

**Response to
Recommendations
– update**

January 2019



Scottish Government
Riaghaltas na h-Alba
gov.scot

Universal Periodic Review



Human Rights

Contents

List of abbreviations	3
Ministerial foreword	4
Introduction	6
1. Domestic human rights framework	7
2. Violence against women and girls	10
3. Tackling racial discrimination	11
4. Access to justice	13
5. Human trafficking and slavery	14

List of abbreviations

CEDAW	UN Convention on the Elimination of All Forms of Discrimination Against Women
COPFS	Crown Office and Procurator Fiscal Service
EU	European Union
FGM	Female Genital Mutilation
NPF	National Performance Framework
PfG	Programme for Government
REF	Race Equality Framework
TARA	Trafficking Awareness Raising Alliance
UK	United Kingdom
UN	United Nations
UNCRC	UN Convention on the Rights of the Child
UPR	Universal Periodic Review
VAWG	Violence against women and girls

Ministerial foreword

“It is by building access to all human rights that society becomes stronger and more able to resist unpredictable shocks.”

UN High Commissioner for Human Rights Michelle Bachelet

In December 2018, the Scottish Government published its response to recommendations made by the United Nations Human Rights Council following the third Universal Periodic Review (UPR) of the UK’s human rights record.

At the time of the review in May 2017 I had the pleasure of serving as Convener of the Scottish Parliament’s Equalities and Human Rights Committee and I very much welcomed the Scottish Government’s publication of a formal response to the UPR recommendations. This was the first time Scottish Ministers had responded in detail to the UN Human Rights Council’s recommendations.

The Equalities and Human Rights Committee’s own remit was extended to include human rights following the 2016 Scottish elections. That was an important innovation, which built on the Parliament’s long-standing commitment to both equality and human rights. The Committee subsequently initiated an inquiry into the role played by the Scottish Parliament in ensuring the full implementation of international human rights standards in Scotland. Through taking evidence from Scottish Government Ministers and officials, as well as from national human rights institutions and civil society organisations, I gained new insights into the UPR process.

Now, as the Scottish Minister with overall responsibility for embedding human rights at the heart of everything we do as a government, I am delighted to have the opportunity to further develop that work. That means asking myself, and my ministerial colleagues, the same questions I posed to Ministers appearing before me in Committee. And it means being open and self-critical in our answers.

Just as the role of Parliament is to scrutinise and to ensure accountability, the function of government is to ensure that internationally-recognised human rights have meaningful, everyday impact, as part and parcel of people’s daily lives. This report is one contribution to ensuring that our record in doing so is transparent, accessible and accountable.

I note – in line with best practice – the UK Government has also voluntarily updated the UN Human Rights Council on activity covered by the five thematic areas. I am pleased to see the work we are doing in Scotland reflected so positively in that report.

The Scottish Government not only recognises but welcomes our responsibility to contribute to state party reports and to account at international level for devolved functions in Scotland. This update is a challenge and an opportunity. As Scotland’s Minister for human rights, I understand the importance of regularly reviewing progress in order to make sure we are on course to deliver meaningful change. I hope that the UK Government will do the same.

But there are also practical limits to the extent a UK-wide document (covering not just Scotland, England, Wales and Northern Ireland, but also the Crown Dependency and Overseas Territories) can do justice to the detail of Scotland's work on human rights. It is important that we continue to explicitly and publicly account for progress in Scotland, and it is in that spirit that I present this position statement as an update covering the five themes addressed by the UK report.

It is heartening, in particular, to be able to describe the meaningful action we are taking in Scotland to tackle racial discrimination; to combat violence against women and human trafficking; and to ensure access to justice for all. Those are goals which inform a common purpose across the international community.

At the same time, as the UK prepares to leave the European Union and in the face of continuing uncertainty over the future of the Human Rights Act, it remains disappointing that the Scottish Government must once again highlight our grave concern at the persistent threat to the framework of existing human rights protections in the UK. I therefore want to reiterate that we will use the full extent of our powers to defend the safeguards currently in place, including those provided by European Union law.

That is also one reason why the Scottish Government established the First Minister's Advisory Group on Human Rights Leadership and has announced it will incorporate the principles of the UN Convention on the Rights of the Child (UNCRC) into domestic law. Whatever the outcome of Brexit, Scotland intends to do all it can to uphold and implement the human rights duties and obligations we enjoy as a result of the international human rights framework.

The issues addressed in our report are crucial to ensuring that some of the most vulnerable people in society are able to fully enjoy the human rights to which they are entitled. Of course, they represent only a selection of the 227 recommendations made by the Human Rights Council. The mid-term review of UPR, which will take place in 2019, provides a more comprehensive opportunity to review overall progress in Scotland across the full range of UPR recommendations.

I look forward to being able to report positively later in 2019 on our further achievements as we continue our work to ensure Scotland is truly a place where every member of society is able to live a life of human dignity.



Christina McKelvie

Christina McKelvie
Minister for Older People and Equalities

Introduction

Following the third Universal Periodic Review (UPR) of the UK's human rights record in Geneva in May 2017, the UN Human Rights Council issued a total of 227 recommendations,¹ covering both reserved and devolved areas of policy.

On 8 December 2017, the Scottish Government published a response to the recommendations,² providing more detail on action being taken in Scotland to fulfil international human rights obligations and how the Scottish Government intends to make substantive progress in areas highlighted by the review.

In its response³ to the UPR recommendations, the UK Government committed to preparing an update on up to five recommendations in 2018 and a mid-term report on all recommendations in 2019.

This update covers the following five thematic areas:

1. Domestic human rights framework, including the status of UN human rights treaties
2. Violence against women and girls
3. Tackling racial discrimination
4. Access to justice
5. Human trafficking and slavery

1 <https://www.ohchr.org/EN/HRBodies/UPR/Pages/GBindex.aspx>

2 <http://www.gov.scot/Publications/2017/12/4740>

3 <https://www.gov.uk/government/publications/third-universal-periodic-review-uk-response-to-the-recommendations>

Domestic human rights framework⁴

National Performance Framework

In 2018 the Scottish Government refreshed Scotland's National Performance Framework (NPF). The 11 National Outcomes now include an explicit human rights outcome: "We respect, protect and fulfil human rights and live free from discrimination". A further seven National Outcomes are linked to the international human rights framework, including treaty obligations under the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the UNCRC. A total of 31 (out of 82) national indicators are used by the NPF to track practical progress against the human rights element of these outcomes. In addition, the refreshed NPF was developed to be consistent with the Sustainable Development Goals. The new NPF outcomes and indicators were developed in close consultation with the Scottish Human Rights Commission and with wider civil society.

UK withdrawal from the European Union

The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill was passed by the Scottish Parliament in March 2018. It was subsequently referred to the UK Supreme Court under section 33 of the Scotland Act 1998 by the Attorney General and the Advocate General for Scotland.

The Court has now ruled that all but one of the provisions contained in the Bill were within devolved competence at the time the Scottish Bill was passed. However, subsequent legislation in the UK Parliament has meant that a number of provisions in the Bill cannot now take effect. These include section 5, which would have provided for the general principles of EU law and the EU Charter of Fundamental Rights to remain part of Scots law on or after exit day, so far as they would apply to devolved matters.

First Minister's Advisory Group on Human Rights Leadership

A Nation With Ambition: The Government's Programme for Scotland 2017-18 (2017-18 PfG) contained a commitment to:

"establish an expert advisory group to lead a participatory process to make recommendations on how Scotland can continue to lead by example in human rights, including economic, social, cultural and environmental rights".

The Group was chaired by the former Chair of the Scottish Human Rights Commission, Professor Alan Miller, and included the Commission's current Chair amongst its members. Seven other members contributed expertise in relation to civil, political, economic, social, cultural and environmental rights, and on EU and constitutional matters.

4 UPR recommendations: 134.56-61; 134.66-78

The Group carried out its work entirely independently of government and presented its report and recommendations to the First Minister on 10 Dec 2018 (Human Rights Day). It had been asked to examine the human rights impacts of UK withdrawal from the EU and how best to protect and promote all human rights across all potential scenarios. In doing so, it applied the three principles articulated by Scotland's Standing Council on Europe:

- there must be no regression from current standards;
- Scotland must keep pace with future EU standards; and
- Scotland should demonstrate leadership on human rights.

The Group also gave particular consideration to the potential for incorporating international human rights treaties into domestic law, and the means by which this might in practice be undertaken.

The seven recommendations made by the Group are that there should be:

- An Act of the Scottish Parliament which provides human rights leadership.
- A public participatory process, to be developed as a vital part of preparation of the Act and its implementation.
- Capacity-building to enable effective implementation of the Act so as to improve people's lives.
- A Scottish Government National Mechanism for Monitoring, Reporting and Implementation of Human Rights.
- Development of human rights-based indicators for Scotland's National Performance Framework (NPF).
- Creation of a National Task Force to implement the Recommendations.
- A written constitution including a Bill of Rights for Scotland, in the event that Scotland becomes an independent state.

Delivering for today, investing for tomorrow: the Government's Programme for Scotland 2018-2019 (2018-19 PfG) commits the Scottish Government to responding in full to the Advisory Group's recommendations, prioritising actions that can be taken to address the human rights and equality impact of withdrawal from the EU. In her response to the report, the First Minister endorsed the report's overall vision of a new "Human Rights Framework" for Scotland and confirmed her intention to establish a national taskforce to carry that work forward.

UN Convention on the Rights of the Child

The 2017-18 PfG committed the Scottish Government to undertake a comprehensive audit on the most effective and practical way to further embed the principles of the UNCRC into legislation, policy and practice, including the option of full incorporation into domestic law. The audit is underway and it is intended to publish that work in spring 2019.

Scottish Ministers announced in September 2018, through the 2018-19 PfG, their commitment to incorporating the principles of the UNCRC into domestic law. There are some particular complexities in relation to incorporating the principles into domestic law and Scotland's devolution settlement, which require to be worked through. Such processes take time but the evidence is clear that an inclusive and consultative approach is the best foundation to achieve the right model. Therefore, in 2019 the Scottish Government plans to carry out a period of consultation and engagement on the best way to incorporate the principles. This will allow the legal and practical issues to be addressed ahead of incorporation.

Convention on the Elimination of all forms of Discrimination Against Women

On 2 May 2018 the Scottish Government published its contribution to the UK's 8th periodic report under CEDAW as a separate position statement, describing a range of Scottish-specific initiatives and policies to support implementation of the Convention.⁵

5 <http://www.gov.scot/Publications/2018/05/4431>

Violence against women and girls⁶

Domestic abuse

The Domestic Abuse (Scotland) Act 2018⁷ creates a new specific offence of domestic abuse, which provides that it is an offence for a person to engage in a course of behaviour that is abusive of their partner. The definition includes physical violence and overt threats, and psychological abuse and coercive and controlling behaviour, which are difficult to prosecute using the existing law.

The Act makes provision for a number of reforms to criminal procedure intended to prevent the abuse of a complainant through the court process, for example by prohibiting the accused from personally conducting their own defence or precognition of the complainant. It provides for a presumption against bail where someone is accused on indictment of a domestic abuse offence – or any serious sexual or violent offence – and has a previous track record of serious violent, sexual or domestic abuse offending.

The Act also makes provision for the leading of expert evidence and provides for a presumption that the court shall impose a non-harassment order on a person convicted of domestic abuse unless, in the particular case, the court concludes such an order is not necessary to protect the victim.

The Act provides for a statutory sentencing aggravation that where the perpetrator uses a child in committing the offence; directs behaviour at a child in committing the offence; where the child sees, hears or is present when the abuse is taking place; or where a child is likely to be adversely affected by the perpetrator's behaviour, the offence is aggravated. Where the aggravation is proven, the court is required to take account of this in sentencing the offender and state how the sentence differed from that which the court would otherwise have imposed. This ensures that the harm caused to children by the abuse of their parent or carer is formally recognised and recorded.

It is anticipated that the new offence will come into force in early 2019. Effective implementation is important: the Scottish Government is ensuring training for 14,000 police officers and staff, and is working with police, COPFS and third sector stakeholders to consider what measures must be put in place.

6 UPR recommendations: 134.43-134.48 (on ratifying the Istanbul Convention); and 134.180-134.188 (on combating VAWG, FGM and forced marriage).

7 <http://www.legislation.gov.uk/asp/2018/5/contents/enacted>

Tackling racial discrimination⁸

Race Equality Action Plan

The Race Equality Framework for Scotland (REF)⁹ sets out the Scottish Government's approach to promoting race equality and tackling racism and inequality between 2016 and 2030. In December 2017, the Scottish Government published a Race Equality Action Plan,¹⁰ which sets out actions to drive positive change for minority ethnic communities. Throughout 2017, REF-themed roundtables on housing, participation & representation, and community cohesion & safety were held, involving policy officials and experts from statutory and third sector organisations and from academia. Further roundtables on employment, education and health will be held in 2019, along with an employment summit that will include issues on race equality.

Minority Ethnic Women

A minority ethnic women's network has been established for mentoring, peer support, capacity building, training, and influencing workforce/workplace policies and practices – such as increasing the number of minority ethnic women in senior management roles within the public sector. A number of network meetings were held in 2017 and 2018, and an Advisory Forum (the working group) has been set up to develop a structure that will ensure representation from the diverse communities and across all geographical regions of Scotland. Currently 300 women are part of the network and over 20 women are part of the Advisory Forum. Network members are not only ethnically diverse but also diverse in terms of skills, experience, and knowledge, with a mixture of professional and individual women with different needs.

Minority Ethnic Young People

The Scottish Government commissioned Young Scot to co-design the Fairer Future project, which is a panel of 16 young people aged 14-21 exploring (among other topics) the six core REF themes. Following an event involving young people, youth organisations, minority ethnic organisations and relevant policy makers in June 2017, the Creating a Fairer Future¹¹ report was published in November 2017. A second panel of young people has been recruited and is working with the Scottish Government Equality Unit to take forward the recommendations made by the group in phase one.

8 UPR recommendations: 134.84-134.85 (on combating hate speech); 134.100-134.106, 134.108, 134.110-134.123 (on combating hate crime)

9 <https://www.gov.scot/Publications/2016/03/4084>

10 <http://www.gov.scot/Publications/2017/12/8700>

11 https://www.youngscot.net/wp-content/uploads/2017/11/YS_Fairer_Future_Report.pdf

Hate crime and hate speech

In January 2017 Scottish Ministers appointed Lord Bracadale to undertake a review of hate crime legislation in Scotland and he published his report on 31 May 2018.¹² The Scottish Government welcomes Lord Bracadale's report and accepts the recommendation to consolidate all Scottish hate crime legislation into one new hate crime statute. The report and recommendations will be used as the basis for consultation on the detail of what should be included in a new hate crime bill. All concerns will be listened to – updated hate crime legislation must balance protections required with human rights, freedom of speech and civil liberties.

The Scottish Government recognises that legislation in and of itself is not enough to build an inclusive and equal society, however it forms the basis of understanding what is not acceptable in society. In June 2017, the Scottish Government published its Tackling Prejudice and Building Connected Communities Action Plan¹³, an ambitious programme of work to tackle hate crime and build community cohesion, and established an Action Group, chaired by the Cabinet Secretary for Communities, with key stakeholders to take this work forward.

12 <http://www.gov.scot/Publications/2018/05/8696>

13 <https://www.gov.scot/Publications/2017/06/1336>

Access to justice¹⁴

Independent review of legal aid

The Scottish Government announced a comprehensive, independent review of legal aid on 1 February 2017 to fulfil the commitment to maintaining access to public funding for legal advice and representation in both civil and criminal cases alongside measures to expand access to alternative methods of resolving disputes.

While recognising that the current system compares very well internationally, the report, *Rethinking Legal Aid, An Independent Strategic Review*,¹⁵ published in February 2018, sets out a 10 year vision for legal aid in Scotland and makes 67 recommendations on how this vision can be delivered.

The report's recommendations are currently being analysed and discussions are ongoing with stakeholders – such as the Law Society of Scotland, the Faculty of Advocates, the Scottish Legal Aid Board and others in the third sector – to seek their views. The Scottish Government has published its response¹⁶ to the review and will consult in due course.

14 UPR recommendation 134.154

15 <http://www.gov.scot/Resource/0053/00532544.pdf>

16 <https://www.gov.scot/publications/scottish-government-response-independent-review-legal-aid-scotland/>

Human trafficking and slavery¹⁷

Legislation

The Human Trafficking and Exploitation (Scotland) Act 2015¹⁸ (“The 2015 Act”) consolidates and strengthens criminal law against human trafficking and exploitation, and improves protection, support and assistance for victims. Most provisions are now in force, with work underway to implement those that remain outstanding.

Prosecutions

On 15 March 2018, two men were sentenced to ten years’ and seven years’ imprisonment respectively. Amongst other charges, both were convicted of a contravention of section 4(1) of the Human Trafficking & Exploitation (Scotland) Act 2015 (slavery, servitude and forced or compulsory labour). This prosecution, conducted by the national lead prosecutor for human trafficking, resulted in the first convictions under the 2015 Act since it came into force.

Both men were also made subject to Trafficking and Exploitation Prevention Orders. Again, these are the first orders of their kind to be imposed in Scotland since they came into force on 30 June 2017. The terms of the order mean that, for five years after the men are released from prison, both will be restricted in who they can employ and the property they can use, and they must notify police of any plans to travel outside Scotland. They are also restricted in the number of communications devices they may own.

Trafficking and Exploitation Strategy

The four key elements of the Trafficking and Exploitation Strategy,¹⁹ which was laid before the Scottish Parliament on 30 May 2017, are:

- identifying victims and supporting them to safety and recovery;
- identifying perpetrators and disrupting their activity;
- addressing the wider factors that foster trafficking and exploitation; and
- specific actions for child victims of trafficking.

Implementation groups have been established for each of the four elements and meet on a quarterly basis to drive forward action towards the goals of the Strategy.

A public awareness raising campaign was launched by the Cabinet Secretary for Justice on 29 August 2017.²⁰ Public surveys undertaken in spring 2018 show increased awareness of human trafficking, and also that more people say they would report concerns about trafficking to the police.²¹

17 UPR recommendations 134.138-134.147

18 <http://www.legislation.gov.uk/asp/2015/12/contents/enacted>

19 <https://www.gov.scot/publications/trafficking-exploitation-strategy/>

20 <https://news.gov.scot/news/human-trafficking-is-closer-to-home-than-most-scots-think>

21 <https://news.gov.scot/resources/human-trafficking-report>

A corporate group has been established, drawing together representatives from key businesses in Scotland who have a role to play in tackling trafficking. The group is looking into the provision of guidance and training to businesses on human trafficking; raising awareness and sharing best practice; and improving the quality of Slavery and Human Trafficking Statements.

On 14 June 2018, the first annual progress report on implementation of the Strategy was published.²²

Support for adult and child victims

On 1 April 2018 changes came into force to increase, from 45 to 90 days, the statutory minimum period for which adult victims of human trafficking and exploitation recovered in Scotland would be provided with support, and for victims of slavery, servitude and forced or compulsory labour. This is double the previous minimum period and is a longer statutory support period than anywhere else in the UK.

To reflect this commitment, as well as the increase in victims identified through the National Referral Mechanism, the Scottish Government has increased funding to two organisations that support trafficking victims in Scotland: Trafficking Awareness Raising Alliance (TARA) and Migrant Help, and has established a three-year funding agreement to provide greater stability. Over £3 million has been committed over a three-year period. In addition, the Scottish Government has increased funding for psychological trauma support for adult trafficking victims through The Anchor – a 65% increase to £115,000 for 2018-19.

Children are supported through the child protection system and eligible children are given the additional support of an independent child trafficking guardian. Where a child for whom no one in the UK holds parental rights or responsibilities has been, or is suspected of having been, trafficked, the 2015 Act makes provision for an independent child trafficking guardian to be appointed to provide additional assistance and support. A consultation with stakeholders is planned regarding the roles and responsibilities of this new guardianship service, which will work alongside existing statutory provision.

The 2015 Act also requires relevant authorities to presume that a victim of human trafficking is a child in circumstances where the age of a victim is uncertain but there are reasonable grounds to believe that the victim is a child (under 18 years of age). To reflect this change, the 2012 Age Assessment Guidance for social workers has been revised.²³

22 <http://www.gov.scot/Publications/2018/06/7045/0>

23 <http://www.gov.scot/Publications/2018/03/7841/0>



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This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78781-527-8 (web only)

Published by The Scottish Government, January 2019

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS467186 (01/19)

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