

March 2018

Joint Submission

Joint submission from *deafscotland*, *Glasgow Council for the Voluntary Sector*, & *Voluntary Action Scotland* to the Scottish Parliament's Independent Commission on Parliamentary Reform.

3 of 4 joint submissions.

Joint submission from *deafscotland*, *Glasgow Council for the Voluntary Sector* and *Voluntary Action Scotland* to Scottish Parliament on the Independent Commission on Parliamentary Reform.

The three organisations are working collectively to build knowledge and capacity on human rights within the third sector and to work collaboratively with government, the Scottish Parliament and the public sector so that human rights fulfil their potential to help make Scotland fairer.



The Scottish Council on Deafness (SCoD) is the lead for all matters concerning deaf people and their issues in Scotland, representing organisations working with and on behalf of deaf people: Deaf /Sign Language users, Deafblind, Deafened, and Hard of Hearing people. SCoD's membership provides an effective working partnership between the Third, Public and Private Sectors and the Scottish Government.

For more information visit <http://www.scod.org.uk/>



GCVS is the main development agency and advocate for voluntary and community organisations in Glasgow and one of the largest Council's for the Voluntary Sector in the UK. We are also one of four key partners – (GCVS, Volunteer Glasgow, Glasgow Social Enterprise Network and the Third Sector Forum) – that form Glasgow's Third Sector Interface – the partnership that supports and represents the third sector in Glasgow and through which the Scottish Government engages with the third sector.

For more information visit <http://www.gcv.org.uk/>



Voluntary Action Scotland is the national network organisation that champions, connects and develops Scotland's Third Sector Interfaces (TSIs) to support the third sector locally. VAS gives a national voice to the TSIs local impact. We advocate for the best possible environment in which the third sector locally can thrive and contribute to better and fairer outcomes for the people we serve.

For more information visit <http://www.vascotland.org/>

Executive Summary

The purpose of this submission is to inform and influence the recommendations of the independent 'Commission on Parliamentary Reform', set up by the Presiding Officer of the Scottish Parliament. In drafting, we have drawn from our collective experience of working with thousands of individuals, families and communities across Scotland as well as benefitting from volunteers across Scotland who are estimated to provide value of £2.6 billion every year. Our staff and the volunteers we work with understand the importance of fulfilling individual obligations to each other and to society, to make Scotland fairer. As a matter of principle and in return, we would like to see the Scottish Parliament fulfil its role to ensure Scotland is a 'rights respecting' society.

In this submission we have reflected on the recommendations from 'Shaping Scotland's Parliament' Report of the Consultative Steering Group on the Scottish Parliament and offered some observations drawn from our practice and experience. As a result, we have chosen to focus on how human rights, a core principle and function of the Parliament, can be given greater impact to make Scotland more inclusive and economically fairer. We are happy for our submission to be made public.

Human rights equalise the relationship between government, parliament and the people. Human rights empower people as they shift the debate from benevolence and 'asks' to a strategy for delivering rights and duties. When the Scottish Parliament was established there should have been a new culture of rights developed as the Scotland Act 1998, arguably our constitution¹, set out the rights of people and the duties of our elected government. However, there is little indication people understand or can exercise their rights with a Scottish Government opinion poll revealing that 'one in five Scots believe human rights are for minority groups only' and 'two in five Scots (44 per cent) say they have no bearing on their everyday life'². A rights respecting culture would be a big and welcome change in Scotland.

The Scottish Parliament depends on a funded and vibrant Third Sector. However, our problems with funding means that our ability to participate in the work of the Scottish Parliament is limited, although our ability and effectiveness in local communities which we are funded for, continues to grow. Informing the national perspective with what is going on locally remains a key driver for reform but there is a danger that a lack of information and evidence provided to the Parliament skews the nature of reform or fails to make the case for it in the first place.

In this climate, the Scottish Parliament can use the existing human rights framework and tools to evaluate the delivery by the State of its human rights obligations and probing the public sector to account for its delivery of human rights obligations. This would lighten the load of the voluntary sector's activity on public policy. The Scottish Parliament can also deploy international standards on delivering human rights through the private sector which is already supported by the UK and Scotland. Specifically, the UN's Guiding Principles on Business and Human Rights (UNGPs) provide a framework of 'respect, protect

¹ For example see review undertaken for EHRC Scotland in "Equality, Human Rights and Constitutional Reform in Scotland", pub November 2013 <http://www.equalityhumanrights.com/about-us/devolved-authorities/the-commission-in-scotland/research-in-about-us/devolved-authorities/the-commission-in-scotland/equality-human-rights-and-constitutional-reform-in-about-us/devolved-authorities/the-commission-in-scotland>

² YouGov poll during 30 Oct – 03 Nov 2015 of 1,026 online interviews & are representative of all adults in Scotland (aged 18+).

and remedy'. This framework prevents human rights abuses and switches the emphasis from 'commitments' to requiring evidence of compliance and impact.

In making the following recommendations we have been influenced and impressed by the repeated, declared commitments of MSPs on delivering human rights, equally

1. Human rights should achieve far greater prominence across the business of committees in the Scottish Parliament and in the work of the SPCB.
2. More information and detail is needed on the human rights implications of proposed laws, regulations and policies. The current brief statements in the Policy Memorandum which accompanies Bills are inadequate to generate informed debate amongst the public and politicians. The Policy Memorandum provided by the Parliament should provide much more detail about implementing minimum international standards so that journalists, NGOs, MSPs, Committee clerks and those drafting amendments for MSPs have a greater understanding of and can participate more effectively in, informed debate about the duties on public authorities and the human rights of people.
3. The Scottish Parliament should explicitly introduce the UNGPs into its public procurement strategy. In addition, there needs to be a system of public accountability in its procurement framework to ensure that the rights of workers, the rights of service users and the needs of communities are respected, protected and fulfilled.
4. Across its business, each Committee should require the purchasing power of public procurement to be used to ensure that the rights of workers, the rights of service users and the needs of communities are respected, protected and fulfilled eg as a matter of procedure, require those public sector bodies who give evidence to provide a statement of account on how its public procurement processes are 'rights respecting' in impact. This would fulfil the UNGPs. It is understood this would be a more ambitious process than the reporting required under the Procurement Reform (Scotland) Act 2014.
5. The SPCB should be an explicit delivery agent for Scotland's National Action Plan on Human Rights (SNAP) and consequently inspire action from other Scottish public authorities. The SPCB should also adopt and deliver Scotland's Action Plan on Business and Human Rights (NAP) when it is agreed.
6. The lived experience of people we work with has been conveyed to Parliament since 1999, and the process has raised expectations about impact and results. Given that there has been 18 years of legislation it is now timely to review how laws and policies are working, identify any unintended consequences and to monitor rollout.
7. We are happy to convene consultation events with our members to discuss these issues in more detail and to consult on some of the independent Commission's draft recommendations.

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Section 1 – Functions of Parliament

We have much to say on this issue, but we are confined to six pages. We highlight the following issues.

1. **Human rights are the solution**, not a problem. Compliance with international standards will make Scotland more inclusive and economically fairer. Concrete and deliberate actions are needed to make Scotland a ‘rights respecting’ society.
2. **Human rights culture** does not currently exist as every day, people face difficulties in knowing and asserting their rights. There needs to be capacity building as well as improved knowledge, for duty bearers and rights holders.
3. **Informed reform** can be achieved by directly engaging with local groups, so evidence can be gathered on the practical problems.
4. **Introduce mechanisms** which ensure that the Concluding Observations from the UN, and other internationally ratified treaties, are debated by the Scottish Parliament, and scrutinised by the appropriate Committee. Each treaty review as well as the UPR process should merit a report from a Committee on what action needs to be taken, by whom, and when.
5. **Mainstream human rights** in the business of the Scottish Parliament. For example, provide much more information about the human rights considerations of any Bill to assist Committee members understand the human rights engaged and interpretations of responsibilities under international law. Currently the brief descriptions provided are insufficient.
6. **Instigate legislative reform** to enable change via cases. In addition to extending the availability of legal aid to increase the flow of cases from adults and children, amend the law to enable the Scottish Human Rights Commission to undertake casework and to fund a small number of cases annually at courts in Scotland. Currently the SHRC is specifically barred from undertaking casework¹. The Scottish Parliament has already extended the powers of the Children’s Commissioner in this regard. This will require an increase in the SHRC’s budget.
7. **Improve scrutiny** of performance by duty bearers. Establish systems and procedures so that those who are in receipt of public funds have an explicit duty to comply with, and promote, the equal enjoyment of human rights. This responsibility extends to public procurement as we would expect that companies which respect workers’ rights and deliver human rights compliant services will be rewarded with public sector contracts. Scrutiny should be undertaken in conjunction with the Scottish Government as well as key agencies such as Audit Scotland, the Scottish Charity Regulator, the Scottish Housing Regulator and the Public Services Ombudsman. There is an opportunity to develop cross cutting work, underpinned by accessible communication, to achieve economies of scale across the different agencies as well as build expertise. There needs to be external audit to ensure sufficient consistency and quality.
8. **Extend funding** to the Third Sector to build knowledge and capacity on human rights. Existing umbrella groups such as VAS can provide infrastructure and support targeted at rights holders and duty bearers, but there also needs to be funds for local groups so they can promote human rights and mainstream human rights in their daily operations. This is new work, which requires additional investment. Local organisations need to be funded to make an impact on housing, health, social work, care and public administration, and already there is some discussion that Local Human Rights Plans may be the best way forward if progress is to be panned and

monitored. New networks also need to be established, such as involving Chambers of Commerce and small business support (links to 9 below), which are currently being actively explored. A change in practice is needed, away from the top down approach.

9. **Chase up** publication of Scotland's National Action Plan on Business and Human Rights (NAP) and confirm that it is the duty of the Scottish Government to implement as per the UN Guiding Principles on Business and Human Rights.
10. **Clarity and consistency** is required: there is confusion between equality law and human rights law – too many times there are understood to be the same thing which is unhelpful. Human rights are to be equally enjoyed and are therefore a much more expansive framework to achieve fairness. Specific measures have been undertaken to promote equality that could equally have been agreed for human rights such as an explicit requirement that the City Partnership Deals comply with equality law, but not human rights law.

We would also refer you to the submission that we made to the Scottish Commission for Parliamentary Reformⁱⁱ. We would welcome the opportunity to develop these points further in oral evidence to the Committee. We now highlight concerns and recommend a number of actions to inform the Committee's deliberations.

3. Improve Evidence & Knowledge of Human Rights

Human rights equalise the relationship between government, parliament and the people. Human rights empower people as they shift the debate from benevolence and 'asks' to a strategy for delivering rights and duties. However, people need to be aware of their rights, know how to exercise them and challenge duty bearers' delivery of functions. A Scottish Government opinion poll revealed that 'one in five Scots believe human rights are for minority groups only' and 'two in five Scots say they have no bearing on their everyday life'ⁱⁱⁱ. Scotland cannot boast that it has a human 'rights respecting' culture. There is no evidence that the Human Rights Act 1998, or internationally ratified treaties, have been mainstreamed across public services. Therefore, as a precursor to engagement with the public sector and the public there is a need to train staff and inform the public about what human rights mean.

Article 10 of the European Convention on Human Rights (ECHR) is given domestic effect through sections 29 and 57 of the Scotland Act 1998 as well as the Human Rights Act 1998. Article 10 accords everyone, including MSPs, the right to access information to make an informed opinion^{iv}. Better information needs to be sourced to inform scrutiny and to decide what actions should be taken by Scottish Parliament Committees. This is particularly important to aspects of community engagement – so communities can better participate in local level participative democracy, which is particularly important to implementing aspects of the Community Empowerment Act.

4. Integrate with Developments

The design and delivery of the ‘Socio-Economic Duty’ (The Duty) should be rooted in human rights so that it facilitates the developments of a rights culture in making Scotland fairer. For example, The Duty could give effect to the International Covenant on Economic, Social and Cultural Rights (ICESCR). As the UK has ratified this UN treaty then all our laws and policies should already comply.

5. Framework Using International Standards

Human rights are within the legislative competence of the Scottish Parliament. The Scotland Act 1998 places obligations on the Scottish Parliament to pass legislation which complies with the ECHR, and EU law, and places obligations on Scottish Government Minister to comply with other international human rights treaties that have been “ratified” by the UK, under Section 100 and Schedule 5. Therefore, Parliament has passed legislation which specifically includes duties under international ratified treaties e.g. the Children and Young People’s Commissioner Scotland (2003) included functions on promoting the UNCRC and the Scottish Commission for Human Rights Act (2006) places duties on the SHRC in respect of internationally ratified treaties.

By understanding and considering the 100s of recommendations from the UN and Council of Europe processes, the Scottish Parliament is in the fortunate position of applying the recommendations from experts and judges which have had the opportunity consider matters in some detail.

6. Promote Obligations of Duty Bearers

The Scottish Parliament is able to lead practice. The spending power of the public bodies covered by the HRA is significant^v. We also believe that those organisations funded by public money should be human rights complaint – a condition of the contract! The effect will be that the voluntary sector, Arm’s Length External Organisations (ALEOs)^{vi} and publicly owned companies will have to be explicitly compliant.^{vii} By adopting a much broader approach to which organisations are duty bearers, the Scottish Parliament can effect a change in culture and practice using existing spend across 10,000+ bodies delivering public services and those of a public nature^{viii}.

The Human Rights Act 1998 (HRA) places obligations on many organisations funded by government and the public sector. For example, Section 6 requires all public bodies and those delivering services of a public nature to comply with the ECHR. Bodies covered by the HRA include housing departments and housing associations, social work services, schools and nurseries, GP practices and health services which are all bodies subject to scrutiny by the Scottish Parliament and those bodies which can make Scotland fairer.^{ix}

7. Use Current Resources

There are many freely available resources which bodies can use to demonstrate that they are complying with human rights law: An Equality and Human Rights Impact Assessments tool that has been jointly developed by the EHRC Scotland and the SHRC - it is not prescriptive but sets out 10 steps^x; a Child Rights and Wellbeing Impact Assessment (CRWIA) ‘is a policy development and improvement approach’ used by Scottish Government officials from June 2015^{xi}; a Human Right Based Approach is about about empowering people to know and claim their rights and increasing the ability and accountability of individuals and institutions who are responsible for respecting,

protecting and fulfilling rights^{xii}; there are five PANEL principles: participation, accountability, non-discrimination and equality, empowerment and legality^{xiii}; FAIR is another process that helps to deliver a HRBA.^{xiv}

8. Slow Progress

There have been a number of specific measures taken:

- Scotland's National Action Plan on Human Rights (SNAP), which was launched in 2013, has been the subject of reports and debates in the Scottish Parliament and at the Justice Committee but has not achieved the impact expected.^{xv}
- Human rights budgeting has not progressed despite action on 'equality' budgeting. This is understood internationally as a key driver for reform: 'Human rights impose moral and legal obligations on states, and these obligations extend also to budgeting.'^{xvi}
- There is a need for co-ordination by the Scottish Parliament to ensure the human rights strategy is joined up and that needs to be addressed^{xvii} as well as progress on outcomes^{xviii}.

9. Inclusive Communication

There needs to be continuity in communication i.e. that the Principles of Inclusive Communication are used^{xix} to ensure duty bearers and rights holders are involved in engagement. The guidance from the Scottish Accessible Information Forum^{xx} is under-used although its purpose is to ensure all information is available and accessible to all members of the public – not just available in Easy Read. Inclusive communication makes services and opportunities more accessible for everyone. Although the implementation of the British Sign Language (Scotland) Act 2015^{xxi} creates opportunities to improve linguistic access by public sector bodies, its focus is on a narrow sector – 12,533 BSL users according to the 2011 Census. There needs to be a more inclusive approach to communication generally. For example, according to the 2011 Census, 350,492 of the Scottish population aged 3 and over listed deafness or partial hearing loss as a long-term health condition. We believe that the number of people who have a hearing loss in Scotland is one in five^{xxii} of the population, which is approximately 1 million people.

This point is important as if the Parliament embarks on Participatory Human Rights Budgeting to achieve better clarity of current spend, cost base and quality comparators then this requires the proactive publication of information to enable better informed decision making.

10. Fund Third Sector Organisations

Additional monies are needed to enable the Third Sector to fulfill its role under the Paris Principles^{xxiii}. For example, it could develop innovative cross cutting teams moving away from equalities compliance to a human rights improvement approach, so they can be effective 'rights defenders'. There are a wide range of tasks that can be undertaken by the Third Sector including:

1. Provide training for staff, volunteers and service users, so they can comply with duties as well as promote human rights.
2. Help deliver an effective public information campaign targeted at 'right holders', as you don't have rights until you know about them.
3. Appoint 'Equalities and Human Rights Improvement Officers' with new public funding.

4. Share practice and demonstrate impact when training is implemented – to create a sense of need and want rather than just compliance.

11. Strategic Litigation

Given that Scotland does not hear many cases on human rights, for a variety of reasons, the pace of legal reform is very slow. That needs to change. An individual pursuing a human rights case can achieve benefit for all of us. For example, Rape Crisis Scotland achieved a significant victory in 2016 that had a major impact on the rights of rape survivors.^{xxiv} Strategic litigation needs to be better used as a tool to ensure duty bearers respect human rights.

12. Conclusion

The YouGov poll for the Scottish Government carried out from October – November 2015 revealed that: one in five Scots believe human rights are for minority groups only and two in five Scots (44 per cent) say they have no bearing on their everyday life. There is a need to improve public perception and understanding of how human rights can be used to achieve fairer outcomes. People need help to assert their rights and they will as the YouGov poll also revealed that two thirds of those interviewed think human rights are a positive thing and 68% said they would act if they felt their rights had been violated. Therefore, enabling people to assert their rights is key to driving change.

Despite the Scotland Act 1998 and the Human Rights Act 1998, human rights need to be more explicitly acknowledged and mainstreamed across the business of the public sector. A focus of the Committee's Inquiry should be on why human rights have not made a greater impact as there have been a succession of statements and policies which should have achieved change. For example, we know from our members that there have been disappointing results embedding human rights into the public procurement process in the social and care sector. Our members would be pleased to meet with the Committee to explain the barriers to the equal enjoyment of human rights across devolved areas, and to discuss solutions which can be progressed by the Scottish Parliament. We would be pleased to set up that opportunity quickly.

End Notes

ⁱ Section 6 at <https://www.legislation.gov.uk/asp/2006/16/contents>

ⁱⁱ Response CPR_096, available on the website at https://test123582.files.wordpress.com/2017/02/cpr_096_joints submission from gc vss cod and vas.pdf

ⁱⁱⁱ YouGov poll during 30 Oct – 03 Nov 2015 of 1,026 online interviews & are representative of all adults in Scotland (aged 18+).

^{iv} Grand Chamber decision of *MAGYAR HELSINKI BIZOTTSÁG v. HUNGARY* issued on 8th November 2016 see <http://www.ijrcenter.org/2016/11/15/ecthr-government-obligated-to-impart-information-beneficial-to-public/>

^v The public sector spends over £10 billion each year on goods, works and services. Stat contained in Guidance under the Procurement Reform (Scotland) Act 2014, Section 1.2, published by the Scottish Government 2016 and available at <http://www.gov.scot/Resource/0049/00496919.pdf>

^{vi} For example see the report from OSCR in 2015 <https://www.oscr.org.uk/media/1778/2015-01-09-oscr-aleo-report.pdf> and from Audit Scotland in 2011 http://www.audit-scotland.gov.uk/docs/local/2011/nr_110616_aleos.pdf

^{vii} For more information see OSCR website at http://www.itspublicknowledge.info/YourRights/Whocanlask/Publicly_owned_companies.aspx

^{viii} Freedom of Information (Scotland) Act 2002, Survey of Designated Public Authorities' by Craigforth Consultancy and Research for Office of Scottish Information Commissioner, March 2004. More organisations are covered under human rights law than FoISA e.g. Scotland has over 200 housing associations.

^{ix} See EHRC website <https://www.equalityhumanrights.com/en/human-rights/human-rights-act>

^x For more information go to the SHRC website <http://www.scottishhumanrights.com/eqhria>

^{xi} For more information see CYPCS website <https://www.cypcs.org.uk/policy/cria#>

^{xii} For more information go to the SHRC website <http://www.scottishhumanrights.com/careaboutrights/whatisahumanrightsbasedapproach>

^{xiii} Ibid

^{xiv} For more information go to the SHRC website <http://www.scottishhumanrights.com/eqhria/eqhriatrainingfair>

^{xv} For more information go to the SHRC website <http://www.scottishhumanrights.com/actionplan>

^{xvi} For more information see <https://www.law.ox.ac.uk/research-subject-groups/human-rights-and-budgeting>

^{xvii} See SHRC website at <http://eqhria.scottishhumanrights.com/eqhriaresbudgetan.html>

^{xviii} For example, see website of the Scottish Women's Budget Group at <http://www.swbg.org.uk/>

^{xix} <http://www.gov.scot/Publications/2011/09/14082209/0>

^{xx} <http://www.saifscotland.org.uk/#sthash.FWiq1yfq.dpbs>

^{xxi} See website of Deaf Sector Partnership for more information <http://deafsectorpartnership.net/bsl-scotland-act/>

^{xxii} The Scottish Government commissioned the report: The Long and Winding Road - A Roadmap to British Sign Language & Linguistic Access in Scotland. The British Sign Language & Linguistic Access Working Group 2008: <http://www.gov.scot/Publications/2009/07/01102537/1>

^{xxiii} See UN website at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

^{xxiv} See Blog at <https://www.rapecrisisScotland.org.uk/news/blog/a-case-for-human-rights-in-praise-of-the-legal-profession/>