

The Health and Social Care Alliance Scotland (the ALLIANCE)



International Covenant on Economic, Social and Cultural Rights: Report to the UN Committee on Economic, Social and Cultural Rights

December 2022

About 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. We have a growing membership of over 3,000 national and local third sector organisations, associates in the statutory and private sectors, disabled people, people living with long term conditions and unpaid carers. Many NHS Boards, Health and Social Care Partnerships, Medical Practices, Third Sector Interfaces, Libraries and Access Panels are also members.

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.

The ALLIANCE has three core aims; we seek to:

- Ensure people are at the centre, that their voices, expertise and rights drive policy and sit at the heart of design, delivery and improvement of support and services.
- Support transformational change, towards approaches that work with individual and community assets, helping people to stay well, supporting human rights, self management, co-production and independent living.
- Champion and support the third sector as a vital strategic and delivery partner and foster better cross-sector understanding and partnership.

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General

The Scottish context

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was ratified by the UK in 1976.¹ As the State Party to ICESCR, the UK Government has ultimate responsibility for implementing the rights outlined in the Covenant. However, as a devolved administration, Scotland has responsibility to protect human rights in devolved policy areas, including health and social care and some aspects of social security. This report outlines core issues that we suggest the Committee may consider raising with the UK and Scottish Governments. Our report draws on an existing evidence base, informed by engagement with ALLIANCE members and partners.

UK Bill of Rights Bill

In June 2022, the UK Government introduced the Bill of Rights Bill to the UK Parliament.² If enacted, the Bill of Rights would repeal the Human Rights Act 1998 and replace it with much weaker protections. The proposed Bill threatens to reduce the ability of people to enforce their rights and may weaken obligations on public authorities to take human rights seriously and to embed human rights based approaches in their work. This is regressive, would have negative consequences on everyone's human rights, and would disproportionately impact disabled people, people living with long term conditions, unpaid carers, and people from other marginalised groups.³

Additionally, any changes to the Human Rights Act could create complex constitutional issues and legal uncertainty.⁴ From a Scottish perspective, there is substantial concern about the extent to which repeal of the Human Rights Act could impact upon the ongoing human rights work and commitments to international conventions across the Scottish policy landscape. The Scottish Government has committed to incorporating four international UN treaties into Scots law through a new Human Rights Bill.⁵ This includes the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which would ensure that disabled people can enjoy and enforce their human rights.⁶ Scotland is also currently developing its second National Action Plan for Human Rights (also known as SNAP 2).⁷ It is vital that the journey towards embedding human rights is not disturbed, or the progress that has already been made become undone. The operation of the Human Rights Act must be maintained to ensure it links in the best way possible to the work that we are currently undertaking in Scotland.

Recommendations

- The Human Rights Act, in its current form, should not be diluted. Any changes to the Human Rights Act must be progressive and should aim to enhance the protections that are currently offered, including the status of economic, social and cultural rights for all.
- The UK Government should develop a national action plan on human rights, learning from Scotland's National Action Plan for Human Rights (SNAP) to set out concrete actions towards key recommendations from the United Nations and the Council of Europe.

Human Rights Incorporation Bill

The Scottish Government's new Human Rights Bill proposes to incorporate ICESCR and three other international treaties into Scots law. Incorporation is a key priority for the ALLIANCE, and we strongly support the Scottish Government's commitment to introduce a new human rights framework for Scotland.⁸ Too often, disabled people, people living with long term conditions and unpaid carers have difficulty accessing their human rights. Incorporation in Scotland must ensure that everyone can access and realise their human rights to the maximum extent possible.

The COVID-19 pandemic and the Cost of Living crisis have highlighted and exacerbated the inequalities in the protection and fulfilment of human rights. It is vital that the work to develop the Human Rights Incorporation Bill is prioritised to embed human rights decision making in law, policy and practice across Scotland. In September 2022 the ALLIANCE – along with 15 civil society organisations – called for the Scottish Government to increase capacity, resource and expertise to develop the new Human Rights Incorporation Bill.⁹ We also emphasised that implementation plans should not be delayed, and that plans should be put in place to effectively prepare for the culture, policy and practice change that the new law will require.

Further, there are existing legal mechanisms through which the Scottish Government can progressively realise economic, social and cultural rights.¹⁰ Efforts can be made therefore to define minimum core obligations using participatory processes with rights holders.¹¹ Concrete measures should be set out to progressively realise these obligations across devolved policy areas.

Recommendations

- The Scottish Government should put plans in place – within its devolved competence – to give effect to ICESCR to the maximum extent possible, and ensure sufficient capacity, resource and expertise to develop the Human Rights Incorporation Bill.
- The Scottish Government should ensure that duty bearers are adequately supported and resourced to ensure the progressive realisation of economic, social and cultural rights for all.
- The Scottish Government should determine minimum core obligations, using participatory processes, across economic, social and cultural rights in the Scottish context.

Article 7: the right to just and favourable conditions of work

The gendered nature of caring

Social care is vital to society but continues to be undervalued, with low pay and poor terms and conditions. Systemic underinvestment in the sector has led to long term, ongoing problems with recruitment and retention, and we often hear of people leaving the sector to do less demanding jobs for similar or better rates of pay. Around 85% of the social care workforce in Scotland identify as female,¹² and around 70% of unpaid care is carried out by women. Workforce issues relating to social care are therefore highly gendered. Failure to address these issues will exacerbate the inequality in women's working conditions and Scotland's gender pay gap.

At the core of issues related to fair work are the rights of people who access support and services and unpaid carers, as well as the rights of people who provide them. The Scottish Government introduced the National Care Service (Scotland) Bill to the Scottish Parliament in June 2022.¹³ It is important the design, delivery and implementation of the National Care Service is grounded in economic, social and cultural rights which protect, respect and fulfil the rights of women, and ensure the value of social care work is recognised and remunerated appropriately. The Scottish Government must prioritise paying social care staff better, and should address institutionalised gender bias with an intersectional evaluation of social care work to establish fair and equitable assessment of terms and conditions.¹⁴

Unpaid carers receive inadequate financial support, and there is a lack of awareness among unpaid carers about the wider support that is available, for example access to Self-directed Support and respite support. Unpaid carers have explained that information about access to social care support, financial support and respite support is often not "forthcoming".¹⁵

Recommendations

- The Scottish Government should set out concrete measures to ensure that design, delivery and implementation of the National Care Service is grounded in economic, social and cultural rights which protect, respect and fulfil the rights of women.
- The Scottish Government should address institutionalised gender bias with an intersectional evaluation of social care work to establish fair and equitable assessment of terms and conditions, and ensure the value of social care work is recognised and remunerated appropriately.

Article 9: right to social security

The social security system for disabled people, people with long term conditions and unpaid carers can often be confusing, undignified and does not fully respect their human rights.

As outlined above, some aspects of social security are devolved to the Scottish Government,¹⁶ and the Scottish Government has committed to implementing a rights-based social security system.¹⁷ Although the Scottish Government has made some positive steps to increase the take up of social security payments, there is still a large amount unclaimed. There is also no reliable estimate of the levels of take up for disability benefits, and anecdotal evidence suggests there is significant under-claiming.

At a UK level, there has been no major forward progress since 2016. There is no mechanism for ensuring that social security payments are adequate, with some evidence that the level of disability payments may be inadequate,¹⁸ and the level of Universal Credit has been undermined by being frozen for several years. Despite now being increased in line with inflation, there is no formula to assess its adequacy.

Personal Independence Payment (PIP) has a very poor level of accuracy of decision making, with a high level of decisions overturned by mandatory reconsideration and appeal. Although this is being replaced by the devolved Adult Disability Payment, with improvements to the assessment and administrative processes, many of the rules and eligibility criteria from PIP are duplicated, so it may not fully address the issues experienced by recipients.

Recommendations

- The Scottish Government should implement improved data gathering to better understand the levels of take up for disability benefits.
- The UK Government should assess the adequacy of social security payments.
- The UK and Scottish Governments should review the decision making processes for PIP and Adult Disability Payment to ensure the assessment and administrative processes are suitably rights based.

Article 11: the right of everyone to an adequate standard of living

Cost of living

Research in 2016 highlighted that disabled people are disproportionately impacted by poverty with 48% of people who are living in poverty in Scotland are disabled, despite making up only 22% of the population.¹⁹ Further, research in 2018 found that disabled people in Scotland spent an average of £632 a month on disability-related

expenses such as additional heating, washing, taxis, special equipment, and care costs.²⁰ These figures have been exacerbated by the cost of living crisis, driven in particular by dramatic increases in the cost of energy.

Disabled people, people living with long term conditions, and unpaid carers are more likely to find themselves both with higher bills and with less ability to pay.²¹ Measures taken by the UK Government have not gone far enough to ensure an adequate standard of living for disabled people, people living with long term conditions and unpaid carers.

Recommendations

- The UK and Scottish Governments should take targeted action to prioritise emergency cost of living payments, implement additional support packages, and uprate reserved social security payments in line with inflation.
- The UK and Scottish Governments should adopt longer term action to rebalance how we approach the economy and public finances by embedding a human rights budgeting approach.

Provision of accessible housing

A lack of accessible housing in the UK is having a direct impact on the rights of disabled people, including their ability to live independently. Currently, only 9% of homes in the UK are accessible for disabled people.²² A 2018 report by the Equality and Human Rights Commission found that many disabled people were living in housing without any accessible features with evidence of people “eating, sleeping and bathing in one room”.²³ This can have a direct impact on the physical and mental health of disabled people, people living with long term conditions and unpaid carers.

A recently published report by the UK Parliament Public Accounts Committee highlighted that the UK Government is likely to ‘fall short’ on its affordable home housebuilding targets.²⁴ Many local authorities do not have any targets for how many accessible houses they aim to build or adapt, and waiting lists run to three years or more.²⁵

The Scottish Government has committed to introducing a new Scottish Accessible Homes Standard to see accessibility considered in new homes from the outset.²⁶ However, evidence suggests that even where there are commitments to build a percentage of accessible housing, many developers are not delivering their commitments.²⁷

Housing accessibility should also be considered in terms of internal and external accessibility, including links to health and social care services, nearby accessible

transport links, and informal support networks, to ensure disabled people are able to access the support they need and be included in their communities.²⁸

Recommendations

- The UK and Scottish Governments should set and monitor minimum targets for accessible and adaptable housing. Robust accountability mechanisms are needed to ensure commitments are delivered consistently.
- UK and Scottish planning authorities should commit to ensuring housing developments are designed alongside local infrastructure – and in conjunction with disabled people, people living with long term conditions and unpaid carers – to ensure that everyone has access to services, transport links and greenspace in their local area to support their health and wellbeing.

Article 12: the right to the highest attainable standard of physical and mental health

Social care

ALLIANCE members have repeatedly shared experiences that social care does not work for many people and families across Scotland, with an ensuing impact on human rights and the quality of life and mental wellbeing for people accessing support and unpaid carers.²⁹ The Scottish Government has committed to introducing a National Care Service. While the Bill offers opportunities to respond to many of the existing problems within Scotland's social care sector, it is not the sole means of improvement and change.

The ALLIANCE is committed to the removal of care charges to ensure that care is free at point of delivery; a concern which has become more acute within the current cost of living crisis, which disproportionately affects disabled people, people living with long term conditions, and unpaid carers. Care charges are not mentioned in the National Care Service (Scotland) Bill as introduced, but remain an area where change is essential to improve the quality and consistency of social work and social care services. Social care as currently arranged means that some people must pay more to enjoy the same human rights as others. Non-residential care charges increase financial pressures on people who access care, and potentially causes people to forego essential services.³⁰ This difficulty is compounded by the fact that local authorities and health and social care partnerships can make their own decisions on charging, leading to varying quality in the experience of social care across Scotland.

Recommendations

- The Scottish Government should work towards making all social care universally free at the point of use.

Mental health

It is widely recognised that people with lived experience of mental health conditions in Scotland do not enjoy their human rights as fully as they could, and that barriers exist for unpaid carers in supporting people living with mental health conditions.³¹ The 'Scottish Mental Illness Stigma Study', published in September 2022, highlighted that experiences of stigma and discrimination span across a range of life areas, including personal, public and professional spheres.³² The recommendations of the Scottish Mental Health Law Review place human rights, and a human rights based approach, at the heart of proposals for law reform.³³ The proposals set out to address many of the issues faced by people living with mental health conditions, including stigma and discrimination.

The 'Coming Home Implementation Report', published in February 2022, responded to the critical issue of people with learning disabilities and autistic people spending long periods of time in hospitals and inappropriate out of area placements.³⁴ The report makes recommendations of national and local actions to reduce the number of delayed discharges and out of area placements. However, there is concern that the report failed to ensure the participation of those whose rights are most impacted.³⁵

Recommendations

- The Scottish Government should adopt the recommendations of the Scottish Mental Health Law Review, accompanied by a robust implementation framework to ensure the ideas and underpinning principles come to fruition.
- In responding to issues of delayed discharge and out of area placements for people with learning disabilities and autistic people, the Scottish Government should ensure real and meaningful participation of people with lived experience, their families and unpaid carers.

Climate change

A changing environment and extreme weather effects, such as heatwaves, flash flooding, winds, storms and air quality, is having a direct impact on certain groups including disabled people and people living with long term conditions. Evidence suggests that the UK is not keeping pace with climate impacts.³⁶ More needs to be done to ensure that all parts of society are working to reduce emissions causing climate change, including within health and social care. Additionally, disabled people can often feel overlooked or excluded in conversations about climate change, and

actions to address climate change can create additional barriers for disabled people and people living with long term conditions.³⁷

Recommendations

- The UK and Scottish Governments must ensure that disabled people, people living with long term conditions and unpaid carers are involved in climate change discussions, particularly as new legislation and policies are introduced to respond to the climate change emergency.

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² UK Parliament, 'Bill of Rights Bill' (9 September 2022). Available at: <https://bills.parliament.uk/bills/3227>

³ The ALLIANCE, 'ALLIANCE responds to consultation on Human Rights Act Reform' (8 March 2022). Available at: <https://www.alliance-scotland.org.uk/blog/news/alliance-responds-to-consultation-on-human-rights-act-reform/>

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⁶ As above.

⁷ Scotland's National Action Plan for Human Rights, 'Developing SNAP2'. Available at: <https://www.snaprights.info/snap-2>

⁸ The ALLIANCE, 'Human rights incorporation'. Available at: <https://www.alliance-scotland.org.uk/policy-into-practice/human-rights/human-rights-incorporation/>

⁹ Human Rights Consortium Scotland, 'Final letter to First Minister on consultation delay' (27 September 2022). Available at: <https://hrcscotland.org/wp-content/uploads/2022/10/Final-letter-to-FM-on-consultation-delay-27-Sept-2022-1.pdf>

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¹² SSSC, 'Scottish Social Service Sector: Report on 2018 Workforce Data' (Nov 2019). Available at: <https://data.sssc.uk.com/images/WDR/WDR2018.pdf>

¹³ The Scottish Parliament, 'National Care Service (Scotland) Bill'. Available at: <https://www.parliament.scot/bills-and-laws/bills/national-care-service-scotland-bill/introduced>

¹⁴ The ALLIANCE, 'ALLIANCE calls for National Care Service to be "investment of citizenship"' (2 November 2021). Available at: <https://www.alliance-scotland.org.uk/blog/news/the-alliance-calls-for-national-care-service-to-be-investment-of-citizenship/>

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¹⁷ Scottish Government, 'Social security'. Available at: <https://www.gov.scot/policies/social-security/social-security-agency/>

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