



**Inclusion Scotland and the Health and Social Care Alliance  
Scotland (the ALLIANCE)**

# **Incorporating the United Nations Convention on the Rights of Disabled People (CRPD) in Scotland**

**Report (November 2020)**

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## 1. Introduction

Inclusion Scotland and the Health and Social Care Alliance Scotland (the ALLIANCE) have expressed their support for incorporation of the Convention on the Rights of Persons with Disabilities<sup>1</sup> (CRPD) and other international human rights treaties into Scots law as a means to ensure that people's rights are respected, protected and fulfilled. In order to inform their positions on incorporation, they jointly commissioned this report, which identifies and compares the benefits of different models of incorporation with specific reference to the CRPD.

The aim of this report is to provide information and opinion relevant to the opportunities to further entrench the CRPD in Scotland through incorporation and other methods of implementation. The report addresses the following considerations:

- Whether or not incorporation of the CRPD would be positive for the realisation and progression of disabled people's rights in Scotland.
- Which model(s) of incorporation of the CRPD would be most beneficial for securing positive outcomes for disabled people in their everyday lives.
- What other legal mechanisms or duties could be created to ensure better realisation and / or justiciability of disabled people's rights.

The report is intended to inform and increase the capacity of disabled people, Inclusion Scotland and the ALLIANCE in their efforts to inform and influence law and policy makers, including the Scottish Government, Scottish Parliament and the National Taskforce for Human Rights Leadership<sup>2</sup> so that they recognise the benefits of and best models for incorporation of the CRPD and the realisation of disabled people's rights.

The report using rights-related technical language and legal terminology and a glossary of key terms can be found at Annex 1.

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<sup>1</sup><https://www.ohchr.org/en/hrbodies/crpd/pages/conventionrightspersonswithdisabilities.aspx>.

<sup>2</sup> <https://www.gov.scot/groups/national-taskforce-for-human-rights-leadership/>.

## 2. National context

In response to Brexit, successive UK Governments' public aversion to human rights and the current UK Government's failures to secure minimal human rights protections for individuals during the ongoing COVID-19 pandemic, Scotland has taken the position to secure stronger legal human rights protection through incorporating a range of international human rights into Scots Law. Following the UK's departure from the European Union at the end of 2020, existing human rights protections will be weakened when key European human rights laws, such as the Charter of Fundamental Rights of the European Union, will no longer be applicable.<sup>3</sup>

The First Minister's Advisory Group on Human Rights Leadership (FMAG) published its 'Recommendations for a new human rights framework to improve people's lives' (FMAG Recommendations) in December 2018.<sup>4</sup> In 2019, the National Taskforce for Human Rights Leadership<sup>5</sup> (HR Taskforce) was established to take forward the FMAG Recommendations and develop a statutory framework for incorporating international human rights into Scots law. In line with the FMAG Recommendations, the HR Taskforce has prioritised economic, social and cultural (ESC) rights but also identified the rights of disabled people as a focal point for future Scottish human rights legislation. To date, ESC rights have gained little traction in UK law, which negates the crucial role that these rights play in developing the full range of human rights for each person in Scotland, but particularly the rights of disabled people. While the Scottish Government's commitment to ESC rights is welcomed, the overarching focus on ESC

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<sup>3</sup> European Union Committee, The UK, the EU and a British Bill of Rights, 12th Report of Session 2015–16 – published 9 May 2016 – HL Paper 139. Table 1.

<https://publications.parliament.uk/pa/ld201516/ldselect/lducom/139/139.pdf>. See discussion in 'BREN (Brexit and Rights Engagement Network): Brexit, Rights and Devolution' at <https://papers.ssrn.com/abstract=3321685>.

<sup>4</sup> First Minister's Advisory Group on Human Rights Leadership, Final Report (FMAG Recommendations) at <https://humanrightsleadership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf>.

<sup>5</sup> <https://www.gov.scot/groups/national-taskforce-for-human-rights-leadership/>.

rights does not recognise the fact that disabled people as rights-holders<sup>6</sup> in Scotland have yet to gain full access to their civil and political rights due to the persistent barriers they face when trying to exercise their human rights. Acknowledging that the Scottish Government's Programme for Government 2020–21 pledge to actively consider incorporating the CRPD,<sup>7</sup> this report aims to highlight why and how CRPD incorporation should be prioritised.

While Scotland does have a range of laws, policies and national strategies specific to the promotion of disabled people's rights, such as the Social Care (Self-directed Support) Act 2013 and A Fairer Scotland For Disabled People 2016–2021 Delivery Plan, both of which are discussed below, implementation is patchy at best and has failed to enable disabled people to exercise some of their most fundamental human rights and fully participate in their communities.<sup>8</sup> This situation stems from a lack of disability-specific language in existing laws, poor policy coordination, little understanding of the minimum international standards relevant to disabled people's rights, and generally poor knowledge of the barriers experienced on a daily basis by disabled people in Scotland. The international framework offered by the CRPD reinforces a holistic understanding of how disabled people must be enabled to activate all of their existing rights under the social model for disability (see section 3.2 below).

The 2018 FMAG Recommendations proposed that any new Act of Scottish Parliament (ASP) should 'include[ ] a duty on the government to take steps, including as part of budgetary processes and decision-making, to use the maximum of its available resources to achieve progressively the full realisation of the economic, social and cultural rights of everyone'.<sup>9</sup> Importantly, the FMAG further outlined that any new legislation should

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<sup>6</sup> The person who holds a legal right and, in the context of human rights law, to whom the State owes a duty to respect, protect and fulfil that right. See Annex 1.

<sup>7</sup> Scottish Government, Protecting Scotland, Renewing Scotland: The Government's Programme for Scotland 2020–2021, p 107 at <https://www.gov.scot/publications/protecting-scotland-renewing-scotland-governments-programme-scotland-2020-2021/>. Note, the Programme for Government does not use the official name of the UN Convention on the Rights of Persons with Disabilities.

<sup>8</sup> <https://www.gov.scot/policies/disabled-people/#:~:text=Legislation%20to%20protect%20the%20rights,support%20more%20choice%20and%20control.>

<sup>9</sup> FMAG Recommendations (n 4).

include specific rights for disabled people and be accompanied by a system for ensuring accountability.<sup>10</sup> The lack of accountability is why many individuals that identify with one or more protected characteristics under existing equality law are unable to enforce their rights.

For these reasons, exploring how the CRPD could provide stronger direction in the development of Scots law and drive a cultural change that empowers disabled people is timely.

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<sup>10</sup> Ibid. Recommendation 1.

### 3. Convention on the Rights of Persons with Disabilities

The CRPD and its Optional Protocol<sup>11</sup> were agreed in December 2006 following decades of work by civil society, activists and the United Nations to move disabled people away from being objects of charity to independent individuals capable of exercising their rights and making decisions about issues that affect their lives. Since the CRPD entered into force (became legally obligatory) in May 2008, 93% of the UN Member States have joined the treaty (become 'States Parties') and, as a result, are required to implement the Convention.

Despite being the most swiftly ratified human rights treaty on record, the 181 states that agreed to implement the CRPD have generally relied upon non-discrimination or equality clauses in their constitutions or other legislation to respect, protect and fulfil disabled people's rights, which is required by the CRPD (Article 5). However, very few states appear to have directly incorporated the CRPD and few states directly reference the Convention in sectoral laws. The lack of reference to the treaty in law makes linking national legislation directly to the holistic CRPD framework harder than with other international human rights treaties, such as the UN Convention on the Rights of the Child (UNCRC) or the European Convention of Human Rights (ECHR).<sup>12</sup> Most often, the CRPD is expressly referenced through National Action Plans (NAPs) and policy frameworks, rather than legislation.<sup>13</sup>

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<sup>11</sup> The Optional Protocol to the CRPD offers an international complaint mechanism capable of reviewing complaints about implementation of the CRPD in those states that have ratified the Optional Protocol. <https://treaties.un.org/doc/Publication/CTC/Ch-15-a.pdf>.

<sup>12</sup> Notable exceptions include Australia and Spain, which have passed extensive legislation directly linked to the CRPD.

<sup>13</sup> For example, Federal Ministry of Labour, Social Affairs and Consumer Protection (BMASK) 'National Action Plan on Disability 2012–2020 Strategy of the Austrian Federal Government for the implementation of the UN Disability Rights. Convention' (2012) [https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2019/10/Austria\\_National-Disability-Strategy-2010-%E2%80%932020.pdf](https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2019/10/Austria_National-Disability-Strategy-2010-%E2%80%932020.pdf).



### 3.1. Substance of the CRPD

The CRPD is a comprehensive mix of civil and political rights as well as economic, social and cultural rights that are common across other international human rights treaties (see Annex 2). The CRPD reinforces that the realisation of civil and political rights depends on the parallel realisation of economic, social and cultural rights.<sup>14</sup> The CRPD places both negative and positive obligations on states to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all disabled people – the specific ‘rights-holders’ under the Convention.<sup>15</sup> Negative obligations are those that require the state to refrain from interfering with the exercise of a person’s rights. For example, the CRPD requires that states do not interfere with a disabled person’s right to education and therefore a disabled person cannot be excluded from the general education system on the basis of their disability (CRPD Article 24(2)(a)). Positive obligations, on the other hand, demand that the state ensures that each individual is able to fulfil their rights. Therefore, the positive dimension of CRPD Article 24 requires that the state provide reasonable accommodation to meet each individual’s requirements. As with all international human rights treaties, the treaty does not specify how the duty is fulfilled but leaves that to the determination of each state.

The Committee on the Rights of Persons with Disabilities (CRPD Committee) is the supervisory body that monitors how well the state is doing in implementing and abiding by its obligations under the CRPD. It is comprised of independent experts in disabilities law, policy and practice as well as expertise gained through lived experience. In carrying out its functions, the CRPD Committee reviews periodic reports by the state. It may also review individual complaints about a state’s interference with an individual’s rights under the treaty. If the state has committed widespread or grave violations, the Committee may also initiate an inquiry procedure

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<sup>14</sup> R Sandland, ‘Lessons for children’s rights from disability rights?’ in E Brems, E Desmet and W Vandenhole (eds) *Children’s Rights Law in the Global Human Rights Landscape* (Routledge 2017), p 121.

<sup>15</sup> CRPD art 1. Note, the CRPD uses the term ‘persons with disabilities’ but in consultation with the commissioners of this report, the term ‘disabled people’ will replace the CRPD term for coherence with local terminology.

into the state's alleged behaviour. Finally, the CRPD Committee may issue general comments from time to time that clarify how CRPD rights should be interpreted. These general comments are useful in understanding the minimum standards for implementing CRPD rights in line with global practice. Collectively, the concluding observations on states' periodic reports, final views on individual complaints and inquiries and general comments are referred to as the 'jurisprudence' of the Committee and serve as important interpretive tools.

CRPD Article 3 sets out the general principles that underpin all of the rights inherent in activating disabled people's engagement with society, including:

1. Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
2. Non-discrimination;
3. Full and effective participation and inclusion in society;
4. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
5. Equality of opportunity;
6. Accessibility;
7. Equality between men and women;
8. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

These general principles reinforce the social model of disability.

### **3.2. The social model of disability**

The social model of disability promotes a holistic approach to disabled people's rights in terms of ensuring the equal opportunity to engage with and activate all of their rights as part of an inclusive society that is enriched by the participation of all people. As Barbara Lisicki explains,

*'The Social Model frames disability as something that is socially constructed. Disability is created by physical, organisational and attitudinal barriers and these can be changed and eliminated. This*

*gives us a dynamic and positive model that tells us what the problem is and how to fix it.*<sup>16</sup>

The social model outlined in the CRPD is distinguishable from the medical model that shaped most laws relating to disabilities during the 20<sup>th</sup> century and focused on an individual's impairment, rather than the disability, which should be understood as 'the social, material, and cultural barriers which exclude people with impairments from mainstream life'.<sup>17</sup> It is important to note that the CRPD Article 1 uses the term 'persons with disabilities', however, in consultation with Inclusion Scotland and the ALLIANCE, in this report the term 'disabled people' will replace the CRPD phrasing to align with local terminology.

### **3.3. Bringing the rights of disabled people to life in Scotland**

Civil and political rights are already largely embedded in UK law through the Human Rights Act 1998 (HRA 1998) and to some extent disabled people's rights are reinforced by reading the HRA 1998 in conjunction with the Equality Act 2010. However, practice has demonstrated that the general terms of existing law are not sufficiently tailored to allow disabled rights-holders to fully engage with and take ownership of their rights. This is one of the driving reasons behind the development of the CRPD and why the framework offered by the Convention has the potential to be the touchstone for delivering comprehensive human rights protection delivered for all disabled people in Scotland.

The UK ratified the CRPD in 2009, and through the Scotland Act 1998 the Scottish Government and Parliament are able to implement law and policy to give effect to CRPD rights. The UK's dualist legal system does not

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<sup>16</sup> Inclusion London, 'Factsheet: The Social Model of Disability' (2015), p 2, at [https://www.inclusionlondon.org.uk/wp-content/uploads/2015/05/FactSheets\\_TheSocialModel.pdf](https://www.inclusionlondon.org.uk/wp-content/uploads/2015/05/FactSheets_TheSocialModel.pdf) (accessed 30 September 2020).

<sup>17</sup> K Stalker, J Taylor, D Fry and ABR Stewart, 'A study of disabled children and child protection in Scotland – a hidden group?' (2015) 56 *Children and Youth Services Review* 126, p 128, relying on the fundamental principles set out in: Union of the physically impaired against segregation and the disability alliance discuss principles of disability. <https://www.research.ed.ac.uk/portal/files/21439550/K201511.pdf>.

permit the direct invocation of international treaties unless they have been expressly incorporated into the national legal system. There are a number of ways in which states and sub-state/devolved political entities, in this instance Scotland, can bring the CRPD to life, including:

- Fully recognise the rights of persons with disabilities in existing law through the following:
  - Include and ensure a general guarantee of equality;
  - Non-discrimination laws that expressly prohibit discrimination on the basis of disability;
  - Revise existing constitutions or laws to include protections for persons with disabilities;
  - Include explicit provisions to ensure proactive protection of rights for persons with disabilities;
  - Revise language of all law and policy to refer to persons with disabilities;
  - Ensure all relevant legislation explicitly references the CRPD.
- Adopt new legislation directly incorporating the CRPD and ensuring its enforceability before the courts;
- Adopt secondary legislation to implement incorporation of the CRPD as necessary;
- Ensure that an effective mechanism for consulting persons with disabilities and or representative organisations is created and utilised at the law-making level.<sup>18</sup>

These steps will only make a difference in the lived experiences of disabled people if all parts of the government, including local authorities, health boards, public service providers and all other publicly funded bodies, are accountable and actively involved in the implementation of disabled people's rights in Scotland. The focus of this report is to highlight how different models of incorporation can entrench CRPD rights and to identify further mechanisms that could and should support the legalisation of CRPD rights.

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<sup>18</sup> UN Handbook for Parliamentarians on the CRPD, ch 5 at <https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities/chapter-five-national-legislation-and-the-convention.html>.

## 4. Different models of incorporation

To ensure a common basis for the following incorporation discussion it is necessary to define the term. Incorporation is a *legal* starting point for human rights treaty implementation leading to comprehensive protection of internationally recognised human rights. **Incorporation** is the process that makes an international treaty, such as the CRPD, part of national law and is a crucial first step toward changing the way that society looks at different human rights. **Implementation** is a holistic term used to identify the diverse range of legislative, administrative, policy and other measures that make international human rights real in practice and not simply words in a document. There are three primary models of incorporation: direct, indirect, and sectoral or piecemeal.<sup>19</sup>

### 4.1. Direct incorporation

Direct incorporation sees the international treaty becoming part of national law through transposition or transformation/translation. When the original text and articles of the treaty are used verbatim, this is referred to as transposition. A clear example of direct incorporation through transposition is the HRA 1998<sup>20</sup> which directly incorporated the ECHR.<sup>21</sup> Notably, transposition can be through legislation declaring a treaty is part of the national law without copying and pasting all of the text and is generally referred to as incorporation by reference. Again, the HRA 1998 s1 demonstrates this approach,<sup>22</sup> though it also sets out the full text of the articles in Schedule 1 to the Act.<sup>23</sup> By contrast, transformation or translation refers to incorporation whereby the treaty provisions are reformulated or reworded in the national legislation.

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<sup>19</sup> See Incorporating Human Rights in Scotland, Glossary at <https://www.law.ed.ac.uk/research/research-projects/incorporating-human-rights-in-scotland> and Annex 1.

<sup>20</sup> <https://www.legislation.gov.uk/ukpga/1998/42/contents>

<sup>21</sup> [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf)

<sup>22</sup> <https://www.legislation.gov.uk/ukpga/1998/42/section/1>

<sup>23</sup> <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1>

When the treaty becomes part of the national law, it is binding on public agencies and enforceable in court. In other words, it has *direct effect* in the national legal system. Direct effect means that people may demand that all specified government authorities give effect to the rights in the treaty and that the rights are *justiciable* in the national courts. In this sense, justiciability refers to those issues that courts are permitted to make legal decisions about. With direct incorporation, people can use the articles of the treaty to enforce their rights in courts and other procedures outlined in the law that incorporates the treaty. It also means that government officials, organs and agencies are required to ensure the rights are capable of being exercised by people – the rights are binding rather than simply guiding.

Direct incorporation does not always equate to incorporation of the full treaty. For example, the proposed UNCRC (Incorporation) (Scotland) Bill takes this approach, incorporating the treaty directly but omitting articles or parts of articles deemed outwith the competence of the Scottish Parliament under the existing devolution arrangements.<sup>24</sup>

When directly incorporating a treaty, it is important that the legislation also define the treaty-related interpretation tools available, such as the general comments and case law of the treaty body that oversees a particular treaty. This aids in determining the baseline level or minimum core of the protected rights and assists in ensuring progressive realisation of the rights. For example, ensuring a tether to the CRPD Committee jurisprudence would aid in supporting the progressive realisation of CRPD rights through interpretation by those responsible for implementing related law and policy (duty-bearers) and reinforce the crucial role that active participation of disabled people in decision-making processes plays in the implementation of their rights.<sup>25</sup>

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<sup>24</sup> UN Convention on the Rights of the Child (Incorporation) (Scotland) Bill, introduced 1 September 2020 at <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/introduced/bill-as-introduced-united-nations-convention-on-the-rights-of-the-child-scotland-bill.pdf>.

<sup>25</sup> CRPD Committee, General Comment No. 7, UN Doc CRPD/C/GC/7, 9 November 2018.

## **4.2. Indirect incorporation**

Indirect incorporation gives the treaty some indirect effect in national law by means of another legal mechanism. This includes legal mechanisms that enable treaty rights to be better realised or increase justiciability of the rights or both. There are a number of ways to indirectly incorporate human rights treaties. For example, some national constitutions stipulate that public authorities and courts should take account of any human rights treaty ratified by the government when interpreting human rights claims. In these instances, the ability of individuals to rely upon the international treaty articles when exercising their rights or to utilise the courts when their rights are interfered with is variable depending on the country and the language of the relevant legislation. Further enabling legislation clarifying the applicability of the treaty rights is almost always necessary as is a clear explanation of the justiciability of the specific treaty rights.

Another way in which indirect incorporation has been delivered is through a due regard duty, such as that adopted in Wales to give effect to the UNCRC.<sup>26</sup> The due regard duty ensures that decision-makers use the international treaty as a guide when making law and policy decisions and, if the decision is challenged, courts will have latitude in determining whether the government, including all relevant public authorities,<sup>27</sup> met the threshold for due regard. This duty, discussed further below, can be coupled with direct incorporation to ensure a pre-legislative level of scrutiny and preventative dimension to human rights protection. The point is that indirect incorporation may be achieved using a variety of methods.

## **4.3. Sectoral or piecemeal incorporation**

Sectoral, also called 'piecemeal', incorporation is where an individual provision of a treaty is made part of domestic law, but often without specific

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<sup>26</sup> <https://www.legislation.gov.uk/mwa/2011/2/contents>.

<sup>27</sup> In the context of human rights law, public authorities are agents of the state such as the government, law enforcement agencies, local authorities, hospitals and other agencies or organisations that provide public services or functions that can be described as governmental or attributable to the state.

reference to the treaty itself. This method only incorporates specific right/s within a treaty in the context of a particular law and policy area while ignoring other rights outlined in the treaty and the overarching framework within which the right sits. For example, the right to be free from torture has been incorporated into UK law through both the HRA 1998 (direct incorporation) and the Criminal Justice Act 1988 (s134) (sectoral incorporation).<sup>28</sup> This is the most common form of 'incorporation' but it is the process furthest from delivering the international dimension of any particular human right in terms of the interdependent, interrelated and indivisible nature of human rights. This approach also fails to acknowledge the tools available to interpret a particular right. The lack of a link to the original treaty risks the right not progressively developing in line with the wider framework of human rights or in a holistic way. In essence, sectoral incorporation alone results in different human rights being protected to variable extents, which means that the ability to access and engage with different human rights will vary wildly among rights-holders.

Sectoral incorporation is the most common way that CRPD obligations have been implemented in national legal systems. In practice, it is easier for governments to make small, incremental changes rather than to adopt a number of interrelated human rights obligations. Unfortunately, this means that the holistic approach offered by the CRPD is missing, which makes it difficult to assess the success of the law as an incorporation measure. To supplement the power of sectoral laws and align them with the international standards of the CRPD, legislation should include a direct reference to the use of the CRPD for interpretation of these statutes.

Overall, sectoral incorporation has an important role to play in filling in existing gaps in the law and can provide very explicit direction on how to protect a particular right in specific situations. Alone, however, it does not aid in developing an overarching, human rights-based approach or a holistic approach to ensuring every individual can engage and activate their human rights.

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<sup>28</sup> <https://www.legislation.gov.uk/ukxi/1988/2242/schedule/1/made>.



## 5. Scottish law and policy: gaps and opportunities for disabled people's rights

### 5.1. Gaps

Currently in Scotland, as with the broader UK, the primary approach to ensuring disabled people can access their rights is through the Equality Act 2010, the HRA 1998 (Article 14) and a range of sectoral laws. The Equality Act places a proactive Public Sector Equality Duty (PSED) (s1, s149) on public bodies, and those exercising public functions, to consider the potential effects of key decisions on groups with protected characteristics, including disability. In Scotland, this is known as the 'Fairer Scotland Duty'<sup>29</sup> The duty imposed on public authorities under the Fairer Scotland Duty is one of due regard to eliminate discrimination, advance equality of opportunity, and foster good relations between those with protected characteristics and those without. Essentially, this places an obligation on decision-makers – or any other government actor identified by the legislation – to observe specific considerations, such as the impact on individuals identifying with one or more protected characteristics, when exercising their functions and powers. Public bodies must be able to show how they have considered equality issues when they develop, implement and review policies, services and processes. This approach also ensures that organisations that provide services or functions on behalf of public sector bodies have the same obligations to consider equality issues when making key decisions about service provision. However, where decisions are not anchored to a positive human rights framework, such as the CRPD, the decision-making institutions of society often perpetuate inequality.<sup>30</sup>

In addition to the Equality Act, many law and policy areas necessary to the entrenchment and activation of disabled people's rights are devolved through the Scotland Act 1998 and its subsequent revisions in 2012 and 2016. The Scotland Act (s29(2)(d)) clarifies that Scots law cannot be incompatible with the ECHR and that Scotland should observe and

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<sup>29</sup> <https://www.gov.scot/publications/fairer-scotland-duty-interim-guidance-public-bodies/pages/1/>

<sup>30</sup> MA Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' (2008) 20 *Yale Journal of Law and Feminism* 2.

implement international obligations (schedule 5, para 7(2)(a)).<sup>31</sup> As a result of the successive revisions to the Scotland Act, the Scottish Parliament may legislate in relation to issues such as education and training, health and social services, housing, law and order, some aspects of equality, social security and taxation, as well as range of additional areas. Because the CRPD includes civil, political, economic, social and cultural rights, the ability to respond to a broad range of law and policy areas underpins the potential for entrenching CRPD rights through incorporation.

The limitations of the UK's equality law in giving full effect to CRPD interpretations of rights has been recognised by the CRPD Committee. In 2016 the Committee determined that impact assessments conducted in fulfilment of the PSED prior to the implementation of several UK welfare reforms by the UK government expressly anticipated an adverse impact on disabled people and these measures have in fact had a disproportionate and adverse effect on disabled people.<sup>32</sup> The cumulative impact of the various welfare reforms was not fully recognised in the pre-legislative impact assessments. The Committee also found that there was inadequate representation of disabled people in the impact assessment process. CRPD Committee commentary makes clear that reviewing discrimination claims solely on the basis of the Equality Act fails to recognise the interrelated nature of disabled people's rights protected under the CRPD framework and the cumulative impact on the enjoyment of rights that discrimination can cause. In particular, the failure to respond to multiple protected characteristics (intersectional identities), such as being a disabled, ethnic minority female has been under-examined in the context of impact assessments carried out through the PSED.

The Social Care (Self-directed Support) (Scotland) Act 2013<sup>33</sup> (SDS Act) was designed to ensure that people have choice and control over their

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<sup>31</sup> <https://www.legislation.gov.uk/ukpga/1998/46/schedule/5>.

<sup>32</sup> CRPD Committee, Inquiry concerning the UK, CRPD/C/15/4 (2017); CRPD Committee, Follow-up to the Inquiry into the UK, UN Doc CRPD/C/GBR/FIR/1 (2018). Both at

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeCategoryID=7](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeCategoryID=7).

<sup>33</sup> <https://www.legislation.gov.uk/asp/2013/1/contents/enacted>.

social care.<sup>34</sup> The Act is underpinned by rights-based principles that should ensure disabled people are able to make decisions about the type of support they receive as well as when and where they receive it. The four SDS options are intended to enhance disabled people's ability to exercise their rights and better engage with their communities. The SDS Act has generated a number of success stories for individuals who have engaged with SDS.<sup>35</sup> However, research suggests that there is a lack of information about the Act across potential SDS users and those who support them.<sup>36</sup> The Act also aims to drive transformational change across social care culture and services. While the SDS Act introduced innovations in securing a stronger support framework for decision-making, some disabled people report that they do not exercise choice and control over their services, or receive enough support to meet their needs, rights and preferences.<sup>37</sup> The ALLIANCE and Self Directed Support Scotland have recommended that public bodies should work to close these gaps in practice in order to maximise the opportunities provided by SDS in realising disabled people's right to live independently, among other rights.<sup>38</sup>

The umbrella strategy that delivers some aims of the CRPD in Scotland is A Fairer Scotland for Disabled People 2016–2021 Delivery Plan.<sup>39</sup> The Delivery Plan features five ambitions, including:

1. Support services that meet people's needs and promote independent living;
2. Decent incomes and fairer working lives;
3. Places that are accessible to everyone;
4. Protected rights;

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<sup>34</sup> <https://www.gov.scot/publications/self-directed-support-strategy-2010-2020-implementation-plan-2019-21/pages/2/>.

<sup>35</sup> See, for example, case studies by Penumbra at [https://www.alliance-scotland.org.uk/blog/case\\_studies/penumbras-sds-case-studies/](https://www.alliance-scotland.org.uk/blog/case_studies/penumbras-sds-case-studies/).

<sup>36</sup> The ALLIANCE and Self Directed Support Scotland, 'My Support My Choice: People's Experiences of Self-directed Support and Social Care in Scotland', National Report October 2020, at <https://www.alliance-scotland.org.uk/wp-content/uploads/2020/10/ALLIANCE-SDSS-MSMC-National-Report-Oct-2020.pdf>.

<sup>37</sup> *ibid.*

<sup>38</sup> *ibid.*

<sup>39</sup> <https://www.gov.scot/publications/fairer-scotland-disabled-people-delivery-plan-2021-united-nations-convention/>.

## 5. Active participation.

While the aims of the Delivery Plan linguistically tick the boxes in terms of utilising terminology reflecting CRPD rights, practice reveals gaps between policy and delivery. Disabled people in Scotland frequently report the lack of clear information about disability services in Scotland and limited success in having their views heard or influencing decision-makers.<sup>40</sup> This reinforces findings about the SDS Act. In terms of measuring implementation of disabled people's rights, the strategy merely pulls together various streams of work that were already in progress and anticipated in Scotland. A consolidated action plan that entrenches a coherent measurement system for delivering the strategy is needed if disabled people's rights are to be made real.

### 5.2. Opportunities

The 2016 expansion to devolved powers relating to different social protections as well as the Social Security (Scotland) Act 2018<sup>41</sup> present the opportunity to increase the protection of disabled people's rights through Scottish public authorities.<sup>42</sup> Section 1 of the Act recognises that 'social security is itself a human right and essential to the realisation of other human rights.' It is further underpinned by the principle that opportunities to improve the system should be continuously sought (s1(g)). In addition to

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<sup>40</sup> E.g. Disability and Careers Benefits Expert Advisory Group (DACBEAG), Letter to Shirley-Anne Sommerville regarding Disability Assistance for Children and Young People, 19 July 2019, at <https://www.gov.scot/binaries/content/documents/govscot/publications/correspondence/2020/03/disability-and-carers-benefits-expert-advisory-group---dacyp-advice/documents/disability-and-carers-benefits-expert-advisory-group---dacyp-advice/disability-and-carers-benefits-expert-advisory-group---dacyp-advice/govscot%3Adocument/Disability%2Band%2BCarers%2BBenefits%2BExpert%2BAdvisory%2BGroup%2B-%2BDACYP%2B-%2BAdvice.pdf>; Together, State of Children's Rights in Scotland 2019, p 90, at [https://www.togetherscotland.org.uk/media/1436/socrr\\_online\\_version.pdf](https://www.togetherscotland.org.uk/media/1436/socrr_online_version.pdf).

<sup>41</sup> <https://www.legislation.gov.uk/asp/2018/9/contents/enacted>.

<sup>42</sup> In addition to the Assistance explicitly linked to disabilities that have been devolved most recently, Scotland also has the power to determine how Universal Credit payments are delivered. See Scotland Act 2016 s22, at <https://www.legislation.gov.uk/ukpga/2016/11/section/22>.

assuming responsibility for the Severe Disablement Allowance and Industrial Injuries Disablement Benefit, new forms of Assistance developed and delivered under the Act include:

- The Child Disability Payment (CDP), replacing the Disability Living Allowance (Child) (DLA);
- The Disability Assistance for Working Age People (DAWAP), replacing the Personal Independence Payment (PIP);
- Disability Assistance for Older People (DAOP), replacing the Attendance Allowance (AA).<sup>43</sup>

The opportunity in the Act is that it brings many Assistance payment decisions to Scotland. This should allow for more localised consideration and a better understanding of the range of available social support, including the variety of services and real costs. However, due to the Covid-19 pandemic, the transfer of Assistance delivery to Social Security Scotland has been delayed.

The FMAG Recommendations noted that specific rights for disabled people should be included in any new human rights framework developed and the First Minister committed to ‘actively considering’ incorporation of the CRPD in the 2020–21 Programme for Government.<sup>44</sup> While there has been some attention to specific rights for disabled people, the primary focus of the Taskforce has been refining how ESC rights defined by the International Covenant on Economic, Social and Cultural Rights (ICESCR) could and should be incorporated. Due to the integral role that ESC rights play in activating disabled people’s rights, the opportunity to ensure effective interpretations for disabled people should be seized.

In light of the existing gaps and opportunities that currently exist in Scots law and policy, it is timely to explore how the variable options for incorporation could help strengthen CRPD rights both now and into the future (see Section 6).

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<sup>43</sup> <https://www.gov.scot/policies/social-security/benefits-disabled-people-ill-health/>.

<sup>44</sup> Scottish Government 2020–21 Programme for Government (n 7).

## 6. Incorporating the CRPD into Scots Law

There is no doubt that Scotland could incorporate the CRPD into Scots law. The question is how?

### 6.1. Direct incorporation

Under the current devolution settlement, legalising human rights as part of the constitutional framework of the UK is not an option due to the status of Scotland's devolved legal system in relation to the broader UK legal system.<sup>45</sup> However, direct incorporation through a new ASP to the extent possible under the existing devolution settlement is one way in which the CRPD could be realised. Verbatim incorporation of the Convention helps supports the interdependent, interrelated and indivisible nature of disabled people's rights by using the internationally agreed language of the CRPD.<sup>46</sup> This 'rights-enabling'<sup>47</sup> approach accompanied by either indirect incorporation measures or sectoral laws or both would provide much stronger rights protections for disabled people in Scotland and greater coherence between Scots law and international law.

Incorporation of the CRPD through a new ASP should capitalise on the well-understood tri-partite formula – respect, protect and fulfil – employed by the HRA 1998 in legalising ECHR rights.<sup>48</sup> This includes:

1. Respect – a negative obligation on public authorities to not act incompatibly with the CRPD (which triggers a right of action to determine whether they have acted incompatibly);

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<sup>45</sup> N Busby and M Robison, CEDAW: How can women's rights be better realized in Scotland?, para 8.1 at <https://www.engender.org.uk/content/publications/CEDAW-incorporation-paper.pdf>.

<sup>46</sup> OHCHR, 'What are human rights?' <https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx>.

<sup>47</sup> K Boyle, 'Models of Incorporation and Justiciability for Economic, Social and Cultural Rights' (Scottish Human Rights Commission, 2018) at [https://www.scottishhumanrights.com/media/1809/models\\_of\\_incorporation\\_escr\\_vfinal\\_nov18.pdf](https://www.scottishhumanrights.com/media/1809/models_of_incorporation_escr_vfinal_nov18.pdf).

<sup>48</sup> Busby and Robison (n 45).

2. Protect – a proactive/positive obligation on public authorities and courts to take account of and abide by the Convention in all decision-making and to ensure access to all CRPD rights;
3. Fulfil – ensure justiciability of CRPD rights in Scots law by ensuring that courts have the power to determine the compatibility of actions, or inaction, with the CRPD and to deliver effective remedies.

Fulfilling CRPD rights would drive change in the daily, lived experiences of disabled people by holding all arms of the government accountable if they fail to respect and protect these rights.

Providing an excellent, local example upon which a future CRPD incorporation bill could be modelled, the UNCRC (Incorporation) (Scotland) Bill reinforces the HRA 1998 formula through a range of steps that reinforce the respect, protect and fulfil formula:

- Respect –
  - Identifying all under-18s as rights-holders under Scots law in line with the UNCRC;
  - Making it ‘unlawful for a public authority to act in a way which is incompatible with the UNCRC requirements’ (s6).
- Protect –
  - A proactive/positive obligation on Scottish Ministers to develop a scheme detailing the arrangements they are putting into place to ensure they comply with their duties under s6 (s11);
  - A proactive/positive duty to keep these schemes and progress on entrenching children’s rights under review (s13).
- Fulfil –
  - Ensuring justiciability by enabling ‘a person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by s6(1) [to] (a) bring proceedings against the authority under this Act in any civil court or tribunal...or (2) rely on the UNCRC requirements concerned in any legal proceedings.’ (s7(1));
  - Ensuring courts can take account of international items relevant to the interpretation of the UNCRC (s4);

- Giving courts power to ‘make a declarator stating that the provision ceases to be law to the extent of the incompatibility (a “strike down declarator”)’ (s20);
- Enabling courts to deliver a ‘declarator of incompatibility’ (s21) for proposed legislation that breach the UNCRC, thus protecting children’s rights before a conflicting law is adopted; and
- Permitting a range of remedies (s8).<sup>49</sup>

Incorporation would require a significant amount of examination of existing law and policy for compliance with the CRPD.

To ensure that there is sufficient time for direct incorporation to be effective, international practice has demonstrated a tendency to use ‘sunrise’ clauses which set extended periods before the incorporated rights become justiciable in order to assess where further conflicts between the new law and existing law may need to be adjusted. As demonstrated by the Scottish experience in preparing for incorporation of the UNCRC, this type of stocktaking exercise can provide a clear direction of travel for rights-holders and duty-bearers in order to ensure that CRPD standards, as well as other relevant human rights treaties,<sup>50</sup> are used as a benchmark against which all law and policy is examined.<sup>51</sup> Entrenching these measures would shift the power balance between rights-holders and duty-bearers, thus providing a more level, rights-activating relationship.

Global incorporation practice demonstrates that devolved governments have a stronger track record in implementing international human rights.<sup>52</sup>

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<sup>49</sup> UNCRC (Incorporation) (Scotland) Bill as introduced (n 24).

<sup>50</sup> For example, issues regarding disabled children would benefit from resort to both the CRPD and the UNCRC.

<sup>51</sup> Australia, for example, has had comprehensive disabilities legislation in place since 1992. In 2009 it amended the Disability Discrimination Act 1992 to directly ‘give effect’ to the CRPD in relation to preventing discrimination against persons with disabilities. See Disability Discrimination and Other Human Rights Legislation Amendment Act 2009 at <https://www.legislation.gov.au/Details/C2009A00070>.

<sup>52</sup> See, for example, in relation to the UNCRC, L Lundy et al, *The UN Convention on the Rights of the Child: a Study of Legal Implementation in 12 Countries* (2012) p 4, at [https://www.unicef.org.uk/wp-content/uploads/2012/11/UNICEFUK\\_2012CRCImplementationreport-FINAL-PDF-version.pdf](https://www.unicef.org.uk/wp-content/uploads/2012/11/UNICEFUK_2012CRCImplementationreport-FINAL-PDF-version.pdf).



This is predominately because devolved regions have greater responsibility in delivering different aspects of human rights, such as education, health care, social support, among other things (see section 5.2 above). In terms of competence of the Scottish Parliament to incorporate, the devolution settlement is not static, thus any incorporation measures should take into account the potential for further devolution. Therefore, any envisioned ASP could incorporate those rights that are fully devolved and include a clause that would permit Scottish Ministers to add additional CRPD rights as appropriate in line with further devolution. This approach is taken in the proposed UNCRC incorporation legislation before Scottish Parliament.<sup>53</sup> It also ensures progressive realisation links to the opportunities opened up through increased devolution.

Further elements that could strengthen direct incorporation:

- A stronger interpretive feature would require public authorities, Scottish Ministers and courts to take account of the interpretive materials (jurisprudence) produced by the CRPD Committee in order to define the basic level of protection or minimum core required to deliver different CRPD rights. This means expressly outlining that interpretive materials over and above the text and preamble of the treaty may be relied upon in determining breaches of CRPD rights. This also means including disabled people in the interpretation processes in a way that supports their right to active and informed participation in public life and decision-making;<sup>54</sup>
- The strongest justiciability option would include a strike-down power for an incompatible ASP pre-dating the new CRPD Incorporation Act. This is the approach taken in the proposed UNCRC (Incorporation) Scotland Bill (s20);
- A duty to comply is essential. The duty of due regard alone has proven untenable in the pursuit of progressing and activating people's rights.

International incorporation experience confirms that the opportunity to develop and discuss the features of an incorporation bill through a participative, inclusive process can also encourage culture change and

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<sup>53</sup> UNCRC (Incorporation) (Scotland) Bill, ss 3, 5, as introduced (n 24).

<sup>54</sup> CRPD Committee, General Comment No. 7 (n 25).

ensure that the voices of disabled people are heard across all levels of society.<sup>55</sup>

Even with incorporation, as with most human rights, some limitations or interference is permissible under certain circumstances as long as the basic level or minimum core of the right is not breached. Incorporation of CRPD rights will not mean a panacea will open up and deliver all rights to all people immediately. Similar to Katie Boyle's observations on ESC rights implementation:

*'There is a sensible and balanced approach to ESC implementation which allows for the balancing of rights (including competing rights), the potential to place limitations on rights in accordance with the law and which takes into account the allocation of limited resources across multiple areas of policy.'*<sup>56</sup>

Incorporation of the CRPD would only be a legal first step that could provide a common framework and point of reference against which the realisation of rights for all disabled people could be assessed. Additional mechanisms integrated into the incorporating legislation or developed alongside could aid in further entrenching CRPD rights.

## **6.2. Indirect incorporation options that could further realise the CRPD**

The anticipated ASP that will be introduced in line with the HR Taskforce's work will provide a framework protecting civil, political, economic, social, cultural and environmental rights. Even without direct CRPD incorporation at this stage, each of the forecasted rights is highly relevant to progressing implementation of the CRPD and, in most cases, the rights under consideration overlap with CRPD rights (see Annex 2). Therefore, until direct CRPD incorporation can be achieved, there are a number of indirect incorporation options that could ensure that CRPD standards guide the implementation of any new human rights incorporation legislation when disabled people's rights are considered, assessed or adjudicated.

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<sup>55</sup> Lundy et al (n 52) p 4.

<sup>56</sup> Boyle (n 47) p 6.

- Amend current laws to ensure compliance with the CRPD. For example, the Children (Scotland) Act that was passed by Scottish Parliament on 25 August 2020 is designed to ensure that family court cases comply with the UNCRC.<sup>57</sup>
- Placing a due regard duty to consider the CRPD on Scottish Ministers is one option for strengthening pre-legislative scrutiny (also called ex ante review). This would require referring specifically to the CRPD and could include consideration of the interpretive jurisprudence produced by the CRPD Committee. This approach is employed by the Children and Young Persons (Scotland) Act 2014 with reference to the UNCRC. Mandatory training of parliamentarians in the CRPD should accompany any duty as this is key to effective law and policy development as well as culture change and understanding of disabled people's rights.<sup>58</sup> However, a due regard duty alone is not sufficient. The Rights of Children and Young Persons (Wales) Measure 2011 employs this type of duty and there is a growing body of research about the lack of effectiveness when not coupled with an enforcement mechanism.<sup>59</sup>
- CRPD Impact Assessments. Any form of pre-legislative review should be supported by human rights impact assessment directly linked to the CRPD. This should not be a mere tick-box exercise.<sup>60</sup> Instead, there should be evidence-based analysis driven by consistent collection of disaggregated data and a genuinely participative process.<sup>61</sup> The lack of disaggregated data about disabled people and rights-holders in general in Scotland and the wider UK is a consistent

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<sup>57</sup> Children (Scotland) Act 2020 at <https://beta.parliament.scot/bills/children-scotland-bill>.

<sup>58</sup> MA Stein and JE Lord, 'Future Prospects for the United Nations Convention on the Rights of Persons with Disabilities' in G Quinn and OM Arnadottir (eds), *United Nations Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Brill-Nijhoff, 2009) p 32.

<sup>59</sup> <https://www.legislation.gov.uk/mwa/2011/2/contents>.

<sup>60</sup> Examination of Children's Rights and Wellbeing Impact Assessments in Scotland demonstrate how nominal use of these undermines the strength of the due regard duty.

<sup>61</sup> See discussion in K McCall-Smith, 'Minimum Standards for Delivering Economic, Social and Cultural Rights', Briefing Paper for the National Taskforce for Human Rights Leadership, June 2020, s4.6, at <https://www.gov.scot/groups/national-taskforce-for-human-rights-leadership/>.

criticism by international human rights supervisory bodies<sup>62</sup> and by local civil society organisations.<sup>63</sup>

- Identifying a parliamentary mechanism for reviewing the potential implications for CRPD rights in line with the minimum core of each right outlined at the international level, e.g. the Equality and Human Rights Committee.
- Post-enactment reviews. Human rights impact assessments do not stop simply because a new piece of legislation is enacted. To fully realise CRPD rights, consistent periodic review procedures should be written into new legislation. This aids in identifying practical gaps and process problems and also promotes progressive realisation of human rights.
- Identifying the range of interpretive tools to be utilised when examining rights of disabled people under any new legislation should include a specific reference to the CRPD as well as the interpretations delivered by the CRPD Committee. This aids in determining the minimum core as well as the positive and negative dimensions of each right. Despite British courts having a mixed relationship with the jurisprudence produced by the international treaty bodies, ensuring that courts have read and considered the CRPD Committee's interpretations is necessary to evolve our understanding of different rights. For example, the rights to an adequate standard of living and social protection (CRPD Article 28) and their relationship to the right to independent living (CRPD Article 19) are addressed by the CRPD across its jurisprudence. To reinforce this connection, the Committee's General Comment No. 5<sup>64</sup> combined with its Concluding Observations on the periodic reports of the UK could be instructive for Scottish public authorities in pursuing a more holistic approach to implementing these rights.

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<sup>62</sup> For example, CRPD Committee, Inquiry concerning the UK (n 32); CRPD Committee, Follow-up to the Inquiry into the UK, UN Doc CRPD/C/GBR/FIR/1 (2018).

<sup>63</sup> For example, Together, State of Children's Rights (n 40) p 90; The ALLIANCE (n 36) p 71.

<sup>64</sup> CRPD Committee, General Comment No. 5, at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/5&Lang=en).

### 6.3. Further legal measures that could increase realisation of CRPD rights

- Enable the Scottish Human Rights Commission (SHRC) or other designated agency to raise strategic litigation/public interest cases and ensure that the increased capacity is appropriately funded.<sup>65</sup> In line with CRPD Article 33, both the Equality and Human Rights Commission (EHRC) and the SHRC are focal points designated by the government as part of the UK Independent Mechanism to promote, protect and monitor implementation of the CRPD in Scotland. Thus, the SHRC is well-placed to develop ideas about where the law is poised to breach rights across the disabled community. The proposed UNCRC (Incorporation) (Scotland) Bill (s10) includes a provision that would enable the Children and Young People's Commissioner in Scotland to take legal action if children's rights under the UNCRC are breached or are likely to be breached.<sup>66</sup>
- Establishing a duty to co-operate/coordinate. In relation to the UK social support framework, the CRPD Committee has observed that 'persons with disabilities who had undergone functional assessments aimed at determining their eligibility for social benefits felt that they were merely being processed rather than listened to or understood.'<sup>67</sup> Lived experiences in Scotland demonstrate that these problems continue throughout disabled people's engagement with social care and social security processes. Process problems were also identified by the FMAG as a major gap in human rights protection in Scotland.<sup>68</sup> The benefit of establishing a duty to co-operate/coordinate is that access to assessments and referrals would be streamlined so that following assessments disabled people would not require different processes in order to access each individual social support or assistance stream.

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<sup>65</sup> Scottish Commission for Human Rights Act 2006, s6, prohibits assistance in claims or legal proceedings.

<sup>66</sup> UNCRC (Incorporation) (Scotland) Bill as introduced (n 24).

<sup>67</sup> CRPD Committee, Inquiry into the UK (n 32) para 90.

<sup>68</sup> FMAG Recommendations (n 4) p 25.

The Children's Services Co-operation Act (Northern Ireland) 2015 created a duty to co-operate across children's services. The Act (s2) requires that 'Every children's authority must, so far as is consistent with the proper exercise of its children functions, co-operate with other children's authorities and with other children's service providers in the exercise of those functions.'<sup>69</sup> The Executive is required to report on the operation of the Act every three years (s5). Creating a similar duty in relation to all support service providers for disabled people with reference to the CRPD could be useful in strengthening and streamlining delivery of services and also promote the social model of disability.

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<sup>69</sup> Children's Services Co-operation Act (Northern Ireland) 2015 at <https://www.legislation.gov.uk/nia/2015/10/contents>.

## 7. Additional ways to entrench the CRPD

In addition to the different opportunities for incorporation, there are a number of options that could further support the development of CRPD rights in Scotland: increased CRPD training resulting in development through the common law (judicialisation); human rights budgeting; national action plans and strategies; and the use of international mechanisms.

### 7.1. Judicialisation

Even without incorporation, training and guidance on interpretation of CRPD rights that links to the CRPD Committee and its jurisprudence should be mandatory for all public authorities, including the judiciary. As Scotland benefits from a mixed common and civil law legal system, many human rights have been developed through the common law – or judge-made interpretations of different legal rights. This is often called ‘judicialisation’. UK courts are inconsistent in their use of the CRPD. Some courts highlight the value of the CRPD in ‘[illuminating] our approach to both discrimination and justification’ for differential treatment.<sup>70</sup> ECHR articles have been interpreted in light of other treaties ratified by the UK, such as the CRPD or the UNCRC. Utilising international treaties tends to hinge on whether the statutory provision being challenged is ambiguous or uncertain.<sup>71</sup> The lack of incorporation is also cited as the reason why courts do not resort to the CRPD for guidance.<sup>72</sup>

Though UK law requires incorporation of a treaty before it may be invoked in court, it has been acknowledged that by ratifying the treaty, the UK should ensure that laws passed subsequent to ratifying the treaty should conform to the law and values set out therein. Thus, all legislation adopted post the UK’s ratification of the CRPD should be construed as being consistent with those obligations.

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<sup>70</sup> *Burnip v Birmingham City Council* [2012] EWCA Civ 629, [2013] PTSR 117, para 22.

<sup>71</sup> *R (Davey) v Oxfordshire County Council* [2017] EWCA Civ 1308.

<sup>72</sup> For example, *R (Davey) (n 71)*; *Reg (NM) v London Borough of Islington* [2012] EWHC 414 (Admin).

Raising CRPD awareness across the judiciary could support more extensive judicialisation of the CRPD. Raising CRPD awareness in the parliament will also enable parliamentarians to better shape future laws.

## **7.2. Human rights budgeting**

The Scottish Human Rights Commission explains that ‘Taking a human rights-based approach to budgeting means distributing resources in a way that puts people first.’<sup>73</sup> National budgets should outline Scottish Parliament and Scottish Government’s methods of prioritising legalised rights. Budgeting priorities must be linked to freely available research and relevant impact assessments. As noted by Aoife Nolan, Professor of International Human Rights Law and Co-Director of the Human Rights Law Centre at Nottingham University, ‘Budgets are a key sign of a government’s values. So, if human rights are not in there, what’s being said is that they are not a value worth counting.’<sup>74</sup> Advocating increased budgeting transparency reinforces common democratic principles and paves the way for more effective delivery of human rights.<sup>75</sup>

## **7.3. National action plans and strategies**

The following examples of national action plans offer good opportunities to drive change in the lived experience of disabled people. However, without a legal anchor, soft law options have not been successful in securing meaningful entrenchment of disabled people’s rights.

The continued interference with disabled people’s rights is one of the themes that will be addressed in the next Scottish National Action Plan (SNAP 2) currently under development with the Scottish Human Rights Commission (SHRC). The proposed SNAP 2 highlights a number of the barriers facing disabled people in Scotland, including the lack of accessible, inclusive information and communications practices across the public

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<sup>73</sup> <https://www.scottishhumanrights.com/projects-and-programmes/human-rights-budget-work/>.

<sup>74</sup> *ibid.*

<sup>75</sup> See discussion in McCall-Smith (n 61) s4.7.



sector and the high prevalence of discrimination.<sup>76</sup> The actions proposed link in with the Delivery Plan, introduced in section 5.1 above, and the Fairer Scotland for Disabled People Employment Action Plan, discussed below. As outlined by the SHRC, the PANEL principles (Participation, Accountability, Non-discrimination, Empowerment, Legality)<sup>77</sup> should inform a human rights-based approach to decision-making about people's rights.

The Delivery Plan is a strategy that could be strengthened to provide real, practical support in the realisation of disabled people's rights. However, rather than pull together all work that is being undertaken across Scotland to develop disabled people's rights, a forward-looking strategy with clear objectives and measurable outcomes should be developed to replace the existing piecemeal approach.

A Fairer Scotland for Disabled People Employment Action Plan was introduced in 2018 with the aim of at least halving the disability employment gap by 2038. It is driven through three distinct courses of action:

1. Supporting employers to recruit and retain disabled people using a variety of initiatives to drive recruitment;
2. Supporting disabled people to enter employment through the introduction of the Fair Start Scotland employability service;
3. Developing an improved framework for disabled children and young people transitioning into work.

While each of these elements of the Employment Action Plan can bring about incremental change, the capacity to deliver widespread culture change is limited.

Each of these action plans or strategies offers opportunities to further entrench disabled people's rights in Scotland. However, where there is no potential for legal enforcement and the measurement tools are ineffective, it is difficult to consider that these non-legal approaches will deliver comprehensive realisation of disabled people's rights.

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<sup>76</sup> SHRC, *SNAP 2: Proposal for Scotland's second National Action Plan for Human Rights*, p 22, at [http://www.snaprights.info/wp-content/uploads/2019/09/SNAP-2\\_Online.pdf](http://www.snaprights.info/wp-content/uploads/2019/09/SNAP-2_Online.pdf).

<sup>77</sup> <https://www.scottishhumanrights.com/projects-and-programmes/human-rights-based-approach/>.

## 7.4. International compliance mechanisms

As a State Party to the CRPD, the UK must report on measures taken to implement the treaty every four years. Disabilities-focused civil society organisations have successfully engaged with the CRPD Committee and their shadow reports have drawn attention to implementation gaps in Scotland.<sup>78</sup> The reporting mechanism can be an effective way of directing international attention to varying levels of interference with CRPD rights and aid in progressing law and policy changes.

The individual complaints mechanism offered through the Optional Protocol to the CRPD offers another compliance mechanism. Individuals or groups of individuals in states that have ratified the Optional Protocol may raise complaints about breaches of the CRPD before the CRPD Committee. Ninety-seven states, including the UK,<sup>79</sup> have opted to permit the Committee to review such complaints. A number of procedural requirements exist, such as the claimant must have exhausted available domestic remedies and the breach alleged must have occurred after the Optional Protocol entered into force (became legally mandatory) for that state. Another benefit is that individuals need not have legal representation to submit a claim. Like the shadow reports submitted as part of the periodic reporting process, individual complaints highlight important stories of lived experience. The final views/decisions of the Committee are not binding on the state but provide clarity on how the state should address particular issues where the Committee finds a breach of the CRPD. Two such claims against the UK have been raised before the CRPD Committee. However, both were declared inadmissible because the facts on which the claims were based took place prior to the Optional Protocol entering into force for the UK.<sup>80</sup>

Article 6 of the Optional Protocol also permits the CRPD Committee to conduct a confidential **inquiry** when it 'receives reliable information

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<sup>78</sup> See, for example, reports by various Scottish civil society organisations, at [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=GBR&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=GBR&Lang=EN).

<sup>79</sup> Since 7 August 2009.

<sup>80</sup> CRPD Committee, Jurisprudence, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/TBSearch.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx).

indicating grave or systematic violations' of CRPD rights by the State Party. In the first instance, the Committee will confidentially ask the state to co-operate in an examination of the violations alleged. Dependent on the response by the state, the Committee may designate one of its members to conduct an 'urgent inquiry' into the claims. In all instances the Committee works with the co-operation of the state.

In 2013, the CRPD Committee launched a formal inquiry into the impact of the UK's austerity measures on the rights of disabled people, including: the right to live independently and be included in the community (Article 19); the right to work and employment (Article 27); and the right to an adequate standard of living and social protection (Article 28).<sup>81</sup> The basis of the inquiry was the impact that the Welfare Reform Act 2012, the Care Act 2014, the Welfare Reform and Work Act 2016 and the Legal Aid, Sentencing and Punishment of Offenders Act 2012 had on the UK's duty of social care. The inquiry concluded that the UK had not complied with its PSED in terms of impact assessments in the preparation of the reform legislation. The Committee's final report threw into sharp relief the lack of understanding about how austerity measures interfered with disabled people's lives to such an extent that many were stopped from exercising some of their most basic rights. While the UK largely ignored this particular inquiry, other examples have had greater success at pushing forward change.

An international mechanism that is less directed toward the enforcement of CRPD rights but that is available for international complaints is the United Nations Human Rights Council complaints procedure. A rarely utilised option, this complaints mechanism permits any individual suffering from possible interference with their human rights by any UN Member State the opportunity to complain to the Human Rights Council. It is also open to groups and NGOs that are either direct victims or have direct knowledge of violations, similar to a public interest claim. Complaints can relate to any human rights violation regarding any human rights treaty or the Universal Declaration of Human Rights. While useful for political purposes and awareness-raising in extreme human rights situations, the confidential

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<sup>81</sup> CRPD Committee, Inquiry into the UK (n 32).

process is really a last resort where stronger enforcement mechanisms exist.

Ultimately, accessing international mechanisms would add a further layer of remedial compliance monitoring for CRPD rights and the development of international standards in line with the CRPD. However, delivering reports and accessing the international mechanisms is often beyond the reach of many organisations due to limited funding, capacity and international expertise. The differentiation across the human rights sector in these contexts has a direct bearing on the extent to which variable rights are currently raised by disabled people at the international level.

## 8. Summary

At present, opportunities for enforcing disabled people's rights in Scotland are extremely limited and tethered to violations under either the HRA 1998, the Equality Act 2010 or other relevant common law or legislation, such as the SDS Act. Even where avenues to enforcement exist, the long-standing barriers to accessing justice – understanding about how to navigate the system, knowledge of the law, financial costs – prevent most disabled people from pursuing enforcement of their rights. There is no international standard against which disabled people's rights are assessed to ensure that national resources are being deployed as part of human rights-based decision-making processes. The existing laws fail to recognise the interdependent, interrelated and indivisible nature of disabled people's rights as protected by the CRPD framework. Incorporation presents the opportunity to cure this gap in Scots law.

Current progress in developing other ASPs that incorporate international human rights clarify the following:

- Direct incorporation of the CRPD is possible to the maximum extent permissible under the current devolution settlement;
- A range of indirect incorporation measures are available to support stronger CRPD rights recognition until direct incorporation can be achieved, including a duty take account of the CRPD during law and policy development;
- Even without incorporation, further CRPD training and judicialisation of the CRPD, political pressure to clarify human rights budgeting priorities, strengthening national action plans and strategies to ensure clear objectives and measurable outcomes, and engaging with international mechanisms as a means of remedial monitoring all have a role in raising the visibility of the CRPD and smoothing the path for future incorporation.

To activate disabled people's rights the Scottish Government must not only amend laws and move to incorporate the CRPD, it must underpin all legal efforts with effective engagement with disabled people and work to raise the visibility of CRPD rights and the barriers that disabled people face in their communities.

## Annex 1: Glossary of key terms

Terms highlighted in bold are defined elsewhere in the glossary.

Term and explanation	Source / more info
<p>Absolute right</p> <p>If a human right is considered 'absolute' it is not permissible for states to interfere with the right or make <b>reservations</b> or <b>derogations</b> from that right, even in a case of emergency or threat to national security. Not many rights are absolute. One example is the right to be free from torture.</p>	
<p>Accession to a treaty</p> <p>'Accession' is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and accepted by other states. It has the same legal effect as <b>ratification</b>. Accession usually occurs after the treaty has <b>entered into force</b>.</p>	<p>Vienna Convention on the Law of Treaties, arts 2 (1) (b) and 15</p>

Term and explanation	Source / more info
<p>Constitutional incorporation</p> <p>A process whereby international human rights law is made part of the national legal system through a reference in the constitution. This is a form of <b>'indirect' incorporation</b>.</p>	
<p>Core international human rights treaties</p> <p>The nine core UN human rights <b>treaties</b> are the CERD, ICCPR, ICESCR, CAT, CEDAW, CRC, CRPD, CPED, and ICMW. Each of these <b>treaties</b> has established a <b>UN treaty body</b> (also called a Committee) of experts to monitor implementation of the treaty provisions by its <b>States Parties</b>.</p>	<p>'Human Rights Bodies - Complaints Procedures' (OHCHR)</p>

Term and explanation	Source / more info
<p>Declaration of incompatibility</p> <p>Under the Human Rights Act 1998, a High Court (or above) in the UK may make a declaration of incompatibility where an Act of Parliament is fully or partly incompatible with the European Convention on Human Rights. Because of <b>parliamentary sovereignty</b>, a declaration of incompatibility does not in itself invalidate the legislation but gives parliament the option to do so. This is distinct from '<b>strike down power</b>', which is where a court invalidates a law.</p>	<p>Jonathan Law (2015)</p>



Term and explanation	Source / more info
<p>Direct incorporation</p> <p>'Direct 'incorporation' refers to when an entire international treaty is made part of domestic law through either <b>transformation</b> or <b>transposition</b>, whereby a state enacts domestic law that gives effect to the treaty, using its original wording, and makes it binding upon <b>public authorities</b> and <b>enforceable</b> in domestic courts.</p> <p>The UK Human Rights Act 1998 is an example of direct incorporation in a <b>dualist legal system</b>, where an Act of Parliament (domestic legislation) expressly intends 'to give further effect to rights and freedoms guaranteed under the European Convention on Human Rights.' In <b>monist legal systems</b>, direct incorporation happens automatically. But this will not always mean that the treaty rights are given <b>direct effect</b>.</p>	<p>Kasey McCall-Smith (2019), 430; Rebecca Thorburn Stern (2019)</p>

Term and explanation	Source / more info
<p data-bbox="201 297 699 337">Dualist legal system (dualism)</p> <p data-bbox="201 394 1287 678">A dualist legal system treats the international and domestic systems of law as separate and independent of one another. International law therefore must be authorised by a domestic law in order to be applicable in that domestic legal system, for example through incorporation. The UK is an example of a dualist legal system. (See also <b>monist legal system</b> below).</p>	<p data-bbox="1308 297 1724 337">Madeleine Chiam (2018)</p>
<p data-bbox="201 740 474 781">Due regard duty</p> <p data-bbox="201 837 1262 1024">The due regard duty places an obligation on duty-bearers to pay due regard, in other words to ‘observe’ specific considerations, such as a particular human rights treaty, when exercising their functions and powers.</p> <p data-bbox="201 1081 1251 1317">The due regard duty exists in UK equality law and is recognised in the Rights of Children and Young Persons (Wales) Measure 2011. It falls short of a duty to comply fully with certain human rights provisions, such as the duty of compliance set out in section 6 of the Human Rights Act 1998.</p>	<p data-bbox="1308 740 1801 829">Simon Hoffman, Sean O’Neill (2018)</p>

Term and explanation	Source / more info
<p data-bbox="201 297 430 334">Enforceability</p> <p data-bbox="201 394 1268 630">Enforceability of a human right refers to the availability of institutions and procedures that can provide a remedy for the breach of that right. Such institutions may both prevent breaches and deliver effective <b>redress</b> through either judicial or administrative paths when a right is violated.</p>	<p data-bbox="1308 297 1776 383">Kasey McCall-Smith (2019), 429.</p>
<p data-bbox="201 691 457 729">Entry into force</p> <p data-bbox="201 789 1262 1117">The point in time at which a treaty becomes binding on the <b>States Parties</b>. Typically, this relates to the manner agreed by the negotiating states, such as the number of <b>ratifications</b> or <b>accessions</b> to the relevant treaty plus a certain number of days. For example, ‘The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession’.</p>	<p data-bbox="1308 691 1822 777">Vienna Convention on the Law of Treaties, art 84</p>

Term and explanation	Source / more info
<p data-bbox="201 297 722 334">Equality and non-discrimination</p> <p data-bbox="201 394 1276 724">All individuals are equal as human beings and by virtue of the inherent dignity of each human person. No one, therefore, should suffer discrimination on the basis of race, colour, ethnicity, gender, age, language, sexual orientation, religion, political or other opinion, national, social or geographical origin, disability, property, birth or other status as established by human rights standards.</p>	<p data-bbox="1308 297 1755 431">'Human Rights Principles' (United Nations Population Fund, 2005)</p>
<p data-bbox="201 789 789 826">General comment/recommendation</p> <p data-bbox="201 886 1262 1268">General comments or recommendations are interpretations of a certain human right or issue published by <b>Treaty Bodies</b>, such as the Human Rights Committee. General comments provide guidance on the application and <b>implementation</b> of the UN human rights treaties usually based on common trends across periodic reviews, individual communications decisions and other bilateral contact with the <b>States Parties</b> by the treaty bodies. These are considered a type of <b>jurisprudence</b>.</p>	<p data-bbox="1308 789 1738 1073">'Working with the United Nations Human Rights Programme' (Office of the United Nations High Commissioner for Human Rights (OHCHR), 2008)</p>

<b>Term and explanation</b>	<b>Source / more info</b>
<p>Human rights-based approach</p> <p>‘Taking a human rights-based approach is about making sure that people’s rights are put at the very centre of policies and practices. The PANEL principles are one way of breaking down what this means in practice’:</p> <ul style="list-style-type: none"> <li>• Participation</li> <li>• Accountability</li> <li>• Non-Discrimination and equality</li> <li>• Empowerment and</li> <li>• Legality</li> </ul>	<p>‘PANEL principles’ (Scottish Human Rights Commission)</p>
<p>Human Rights Council</p> <p>An inter-governmental body within the United Nations system responsible for strengthening the promotion and protection of human rights globally, addressing human rights violations and making recommendations on them. It can discuss all thematic human rights issues and situations that require its attention throughout the year.</p>	<p>‘Welcome to the Human Rights Council’ (OHCHR)</p>

Term and explanation	Source / more info
<p>Implementation</p> <p>The process by which states give effect to the provisions in a treaty that they have <b>ratified</b> and, in some cases, <b>incorporated</b> into national law. It involves a diverse range of legislative, administrative, policy and other appropriate measures that ensure that the rights in the treaty are realised in practice and do not simply remain words in a document.</p> <p>The <b>UN treaty bodies</b> often say that incorporation is the first step toward implementation.</p>	<p>Kasey McCall-Smith (2019), 428</p>

Term and explanation	Source / more info
<p>Incorporation</p> <p>Incorporation refers to the process that makes an international treaty part of national law, so that the treaty provisions may be directly applied by national courts, in other administrative tribunals and by <b>public authorities</b>. Incorporation is an element of and possible starting point for <b>implementation</b> of international law and can take different forms: <b>direct, indirect</b> or <b>sectoral/piecemeal incorporation</b>. Each form can incorporate a treaty as a whole or in part, respectively referred to as full or partial incorporation.</p>	<p>Kasey McCall-Smith (2019), 428–29; Rebecca Thorburn Stern (2019), 277</p>
<p>Indirect incorporation</p> <p>Indirect incorporation gives a treaty <i>some</i> effect in national law by means of another legal mechanism, for example, if a provision in a national constitution stipulates that courts and <b>public authorities</b> should take a given human rights treaty into account. Another example is the Welsh <b>due regard duty</b> for the UNCRC.</p>	<p>Kasey McCall-Smith (2019), 433; Rebecca Thorburn Stern (2019), 268</p>

<p>Individual communication</p> <p><b>Treaty bodies</b> of the <b>core international human rights treaties</b> may, under certain conditions, consider individual complaints (also called communications) from individuals similar to bringing a case against the state in a domestic court.</p> <p>Anyone can lodge a complaint with a Committee against a State:</p> <ul style="list-style-type: none"> <li>• that is party to the treaty in question providing for the rights which have allegedly been violated;</li> <li>• that has accepted the Committee’s competence to examine individual complaints, either through ratification or accession to an <b>Optional Protocol</b>, or by making a declaration under a specific article of the Convention.</li> </ul> <p>Complaints can be brought by third parties on behalf of individuals if they have given their written consent or, without, for example, where a person is a victim of an enforced disappearance. A notable distinction is that unlike court cases in the domestic legal system, this process is conducted entirely on the basis of written submissions by the claimant and the <b>State Party</b>.</p>	<p>‘Human Rights Bodies – Complaints Procedures’ (OHCHR)</p>
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<b>Term and explanation</b>	<b>Source / more info</b>
<p data-bbox="199 295 661 332">Indivisibility of human rights</p> <p data-bbox="199 393 1270 678">Human rights are indivisible. Whether they relate to civil, cultural, economic, political or social issues, human rights are inherent to the dignity of every human person. Consequently, all human rights have equal status and cannot be positioned in a hierarchical order. Denial of one right invariably impedes enjoyment of other rights.</p>	<p data-bbox="1306 295 1759 430">'Human Rights Principles' (United Nations Population Fund, 2005)</p>
<p data-bbox="199 738 976 776">Interdependence and interrelatedness of rights</p> <p data-bbox="199 836 1281 1071">Human rights are interdependent and interrelated. Each right contributes to the realisation of a person's human dignity through the satisfaction of his or her developmental, physical, psychological and spiritual needs. The fulfilment of one right often depends, wholly or in part, upon the fulfilment of others.</p>	<p data-bbox="1306 738 1738 776">'Human Rights Principles'</p>

Term and explanation	Source / more info
<p>Jurisprudence</p> <p>Jurisprudence can refer to the body of judgments and decisions from courts as sources of law and interpretation. For example, cases from the European Court of Human Rights are referred to as the jurisprudence of the European Court of Human Rights. <b>General Comments, final views</b> and other decisions from <b>UN Treaty Bodies</b> are also referred to as 'jurisprudence'.</p>	<p>'Jurisprudence' (Merriam Webster)</p> <p>Kasey McCall-Smith (2019a), 345</p>
<p>Justiciability</p> <p>Justiciability refers to the ability of a right-holder, whose rights have been violated, to lodge a complaint and claim an enforceable remedy before an independent and impartial court or a quasi-judicial body (such as a tribunal or <b>UN treaty body</b>).</p> <p>In the UK, international laws must generally be <b>incorporated</b> by national law to be justiciable (see <b>dualism</b> above).</p>	<p>'Courts and the Legal Enforcement of Economic, Social and Cultural Rights. Comparative Experiences of Justiciability' (International Commission of Jurists, 2008)</p>

Term and explanation	Source / more info
<p>Legal Aid</p> <p>Legal Aid helps pay for legal advice, mediation, or representation in court. It can be claimed from the government by people eligible according to certain criteria, such as lack of financial resources.</p>	
<p>Living instrument doctrine</p> <p>The living instrument doctrine refers to the notion developed by the European Court of Human Rights, that the European Convention on Human Rights is a 'living instrument' meaning that the convention rights should be interpreted in light of present-day developments including technological and scientific changes, evolving human rights standards, and new moral and ethical standards. This approach has been adopted across the Inter-American and African human rights systems and is followed by the <b>UN treaty bodies</b>.</p>	<p>'ECHR- Introduction' (Hembach Legal)</p>

Term and explanation	Source / more info
<p>Minimum core</p> <p>The minimum core of a human rights represents the most basic essential level of provision of a particular right. As such, it is variable depending on the right under review.</p>	<p>World Bank, <a href="#">‘Minimum Core of Socio-Economic Rights’</a></p>
<p>Monist legal system (monism)</p> <p>In a monist legal system international law and domestic law are seen as forming a single universal legal system, with international law typically ranking above domestic law. In contrast to <b>dualist legal systems</b>, international treaties are automatically applicable in monist systems once they have been <b>ratified</b> by the state. However, this does not necessarily mean that the rights contained in such <b>treaties</b> are automatically <b>enforceable</b>.</p>	<p>Madeleine Chiam (2018)</p>
<p>Negative obligations/rights</p> <p>Negative obligations place a duty on public authorities to refrain from acting in a way that unjustifiably interferes with human rights. Most human rights place both negative and <b>positive obligations</b> on the state.</p>	<p>‘Some Definitions’ (Council of Europe)</p>

Term and explanation	Source / more info
<p>Obligation to respect, protect and fulfil</p> <p>Human rights obligations are typically explained in the following typology:</p> <ul style="list-style-type: none"> <li>• The obligation to respect means that states must not act in a way that violates people’s human rights.</li> <li>• The obligation to protect means that states must protect people’s rights from being violated by the actions of others, for example, corporations.</li> <li>• The obligation to fulfil requires states to be proactive in taking measures that assist individuals and communities to enjoy their rights.</li> </ul>	<p>‘International Human Rights Law’ (OHCHR)</p>
<p>Optional protocol</p> <p>‘A new [supplementary] treaty which modifies another treaty (generally adding additional procedures or substantive provisions). The European Convention on Human Rights has 13 protocols, separate <b>treaties</b> which update the original, added gradually between 1952 and 2002.’</p>	<p>‘Glossary of terms’ (Equality and Human Rights Commission, 16 May 2016)</p>

Term and explanation	Source / more info
<p>Parliamentary supremacy</p> <p>Parliamentary supremacy is a constitutional principle in the UK that makes the UK Parliament the supreme legal authority. This means that courts <b>strike down</b> an Act of Parliament even if they conflict with international law. In this instance courts are limited to issuing a <b>declaration of incompatibility</b>.</p>	<p>'Parliament's authority' (UK Parliament)</p>
<p>Participation and Inclusion</p> <p>All people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being. <b>Human Rights-based approaches</b> require a high degree of participation by communities, civil society, disabled people, minorities, women, young people, indigenous peoples and other identified groups.</p>	<p>'Human Rights Principles' (United Nations Population Fund, 2005)</p>

Term and explanation	Source / more info
<p>Periodic review</p> <p>A mechanism of review conducted by all of the treaty bodies. The States Parties to all of the <b>core human rights treaties</b> undertake to submit reports on the measures they have adopted which give effect to the rights recognised in the <b>treaty</b> and on the progress made in the enjoyment of those rights. For each <b>treaty</b> a <b>State Party</b> is required to submit a report within one year of the entry into force of the treaty and thereafter in a periodic cycle determined by the <b>treaty body</b>. Following the initial report, a <b>State Party</b> may utilise a consolidated treaty reporting process in relation to all of the human rights <b>treaties</b> it is party to.</p>	<p>International Covenant on Civil and Political Rights, art 40</p>
<p>Positive obligations/rights</p> <p>Positive obligations place a duty on <b>public authorities</b> to take active steps in order to safeguard and ensure human rights. For example, by undertaking an investigation, providing a service or enacting legislation. Most human rights place both positive and <b>negative obligations</b> on the state.</p>	<p>'Some Definitions' (Council of Europe)</p>

Term and explanation	Source / more info
<p>Progressive realisation</p> <p>The state's <b>positive obligations</b> to facilitate, promote and provide human rights must be continually assessed and in doing so the state must take deliberate, concrete and targeted steps within a reasonably short time to chart a path toward implementing a right to the extent permitted by looking at the maximum available resources. This includes particularly the adoption of legislative measures in addition to administrative, financial, education and social measures.</p>	<p>CESCR, <a href="#">An Evaluation of the Obligation to Take Steps to the “Maximum of Available Resources” under and Optional Protocol to the Covenant.</a></p>
<p>Public authorities</p> <p>In the context of human rights law, public authorities are agents of the state such as the government, law enforcement agencies, local authorities, hospitals and other agencies or organisations that provide public services or functions that can be described as governmental or attributable to the state.</p>	<p>“What defines a ‘public authority’ – and why it matters’ (Ward Hadaway, 15 July 2015); Human Rights Act 1998</p>



Term and explanation	Source / more info
<p>Public interest litigation</p> <p>Litigation that goes beyond the interest of one individual on issues that are in the interest of the public or a specific group of people. Typically initiated on behalf of individuals by NGOs or other organisations, with the aim of setting legal precedent and changing law and policy.</p>	<p>Human Rights Consortium (2018)</p>
<p>Principle of consistent interpretation</p> <p>National law should be interpreted consistently with international law, but in the case of conflict national law prevails.</p>	<p>Davíd Thór Björgvinsson (2015), 65</p>
<p>Qualified/limited rights</p> <p>In contrast to <b>absolute rights</b>, ‘qualified’ or ‘limited’ rights can be interfered with under specific circumstances where a compromise is necessary, such as in the interest of national security or where required to respect the rights of another individual or group. An example is the right to freedom of speech. Most human rights are qualified or limited rights.</p>	<p>Equality and Human Rights Commission (2016)</p>

Term and explanation	Source / more info
<p>Ratification</p> <p>When a state ratifies an international <b>treaty</b>, it consents to be bound by the treaty provisions. <b>Treaties</b> often allow for a timeframe after ratification where the state can adopt the necessary measures to give effect to the treaty in the domestic legal system.</p>	<p>Vienna Convention on the Law of Treaties, arts 2(1)(b), 14(1) and 16</p>
<p>Redress</p> <p>In the event of a human rights violation, a <b>State Party</b> to a convention has an obligation to provide timely, adequate, and effective <b>reparations</b> to the victim of the violation. The right to redress includes the corresponding right of the victim to seek reparations in the event of a violation.</p>	<p>Lisa Magarrell, Lorna Peterson, (2010),<sub>1</sub> 8–9</p>
<p>Reparations</p> <p>‘Recompense given to one who has suffered legal injury at the hands of another; to make amends, provide restitution, or give satisfaction or compensation for a wrong inflicted; it also refers to the thing done or given to the injured party.’</p>	<p>Dinah Shelton (2015)</p>

Term and explanation	Source / more info
<p>Reservation</p> <p>‘A unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a <b>treaty</b>, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.’ Effectively, this is a legal statement included by the State Party indicating how it intends to alter the terms of the treaty after the text has been adopted.</p>	<p>Vienna Convention on the Law of Treaties, art 2(1)(d)</p>
<p>Rights-holder</p> <p>The person who holds a legal right and, in the context of human rights law, to whom the State owes a duty to respect, protect and fulfil that right.</p>	

<b>Term and explanation</b>	<b>Source / more info</b>
<p data-bbox="199 295 514 332">Scotland Act 1998</p> <p data-bbox="199 393 1285 727">An Act passed by the UK Parliament which devolves certain legislative powers to the Scottish Parliament. This means that the Scottish Parliament can legislate on issues such as Scottish agriculture, forestry and fisheries, or tourism and sport among other matters, independently of the Westminster Parliament. The UK Parliament cannot normally legislate on devolved areas without the approval of the Scottish Parliament.</p> <p data-bbox="199 787 1285 1024">Some important legislative matters remain reserved to the competency of the UK Parliament, such as immigration, equalities and employment, meaning that the Scottish Parliament cannot enact laws specific to Scotland in these areas. If they do, these laws can be struck down and declared invalid by UK courts.</p> <p data-bbox="199 1084 1222 1170">Scotland's devolved powers were extended in 2012 and 2016 after the independence referendum.</p>	<p data-bbox="1306 295 1621 332">Scotland Act 1998</p>

Term and explanation	Source / more info
<p>Sectoral or piecemeal incorporation</p> <p>Where an individual provision of a treaty is made part of domestic law, but often without specific reference to the <b>treaty</b> itself. This method only incorporates parts of a treaty, for example in relation to a specific right within a treaty, while ignoring other rights outlined within the treaty.</p>	<p>Kasey McCall-Smith (2019), 430</p>
<p>Special Procedures of the Human Rights Council</p> <p>The special procedures of the <b>Human Rights Council</b> are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. The system of Special Procedures is a central element of the United Nations human rights machinery and covers all human rights: civil, cultural, economic, political and social.</p> <p>Among other functions, special procedures undertake country visits; act on individual cases and concerns of a broader, structural nature by sending communications to states and others in which they bring alleged violations or abuses to their attention.</p>	<p>'Special Procedures of the Human Rights Council' (OHCHR)</p>

Term and explanation	Source / more info
<p>Special Rapporteur (UN)</p> <p>An independent expert appointed by the <b>Human Rights Council</b> to examine and report back on a country situation or a specific human rights theme. This position is honorary, and the expert is not United Nations staff nor paid for his/her work. The Special Rapporteurs are part of the Special Procedures of the Human Rights Council. They are often referred to as ‘mandate holders’.</p>	<p>‘Special Rapporteur on the right to privacy’ (OHCHR)</p>
<p>State Party</p> <p>A country that has ratified or acceded to that particular treaty and is, therefore, legally bound by the provisions in the instrument under international law.</p>	<p>‘Introduction to the Convention on the Rights of the Child’ (UNICEF)</p>
<p>Strike Down Power</p> <p>The strike down power refers to the ability of a court to invalidate a piece of legislation that is incompatible with a human rights obligation. Compare with a <b>declaration of incompatibility</b>.</p>	

Term and explanation	Source / more info
<p>Transformation/translation</p> <p>Transformation or translation refers to a method of <b>incorporation</b> whereby the treaty provisions are reformulated or reworded and adopted as part of domestic legislation.</p>	<p>Rebecca Thorburn Stern (2019), 269</p>
<p>Transposition</p> <p>Transposition refers to a method of <b>incorporation</b> whereby the provisions of a treaty are given effect in domestic legislation using the exact language of the treaty.</p>	<p>Rebecca Thorburn Stern (2019), 269; Esin Örucü (2002)</p>
<p>Treaty</p> <p>A treaty is an international agreement concluded between states in written form and governed by international law. It places binding legal obligations on the states that commit to the agreement through <b>ratification</b>, <b>accession</b> or any other accepted method. The agreement may be described as a treaty, convention, covenant, etc.</p>	<p>Vienna Convention on the Law of Treaties, art 2(a)</p>

Term and explanation	Source / more info
<p>UN Treaty Bodies or UN Human Rights Treaty Bodies</p> <p>UN Treaty bodies or UN human rights treaty bodies, such as the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, are committees made up of independent experts tasked with monitoring and publishing guidance on the interpretation and <b>implementation</b> of the <b>core international human rights treaties</b>.</p>	<p>'Human rights treaty bodies' (OHCHR)</p>
<p>Universal Declaration of Human Rights (UDHR)</p> <p>Adopted by the UN General Assembly on 10 December 1948, the UDHR is the basis of the <b>core international human rights treaties</b>. The UDHR, however, is not a treaty but a non-binding resolution of the UN. Several of the human rights recognised in the UDHR are binding due to their recognition in other <b>treaties</b>, such as the prohibition against torture, which is also found in the Convention against Torture and ICCPR article 7.</p>	



Term and explanation	Source / more info
<p data-bbox="201 297 751 334">Universal Periodic Review (UPR)</p> <p data-bbox="201 394 1283 529">A mechanism of the <b>Human Rights Council</b> under which the human rights situation of all UN Member States is reviewed every five years.</p> <p data-bbox="201 589 1283 724">The result of each review is reflected in the Final Report of the Working Group, which lists the recommendations the State under review should implement before the next review.</p> <p data-bbox="201 784 695 821">Three key stages of the UPR:</p> <ul data-bbox="254 837 1272 1125" style="list-style-type: none"> <li data-bbox="254 837 1125 924">• Preparation for the Review and reporting on treaty implementation</li> <li data-bbox="254 940 1199 1026">• Review of the human rights situation of the state under review and adoption of the Report</li> <li data-bbox="254 1042 1272 1125">• Implementation of Recommendations and reporting at mid-term.</li> </ul>	<p data-bbox="1308 297 1738 334"><a href="#">OHCHR, 'About the UPR'</a></p>

<b>Term and explanation</b>	<b>Source / more info</b>
<p data-bbox="199 295 829 332">Universality and Inalienability of rights</p> <p data-bbox="199 393 1249 630">Human rights are universal and inalienable. All people everywhere in the world are entitled to them. The universality of human rights stems from the words of Article 1 of the <b>Universal Declaration of Human Rights</b> (UDHR): ‘All human beings are born free and equal in dignity and rights.’</p>	<p data-bbox="1306 295 1753 430">‘Human Rights Principles’ (United Nations Population Fund, 2005)</p>

## Annex 2: Overlap across different law and policy frameworks at the international and national levels

Overlap of different frameworks on civil, political, economic, social and cultural rights, using the following international treaties:

- International Convention on the Elimination of all forms of Racial Discrimination 1965 (ICERD)
- International Covenant on Civil and Political Rights 1966 (ICCPR)
- International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)
- Convention on the Elimination of all forms of Discrimination against Women 1979 (CEDAW)
- Convention on the Rights of the Child 1989 (UNCRC)
- Convention on the Rights of Persons with Disabilities 2006 (CRPD)

International	European	Scots Law	Scots Policy
<b>Right to adequate standard of living (ASOL)</b>			
<b>ASOL (general)</b> <ul style="list-style-type: none"> <li>• CRPD art 28</li> <li>• ICESCR art 11</li> <li>• UNCRC art 27</li> <li>• Universal Declaration of</li> </ul>	<ul style="list-style-type: none"> <li>• European Social Charter (ESC)</li> <li>• European Convention on Human Rights (ECHR) art 8</li> </ul>		

International	European	Scots Law	Scots Policy
Human Rights (UDHR) art 25			
<b>Housing/Living conditions</b> <ul style="list-style-type: none"> <li>• CRPD art 9(1)(a) and 28</li> <li>• ICESCR art 11(1)</li> <li>• CERD art 5(e)(iii)</li> <li>• CEDAW art 14(h)</li> <li>• UNCRC art 27</li> <li>• UDHR art 25</li> <li>• <a href="#">ILO Workers' Housing Recommendation, 1961</a> (No. 115)</li> </ul>	<ul style="list-style-type: none"> <li>• ECHR art 8</li> <li>• ESC arts 16 and 31</li> <li>• Race Directive (Council Directive 2000/43/EC)</li> <li>• Gender Directive (Council Directive 2004/113/EC)</li> </ul>	<ul style="list-style-type: none"> <li>• Housing (Scotland) Act 1987</li> <li>• Homelessness (Scotland) Act 2003</li> <li>• Homeless (Abolition of Priority Need Test) (Scotland) Order 2012</li> <li>• Housing (Scotland) Act 2014</li> <li>• Private Housing (Tenancies) (Scotland) Act 2016</li> <li>• Planning (Scotland) Act 2019</li> </ul>	<ul style="list-style-type: none"> <li>• Ending Homelessness Together: <a href="#">High level action plan</a></li> </ul>

International	European	Scots Law	Scots Policy
<p><b>Food</b></p> <ul style="list-style-type: none"> <li>• ICESCR art 11(1) &amp; (2)</li> <li>• UNCRC art 24(2)(c)</li> <li>• UDHR art 25</li> <li>• <a href="#">UN Declaration on the Rights of Peasants</a> art 15</li> <li>• <a href="#">FAO Voluntary Guidelines to Support the Progressive Realisation of the Right to Adequate Food</a></li> </ul>			<ul style="list-style-type: none"> <li>• Good Food Nation policy</li> </ul>
<p><b>Water</b></p> <ul style="list-style-type: none"> <li>• ICESCR arts 11 and 12</li> </ul>		<ul style="list-style-type: none"> <li>• Sewerage (Scotland) Act 1968</li> <li>• Water (Scotland) Act 1980</li> </ul>	

International	European	Scots Law	Scots Policy
<ul style="list-style-type: none"> <li>• CEDAW art 14(2)</li> <li>• UNCRC art 24(2)(c)</li> <li>• Geneva Conventions</li> </ul>		<ul style="list-style-type: none"> <li>• Water Industry (Scotland) Act 2002</li> <li>• Water Services etc (Scotland) Act 2005</li> <li>• Water Resources (Scotland) Act 2013</li> <li>• <a href="#">Water environment legislation</a></li> </ul>	
<p><b>Protection against poverty and social exclusion</b></p> <ul style="list-style-type: none"> <li>• CRPD – numerous articles support this right, e.g. arts 8, 9</li> <li>• ICESCR</li> </ul>	<ul style="list-style-type: none"> <li>• ESC art 16</li> </ul>		
<p><b>Right to the enjoyment of the highest attainable standard of physical and mental health</b></p>			

International	European	Scots Law	Scots Policy
<ul style="list-style-type: none"> <li>• CRPD arts 25, 26</li> <li>• ICESCR art 12</li> <li>• CERD arts 5(e)(iv), 11(1)(f), 12</li> <li>• CEDAW arts 12, 14(b)</li> <li>• UNCRC art 24</li> <li>• UDHR art 25</li> </ul>		<ul style="list-style-type: none"> <li>• Public Health etc. (Scotland) Act 2008</li> <li>• Mental Health (Scotland) Act 2003</li> <li>• Mental Health (Scotland) Act 2015</li> </ul>	<ul style="list-style-type: none"> <li>• <a href="#">Getting it Right for Every Child (GIRFEC)</a></li> <li>• <a href="#">Mental Health Strategy 2017-2027</a></li> </ul>
<b>Right to education</b>			
<ul style="list-style-type: none"> <li>• CRPD art 24</li> <li>• ICESCR art 14</li> <li>• CERD arts 5(e)(v), 7</li> <li>• CEDAW arts 10, 14(d)</li> <li>• UNCRC arts 28, 29</li> </ul>	<ul style="list-style-type: none"> <li>• ECHR OP-1 art 2</li> <li>• ESC art 10</li> </ul>	<ul style="list-style-type: none"> <li>• HRA</li> <li>• Equality Act 2010</li> <li>• Education (Scotland) Act 1980</li> <li>• Standards in Scotland's Schools Act 2000</li> </ul>	<ul style="list-style-type: none"> <li>• <a href="#">Getting it Right for Every Child (GIRFEC)</a></li> <li>• <a href="#">Curriculum for Excellence</a></li> </ul>

International	European	Scots Law	Scots Policy
<ul style="list-style-type: none"> <li>• UDHR art 26</li> <li>• <a href="#">UNESCO Convention against Discrimination in Education</a></li> </ul>		<ul style="list-style-type: none"> <li>• Education (Additional Support for Learning) (Scotland) Act 2004</li> <li>• Gaelic Language (Scotland) Act 2005</li> <li>• Requirements for Community Learning and Development (Scotland) Regulations 2013</li> <li>• Children and Young People (Scotland) Act 2014</li> <li>• Education (Scotland) Act 2016</li> </ul>	
<b>Right to social security and social protection</b>			
<ul style="list-style-type: none"> <li>• CRPD art 28</li> <li>• ICESCR art 9</li> <li>• CERD art 5(e)(iv)</li> </ul>		<ul style="list-style-type: none"> <li>• Social Security (Scotland) Act 2018</li> </ul>	<ul style="list-style-type: none"> <li>• <a href="#">Social Security Scotland Charter</a></li> </ul>



International	European	Scots Law	Scots Policy
<ul style="list-style-type: none"> <li>• CEDAW arts 11(c), 12, 14(c)</li> <li>• UNCRC art 26</li> <li>• UDHR art 22</li> </ul>			
<b>Right to take part in cultural life</b>			
<ul style="list-style-type: none"> <li>• ICESCR art 15(1)(a)</li> <li>• ICCPR art 27 (minority cultural rights)</li> <li>• CERD arts 5(e)(vi), 7</li> <li>• CEDAW art 13(c)</li> <li>• UNCRC arts 23(3), 30, 31</li> <li>• CRPD art 30</li> <li>• UDHR art 27</li> </ul>	<ul style="list-style-type: none"> <li>• Framework Convention for the Protection of National Minorities (Council of Europe, ETS No. 157) art 15</li> <li>• European Charter for Regional or Minority Languages</li> </ul>	<ul style="list-style-type: none"> <li>• Gaelic Language (Scotland) Act 2005</li> <li>• Education (Scotland) Act 2016</li> </ul>	

International	European	Scots Law	Scots Policy
<ul style="list-style-type: none"> <li>• ICRMW art 43(1)(g) (UK not party)</li> <li>• Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities art 2</li> <li>• UN Declaration on the Rights of Indigenous Peoples arts 5, 8, and 10–13</li> </ul>			
<b>Right to life</b>			
<ul style="list-style-type: none"> <li>• ICCPR art 6</li> <li>• CRPD art 10</li> <li>• UNCRC art 6</li> </ul>	<ul style="list-style-type: none"> <li>• ECHR art 2</li> <li>• EU Charter of Fundamental Rights art 2</li> </ul>	<ul style="list-style-type: none"> <li>• Human Rights Act (HRA) 1998 art 2</li> </ul>	

International	European	Scots Law	Scots Policy
<ul style="list-style-type: none"> <li>• UDHR art 3</li> <li>• Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, (adopted by the Economic and Social Council in its resolution 1989/65 of 24 May 1989)</li> <li>• Charter on Human and Peoples' Rights art 4</li> <li>• African Charter on the Rights</li> </ul>			

International	European	Scots Law	Scots Policy
<p>and Welfare of the Child art 5</p> <ul style="list-style-type: none"> <li>• Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa art 4</li> <li>• Arab Charter on Human Rights arts 5, 6</li> <li>• American Declaration of the Rights and Duties of Man art 1</li> <li>• American Convention on Human Rights art 4</li> </ul>			

International	European	Scots Law	Scots Policy
<ul style="list-style-type: none"> <li>• Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará") art 4</li> </ul>			
<b>Prohibition of torture or cruel, inhuman or degrading treatment or punishment</b>			
<ul style="list-style-type: none"> <li>• ICCPR art 7</li> <li>• UDHR art 5</li> <li>• CPRD art 15</li> <li>• CERD art 5(b)</li> <li>• UNCRC art 34, 37</li> </ul>	<ul style="list-style-type: none"> <li>• ECHR art 3</li> <li>• European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987</li> </ul>	<ul style="list-style-type: none"> <li>• <a href="#">Abusive Behaviour and Sexual Harm (Scotland) Act 2016</a></li> <li>• <a href="#">Female Genital Mutilation (Protection and Guidance) (Scotland) Act 2020</a></li> </ul>	<ul style="list-style-type: none"> <li>• Scotland's national action plan to prevent and eradicate FGM</li> </ul>

International	European	Scots Law	Scots Policy
<ul style="list-style-type: none"> <li>• UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) 1984</li> <li>• CEDAW Committee, General Recommendation No.19 (1992)</li> <li>• <a href="#">Standard Minimum Rules for the Treatment of Prisoners (1955)</a></li> <li>• <a href="#">UN General Assembly (UNGA) Declaration on</a></li> </ul>	<ul style="list-style-type: none"> <li>• EU Charter of Fundamental Rights art 4</li> </ul>		

International	European	Scots Law	Scots Policy
<p><a href="#"><u>the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975)</u></a></p> <ul style="list-style-type: none"> <li>• Code of Conduct for Law Enforcement Officials (1979)</li> <li>• Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)</li> <li>• Principles of Medical Ethics</li> </ul>			

International	European	Scots Law	Scots Policy
<p>relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982)</p> <ul style="list-style-type: none"> <li>• Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)</li> </ul>			



International	European	Scots Law	Scots Policy
<ul style="list-style-type: none"> <li>• Basic Principles for the Treatment of Prisoners (1990)</li>   <li>• Rome Statute of the International Criminal Court (1998) art 7</li>   <li>• Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) (1999)</li> </ul>			

International	European	Scots Law	Scots Policy
<ul style="list-style-type: none"> <li>• <a href="#">Global strategy to stop health-care providers from performing female genital mutilation</a> (2010)</li> </ul>			
<b>Prohibition of slavery or forced labour</b>			
<ul style="list-style-type: none"> <li>• ICCPR art 8</li> <li>• UDHR art 4</li> </ul>	<ul style="list-style-type: none"> <li>• ECHR art 4</li> <li>• EU Charter of Fundamental Rights art 5</li> </ul>	<ul style="list-style-type: none"> <li>• <a href="#">Human Trafficking and Exploitation (Scotland) Act 2015</a></li> </ul>	
<b>Right to liberty and security of person</b>			
<ul style="list-style-type: none"> <li>• ICCPR art 9</li> <li>• UDHR art 3</li> <li>• CERD art 5(b)</li> </ul>	<ul style="list-style-type: none"> <li>• ECHR art 5</li> <li>• EU Charter of Fundamental Rights art 6</li> </ul>		
<b>Fair trial rights and equality before the law, right to remedy</b>			
<ul style="list-style-type: none"> <li>• ICCPR arts 10, 11, 14, 15, 16</li> </ul>	<ul style="list-style-type: none"> <li>• ECHR arts 6, 7, 13</li> <li>• EU Charter of Fundamental</li> </ul>	<ul style="list-style-type: none"> <li>• <a href="#">Victims and Witnesses (Scotland) Act 2014</a></li> </ul>	

International	European	Scots Law	Scots Policy
<ul style="list-style-type: none"> <li>• UDHR arts 6, 7, 8, 9, 10, 11</li> <li>• CRPD arts 12, 13</li> <li>• CEDAW art 15</li> <li>• CERD arts 5(a), 6</li> <li>• UNCRC art 12(2)</li> </ul>	<p>Rights title 6 (justice)</p>	<ul style="list-style-type: none"> <li>• <a href="#">Criminal Justice (Scotland) Act 2016</a></li> </ul>	
<b>Right to liberty of movement and freedom to choose residence, Prohibition of expulsion of nationals</b>			
<ul style="list-style-type: none"> <li>• ICCPR arts 12, 13</li> <li>• UDHR art 12</li> <li>• CRPD art 18</li> </ul>	<ul style="list-style-type: none"> <li>• ECHR art 2, 3</li> </ul>		

International	European	Scots Law	Scots Policy
<ul style="list-style-type: none"> <li>• CERD art 5(d)(i,ii,iii)</li> </ul>			
<b>Right to private and family life</b>			
<ul style="list-style-type: none"> <li>• ICCPR art 17</li> <li>• CRPD arts 22, 23</li> <li>• UNCRC art 16</li> </ul>	<ul style="list-style-type: none"> <li>• ECHR art 8</li> <li>• EU Charter of Fundamental Rights art 7</li> <li>• ESC art 16</li> </ul>		
<b>Right to freedom of thought, conscience and religion</b>			
<ul style="list-style-type: none"> <li>• ICCPR art 18</li> <li>• UDHR art 18</li> <li>• CERD art 5(d)(vii)</li> <li>• UNCRC art 14</li> </ul>	<ul style="list-style-type: none"> <li>• ECHR art 9</li> <li>• EU Charter of Fundamental Rights art 10</li> </ul>		
<b>Right to freedom of expression and opinion</b>			
<ul style="list-style-type: none"> <li>• ICCPR art 19</li> </ul>	<ul style="list-style-type: none"> <li>• ECHR art 10</li> </ul>		

International	European	Scots Law	Scots Policy
<ul style="list-style-type: none"> <li>• UDHR art 19</li> <li>• UNCRC art 13</li> <li>• CRPD art 21</li> <li>• CERD art 5(d)(viii)</li> </ul>	<ul style="list-style-type: none"> <li>• EU Charter of Fundamental Rights art 11</li> </ul>		
<b>Right of peaceful assembly, right to form and join trade unions</b>			
<ul style="list-style-type: none"> <li>• ICCPR art 22</li> <li>• UDHR art 20</li> <li>• CERD art 5(d)(ix)</li> <li>• UNCRC art 15</li> </ul>	<ul style="list-style-type: none"> <li>• ECHR art 11</li> <li>• European Social Charter art 5</li> <li>• EU Charter of Fundamental Rights art 12</li> </ul>		
<b>Right to marry</b>			
<ul style="list-style-type: none"> <li>• ICCPR art 23</li> <li>• ICESCR art 10</li> </ul>	<ul style="list-style-type: none"> <li>• ECHR art 12</li> <li>• EU Charter of Fundamental Rights art 9</li> </ul>	<ul style="list-style-type: none"> <li>• <a href="#">Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011</a></li> </ul>	<ul style="list-style-type: none"> <li>• <a href="#">Forced marriage: guidance for legal professionals in Scotland 2012</a></li> </ul>

International	European	Scots Law	Scots Policy
<ul style="list-style-type: none"> <li>• CEDAW art 16</li> <li>• UDHR art 16</li> <li>• CERD art 5(d)(iv)</li> <li>• <a href="#">UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1964</a></li> </ul>		<ul style="list-style-type: none"> <li>• <a href="#">Anti-social Behaviour, Crime and Policing Act 2014</a>, part 10 (forced marriage)</li> <li>• <a href="#">Marriage and Civil Partnership (Scotland) Act 2014</a></li> </ul>	
<b>Right to vote and take part in the conduct of public affairs</b>			
<ul style="list-style-type: none"> <li>• ICCPR art 25</li> <li>• ICESCR art 8</li> <li>• UDHR art 21</li> <li>• CRPD art 29</li> </ul>	<ul style="list-style-type: none"> <li>• EU Charter of Fundamental Rights arts 39, 40</li> </ul>		

International	European	Scots Law	Scots Policy
<ul style="list-style-type: none"> <li>• CEDAW arts 7, 8</li> <li>• CERD art 5(c)</li> <li>• UNCRC art 15</li> <li>• American Convention on Human Rights art 23</li> <li>• African Charter on Human and Peoples' Rights art 13</li> </ul>			
<b>Freedom from exploitation, violence and abuse</b>			
<ul style="list-style-type: none"> <li>• CRPD art 16</li> <li>• UNCRC arts 19, 34</li> </ul>	<ul style="list-style-type: none"> <li>• <a href="#">European Commission against Racism and Intolerance (ECRI) General Policy Recommendation No. 15 on</a></li> </ul>	<ul style="list-style-type: none"> <li>• <a href="#">Abusive Behaviour and Sexual Harm (Scotland) Act 2016</a></li> <li>• <a href="#">Limitation (Childhood Abuse) (Scotland) Act 2017</a></li> </ul>	

International	European	Scots Law	Scots Policy
<ul style="list-style-type: none"> <li>• <a href="#">Council of Europe Disability Strategy 2017-2023</a></li> <li>• Council of Europe Convention on Action against Trafficking in Human Beings 2005</li> <li>• Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul</li> </ul>	<ul style="list-style-type: none"> <li>• <a href="#">combating hate speech 2015</a></li> <li>• ESC art 17(1)(b)</li> </ul>	<ul style="list-style-type: none"> <li>• <a href="#">Domestic Abuse (Scotland) Act 2018</a></li> </ul>	



International	European	Scots Law	Scots Policy
Convention) art 3			
<b>Right to integrity of the person</b>			
<ul style="list-style-type: none"> <li>• CRPD art 17</li> </ul>	<ul style="list-style-type: none"> <li>• EU Charter of Fundamental Rights art 3</li> </ul>		<ul style="list-style-type: none"> <li>• <a href="#">Code of Ethics for policing in Scotland</a></li> </ul>

**Annex 3: Table of international and regional human rights instruments to which the United Kingdom is bound**

<b>Treaty</b>	<b>Area of protection</b>	<b>Governing body</b>	<b>Ratified by the UK?</b>
CERD (Convention on the Elimination of All Forms of Racial Discrimination)	Discrimination against minority groups	UN Committee on the Elimination of Racial Discrimination	1968
ICCPR (International Covenant on Civil and Political Rights)	Civil and political rights	UN Human Rights Committee	1976
ICESCR (International Covenant on Economic, Social and Cultural Rights)	Economic, social and cultural rights, global.	UN Committee on Economic, Social and Cultural Rights	1976
CEDAW (The Convention on the Elimination of all Forms of Discrimination Against Women)	Women's rights	UN Committee on the Elimination of Discrimination Against Women	1986
CAT (Convention Against Torture and other forms of Cruel, Inhuman or Degrading Treatment)	Torture, inhuman and degrading treatment	UN Committee Against Torture	1987

<b>Treaty</b>	<b>Area of protection</b>	<b>Governing body</b>	<b>Ratified by the UK?</b>
CRC (Convention on the Rights of the Child)	Children's rights	UN Committee on the Rights of the Child	1991
CRPD (International Convention on the Rights of Persons with Disabilities)	Persons with disabilities	UN Committee on the Rights of Persons with Disabilities	2009
ECHR (European Convention on Human Rights)	Mainly civil and political rights (Europe)	European Court of Human Rights and the Council of Europe	1951
EU Charter of Fundamental Rights	Based on the ECHR and the ESC (Europe)	Court of Justice of the European Union and the EU Agency for Fundamental Rights	As an EU member state
ESC (European Social Charter (revised))	Some social and economic rights, particularly worker's rights (Europe)	European Committee of Social Rights, Council of Europe	The UK has signed (1996) but not ratified the ESC

## **About Inclusion Scotland**

Inclusion Scotland's mission is to achieve positive changes to policy and practice, so that we disabled people are fully included throughout all Scottish society as equal citizens. We do this by influencing decision-makers, supporting disabled people to be decision-makers, and developing capacity, awareness and engagement. Inclusion Scotland is run by disabled people. This is important because disabled people know best about the barriers that prevent our full inclusion into Scottish society. We experience them every day. But we cannot remove them by ourselves. We need allies and supporters. We need those in power to hear disabled people's voices and work with us to remove these barriers.

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## **About the Health and Social Care Alliance Scotland (the ALLIANCE)**

The Health and Social Care Alliance Scotland (the ALLIANCE) is the national third sector intermediary for a range of health and social care organisations. The ALLIANCE has around 3,000 members including large, national support providers, small, local volunteer-led groups, and people who are disabled, living with long term conditions or providing unpaid care. Our vision is for a Scotland where people of all ages who are disabled or living with long-term conditions, and unpaid carers, have a strong voice and enjoy their right to live well, as equal and active citizens, free from discrimination, with support and services that put them at the centre.

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