



Integrated Implementation

of Scotland's New Human Rights Framework

Workshop Series Findings, October 2022

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Executive summary

In March 2021, the Scottish Government accepted the recommendations of its National Taskforce for Human Rights Leadership ('the Taskforce'), co-chaired by the Cabinet Secretary for Social Security and Older People and Professor Alan Miller. The recommendations enjoy cross-party support in the Scottish Parliament. This process began in 2018 with the First Minister's Advisory Group on Human Rights Leadership. Its ambition was propelled by the COVID-19 pandemic, which starkly demonstrated the need to strengthen economic, social and environmental human rights to increase society's resilience and address structural inequalities.

The Scottish Government justifiably describes its forthcoming Bill as world-leading because it will, within one integrated framework, give legal effect to the full range of internationally recognised human rights which belong to everyone and give specific recognition to the rights of women, children, disabled, ethnic minority and older and LGBTI people. This is the most significant leap taken to date in Scotland's post-devolution human rights journey. The framework will mandate a new range of legal duties relating to minimum standards and progressive realisation of economic, social, cultural and environmental rights (such as rights to adequate housing; highest attainable standard of physical and mental health; and a healthy environment). In addition, these specific protections will need to be operationally aligned with existing Scottish and UK equality duties (such as the Fairer Scotland Duty and Public Sector Equality Duty).

Further, multiple sources of evidence indicate that a transformative shift will be required in public authority culture for duty-bearers to 'get it right first time' in their interactions with individuals and communities. For example, the Equality and Human Rights Commission's evaluations of compliance with, and the impact of, the Public Sector Equality Duty in Scotland in 2017 and 2018 (see page 12 of this report) attest to the need to align process and outcome more clearly to ensure that compliance with duties results in measurable impacts capable of improving people's lives. In other words, a shift is required to enable a move beyond 'box-ticking' and process- rather than outcome-focused implementation.

The Taskforce itself carried out broad public engagement in developing its recommendations, including a participatory project which engaged with over 400 individuals with lived experience of rights violations. The Taskforce also established a Civil Society Reference Group and Public Sector Reference Group, both with representation from across the breadth of each sector. From their distinctive but complementary perspectives, both groups emphasised the need to build capacity in public authority decision-making.

From our perspective as legal practitioners and academics who had been closely involved, in different ways, with these processes, we set out to address some important questions for understanding what implementation of the new framework might look like. An approach is required that is embedded in social justice outcomes and reflective of the reality of lived experience, which does not generally accord with neat legal categorisations. Recognising this, we were motivated to ask:

- *How can public authorities adopt an integrated approach to rights realisation - i.e., across different legal rights and at the intersections of different protected equality characteristics?*
- *How can academic research support public authorities in consolidating and interpreting their legal duties?*

In September 2021, we received funding from the Royal Society of Edinburgh to host a series of research workshops. Our aim was to begin to collaboratively investigate, with academics,

representatives of civil society and rights-holders, and of public sector duty-bearers, how a shift towards effective, integrated policy implementation at the intersections of human rights and equality law could be enabled. The workshop series centred on a case study related to local authority implementation of the right to adequate housing.

At the core of the workshop series were 3 one-day ‘learning labs’ (Workshop Two: 11 participants from 7 organisations; Workshop Three: 14 participants from 12 organisations; Workshop Four: 9 participants from 7 organisations).

This report documents the process and key activities focused on the case study of local authorities and the right to adequate housing, and draws out wider insights for integrated implementation of human rights and equality law under Scotland’s new human rights framework.

Part I provides some detail on the shift envisaged in the move towards giving effect to civil, political, economic, social, cultural and environmental human rights and equality protections for specific groups. It outlines this change, describes how it relates to the equality framework in the UK and Scotland, clarifies the duties that have been recommended for public authorities, and outlines the vision for effective implementation that is integral to the process of legal change.

- *This part provides information for readers who are less familiar with the details of the recommendations of the National Taskforce for Human Rights Leadership. Readers might alternatively like to focus on certain sections within Part I (e.g. on the nature of legal duties, and so on).*

Part II provides an overview of the workshop content and format, and highlights some of the key points/themes to emerge.

- *This part provides information primarily for readers who did not participate in all or any of the workshops. Readers who did participate in a workshop might like to review the summary of their own workshop or any preceding or subsequent workshop in order to gain additional context.*

Part III details our exploration of the case study. It provides an overview of the motivation for selecting local authorities and housing as a case study, and highlights limitations and key learnings. It goes on to provide a worked example, which we developed progressively during and after the learning labs. It is accompanied by an analysis of relevant considerations for integrated implementation of some relevant legal provisions. Part III then maps out policy considerations in order to illustrate the nature of the landscape in which local authorities are situated as duty-bearers, using an example of one local authority that was referred to in a number of the workshops as a good practice example. Finally, this part includes an Outcome Map to provide an example of current perspectives from within the sector on the journey towards readiness for implementation of the right to adequate housing, and of a Theory of Change methodology to support planning.

- *This is the core of the report. It will be useful for all readers since it provides insights gathered during the workshop series. It presents our findings and shows how we have developed these further.*

Part IV draws out insights of more general application for other public authority duty-bearers and for implementation of other human rights.

- *This part provides broader insights and as such may be particularly useful for those outside of the case study area and those from within the housing and local authority sector who are interested in placing the workshop series findings within the wider context of human rights*

incorporation. For all readers, it summarises key messages after a general commentary on learnings for supporting integrated implementation and for the future potential of research-informed practice.

Integrated implementation of human rights and equality law in Scotland is an achievable aim. We have engaged in the workshop series in order to begin untangling relevant legal dimensions, whilst also foregrounding cultural, material and social factors on which successful integrated implementation will depend, and testing analysis and planning processes for bringing the legal dimensions into closer conversation with other contextual factors. The workshop series has helped to highlight existing strengths as well as areas requiring more attention in order for public authorities to be supported to achieve integrated implementation.

Key Messages

- International human rights law is based on the understanding that the effective implementation of human rights and related equality guarantees depends on wide-ranging cultural, material and social factors as well as the legal framework itself. As such, implementation is context-specific and depends on multiple stakeholders.
- Implementation planning processes should engage directly with the nature and content of the relevant legal duties and map these across relevant areas of law: national (domestic) law duties in subject-specific legislation, equality law duties, existing human rights duties, and supplementary duties that will be introduced under the new Human Rights Bill.
- Unpacking the interactions between the existing and developing equality and human rights law frameworks shows that there are areas of natural alignment with current approaches, and opportunities to maximise current approaches in a way that integrates with, and enables a shift towards the outcomes-focused approach at the core of international human rights law.
- There will be a need for co-production of guidance for duty-bearers on developing implementation plans and integrated reporting tools.
- Planning processes should include civil society and rights-holders as well as the Scottish Government, and would also benefit from collaborative learning with academia. This approach would simultaneously help to identify assumptions, support the sharing of learning across sectors and processes (notably, in relation to implementation of the Convention on the Rights of the Child¹), and create fora for constructive challenge and ongoing reflection.

Introduction

In March 2021, the Scottish Government committed to an ambitious legal framework that will give rise to a new range of duties and a new focus on groups whose rights are the least realised. We know that when the framework comes into effect, its success will depend upon the capacity of public authorities to translate its ambition into lived realities.

Human rights and related equality protections have a constitutional quality. They are constitutional in the sense that they aim to regulate and guide the way that state actors (from central to local government and organisations tasked with the delivery of public services) treat people and prioritise their rights in relevant law, policy, and operational decision-making. Being constitutional in this sense means that legal human rights and related equality protections should provide a baseline – a foundation – for the strategic and operational delivery of public services. If these legal protections were introduced to a clean legislative and policy slate, they would act as a foundation stone, and domestic legislation and policy across the spectrum of services would be systematically built upwards from this foundation. This is not, of course, the context in which any law, including human rights and related equality law, is introduced. The new legal framework will be introduced into developed, and in some areas crowded, legal and policy landscapes.

This is not negative – there are undoubtedly already many areas of good practice, including approaches which go beyond what human rights and related equality law demands, and the process of integrating human rights and related equality law provides standards against which such good practice can be identified and acknowledged. Further, it is positive that the process of integrating human rights and related equality law will at the same time provide standards against which gaps can be identified, where Scotland has not yet reached the baseline set in international human rights law. The core aim in Scotland is to meet, and actively plan to meet, this baseline as a way of securing better human rights and equality outcomes in people’s daily lives.

The task of integrating human rights and related equality law does nevertheless lead to a challenging task of trying to integrate these legal protections into existing landscapes. Further, this process must be addressed, not only in relation to existing legal and policy landscapes, but also organisational cultures and professional practice.

In September 2021, we received funding from the Royal Society of Edinburgh to host a series of research workshops. Our aim was to begin to collaboratively investigate, with academics, representatives of civil society and rights-holders, and of public sector duty-bearers, how a shift towards effective, integrated policy implementation at the intersections of human rights and equality law could be enabled. The workshop series centred on a case study related to local authority implementation of right to adequate housing. Our aim was also to explore a model for research-informed practice, in which academics could potentially support public authorities in some way to achieve effective implementation.

We have aimed in this workshop series to begin to articulate and unpick what integrated implementation will require and thus what support public authorities will need to achieve this. As legal practitioners and academics, our contribution has been to initiate a conversation about how public authorities in Scotland might effectively achieve effective implementation of connected legal frameworks. Law, underpinned by bedrock values, acts as the regulatory substructure of human rights and equality protections in the international and current national context, and the new Scottish framework will have the same function. We have aimed to promote a connection between the law, processes of legislative integration, and the context in which implementation will occur, both in a policy sense and in an organisational culture and practice sense.

We have also approached this workshop series on the basis of a commitment to shared human rights leadership. This ethos recognises a shared responsibility for progress towards making rights real in peoples' everyday lives.

We remain at an early stage of the process in Scotland. Beginning these conversations now, we hope, will make a contribution towards building momentum towards effective implementation by public authorities at the same time as developing understanding and collaborative relationships that will be necessary to support the process. Public authorities have a huge stake in this work. They will rightly be held accountable under the framework, but with responsibility comes opportunity – Scotland can lead the way by providing a gold standard in public service provision for all which can and should improve the lives of those most in need. Thus, we hope that this workshops series and report will make a small contribution to assisting public authorities and others in their work to realise the potential of the new legal framework.

Dr Elaine Webster, Professor Nicole Busby, and Professor Alan Miller

Part I Implementation of equality and human rights law

Overview

The First Minister’s Advisory Group on Human Rights Leadership (FMAG),ⁱ which set out Scotland’s aspirations to incorporate a suite of international human rights treaties into Scots law, was led by three guiding principles:ⁱⁱ

- Non-regression from the rights currently guaranteed by membership of the European Union;
- Keeping pace with future rights developments within the European Union;
- Continuing to demonstrate leadership in human rights.

The work of the National Taskforceⁱⁱⁱ made clear that this aspiration will be realised by an Act of the Scottish Parliament which, through incorporation, will enable full and equal enjoyment of the rights drawn from UN human rights treaties ratified by the UK but not yet incorporated.

From the outset it was acknowledged that this undertaking is both ambitious and challenging,^{iv} but the vision of the FMAG which has been operationalised by the National Taskforce is eminently achievable.

Under Scotland’s new human rights framework, protection against poverty and exclusion will be provided by:

- The International Covenant on Economic, Social and Cultural Rights (ICESCR)

Protection against discrimination on the grounds of sex, race and disability will be provided by a suite of treaties, namely:

- The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW),
- The International Convention on the Elimination of Racial Discrimination (ICERD) and
- The UN Convention on the Rights of Persons with Disabilities (CRPD).

In addition, the Act will make explicit provision for older people and LGBTI communities which are not yet provided for by a UN treaty.

The Convention on the Rights of the Child (CRC) is being incorporated into Scots law by way of a parallel legislative process.

Human rights law: from ‘civil and political’ to ‘civil, political, economic, social, cultural and environmental’ rights

The rights contained in these UN treaties include not only the civil and political rights found in the European Convention on Human Rights and already incorporated into UK law by the Human Rights Act 1998 such as the right to freedom of speech, the right to a fair trial, and rights to privacy and to non-discrimination in enjoyment of human rights. They also include economic, social and cultural rights, including the rights to an adequate standard of living, to adequate housing, to the highest attainable standard of physical and mental health, and to social security.

The obligation of states in ratifying these treaties is to ‘take steps, using maximum available resources, for the progressive realisation’ of such rights.

Bringing together civil, political, economic, social and cultural as well as environmental rights will enable Scotland to meet contemporary international standards and to make human rights more relevant and accessible to people in their everyday lives.

In recent years specific references to some of these rights have appeared in legislation passed by the Scottish Parliament including the Community Empowerment (Scotland) Act 2015, the Children and Young Persons (Scotland) Act 2014, the Land Reform (Scotland) Act 2016 and the Social Security (Scotland) Act 2018.

Equality law: from equal opportunity to equal enjoyment of human rights

Equality in UK law

To ensure equal access to these economic, social, cultural and environmental rights will require recognition and realisation of the principles of equality and non-discrimination.

For reasons of legal certainty, it is imperative that the new rights framework is aligned, as closely as possible, with the pre-existing national equality law framework. However, the introduction of new substantive rights or any extension of existing equality rights poses certain challenges under current devolution arrangements as ‘equal opportunities’ is a reserved policy area.

The Equality Act 2010 (EA) is an Act of the Westminster Parliament which covers Great Britain (Northern Ireland having its own equality law regime). The Act operates by prohibiting discrimination on nine specified grounds linked to shared identity characteristics known as ‘protected characteristics’ (PCs), specified as: age, gender reassignment, marriage or civil partnership, pregnancy, disability, race (including colour, nationality, ethnic or national origin), religion or belief, and sex.

The definition and scope of ‘equal opportunities’ under the Scotland Act incorporates the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions. This is wider than the closed list of nine PCs specified in the EA.

Under the current devolution arrangements, the new human rights framework in Scotland would be able to introduce protections and requirements that supplement the EA, but which do not modify it. This means that it is at least possible that Scotland could provide specific equality protections for a larger number of PCs than those specified in the EA.

Despite the limitations imposed on Scotland by the current devolution settlement, the existing equality framework contains some proactive duty-based approaches which could be used to good effect in the current context.

Equality in international human rights law

All international and regional human rights instruments contain equality guarantees. The public benefits of these rights are axiomatic: they seek to ensure that no-one is discriminated against across a range of different contexts including employment, the provisions of goods and services, the exercise of public functions, housing, education and, in some circumstances, in the private sphere.

The principle of non-discrimination provides an important cross-cutting component of international human rights law: equality is recognised as a fundamental principle in the interpretation of human rights. Some of the core treaties are explicitly focused on the ‘elimination’ of discrimination in specified contexts, for example CERD and CEDAW. Others provide general non-discrimination and equality rights to specific identity groups, for example the CRC and the CRPD.

As noted, in contrast with current national law, the protected characteristics of sexual orientation, trans status and age (specifically in relation to older people) are missing from the express provision offered by the treaties.

The application of the principles of equality and non-discrimination in international human rights law requires states to take steps to eliminate discrimination in order to achieve substantive equality of outcome and address structural injustices. International law requires that access and delivery of human rights should not exclude groups, particularly those who are marginalised and possibly ‘hidden’.

This application goes beyond the formal equality approach of UK (and EU) equality law as it requires a contextual understanding and a focus on outcomes characterised by substantive equality.

Duties: from existing duties to ‘compliance’

Who are the duty-bearers?

In general, all branches of government (executive, legislative and judicial) and other public or governmental authorities at whatever level – national, regional or local – are recognised as duty-bearers under international human rights law.

Bodies that are currently considered as public under the Equality Act and the Human Rights Act could equally be considered as duty-bearers under the new Human Rights Bill.

Private actors are not directly duty-bearers under international human rights law. Some may be characterised as public in order to include them within the scope of legal duties (e.g., the Human Rights Act (HRA) itself, case law, and subsequent legislation specifies the scope of the term ‘public authority’).

Recommendation 16 of the Taskforce Report called for further examination of which bodies should be considered as duty-bearers. This was due to the frustrations caused by the scope of interpretation of ‘public actors’ under the Human Rights Act.

There is also extensive best practice guidance in international human rights law that is relevant to the responsibility of private bodies (notably, the UN Guiding Principles on Business and Human Rights⁹).

The forthcoming Human Rights Bill, to be introduced to the Scottish Parliament during this session, will need to be clear that the duties under the Bill will apply only to those bodies within the devolved jurisdiction and within the limits of devolved competence.

The duty on ‘Public Authorities’ under the Human Rights Act

One of the key ways in which the HRA aims to give effect to rights within the European Convention on Human Rights is by placing a duty on public authorities in the UK to act compatibly with the protected rights. This was a new statutory duty created by the HRA. It renders acts that are not compatible with the rights (‘Convention rights’) unlawful. This is thereby a duty to comply. It has applied since the HRA came into force (in 1999 for Scotland).

The legislation provides for specific exceptions (notably, when a lack of respect for Convention rights stems from legislation of the Westminster parliament, meaning that the public authority implementing the legislation could not have acted differently). However, the general rule is that any organisation considered as a public authority cannot lawfully contravene the protected human rights.

Unlike duties under the EA, the HRA duty is not one of ‘due regard’ and there are no reporting requirements attached. Although the HRA act duty is one of compliance, little appears to be known about the extent to which public authorities, including in Scotland, have proactively aimed to meet with their duties under the HRA.

The Public Sector Equality Duty

Section 149 of the EA imposes certain duties on public authorities under what is known as the Public Sector Equality Duty (PSED). Under the general duty, which is part of reserved equality law, public bodies are required to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities.

In addition, Scottish public bodies are also required to pay due regard to the Scottish specific duties which are intended to enable better performance of the general duty (EA 2010 (Specific Duties) (Scotland) Regulations 2012).

Listed public authorities in Scotland are required to publish a set of equality outcomes and to report on progress every two years. In setting these outcomes, public authorities must consider relevant evidence and take steps to involve people with protected characteristics. The specific duties also require listed public authorities to undertake equality impact assessments of new or revised policies and practices and to consider relevant evidence when making their assessments. The Scottish Government is currently reviewing the effectiveness of the Public Sector Equality Duty (PSED) in Scotland.^{vi}

The Fairer Scotland Duty

The socio-economic duty provided for by Part 1 of the Equality Act 2010 came into force in Scotland in April 2018 (The Equality Act 2010 (Scotland) Regulations 2018). Scotland was the first of Great Britain's three nations to implement this provision, renaming the duty 'the Fairer Scotland Duty' (FSD). The FSD places a legal duty on public authorities in Scotland to pay due regard to how they can reduce inequalities of outcome caused by socioeconomic disadvantage, when making strategic decisions.

To discharge their duty under the FSD, public authorities must be able to meet certain key requirements in each relevant circumstance, specifically, 'to actively consider how they can reduce inequalities of outcome caused by socio-economic disadvantage, when making strategic decisions'.^{vii}

The 'due regard' approach

The PSED and FSD operate through the imposition of a duty to pay 'due regard', and the relevant duty-bearers under the new Human Rights Bill are likely to be the same listed public authorities. A due regard duty is also the proposed first step to the incorporation of international human rights standards through the new human rights framework. Recommendation 12 of the Taskforce report proposes an initial duty of 'due regard' on commencement of the legislation. This makes it necessary to align the duty imposed under the new Human Rights Bill with those pre-existing duties under the EA.

Public authorities' experiences of implementing the PSED and its impact can provide valuable insights which should be taken into account in the development of this aspect of the new Human Rights Bill and associated guidance. The EHRC has carried out assessments in respect of compliance with,^{viii} and the impact of,^{ix} the Scottish specific duties.

The FSD is a relatively new addition to the equality framework, and it remains to be seen how it is being used in practice and what impacts it will have on reducing socioeconomic inequalities in Scotland.

The 'Compliance' Approach

As noted above, Recommendation 12 of the Taskforce report proposes an initial duty of 'due regard' on commencement of the legislation. A 'sunrise clause' is then proposed to enable public bodies to make appropriate preparations before a supplementary 'duty of compliance' becomes effective.

Since the high-level policy recommendations in the Taskforce report were all accepted by the Scottish Government, this will significantly inform the development of the Bill. There will also be a public consultation in 2023 prior to the introduction of the Bill to the Scottish Parliament and this will be an

opportunity to engage on the nature of the duties along with many other questions. The Bill itself will then specify the nature of duties on public authorities and there is likely to be accompanying statutory and/or non-statutory guidance.

The reasoning behind the suggested approach, from due regard to compliance, is to provide clarity for duty-bearers that the framework will include both obligations for the process of decision-making, the 'due regard' duty, as well as for outcome, the 'duty of compliance'. Together the duties can ensure both rights-based decision-making and outcomes.

Recommendation 13 of the Taskforce report emphasises the need for duty-bearers to understand the approach of 'progressive realisation' which is inherent in international human rights law and will be so in the new Scottish framework.

The idea of 'progressive realisation' is drawn from the International Covenant on Economic, Social and Cultural Rights, Article 2 (1): 'to take steps...to the maximum of ... available resources with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means...' According to international human rights standards, progressive realisation implies that duty-bearers have a continuous obligation to take deliberate and concrete measures aimed at the full implementation of the rights, as expeditiously and effectively as possible.

This duty also implies that duty-bearers are obliged not to take any regressive steps that limit the realisation of rights, unless there are convincing justifications for doing so and it is done as a last resort and in accordance with rights-based criteria. These criteria include using the maximum available resources and that any regression is temporary, that there is no arbitrary, discriminatory or disproportionate impact and that the most vulnerable are prioritised.

There are certain aspects however which are so critical that they cannot be subject to progressive realisation and availability of resources. These are called 'minimum core obligations' which are designed to ensure that people are able to live a life of dignity.

Recommendation 13 proposes that in order to define the level in Scotland of these minimum core obligations of incorporated economic, social and cultural rights – which need to be viewed as a floor and not a ceiling – a public participatory process involving rights-holders should be undertaken.

Therefore, using an approach similar in nature to the existing PSED and FSC which sit under the Equality Act, the intention is to start with a duty of due regard which will later be supplemented by a duty of compliance (more outcomes-focused). Compliance with minimum core obligations and the broader obligation of progressive realisation will sit alongside the current Human Rights Act duty of compliance in respect of the rights protected by that legislation.

Implementation: from incorporation to integration?

Effective implementation of the new human rights framework is critical in order to improve lives. Its requirements include capacity-building, public participation, strengthening of access to justice and monitoring of outcomes.

There will be opportunities to engage on these issues through next year's public consultation and the development of statutory and/or non-statutory guidance to accompany the Human Rights Bill. In preparation it is helpful to have regard to the relevant recommendations of the National Taskforce for Human Rights Leadership and in particular Recommendations 15 to 30.

Recommendation 15 can be regarded as having significant implications for public bodies and pulls together a number of the other relevant recommendations. It recommends a duty on the Scottish

Government to periodically publish an implementation plan to demonstrate how it is to give effect to the rights contained within the new human rights framework. Importantly this plan should demonstrate that it has been influenced by public participation and that it is taken into account when determining the annual budgets, and should also demonstrate how its implementation is to be monitored.

Of relevance to public bodies, this plan is recommended to include how similar implementation plans are to be developed and reported on by public bodies including both those which provide public services and those which have scrutiny roles.

The development of such human rights-based implementation plans by public bodies can improve stakeholder relations through meaningful public engagement in their development, identify the most targeted and most cost effective use of resources, and serve to justify the ‘reasonableness’ of such, often difficult, decisions if subsequently challenged.

Specifically, the plan of the Scottish Government should also include how guidance is being provided to enable the development of such implementation plans by public bodies. The Taskforce Report recommends that public bodies should be able to co-produce with government such guidance to ensure that it places no unnecessary burden on them and can be integrated with other reporting duties such as to the National Performance Framework, including the outcome of ‘respect, protect and fulfil human rights and live free from discrimination.’ The reporting should also be integrated with pre-existing public sector equality duties.

The guidance was also recommended by the Taskforce to contain clear examples of how good practice can be developed and shared. Proven human rights-based good practice is promoted by the Scottish Human Rights Commission.^x It is based upon the PANEL Principles of Participation, Accountability, Non-discrimination, Empowerment and Legality.

One example of a practical methodology for applying the Panel Principles is the FAIR tool (this is currently being explicitly applied by the National Drugs Mission through the Roadmap of the National Collaborative^{xi}). This tool is flexible and adaptable to varied contexts including the development of implementation plans. Its premise is that a human rights-based approach helps both duty-bearers and rights-holders to more effectively address together different kinds of needs and challenges faced by them.

In this context it can essentially provide a cycle of continuous improvement of the delivery of public services, as follows.

Facts – the gathering of information evidencing the needs and challenges of the delivery of public services. Critically, this includes meaningful engagement with the lived experience of rights-holders including the most vulnerable.

Analysis – a shared understanding of the relevant rights and duties as introduced by the Human Rights Bill.

Identification – reaching a shared understanding of the components of an implementation plan for the delivery of public services, including what is to be done and how in order to meet the duty of the public body to respect, protect and fulfil the rights of those it serves.

Review – how the outcomes are to be monitored and evaluated, including through the development of human rights-based indicators and meaningful engagement of rights-

holders. Lessons learned can then be fed back into the gathering of facts to renew the FAIR cycle so as to continuously improve the delivery of public services.

The development of such implementation plans can be expected to bring a more integrated approach to strategy and decision-making of public bodies.

This more proactive approach may also be expected to bring about positive developments in the everyday culture of public bodies and help address some of the evident shortcomings of how equality impact assessments have come to be experienced. Additionally, the development of such implementation plans can be expected to provide scrutiny bodies with a clear oversight opportunity.

Part II Workshop summaries

Overview

Some participants had been involved in the process led by the National Taskforce for Human Rights Leadership and others were new to it, therefore there were differing levels of knowledge of the current context. A number of participants joined from outside Scotland, who also had different levels of knowledge of the Scottish context. For the workshops on a rights-holder perspective and a duty-bearer perspective, we invited those who already had knowledge of human rights and/or equality law and/or practice. There was a mix of those who were more familiar with human rights and those who were more familiar with equality protection.

The following summaries are based on notes taken by Workshop Rapporteurs throughout the series.

Launch

Workshop one consisted of an online introductory session, which outlined the structure of the research workshop series. Attendees included representation from public bodies, civil society organisations, charities, academia, and practitioners.

The format of workshop one consisted of:

- An introduction to the workshop series and format
- Discussion of future integration of equality and human rights, and the Theory of Change Model
- An interactive activity to share examples of effective policy development or implementation in the context of the right to adequate housing, and wider examples in Scotland (see [Annex B](#))
- Contextualising the right to housing in Scotland
- A keynote from Raquel Rolnik, UN Special Rapporteur on the Right to Adequate Housing (2008-14)
- A final activity to share general reflections and questions for further consideration (see [Annex C](#)).

Workshop attendees highlighted several effective policy examples related to housing, including examples related to housing and wider population groups, such as women, care experienced young people, persons with disabilities, and linkages with the right to health.

In their general reflections on the first workshop, attendees noted several themes as important to consider during the process, including **defining parameters around the right to housing, the role of local authorities, human rights budgeting, examining narratives around housing, and lessons learned from successful and unsuccessful past policies.**

Academic perspectives

Workshop two enabled the sharing of expertise and learning from the perspective of academic research in law, sociology and the field of housing studies. Workshop representation was predominantly those from academia but with input from public sector and third sector practitioners with broad expertise in human rights, equality and housing. The aim of this workshop was to inform discussions on implementation practice, and to consider some conceptual and methodological frameworks, i.e. ways of conceptualising and contextualising the right to housing, that could support implementation.

The format of Workshop Two consisted of:

- **Perspectives on the general challenges and opportunities for integrated implementation**
 - Discussion of the wider international human rights law framework concerning implementation, and the challenges and opportunities of ‘vernacularising’ (making relevant) human rights in Scotland.
 - The intersection of human rights and equality law, and sharing expertise from Scotland’s National Taskforce on Human Rights Leadership.
- **Perspectives on the challenges and opportunities in relation to the right to adequate housing in Scotland**
 - A discussion of the current Human Rights Act system in Scotland, and a case study discussion of housing conditions of expectant mothers seeking asylum in Glasgow.
 - Placing the right to adequate housing within broader, related research, e.g., framing the right to adequate housing as ‘the right to home’ based on empirical evidence from tenants.
- **Perspectives on the challenges and opportunities in relation to public sector culture and change**
 - Discussion of methodologies used in relation to improving public service provision, specifically based on experience working with disabled people’s organisations.
- **Key insights to underpin a Theory of Change**
 - The discussion of the Theory of Change Model led to suggested high-level outcomes as including the realisation of a life with dignity, equality as a principle, ‘human flourishing’ and the realisation of a human rights culture.
 - Other suggested outcomes included shared leadership, data gathering and disaggregation, everyday accountability, trust between rights-holders and duty-bearers, and distributional justice.

Civil society perspectives

Workshop Three attendees represented various civil society organisations in Scotland, which had expertise in housing and/or human rights from several perspectives. The workshop consisted of:

- A facilitated session on the helping and hindering factors at the individual, social and material level in relation to the incorporation of the right to adequate housing in Scotland;

Notable themes from the session on helping and hindering factors included **hindering factors** like **gaps in rights knowledge, gaps in knowing where support is, and the exhaustion of those in vulnerable situations.**

Positives included **challenging systems of power, the sentiment of ‘I’m not alone’, and everyday accountability.**

- A worked example for discussion, considering the Freedom to Crawl campaign (‘In light of the context analysis and outcome mapping, and from the perspective of your own expertise, which other issues could become relevant when we have the new human rights framework?’);

- A test activity to plot a Theory of Change for civil society in relation to incorporation of the right to adequate housing in Scotland.

The activity on a Theory of Change for housing in Scotland included mapping contributions to outcomes through a model based on six key questions (facilitated by Matter of Focus; see section below on the Outcome Mapping exercise):

1. What we do – key activities delivered
2. Who with? – who is involved?
3. How they feel – how do they react to the activities and what helps them engage positively?
4. What they learn and gain – what knowledge, skills, capacity or attitudes change?
5. What they do differently – what behaviours, policies or practices change?
6. What difference does this make? – what is better for people or communities?

In the worked example for discussion, workshop attendees detailed the freedom to crawl campaign, in which several had been directly involved, and which considered the housing conditions of expectant mothers and mothers of babies and toddlers who were housed in a dedicated facility in Glasgow in poor conditions.

Workshop attendees offered reflections such as, **rights are often perceived to be hierarchical**, and the need to remedy this in Scotland’s ‘maximalist’ approach to rights incorporation, and expressed concerns about **how to implement human rights given strain on resources, infrastructure, and contrasting UK-level policy**.

Duty-bearer perspectives

Workshop Four attendees represented duty bearers, including those from public bodies and local authorities with remits which considered housing, equalities and/or human rights. The workshop consisted of:

- A facilitated session on the helping and hindering factors at the individual, social and material level in relation to the incorporation of the right to adequate housing in Scotland;

Notable themes from the session on helping and hindering factors included **hindering factors** like **rights-holders having high expectations, lack of clarity** about implementing rights which are not absolute, and **duty-bearers’ need for specialist support** to make implementation effective.

Positives included **taking proactive steps** before legislative change, **sharing resources**, and the **possibility of a collective process** across Scotland’s housing sector.

- An activity to plot a Theory of Change for local authorities towards implementation of the right to adequate housing in Scotland under the new human rights framework;

The Theory of Change Scotland included mapping contributions to outcomes through a model based six key questions:

1. What we do – key activities delivered
2. Who with? – who is involved?
3. How they feel – how do they react to the activities and what helps them engage positively?
4. What they learn and gain – what knowledge, skills, capacity or attitudes change?
5. What they do differently – what behaviours, policies or practices change?

6. What difference does this make? – what is better for people or communities?

- A worked example for discussion, considering a hypothetical situation inspired by the Freedom to Crawl campaign.

The worked example for discussion developed the Freedom to Crawl example in a hypothetical situation after the new human rights framework is in effect. It considered housing allocation for a pregnant woman and infant child, where the woman is a non-UK national with leave to remain and has a physical impairment.

Attendees shared reflections such as **considering principles like due regard, proportionality, and resourcing** in the decision-making process around the right to housing.

Additionally, attendees raised issues such as **housing stock, equalisation standards between private and social rent** and the need for **sustained, strong political leadership** to integrate equalities and human rights in the new framework.

Part III Case study findings

Local authorities and implementation of the right to adequate housing

Why local authorities and housing?

Local authorities will be key stakeholders for implementation of the new human rights framework. For rights-holders accessing services, the extent to which local authority staff and leaders act to implement rights is key to everyday experiences of dignity or indignity in public sector interactions. As such, exploring the journey towards implementation readiness of local authorities has been a valuable case-study for understanding what happens/needs to happen at the interface of human rights and equality law implementation.

Housing provides a prime example of an implementation challenge area. Local authorities (like other public authorities) will be required to respond to the introduction of the right to adequate housing and integrate its implementation with existing law. In addition, local authorities should address intersections with multiple group-specific rights (e.g. for children, disabled people, ethnic minority and migrant communities) and other rights that will be newly incorporated (e.g. the right to a healthy environment).

Prior to the workshop series, a number of key organisations in the sector had already begun examining opportunities and challenges in relation to the human right to adequate housing in Scotland. These include Shelter Scotland, the Association of Local Authority Chief Housing Officers and the Chartered Institute of Housing in Scotland.

We have used these sources to further inform our own understanding of the housing and human rights landscape in Scotland and the perspectives of civil society and public sector stakeholders.

Shelter Scotland: Housing as a Human Right: Realising the Human Right to Housing in Scotland (December 2021)

This paper considers the current context, practicalities and realities of incorporating the right to housing as defined in the International Covenant on Economic, Social and Cultural Rights. The paper discusses defining adequate housing, an examination of current legal protections in Scotland, the necessary framework for the incorporation and implementation of the right to adequate housing, and more.

[You can read the Shelter Scotland report here.](#)

Association of Local Authority Chief Housing Officers (ALACHO): The Right to Adequate Housing: Are we focusing on what matters? (June 2021)

This discussion paper outlines a suggested shift in the discussion around the human right to adequate housing, from a legal lens to a policy lens which considers policy, programme design and resource allocation. The paper outlines the need for Scottish outcome indicators on housing to guide Scottish policy, and to provide a foundation for a monitoring framework to enable the realisation of the right to adequate housing in Scotland.

[You can read the ALACHO report here.](#)

Chartered Institute of Housing Scotland (CiH): Walking the Talk: An overview of the right to adequate housing and human rights issues for landlords in Scotland (January 2022)

This paper considers an overview of human rights principles and the right to adequate housing as drivers of people-centred national and local housing policy in Scotland, including various checklists of issues which may be considered by housing providers, and suggestions for Scottish Government on reforms to support landlords to uphold human rights and advance the right to adequate housing.

[You can read the CiH report here.](#)

Limitations

The findings from the case study were limited in a number of ways:

- we restricted our focus to local authorities as key duty-bearers within the housing sector, which excludes housing associations and does not directly engage with the scale of private provision of housing in Scotland;
- there was a significant level of response and keen interest from local authority professionals but attendance at the workshops was significantly more limited than attendance by civil society participants;
- there are specific issues that were not raised in the workshop series that are relevant for future implementation, such as regulation of rural and island housing;
- the workshop series format was designed to facilitate initial investigation, rather than an in-depth research project.

Nevertheless, the case study provided a rich opportunity to look in some detail at legal and related contextual opportunities and challenges for integrated implementation of human rights law and equality law.

Learnings

Key learnings from the case-study include:

- There is significant diversity of actors in this space: including local authorities, registered social landlords, and the private rented sector, and consequent diversity of actors internally (e.g. within local authorities, it is necessary to consider the role and capacity of staff but also elected members and senior leaders). There is also diversity across local authority areas in terms of housing stock and scale of the housing association sector;
- Material context emerged as highly important (housing stock);
- From both perspectives, there were common concerns about the adequacy of financial resource from the Government to support change, and concern about inadequate data/use of data. At the same time, there was evidence of a willingness to support creative solutions and local-level proactive action that was not dependent on central government direction;
- Existing practice of multi-agency work and interaction with other services (including education, social work, health) which can align with implementation of human rights and addressing intersectional (in)equality across human rights and equality provisions;
- There is a willingness of local authorities to 'be at the table';
- There is a need for skills, training and confidence amongst those working in the sector.

Introducing the worked example, policy landscape, and outcomes map

In the remainder of this section, we set out a worked example in the case study area. This was inspired by a real-life example shared in Workshop Two, discussed in detail in Workshop Three, modified in Workshop Four to include hypothetical legal considerations introduced under the new human rights framework, and further developed after the workshops. It is accompanied by an analysis of relevant considerations for integrated implementation.

We then map out policy considerations in order to illustrate the nature of the landscape in which local authorities are situated, and within which they act as duty-bearers under the existing and future legal framework. We do so using an example of a local authority (Fife), which was referred to in a number of the workshops as a good practice example and for which we could access publicly available information on housing work.

We conclude this section by linking to the Outcome Map that was developed during the workshops. This is intended to provide an example of current perspectives from within the sector on the journey towards readiness for implementation of the right to adequate housing, as well as an example of a Theory of Change methodology to support planning.

Worked example: what difference will the new framework make?

Scenario

Consider the case of Ayesha and her family, detailed below, with regard to any existing protections under equality law and potential additional protection under international human rights law:

Ayesha is a 28-year-old female. She is originally from Pakistan and has lived in the UK since her marriage to a British man in 2003. She is the mother of two children aged 11 months and 5 years. Four weeks ago, Ayesha and her children left their family home in the south of England due to her husband's violence. She is currently staying at the home of a friend in Strathburgh, a large city in Scotland's central belt.

Since the birth of her first child Ayesha has been financially dependent on her husband who controlled all household expenditure. She is currently living on savings that she managed to accrue from family gifts and housekeeping, of which she has just £200 left. She has no income and no further accessible savings. She also has no furniture or household items and very little clothing for herself or her children. Ayesha is finding it difficult to apply for benefits as she has left all documentation behind at the family home. She does not have a bank account.

Ayesha is unable to demonstrate a local connection to the Strathburgh area. Her immediate family is in Pakistan. Her extended family – the relatives of her husband – are in England but she is not in touch with them as she feels that they will not be supportive and may tell her husband where she is.

She came to Strathburgh because she has one friend in the city who lives with her own child in private rented accommodation. Her friend has agreed that Ayesha and her family can stay for a few weeks. Ayesha is sleeping on the sofa and her children are sharing the small bedroom of her friend's child. She feels that she has already overstayed her welcome but has nowhere else to go. Her friend's rental agency has received a complaint from another neighbour about the noise and is threatening Ayesha's friend with eviction.

Ayesha's eldest child has autism, and he is struggling emotionally with the family's current circumstances and disruption to his usual routine. He is unable to sleep and often cries loudly and lashes out at those around him. He has recently started at the primary school which is located nearby. The

head teacher has been very supportive, and Ayesha is pleased that his teacher is very experienced in teaching children with autism.

Ayesha is feeling very stressed about her housing situation. She tried to register with her local GP but while she was giving her details to the receptionist, a member of the public was abusive towards her, mimicking her accent and trying to remove her hijab. Ayesha was visibly shaken but the receptionist told her that it was ‘just banter’ and not to be so sensitive. Ayesha left without being seen by a doctor.

Last week at a meeting with a homelessness officer at the local council, Ayesha was advised that there is a severe shortage of housing stock in Strathburgh. New accommodation is under construction but won’t be available for 9-12 months and there is a waiting list. The officer questioned her eligibility to be placed on the waiting list because of the lack of a local connection to the area. While her case is being assessed, Ayesha has been offered a room in a hostel with a shared kitchen and bathroom. The hostel is a 45-minute bus ride from the home of her friend and her son’s new school. The room is small and would just about fit a double bed, which she would share with her eldest son, and a cot for her other child. She is worried about the impact on her children of living in such cramped conditions. Her eldest son requires calmness and space, and her youngest son is starting to crawl. She is also concerned about sharing a kitchen with others as the family eats halal which requires food and utensils to be kept separately. She is nervous about sharing washing and toilet facilities with strangers.

Ayesha is worried that if she refuses to move to the hostel, she will not be classed as ‘unintentionally homeless’ which, along with her lack of a local connection, will mean that she does not qualify for any social housing.

Towards Integrated Implementation: How does current and international law relate to Ayesha’s case?

Current law – housing and equality provisions	International human rights law
<p>Under section 29 of the Housing (Scotland) Act 1987, the Council has an interim duty to accommodate Ayesha and her children.</p> <p>The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014 requires that the suitability of accommodation for a homeless household must take into account the needs of the household and meet minimum accommodation safety standards.</p> <p>The Homelessness Code of Guidance issued by Scottish Government, Annex A: Advisory Standards for Temporary Accommodation, specifies that the quality of temporary accommodation must be of a good standard and:</p> <ul style="list-style-type: none"> ➤ Be accessible and able to meet the needs of any disabled person within the household; ➤ Have adequate toilet and personal washing facilities for the exclusive use of the household. <p>As a victim of domestic abuse, Ayesha cannot be asked to return to the south of England to make an application for housing or to collect documentation for her benefits application. The</p>	<p>ICESCR – the right to adequate housing</p> <p>Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that everybody has the right to an adequate standard of living for themselves and their family, including adequate food, water, clothing and housing and to the continuous improvement of living conditions.</p> <p>ICESCR provides other rights including:</p> <ul style="list-style-type: none"> ➤ the right to social security ➤ the right to take part in cultural life ➤ the right to health ➤ the right to education <p>International human rights law provides an integrated framework which brings existing rights together and which guarantees the enjoyment of those rights free from discrimination on certain specified grounds.</p> <p>What is the significance of incorporation for rights-holders such as Ayesha and her children?</p>

<p>need for a local connection should be waived in these circumstances. (Housing (Scotland) Act 1987, Section 33(2)(c)). The definition in the Protection from Abuse (Scotland) Act 2001 applies. This sets out that ‘abuse’ includes violence, harassment, threatening conduct, and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress. A person is at risk of abuse if that person runs the risk of abuse from someone with whom they would otherwise reasonably be expected to reside, or with whom they formerly resided.</p> <p>What does this mean in practice for Ayesha and her children?</p> <p>Scots law currently offers Ayesha good protection against being placed in unsuitable temporary accommodation. However, this doesn’t mean that these provisions always operate effectively or that corresponding rights are realised in an integrated way so that they prevent discrimination from occurring at the point of service delivery. The recent case <i>X v GCC</i> (2022) had to be heard by the Court of Session before it was established that local authorities are under an absolute legal duty to provide suitable temporary accommodation for homeless households in Scotland and that such accommodation must meet the needs of disabled children.</p>	<p>Incorporation of social, economic and cultural rights provided by ICESCR would provide individuals with better access to the rights directly related to their living conditions. This would help to ensure that vulnerable and marginalised groups, including women fleeing domestic abuse, children, people with disabilities and those who are reliant on social security receive protection in the progressive realisation of their rights. Effective enforcement of such rights can assist in the alleviation of the causes and consequences of poverty.</p> <p>For Ayesha and her family this integrated approach would mean that her rights and those of her children should be considered ‘in the round’. The specific needs of Ayesha and her children and their access to, and realisation of, the range of rights would have to be considered in any decisions regarding housing.</p> <p>What about the duty-bearers?</p> <p>Incorporation would provide duty-bearers with a clear statutory foundation for the exercise of their functions. This would be helpful in ensuring that public authorities are able to meet their statutory duties in the provision of services, for example, through the adequate allocation of resources from central government.</p>
<p>The Equality Act 2010</p>	<p>CEDAW, CERD, CRPD, CRC</p>
<p>Under the Equality Act, discrimination in the provision of housing on the grounds of the protected characteristics (PCs) of disability, gender reassignment, pregnancy or maternity, race, sex, sexual orientation, religion or belief is unlawful. The Act protects individuals who have a PC against certain forms of discrimination. It also prohibits discrimination which occurs because of an individual’s association with someone who has a PC, for example, in Ayesha’s case as the parent of a disabled child.</p> <p>In addition, all service and housing providers have a legal duty to make reasonable adjustments by anticipating the needs of disabled people. If any provision, criterion or practice places disabled people at a substantial</p>	<p>Non-discrimination provides a cross-cutting principle for all the UN Treaties which will be incorporated. Equality is a fundamental principle in the interpretation of human rights.</p> <p>CEDAW and CERD provide for the elimination of all forms of discrimination against women and in relation to race. The CRPD and CRC provide general non-discrimination and equality rights to persons with disabilities and to children.</p> <p>The treaties’ coverage extends to the right to access and to use services without discrimination in respect to health, employment, education and social and economic activities, including housing.</p>

<p>disadvantage, reasonable steps must be taken to avoid the disadvantage.</p> <p>Which PCs are relevant to Ayesha’s case? Ayesha can claim protection against discrimination on the grounds of her sex, race, disability, and religion. However, apart from the reasonable adjustment requirement under the disability provisions, the non-discrimination rights are <i>post facto</i> so that the discrimination has to occur before they can be relied on. This is known as ‘formal equality’ and it is limited in practice as it relies on an individual who has suffered discrimination taking action against an alleged discriminator in order to obtain a remedy.</p> <p>The standard for proving discrimination is high and requires the victim to show that she has received less favourable treatment compared to someone who does not have the PC. Using this formulation, it looks unlikely that Ayesha has suffered discrimination. However, she clearly needs some proactive intervention to improve life for her and her children.</p> <p>For public authorities, the prevention of discrimination arises as a duty under the Public Sector Equality Duty.</p>	<p>If incorporated how would the treaties relate to Ayesha’s rights and those of her children? The international human rights framework takes a proactive, anticipatory approach aimed at achieving substantive outcomes which can benefit all rights-holders, not just an individual who has won a legal case.</p> <p>If fully implemented, this would require that Ayesha’s situation is explored in terms of the whole lived experience of her and her children in order to decide how best to improve their situation in a holistic, cohesive and sustainable way, rather than through a series of disjointed and piecemeal interventions.</p> <p>Ayesha’s rights under ICESCR, including her right to access health services and social security, would be guaranteed without discrimination on the grounds of sex or race. Account would have to be taken of Ayesha’s son’s disability and any specific needs he might have when assessing the family’s housing needs. The rights of the children to adequate housing (i.e. in an environment that fosters their physical, mental and emotional development), and without the loss of established educational support, would be guaranteed.</p> <p>(see also Annex A for an indicative mapping of housing-related provisions in the relevant international treaties, related also to protected characteristics).</p>
<p>Public Sector Equality Duty (PSED) and the Fairer Scotland Duty (FSD)</p>	<p>From a Duty of Due Regard to Compliance under the Human Rights Framework</p>
<p>The Equality Act 2010 imposes certain duties on all listed public bodies.</p> <p>Under the PSED, public bodies (and private service providers when exercising public functions) must have due regard to the need to:</p> <ul style="list-style-type: none"> ➤ eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited under the Equality Act 2010, ➤ advance equality of opportunity between people who share a protected characteristic and people who do not, 	<p>Under Scotland’s proposed new human rights framework, it is expected that an anticipatory ‘due regard’ duty would be placed on public authorities in Scotland when carrying out devolved functions. The same duty would likely apply to private service providers when carrying out devolved public functions.</p> <p>The due regard duty would require that duty-bearers take full account of the obligations imposed by the international human rights provisions which, following incorporation, will be part of Scots law.</p>

<p>➤ foster good relations between people who share a protected characteristic and people who do not.</p> <p>Public authorities in Scotland also have specific duties relating to monitoring and reporting on progress related to the PSED.</p> <p>The FSD places a legal obligation on public bodies in Scotland to pay due regard to how they can reduce inequalities of outcome caused by socio-economic disadvantage, when making strategic decisions.</p>	<p>After a specified period, there would also be a duty to comply with these provisions meaning also that rights-holders could bring actions in law to assert those rights when they are breached.</p>
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Integrated Implementation

Although both PSED and FSD require those engaged in the provision of public sector housing services to actively consider the specific needs of homeless families like Ayesha’s when formulating policy, they do not provide any direct guarantee of standards and they offer no route to a remedy where individuals’ rights are breached. The ways in which they operate in practice can also make it difficult for service providers to identify and measure impact.

Rather than replacing the PSED and FSD, it is expected that the new due regard and compliance duties will be aligned as closely as possible with improved versions of them. The integrated approach required under the international human rights framework is likely to be challenging for service providers as it will mean a change in culture in certain respects, but it could also help to integrate and catalyse the existing PSED and FSD duties and to foster ‘joined up thinking’ leading to improvements across all public services.

The alignment of human rights and equality duties means that they will all contribute to the fulfilment of the duty to comply with the new human rights framework. In exercising this duty, the onus will be on public authorities in Scotland to develop smarter working methods which avoid replication of tasks and additional work. This is an ambitious undertaking which will require leadership, adequate resourcing and investment in education and training as well as effective monitoring, accountability and improved enforcement mechanisms.

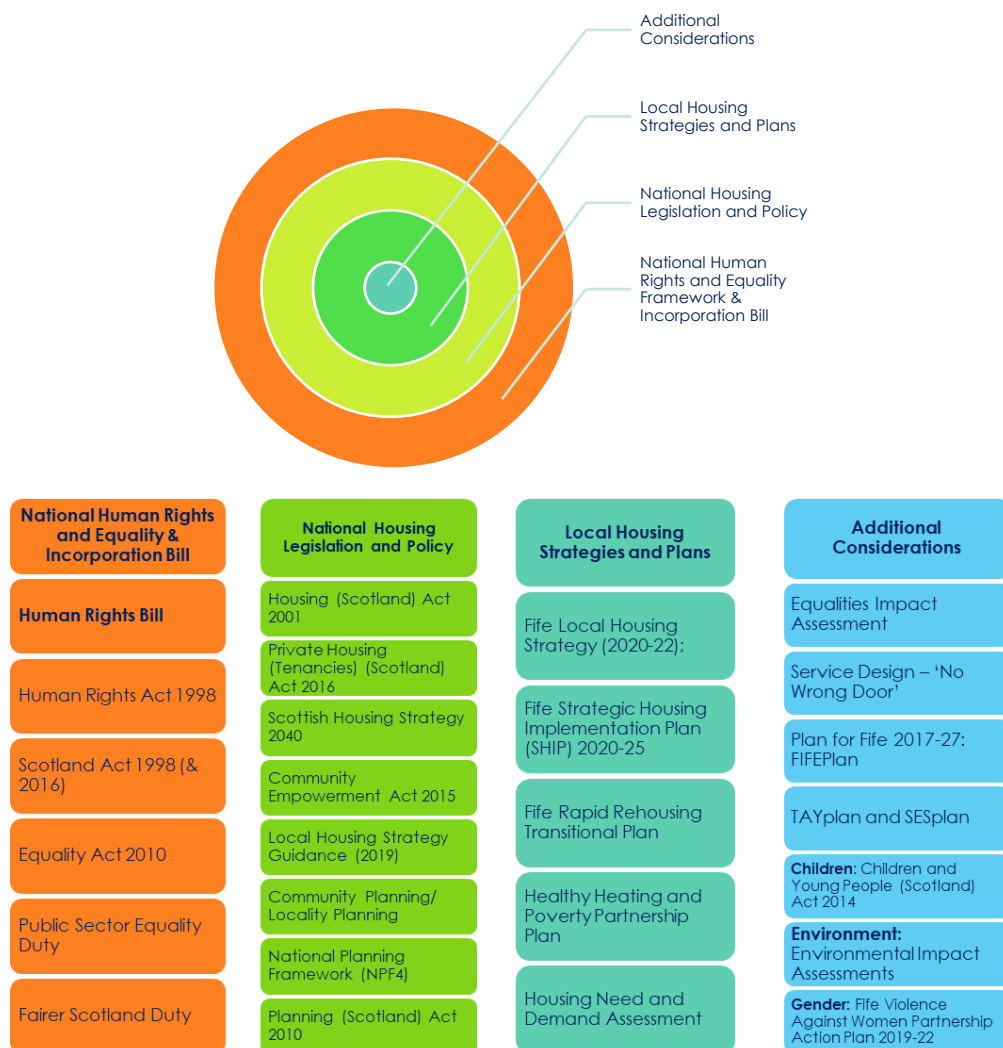
The relevant policy landscape

During workshops three and four, various attendees mentioned multi-agency working in relation to housing in Fife. Attendees spoke of some positive working, linking public bodies and local authorities considering housing with third sector and charitable organisations.

However, a notable theme from Workshop Four’s attendees from local authorities and experience in law and policy implementation was the complexity of the policy landscape which considers housing. Taking inspiration from attendees’ discussion, and based on publicly available information, we have collated an illustrative example of some of the relevant housing legislation, policies, and strategies for local authorities in Fife.

This example should be considered in light of the worked example discussed above, which focuses on interacting current and future laws. Such laws (including on housing, on equality, and on human rights) are represented below alongside examples of national housing policy, local housing policy, and other action plans, etc.

The example demonstrates the complexity of the policy landscape into which integrated implementation will be imported, and in which local authorities are working.¹



¹ These examples are based on the information provided in [Fife’s Local Housing Strategy 2020-2022](#), and draft of [Fife Local Housing Strategy 2022-2027](#). Additions could also include e.g., the Housing (Scotland) Act 1987, Housing First Policy and the UNCRC (Incorporation)(Scotland) Bill 2021.

Outcome mapping exercise

An Outcome Map was developed during the workshops, with the final Map based specifically on the perspectives of duty-bearers. The map is intended to provide an example of some current perspectives from within the sector on the journey towards readiness for implementation of the right to adequate housing, as well as an example of a Theory of Change methodology which can support planning. A more developed map would require more sustained input from stakeholders.

Please [visit the Outcome Map here](#).

The Map has been produced in OutNav, dedicated software produced by Matter of Focus to hold and assemble evidence against theories of change. If you would like to find out more about using OutNav to support your work, the work of Matter of Focus, or events and resources connected with using this evaluation approach, please visit [Matter of Focus](#) (or sign up for communications [here](#)), follow [@matter_of_focus](#), or contact the Director, sarah@matter-of-focus.com, who is happy to discuss a shared interest in tracking progress in embedding a human rights-based approach.

Part IV Commentary

Supporting integrated implementation of human rights and equality law

In this section we summarise our reflections prompted by the workshop series and highlight some of the insights which have relevance beyond the case study.

Understanding implementation: legal duties in context

The starting point is that the aim of the legal framework is to facilitate individual and collective outcomes that are aligned with human rights law and equality law. ‘Law’, and implementation of the legal framework, is not the same as legal challenge. Legal routes to remedy are a form of enforcement of legal rights and are one key part of the framework. Legal implementation is much broader, depending on wide-ranging cultural, material and social factors. As such, implementation is context-specific. This is recognised in international human rights law: implementation ‘measures’, including but extending beyond legal frameworks, should provide effective protection; how they do so must be tailored within a state and will depend on the contribution of ‘every organ of society’.^{xiii} For implementation to be effective, change will be underpinned by the prevailing context. We have aimed to foreground these contextual factors, whilst remaining focused on integrated implementation of co-existing legal frameworks.

There was more focus in the workshops on the contextual (cultural, material, and social) factors and on process than on the nature of existing or future legal duties and how to engage with these duties (e.g. how to assess the minimum core of economic, social, cultural and environmental rights, how to adequately conduct proportionality assessments). This is not surprising since this level of engagement may often be associated with lawyers, but seems a significant area for change if outcomes-focused compliance with legal duties is to be achieved.

The nature of the legal duties are relevant for understanding how policy should be focused, i.e. through participative processes, drawing on the knowledge within civil society, and oriented towards substantive human rights and equality compliant outcomes. Duties encompass strategy, as well as attending to people’s experiences as a result of interactions with, and decision-making by, public authorities. It is clear that the nature of the duties as legal duties upon public authorities means that rights-holders should not carry the burden of advocating that public authorities plan to meet these duties. The role of regulatory bodies was noted several times as helping to shift a burden of progress from rights-holders to public authorities themselves.

Prospects for integration of equality and human rights law

The realisation of enhanced rights and a potential shift from formal to substantive equality is undoubtedly an incremental process of which incorporation is a first, important step. To make incorporation effective, a first challenge is to map the new human rights framework on to the existing equality provisions. This has already been examined through the process of the National Taskforce for Human Rights Leadership, and in this workshop series we have aimed to further this examination by setting out the current context and future context, and connecting this to a case study example.

The workshop series has confirmed that clarity can emerge when we drill down into intersections between legal frameworks.

It is fair to say that the PSED has not been as effective as it could have been in ensuring that intentions and objectives have resulted in definable and measurable impacts. The PSED is subject to an ongoing review and the learning that comes out of that process should inform the approach to be taken in relation to the human rights framework.

The Public Sector Equality Duty (PSED), as enacted in Scotland through the general and specific duties, has direct application in the current context. The specific duties in particular may offer some scope for Scotland to take a distinctive approach in the way in which the new human rights framework operates in practice. A strengthened and enhanced PSED in Scotland could provide a useful framework for furtherance of the contextual approach required to realise substantive outcomes as opposed to a purely formal approach to equality.

In relation to the existing Fairer Scotland Duty (FSD), the specific linkage between equality and socioeconomic disadvantage could provide an opportunity to align the proposed new human rights framework with the pre-existing equality law framework. Furthermore, the focus on outcomes may enable exploration of how the contextual approach required to achieve substantive equality might be achieved in Scotland albeit in line with the restrictions imposed by the reservation of equal opportunities.

The general requirement to provide equal (the same) treatment for those with and without the specified PCs covered by the EA severely limits the potential impact of the specific rights covered by CEDAW, CERD and, to some extent, CRPD which arguably has more leeway through the reasonable accommodation requirement under section 20 of the EA.

The PSED and FSD undoubtedly provide potential for expansion of the equality principle through their requirement for wider contextual assessments in policy formulation despite the reservation of equal opportunities to the UK Parliament.

When we unpack the interactions between the existing and developing equality and human rights law frameworks, there are areas of natural alignment (including in the nature of applicable duties on public authorities) and opportunities to maximise current approaches (via PSED and FSD) in a way that is aligned with, and indeed enables, a shift towards the outcomes-focused approach at the core of international human rights law.

There has been substantial development in international human rights law (and European human rights law which anchors the Human Rights Act framework currently) to guide what is required of public actors to realise the range of human rights and the way that these rights intersect with equality guarantees. This body of knowledge is a valuable resource for Scotland, which can be brought into participative processes of articulating what realisation of human rights should look like in a local context.

Outcome-focused reporting

What we need to ensure does not happen in these parallel processes - of improving and implementing the existing equality duties and of developing and introducing new duties relating to human rights – is that we lose the focus on improving people’s lives. Overly bureaucratic and administratively burdensome processes could cause this to happen and so communication at the earliest stage is critical.

Duty-bearer perspectives highlighted the need for support in developing integrated reporting tools, both to reduce ‘overwhelm’ with bureaucracy and to scaffold work towards improved outcomes for the public. These could provide a focus both for participation and authorities’ responses to participation. For example, some workshop participants suggested a move towards integrated ‘risk’, rather than ‘impact’, assessments as ‘planning tools’, rather than after-the-fact ‘defensive’ tools.

Integrated and outcome-focused ‘planning tools’ could also support transparency in the way that public authorities are interpreting their legal duties and the evidence on which decision-making as well as strategy development is based. This could simultaneously enable duty-bearers to identify if there are

outcomes that have been convincingly and transparently pursued without success, which could be fed back to central government in a transparent way.

Collective learning and challenge

Amongst all participants, there was a clear willingness to support effective, integrated implementation. At the same time, some differences of perspective were evident.

From civil society perspectives, there was a significant focus on experience of individual rights-holders and the need for proactive responses by public authorities that could lead to improved collective outcomes for rights-holders. From duty-bearer perspectives, there was a significant focus on strategy and policy-level change, and the design of reporting processes. The civil society perspective saw rights-holders are disenfranchised, while a public sector perspective saw rights-holders having high expectations.

From our perspective outside of civil society and public authorities, there appears to be both a wealth of knowledge and a series of assumptions across stakeholder groups which tends to be implicit. Further, there are perceptions of fragmented approaches across the spectrum; that is, there are perceptions that the civil society landscape can appear fragmented and not necessarily easy for duty-bearers to navigate, and perceptions that duty-bearer networks are fragmented and not equipped to take an integrated approach. These perceptions are also relevant for academia (see reflections below on the contribution of academics).

This suggests that there is value in having platforms for identifying assumptions, sharing knowledge, and providing collective challenge which could support implementation based on collaborative planning and ongoing reflective processes. Participants referred to existing (formal and informal) networks but not to cross-sector networks. Opportunities to bridge networks could help to mutually inform different perspectives, and meaningfully build trust and collaborative alliances.

There is thereby a need for widespread capacity building, in addition to having a greater number of specialist individuals/organisations who should play key supporting roles across services. Again, this seems relevant across the board, for civil society, the public sector, and academia (as well as the general public).

It could be beneficial to engage with the value-base of the new legal framework, which provides a unifying ethos and could help to build commitment to engage with change. This could support a transition from seeing the legal framework as merely a 'stick' to seeing it also as a value-driven scaffolding for decision-making and planning.

In summary, to ensure an effective framework would benefit from collaboration and communication between different groups of experts – practitioners, academics and those with lived experience – so that we can transfer knowledge and experience, learn from each other and translate that learning into a process with discernible and measurable outcomes.

A model for research-informed practice?

A motivation for the workshop series was to begin to explore a model for research-informed practice; that is, to ask, how can academics support public authorities to undertake successful implementation?

The series has demonstrated that there are academics and academic perspectives that can support public authorities in implementation of human rights and equality protections in two senses: through the provision of research-based evidence, and through collaborative working.

Research-based evidence:

- e.g. for decision-making: academics/academic research could provide existing and/or new research data to inform strategy development and operational decision making that is human rights-compliant;
- e.g. for workforce development: academics/academic research could provide existing and/or new research on organisational culture around human rights and equality implementation, and provide research-based evidence to enrich the content of capacity building programmes within/for public authorities.

Academic collaboration:

- e.g. for exchanging knowledge that can support effective decision-making, including in relation to understanding impact assessment models;
- e.g. for expert facilitation: academics/academic research could provide expertise in methods of monitoring and evaluation, and facilitate internal and cross-sector processes.

Being outside of actual processes of implementation practice, academics could be well-positioned collectively to make a contribution in support of public authorities. The approach most likely to be successful is to start from current ways of thinking, talking and doing and to try to understand how the new human rights framework can fit or challenge existing approaches.

Our contribution in this workshop series has been from a legal academic perspective but by beginning to look beyond this, the series has drawn attention to a range of ways in which academics could bring expertise to a process of integration of frameworks. The examples that emerged from the series (specifically in Workshop Two) include:

- Integration of international human rights ‘localisation’ research with conceptual approaches to workforce development and wellbeing;
- Integration of a ‘capabilities’ approach with a ‘human rights-based’ approach at a conceptual and practice level;
- Integration of data from service-user participation (such as tenant participation) with research on human rights education.

In a sense, academics could contribute as ‘integrators’, helping to collaboratively bridge gaps and translate between human rights law, other areas of methodology and/or subject expertise, and existing approaches within public authorities.

Within the legal academic discipline in Scotland there has been wide-ranging and in-depth work across a number of areas of human rights incorporation, and there is significant expertise in, for example, sociology and social policy, but there appears to be room for further expansion (e.g. in urban and rural design, health education, and economics). Maximum benefit would be gained from a combination of cross-sectoral academic expertise, generalist human rights and equality expertise, and subject-specific expertise (e.g. in housing studies, disability studies, public sector change, and so on) in order to identify opportunities and challenges for integrated practice.

Five Key Messages: Integrated Implementation Workshop Series Findings

- International human rights law is based on the understanding that the effective implementation of human rights and related equality guarantees depends on wide-ranging cultural, material and social factors as well as the legal framework itself. As such, implementation is context-specific and depends on multiple stakeholders.
- Implementation planning processes should engage directly with the nature and content of the relevant legal duties and map these across relevant areas of law: national (domestic) law duties in subject-specific legislation, equality law duties, existing human rights duties, and supplementary duties that will be introduced under the new Human Rights Bill.
- Unpacking the interactions between the existing and developing equality and human rights law frameworks shows that there are areas of natural alignment with current approaches, and opportunities to maximise current approaches in a way that integrates with, and enables a shift towards the outcomes-focused approach at the core of international human rights law.
- There will be a need for co-production of guidance for duty-bearers on developing implementation plans and integrated reporting tools.
- Planning processes should include civil society and rights-holders as well as the Scottish Government, and would also benefit from collaborative learning with academia. This approach would simultaneously help to identify assumptions, support the sharing of learning across sectors and processes (notably, in relation to implementation of the Convention on the Rights of the Child), and create fora for constructive challenge and ongoing reflection.

Annex

A. Indicative mapping of the right to adequate housing across the Scottish Human Rights Bill and Equalities Protected Characteristics

	International Covenant on Economic, Social and Cultural Rights	Convention on the Rights of the Child	Convention on the Rights of Persons with Disabilities	Convention on the Elimination of All Forms of Discrimination against Women	Convention on the Elimination of All Forms of Racial Discrimination
HOUSING	Article 11(1): ‘[...] the right of everyone to an adequate standard of living, including adequate food, clothing and housing , and to the continuous improvement of living conditions.’	Article 27: ‘[...] the right of every child to a standard of living adequate for the child’s physical, mental, moral and spiritual development [...] particularly with regard to nutrition, clothing and housing .’	Article 28(1): ‘[...] the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing [...].’	Article 14(2)(h): ‘[...] eliminate discrimination against women in rural areas in order to [...] ensure to such women the right: [...] to enjoy adequate living conditions, particularly in relation to housing [...].’	Article 5(e)(iii): ‘[...] the right of everyone, without distinction as to race, colour, or national or ethnic origin , to equality before the law, notably in the enjoyment of [...] [T]he right to housing .’
Age	✓	✓	✓		✓
Disability	✓	✓	✓		✓
Gender Reassignment	✓				
Marriage and Civil Partnership	✓		✓	✓	✓
Pregnancy and Maternity	✓	✓	✓		
Race	✓	✓	✓		✓
Religion or Belief	✓	✓	✓		✓
Sex	✓	✓	✓	✓	✓
Sexual Orientation	✓				

B. Workshop Whiteboard Activity: Effective policy examples

Do you have any examples of effective policy development or implementation that could be applied in this context (related to housing or more broadly)?

Right to adequate housing and agree "adequate" requires to be defined. Also a right to tenant participation (at moment we have in Housing (Scotland) Act 2001 a legal requirement on social rented sector housing)

Finnish Housing First work is a relevant example. UN Human Rights Based Approach framework might also provide some useful insights.

Some elements of Scottish social security policy development have included better practice in relation to co-pro/participation.

The recommendations from the working group on improving housing outcomes from women and children experiencing domestic abuse accepted in full by the Scottish Government takes a human rights approach - including

Finnish Housing First work is a relevant example. UN Human Rights Based Approach framework might also provide useful insights (S.Balan, uOttawa)

A new housing and dementia practice framework is now available - <https://www.alliance-scotland.org.uk/blog/news/new-housing-and-dementia-practice-framework-available/>

I think it's worth looking at the work Engender is doing on women and housing - <https://www.engender.org.uk/news/blog/the-invisible-women-in-scotlands-housing-system/>

file:///C:/Users/derek/Desktop/preventing-homelessness-in-scotland.pdf

In terms of policy dev - consider participatory policymaking approaches. Look to learning from the Scottish Approach to Service Design (Office of the Chief Designer in SG).

Agree Housing First evaluations from UK

Learning from the pandemic - getting people of the streets as a starting point

perhaps not get too focused on homelessness as the central issue or failing, our study suggests 500,000 households living in homes with 2 or more HR failings. Our current approach needs assessments that iteratively misses this

Agree with point about learning from the pandemic - while many experienced significant challenge, as a charity we sometimes saw greater flexibility from LAs in addressing housing conditions of young people who

EHRC report on housing and disabled people is helpful - <https://www.equalityhumanrights.com/en/publication-download/housing-and-disabled-people-scotlands-hidden-crisis>

extend the "Ask and Act" is a process of targeted enquiry to be practiced across the Public Service to identify violence against women, domestic abuse and sexual violence. This is going through the SG at present as this is

Sometimes effective implementation is hugely dependent on methods of rights protection locally - e.g. - independent advocacy provision - informed individuals who can support individuals/groups to know their rights,

CIH Scotland is publishing guidance for the housing sector with regards to the right to adequate housing. It sets out the practical steps that landlords can take to ensure housing is a realised human right for

Tenant participation - At moment have legal requirement of social rented sector housing organisations to consult tenants) through Housing (Scotland) 2001 Act - this should be extended to other housing sectors.

important to focus on outcomes, not just the legal and policy framework. we are told we have "some of the most advanced homeless rights in the world" we also the highest levels of homeless deaths in the UK, rising issues

No Wrong Doors approach to services

involvement of survivors of domestic abuse in leading participatory action research on homelessness prevention and rights of women to remain in their home. Recommendations led to new legislation -

With the abolishment of priority need and the extension of suitability standards to all homeless households we have, at least in theory, something very close to a right to adequate housing, for (eligible) homeless households.

Clan Childlaw have been funded to work on homelessness and housing issues experienced by care experienced young people - legal advice, intervention, training, education. <https://www.clanchildlaw.org/news/clan-childlaw>



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Questions? General reflections? Anything else you'd like us to be aware of?

How will do justice to the rights of those who are subject to immigration control, and perhaps not eligible for housing & homeless assistance. Can a new human rights framework, be more inclusive?

Ensure wider consideration of those who experience challenge in having their rights upheld - beyond protected characteristics e.g. care experienced people who can experience significant housing (and many

As well as considering what a right to adequate housing might look like in substance, we should give equal consideration to accountability mechanisms, as these rights need to be practical and

Many housing issues in practice arise from lack of resources- human rights budgeting seems like it will play a key role, in ensuring that the Right to Adequate Housing and other ESCR are effective. How can human

Perhaps worth considering what lessons we can learn from what hasn't worked, despite the legislation- for example right to support for care leavers, including housing, which has fallen dreadfully short

Agree that we could also learn from what policy hasn't been successful. Eg, self-directed support is ostensibly a rights based policy and legislative process, but has hugely struggled for implementation in a

Not sure it's true to say there is a strong history of housing co-ops in Scotland. I think we have two, perhaps three. At least one has recently merged with an RSL.

Just a comment that I can think of loads of examples of practice in this area - but rather practice aimed at changing policy because policy wasn't adequate? I can think of vanishingly few examples of effective rights based policy

Need to consider a variety of housing models, not just cooperatives. Different models will be needed for different social groups. The model of change will enable to test which housing model is likely to be

Have a look at the SG Coming Home Report publishes in 2019 about the housing, care and support needs of people with complex needs around learning disability and autism

gender analysis to understand what the right to adequate housing means for women - and make visible within the framework, particularly in relation to VAWG, where the home is not a place of safety, security, peace

When there are repeated strategies but no evidence of change, what should our response be? In Scotland, the power of the collective/civil society orgs has an effect at policy level but not at implementation level-

In the development of new fire safety standards for all Scottish housing from Feb 2022, Deaf people orgs speak about a significant lack of their participation in the design of that policy

Safe Way Scotland - includes aspirations to make housing available to people without recourse to public funds

75%+ of housing in Scotland is privately owned and 60% are owner occupiers, who is responsible for delivering for those not living in social housing when over half of our poorest households and many of those living in

To what extent did overcrowded housing for minority ethnic groups put their right to life at risk during covid, especially given disproportionate deaths in these communities?

The right to property (also a human right) is often cited as a reason for not strengthening housing rights. How we address this imbalance?



Endnotes

- ⁱ First Minister's Advisory Group on Human Rights Leadership, <https://humanrightsleadership.scot/>
- ⁱⁱ See First Minister's Advisory Group Report (2018), available: <https://humanrightsleadership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf>, p.4
- ⁱⁱⁱ National Taskforce for Human Rights: Leadership Report (2021), available: <https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/>
- ^{iv} First Minister's Advisory Group on Human Rights Leadership: Ambition on Human Rights (2018), available: <https://www.gov.scot/news/ambition-on-human-rights/>
- ^v https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf
- ^{vi} <https://consult.gov.scot/mainstreaming-policy-team/public-sector-equality-duty-review/>
- ^{vii} [The Fairer Scotland Duty: Guidance for Public Bodies](#), p. 3.
- ^{viii} Measuring Up 7: Public Authorities' performance in meeting the Scottish Specific Equality Duties, 2017 available: <https://www.equalityhumanrights.com/en/publication-download/public-authorities%E2%80%99-performance-meeting-scottish-specific-equality-duties-2017>
- ^{ix} Effectiveness of the PSED Specific Duties in Scotland, available: <https://www.equalityhumanrights.com/en/publication-download/effectiveness-psed-specific-duties-scotland>
- ^x Scottish Human Rights Commission: Human Rights Based Approach, available: <https://www.scottishhumanrights.com/projects-and-programmes/human-rights-based-approach/>
- ^{xi} National Mission on Drugs : National Collaborative – supporting documents for the Call for Nominations (2022), available: <https://www.gov.scot/publications/national-collaborative-papers/pages/revised-roadmap-draft/>
- ^{xii} Workshop Two; see Julie Fraser (2020), *Social Institutions and International Human Rights Law Implementation; Every Organ of Society*, Cambridge University Press, p. 4-6.

