

## **Finance and Public Administration Committee Pre-Budget Scrutiny 2023-24**

**August 2022**

---

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.

[www.scottishhumanrights.com](http://www.scottishhumanrights.com)

---

## Introduction

The Commission welcomes the opportunity to respond to the Finance and Public Administration's Pre-budget scrutiny - **Scotland's public finances in 2023-24: the impact of the cost of living and public service reform**. The Commission also welcomes the decision by the Scottish Government to conduct a [Resource Spending Review](#)<sup>1</sup> covering the period 2022-23 to 2026-27.

The Scottish Government has the obligation to respect, protect and fulfil human rights. These obligations apply to all government activity, including decisions around resource generation, allocation and spend. In particular, there is the obligation to demonstrate the progressive realisation of economic, social, and cultural rights in Scotland. This requires the use of 'maximum available resources' to meet a minimum level of rights provision, progressively realise rights over time, and ensure retrogressive steps that reduce the fulfilment of people's rights are not deliberately taken nor necessary.

The Commission will therefore focus on the need for these obligations to be reflected within and fulfilled by the Resource Spending Review. In our responses, it is not appropriate for the Commission to comment on the specifics of government policy choices, but rather we focus on the process by which these policy choices should be determined in line with the government's human rights obligations.

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, these can be found [here](#)<sup>2</sup>.

## **Question 1:**

**The Scottish Government's Resource Spending Review assumes that the current taxation policies are maintained while funding for health and social care and social security is prioritised. Are these the right priorities and approach for the Scottish Budget 2023-24 and until 2026-27?**

This question essentially has two key components that the Commission wishes to address:

1. An assumption that the current taxation policies are maintained.
2. A rights-based process for resource allocation prioritisation.

### **Taxation policy**

The Committee's question states that the Scottish Government's Resource Spending Review (RSR) assumes that the current taxation policies are maintained. The RSR document does appear to indicate that decisions on taxation will be taken at the point that each budget is delivered, which therefore does not give any clear indication as to what the government's taxation plans are.

What can be inferred, however, is that the government have not considered their human rights obligations in delivering their RSR. As noted in the introduction, the government has an obligation to maximise its available resources in order to deliver on people's rights. This mandates consideration of resource generation in order to be able to take decisions on resource allocation.

Fundamentally, the right questions are not being asked and answered by the RSR. It should be addressing the structure of how we measure growth; how and who we are taxing to generate resources; and how we provide an evidence base for the fair distribution of resources in Scotland.

In Scotland the current approach to fiscal policy making (as is exemplified by the RSR and annual budget processes) sets out: the total forecasted resource; how that resource is planned to be allocated to different priority areas; a descriptive narrative of what the resource allocation aims to achieve; and more recently the broad national outcomes it relates to, but with no specific outcomes linking resource allocation and spend with impact, meaning no direct link to the aspirations and objectives set out in the National Performance Framework (NPF).

The Commission has previously argued that this process is back – to – front. First the government needs to set out what it is trying to achieve in terms of outcomes. From a rights perspective these outcomes need to be grounded in Scotland’s international human rights obligations and commitments, and stem from an assessment and analysis of the human rights concerns facing different groups within and across different social sectors (e.g. housing, health, education). The broad framing in the NPF needs to be more closely aligned with spending commitments in annual budgets and direction of travel in the RSR, scrutiny of outcomes, and the human rights obligations under international law.

The government’s policies would then be designed to respond to those concerns and an assessment made to ascertain the level of the resources required to deliver on those policies.

The government is further required to explore how to generate the necessary funds. Following allocation, the government should then monitor: whether the money was spent as planned and if process was followed for redistribution; what was delivered and to whom; and evaluate whether the policy was implemented as planned and what impact it had.

A fiscal framework that incorporates a human rights perspective takes a particularly broad view of the rights concept to include a wider spectrum of rights implicated by the design and implementation of fiscal law and

policy. This means that the human rights framework not only protects rights but promotes them.

Under the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which the UK is a signatory and Scotland intends to incorporate, States have the obligation to take steps towards the goal of the full realisation of all economic, social, and cultural rights. Therefore, States must devote the “maximum available resources” to ensure the progressive realisation of these rights as expeditiously and effectively as possible – this requires the effective, efficient, and equitable use of available resources, including potential resources that could be raised through reasonable efforts, such as taxation.

Therefore, by assuming that current taxation policies are maintained, this immediately undermines the development of a rights-based approach to taxation. In doing so, it limits the ability of government to understand the relationship between desired outcomes, resource generation, allocation and spend, and (un)intended impact.

Efforts and focus should be directed at engaging with a progressive tax system in which tax is viewed less as a political choice, but instead reflect the legal obligation to ensure public funds are sufficient to fund essential services, policies, and programmes for the fulfilment of people’s rights.

Taxation represents an indispensable policy instrument for mobilising additional resources without necessarily needing to sacrifice spending priorities. Starting from the assumption that we cannot increase the size of our budget will undermine Scotland’s commitments to human rights fulfilment. It also suggests limitations in the appraisal of tax policy options. There are a number of revenue raising tools that the Scottish Government could consider beyond income tax, including land value taxation, revaluation of property to support local tax reform, wealth taxes, and the revenue of the Crown Estates.

As the Commission has previously documented<sup>3</sup>, Scotland does not currently use the full extent of its taxation powers to generate resource in line with its human rights obligations. The RSR should clarify this and make sure that full consideration has been given to implementing targeted taxes to raise public resources to be allocated for upholding the rights of those most vulnerable in Scotland.

## **Rights-based resource allocation approach**

The RSR sets out prioritised spend in a range of areas. Health, social care, and social security are all essential areas of the welfare state and directly reflect corresponding human rights. They are appropriate areas of focus, particularly with the move to create a National Care Service. However, what is not clear from the RSR is what assessment has been made that these are the areas of public service that are most in need of public expenditure? The introduction of the National Care Service Bill as a 'framework' bill does not allow for close scrutiny of spending proposals, alongside the limited financial memorandum which does not include an extensive assessment of costs. A revised and additional assessment is due in August from the Scottish Government, and should be assessed for consistency with previous statements and future commitments of spend in the context of the progressive realisation of rights.

Taking a rights-based approach requires transparency over this decision-making process, sharing more detail on the assessment of why these areas have been prioritised over others (see Question 8 for further discussion on fiscal transparency). This is necessary in order to ensure that these are indeed the areas most in need, but also to ensure that the minimum core of rights are being delivered for all groups in other policy areas (legal obligation). For example, many of the front line services that deliver people's rights on a day-to-day basis are provided by local authorities and yet the RSR has set course for a local government decline of 7% in real terms between 2022/23 and 2026/27, leaving a

considerable shortfall and weakening of services at local government level.

It will be important when it comes to implementing the forthcoming Scottish human rights legislation, that the Scottish Government recognise that their responsibility to deliver the progressive realisation of rights, including the sub-duties of using the maximum available resources, fulfilling minimum core obligations, ensuring non-retrogression and non-discrimination cannot be devolved to the local level, without the allocation of adequate resources to fulfil those obligations.

Undertaking a rights-based approach to resource allocation also supports a more detailed analysis of the interdependency of rights – and enables an exploration of the links between rights and what outcomes they intend to deliver. For example, in examining the right to the highest attainable physical and mental health, consideration should be given to the impact that access to secure, affordable, habitable, accessible, and culturally adequate accommodation has on health and in turn the impact that that has for example, on a person's right to education or work.

The RSR mentions throughout the document, the potential role of 'preventative spend', especially in relation to health. However, the interdependency of rights highlights that many areas where preventative spending could have an impact on health would not necessarily feature within the allocation of health spending for example. It is therefore important that more holistic determinants of health and preventative health measures are explicitly connected through budget allocations.

[Audit Scotland's recent evidence](#)<sup>4</sup> to the Constitution, Europe, External Affairs and Culture Committee (CEEAC) highlighted the significant cutbacks over the last 10 years (by almost 30%) to culture and leisure services. They also noted that it is these council services focused on wellbeing and community connectedness, including community and culture services, which can reduce demand on other core health

services. A rights based approach to the RSR would necessitate a focus on recognising the interrelated nature of spend in many areas including health and wellbeing. Well-constructed impact assessments will help to think through the impact of resources allocated preventatively.

Resource generation, allocation, and expenditure should be driven by meeting rights-based outcomes. In other words, the RSR needs to set out what evidence base has been used to underpin the prioritisation of public funding for the coming Parliamentary term.

Question 6 discusses the role of the National Performance Framework and the need for connection to the budget in more detail, however, for the purposes of answering this question, it is important to note that the NPF needs to be connected to rights-based resource allocation.

Although there is a narrative on the NPF and National Outcomes present within the Equality and Fairer Scotland Statement (EFSS) that accompanies the RSR, it does not explore the prioritisation of resources through the lens of Scotland's National Outcomes. There are no direct connections made between allocated spend and the National Outcomes, and therefore the way that both the NPF and the RSR (and all budget documents) are currently constructed limits accountability because they do not allow for a transparent assessment of the impact of allocated or spent resources.

## **A time for change?**

It is almost 25 years since devolution and we are no longer in the same place or facing the same challenges. However, the budget process rolls over each year, with what could be described as some tinkering around the edges of process improvement. What is required is a commitment to something more radical. Whilst acknowledging the limitations that do exist within the devolved context, these should not continue to overshadow Scotland's potential within the powers that it does have. There is a need to be politically bold in the way we design our resource generation, allocation and spend.

The Scottish Government has committed<sup>5</sup> to new legislation incorporating a range of UN treaties<sup>6</sup> into Scots law. Successful implementation will require dedicated resources<sup>7</sup>. Emerging from the COVID-19 Pandemic, it is clear that Scottish society is not functioning that well right now. COVID-19 magnified the structural inequalities already facing many people in Scotland<sup>8</sup>, with intersectionality magnifying these impacts further<sup>9</sup>. The time is ripe for transformative process change.

A Human Rights Based Approach could provide that change by supporting the distribution of resources in a way that puts people first. It involves thinking through what is required to how people's rights are impacted by the way that money is raised, allocated, and spent.

## Question 2

**The Scottish Fiscal Commission (SFC) notes that Scottish income taxes have grown more slowly than the rest of the UK and is forecasting Scottish taxes to be around £360 million less in 2023-24 than they would be without income tax devolution. The SFC is also forecasting that, as a result of forecast error, the Scottish Budget in 2023-24 could be £221 million lower. How should the Scottish Government's Budget 2023-24 respond to this challenge?**

Public finances in Scotland are increasingly complex and currently difficult to forecast. There is an expectation of some difference between the economic impact in Scotland and the rest of the UK. The forthcoming review of the Fiscal Framework will be enhanced by understanding of how well the Framework responded to the major economic crisis resulting from the Pandemic. A thorough evaluation of the Fiscal Framework's strengths and weakness in response to COVID-19 will support its improved development.

The review will need to address amongst other things, the limited borrowing powers available to the Scottish Government in order to deal with fiscal uncertainty and volatility; the timing of reconciliations between different indexation mechanisms; the timing and methodologies underpinning Scottish tax forecasts, and the timing of the calculation of some aspects of the Block Grant Adjustments.

In responding to the impact of the current forecasting error, the Commission draws attention to two issues:

1. The distributive character of resources
2. Tax evasion and avoidance in Scotland and the UK

## The distributive character of resources

In her report to the United Nations, the then UN Special Rapporteur on Extreme Poverty and Human Rights Magdalena Sepúlveda Carmona stated that:

*States must devote the “maximum available resources” to ensure the progressive realization of all economic, social and cultural rights as expeditiously and effectively as possible, even during times of severe resource constraints, whether caused by a process of adjustment, economic recession or other factors. This principle should guide the State’s decisions and priorities in generating, mobilizing and allocating resources in order to permit the realization of human rights.*<sup>10</sup>

States are granted a ‘wide measure of discretion’ to determine the resources to be set aside to promote the realisation of rights. Nevertheless, ‘due priority’ should be given to the realisation of rights in allocating resources and resources should be allocated in a way that is ‘equitable and effective’.

From a human rights perspective, if resources were spent more equitably and efficiently on rights outcomes, having less of an overall fiscal envelope would not have as big an impact as it does. (See Question 1 for further information on the process of resource allocation from a human rights perspective).

To ensure equitable and efficient spend, it is critical that resource allocation and spend can be scrutinised by the Scottish Parliament, government and public to monitor and evaluate the impact of those spending decisions in relation to the stated/desired outcomes. The causes of a poor human rights situation can be multiple and are often clustered. Scrutinising resource allocation and spend for impact, can help to identify if budgetary choices are one of those causes.

## Tax evasion and avoidance in Scotland and the UK

Whilst appreciating that there may be limited ability to have an immediate impact to respond to this challenge faced within budget 2023-24, it is important to explore tax evasion and avoidance and the impact that this has on available resources.

The cost of tax evasion to the Scottish fiscal envelope has been estimated to range from £3-7 billion<sup>11</sup>. This figure dwarfs the resources estimated to be lost through the current SFC forecasting error.

Scottish and UK Government efforts to promote human rights are meaningless without an adequate effort to collect the necessary funds to provide for basic public services. A State or devolved administration that does not take strong measures to combat tax abuse is not allocating the maximum available resources to the realisation of economic, social and cultural rights.

Given that evaders end up paying less than taxpayers with the same or less capacity to pay, both tax evasion (illegal) and tax avoidance<sup>12</sup> do not only undermine the fiscal base, but the principles of equality and non-discrimination. Tax is a tool to enable the redistribution of resources fairly around Scotland and its evasion undermines this as a basic principle.

The former UN Independent Expert on Extreme Poverty and Human Rights noted that tax abuse is:

*'not a victimless practice; it limits resources that could be spent on reducing poverty and realizing human rights, and perpetuates vast income inequality'*<sup>13</sup>.

Moreover, human rights law is clear that even in times of severe resource constraints – whether caused by a process of economic adjustment or recession – the vulnerable members of society must be protected. Therefore, a fiscal policy should ensure equality, through

being progressive and assisting the most disadvantaged individuals and groups in society.

It is therefore in the interests of the Scottish fiscal envelope to explore compliance and accountability in relation to tax avoidance within devolved competency and to consider what further discussions are required with the UK Government and HMRC in relation to tax evasion (as the Block grant would be larger if resources lost to tax evasion was reduced).

For example, although Revenue Scotland itself has no role in the collection of Scottish Income Tax, the Scottish Government does pay the HMRC to provide this service through a Service Level Agreement (SLA). Whilst the default position of HMRC is that they provide the same level of service to taxpayers in Scotland as they do to those in the rest of the UK, provisions within the SLA do allow for the Scottish Government to discuss further compliance work with HMRC. Investment in improved compliance is something that should be considered as a means to influence significant returns.

## Question 3

### **How should the Scottish Government respond to inflationary pressures and the cost of living crisis in its Budget 2023-24?**

In order to respond to inflationary pressures and the cost of living crisis in its Budget 2023-24, the 'cost-of-living crisis' should be reframed in relation to Scotland's rights obligations. The cost of living is directly related to the right to an adequate standard of living and has the potential to undermine a broad range of economic and social rights.

Referring to the 'cost of living crisis', gives the impression that everyone is similarly affected. It is important to remember that it is the most vulnerable people who are being pushed into poverty in some or all of its forms, which impacts on their access to the resources (fuel, food, housing and clothing) required to live a life of dignity. The predominant media narrative that this crisis has been caused solely by international pressures (inflation / Ukraine) is a displacement of accountability over a poorly handled economy and prevailing contractionary (austerity) fiscal policy over the last 12 years.

Recent profits disclosed by energy and fossil fuel firms demonstrate these pressures are being directly passed onto consumers creating insecurity for millions of people in Scotland alone. Individual circumstances, family and household structures, are also exacerbated by gender, race, age, and disability. Public policy and public finance interventions should be responsive to the equality dimensions, and as per human rights principles ensure that there is no discrimination in policy or legislative action.

Currently, the limit on the ability for Scottish Government to borrow money to invest in the future causes a significant and structural problem. It effectively means that in terms of recovery, the same options available to other nations are unavailable to Scotland. This is an area that requires specific consideration through the forthcoming review of the

Fiscal Framework and highlights the importance for constructive discussion between the Scottish Government Finance Team and the UK Government Treasury.

One immediate option is for the Scottish Government to proactively discuss windfall taxes on company profits with the UK Government. Exploration of how these could and should be put in place to aid recovery from the inflation aftermath of the pandemic spending must take place.

However, if resource generation is not an immediately available option due to real or political limitations on tax options, human rights obligations require the need for a better distribution of the available resources in Scotland to ensure minimum core obligations are maintained and prioritised over non-essential areas of spend.

In terms of inflationary pressures, whilst the Scottish Government might be limited in terms of macro-economic policy, it needs to consider what other policy levers it has that could be utilised. For example, through investment in: labour market participation; specific areas of the economy, including the care economy and care infrastructure; social security payments and the mitigation policies such as: council tax rebate, social protection policies around bedroom tax and fuel poverty and so on. Considering these options would all be an essential part of taking a Human Rights Based Approach to the process of establishing resource priorities.

## **Question 4**

**The Spending Review identifies key areas of reform over the lifetime of the Parliament to support its priorities in the Spending Review, including delivering efficiency savings across the public sector. How should the Scottish Government approach each of these areas to achieve efficiencies while also maintaining effective public services?**

- **digitalisation**
- **maximising revenue through public sector innovation**
- **reform of the public sector estate**
- **reform of the public body landscape**
- **improving public procurement**

Whilst a Human Rights Based Approach supports the effective and efficient use of resources, it is important to highlight the context of this question. There needs to be further clarity as to what 'efficiency' means and delivers in practice. Public bodies and services have been asked for more than a decade to provide efficiency savings. 'Efficiencies' in reality often means cuts, and cuts mean that maintaining effective public services will be extremely difficult. This has the potential to undermine the progressive realisation of rights through the need to adopt regressive measures on service delivery.

From a Commission perspective, a process of ensuring efficiency and effectiveness must take a Human Rights Based Approach. Any efficiency measures taken must ensure that the Government is still able to respect, protect, and fulfil people's rights as described in answer to Questions 1-3.

A further concern with this question is the focus of the question, 'how' should the Scottish Government approach each of these areas? The way the question is framed is not inviting what do people think about this, it is asking, how can they do it? We feel that the role here is to scrutinise the appropriateness of the Scottish Government's options for making efficiencies, rather than suggesting how they should achieve them.

In response to Question 1, this submission refers to need to amend the approach taken to the RSR with an outcomes focus (rather than being input driven) and through a human rights lens. Resource generation and the tools available for it should be maximised before we begin again looking at efficiencies. Therefore, our initial response to this question is, is this being framed in the right way?

Drawing on two of the areas listed, the Commission wishes to raise some issues requiring further consideration.

## **Digitisation**

The digitisation of public services has got the potential to integrate more efficient and cost-effective systems when carried out in an assessed and targeted manner. However, it also raises serious potential risks in relation to civil and political rights (privacy, non-discrimination, accessibility amongst others), as well as discrimination within the welfare system.

In this regard, we suggested the Committee review the [work<sup>14</sup> of Philip Alston](#) (former Special Rapporteur on extreme poverty and human rights) on the issues of digital technologies in the welfare state. His work has highlighted that whilst "*systems of social protection and assistance are increasingly driven by digital data and technologies that are used to automate, predict, identify, surveil, detect, target and punish*", at the same time big technology companies are operating in an almost human rights-free zone.

There has also been recent [case law](#)<sup>15</sup> from the Netherlands on algorithms in their welfare system discriminating against those from ethnic minority backgrounds in specific neighbourhoods. The design of the algorithm reinforced existing institutional bias of a link between race and ethnicity, and crime, as well as generalising behaviour to an entire race or ethnic group. The result was a discriminatory loop with non-Dutch nationals flagged as potentially committing fraud more frequently than those with Dutch nationality. These discriminatory design flaws were reproduced by a self-learning mechanism that meant the algorithm adapted over time based on experience, with no meaningful human oversight.

The [Digital Welfare State and Human Rights Project](#)<sup>16</sup> is also undertaking research to further the theoretical and practical understanding of the phenomenon of the Digital Welfare State, and the implications of the emergence of these systems of governance for the protection of individuals' human rights.

Any digitisation of services needs to be done very carefully with full impact assessments carried out for any change in service.

## **Improving public procurement**

A considerable amount of public resource in Scotland is spent through public procurement (£13.3 billion in financial year 2020-21). As with the use of any public money, resource spent through public procurement should be subject to robust equality and human rights analysis, just as we are asking for across the rest of the budget and spending within different public authority. Public money spent through procurement will be more effectively used if the process is designed from a human rights based approach.

The public procurement process should also allow for alignment to be made between procurement and the national performance framework in

order to show what National Outcomes will be impacted by contracted resources.

Looking at public procurement through a human rights lens means examining how the system is being used, asking if it is transparent and accountable? In order to scrutinise the procurement process and assess its impact the greater openness and transparency around budget and finance decisions envisaged by the Christie Commission are yet to be realised.

There needs to be a focus on whether the process can be used in a more transformational way? For example, is it possible to include conditionalities in public contracts that support rights promotion and protection? Can public contracts be designed from the outset to advance equality and secure the realisation of rights, both in terms of the contract and those employed within the contract, and the nature of the services, in their design and their composition and modes of delivery?

At the local level, there are also concerns about the overall balance between public and private delivery of essential services. The public sector has been reduced to such an extent they simply can't deliver statutory duties without reliance on expensive and often poor-quality private procurement. This is a structural issue that needs to be addressed, with which better regulation is needed, but is only part of the answer.

## **Question 5:**

**How effective do you think these reforms will be in delivering efficiency savings in the Scottish Budget 2023-24, and beyond? If you have additional or alternative priorities for achieving efficiencies (for example within your public sector area), please provide details.**

In answer to the first part of this question, as per Question 4, it is the position of the Commission that in order for a programme of efficiency savings not to have a retrogressive impact on the delivery of rights, it is important that the Scottish Government take a Human Rights Based Approach to any process of ensuring efficiency and effectiveness. As efficiencies may lead to regressive measures being imposed on rights realisation, this will require an extra justificatory burden to demonstrate that other possible avenues for continuing the level of service have been discussed by the Scottish Government.

Any efficiency measures taken must ensure that the Government is still able to respect, protect, and fulfil people's rights as described in answer to Questions 1-3.

While efficiency of expenditure is an essential budgeting principle, at this stage, the Commission would argue that the Scottish Government's focus would be more effectively spent on seeking to raise revenue than to believe the funding gap can be closed through efficiency. Not doing so simply reflects an 'austerity mindset' continued.

With regard to the second part of the question, there are also two areas that have the potential to create inefficiencies that should also be addressed by the Scottish Government:

1. Local Government finance arrangements
2. Preventative Spend

## **Local Government finance arrangements**

The first of these is focused on the relationship between national and local government. Early findings from PhD research by Aidan Flegg<sup>17</sup>, has raised concern about a number of issues in the way that the current relationship between national and local government works to effectively create significant inefficiencies. Impacts from issues such as directive spend, national targets vs local need, short planning cycles, as well as cash and real term cuts (the Local Government core settlement has seen a real terms reduction of 15.2% since 2013/14). As many of the services that deliver on people's rights are those provided at the local level, Local Authorities play a key role in delivering on the Scottish Government's obligations to protect, respect and fulfil people's rights. They must, therefore, be provided with adequate resources to do this. Responsibility for meeting the minimum core and delivering progressive realisation cannot be devolved to Local Government without the resources to fulfil.

COSLA has also raised concern for many years, over the use of one year versus three year budgets which impacts on the ability to plan effectively. The key issue being that multi-year settlements are required to maximise the positive impact of public spending and create a Best Value Approach.

There is also concern about the impact of new policy announcements part way through the financial year. This process often fails to take account of what is happening locally and is therefore at increased risk of creating inefficient spend.

### **Preventative Spend**

The RSR has identified a number of ways in which the Scottish Government will be exploring how to get best value out of Scotland's public spending, including a focus on preventative spend, in line with the principles of the Christie Commission. The Commission agrees that a

greater emphasis on investment in prevention is critical to rebalance budgetary spend to tackle many of the systemic issues that have been placed under a magnifying glass due to COVID-19. Our recent evidence to the Council of Europe [European Social Charter](#)<sup>18</sup> and the UN [Universal Periodic Review](#)<sup>19</sup> has highlighted a wide range of areas of concern such as: physical and mental health inequalities, drug deaths, healthy life expectancy, child poverty, homelessness and climate change impacts on infrastructure and health and wellbeing, where preventative spend would support better outcomes and reduce reactive spend. One example of savings created by preventative spend has been researched by the [London School of Economics](#)<sup>20</sup>. They have estimated that focusing on the prevention of poor mental health could save £8.8 billion annually in Scotland.

However, this RSR ambition to focus on preventative spend must be matched with concrete detail about what exactly is meant by a 'demonstratable preventative approach' and there needs to be an indication of what resources are to be dedicated to preventive policy. The RSR presents a lot of narrative about preventative spend, but this is not currently backed up with a connection to resource allocation.

There must also be more information on how policies are assessed for preventative impact, with explicit analysis within the RSR and ongoing mechanisms in place to monitor and evaluate the impact of preventative spend.

## Question 6

### **What impact will the Spending Review priorities have on the delivery of national outcomes in the National Performance Framework?**

Resource spending in Scotland is not aligned with desired outcomes and therefore it is hard to align the RSR priorities with delivery of the National Outcomes.

The Equality Fairer Scotland Statement (EFSS) does set out a dedicated section on National Outcomes and has made a good effort to provide narrative connections to some of the relevant rights and the nine areas of opportunity/concern. However there is limited information to enable any measurable links between resources and the National Outcomes. This is the same for the main Scottish Budget and associated documentation. There are no current documents produced by the Scottish Government that make explicit resource allocation links to the National Outcomes.

The NPF is described as an Outcomes Framework for Scotland, and the responsibility for delivering on this is not limited to the Scottish Government, but rather is shared by national and local government, businesses, voluntary organisations and people living in Scotland. Indeed this is promoted as one of its strengths.

The government states that it will focus activities and spending to help meet National Outcomes as well as working with the wider public sector and others to help them work in a way that meets these outcomes. As a shared endeavour, however, this enables a blurring of direct accountability for resourcing and delivery of the National Outcomes.

The NPF National Outcomes are currently at the start of their periodic review process. If we are to be able to show the impact of the Spending Review priorities, or indeed any budgetary commitments, it is essential

that the National Outcomes and corresponding indicators are used as a framework from which to prioritise resource allocation. The NPF is currently not used well by Public Authorities across Scotland. As highlighted in the report from the Equality and Budget Advisory Group (EBAG) to the Scottish Government, immediate action is necessary to improve internal communication, and to address internal organisational culture issues that work against maximising collaborative working across departments and functions. EBAG are anticipating a response from the Scottish Government which will of course be available to the Committee.

For spend to have a measurable impact on improving National Outcomes, it must be underpinned by an original assessment of the current status of NPF outcomes and focus, how resources are allocated to priority areas, and how resources are prioritised towards areas that NPF results show are doing poorly. To connect focused activity to resource allocation and spend from a rights perspective, the NPF also needs to meaningfully engage with the international human rights framework. This is critical if the Scottish Government is to successfully implement its new human rights legislation.

The Scottish Government, in its review of the NPF should consider redesigning it in line with the budget. If Scotland is going to have an outcomes focused approach to decision- and policy-making, then they have to be designed together with processes and purpose, in tandem with one another. At the moment, efforts are made to bring the two together and make them speak to each other. However, it is not realistic to expect two processes designed by two different teams in two different areas of government to know how to talk to each other.

This takes us back to the point raised in answer to Question 1 on how the Scottish Government approaches budgetary decision making. If we are saying that the National Outcomes are the key concerns to be addressed, then the annual Programme for Government and the Budget need to be aligned with them. Starting with what outcomes we are trying to achieve, assessing what is required in terms of policy and resources

to achieve those outcomes and then exploring what resource generation is required to fund that?

For further information on the Commission's views on the NPF and how it could be transformed, please see the Commission's previous [submission](#)<sup>21</sup> to the FPA Committee's inquiry into how the National Outcomes shape Scottish Government policy aims and spending decisions, and in turn, how this drives delivery at national and local level.

## Question 7

### **How should the Scottish Government target spending in its budget to achieve net zero targets?**

As with any area of budgetary spend, it is important to start with a process of desired impact assessment, starting from desired outcomes working backwards to necessary inputs and methods of sufficient resource generation. What is it that the government is seeking to achieve in terms of outcomes? What is required in terms of policy and resources to achieve those outcomes? And then exploring what resource generation is required to fund these aims and requirements.

At this point in time, with the challenges presented by inflation and the cost of living 'crisis', it is understandable that actions in this space, where governments want to be providing support. However, it is critical that grave concerns over longer term sustainability are not lost in these immediate pressures, because prevention of further climate change and reaching net zero targets cannot be further delayed. If these are not tackled now, with effective preventative measures, the future, financial, human and planetary costs will be significantly higher. The cost of living crisis also highlights the need to ensure that fairness is built into the delivery of decarbonisation and implementation of measures towards net zero.

The recent extreme record breaking temperatures in Scotland (and the rest of the UK) has brought into sharp focus, the current infrastructure's inability to cope with extreme temperatures. The [3rd UK Climate Change Risk Assessment](#)<sup>22</sup> revealed that the urgency scores for 25 risks from climate change in Scotland have increased since the previous CCRA five years ago. Only one risk has decreased and some new risks have emerged.

The report makes concerning reading when considering the links between the climate change risks and the right to health and life. It notes

for example that the increasingly frequent extreme temperatures, such as those recently experienced, are not being adequately considered in key housing and buildings strategies – noting that our current public housing stock, hospitals, schools and prisons are not designed to cope with such extremes. In terms of human rights obligations, this means that current policy and spending are not securing the realisation of rights or maximising available resources in the pursuit of securing rights.

There are also no plans to respond to climate change-induced increases in ‘vector-borne’ diseases, such as Lyme disease. This is despite a notable increase in cases in recent years.

The [CCC](#)<sup>23</sup> also stated that whilst Scotland’s climate is changing, action to adapt to critical impacts such as wetter winters and rising sea levels has stalled, posing risks to people, infrastructure and business.

The [Just Transition Commission](#)<sup>24</sup> has noted that the current economic and social situation highlights the lack of resilience in the Scottish system and as noted by the CCC, there is a need for an overhaul of Scotland’s infrastructure to support its energy transition and delivery of net zero goals. They also highlight the huge opportunity that this presents to Scotland:

*“If we create policy to achieve high economic, climate and social returns, driving investment in industry, innovation, skills creation and regional development, we can build a clean, value-generating economy for the future. But we need to deliver at pace. The Commission is looking for early indicators of serious ambition to show that transformational change will be achieved”.*

The report covers a wide range of areas with concrete expectations and recommendations for government that need to be addressed.

In addressing those recommendations it is imperative for the government to consider the potential impact of the growth in green jobs on women’s labour market equality in a “just transition”. As it stands,

evidence<sup>25</sup> suggests that it is “men’s jobs” which will disproportionately benefit from further investment in green jobs and sectors. Consideration must also be given to investment in the care economy with an understanding that investment in care is part of the green economy. Care jobs, are green jobs<sup>26</sup>. Analysis by the [Women’s Budget Group](#) suggests that investment in the care industry could be around 30 per cent less polluting than the equivalent investment in the construction industry. This investment would also create 2.7 times as many jobs. However, limited consideration has been given to the potential significance of this or the potential positive impact of implementing large scale investment in all forms of green social infrastructure, including for childcare and social care.

## Question 8

**How has the Scottish Government reflected its commitment to fiscal transparency in the Spending Review and how can it best ensure that spending in the Budget 2023-24 can be properly identified and tracked?**

As the Commission's previous work on [Open Budgets](#)<sup>27</sup> and fiscal transparency has shown, the lack of transparency in the Scottish budget to date is problematic. There has been welcome progress in the last year, with the creation of the 5-year fiscal transparency project led by the Scottish Exchequer and the inclusion of fiscal transparency goals within the [Open Government Partnership Action Plan](#). However, given this acknowledgement and the current focus on the need for fiscal transparency, it is all the more disappointing that the first spending review in almost 10 years lacks transparency.

Whilst it is understandable why the RSR can only provide Level 2 data for years 3 and 4 of the review, it is not sufficient in terms of transparency to only provide Level 2 data for the forthcoming two years. As the Fraser of Allander have already noted, many organisations such as SEPA, Health Boards, and Zero Waste Scotland are unable to see what specific allocation they may receive.

There is one mention of human rights in the RSR, on page 52. Nowhere in the document is there acknowledgement of the Scottish Government's commitments to UNCRC implementation or the forthcoming human rights legislation which plans to incorporate several international human rights treaties into Scots law within this parliamentary term. Both of these pieces of legislation will require significant resource to implement successfully. If the Scottish Government is to stand by its goal of becoming a World leader in human rights leadership, it has to be explicit about this in its budgeting, including in the publication of the RSR.

The RSR Equality Fairer Scotland Statement states that "*We have*

*considered equality, fairness, and human rights impacts throughout the spending review process*". That is not clear to the Commission.

The Commission is a member of the Equality and Budget Advisory Group who have also noted that transparency around decision-making could be improved by making it easier to locate Impact Assessments on the Scottish Government website. It is important for transparency of decision making that such impact assessments are undertaken in order to inform and support the decision making processes in a consistent and easy to access manner and not completed after decisions have already been taken. EBAG has previously raised concern that some Scottish Government initiatives appear to retrofit Equality and Human Rights Impact Assessments to the process rather than integrating them as core parts of the design, development and decision-making.

A fundamental aim of human rights based budget work is that human rights standards shape the goals of a budget and human rights principles shape the process of budgeting in all its phases. One of these key principles is transparency. Transparency is a window into the budget execution of the government, helping the general public to hold the government to account and yet fiscal policies are perceived to be inaccessible to most people.

Fiscal transparency requires the provision of comprehensive and accurate information on past, current and future activities of the government, and the availability of such information can help to improve the quality of decision making processes. It is an important element in the effective management of public finances, and it helps to build the confidence of the general public in the work of public bodies, thereby contributing to the sustainability of public policy implementation.

Some of the measures that can enhance transparency are: the adoption of laws ensuring the public's access to information on governmental processes, decisions and policies as well as institutional reforms on operating procedures and decision-making processes. Transparency is

an important human rights principle that supports efficiency, especially in relation to both the design and greater disclosure of information over tax incentives. Accessible mechanisms for complaints and redress should also be put in place as part of both transparency and accountability principles.

The Open Budget Survey is the world's only independent, comparative, and fact-based research instrument to measure (by international best practice standards) the essential aspects of budgetary governance and accountability, namely participation, oversight and transparency. The survey has a rigorous objective methodology and is subject to independent peer review. Unfortunately they do not undertake reviews of sub-national budgets. However, the International Budget Partnership are very supportive of sub-national reviews being performed utilising their survey's methodology. This is what the Commission did in 2019. At this time the Commission [highlighted](#)<sup>28</sup> that four of the eight recommended budgetary documents were not publicly available. Transparency requires these documents to be available (published) and also to be accessible (appropriate formats for different groups). These documents remain unavailable.

The Scottish Government should commit itself to undertaking the Budget Survey in line with the international survey methodology (every 2 years) to assess the transparency of their budget cycle against global comparators. Where recommended documents are not produced and disseminated publicly, work should be undertaken to assess where further documents can be made available. The work carried out by the Commission<sup>29</sup> would serve as an example of how this can be done.

End

---

<sup>1</sup> See: <https://www.gov.scot/publications/scottish-resource-spending-review/#:~:text=Published%2031%20May%202022&text=The%20Resource%20Spending%20Review%20is,focused%20on%20delivering%20our%20outcomes>.

<sup>2</sup> See: <https://www.scottishhumanrights.com/projects-and-programmes/human-rights-budget-work/>

<sup>3</sup> See: <https://www.scottishhumanrights.com/media/2235/tax-policy-and-the-budget-a-framework-for-tax-shrc.pdf>; <https://www.scottishhumanrights.com/media/1882/shrc-response-to-scottish-government-consultation-on-devolved-tax-policy-framework.docx>; <https://www.scottishhumanrights.com/media/1697/shrc-submission-to-finance-committee-sep2016.doc>

<sup>4</sup> See: <https://www.parliament.scot/chamber-and-committees/official-report/what-was-said-in-parliament/meeting-of-parliament-17-03-2022?meeting=13656&iob=123934>

<sup>5</sup> See recommendations from the First Minister's Advisory Group on Human Rights Leadership: <https://humanrightsleadership.scot/>

See recommendations from the National Taskforce for Human Rights Leadership:

<https://www.gov.scot/groups/national-taskforce-for-human-rights-leadership/>

The Scottish Government has also accepted all recommendations for the new Human Rights Bill, see: <https://www.gov.scot/news/new-human-rights-bill/>

It has also restated a its commitment to all 30 recommendations in its Programme for Government and its plans to consult within next 14 months, see:

<https://www.gov.scot/publications/fairer-greener-scotland-programme-government-2021-22/>

<sup>6</sup> The Taskforce's key recommendations on rights to be included within the framework include the following, so far as possible within devolved competence:

- Reaffirming the relevant rights in the Human Rights Act;
- Incorporation of the International Covenant on Economic, Social and Cultural Rights
- Incorporation of the Convention on the Elimination of All Forms of Discrimination against Women
- Incorporation of the Convention on the Elimination of All Forms of Racial Discrimination
- Incorporation of the Convention on the Rights of Persons with Disabilities
- A right to a healthy environment for everyone
- A right of older people to a life of dignity and independence
- Equality rights for LGBTI people.

<sup>7</sup> Sufficient resourcing will be required for capacity building and a commitment to the maximisation of available resources will be required in order to deliver progressive realisation.

<sup>8</sup> See:

<https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2020/09/the-impacts-of-covid-19-on-equality-in-scotland/documents/full-report/full-report/govscot%3Adocument/Covid%2Band%2BInequalities%2BFinal%2BReport%2BFor%2BPublication%2B-%2BPDF.pdf>

<https://nationalperformance.gov.scot/scotlands-wellbeing-impact-covid-19-chapter-4-communities-poverty-human-rights>

<https://www.resolutionfoundation.org/publications/the-economic-effects-of-coronavirus-in-the-uk/>

<https://fraserofallander.org/what-does-todays-labour-market-and-universal-credit-data-tell-us-about-the-impact-of-covid-19-on-scotland/>;

<https://fraserofallander.org/emerging-indicators-of-impacts-of-covid-19-on-the-economy-and-households-in-scotland/>;

<https://fraserofallander.org/the-economy-remains-on-life-support-but-its-pulse-is-still-beating-latest-real-time-indicators-of-the-scottish-economy/>;

<https://fraserofallander.org/what-can-the-universal-credit-data-tell-us-about-local-impacts-in-scotland/>;

<https://fraserofallander.org/what-do-the-latest-indicators-tell-us-about-the-impact-of-the-coronavirus-on-the-scottish-economy/>

---

<https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/114973.aspx>  
<https://www.resolutionfoundation.org/publications/growing-pains-the-impact-of-leaving-education-during-a-recession-on-earnings-and-employment/>

<sup>9</sup> See <https://data.gov.scot/coronavirus-covid-19/equality.html>

<sup>10</sup> Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, pg7 Available online at [http://www.justiciafiscal.org/wp-content/uploads/2014/06/A\\_HRC\\_26\\_28\\_ENG.pdf](http://www.justiciafiscal.org/wp-content/uploads/2014/06/A_HRC_26_28_ENG.pdf)

<sup>11</sup> These figures are drawn from previous work on human rights budget work by the Commission as part of an EU funded project in 2018. In order to extrapolate a tax evasion figure for Scotland and assuming deviant behaviours are consistent across the UK, the UK evasion estimates have been multiplied by Scottish GDP as a percentage of UK GDP. On this basis, the average Scottish tax evasion figure could be somewhere between £3Bn and £7Bn per annum (HMRC and Tax Research respectively) Measuring the Tax Gap HMRC; Tax Research: Richard Murphy

[Measuring tax gaps publications - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/measuring-tax-gaps-publications)

[Richard Murphy on tax, accounting and political economy \(taxresearch.org.uk\)](https://www.taxresearch.org.uk/publications/richard-murphy-on-tax-accounting-and-political-economy)

<sup>12</sup> HMRC define tax avoidance as “exploiting the tax rules to gain a tax advantage that Parliament never intended”.

<sup>13</sup> Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona. A/HRC/26/28

<sup>14</sup> See [https://documents-dds-](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/312/13/PDF/N1931213.pdf?OpenElement)

[ny.un.org/doc/UNDOC/GEN/N19/312/13/PDF/N1931213.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/312/13/PDF/N1931213.pdf?OpenElement)

<sup>15</sup> See <https://www.amnesty.org/en/latest/news/2021/10/xenophobic-machines-dutch-child-benefit-scandal/>

<sup>16</sup> See <https://chrgj.org/focus-areas/technology/digital-welfare-state-and-human-rights-project/>

<sup>17</sup> Aidan Flegg is in his final year of a collaborative research PhD which is being supported and supervised by Dr Alison Hosie (Scottish Human Rights Commission), Professor Katie Boyle (University of Stirling) and Dr. Joanna Ferrie (University of Glasgow). His work explores the development of a Minimum Core for Scotland in advance of the incorporation of international human rights treaties into Scots law.

<sup>18</sup> See <https://www.scottishhumanrights.com/media/2211/coe-european-social-charter-2021-shrc.pdf>

<sup>19</sup> See <https://www.scottishhumanrights.com/media/2303/shrc-submission-upr-2022-vfinal.pdf>

<sup>20</sup> See <https://www.mentalhealth.org.uk/explore-mental-health/publications/economic-case-investing-prevention-mental-health-conditions-UK>

<sup>21</sup> See <https://www.scottishhumanrights.com/media/2304/fpac-npf-submission-29032022.pdf>

<sup>22</sup> See <https://www.theccc.org.uk/publication/independent-assessment-of-uk-climate-risk/>

<sup>23</sup> See <https://www.theccc.org.uk/2022/03/15/scotland-is-not-yet-climate-ready/>

<sup>24</sup> See <https://www.gov.scot/publications/making-future-initial-report-2nd-transition-commission/>

<sup>25</sup> See for example: <https://www.closesthegap.org.uk/news/blog/making-sure-a-green-economy-also-works-for-women/>

<sup>26</sup> See <https://www.engender.org.uk/news/blog/guest-post-a-recovery-plan-which-works-for-women-also-works-for-the-planet---/>

<sup>27</sup> See <https://www.scottishhumanrights.com/media/2014/scotland-2019-obi-report-vfinal.pdf>; and [https://www.scottishhumanrights.com/media/2024/20\\_05\\_obi-report-msp-letter\\_vfinal.pdf](https://www.scottishhumanrights.com/media/2024/20_05_obi-report-msp-letter_vfinal.pdf)

<sup>28</sup> See <https://www.scottishhumanrights.com/media/2014/scotland-2019-obi-report-vfinal.pdf>

<sup>29</sup> See <https://www.scottishhumanrights.com/media/2014/scotland-2019-obi-report-vfinal.pdf>