

## **Statement to the Committee on Economic, Social and Cultural Rights for the 72nd Pre-Sessional Working Group on the Examination of the United Kingdom's Compliance with the United Nations International Covenant on Economic, Social and Cultural Rights**

**8 March 2023**

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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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The Scottish Human Rights Commission is pleased to present the following information in support of the Committee's review of the UK. We refer to the previous comments in respect of the devolution settlement, taking this opportunity to restate the broad range of legal powers and responsibility in respect of economic, social and cultural rights held by the Scottish Parliament and Scottish Government.

Access to justice for possible violations of human rights is under threat across the whole United Kingdom with the proposed repeal and replacement of the Human Rights Act 1998. This process lacks public support and is counter to the UK Government's own evaluation of the Human Rights Act. We are particularly concerned about the possible impacts for devolution, as the Human Rights Act and the European Convention are also deeply embedded in the Scotland Act. The proposals have attracted cross party criticism in Scotland where there is political support for enhancing human rights protection.

Following a report of a National Taskforce for Human Rights Leadership in 2021, the Scottish Government pledged to incorporate into domestic law rights protected by the Covenant on Economic, Social and Cultural Rights, but also the UNCRPD, UNCERD and UNCEDAW as well as creating new rights to a healthy environment and for older people and LGBTI+ people.

The Scottish Government must now show leadership and fully recommit to the incorporation agenda it has promised. Further measures to tackle barriers to justice are also deeply needed, including legal aid reform, increased non-judicial accountability avenues and high costs of litigation.

Recalling the Committee's previous concluding observations made in 2016, the Scottish Human Rights Commission has assessed the current state of progress in compliance with the state's obligations under the Covenant and has deep and wide-ranging concerns. Scottish Policy is presently reacting to significant external pressures – including the COVID-19 crisis and global economic disruption. However, the Commission is not clear that the Scottish Government's approach to these issues has adequately reflected its obligation to take all

appropriate measures to the maximum of available resources to protect economic, social and cultural rights.

In particular, we regret the lack of available and appropriately disaggregated data and cumulative impact analysis that would demonstrate the Scottish Government has taken the necessary steps to prevent impermissible retrogression. In some instances, we are concerned that minimum core obligations including to housing and food security have not been sufficiently protected.

We urge the Committee to seek information from the State, including Scottish Government, on how critical decisions have reflected human rights obligations.

Recognising that the current issues affecting Scotland cut across all human rights, I will now outline a number of key areas of immediate concern.

The Scottish Human Rights Commission welcomes the establishment of the Social Security Scotland Agency, a significant development since the Committee's previous review. Social Security Scotland was established in 2018 and has been slowly taking over delivery of around 15% of welfare payments in Scotland. However, a focus on safe and secure transition of responsibility has limited innovation in the redesign of entitlements rather than exploring the full scope of devolved opportunity to deliver a rights-based social security approach. While the legislation that creates Scottish social security places human rights law and principles front and centre, there is currently no statutory obligation in relation to compliance.

One exception is the creation of the Scottish Child Payment, a £25 per week per child top up payment delivered by Social Security Scotland. Despite issues such as delay to rollout for children over 6, the implementation of this commitment reflects a whole Scottish Government focus on eradicating child poverty. This ambition is severely threatened by the crises affecting the economy. The Commission is concerned that the right to an adequate standard of living is being radically undermined by the sharp rise in living costs seen in Scotland over the last 12 months in particular.

Households are spending a greater proportion of their income on basic essentials – food, transport and energy. This is not felt equally; women are more likely to act as poverty managers, while disabled people and their households already more likely to live poverty are seeing incomes squeezed even further. 1.5 million people in Scotland report that they struggle with the condition, security, suitability, or affordability of their home. Prices of food are rising sharply, with the average cost of bread up 10 per cent in a year. Food price inflation hit 16.2 per cent in the year to October 2022. In recent weeks supply issues have been even more acute, with fresh food particularly affected. Shortages have particular impacts for rural communities and households with a disabled person.

Poverty and income inequality of course engages a wide array of economic, social and cultural rights, and the Commission's view is that what has become known as the cost of living crisis needs to be understood through a human rights lens. Human rights tools including human rights budgeting, impact assessment and human rights based approaches have not been utilised effectively.

Finally, we draw the Committee's attention to the range of issues affecting the provision of health and social care in Scotland. The right to the highest attainable standard of health is being compromised by the scale of crisis affecting the NHS in Scotland. Since the last review, severe staff shortages in health and social care, especially in rural areas, have worsened. The pandemic has of course had a negative impact on trends disrupting access to healthcare – long pauses to cancer and other screening programmes, elective surgeries and fertility treatment and well as changes to maternity care that isolated women, cuts to social care packages that support the basic needs of disabled people were all explained by the demands of the public health crisis. However ongoing support for those affected has been minimal and waiting times to access vital healthcare remain far in excess of Government targets.

The introduction of default telemedical treatment across primary healthcare improved access for some people, and innovations like telemedical abortion supported access to healthcare, particularly for women in remote and rural areas. However, access to sexual and reproductive care is a particularly acute example of geographic inequalities that mean people in remote and rural areas are required to travel many hours for care.

The Commission is deeply concerned by the reprioritisation of mental health support, especially in the context of worsening mental health over periods of lockdown and social restriction associated with COVID-19 public health measures. The Scottish Government itself has acknowledged the likely negative impacts for mental health of making savings or re-phasing expenditure worth £38 million.

While we have identified these areas of deep concern, there are a host of significant areas of concern raised in our report. We look forward to any questions that the Committee might have.

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