also help to support collection of the necessary data (and/or help to identify what is missing and necessary to be collected) to be able to measure impact. A lack of data, disaggregated data in particular, is not a new issue, but one that has been further highlighted as a result of the pandemic. In order to ensure effective human rights and equality monitoring, various UN Treaty Body Committees have repeatedly called on the UK (and Scotland) to put in place a system to better collate disaggregated data. This is further supported by the call for better data disaggregation as part of the delivery of the Sustainable Development Goals, in order to match the ambition that *'no one should be left behind'* and *'no target should be met, unless met for all groups'*.

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. As set out for the Advisory Group on Economy Recovery<sup>ix</sup>, these criteria include:

- maintaining those minimum services and standards necessary to enable a dignified existence
- prioritising the most vulnerable and ensuring no direct or indirect discrimination
- limiting the extent and duration of any retrogression. 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 in to 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.

EQHRIAs are also necessary pre-allocation and post-spend to ensure that budgetary allocations are being made where they are needed and spent / and having the impact as intended. It is clear that COVID-19 restrictions have resulted in the delay of some intended government spend (both on infrastructure and policies) e.g. the delayed expansion of early learning and childcare (ELC) hours from 600 to 1140 hours. The speed at which many of these decisions were made is understandable, however, this has meant that the potential impacts of such decisions have not been able to be fully considered pre-implementation.

For example in the case of ELC hours, the relevant policy note<sup>x</sup> to the legislation is restricted in detail to a high level recognition that there would be a negative impact, which was felt could not be impact assessed pre-implementation. This is recognised as a limitation by those in government responsible for this work, who anticipate that learning from this unprecedented experience will support a way to make processes in the future more manageable and meaningful at all times, and particularly when resource (both time and people) are under pressure.

Improving transparency in all areas of government decision making will be critical if it is to strengthen trust in the government through the pandemic and beyond towards Scotland's economic recovery. Good EQHRIAs will engage the participation of rights-holders which both improve the decisions made and help to build confidence that the decisions made are fair, especially in difficult financial times. Human rights based approaches can be of assistance to governments and public authorities, especially when difficult fiscal choices have to be made. By assessing the potential impact on human rights, including economic, social and cultural rights of a particular policy or legislative proposal, governments can make more informed, robust, proportionate and transparent decisions.

## **What should be done to ensure the realisation of embedding an equalities and human rights approach across government policy thinking and development for economic recovery and renewal?**

The Commission has very much welcomed the commitment to embedding equality and human rights at the heart of the government's response to this pandemic. There are numerous references in the Framework for Decision Making<sup>xi</sup>, public statements by the First Minister during her COVID-19 briefings; and the recent Programme for Government<sup>xii</sup> makes numerous references to strengthening their approach to equality and human rights across Government and mainstreaming equality and human rights.

The Commission has long advocated for taking a human rights based approach to policy development, 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)<sup>xiii</sup>.

Taking a human rights based approach to the budget 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 this 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<sup>xiv</sup>, exploring the resources required to improve rights realisation in accordance with Scotland's fiscal envelope.

In an environment where there are financial constraints, the 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.

While the commitment and narrative around taking a rights-based approach is important and welcome at the present time, there does not appear to be the necessary understanding across government to facilitate this and therefore, capacity building on taking a human rights based approach will be essential for the government to successfully achieve its stated goal of embedding equality and human rights at the heart of the government's response to this pandemic.

End.

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i COVID-19 in Scotland: <https://data.gov.scot/coronavirus-covid-19/index.html>

ii COVID-19 Committee Call for Evidence on Refining and Reducing Lockdown: <https://www.scottishhumanrights.com/media/2036/covid-committee-call-for-evidence-vfinal.pdf>

iii See [https://www.parliament.scot/S5\\_Finance/Reports/BPRG\\_-\\_Final\\_Report\\_30.06.17.pdf](https://www.parliament.scot/S5_Finance/Reports/BPRG_-_Final_Report_30.06.17.pdf)

iv The Open Budget Survey 2019 results for Scotland's 2017/18 Budget: <https://www.scottishhumanrights.com/media/2014/scotland-2019-obi-report-vfinal.pdf>

v See <https://www.gov.scot/programme-for-government/>

vi See <https://onescotland.org/equality-themes/advisory-council-women-girls/>

vii See <https://www.gov.scot/groups/social-renewal-advisory-board/>

viii See <https://www.gov.scot/publications/coronavirus-covid-19-framework-decision-making-scotlands-route-map-through-out-crisis/>

ix See <https://www.scottishhumanrights.com/media/2035/advisory-group-on-economic-recovery-call-for-views-vonline.pdf>

x See: The Children and Young People (Scotland) Act 2014 (Modification) (No. 2) Revocation Order 2020: <https://www.legislation.gov.uk/ssi/2020/136/policy-note/contents>

xi See <https://www.gov.scot/publications/coronavirus-covid-19-framework-decision-making-scotlands-route-map-through-out-crisis/>

xii See <https://www.gov.scot/programme-for-government/>

xiii See <https://www.scottishhumanrights.com/media/2035/advisory-group-on-economic-recovery-call-for-views-vonline.pdf>

xiv For example see the current UN recommendations relevant to COVID-19 for the UK [https://www.ohchr.org/Documents/Events/COVID19/Infographics/UNITED\\_KINGDOM\\_OF\\_GB\\_AND\\_NORTHERN\\_IRELAND.pdf](https://www.ohchr.org/Documents/Events/COVID19/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>