

Equality, Human Rights and Civil Justice Committee Pre-Budget Scrutiny 2023-24: The Impact of Human Rights Budgeting

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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 Commission welcomes the opportunity to respond to the Equality, Human Rights and Civil Justice Committee's Pre-budget scrutiny – **The impact of human rights budgeting**, and commends the Committee's focus on fiscal transparency; meaningful participation; revenue generation, allocation and spend; impact assessment processes and measuring progress.

The Commission also welcomes the decision by the Scottish Government to conduct a [Resource Spending Review](#)¹ covering the period 2022-23 to 2026-27.

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](#)².

In responding to the range of questions within this consultation the Commission wishes to raise the following points. It is important to recognise budgetary decision-making as an important tool for realising all human rights, not just the progressive realisation of economic and social rights. Embedding human rights throughout Scotland will require the mobilisation of public resources. While progressive realisation represents the key legal obligation underpinning human rights budgeting, it is best to recognise the interrelated nature of all human rights and thus the importance of human rights budget analysis to civil and political rights, as well as economic, social, and cultural.

In addition, the Commission is aware of other budgeting techniques currently utilised and being advocated for in Scotland. From participatory and gender budgeting to wellbeing budgets. It is important to understand that these frameworks are mutually reinforcing of human rights principles, not competing with them. Each approach offers some valuable lessons, both for their positive impact as well as where they

have caused specific barriers to improving process. Importantly, human rights budgeting is underpinned by specific legal obligations and therefore seeks to deliver an approach that gives best effect to human rights realisation. For this reason, we view human rights budgeting as the future framework to be adopted, with support drawn from example practice within other budgeting techniques.

Question 1. What data and information is needed to assess whether budget decisions are helping to progressively realise human rights?

Key points

Before a meaningful assessment of whether budget decision-making is helping to progressively realise human rights, several key steps in relation to available information need to be taken.

First, analysts must have access to timely, transparent, and accessible financial information in a sufficient level of detail. This is required to facilitate a human rights analysis of the budget and determine its impact on the progressive realisation of economic and social rights. The more detailed the information, the more in depth the analysis can be and the clearer a causal connection can be made between budgetary decision-making and the progressive realisation of rights.

Critically, second, it requires that those who are responsible for developing and scrutinising the budget, have a grounded and practical understanding of Scotland's human rights obligations. This includes progressive realisation, but also its further sub-duties that provide a more focused understanding of how progressive realisation should be enacted. This includes, for example, Scotland's minimum core obligations, the cross-cutting principle of non-discrimination, and importantly the need to maximise available resources for human rights realisation. Having a clear approach to and information on how these obligations impact practice in Scotland would be a significant step forward in developing our ability to undertake a rights analysis of the budget.

The Committee should ask the Scottish Government to set out:

- Current progress of its Fiscal Transparency project and what consideration has been given to providing the types of data set out in answer to this question.
- What its plans are with regard to capacity building around Scotland's human rights obligations? (*Of note there is no mention of the new legislation, or costs associated with its implementation or capacity building in the Resource Spending Review).

Current practice

Moving to human rights budgeting in Scotland will be an iterative process and take time to implement correctly. However, there are some key areas to begin with. Currently no budget decisions in Scotland are taken with Scotland's obligations on minimum core in mind. This would be required as a first step. Are budget decisions delivering the minimum level required for the basic fulfilment of rights and if not, what actions are being taken to raise the resources necessary to fulfil those minimum core rights? An understanding of what constitutes this minimum is required, in order to benchmark the progressive realisation of rights.

Box 1 below, shows a narrative case example from South Africa. This particular example should resonate with the Scottish Government's Child Payment. What is missing from the Scottish Government's budgetary documentation (policy development and progress measurement) is an understanding of what the content of Scotland's rights obligations are across the budget in order to undertake this kind of assessment.

Box 1: Child Support Grant in South Africa – an example of progressive realisation

The Child Support Grant (CSG), a cash transfer programme in South Africa designed to improve the situation of the poorest children and families, was first implemented in 1998. In line with the mandate of progressive realisation of economic and social rights in the South African constitution, over the years the reach and impact of the CSG

has progressively expanded, through increases in the age limit for eligibility (from seven to eighteen years), raises in the income cut-off point so that the grant more effectively reaches all poor children, increases in the size of the grant, and adjustments in benefit levels to account for inflation. In 1998 the grant was R100 per month; as of 2012, it was R280 per month. Between 2007 and 2013, the budget for the CSG grew approximately 5.9% a year. The CSG now reaches over ten million children each month, and is considered one of the most effective social protection systems in the world.

Government was encouraged along this path of progressive realisation of ESC rights by civil society organisations which used budget analysis to show how inflation had eaten away at the value of the grant. The government subsequently adjusted the benefit to take account of inflation. Similarly, as civil society called on government to expand the reach of the CSG by increasing the size of the grant and raising the age eligibility level, it suggested ways the government could secure the resources necessary for the expansion.

Source: [Human Rights Budgeting and Budget Analysis](#), by Ann Blyberg for the Scottish Human Rights Commission³

Accessible and transparent data

In terms of the availability of accessible and transparent data, as the Commission's previous work on [Open Budgets](#) and fiscal transparency has shown, there remains a lack of transparency in the Scottish budget to date, which 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. For example, 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. It also was unfortunate to see it only mentioned human rights once throughout the entirety of the document despite Scotland's ongoing commitments to legal incorporation.

Access to level 4 data, outlining the intentions of budgetary allocations in more detail, is a step forwards towards accessible information on the allocation of the Scottish budget. However, often the information included within level 4 data can be scant on detail. Publishing this data in as much detail as possible will allow for improved analysis with firmer connections being able to be made between specific allocations and their intended impact on identified human rights.

As to the types of data required to assess progressive realisation, we would look for accessible data on resource generation, allocation and spend in Scotland. Examples of types of data that would be useful include those in Box 2, below.

Box 2: Example of types of data needed for analysis	
Examples for resource generation:	<ul style="list-style-type: none"> • Government revenue as percent of GDP • Tax revenue as percent of government revenue • Different tax types (e.g. income, corporate, VAT) as percent of total tax revenue • Tax (by type) as a share of a taxpayer's total income • Tax effort: Tax Evasion Gap • Average illicit financial flows • Palma Ratio: measure of overall economic inequality
Examples for resource allocation:	<ul style="list-style-type: none"> • Expenditure ratios (percent out of a total) by sector • Expenditure ratios by sub-sector • Per unit or per capita expenditure by sector and sub-sector • Expenditure ratios by country defined minimum core obligations
Examples for resource expenditure:	<ul style="list-style-type: none"> • Variance between budgeted amounts and actual budget outturns • Budget turnaround time in relation to policy commitment • Efficiency of spending, including analysis of transaction costs and leakages

Making comparisons with the information gathered via indicators allows a government to compare its place and relative progression or regression both externally, therefore as a range of data for comparative purposes is also noted in Box 3 below.

Box 3: Example of types of data needed for comparative analysis

Examples of comparative data:

- National or international targets or commitments agreed to by the State (e.g. UN Treaties) ,
- Guidelines from international bodies (e.g. UN treaty body General Comments),
- Other comparable countries
- Different parts of the budget (e.g. areas of economic, social and cultural rights compared to civil and political rights.
- Other relevant economic indicators (e.g. nationally defined indicators of economic progress)
- Between groups (e.g. equalities and groups with protected characteristics)
 - Helps to identify who is/ is not benefiting – disparities at local levels can help raise red flags of possible discrimination in the distribution of decentralised funds
 - Calculating per capita allocations can help facilitate by-group comparisons.

Analysing trends over time allows a critical examination of a government's effort to progressively realise rights. Examining trends over time can help to support impact analysis, connecting budget allocation with outcomes, and show what allocation/s have been potential drivers for change. When making such comparisons it is important to make the distinction between real and nominal (cash) expenditure. This is crucial to allow for credible commentary on progressive realisation. To enable a valid, accurate comparison over time, nominal budget figures need to be "adjusted for inflation".

Up until budget 2019-20 the Scottish Parliament provided a user-friendly accessible budget tool, which provided information on % change in both real and cash terms. Change was accounted for (to a greater or lesser degree) by the 'What it buys' and 'Explanation of significant changes from previous year' sections. However, when there was no cash change the explanation provided was 'no change', when in reality, no change is always a change in real terms. Cumulative 'No Change' over 5 years is a lot of change and is key to identifying progressive realisation or retrogressive government action.

Despite this issue, the tool was very useful to at least identify top level allocations on a year-to-year basis. This tool has been updated, and unfortunately, much of this explanatory data has been removed, it doesn't provide as much lower-level data (level 4) as before and it is no longer possible to see the data presented visually in a way that make differences between portfolios easy to compare. Further, the budget tool now only allows comparisons for the past 3 years. Understanding how the budget impacts on rights would require a longer view to be taken, with data made available for a minimum of the past five years.

Assessments from previous years, and the cumulative impact previous years over time, should form a key part of formulating budgets for coming years.

In earlier human rights budget work by the Commission⁴ we highlighted the difficulty in being able to track spend over more than an annual cycle. Whilst the Scottish Parliament's budget tool allows examination of changing allocations on a year-by-year basis, when trying to analyse over a parliamentary cycle or longer becomes exceptionally complex. As part of this work, we attempted to compare like for like budget allocations from Budget 2015/16 to 2019/20. There was substantial manual work involved attempting to match up allocations that moved portfolios and for half of the budget it was simply not possible. This was in part because budget priorities changed and developed; Parliamentary Committees changed, and portfolios changed. An ideal way to support

progressive realisation analysis would be a base budget structure that was followed through a parliamentary term to improve transparency.

Often what really matters the most is *actual spending*. If a government has not spent all allocated funds, then it has not made full use of maximum available funds and has potentially limited the progressive realisation process. To analyse this, we would need to know:

- Whether the government has spent what it said it was going to spend during the course of the year? In other words, have allocated funds been spent as planned?
- If allocated funds have not been spent, how have they been reallocated?
- Was the reallocation process transparent, participative, and accountable?

For this analysis to be possible we need to be able to easily access and track data on unspent funds in a government's budget.

Finally, tracking resource allocation and spend requires transparency between national and local budgetary data. Large proportions of the budget are devolved to the local level and health board levels. Therefore, in order to be able to adequately assess progressive realisation within Scottish budgetary decisions, it is necessary to know where allocations are spent at the local level – and the degree to which this is the choice at the local level, as opposed to directed or ringfenced spend.

Many rights, notably economic and social rights, are fulfilled at the local level in Scotland. It is therefore essential that public authorities in Scotland are adequately supported, with training and resourcing, to adopt a human rights-based approach to budgetary decision-making. With so much of the budget allocated to local authorities, ensuring a joined-up approach across public bodies in Scotland is essential to

allowing a clear understanding of how the budget impacts on rights realisation at all levels.

Question 2. What needs to change to increase meaningful participation in the budget process, particularly for marginalised groups?

Key points

To support meaningful participation in the budget process, particularly for marginalised groups, a key first step is for the Committee to consider the question: what is meant by ‘meaningful’ participation? Once defined, drawing on international best practice, this can then be measured and compared with current practice to ascertain what gap exists between current and desired best practice and hence what needs to change.

With the introduction of the forthcoming human rights legislation in Scotland, the Commission suggests that the Committee seek clarification from the Scottish Government as to how it intends to address Recommendation 29 from the [National Taskforce for Human rights Leadership](#)⁵:

29: The Taskforce recommends that further consideration be given to including an explicit right to participation, drawn from the principles of international human rights law, within the legislation.

Further to the participation of adult citizens, the incorporation of the UN Convention on the Rights of the Child will also require specific actions to be taken to ensure children’s views are heard within the budgetary process. Consideration should be given to the correct platforms to allow for meaningful participation of children and young people in Scotland. Where the following information relates broadly to participation, keeping in mind the potential extra effort required to ensure children and young people have meaningful participation in the process remains key.

Current budgetary participation

Members of the Committee may be aware of the Commission's previous work on budgetary participation as part of our initial human rights budget work project in 2019. Two areas of this work focused on participation. The first, was the Commission's work on [Open Budgets⁶](#) which revealed that despite improvements made since the [Budget Process Review Group⁷](#) report in 2017, Scotland remains well below what is considered to be acceptable by international best practice standards, with regards to public participation connect to budgetary decision making.

The low score awarded to Scotland related in part due to: the lack of transparent information provided to citizens, including the production of a citizen's budget in advance of decisions being made and three other key budget documents (as defined by international best practice); lack of participation opportunities by the Government during all phases of the budget.

Key recommendations from the OBI work included:

- Production of clear and well-advertised guidance for public engagement with the budget process including opportunities to engage with the Executive and the Legislature.
- Citizens in Scotland require better and timely access to accessible information in order to participate in the budget process. This should include a citizens' version of every budget document.
- Improvement of feedback to participants who participate in the budget process.
- The Executive should actively engage with individuals or civil society organisations representing vulnerable and marginalised communities during the development and implementation of the budget - (this should not solely be the responsibility of Committees).

- The Executive should provide more opportunities for the public and civil society to participate in scrutiny at all stages of the budget (not just at the pre-budget stage).
- Parliamentary and government policy / subject inquiries could consistently and routinely address budgetary elements to improve budgetary focus and scrutiny.
- Development of a formal mechanism, to enable the public to contribute to audit investigations.

Second, work was undertaken by the Commission in 2019, to better understand the quality of participation in the budget process, which included an assessment of how individuals and organisations felt about their experience of participation with Committees. The research was based on the [Consultation Charter](#)⁸ which has identified seven best practice principles for consultative processes which aim to assist in the process of evidence based decision-making, namely: Integrity, Visibility, Accessibility, Transparency, Disclosure, Fair Interpretation and Publication.

This work revealed the difficulties various stakeholders faced in accessing transparent fiscal information and a scepticism amongst participating stakeholders that their engagement actually had a genuine impact on decision making of the budget priorities. Many felt that budgetary decisions were already made before Committees fed back the findings of their consultative process to government⁹.

Defining ‘meaningful’

In recent years, the important role that participation plays in democratic governance and the promotion and realisation of human rights has become more and more evident. It is a foundational principle of a human rights-based approach (HRBA). Better decisions are made when those making the decisions engage with the people who will be affected by those decisions.

The value that the meaningful participation of rights-holders in different communities of interest can bring to the development of public policy and decision-making process has gained recognition in recent years within public bodies, civil society and human rights communities.

Domestically, the '*Scottish Approach*' seeks transformational change through engagement with people and their communities. A number of participation-related provisions exist in domestic law and policy, both UK and Scottish. Participation is also contained within many legislative and administrative duties arising from 'core' human rights treaties and approaches.

Participation and participatory approaches can mean different things to different people and can represent a range of practices and levels of engagement. However, common elements include:

- a desire to understand a policy problem from the perspective of the people who are affected by it;
- recognition that formal, academic or professional knowledge does not provide a full picture of a policy problem;
- recognition of power imbalances between people who make decisions in a professional capacity and those who are affected by them;
- an intention to hand power to people affected by an issue;
- measures to dismantle or overcome barriers to people's participation; and
- recognition that effective participation requires resources, attention, time and commitment.

Legal and Policy Context

Participation is based on a fundamental principle of human rights that considers individual autonomy and self-determination to be part of basic human dignity.

Participation of individuals in decision-making helps to ensure that systems are responsive to the particular needs of disadvantaged groups. This in turn helps duty bearers comply with anti-discrimination and equalities duties. Mechanisms to satisfy these procedural requirements of participation, access to information and transparency, as well as due process in decision-making, are required. A failure to include these may amount to violations of these international obligations.

In practical terms, human rights law requires that the voices of people whose rights are affected by a decision, are heard throughout the process of making and implementing that decision.

In 2020 the OECD published a [study](#)¹⁰ drawing from the data of almost 300 case studies of citizen participative and other deliberative processes. The findings concluded that involving the participation of citizens in public decision making can deliver better policies and better policy outcomes; involve more inclusive processes which have greater integrity and legitimacy thereby helping to counteract polarisation; and it helps to build and enhance trust between citizens and government. The study also concluded that participation of citizens was well suited to resolve values-based dilemmas, complex problems which require trade-offs and long-term questions.

In order for such processes to work, the study summarised that the following good practice principles were necessary ingredients:

- purpose,
- accountability,
- transparency,

- representativeness,
- inclusion,
- information,
- group deliberation,
- sufficient time,
- integrity

Evidence from the Commission's [evaluation](#)¹¹ of the HRBA Historic Abuse Interaction process, delivered a similar set of principles.

The OECD study further highlights that institutionalising deliberative processes enables governments to be able to take harder decisions and at a lower cost. It concludes that there is no “one-size-fits-all” method, rather the method is dependent on the context, purpose, and process; and requires sufficient capacity in the civil service and civil society, as well as sufficient funding. However, it does suggest including permanent structures; requirements for organising deliberative processes under certain conditions; and that governments should consider drafting legislation or regulation to support such processes.

With Scotland seeking to embed human rights further through society with the new Scottish Human Rights Framework, participation will become increasingly ubiquitous with fulfilling rights in practice. Ensuring the people of Scotland have the opportunity to meaningfully participate in decision-making, where impact of their participation should be evidenced, will form a key part of the transformational process sought in Scotland. Finally, consideration must also be given to the resources required to facilitate meaningful participation. Reaching those who are least likely to participate and often most likely to benefit from doing so will require resources be made available to enable their participation in Scotland's budget process.

Question 3. What can be done to make budget information more transparent and accessible?

Key points

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.

As outlined below, undertaking the Open Budget Survey for Scotland provided an excellent insight into current practice and required improvements based on international best practice. The Committee should ask the government to commit to undertaking the biennial Open Budget Survey in order to assess the transparency (and participation and accountability) of their budget cycle against global comparators.

Open Budget Survey

Fiscal transparency is commonly defined and measured according to the availability and quality of fiscal information. The [Open Budget Survey](#) examines the levels of fiscal transparency, participation and accountability in 117 countries every 2 years. The survey assesses the public availability of the eight key budget documents, that, taken together provide a complete picture of how public resources have been raised, planned, and spent during the budget year. A score of 61 or above out of 100 indicates that a country is publishing enough material to support informed public debate on the budget.

As mentioned in response to Question 1, the [Open Budget Research](#)¹² published by the Commission in late April 2020 revealed that despite improvements made since the [Budget Process Review Group](#)¹³ report in 2017, Scotland remained below what is considered to be acceptable by international best practice standards with regards to fiscal transparency, with a score of 43. A key contributor to these low scores was the fact that Scotland does not produce 4 of the 8 key fiscal documents as defined by international best practice.

Governments often fail to publish key budget documents - Scotland is not alone in this regard. One-third of the eight key budget documents that should be published worldwide are not available to the public. Governments including our own tend to release more information during the formulation and approval stage of their budget process than they do on implementation, which undermines government accountability for spending the budget as approved by the legislature. Even when budget documents are published, they frequently lack the types of information that citizens want to see.

Many organisations are now focused on tax equity and increasing revenues, but few countries provide detailed reporting on tax expenditures – the revenue lost from tax breaks or exemptions given to business or individuals or those lost through tax avoidance, evasion and debt. The government needs to continue the process it has commenced via the Scottish Exchequer project to do more to identify what budget information the public actually wants to see to help them to engage.

Some of the key transparency recommendations from the Commission's OBI work include:

- The Scottish Government should publish all eight key budget documents: four were missing (PreBudget, In-Year, Mid-Year and Citizens' Budget).
- A Citizens' version of each of the key documents should be prepared and published at the same time as the key document, in

order that citizens can be engaged with the budget when it matters.

- Within the Scottish Draft Budget (Executive Budget Proposal) analysis and narrative about how policies across the board may impact on vulnerable or marginalised groups should be improved.
- Policy planning should be driven by outcome expectations and evidence of what works – which requires accessible, transparent information.
- Within the Scottish Draft Budget (Executive Budget Proposal) reduce the repetitiveness, focusing on providing concise and consistently presented information, and include information that should be provided in other reports (such as longer-term projections and connections to National Outcomes).
- It should be possible to connect the budget allocations being referred to in the Scottish Draft Budget (Executive Budget Proposal) with the Level 1-4 budget lines.

Undertake the Open Budget Survey

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.

There would be value in the Committee asking the government to commit itself to undertaking the Open Budget Survey in line with the international survey methodology (every 2 years) in order to assess the transparency (and participation and accountability) 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 would serve as an example of how this can be done.

Question 4. Do the Resource Spending Review or previous Scottish fiscal documents demonstrate a commitment by the Scottish Government to realising rights over time?

Key points

It is clear from the recent RSR that human rights have not featured heavily in influencing the decisions adopted through the Review. Or at least, have not been demonstrated to have done so within the published documents. The RSR only mentions human rights once throughout the entirety of the main document, leaving room for much improvement.

Further, this question has two main components – one relates to a process for assessing commitment and the second relates to availability of data to make that assessment.

Rights within fiscal policy should be recognised as an integral part of international legal obligations when it comes to the implementation of rights, in particular economic and social rights. As noted in relation to Question 1, this requires a resourced capacity building programme across government, including and especially for the Budget and Public Spending Directorate and the Scottish Exchequer, to enable those responsible for fiscal documents to (know how to) show commitment to progressive realisation. As per Question 1, the Committee should ask the Scottish Government to outline how it intends to do this.

In relation to data availability – as also identified in Question 1, further information is required regarding progress of the Government's Fiscal Transparency project.

Finally, the Scottish Government must demonstrate that it has evaluated the impact of any 'efficiency' measures, such as those proposed in the RSR, to ensure that they do not result in retrogressive steps in rights

realisation. The Committee should ask the Government to set out its evidence that all other possible avenues for continuing the level of service have been discussed before efficiencies are implemented.

Current practice

For the Scottish Government to use its budgets and spending reviews to show commitment to progressive realisation, they first need to understand the relationship between the budget and Scotland's human rights obligations. Understanding these obligations, national, regional, and international, must exist throughout government departments. This will increase the ability to demonstrate in detailed and specific terms, how they can meet their obligations through the generation, allocation, spend and audit their budget.

At present there is no demonstrable evidence of an understanding across government of what Scotland's human rights obligations are or how they should be incorporated into policy development, including the budget. There is therefore no explicit connection to realising rights over time in the RSR or previous Budgets.

There has been some welcome progress of introducing a human rights focus into the Equality Fairer Scotland Budget Statement (EFSBS). However, the depth of understanding about how the contents of rights connect to the different portfolios is not evident and the general connections that are made do not appear to have penetrated the thinking behind the main fiscal documentation to any meaningful degree. There is thus significant room for improvements to be made on these initial steps.

Human rights and equality are often perceived as an add-on consideration in policy issues, rather than being viewed as a central framework to start and to build from. Developing this understanding and building capacity on the foundational relevance of the human rights

framework is key to developing and evidencing a commitment to rights realisation in fiscal documentation.

When considering how to apply the obligation of progressive realisation practically in relation to budgeting, this can take many forms. What is key to understand, is that progressive realisation is not an option or a duty that can be delayed. It is an ongoing obligation on governments, independent from economic growth, which requires that a government makes the best use of its maximum available resources. Governments must prove that they are making every effort to progress economic, social and cultural rights with the available resources. Importantly, progressive realisation does not always require more resources, it is about demonstrating that the resources available have been best used to fulfil human rights obligations.

Evidence that the principle of progressive realisation has been applied to the budget occurs when a government takes positive measures or steps that further develop preceding efforts. Applying the principle of progressive realisation within the budget can involve a range of different activities, including:

- direct funding,
- application of other resources,
- introducing new programmes,
- reducing restrictions on certain entitlements/programmes, or
- changing policy direction to strengthen the rights of marginalised groups.

Questions 5 and 6 explore the focus on challenges/ opportunities presented in the EFSBS and measuring progress. Incorporating analysis based on Scotland's commitment to progressive realisation into that work would be a useful starting point. However, until budgetary decisions are routinely informed by an competent equality and human rights analysis and the types of data required for human rights analysis are made available (as per Question 1), fiscal documentation will not be

able to demonstrate a meaningful commitment to progressive realisation. It is important to note, however, that this does not mean that the government is not currently taking some fiscal decisions and undertaking some work that will help to progressively realise rights. It is just not currently presented in this way within fiscal documentation.

One related question regarding commitment that the RSR does raise is whether the RSR demonstrates any commitment to human rights? There is only one mention of human rights in the RSR, on page 52. It is concerning that nowhere in the document is there an 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 take significant resources 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.

Retrogression

The RSR places a particular focus on 'efficiency savings'. It is important to note 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 show that all other possible avenues for continuing the level of service have been discussed by the Scottish Government, including considerations of raising resources via tax. Any efficiency measures taken must ensure that the Government is still able to respect, protect, and fulfil people's rights.

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.

Question 5. For example, is it possible to look at Budget documents and decipher if expenditure on realising rights is increasing or decreasing?

Key points

The Scottish Parliamentary tool hosted by SPICe has been significantly changed since its previous version last used with the 2019-20 Budget. It is no longer a very accessible tool, nor does it provide access to the same information. To facilitate Committee scrutiny of the budget, it would be helpful to understand why changes have been made by SPICe and if it possible to reverse some of these changes.

Enabling a rights analysis of expenditure would require more information to be made available in relation to specific budgetary lines. Currently, level 4 data provides some insight into the specific purpose of resource allocation, however, these are not connected to human rights. Were specific budgetary lines to be connected to relevant rights, as viewed by those making budgetary decisions, this would provide a first step and platform to being able to track expenditure for specific rights and whether it has had an impact.

Accessing relevant data

As identified in Question 1, given the way that budget data is currently presented, it is very difficult to interrogate budget data for change and impact over time.

Using the Scottish Parliament's budget tool, it used to be possible to quickly view and compare general trends at a high portfolio level over an eight-year period. Selections could easily be made as to which portfolios to compare in more detail over two budget cycles side by side.

The updated tool only allows a three-year exploration and only whilst looking at one portfolio at a time. The visual graphic to look at portfolios

by size side by side, no longer has the time-series and has changed from being a simple graph to a more complex 'boxes within boxes' treemap model, which is visually difficult to read. The new tool is not easy to use, and it does not provide the same explanatory data for changes in spend from year to year. Improving the tool and defining clearly within the level 4 data published within the budget what rights the budgetary line intends to impact would go a long way to enabling an analysis of whether the budget is progressive or regressive.

The source data that you can download and manually set to compare over time, used to be available to level 3, sometimes 4 and now appears to be limited to level 3 by portfolio and only level 2 for time series data.

It is disappointing that despite a growing awareness of the need for fiscal transparency, this appears to be a backward step in the main tool currently available to the public to interrogate budget allocations.

The main annual budget document, for the most part provides information on what is coming. Generally, this is without the context of what has come before in all areas. There is sometimes a narrative around positive changes or the introduction of new programmes, for example, but this is not accompanied with an explanation of whether, for example, that funding is new money or has been deprioritised from another area.

The accompanying data for each budget document does provide access to Level 4 data across the budget via a large Excel sheet, which is welcomed. It is, however, only provided with a year to year view and hence any assessment of progress over time is not easy to undertake (as explained in response to Question 1). It also requires some knowledge to navigate and make comparisons, which is where the change to the Parliamentary tool is most noted.

Question 6. Is government funding directed to the right areas to enable the public sector to meet its human rights obligations?

Key Points

As explained in response to Questions 1, 3, 4 & 5, there is a need for improved fiscal transparency to make it possible to adequately assess whether and the degree to which government funding is directed to the right areas to enable the public sector to meet its human rights obligations.

As also set out previously, for this analysis to be possible, there must be a clear understanding of what the minimum core of provision should be in Scotland – budgetary decisions can then be assessed as to whether they are delivering the minimum level required for the basic fulfilment, whether funds are prioritised to those most in need and whether rights are being progressively realised over time.

There is also a need to change the way we approach the budget in Scotland. Resource generation, allocation, and expenditure should be driven by meeting rights-based outcomes, based on assessment and evidence to underpin the prioritisation of public funding.

Finally, there is genuine concern amongst local authorities in Scotland that a continuing lack of funding to local authorities is leading to their inability to carry out basic functions that deliver on a range of economic and social rights. While statutory duties can be maintained, there is now a strong argument to suggest local authorities lack the flexibility within their own spending to meet the needs and thus rights of people local to the area.

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 was 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. This is necessary in order to ensure that these are indeed the area's 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](#) 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.

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 impact.

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 to new legislation incorporating a range of UN treaties into Scots law. Successful implementation will require dedicated resources. Emerging from the COVID-19 Pandemic, it is clear that Scottish society is not functioning that well right now with a cost-of-living crisis currently worsening. COVID-19 magnified the structural inequalities already facing many people in Scotland, with intersectionality magnifying these impacts further. 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.

What is required is a zero-based budgeting exercise, where time can be taken to provide a true assessment of rights realisation across Scotland (as best as possible), and allow this assessment to bring into question whether Scotland is raising enough resources to truly realise people's rights. In clear instances where Scotland is failing to deliver rights, the question must become how to raise more resources, whether that be through efficiency or taxes for example. 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 7. Does the Scottish Government raise sufficient revenue to realise human rights? If not, how could the government raise more revenue to ensure rights realisation?

Key points

The Scottish Government need to change the way that it approaches the budget. Budgeting should start from desired right-based outcomes, followed with development of policy to achieve those outcomes and the generation of resources required to fulfil them. The Committee could ask the Scottish Government to fully consider taking such a human rights based approach to budgeting.

There are a number of revenue raising tools that the Scottish Government should explore. The Committee could ask the Scottish Government to be more politically bold and engage with more progressive taxation options, especially around land and wealth. Economically, it is important to keep in mind the impact of prevention. Socio-economic disadvantage is hugely costly to the State. Extra spending and resource raising to fulfil people's basic economic and social rights, will lead to efficiencies being made in the future.

Outcome-focused budgets

The wording of this Committee question reflects the way our budget system works, but not how it should work, if it is to better support the realisation of rights. Rather than asking is there enough resource, the first question should focus on what is it that the government is trying to achieve in terms of outcomes.

From a rights perspective these outcomes should 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 National Performance Framework 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 resource 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 a 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.

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 (as the RSR appears to), 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.

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.

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

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 documented¹⁴, 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.

Much domestic expertise has been developed on the taxation options available to Scotland in recent years by the likes of the Fraser of Allander Institute¹⁵, CPAG¹⁶ and the Institute for Public Policy¹⁷, amongst others. Proposals include exploring the potential offered by: further amendments to Income Tax; reforming Scottish property taxes; excluding tax avoiders from government bailouts; leveraging tax as a tool for behavioural change; and new taxes – including Local Wealth Taxes.

This is an area where policy needs to be more proactive. Taking the opportunity to explore these ideas with taxation experts through a

human rights lens would afford the government the possibility for a timely multi-stakeholder learning opportunity focusing on both the benefits of taking a HRBA to taxation coupled with a thorough analysis of the taxation options that are fully within the remit of the Scottish Government.

Question 8. Is revenue raised in an equitable way?

Key points

The Scottish taxation principle of who can afford to pay pays more is the right one. Whilst people with less pay less income tax compared to the rest of the UK, we do tax income and wealth differently throughout the UK and people with less pay more proportionately due to consumption taxes.

Scotland's taxation system has the potential to be much more progressive. The Committee could suggest that the Scottish Government undertake a review of taxation burden that focuses on wealth as well as income to inform discussions around more progressive taxation options.

The Scottish Government should also be encouraged to discuss further compliance work with HMRC, in order to reduce substantial losses to the budget through tax evasion.

Fair taxation

With a fair tax system that aims to be progressive, the proportion of tax paid should reflect the relative income or wealth of the taxpayer. The taxation system has the ability to raise additional revenue for the government and the responsibility to do so in a way that does not negatively impact on those who can least afford to pay. The way taxes are levied has a strong redistributive potential.

Whilst in recent years the Scottish Government has taken the opportunity to change the way that income is taxed and in doing so introduce a more progressive system that is fairer to those on lower incomes, wealth (unearned income) has not received the same treatment.

Increasing wealth inequality in Scotland and the UK as a whole is not a new feature of the Scottish or UK economies, however, the pandemic has accelerated this rapidly growing inequality. As the [Resolution Foundation](#) recently highlighted, whilst the inflation-adjusted value of household wealth has more than doubled since 1980, revenue from taxes on wealth has remained stagnant. This means that the rate of tax on wealth has effectively more than halved over the last 40 years. Reforming wealth taxes must therefore be given serious consideration as a means to raising revenue in a way that can help to reduce wealth inequality.

Examples worth exploring in the Scottish context include a net wealth tax modelled on that levied in Switzerland and taxing the imputed rents of owner occupiers (see Byrne 2021 for further details)¹⁸.

Tax evasion and avoidance

Tax is a human rights issue and must begin to be viewed as a tool to be leveraged to ensure rights are respected, protected, and fulfilled. There is evolving agreement amongst human rights monitoring bodies about the crucial role that taxation plays in terms of both delivering sustainable public finances, as well as its progressive redistributive function. In turn, tax evasion, avoidance and abuse are increasingly the focus of these monitoring bodies. The Human Rights Council Resolution 34/11, calls on states:

“to seek to reduce opportunities for tax avoidance, to consider inserting anti-abuse clauses in all tax treaties and to enhance disclosure practices and transparency in both source and destination countries, including by seeking to ensure transparency in all financial transactions between Governments and companies to relevant tax authorities”.

Whilst appreciating that there may limited ability to have an immediate impact to respond to this challenge faced within budget 2023-24, it is

important to raise the issue of tax evasion and avoidance and the impact that this has on available resources.

Previous human rights budget work by the Commission¹⁹ on tax estimated that the cost of tax evasion to the Scottish fiscal envelope has been estimated to range from £3-7 billion²⁰. 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 avoidance²¹ 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’ .

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 were 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 9. What is the distributional impact of budget decisions? Do budget decisions have a discriminatory impact on different groups of the population? Do budget decisions help reduce structural inequalities?

Key points

Distributional analysis is a valuable tool to better understand the impact of budgetary decisions on different groups. It is unclear whether the Scottish Government has continued to build on and invest in this developing expertise or whether it was utilised to inform the RSR. The Committee could ask the Scottish Government to explain its current position on this work.

Progress has been made through publishing of the Equality and Fairer Scotland Budget Statement. Where questions remain is on whether there is a clear understanding that equality and human rights are not synonymous of one another. Equality forms a basic principle within rights realisation and is discussed as non-discrimination. While ensuring equality through budgetary decision making is crucial, it does not capture the whole human rights picture. People may be treated equally fairly or equally poorly, we must thus be able to also measure and focus on whether everyone's basic rights are improving.

Impacts of budget decisions

Budget decisions can have discriminatory or positive impacts on different groups of the population and equally they can help to tackle or reinforce structural inequalities. This is why human rights and equalities impact assessments to inform and evaluate budgetary decisions are so crucial. These are discussed in depth in Questions 10 and 11.

Distributional analysis

Distributional impact analysis is a critical tool in being able to further explore impact across different groups and highlight where intersectional impacts multiple effect (positive and negative). The process of distributional analysis is complex and requires specialist knowledge which requires investment and time to undertake.

In February 2022, Scottish Government officials from the Strategic Insights market delivered a presentation to members of the Equality and Budget Advisory Group on the feasibility of distributional analysis, following a [paper](#)²² released in March 2021. The feasibility work found that cumulative distributional analysis could be a valuable tool to help understand the impact of the Scottish Budget in total has on different households and individuals in Scotland. It was considered most valuable by the Scottish Government in providing a baseline assessment – to be updated at regular intervals - which could support identification of areas requiring more detailed analysis at an individual policy level.

Members of EBAG welcomed this work and were supportive that it would be a useful tool for the RSR, as well as the baseline assessment, to support the development of clear and robust spending outcomes. EBAG were keen that this that the government continue to invest in future distributional analysis work and it noted that it was a very useful tool which should be able to support further embedding equality into the Scottish Budget process. At the time of presentation there was internal pressure to pause this work and it is unclear if the Scottish Government has continued to build on and invest in this developing expertise.

Question 10. Does the current approach to Equality Impact Assessments and Fairer Scotland Duty Assessments produce a fair budget/meaningfully impact budget decisions? If not, how can this be improved?

Key points

The Scottish Government is due to respond to the EBAG recommendations for equality and human rights budgeting in September 2022. These include a number of areas of focus on improving the current approach to impact assessment. We recommend that the Committee review these recommendations and the government's response to them. Their response will give an indication of the next set of scrutiny areas for the Committee.

Equality Impact Assessments

As a member of EBAG, the Commission has contributed to a review of practice and [recommendations for government](#) on improvements needed for Equality and Human Rights Budgeting (2021-26)²³. The improvements needed to be made to the process of impact assessment are mentioned throughout the recommendations briefing, this providing a useful summary point:

Currently all policy and spending proposals should include an analysis of the equalities dimensions, existing inequalities, and actions to realise human rights. These are requirements under the Public Sector Equality Duty of the Equality Act 2010, and the Fairer Scotland Duty. What is clear is that current practice of equality and human rights impact assessment is at best variable. It is also clear that the starting point for policy formulation is not an analysis of the equality dimensions and a clear articulation of

objective to advance equality and progress the realisation of rights. That fundamental starting point for policy and spending decision-making must anchor the analysis, evidence, and focus of policy decision, drawing together the overarching social justice discourse of the Scottish Government, and the specific actions to realise the outcomes expressed in the National Performance Framework.

One of EBAG's long standing criticisms is that some Scottish Government initiatives appear to retrofit Equality and Human Rights Impact Assessments to their processes rather than integrating them as core parts of policy design, development and decision-making.

Feedback from the Equality Fairer Scotland Budget Statement Process has also raised concern within EBAG that colleagues within government are not well supported and given sufficient time to undertake this work. It is crucial that the value of this work is better understood as the essential tool for improving policymaking and ensuring fair and effective use of public money that it is. The new mainstreaming strategy on equalities and human rights provides a timely opportunity to restate the requirements for equalities and human rights analysis to be supported, and for integration to be implemented by management.

Fairer Scotland Duty Assessment

The Fairer Scotland Duty requires all public authorities to have “due regard” to socio-economic disadvantage and encourages all of them to take into consideration all poverty levels as well as material deprivation when making strategic decisions. This assessment is a step in the right direction as it moves beyond a focus on purely whether people are treated equally within decision-making. However, use of this duty is in its primacy, having come into effect in 2018, and its effective use is mixed throughout differing public authorities in Scotland. Evidence of this can be found in the lack of published assessments from local authorities, while others clearly demonstrate a lot of effort has gone into the assessments²⁴. Work should be carried out to continue capacity building

within Scotland's public authorities to ensure best practice is adopted and maintained through decision-making and full effect is given to FSDA.

The process is captured within current impact assessments and requires Public Authorities to go beyond looking at just equality (non-discrimination). There is [guidance](#)²⁵ available and some template forms online, however these appear to reflect impact assessments rather than the FSDA specifically. For the FSDA to become a meaningful duty, and one which builds on existing practice over becoming a 'tick-box' exercise, it is important specific practice is adopted to provide due regard to socio-economic disadvantage.

It is difficult to know, across the board, the impact the FSDA is having. Causal effect between decision-making processes and its impact on outcomes is difficult to measure over such a short space of time, however early findings from PhD research by Aidan Flegg²⁶, support the suggestion that it is having some impact on decision-making. Data from Local Authorities participating in this research have noted its importance within their processes and therefore, it likely effects budgetary decision-making, it is just unknown to what extent. The lack of ability to measure impact is an issue to be addressed moving forward.

Improvement could be made to the duty itself. 'Due regard' could be built on to 'give effect to' or something which is more concrete legally. Due regard is a soft law option and does not ensure change. Even when a decision is shown to have a clearly detrimental impact to those in socio-economic disadvantage, there is no legal obligation to change that decision, only to pay due regard to it. Incorporation of ICESCR would for example ensure legal accountability for decisions that undermine basic economic and social human rights and increase the effectiveness of the assessments made.

Question 11. How can human rights be fully incorporated into the impact assessment process?

Key points

Incorporating human rights into the impact assessment process is about improving the depth of analysis of other complementary assessment processes. The Committee should encourage the government to reflect this within their forthcoming Equality and Human Rights Mainstreaming Strategy.

Human Rights & Impact Assessments

The Independent Expert on the effects of foreign debt on human rights has proposed that taking a HRBA implies a duty to undertake human rights impact assessments of fiscal policy decisions, to ensure that a state's economic policies do not violate human rights. His [Guiding Principles on Human Rights Impact Assessments of Economic Reforms](#), published in 2019, highlighted that human rights need to be a central factor of good policymaking if economic reforms are to “*help advance societies, rather than hinder people's lives*”.

A number of UN human rights committees have also proposed the use of human rights impact assessments to support better policy making and fiscal decisions.

[Governments should] “conduct human rights assessments of fiscal policy periodically and with broad public participation, including analysis of the distributional consequences and tax burden borne by different income sectors and disadvantaged groups”.

The role of a state's human rights obligations in economic policymaking are obligations that states simply cannot ignore. These decisions have

consequences and those consequences must be identified before, not after, a policy has been implemented:

"Any economic policy measures – whether fiscal austerity, structural adjustment reforms, privatisation of public services, deregulation of financial and labour markets, or changes in taxation – all have human rights consequences... Governments at all levels - including local and subnational governments - must properly take into account their human rights obligations when designing and formulating economic reforms. Human rights impact assessments are key to this process... such assessments should pay particular attention to potential and cumulative impacts of economic measures on specific individuals and groups, such as women and persons with disabilities."

Good practice has been developed on Equality and human rights impact assessments (EQHRIAs) by the [Scottish Human Rights Commission \(SHRC\)](#) and [Equality and Human Rights Commission \(EHRC\)](#) – with a dedicated website which sets out:

- An explanation of the [added value of the human rights dimension.](#)
- The [10 Good Practice Building Blocks for Assessing Impact.](#)
- Information about [two pilot EQHRIAs in Renfrewshire and Fife Councils.](#)
- [Basic background training materials.](#)
- [Links to other resources.](#)
- This work has been endorsed by the UN Independent Expert on foreign debt and human rights who explored this particular work when developing his Guiding Principles for Human Rights Impact Assessments for Economic Reform Policies.

Building human rights into impact assessment processes is still not widely done, however, they should be standard practice in the preparation of budgets. Such assessments enable fair and transparent decision making and provide a practical method to support governments

to avoid disproportionately affecting some groups more than others with their policy and budgetary decisions. The new mainstreaming strategy on equalities and human rights provides a timely opportunity to build the necessary capacity to undertake, and support for, improved equalities and human rights assessments.

Question 12. Do the 9 key opportunities and challenges identified in the Equalities and Fairer Scotland Statement correctly identify the key opportunities and challenges around building a fairer Scotland?

Key points

The Committee should consider recommending that the Scottish Government amends the nine key opportunities and challenges to make them rights-based, and incorporate people's right to an adequate standard of living as a means to including the cost of living crisis within the nine.

The Committee should also consider recommending that the government move away from a purely narrative presentation of the nine key opportunities and challenges, to an EFSBS statement that documents the analysis that has informed the fiscal decisions. In doing so, the statement should make clear the relationships between how commitments in the budget (as declared in the Programme for Government) are actually driving progress towards the National Performance Framework Outcomes.

Nine key opportunities and challenges

There are two key aspects that the Commission wishes to address in relation to the 9 nine key opportunities and challenges identified in the Equalities and Fairer Scotland Statements that accompany the annual budget and the RSR. First, the process that they are utilised for and how this could be enhanced and second, the specific content of those nine aspects.

Process

The nine key opportunities and challenges identified in the Equalities and Fairer Scotland Statements that accompany the budget and the RSR provide a useful lens through which to understand budgetary decisions. They provide a narrative accompaniment to these fiscal documents. Where the Commission and EBAG would like to see this process develop, is for this statement to start documenting the analysis that has informed those fiscal decisions.

The nine key opportunities and challenges represent important issues, however, we feel that they could be enhanced through embedding each within the context of their relevant rights obligations. This could help to public bodies, including the government, to identify what human rights obligations are relevant to each of the opportunities and challenges, providing a legal grounding. Amending the fifth opportunity/challenge to include the right to an adequate standard of living in addition to addressing child poverty, would also allow for a specific focus on the cost of living crisis.

They should also have much clearer connections to the National Performance Framework. If the NPF represents Scotland's national priorities then these should be linked. There should then be evidentiary links to the inform the choices within the Programme for Government and in turn, the budget and its allocations should be linked to them all. Otherwise, there appears to be different and possibly competing agendas or priorities, which makes it harder for public bodies to know what to prioritise. Moreover, once we have established the links between data, challenges, national priorities, policy objectives and spending allocations in the first instance, the process to evaluate the impact can follow (see Question 13 for more on monitoring and evaluation).

Content

1. Support **a rights-based** economic recovery which continues to progress action to tackle structural inequality in the labour market, including through good green jobs and **recognising everyone's right to fair work**.
2. Ensure that the devolved taxation system **maximises available resources, whilst delivering** a system based on ability to pay and that the devolved social security funding increases the resources available to those who need it.
3. Ensure that inequalities in physical and mental health are tackled **through access to available, accessible, acceptable and quality health** and social care services as well as broader public health interventions.
4. Build **human rights compliant** digital services that are responsive to individuals and address inequality of access to digital participation,.
5. **Ensure that everyone has access to an adequate standard of living, especially during times of crisis and** deliver greater progress towards meeting statutory child poverty targets.
6. **Ensure all children are able to realise their right to education** and deliver greater progress towards closing the attainment gap.
7. Improve the availability, affordability and **environmental quality** of public transport services, to ensure those more reliant on public transport can better access it.
8. Ensure that policies, action and spend necessary to mitigate and adapt to the global impacts of climate change deliver a just transition for people in Scotland **and deliver on people's right to a healthy environment**.

9. Better realise the right to an adequate home that is affordable, accessible, of good quality, and meets individual need whilst ensuring that progress on tackling current inequality of housing outcome is addressed.

Question 13. Can progress against these priority areas be tangibly measured?

Key points

Tangible measurement of progress requires a connective shift in how we make fiscal decisions, starting with evidenced priorities and defined outcomes leading to resourced policy and programmes that can then be reviewed for impact. Connecting the nine priorities with the human rights framework, the National Performance Framework, the Programme for Government and the Budget are necessary to facilitate this transformational change in measuring budget impact.

Measuring progress

At the moment, measuring progress towards these priorities is not simple. There is no direct read from the data that informed these priorities, to the desired outcomes, the policy proposals within the Programme for Government and the resource allocations within the budget. Without connecting these links in the chain, meaningfully measuring impact is unrealistic.

The Commission and EBAG have made many suggestions as to how this process can and needs to be improved (and were also made by the Budget Process Review Group in 2017). As highlighted in the report from the EBAG [recommendations for government](#)²⁷, immediate action on this is necessary to improve internal communication, and to address internal organisational culture issues that work against maximising collaborative working across departments and functions.

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

The RSR 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.

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 earlier in relation to 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 priorities, 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](#) 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.

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

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

³ See:

<https://www.bing.com/ck/a?!&p=9f74f36ba0610e41JmltdHM9MTY2MjMzNjAwMCZpZ3VpZD0xYWQ5NjI1YS0yY2M2LTly1MGMtMTQ3ZS03M2I1MmRmZTY0MGQmaW5zaWQ9NTE3Mg&pfn=3&hsh=3&fclid=1ad9625a-2cc6-650c-147e-73b52dfe640d&u=a1aHR0cHM6Ly93d3cuc2NvdHRpc2hodW1hbnpZ2h0cy5jb20vbmV3cy9odW1hbi1yaWdodHMtYnVlLnZlcWV5aW5nLWFuZC1idWRnZXQtYW5hbnR1ZmVzaXMuX28=&ntb=1>

⁴ See <https://www.scottishhumanrights.com/media/1842/human-rights-budgeting-150319-presentation-whole.pdf>

⁵ See National Taskforce for Human Rights: lead [https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/pages/4/ership_report_-_gov.scot_\(www.gov.scot\)](https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/pages/4/ership_report_-_gov.scot_(www.gov.scot))

⁶ See <https://www.scottishhumanrights.com/media/2014/scotland-2019-obi-report-vfinal.pdf>

⁷ See

<https://www.bing.com/ck/a?!&p=683a4a8409c37ac4JmltdHM9MTY2MjMzNjAwMCZpZ3VpZD0xYWQ5NjI1YS0yY2M2LTly1MGMtMTQ3ZS03M2I1MmRmZTY0MGQmaW5zaWQ9NTE5NQ&pfn=3&hsh=3&fclid=1ad9625a-2cc6-650c-147e-73b52dfe640d&u=a1aHR0cHM6Ly9hcmNoaXZlMjAyMS5wYXJsaWFtZW50LnNjb3QvcGFyblhWVudGFyZW5kZjZlcWV5aW5nLWFuZC1idWRnZXQtYW5hbnR1ZmVzaXMuX28=&ntb=1>

⁸ See <https://www.consultationinstitute.org/consultation-charter-7-best-practice-principles/>

⁹ See <https://www.scottishhumanrights.com/projects-and-programmes/human-rights-budget-work/>

¹⁰ See

<https://www.bing.com/ck/a?!&p=544060aa7c3305a6JmltdHM9MTY2MjMzNjAwMCZpZ3VpZD0xYWQ5NjI1YS0yY2M2LTly1MGMtMTQ3ZS03M2I1MmRmZTY0MGQmaW5zaWQ9NTQyNA&pfn=3&hsh=3&fclid=1ad9625a-2cc6-650c-147e-73b52dfe640d&u=a1aHR0cHM6Ly93d3cud2ZkLm9yZy9jb21tZW50YXJlJ2hvdy1kZWxpYmVvYXRpdmUlcHJvY2VzZ2VzLWVudWV5aW5nLWFuZC1idWRnZXQtYW5hbnR1ZmVzaXMuX28=&ntb=1>

¹¹ See <https://www.scottishhumanrights.com/media/2297/haia-eval-report-2016.pdf>

¹² See <https://www.scottishhumanrights.com/media/2014/scotland-2019-obi-report-vfinal.pdf>

¹³ See

<https://www.bing.com/ck/a?!&p=683a4a8409c37ac4JmltdHM9MTY2MjMzNjAwMCZpZ3VpZD0xYWQ5NjI1YS0yY2M2LTly1MGMtMTQ3ZS03M2I1MmRmZTY0MGQmaW5zaWQ9NTE5NQ&pfn=3&hsh=3&fclid=1ad9625a-2cc6-650c-147e-73b52dfe640d&u=a1aHR0cHM6Ly9hcmNoaXZlMjAyMS5wYXJsaWFtZW50LnNjb3QvcGFyblhWVudGFyZW5kZjZlcWV5aW5nLWFuZC1idWRnZXQtYW5hbnR1ZmVzaXMuX28=&ntb=1>

¹⁴ Please see the following where the Commission has written most recently about taxation options for the Scottish Government:

- <https://www.scottishhumanrights.com/media/2235/tax-policy-and-the-budget-a-framework-for-tax-shrc.pdf>
- <https://www.scottishhumanrights.com/blog/we-need-human-rights-based-taxation-to-help-scotland-build-back/>
- https://www.scottishhumanrights.com/media/2317/2022_08_04-fpa-pre-budget-scrutiny-2023-24-web-version.pdf

¹⁵ See <https://fraserofallander.org/>

¹⁶ See <https://cpag.org.uk/shop/cpag-titles/lets-talk-about-tax>

¹⁷ See https://www.ippr.org/files/2019-09/1568730565_local-tax-in-scotland-sept19.pdf

¹⁸ Response by Professor David Byrne Ph.D., FAcSS to Consultation on Scotland's first Framework for Tax and tax policy in relation to the Scottish Budget 2022-23.

¹⁹ See: <https://www.scottishhumanrights.com/projects-and-programmes/human-rights-budget-work/>

²⁰ 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 <https://www.gov.uk/government/collections/measuring-tax-gaps> ; Richard Murphy on tax, accounting and political economy <http://www.taxresearch.org.uk/Blog/>

²¹ HMRC define tax avoidance as “exploiting the tax rules to gain a tax advantage that Parliament never intended”.

²² See <https://www.gov.scot/publications/feasibility-distributional-analysis-scottish-government-budget-2019-20/>

²³ See <https://www.gov.scot/publications/equality-budget-advisory-group-recommendations-for-equality-and-human-rights-budgeting---2021-2026-parliamentary-session/>

²⁴ See for example:

- <https://www.nes.scot.nhs.uk/about-us/equality-and-diversity/fairer-scotland-and-equality-impact-assessments.aspx#:~:text=The%20Fairer%20Scotland%20Duty%20requires%20that%20we%20carry,by%20socio-economic%20disadvantage%20when%20we%20make%20strategic%20decisions.>
- <https://www.gov.scot/publications/fairer-scotland-duty-assessment-scottish-attainment-challenge-2022-2023-2025-2026/>
- [Fairer Scotland Duty | Improvement Service](#)

²⁵ See

<https://www.bing.com/ck/a?!&p=63886d87bff056a8JmldHM9MTY2MjQyMjQwMCZpZ3VpZD0xYWQ5NjI1YS0yY2M2LTY1MGMtMTQ3ZS03M2I1MmRmZTY0MGQmaW5zaWQ9NTE4OQ&ptn=3&hsh=3&fclid=1ad9625a-2cc6-650c-147e-73b52dfe640d&u=a1aHR0cHM6Ly93d3cuZ292LnNjb3QvcHVibGlyYXRpb25zL2ZhaXJlci1zY290bGFuZC1kdXR5LWd1aWRhbmNILXB1YmxpYy1ib2RpZXMv&ntb=1>

²⁶ 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.

²⁷ See <https://www.gov.scot/publications/equality-budget-advisory-group-recommendations-for-equality-and-human-rights-budgeting---2021-2026-parliamentary-session/>