

## Comments on the UK's 40<sup>th</sup> National Report on the Implementation of the European Social Charter

June 2021

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The Scottish Human Rights Commission (the Commission) is the national human rights institution (NHRI) for Scotland, accredited with 'A status' by the International Coordinating Committee of NHRIs. The Commission was established by an Act of the Scottish Parliament in 2008. It has a general duty to promote awareness, understanding and respect for all human rights and to encourage best practice, including through education; training and awareness raising, and by publishing research. SHRC has a number of powers including:

- The power to conduct inquiries into the policies or practices of Scottish public authorities,
- Recommending such changes to Scottish law, policy and practice as it considers necessary,
- The power to enter some places of detention as part of an inquiry,
- The power to intervene in some civil court cases.

The Commission is one of three NHRIs in the UK<sup>1</sup>. The Commission is also a member of the UK's National Preventive Mechanism (NPM) designated in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

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# 1. Introduction, Structure and Scope of this report

## 1.1. Introduction

The Commission welcomes the opportunity to provide to the European Committee of Social Rights comments on a number of matters regarding the [United Kingdom's 40<sup>th</sup> National Report](#)<sup>2</sup> on the Implementation of the European Social Charter and the rights that are examined in the 2021 cycle.

The Scotland Act 1998, which established the Scottish Parliament, requires both the Scottish Parliament and Scottish Government to observe and implement all of the UK's international human rights obligations. Under the terms of the Scotland Act 1998, all issues which are not explicitly reserved to the UK Parliament are devolved to the Scottish Parliament. Consequently issues such as justice, detention, policing, health, education, social care and some elements of social security are within the powers of the Scottish Parliament. A meaningful understanding of the obligations of the Scottish Parliament and Government to observe and implement the European Social Charter will be crucial to ensuring law, policy and practice in Scotland are fully compliant.

In its [2016-2020 Strategic Plan](#)<sup>3</sup>, the Commission identified three of its five strategic priorities as:

- Promoting respect for dignity and rights in health and social care;
- Promoting a rights based approach to poverty and social justice;
- Increasing accountability for rights: law, regulation, monitoring and accessing rights.

These three priorities placed a specific focus on:

- embedding human rights in practice throughout health and social care services;
- influencing approaches to tackling poverty, social exclusion and social justice to be human rights based at local, national and international levels – including supporting the creation of a rights-

based Scottish Social Security System with Scotland's newly devolved social security powers; and

- working towards full incorporation of international human rights in domestic law.

In recent years the Commission has contributed to the examination by UN treaty bodies of the realisation of economic, social and cultural rights in Scotland through reports on the UK's examinations under:

- The United Nations Convention on the Rights of the Child (CRC) in [2016](#)<sup>4</sup>.
- The International Covenant on Economic, Social and Cultural Rights (ICESCR) in [2016](#)<sup>5</sup>.
- The United Nations Convention on the Rights of Persons with Disabilities (CRPD) in [2017](#)<sup>6</sup>. The Commission is also a member of the UK Independent Monitoring Mechanism for the CRPD. In January 2016, the Commission and the Equality and Human Rights Commission (EHRC) submitted a [response to the Scottish Government's Draft Delivery Plan for the Convention](#)<sup>7</sup>.
- The International Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in [2019](#)<sup>8</sup>.
- The United Nations Convention on the Elimination of Discrimination Against Women (CEDAW) in [2019](#)<sup>9</sup>.
- The Universal Periodic Review (UPR) process in [2017](#)<sup>10</sup>.

The Commission also contributed through Scotland's SDG Network to the UK's Voluntary National review process in 2019, including supporting the development and publication of [Scotland's Supplementary Report](#)<sup>11</sup>.

## **1.2. Structure of the report**

A grouped article by article analysis of the European Social Charter Articles under examination is pursued in this document. In selecting material for this report we have prioritised matters that on our analysis:

- are the most pressing and /or
- where the Committee has requested information and/ or additional information (based on a previous conclusion) and/or

- where the Commission has carried out particular work on the issue which may assist the Committee.

The overall report has also been reviewed with specific consideration to the SDGs. For the purpose of brevity, these references are footnoted throughout the report.

Appendix 1 provides a collation of the Commission's recommendations to the Committee.

### **1.3. Sources**

This report draws from the Commission's evidence base which was created as part of a three year research project culminating in the publication of "[Getting it Right: Human Rights in Scotland](#)<sup>12</sup>" in 2012 and led to the development of Scotland's first National Action Plan for Human Rights (SNAP). This database has been further developed and updated through: a national participatory process to develop Scotland's second National Action Plan (SNAP 2) in 2017/18; SHRC's contribution to the [Scottish Supplementary Report](#)<sup>13</sup> to the SDG Voluntary National Review Process in 2019; as well as our reports to other UN Treaty Bodies submitted during the reporting period.

This report also draws on evidence from our Lived Experience Leadership Group<sup>14</sup>; the Commission's recent monitoring report focused on [COVID-19, Social Care and Human Rights](#)<sup>15</sup> and our series of COVID-19 focused publications<sup>16</sup>; other Commission sources, such as: responses to consultations about proposed legislative change; and many external sources including reports published by NGOs, Ombudsmen, inspectorates and regulators. We would be pleased to provide any clarification, further information, or other assistance to the Committee.



## **2. Article 3 – The right to safe and healthy working conditions**

### **2.1. Article 3.1 - Issue safety and health regulations**

#### **2.1.1. COVID-19: protection of frontline workers<sup>i</sup>**

It is now well documented that in Scotland the Coronavirus outbreak has significantly impacted on the residents and staff of Scotland's care homes. Data released by the National Records of Scotland showed that by August 2020, 47 per cent of COVID-19 deaths registered related to deaths in care homes<sup>17</sup>. By April 2021, COVID-related deaths in Scottish care homes accounted for approximately a third of the more than 10,000 deaths<sup>18</sup>. Questions have arisen over whether the approach taken to COVID-19 in care homes has been sufficient and appropriate, in particular, whether clinical guidance was appropriate; whether adequate personal protective equipment ("PPE") was made available for the protection of both staff and residents; and whether the availability and distribution of Coronavirus testing of care home residents and staff was adequate<sup>19</sup>.

These concerns were also raised within the [Commission's monitoring research](#)<sup>20</sup> into the impact of the COVID-19 pandemic, and how it has been managed, on people's rights in the context of care at home and support in the community, published in October 2020. The research highlighted concerns that at the start of the pandemic, information and guidance about PPE was often confusing and changed quickly. The research further highlighted that as time progressed, changes to guidance on PPE were often communicated before there was any

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<sup>i</sup> In relation to the Sustainable Development Goals – Goal 8: Decent work and economic growth and Goal 3: Good health and wellbeing are both relevant to this issue. Specifically, Target 8.8 focuses on the protection of labour rights and promotion of safe and secure working environments for all workers. For Goal 3, Target 3.d makes reference to strengthening countries' capacity for risk reduction and the management of national and global health risks.

infrastructure in place to supply the relevant items, which led to anxiety among front-line social care staff and families.

Concern was also raised in the Commission's research that information and guidance on PPE had been written with clinical settings in mind, and that there was little understanding and awareness of how care and support are provided in either residential or home care settings, which in turn affected the relevance of the guidance to the way their organisations worked<sup>21</sup>.

With regard to sourcing PPE, concerns were raised in the Commission's research report<sup>22</sup> that PPE resources were diverted away from certain parts of the social care workforce in preference for both the National Health Service (NHS) and for public authority provided services. Others stressed that there had been or were inequalities in access to testing between health and social care workers, between different types of social care workers, and between family carers and health and social care workers. Several interviewees in the Commission's research also pointed out that, as with PPE, there was or had been a significant gap between policy statements on testing and the actual infrastructure available to achieve this<sup>23</sup>.

A recent report by [Audit Scotland into PPE](#)<sup>24</sup> revealed that at the height of the first wave in April 2020, Scotland came within eight hours of running out of some stocks of PPE. Overall, the auditor general for Scotland, Stephen Boyle, concluded that the Scottish Government and NHS National Services Scotland (NHS NSS) had "*worked well together under extremely challenging circumstances.*" However, he criticised the lack of preparedness, despite three preparedness exercises since 2011, noting that the processes that NHS NSS had in place for distributing PPE before the Covid-19 pandemic were not designed to enable distribution of high volumes of PPE to urgent timescales. The report also found the surge in prices for PPE cost NHS NSS £37.4m over what it would have normally paid for the safety equipment<sup>25</sup>. Other concerns highlighted in the report included, a lack of knowledge about stock held by NHS boards and a need to better understand the PPE demand and usage in social care and primary care settings<sup>26</sup>.

1. The Commission recommends that the Committee ask the UK and Scottish Governments what steps they will take to ensure that in a future such event (or a resurgence of COVID), personal protective equipment and testing will be available to everyone who requires or provides personal care in a social care environment.

The First Minister has confirmed to the Scottish Parliament<sup>27</sup> that there will be a public inquiry into the handling of all aspects of the pandemic, including what has happened in care homes<sup>28</sup>. This commitment is welcomed by the Commission. The Commission has published a [briefing](#) which sets out the human rights framework as it applies to the issues we understand to have arisen in Scotland's care homes and details the requirements of human rights law to ensure effective investigations are carried out<sup>29</sup>. In July 2020, the First Minister put on record her commitment that any public inquiry should take a human rights based approach. The Commission has written to the Scottish Government setting out what a human rights based approach requires in that context<sup>30</sup>.

2. The Commission recommends that the Committee ask the Scottish Government to reconfirm its commitment to taking a human rights based approach to a public inquiry into the response to the pandemic, which specifically gives consideration as to whether human rights standards and principles have been met.

### **3. Article 11 – The right to protection of health<sup>ii</sup>**

#### **3.1. Article 11.1 – Removal of the causes of ill-health**

##### **3.1.1. Life Expectancy across the Country and Different Population Groups<sup>iii</sup>**

Over recent decades, Scotland has seen an overall rise in life expectancy and improvements in people’s health, although this progress has not been experienced universally. Progress made at a population level has, however, stalled since 2012, with levels actually worsening in the most socioeconomically deprived areas<sup>31</sup>. Scotland continues to see thousands of premature deaths every year, with men from our most deprived areas spending over 23 fewer years in ‘good health’, and just over 22 years fewer for women<sup>32</sup>. These higher rates of premature death for men and women remain the highest in Britain.

Data from NHS Health Scotland also reveal that life expectancy for people with learning disabilities is shorter when compared to the general population<sup>33</sup> and for those with a diagnosis of Schizophrenia, life expectancy is 15 years less than the general population for women and for 20 years less for men<sup>34</sup>. These concerns<sup>35</sup> were also raised by the Commission in our [UK Independent Mechanism \(UKIM\) report](#)<sup>36</sup> to the Convention on the Rights of People with Disabilities in 2017. One further community with a life expectancy significantly lower than the general population in Scotland, is that of Scottish Gypsy Travellers whose life expectancy is estimated to be as low as 55 years<sup>37</sup>.

These inequalities do not occur randomly, but rather are socially determined often by circumstances, on the whole, beyond an individual’s

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ii The overall focus of SDG Goal 3 is to ensure healthy lives and promote well-being for all at all ages.

iii A number of SDG Goal 3 targets related to life expectancy, focusing on reducing unnecessary deaths. These include: Target 3.1 on reducing maternal mortality; 3.2 on ending preventable deaths of newborns and children under 5 years of age; 3.4 on reducing premature mortality from non-communicable diseases; 3.9 on reducing the number of deaths and illnesses from hazardous chemicals and air, water and soil pollution and contamination.

control<sup>38</sup>. NHS Health Scotland have reported that similar patterns of socially determined circumstances are found in England, Wales and Northern Ireland. They note that the issues creating this problem are complex and relate to long-term inequalities, deprivation and poverty, and changes in the pattern of disease, as well as austerity policies which have had an adverse impact in recent years<sup>39</sup>.

3. The Commission recommends that the Committee asks the Scottish Government to explain how they plan to address this stagnation in progress on improving life expectancy, and years of life spent 'in good health' in Scotland.

### **3.1.2. Sexual and reproductive health-care services for women and girls<sup>iv</sup>**

#### **3.1.2.1. Disabled women**

The [UKIM report](#) to the UN Committee on the Rights of Persons with Disabilities<sup>40</sup> highlighted concerns about the reproductive and maternity rights of disabled women in Scotland. In workshops undertaken by [Engender](#)<sup>41</sup> many participants discussed their experiences of negative comments from health professionals with regards to pregnancy and maternity<sup>42</sup>. Most also reported feeling pressured to terminate pregnancies and to take steps to avoid becoming pregnant rather than consider having a family<sup>43</sup>. These culturally ingrained negative assumptions about disabled women play a huge role in the systemic failure to protect their reproductive rights. Engender have noted that the:

*“misconceptions about their needs, intentions and capacities regarding sex, relationships and motherhood influence the actions of families, service providers and legal representatives, and perpetuate stereotypes that lead to lack of autonomy and the*

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<sup>iv</sup> SDG Goal 3 Target 3.7 places a specific focus on ensuring universal access to sexual and reproductive health-care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes.

*breach of a wide range of human rights. The extent to which this stereotyping of disabled women underpins negative outcomes is overwhelming”<sup>44</sup>.*

[UN CRPD Concluding Observations to the UK](#) in 2017 noted their concern that persons with disabilities, including women, reportedly continue to be subjected to involuntary medical treatment including forced sterilization. They also noted the multiple barriers persons with disabilities, particularly women and girls face in accessing sexual and reproductive health-care services, including insufficient information and education on family planning in accessible formats. The Committee has recommended that:

*“the State party, in close collaboration with representative organizations of persons with disabilities:*

*(c) Ensure equal access to sexual and reproductive health-care services, as set out in target 3.7 of the Sustainable Development Goals, and provide information and education on family planning for persons with disabilities in accessible formats, including Easy Read”<sup>45</sup>*

The Commission is concerned that this situation is unlikely to change as long as the majority of relevant Scottish Government policy frameworks continue to make very little reference, if any, to the sexual and reproductive health of disabled people. For example, the government’s key strategy for delivering on the rights articulated in the CRPD for disabled people, does not mention reproductive and sexual health.

4. The Commission recommends that the Committee asks the Scottish Government how it is planning to improve its policy frameworks to address the sexual and reproductive health of disabled people.

### **3.1.2.2. Maternal Services**

As the Commission highlighted in its [submission](#)<sup>46</sup> to the Committee on the Elimination of Discrimination Against Women, pregnant women going through the asylum process face particular difficulties, from lack of adequate financial support through to lack of interpreters during and

after childbirth. We noted that a human rights based approach to assessing the needs of pregnant asylum seeking women in Scotland is required, with a focus on making them aware of their rights and entitlements<sup>47</sup>.

5. The Commission recommends that the Committee asks how the Scottish Government plans to ensure that NHS services focus on equality of access for diverse groups of women.

#### **4. Article 11.1 - Responses to comments and queries from 2017 conclusions**

The Scottish Government's [National Performance Framework](#)<sup>48</sup>, has five objectives, one of which is 'Creating a healthier Scotland'. This includes a focus on two of the sixteen Strategic Objectives, namely – 'We live longer, healthier lives' and 'We have tackled the significant inequalities in Scottish society'. A series of national strategies are set out in the Health and Social Care Delivery Plan published in December 2016 which aim to support action to develop six national priorities for public health as well as the creation of a single public health body for Scotland in 2020.

However, there is broad acknowledgement<sup>49</sup> that there has been slow progress to implement these policies and strategies, and that they are not yet achieving the intended outcomes of a reduction in inequalities and improvements in health, especially for those with the poorest health and social outcomes. A decade of austerity and welfare reform from the UK Government, has resulted in sizeable cuts to all public services has hit the poorest the hardest.

#### 4.1.1. Premature deaths rates<sup>v</sup>

Mortality rates from Scotland's leading causes of death, including coronary heart disease (CHD), cancer, respiratory conditions and stroke had been witnessing a gradual decline thanks to steady improvements in lifestyle and health care provisions. If this progress continues, it would mean that Scotland would be on track to meet the SDG aim of a one-third reduction by 2030.

Scotland's overall mortality rate has decreased from 1,136 per 100,000 in 2016 to 1107 per 100,000 people in 2019, a decrease of 3 per cent on 2018. The rate among males (1,275.0 per 100,000) is higher than among females (971.2 per 100,000). There are geographical differences with the highest age-standardised mortality rate found in Glasgow city (1,349.3 per 100,000)<sup>50</sup>.

There have, however, been some small increases in specific causes of death in recent years. Looking at specific causes of death, comparing the four quarter average for the five year period 2014-2018:

- Deaths from cancer increased by 4.4 per cent to 4,310;
- Deaths from respiratory diseases increased by 3.3 per cent to 1,812;
- Deaths from cerebrovascular disease increased by 1.9 per cent to 1,055<sup>51</sup>;
- Deaths from coronary heart disease however, fell by 3.6 per cent to 1,690 and the rate at which new cases of CHD occur has fallen by almost 22 per cent over the last decade, from 458 per 100,000 population in 2008/09 to 359 in 2017/18<sup>52</sup>.

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<sup>v</sup> SDG Goal 3 Target 3.4 places a specific focus on reducing by one third premature mortality from non-communicable diseases through prevention and treatment and promote mental health and well-being. Progress indicators include both 3.4.1: Mortality rate attributed to cardiovascular disease, cancer, diabetes or chronic respiratory disease and 3.4.2: Suicide mortality rate.



Incidence of heart disease does, however, vary greatly between areas of greater or less deprivation. Whilst there has been a decrease in incidence over the last 10 years in all levels of deprivation, in 2017/18, the most deprived population quintile shows a rate that is 76 per cent higher at 480 per 100,000 than that for the least deprived (273 per 100,000)<sup>53</sup>.

6. The Commission recommends that the Committee asks the Scottish Government what plans it has to improve the implementation of its strong health policy intentions in order to achieve its policy aspirations to reduce health inequalities including improvements in life expectancy.

#### **4.1.2. Obesity<sup>vi</sup>**

In Scotland far too many people, children and adults, risk serious ill-health associated with poor diet and unhealthy weight. In the school year 2017/18, 22.4 percent of children measured in Primary 1 (age 5) were at risk of overweight or obesity (with 1.1 per cent at risk of underweight)<sup>54</sup>. This overall risk has hardly changed in 20 years. In 2018 the percentage of children (aged 2 to 15) who are considered to be of healthy weight<sup>55</sup> was 69 percent, similarly with little change over the preceding 20 years. For adults (aged 16+), the percentage considered to be a normal weight<sup>56</sup> in 2018 was 33 per cent, and again this has remained stable for some time.

What these stable figures mask, however, is the substantial inequalities in unhealthy weight across Scotland. For all age groups, the risk has been increasing in the most deprived areas but decreasing in the least deprived areas<sup>57</sup>. For children, the high prevalence of overweight and

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vi In addition to concerns around health and well-being outlined in SDG Goal 3, Goal 2 aims to End hunger, achieve food security and improved nutrition and promote sustainable agriculture. This includes targets that focus on ending hunger and ensuring access to safe, nutritious and sufficient food (Target 2.1); and ending all forms of malnutrition (Target 2.2).

obesity was raised as an issue of concern by the UN Committee on the Rights of the Child<sup>58</sup>.

Diet related illnesses in Scotland heavily impact both individuals' quality of life and life expectancy, and are costly to the health service. In Scotland, whilst food is generally safe, for many, access to affordable and nutritious food is not a lived reality. 1996 saw the first publication of the Scottish Dietary Goals (updated in 2013 and again in 2016), however, no progress has been made in meeting those goals (in any income deciles). The goals (set at a population level) specify the level of change required in the Scottish diet, in order to reduce diet-related disease and obesity.

The economic and physical accessibility of good food was a core focus of discussions the Commission had with people in preparation for our response to the Scottish Government's Good Food National proposals<sup>59</sup>. Participants in our discussions were concerned about the quality and nutritional value of food which was most commonly available and cheapest. Studies have shown that price is the most important factor in food choices, but healthier food and raw ingredients are on average three times more expensive than processed foods high in salt, sugar and fat<sup>60</sup>.

Meeting the dietary needs of children is of particular importance as food insecurity and poor nutrition can impact significantly on children's educational attainment, social development and long-term health and well-being<sup>61</sup>. Currently around a quarter of children live in households with an income below the relative poverty line. For these children, food insecurity is high. It is clear that in Scotland the realisation of the right to food is not being met with respect to adequacy and nutrition.

There is clear policy support in Scotland for reducing childhood obesity and the First Minister has committed to halving childhood obesity by 2030. However, the lack of progress over the last 20 years strongly indicates that more of the same will not bring about a different result. Much bolder action is required if Scotland is to deliver on this commitment to its children.

7. The Commission recommends that the Committee asks the Scottish Government what plans it has to improve the implementation of its strong health policy intentions in order to achieve its policy aspirations to reduce health inequalities and make improvements in obesity rates.

8. The Commission also recommends that the Committee asks the Scottish Government when it intends to progress its Good Food Nation plans.

### **4.1.3. Mental health<sup>vii</sup>**

#### **4.1.3.1. Adult mental health outcomes**

There has been a steady and significant increase in the proportion of adults who have two or more symptoms of depression (8 per cent in 2010/11 to 12 per cent in 2016/17)<sup>62</sup>. Mental health problems are not however equally distributed across the adult population. Social deprivation significantly increases the risk of developing mental health problems, with the prevalence of common problems being twice as common (22 per cent versus 11 per cent) in the most deprived areas<sup>63</sup>. In 2018/2019 combined, the prevalence of depression, anxiety, attempted suicide and self-harm were highest amongst those living in the most deprived areas<sup>64</sup>.

The rate of suicide has generally been on a decreasing trend since 2002 from 18 to 12 deaths per 100,000 population (16+) in 2016<sup>65</sup>. Between 2016 and 2019 there has been a small but sustained rise back up to 15.2 per 100,000 population<sup>66</sup>. Within these overall figures however, the probable suicide rate for men is three times that of women and the rate

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vii SDG Goal 3 Target 3.4 places a specific focus on reducing by one third premature mortality from non-communicable diseases through prevention and treatment and promote mental health and well-being. Progress indicators include 3.4.2: Suicide mortality rate. Goal 3 also focuses on strengthening the prevention and treatment of substance abuse, including narcotic drug abuse and harmful use of alcohol (Target 3.5), which is often connected with mental health issues – as was noted by the UK review by UN Committee on the Rights of the Child.

in the most deprived areas is three times that of the least<sup>67</sup>. A target to reduce the suicide rate by 20 per cent by 2022 has been set (from a 2017 baseline)<sup>68</sup>.

9. The Commission recommends that the Committee asks the Scottish Government how it plans to reverse the rising trend in suicide rates, and achieve its target reduction by 2022.

#### **4.1.3.2. Adult mental health strategy**

The Scottish Government consultation on a '10 year vision' for mental health in Scotland highlighted the need for considerably more ambition if the new vision was to be a transformational one. There was strong criticism that there was a lack of strategic vision with a predominant focus on services, rather than wider considerations of mental health<sup>69</sup>. Criticism was also levied at the government for failing to properly evaluate and hence learn any lessons from the previous strategy's recommendations, which led to a series of outputs rather than any tangible change in outcomes for people<sup>70</sup>.

In March 2017 the Scottish Government published its new Mental Health Strategy 2017-2027<sup>71</sup>. Many stakeholders, the Commission included, expressed concerns about the Scottish Government's strategy and called for a root and branch review to be carried out by an independent body<sup>72</sup>. The Commission also called for a broad participatory process to ensure the vision for mental health is fully informed by people with lived experience.

In August 2018 the Scottish Government published its new Suicide Prevention Action Plan Every Life Matters, which sets out ten measures aimed at further reducing the rate of deaths by suicide<sup>73</sup>.

In 2019, the Commission welcomed the announcement of a review by the Scottish Parliament of the Mental Health Act, having called for a comprehensive review of mental health legislation for some time. The Commission views this review as an important opportunity to ensure that any new mental health legislation contains the right safeguards and provisions to protect people's rights as fully as possible. We particularly welcome that the review will focus on improving compliance with the full

range of people's rights, including the UN Disability Convention and the European Convention on Human Rights. Importantly, it will also consider the role of incapacity legislation which presents similar challenges in realising people's human rights<sup>74</sup>.

#### **4.1.3.3. Adult Mental health waiting times**

UKIM evidence presented to the UN Committee on the Rights of Persons with Disabilities raised concern that there are unmet needs in Intensive Psychiatric Care Units, with the majority of health boards failing to meet the 18 week waiting time target for psychological therapies<sup>75</sup>. By the end of 2019 just over 20 percent of patients were waiting more than 18 weeks to commence their treatment<sup>76</sup>.

#### **4.1.3.4. Children's mental health outcomes**

[Audit Scotland's report](#) in 2018 identified worrying outcomes for children and adolescent mental health. Currently in Scotland an estimated one in ten children aged five to sixteen in Scotland have a clinically diagnosable mental illness. The UN Committee on the Rights of the Child whilst welcoming efforts to improve mental health services, remained concerned about the number of children with mental health needs increasing, including those related to alcohol, drug and substance abuse<sup>77</sup>.

#### **4.1.3.5. Children's mental health services**

The [Scottish Government's Mental Health Strategy 2017-2027](#)<sup>78</sup> focuses on early intervention and prevention and includes a commitment to taking a human rights based approach to improving mental health services. However, [Audit Scotland's review](#)<sup>79</sup> concluded that:

*“in practice this is limited, and mental health services for children and young people are largely focused on specialist care and responding to crisis. The system is complex and fragmented, and access to services varies throughout the country. This makes it difficult for children, young people, and their families and carers to get the support they need”.*

The [Audit Scotland review](#)<sup>80</sup> also highlighted concern that data on mental health services for children and young people is inadequate, in particular any evidence to link the effectiveness of different services to improvements in mental health outcomes. The Commission has raised similar concerns to Audit Scotland about the difficulty in tracking resource allocations through to spend and impact<sup>81</sup>.

In 2018 the Scottish Government established and Children and Young People's Mental Health Taskforce which published [recommendations](#) in 2019<sup>82</sup> for the improvement in the provision for children and young people's mental health in Scotland. In responding to the initial recommendations, the Scottish Government invested an additional £4 million in the Children and Adolescent Mental Health Service (CAMHS) to provide 80 new staff. Future plans pre-pandemic included the development of community wellbeing services across Scotland, with an initial focus on children and young people from the ages of 5-24. Other planned actions include the provision of additional counsellors across Scotland's secondary schools and supporting testing of the Distress Brief Intervention programme in Aberdeen, Inverness, Borders and Lanarkshire<sup>83</sup>.

The [Programme for Government 2019-20](#)<sup>84</sup> announced the development of a 24/7 crisis support service will be made available for young people and their families (including a text service for young people), however, it was not made clear what funding was allocated to this initiative or how funding would be made sustainable.

The Mental Welfare Commission for Scotland (MWC) has expressed concern at the increasing number of young people who have been admitted to non-specialist settings and at the number of repeat admissions to these wards. In 2018/19 there were 118 admissions involving 101 young people to non-specialist beds (an increase from 103 admissions of 90 young people in 2017/18). Just over a fifth of these young people were 'looked after and accommodated' by a local authority<sup>85</sup>.

Campaign groups have also pointed out that there are only 48 in-patient CAMHS beds in Scotland for Children and Young People, located in

three regions units, with no provision North of Dundee. In practice, this means that many children and young people are being treated far away from home, often leaving them isolated from their family and support networks. NHS Health Boards have a legal duty to provide age appropriate services for young people under the age of 18 under the Mental Health (Care and Treatment) (Scotland) Act 2003. There is also concern from Mental Health NGOs in Scotland that early intervention and preventative services to support children and young people with emerging mental health conditions are poorly resourced and not meeting the needs of this vulnerable group.

10. The Commission recommends that the Committee asks the Scottish Government describe what it is doing to address the concerns regarding the availability of services to address children and young people's mental health.

#### **4.1.3.6. Children's mental health waiting times**

Between 2013/14 and 2017/18 there was a 22 per cent increase in referrals to specialist services as well as a 24 per cent increase in rejected referrals over the same period<sup>86</sup>. Although the average wait time for their first treatment appointment in 2017/18 was 11 weeks, 26 per cent waited more than 18 weeks, compared to 15 per cent in 2013/14<sup>87</sup>. Concern has been raised by the Scottish Association for Mental Health (SAMH) that despite the Scottish Government accepting all 29 recommendations set out in the [Audit of Rejected Referrals](#)<sup>88</sup>, there has been no evidence of plans for 'real' change and in the 18 months following the publication of that report, one in five referrals was refused help by CAMHS<sup>89</sup>.

Since December 2014, the delivery target from referral to treatment for the timely provision of specialist therapies is 18 weeks. Nationally this target is yet to be met and in addition, most health boards do not collect information on either the types of therapies provided and perceived impact on patients, or equality data about which groups are receiving therapies. By December 2019, only 66.4 per cent of young people had been seen within the 18 week period<sup>90</sup> and there were 589 young people

still waiting longer than 52 weeks for access to CAMHS<sup>91</sup>. This wait figure has more than tripled during the pandemic<sup>92</sup>.

11. The Commission recommends that the Committee asks the Scottish Government what plans it has to reduce the mental health waiting times for children & young people.

## **4.2. Article 11.2 – Provision of health promotion advice and education**

### **4.2.1. Ensuring informed consent to health-related interventions or treatment<sup>viii</sup>**

In 2017, [UKIM evidence](#)<sup>93</sup> presented to the UN Committee on the Rights of Persons with Disabilities raised concern about ‘Do Not Resuscitate’ (DNR) being inappropriately applied to disabled people by medical professionals across the UK. The Scottish Government has produced [revised guidance](#)<sup>94</sup> for healthcare professionals on DNR orders including a decision-making framework which highlights human rights standards and CRPD in particular. However, concerns remain and disability organisations have raised grave concerns that disabled people, including people with learning disabilities and family carers were feeling pressured into agreeing to DNR notices, or to not being admitted to hospital if they fell ill during the pandemic<sup>95</sup>.

The UN Committee on the Rights of Persons with Disabilities in its 2017 [concluding observations](#)<sup>96</sup> noted their concern that substituted decision-making applied in matters of termination or withdrawal of life-sustaining treatment and care was inconsistent with the right to life of persons with disabilities as equal and contributing members of society, asking that the State party ensure access to life-sustaining treatment and/or care be available to all. They further reinforced that:

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viii As well as focusing on achieving universal health coverage, SDG Goal 3 Target 3.8 also focuses on ensuring everyone has access to quality essential health-care services.



*“medical professionals are under the obligation to enforce standards set in guidance and criteria on “do not resuscitate” orders for persons with disabilities on an equal basis with others”<sup>97</sup>.*

Concerns were also raised by UKIM that people detained in hospitals, care homes and prisons were not always receiving treatment and care in accordance with legislative safeguards<sup>98</sup>. There is an ongoing shortage of Mental Health Officers (MHO) whose role is to act as an essential safeguard under mental health and incapacity legislation<sup>99</sup>. Large gaps have been identified in the provision of advocacy and demand is increasing while funding has either been reduced or frozen<sup>100</sup>. In mental health care, patient involvement in decisions about treatment and care planning remains low<sup>101</sup>.

Use of substitute decision-making mechanisms continues to rise under the two principal pieces of legislation – the Adults with Incapacity (Scotland) Act 2000 (AWIA) and the Mental Health (Care & Treatment)(Scotland) Act 2003. There has been an upward trend in the number of new episodes of compulsory treatment/measures and available figures for 2018/19 show this is now at its highest level since 2005, when the current legislation was introduced<sup>102</sup>. Specific concern has been raised about the duration of detentions for people with learning disabilities compared to other groups detained under the 2003 Act and the use of psychotropic medication for people with autism<sup>103</sup>.

12. The Commission recommends that the Committee asks the Scottish Government how it intends to address the grave concerns around disabled people, including people with learning disabilities and their carers and DNR notices.

13. The Commission also recommends that the Committee asks the Scottish Government when it plans to undertake a comprehensive a review of the legislation that governs non-consensual care and treatment that reflects the CRPD requirements for a supported decision-making framework.

## **4.3. Article 11.3 – Prevention of disease and accidents**

### **4.3.1. Health care services in places of detention<sup>ix</sup>**

#### **4.3.1.1. Healthcare in Police Custody**

The responsibility for healthcare in police custody transferred from Police Scotland to the NHS in 2013, with a view to giving those in police custody medical care equivalent to the wider community. While there is ongoing liaison between Police Scotland and Health Boards to try to achieve consistency of provision, each of the fourteen health boards operates a slightly different model of care<sup>104</sup>, meaning that in practice the level of provision can vary significantly between different custody suites. While some larger centres have 24 hour on site access to NHS nurses, others rely on nurses based in nearby custody centres or doctors visiting when required<sup>105</sup>.

The Committee for the Prevention of Torture (CPT), following its visit to the Scotland in 2018<sup>106</sup>, made several recommendations relating to healthcare in police custody - namely that the right to access a doctor at the very outset of detention should be provided for in law<sup>107</sup>. They also recommended that the process for identifying and recording injuries be strengthened and that all injuries should be immediately documented by NHS healthcare staff<sup>108</sup>. The CPT called on Police Scotland to standardise approaches to methadone maintenance and detoxification treatment, especially in light of the fact that some people remain in custody for more than 24 hours if detained over a weekend. Observations were also raised concerning medical consultations in police stations not taking place in private.

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<sup>ix</sup> The overall focus of SDG 3 – to ensure healthy lives and promote well-being for all at all ages is relevant throughout this section on healthcare in places of detention. Of particular importance may be Targets 3.4 on reducing by one third premature mortality from non-communicable diseases through prevention and treatment and promote mental health and well-being; 3.5 on strengthening the prevention and treatment of substance abuse, including narcotic drug abuse and harmful use of alcohol; and 3.8 on access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all.

The report of the independent review into [complaints handling, investigations and misconduct issues in relation to policing](#) heard evidence that while urgent medical cases are in the main responded to appropriately in police custody, there can sometimes be delays in responding to less critical needs such as treating minor cuts or administering routine medication. NHS provision was described as ‘consistent, but basic’<sup>109</sup>.

The extent to which police are called as first responders to people in the community who are suffering with mental ill-health is also a feature of Angiolini’s report, pointing to:

*“the tendency for people to be forced into the criminal justice system because of lack of capacity in the health service to handle the demand”<sup>110</sup>.*

Correspondingly, she recommends that training and support is given to police and other staff in dealing with individuals who display mental ill-health. She also recommends that the main focus of police and other agencies should be to divert the most vulnerable from police custody at the earliest stage possible<sup>111</sup>.

14. The Commission recommends that the Committee asks the Scottish Government how it intends to address the concerns in Dame Angiolini’s report relating to health care in custody.

#### **4.3.1.2. Healthcare in Prisons**

Prior to the Coronavirus pandemic, Scotland had an average daily prison population of approximately 8000, 95 per cent of which was male<sup>112</sup>. The rate of ill-health amongst prisoners is higher than that found amongst the general population<sup>113</sup>, with many presenting with complex health needs including mental health and addiction related conditions. It has consequently been argued that:

*“in order to address inequalities, healthcare in prison is required to be more intensive”<sup>114</sup>.*

Responsibility for healthcare in prisons transferred from the Scottish Prison Service (SPS) to the NHS in 2011 and nine health boards are now responsible for delivering healthcare in prisons situated within their boundaries<sup>115</sup>. A 2017 [Scottish Parliament Inquiry into healthcare in prison](#) found that that the transfer of responsibility had :

*“not materialised” in a better service for prisoners, and the Committee was “disappointed to discover the unique opportunity to address health inequalities within the prison environment is not being taken”<sup>116</sup>.*

The [inquiry](#) documented slow progress in driving forward improvements to prisoner healthcare, citing ongoing issues around recruitment and retention of healthcare staff across the prison estate, particularly for GPs, clinical psychologists and mental health nurses. It also highlighted frustrations expressed by medical staff about wasted capacity and not being able to fully utilise their skillsets due the amount of time spent on administering routine medications, as well as high numbers of medical appointments being missed due to prison and security staff being unavailable to escort prisoners to their appointments. Other inefficiencies such as a lack of a comprehensive clinical IT system were identified, preventing healthcare staff within prisons from being able to view the records of prisoners prior to their entry into custody, making it difficult to provide continuity of care or generate electronic prescriptions<sup>117</sup>.

The [inquiry](#) thus recommended that an agreed set of national performance indicators be universally adopted. In response, the Scottish Government established a Health and Justice Collaboration Improvement Board whose remit is to drive improvement in health and social care in prisons through partnership by removing structural barriers to delivery<sup>118</sup>. The delivery of healthcare has been impacted by the coronavirus pandemic (see Section 3.4.1.7) and staffing shortages remain an issue in some prisons<sup>119</sup> although recruitment is ongoing, with work being done to promote the role of prison healthcare and fill existing healthcare vacancies<sup>120</sup>.

15. The Commission recommends that the Committee asks the Scottish Government to set out how it intends to address the slow progress in driving forward improvements to prisoner healthcare.

#### 4.3.1.3. Women in Detention

Scotland has one of the highest rates of imprisonment of women in Europe<sup>121</sup>, with the growth attributed to the increased use of custodial sentences for certain types of crime as opposed to changes in patterns of offending<sup>122</sup>. While work is underway to address the needs of female prisoners, significant concerns remain particularly in relation to access to mental health services and purposeful activity.

In September 2018, planning permission was granted for the first of five small community jails to be built across Scotland, alongside a small national women's facility, as part of the strategy to reduce the number of women in prison<sup>123</sup>. However, delays to the building of the new units mean that this provision is unlikely to be available until 2022<sup>124</sup> and many women continue to be held in prison accommodation designated for men<sup>125</sup>. The [CPT](#) raised concerns about the lack of women-specific programmes and work spaces for women at HMP Edinburgh following its visit to Scotland in 2018, meaning that some women were locked in their cells for extended periods of time and had a comparatively poorer regime than men. It also raised concerns about the lack of a "trauma informed" admissions process in prison facilities holding women, noting that opportunities for routine screening for sexual abuse, and other forms of gender based violence have been missed<sup>126</sup>.

Women in prison are more likely to be involved in self-harm than men. Figures obtained via a Freedom of Information request showed that there were 762 incidents of self-harm in 2018, compared to 532 in 2017, a jump of 43 per cent. A total of 517 incidents were for cuts, 72 incidents were categorised under "*swallows item*", 41 for "overdose" and 31 as "*attempted suicide*"<sup>127</sup>.

A high proportion of women in prison also report to have been the victim of domestic abuse<sup>128</sup>. A recent study into head injury and violent crime in women in prison in Scotland, led by the [University of Glasgow](#), found

that 78 per cent of the women who took part in the study had a history of significant head injury – 84% of which had repeated head injuries which had occurred over years as a result of domestic abuse<sup>129</sup>. Other research has linked traumatic brain injury (TBI) to an increased likelihood of violent behaviour, criminal convictions, mental health problems and suicide attempts<sup>130</sup>. The findings of this research appear to support the case for more systematic screening of women entering prison<sup>131</sup>.

The [National Preventative Mechanism](#) (NPM), as well as its individual members, have expressed concerns about the disproportionate rates of mental ill-health of women prisoners and the lack of appropriate pathways from prison to forensic hospital care. The NPM was

*‘particularly concerned by the CPT’s account of the treatment of women in need of urgent psychiatric care in Cornton Vale prison during its 2018 visit’,*

noting that the CPT had documented at least five women held in the segregation unit who they had assessed as needing urgent psychiatric care<sup>132</sup>. Segregation units are deemed unsuitable by the NPM for vulnerable or mentally ill individuals unless there are exceptional circumstances and all other options have been exhausted<sup>133</sup>. The CPT has subsequently recommended that women in need of psychiatric care be transferred within two weeks from prison<sup>134</sup>. While some progress has been made on this<sup>135</sup>, ongoing delays due to a lack of forensic beds remains an issue.

The Commission is concerned about the a lack of provision for high secure mental health provision in Scotland . The only high secure mental health facility in Scotland is the State Hospital at Carstairs, which historically provided secure care for women, but closed the service in 2007/8 on the grounds that there was little or no demand. This has meant the women in prison requiring high secure care have to be transferred to Rampton Hospital in Nottinghamshire, England<sup>136</sup>. This pathway is problematic for a number of reasons; it does not allow for the transfer of women who are on remand or have outstanding charges; it places women far from their families and support networks; it creates

barriers to repatriating women back to Scotland because progression can only take place to medium secure units in England and it denies women the same appeal rights as they would have in Scotland due to differences in legislation between the two administrations<sup>137</sup>.

The Commission welcomed the review into how forensic mental health services are being delivered in hospitals, prisons and the community across Scotland which was announced in March 2019. The Commission's submission to this review<sup>138</sup> and its published findings<sup>139</sup> lie out with the review period for this current report, but will feature in the next review.

16. The Commission recommends that the Committee asks the Scottish Government to set out how it intends to address the multiple, grave and long standing concerns voiced by the NPM, CPT and the Commission around the health care needs, in particular the mental healthcare needs, of women in prison.

#### **4.3.1.4. Older Prisoners**

The number of older persons<sup>140</sup> in prison has risen significantly since 2013, due to a range of factors including: longer life expectancy; longer sentences for serious crimes; and an increased number of convictions for historic cases<sup>141</sup>. The number of older prisoners doubled between 2013 and 2017<sup>142</sup> and increased again by 46 percent between 2017-2020<sup>143</sup>. Consequently, there is an growing need for social care provision in prisons, as well as an increased demand for specialist services such as dementia care and end of life care.

Social Care was not included when healthcare transferred from the SPS to the NHS in 2011, nor were prisons included in the integration of health and social care in 2016. The responsibility for social care in prisons therefore remains with the SPS, who procure personal care from external service providers as required<sup>144</sup>. Research findings published by the [Scottish Government](#) earlier this year provided a central estimate that 7-10 per cent of the prison population in Scotland have social care needs, a figure that is higher than that of the general population<sup>145</sup>.

There are significant limitations to providing adequate material conditions of detention for older prisoners, those with physical disabilities and others in need of social care, with the physical layout of many of the existing Victorian prisons being unsuited to accommodating those with physical disabilities. A shortage of accessible cells is further compounded by overcrowding, with many prisoners having to share a cell designed for one<sup>146</sup>.

17. The Commission recommends that the Committee asks the Scottish Government to set out how it intends to address the changing health needs of older prisoners across the whole Scottish prison estate.

#### **4.3.1.5. Young People in secure care and prison**

Data from the Centre for Youth and Criminal Justice in 2019 shows that significant levels of mental ill-health are found within secure care institutions in Scotland. The [Centre's survey](#) indicated that, in their year prior to admission, 35 per cent of children had attempted suicide with 53 per cent experiencing suicidal thoughts<sup>147</sup>. Staff within secure care also noted that in 24 per cent of cases, there was a suspected, undiagnosed mental health concern. Despite this, only 36 per cent of children within secure care had received support from the NHS's Child and Adolescent Mental Health Service (CAMHS) and only 4 per cent from the Forensic CAMHS in the year prior to their admission<sup>148</sup>.

[Her Majesty's Inspectorate of Prisons for Scotland report](#) on the provision of mental health services for young people entering and in custody at HMP YOI Polmont in 2019 also noted that what is clear from the available evidence is that:

*“being traumatised, being young, being held on remand<sup>149</sup> and being in the first three months of custody increases the risk of suicide”<sup>150</sup>.*

The review identified two high level strategic issues warranting attention: the lack of proactive attention to the needs, risks, vulnerabilities of those on remand in early days in custody and the systemic interagency



shortcomings of communication and information exchange across the justice sector<sup>151</sup>.

A 2019 inquiry by the [Scottish Parliament Justice Committee](#)<sup>152</sup> into secure care and prison places for children and young people also noted the very high levels of mental health need and Adverse Childhood Experiences (ACES) amongst young people entering secure care. The Committee argued that when taking the decision to deprive children of their liberty, it is imperative that they have access to appropriate mental health services.

Like other detention settings, mental health provision in secure care is the responsibility of the local health board, with varying provision found across different regions<sup>153</sup>. For example, in some health board areas 16 and 17 year olds are not eligible for CAMHS support, while there is only one forensic CAMHS team in the whole of Scotland based in Glasgow. Transfers between different localities and types of establishments can therefore cause disruptions to treatment and care.

The [Royal College of Speech and Language Therapists](#) highlighted in their evidence to the inquiry that 60 per cent or more of young people who offend have significant speech, language and communication needs, yet there is no ring fenced speech and language provision for secure care and “*no meaningful structure or funding in relating to SLT*”<sup>154</sup>.

18. The Commission recommends that the Committee asks the Scottish Government to set out how it intends to address the health needs, risks, vulnerabilities of young people on remand during their early days in custody and the systemic interagency shortcomings across the justice sector.

#### **4.3.1.6. Deaths in prison custody**

An Independent Review into the handling of deaths in prison custody was instructed in Nov 2019 to enable the identification of and to make recommendations for, areas for improvement to ensure appropriate and transparent arrangements are in place in the immediate aftermath of deaths in custody within Scottish prisons, including deaths of prisoners

whilst in NHS care<sup>155</sup>. The review, which is co-chaired by the Scottish Human Rights Commission, HM Inspectorate of Prisons for Scotland (HMIPS) and Families Outside, will report with recommendations in September 2021 and will include NHS staff reflections and a review of NHS policies.

#### **4.3.1.7. COVID-19 Pandemic Response: Prisons**

The Commission, HMIPS and other members of the NPM have monitored the situation for prisoners since the start of the pandemic and raised concerns on a number of occasions with the Cabinet Secretary for Justice, the Scottish Parliament Justice Committee and the Scottish Prison Service<sup>156</sup>.

A key priority raised with the Cabinet Secretary at the start of the pandemic was reducing the prison population to around 6,500 prisoners to mitigate the inherent risk of maintaining people in close confinement and spreading the virus in the prison estate and subsequently into the community. We urged that non-custodial measures using existing instruments and the emergency release powers (under exceptional circumstances) should be implemented rapidly, paying particular attention to: detainees with underlying health conditions; remanded population<sup>157</sup>; young people under the age of 18; and those in other vulnerable categories as well as in areas of the detention estate that are already worryingly overcrowded and where the conditions are not conducive to social distancing requirements (for example, HMP Barlinnie)<sup>158</sup>.

In May 2020, 348 short sentence prisoners were identified for early release<sup>159</sup>. While this drove down numbers and eased pressures on overcrowding, it fell short of reducing the prison population to the recommended 6,500. The Commission is concerned that numbers are once again continuing to rise, with the prison population reaching 7,322 as of 21 May 2021<sup>160</sup>. Of particular concern is the number of people awaiting trial, which represents approximately 23 per cent of the total number. We have once again raised these concerns with the Cabinet Secretary for Justice<sup>161</sup>.

In May 2020 we also raised concerns with the Justice Committee that conditions being experienced by some prisoners could amount to inhuman and degrading treatment, in breach of Article 3 of the European Convention on Human Rights<sup>162</sup>. The Commission was particularly concerned about people confined to their cell for extended periods of time, with very limited access to shower facilities and time out of cells, including access to outdoor exercise. Other concerns related to prisoners confined in their cells with only limited telephone contact with their lawyer and families.

We argued that while it may be legitimate and reasonable to suspend non-essential prison activities in the current public health emergency, any restrictions must be minimised, proportionate to the nature of the health emergency, and made in accordance with law. Measures amounting to solitary confinement for healthcare reasons should only be adopted on the basis of a comprehensive medical assessment. Solitary confinement, which carries significant mental and physical health impacts, should only ever be adopted where it is proportionate, limited in time and subject to procedural safeguards<sup>163</sup>.

The Commission has also repeatedly raised concerns about the lack of transparent and accessible data available from which to enable adequate monitoring of prison conditions and their compliance with human rights standards<sup>164</sup>. Despite repeated requests, the Commission was not able to access meaningful data and has called for efforts to improve this.

The NPM has raised the importance of maintaining principles of equivalence of care in relation to both physical and mental healthcare to those in detention. At a time when all health services are under significant strain, the government must ensure that those deprived of their liberty are not disadvantaged in accessing the health services that they need. This is particularly important given the extent to which detainees are likely to be held in conditions that amount to solitary confinement<sup>165</sup>.

HMIPS Prison Liaison Visit reports<sup>166</sup> highlight that all non-essential Primary Care services, as well as access to individual psychology

sessions were suspended at the start of the pandemic in line with changes to community provision, which resulted in increased waiting lists<sup>167</sup>. However most routine clinics, as well as psychological services, have now been remobilised albeit with reduced capacity for face-to-face appointments. Waiting lists remain for certain services such as sexual health clinics<sup>168</sup>.

While HMIPS Prison Liaison Visit reports published over the past six months<sup>169</sup> cite some examples of good practice, innovation and contingency planning to ensure prisoner safety and sufficient staffing levels during the pandemic, issues have been identified in relation to staff well-being (an increase in work-related stress, tiredness, anxiety and sickness being documented) and shortages/ vacancies in some prisons.

19 a-c. The Commission recommends that the Committee asks the Scottish Government to set out how it intends to address:

a- where prison conditions experienced could amount to inhuman and degrading treatment, in breach of Article 3 of the ECHR,

b- the lack of availability of transparent and accessible data to enable adequate monitoring of prison conditions and their compliance with human rights standards,

c- the outstanding health-related CPT recommendations.

#### **4.3.2. Availability of and transition to community based mental health services**

Concern over the insufficient development of therapeutic community-based services and timely access to them for children and young people have been raised by both the UN Committee on the Rights of the Child and the UN Committee on the Rights of Persons with Disabilities<sup>170</sup>.

Specific concern has also been raised by the UN Committee on the Rights of Persons with Disabilities about delays in access to appropriate community-based services (resulting in longer than necessary stays in hospital care) for people with a learning disability or autism<sup>171</sup>. Reasons

for these delays are stated to be either /or a combination of a lack of: funding, suitable accommodation or an appropriate care provider<sup>172</sup>.

Following the death of Ms MN (who was an individual with complex needs) and subsequent investigation, the Mental Welfare Commission (MWC) recommended that the Scottish Government should audit the availability of specialist services for individuals with highly complex needs who are not appropriately accommodated in learning disability or mental health settings, and identify how gaps can be filled<sup>173</sup>.

The MWC has also identified<sup>174</sup> that for people who do not fit current service approaches, for example, people with learning disabilities and autism, mental health services need to improve their tailoring to these needs. Repeatedly the MWC identifies poorer outcomes and inadequate services for people with complex needs or needs considered out of the ordinary<sup>175</sup> during their visits and investigations<sup>176</sup>.

20. The Commission recommends that the Committee asks the Scottish Government when it will undertake the audit of availability of specialist services for individuals with highly complex needs, who are not appropriately accommodated in learning disability or mental health settings as requested by the Mental Welfare Commission.

#### **4.3.3. Drug-related deaths and transmission of infectious diseases<sup>x</sup>**

Rising drug deaths in Scotland have been of increasing concern in recent years. The number of drug deaths recoded in 2008 was 574. In 2019 this had more than double with 1264 deaths. This represents a 6 per cent rise on 2018 and the highest since records began in 1996<sup>177</sup>. The drug-related death rate in Scotland is higher than that reported for all the EU countries, and is approximately three and a half times that of

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<sup>x</sup> SDG Goal 3 Target 3.5 focuses on strengthening the prevention and treatment of substance abuse, including narcotic drug abuse and harmful use of alcohol, which is often connected with mental health issues.

the UK as a whole<sup>178</sup>. More than twice the number of men than women were victims of drug deaths in 2019, however, the numbers rose sharply in both groups. Older drug users accounted for the majority of the increase in deaths for men and women, with numbers for those aged 34 and under remaining relatively constant<sup>179</sup>.

Recent work by the National Records of Scotland and NHS Health Scotland revealed that drug-related deaths were one of the three areas most impacting on life expectancy in Scotland<sup>180</sup>. During the last Parliamentary session, cross-party concern was expressed about the situation in Scotland now classing it as a public health emergency. As such, the Scottish Government has set up a taskforce to examine the main causes of drug deaths and develop a way to respond to reduce these deaths.

#### **4.3.4. Prevention of environmental pollution and educative measures about environmental problems<sup>xi</sup>**

In 2017, the Commission presented a [statement to the 36th Session of the Human Rights Council on behalf of the UK NHRIs](#) welcoming the country report of the Special Rapporteur on human rights and hazardous substances and wastes and his encouragement to the UK government to fulfil its duty to prevent and control exposure to pollution and toxic chemicals.

The statement<sup>181</sup> noted that while levels of certain pollutants have fallen since the 1970s, grave impacts on the most vulnerable persist, and progress on some of the worst types of air pollutants has stalled in recent years. UK cities regularly fail to meet EU standards for air quality.

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xi SDG Goal 3 Target 3.9 focuses on substantially reducing the number of deaths and illnesses from hazardous chemicals and air, water and soil pollution and contamination. Specific indicators including the mortality rate attributed to household and ambient air pollution (3.9.1), Mortality rate attributed to unsafe water, unsafe sanitation and lack of hygiene (exposure to unsafe Water, and the mortality rate attributed to unintentional poisoning (3.9.3).

Air pollution is a public health concern and children, the elderly and those with lung complaints such as asthma are especially at risk<sup>182</sup>.

The statement further noted that the UK NHRIs considered that the gaps and inadequacies in existing frameworks for protection against toxic and hazardous waste must be confronted on a human rights basis, particularly as there is a high level of uncertainty about the future application of European Union regulatory law in this area now that the UK has left the European Union. It is also important that the UK Government ensures that domestic legislation adequately addresses the toxic impacts of UK businesses abroad<sup>183</sup>.

A further factor of concern for the UK NHRIs raised in the statement was the potential negative human rights impact of the UK's closer cooperation with the United States in the area of energy. As the Special Rapporteur has made clear, the rights that are often impacted by pollution and contamination are not recognized by the US while they are by the UK. We encourage the UK Government and devolved nations to be clear that Brexit is not an opening for deregulation and regression from human rights standards and must instead guarantee their ongoing protection<sup>184</sup>.

Devolution has created the opportunity for more democratic decision making about public health and environmental issues. For example the Scottish Government has a moratorium on fracking, which is allowing for informed decision-making and meaningful public participation. However, greater policy coherence and public participation in decision making should be a feature all across the UK<sup>185</sup>.

The Commission also welcomes the Scottish Government's acceptance of the Taskforce on Human rights Leadership recommendations. This includes the creation of a standalone right to a healthy environment within new forthcoming human rights legalisation which seeks to incorporate a range of international UN treaties in domestic legislation<sup>186</sup>.

21. The Commission recommends that the Committee asks the Scottish and UK Governments how they intend to meet their obligations and ensure that a rights based approach is taken to pollution and other toxic threats to the health and wellbeing of today's and future generations.

#### **4.3.5. COVID-response: adequacy of measures taken to limit the spread of virus in the population**

##### **4.3.5.1. Personal Protective Equipment<sup>xii</sup>**

The Commission welcomes the Scottish Government's commitment to hold a public inquiry into its handling of the COVID Pandemic. The Commission believes that in doing so, it is important that the Scottish Government demonstrates how human rights have systematically informed all of its law policy and decision making in response to the pandemic including where relevant through Human Rights Impact Assessment.

Having regard to the principles established in the ECtHR's case law, it is likely that a number of issues could potentially engage state responsibility, therefore triggering the requirement for an effective investigation. Among those issues are questions, as set out in detail in Section 3.3.1, over whether residents of care homes were afforded equal access to hospital treatment; whether clinical guidance was appropriate<sup>187</sup>; whether adequate personal protective equipment ("PPE") was made available for the protection of both staff and residents; and whether the availability and distribution of Coronavirus testing of care home residents and staff (including patients being transferred from a hospital setting to a care home) was adequate<sup>188</sup>.

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xii SDG Goal 8: Decent work and economic growth and Goal 3: Good health and wellbeing are both relevant to this issue. Specifically, Target 8.8 focuses on the protection of labour rights and promotion of safe and secure working environments for all workers. For Goal 3, Target 3.d makes reference to strengthening countries' capacity for risk reduction and the management of national and global health risks.



For the avoidance of doubt, the Commission does not suggest that any of the issues referred to above (in Section 3.3.1) are necessarily violations of Article 2. However, where there have been potential or arguable breaches of the obligations outlined above, the state has a duty to conduct an effective investigation. The Council of Europe Commissioner for Human Rights has highlighted that, in accordance with Article 2 obligations, states must shed light on all deaths occurring in care homes, without exception<sup>189</sup>.

#### **4.3.5.2. Test and Protect Strategy<sup>xiii</sup>**

With regard to test and trace, the Commission notes that the Scottish Government's approach has been centred largely on manual contact tracing, with the development of digital infrastructure to capture information.

While the Commission supported the Scottish Government's measures to test, trace, isolate and support as a means of controlling the spread of Coronavirus, the human rights implications of tracing technology should remain at the centre of policy making in this area<sup>190</sup>. The Commission considers that as contact tracing technology is further developed, a number of safeguards must be put in place to protect individuals' human rights. The Commission considers it essential that limits around the use of the technology are set out clearly in law, are proportionate, time-bound and subject to ongoing review and independent scrutiny.

22. The Commission recommends that the Committee asks the Scottish Government what processes are in place for the ongoing review and independent scrutiny of test and trace.

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xiii SDG Goal 3, Target 3.d makes reference to strengthening countries' capacity for risk reduction and the management of national and global health risks.

#### 4.3.5.3. Discharge from Scottish hospitals to care homes

Between March 1st and May 31<sup>st</sup> 2020, 338 patients with a known diagnosis of COVID-19 were discharged from Scottish hospitals into care homes<sup>191</sup>. This has raised serious concerns about possible links between these discharges and COVID outbreaks in care homes.

March 2020 also saw the discharge of 3599 patients from hospital, most of whom were never tested. Of the 650 who had undergone a test, 78 were found to be positive. Despite this positive result, the patients were still discharged. Guidance was introduced by the Scottish Government on April 21<sup>st</sup> requiring two negative tests before a patient could be discharged into a care home. However, a report by Public Health Scotland shows that 45 patients continued to be discharged to care homes despite not having two negative tests<sup>192</sup>.

A recent [Mental Welfare Commission's report](#) published findings regarding discharges of adults with incapacity from hospitals to care homes during the pandemic. It highlighted a number of practices which may amount to a deprivation of liberty under the European Convention on Human Rights. Several recommendations are made to Health and Social Care Partnerships, the Care Inspectorate and the Scottish Government, to ensure that the rights of people in situations of vulnerability are respected.

The Commission also [raised concerns](#)<sup>193</sup> with the Scottish Parliament's Covid-19 Committee in September 2020, highlighting instances where adults with incapacity may have been moved to alternative settings without appropriate legal authority. This is a critical safeguard for protecting an adult's rights.

Recent data shows that 33 per cent of COVID-19 related deaths were amongst care homes residents in Scotland<sup>194</sup> (this compares to 34 per cent in Northern Ireland<sup>195</sup>, 28 percent in England and Wales<sup>196</sup>). Research by NHS Lothian and Edinburgh University has revealed that the bigger the population of the care home the worse the outbreak has been, with outbreaks being up to 20 times more likely in large care homes and the likelihood of infection getting into a home tripled with every additional 20 beds<sup>197</sup>. In their areas of study (a large Scottish

health Board) 37 per cent of care-homes experienced a COVID-19 outbreak<sup>198</sup>.

23. The Commission recommends that the Committee asks the Scottish Government how it intends to address the concerns raised by the Mental Welfare Commission's report regarding discharges of adults with incapacity from hospitals to care homes during the pandemic.

In May 2021, a ruling by Scotland's Information Commissioner found the National Records of Scotland (NRS) – a Scottish Government agency – had breached freedom of information rules. Although they had provided the total number of deaths overall, they had refused to disclose how many people had died of COVID-19 in each of the country's care homes.

The Information Commissioner criticised the NRS for a lack of transparency, stating there was a “strong public interest” in the release of the information. The Information Commissioner has ordered the NRS to publish the data<sup>199</sup>, which it has agreed to do. The NRS had produced total number of death data but had argued against revealing the number of COVID-19 deaths for individual care homes as this would be detrimental to the health and safety of staff, and because it could harm the commercial interests of care home owners. Interventions to prevent the release of the data were also made by the care sector's regulator, the Care Inspectorate; Scottish Care, which represents the independent social care sector; and a Coalition of local authority chief executives as part of the Society of Local Authority Chief Executives (SOLACE).

24. The Commission recommends that the Committee asks the Scottish Government how it intends to improve the transparency of the National Records for Scotland and the Care Regulator and ensure they do not in future withhold data that is in the public interest to view.

#### 4.3.5.4. Vaccine prioritisation<sup>xiv</sup>

In Scotland, NHS Scotland have been following the Joint Committee on Vaccination and Immunisation (JCVI) advice to vaccinate those most at risk first, and those who work closest with them.

Scottish Learning Disabilities Observatory research found that people with learning/intellectual disabilities (who already experience poorer health outcomes than people without such disabilities) were:

- twice as likely as those in the general population to become infected with COVID-19;
- twice as likely to experience a severe outcome of COVID-19 infection, resulting in hospitalisation and/or death;
- more than three times more likely to die from COVID-19 than those in the general population<sup>200</sup>.

Although all adults with a learning disability were eventually offered vaccinations, for the majority, this did not come until later (Group 6 out of 9 priority groups). Given the early and strong evidence from UK-wide data<sup>201</sup> that people with a learning/intellectual disability were disproportionately at risk from, and affected by, COVID-19, some have questioned whether people with learning/intellectual disabilities should have been a higher priority for vaccination<sup>202</sup>.

25. The Commission recommends that the Committee asks the Scottish Government how it intends to ensure that in future such prioritisation process can better account for and adapt to emerging evidence of priority risk amongst certain population groups.

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<sup>xiv</sup> SDG Goal 3 Target 3.8 includes a focus on achieving universal health coverage, including access to vaccines for all.

## **5. Article 12 – The right to social security**

### **5.1. Article 12.1- Establish or maintain a system of social security<sup>xv</sup>**

#### **5.1.1. Creation of the Scottish Social Security System**

As detailed in the UK State Report Annex, in 2018 the Social Security (Scotland) Act established a framework for the new system and devolved 11 existing social security entitlements to Scotland. The public authority 'Social Security Scotland' is new and still to fully implement its mandate<sup>203</sup>.

The Act has provided an opportunity for Scotland to address some of the worst impacts of Westminster's welfare reforms. The Commission welcomes the fact that the Scottish Government is committed to building Scotland's social security system on the principles of dignity and respect and the establishment of a scrutiny body which in performing any functions, may have regard to international human rights instruments.

The Commission also welcomed the participation of people with lived experience of the UK social security system to inform the Act, the Charter and a monitoring system for the implementation of the Act. The Commission believes, however, that the engagement of the experience panels should not be time-bound to four years. In the first instance, this is important due to the COVID-19 related implementation delays. However, the Commission also feels that in terms of the ongoing monitoring of the system, people with lived experience have a unique insight in this process and should continue to be involved.

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xv SDG Goal 1 focuses on the eradication poverty, with a specific target (1.3) focused on the Implementation of nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable; and a focus on creating sound policy frameworks at the national, regional and international levels, based on pro-poor and gender sensitive development strategies, to support accelerated investment in poverty eradication actions (Target 1.b).

One aspect of the new Act with which the Commission were disappointed, was in the decision by the Scottish Government and parliamentarians not to take the opportunity to incorporate the right to social security in relevant legislation or place a duty on Ministers to have 'due regard' to the international human right to social security when taking decisions on social security. Without this, there is no legal mechanism in the Act for holding Ministers to account on the delivery of the right to social security.

26. The Commission recommends that the Committee asks the Scottish Government how it intends to remedy this failure to improve the legislation in human rights terms and address the clear accountability gap it has created.

### **5.1.2. Current Scottish Social Security Provisions**

In addition to some changes in the way that Universal Credit is administered<sup>204</sup>, the Scottish Government has so far used its social security powers to introduce the following new entitlements:

- Best Start Foods<sup>205</sup>
- Carer's Allowance Supplement<sup>206</sup>
- Young Carer Grant<sup>207</sup>
- Best Start Grants (Pregnancy, Early Learning & School Age)<sup>208</sup>
- Funeral Expense Assistance<sup>209</sup>

The Scottish Government was also set to provide or assume responsibility for a range of other entitlements in 2020/2021, including:

- Scottish Child Payment<sup>210</sup>
- Job Start Payment<sup>211</sup>
- Child Disability Payment (CDP)<sup>212</sup>
- Disability Assistance for Working Age People (DAWAP)<sup>213</sup>
- Disability Assistance for Older People (DAOP)<sup>214</sup>
- Severe Disablement Allowance (SDA)
- Industrial Injuries Disablement Benefit (IIDB).

However, due to the impact of COVID-19, in particular on the capacity of Social Security Scotland, some of the planned social security programme has been delayed. In the meantime, current disability entitlements will continue to be delivered by the Department for Work and Pensions (DWP).

Local authorities in Scotland also provide a range of relevant support through: the Scottish Welfare Fund (access to crisis grants); council tax reduction scheme; discretionary housing payments (in part to compensate for the 'bedroom tax') and free school meals<sup>215</sup>. To support increased demand for these provisions at this time, local authorities received a £100m boost<sup>216</sup>.

## **5.2. Article 12.3 – Development of the social security system**

### **5.2.1. Impact of COVID-19**

COVID-19 has had a major impact on the lives and livelihoods of millions of people throughout Scotland and the rest of the UK. The impact of COVID-19 has shone a spotlight on the inadequacy of the current UK social security system, with the most economically vulnerable falling through an inadequate social security 'safety net'. Ten years of contractionary fiscal policy (i.e. austerity) by successive UK governments has reduced the levels of support available to people. This, coupled with an increase in insecure, low paid jobs, means that hundreds of thousands of people in Scotland now require financial support via social security in order to meet their basic needs.

Despite the introduction of some necessary measures at a UK level to preserve or boost incomes such as: the job retention scheme, a small increase in Universal Credit standard allowance and working tax credits; as well as the introduction in Scotland of an additional payment to people in receipt of the Carer's Allowance Supplement, and funding for the: Wellbeing Fund<sup>217</sup>, Scottish Welfare Fund, Hardship Fund and Food Fund<sup>218</sup>, households across Scotland are still struggling to stay afloat. Particular groups are suffering disproportionately more than others,

specifically women, children, persons with disabilities and low-income families<sup>219</sup>.

With large-scale job losses in a wide range of sectors, it is inevitable that more people will need to claim and rely upon social security.

Experimental claimant count data for Scotland<sup>220</sup> for January 2021 revealed 206,150 claims were made for Universal Credit. This compares to 115,676 claims in February 2020 and 105,545 in February 2019<sup>221</sup>.

The economic situation in Scotland as in the rest of the UK is becoming severe. The Standard Life Foundation Financial Impact Tracker was set up to provide data on the effect of COVID-19 on household finances. It shows that as of January 2021, 27 per cent of households with children and 17 per cent of households without children in the UK were living on a lower income than in February 2020 as a direct result of a pandemic-related loss of earnings<sup>222</sup>.

The Child Action Poverty Group have highlighted that an out of work family with two children, relying on social security, is currently left with an income 20 per cent below the poverty line<sup>223</sup>. These families are reporting increased financial stress and associated anxiety, loneliness, and more complex mental health problems<sup>224</sup>. This reveals the hidden cost of inadequate social security payments on families, and its damaging effect on society as a whole. Without further direct financial support for those who are currently in need of social security, Scotland runs the risk of thousands plunging below the poverty line.

A range of other evidence has also emerged that highlights the growing precariousness of many households' finances. This includes a noted rise in requests for social security support information made to Citizens Advice Scotland – with a 44 percent rise in visits to their online site compared to April 2019<sup>225</sup>. The Scottish Welfare Fund has also had more than 50 per cent higher number of crisis grant applications in March 2020 compared to March 2019<sup>226</sup>.

Of increasing concern is the disproportional effect of COVID-19 on women. For a range of reasons, women are the most likely to be living in both in-work and out-of-work poverty in the UK<sup>227</sup>. This means women, on average, rely on access to social security for a larger proportion of



their income than men. Women also have a disproportionate responsibility for caring for children and account for 91 per cent of lone parents, meaning women's poverty is inextricably interlinked with child poverty<sup>228</sup>. Additionally, beyond problems with Universal Credit, Women are also less likely to qualify for Statutory Sick Pay (SSP), due to low pay or zero-hours contracts necessitated by child or care responsibilities. This is coupled with the fact women make up 70 per cent of those on jobs not eligible for SSP whilst also making up 77 per cent of those in 'high risk' jobs thus leaving them more likely to require SSP<sup>229</sup>. The COVID-19 crisis has exacerbated this already unacceptable situation for women throughout the country<sup>230</sup>.

27. The Commission recommends that the Committee asks the UK Government, what social security measures it intends to have in place to ensure that the exit from lockdown and withdrawal of temporary support does not leave people unable to realise their right to an adequate standard of living.

### **5.2.2. COVID-19 additional support**

In order to help alleviate some of the impacts of COVID-19, the Scottish Government introduced emergency legislation<sup>231</sup>, which has included a combination of administrative and financial measures to support those most in need.

Time limits for Best Start Grants were temporarily relaxed, so that people did not miss out if applications were late due to COVID-19. This included time limits for: making an application; a redetermination request; a decision on a redetermination; and appealing to the First tier Tribunal.

For those in receipt of Carer's Allowance, carers were allowed a temporary break in caring where the carer or the person they care for has COVID-19 or is self-isolating because of symptoms. There was also been a temporary relaxation on the requirement that care must be provided with the physical presence of a cared for person, thereby allowing the provision of emotional care remotely if necessary.

The Scottish Government made additional funding available as part of a £350m package announced on 18 March 2020<sup>232</sup>. This included:

- An increase from £35.5m to £80.5m of the Scottish Welfare Fund and an amended process making it easier to get more than 3 payments per year<sup>233</sup>.
- An additional £50m was allocated for council tax reduction and Scottish social security entitlements to meet the anticipated increased need.
- A £70m 'food fund' was created, in part, to provide support for families who are unable to access free school meals.

Those in receipt of the Carer's Allowance Supplement also received a one-off top-up payment of £230 in June 2020 to provide some more support for carers during Coronavirus<sup>234</sup>.

The Scottish Government also announced an extra £5 million funding for students in hardship, which could be applied for by students directly via their college or university. This was funded through redirected travel and childcare funds which were no longer required.

## **6. Article 13 – The right to social and medical assistance**

### **6.1. Article 13.1 – Adequate assistance for every person in need<sup>xvi</sup>**

#### **6.1.1. Poverty in Scotland**

Overall figures for Scotland<sup>235</sup> in 2016-19 were as follows:

- Relative Poverty (below 60% of the median UK income in the current year after housing costs)
  - Total population - 19 percent
  - Children - 23 per cent (of these 68 per cent were from working households)
  - Working age adults - 19 per cent
  - Pensioners - 15 per cent
  
- Absolute Poverty (below 60% of the 2010/11 UK median income after housing costs)
  - Total population - 17 percent
  - Children - 21 per cent
  - Working age adults - 17 per cent
  - Pensioners - 12 per cent
  
- Persistent poverty<sup>236</sup> after housing costs was in 2015-19
  - Total population - 12 percent

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xvi SDG Goal 1 focuses on the eradication poverty and Goal 2 places a specific focus on food poverty. Relevant targets include Target 1.1 - eradicating extreme poverty for all; Target 1.2 - reducing by at least 50 percent the proportion of men, women and children of all ages living in poverty in all its dimensions according to national definitions; Target 1.3- Implementing nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable; Target 1.4 ensuring equality of access to basic services and equal rights to economic resources; and Target 2.1 is focused on ending hunger and ensure access by all people, in particular the poor and people in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round.

- Children - 16 per cent
- Working age adults - 11 per cent
- Pensioners - 12 per cent

Within these overall statistics, certain groups of children and young people are disproportionately impacted by poverty. At frequently higher risk are children under five; children living with a disabled parent/carer and children with a disability; as well children from minority ethnic backgrounds<sup>237</sup>.

Currently almost one in four (240,000) children are officially recognised as living in poverty in Scotland<sup>238</sup>. Pre-COVID impact analysis by the Resolution Foundation suggested this may rise to 29 per cent by 2023/24<sup>239</sup>, with the Scottish Government's own figures suggesting a figure of 38 percent by 2030 in the absence of significant policy change<sup>240</sup>.

28. The Commission recommends that the Committee asks the UK and Scottish Governments, how, beyond current policy efforts, they intend to tackle the unacceptably high level of child poverty in Scotland.

### **6.1.2. Reforms to the general framework**

In 2016, the Fairer Scotland Action Plan (FSAP) was launched. The focus of this plan is a long term partnership initiative between Government and the wider public, private and third sectors, to work with those in communities with lived experience of inequalities and poverty to shape policy moving forward.

The FSAP sets out 50 actions and resulted in the creation of a national Poverty and Inequality Commission in 2017, whose main role is to provide independent advice and scrutinise progress on poverty and inequality. Through the Child Poverty (Scotland) Act 2017 (see below), the Commission transitioned to a statutory footing from July 2019. A Fairer Scotland Duty was introduced in April 2018, which places a legal responsibility on the Scottish Government and a range of other public bodies to consider how they can reduce inequalities of outcomes caused by socio-economic disadvantage, when making strategic decisions.

The Scottish Budget is also now accompanied by an Equality and Fairer Scotland Budget Statement<sup>241</sup> which aims to provide a focus on the main challenges that are faced, across different portfolios, in relation to socio-economic equality, on the basis of the protected characteristics in the Equality Act 2010, and on the realisation of human rights. It sets out the main ways that these challenges are being addressed through the government's budgetary decisions.

Other aspects of relevant policy development during the reference period include the Child Poverty (Scotland) Act 2017, which sets out ambitious targets in line with the SDGs, to reduce child poverty by 2030. A range of measures to achieve this were set out as part of the Scottish Government's first '[Tackling Child Poverty Delivery Plan](#)'<sup>242</sup>. Local authorities and health boards now have a statutory duty to deliver joint plans setting out how they tackle child poverty. However, Local councils have experienced a real terms funding cut of almost ten per cent from 2010-2018 with increasing demand for services, particularly from a growing older population<sup>243</sup>. This makes it increasingly difficult for local delivery plans to make the necessary difference in child poverty rates.

As noted above in reference to Article 12, the Social Security (Scotland) Act 2018 established a framework for the new system and devolved 11 existing social security entitlements to Scotland.

### **6.1.3. Adequacy of assistance<sup>xvii</sup>**

It is widely recognised that the social security system in the UK, with the cumulative impact of reforms<sup>244</sup> introduced by successive UK Governments since 2010, and its recent reforms in areas such as the household benefit cap, under-occupancy charge, changes to unemployment support and the roll-out of Universal Credit, continue to

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xvii SDG Goal 17 focuses on strengthening the means of implementation for sustainable development. This includes a focused target (17.1) on Strengthening domestic resource mobilization, to improve domestic capacity for tax and other revenue collection.

have a particularly negative and disproportionate impact on women, children, and disabled people.

The statistics bear out that there is a causal link between the implementation of social security and the experience of food insecurity. The Trussell Trust cite that the top four reasons for referral to a food bank were 'low income, 'benefit delay', 'benefit change' and 'debt'<sup>245</sup>. This has been further supported by the Independent Food Aid Network (IFAN) in their research on reasons for food bank use in 2019 and 2020<sup>246</sup>.

Between 1st April 2019 and 30<sup>th</sup> September 2019, The Trussell Trust's foodbank network distributed 112,207 three day emergency food supplies to people in crisis in Scotland (75,328 to adults and 36,879 to children). This was an almost 22 per cent increase from the same period in 2018 (where 87,981 food parcels were delivered)<sup>247</sup>. In the 5 year period 2015/16 and 2019/20, there has been a 43 per cent increase in the number of food parcels distributed by the Trust in Scotland<sup>248</sup>.

Deep concern has been expressed by a number of UN Treaty Bodies<sup>249</sup> and the Special Rapporteur on Extreme Poverty<sup>250</sup> about the various changes introduced by the Welfare Reform Act 2012 and the Welfare Reform and Work Act 2016. Particular concern has also been expressed by the Committees and the Special Rapporteur on Extreme Poverty about the adverse impact of these changes and cuts on the enjoyment of the rights to social security and to an adequate standard of living by disadvantaged and marginalised individuals and groups, including women, children, persons with disabilities and low income families<sup>251</sup>.

In terms of the UK Government's obligation to use the maximum of its available resources to address economic, social and cultural rights, there is significant work that could be undertaken in relation to taxation and improvements in their efforts to address and reduce tax evasion, avoidance and debt. Research by the [Tax Justice Network](#)<sup>252</sup> has revealed that a 2019 ranking of countries' complicity in global corporate tax havenry has estimated that the UK spider's web (UK and its Overseas Territories and Crown Dependencies) is responsible for over a

third (37.4 per cent) of the world's corporate tax abuse risks<sup>253</sup>. The UK is also a significant global loser in terms of total tax revenue loss (2<sup>nd</sup> only to the USA) – with tax loss per collected tax being estimated at 5.35 percent (which equates to just over £28 billion)<sup>254</sup>. The Tax Justice Network have equated this tax loss to the loss of the annual salaries of 840,209 nurses<sup>255</sup>.

While a number of aspects of social assistance lie with the UK Government, it is also the case that Scotland now has extensive control over the some of the key tools and levers needed for positive change (including the taxation of both property and income in Scotland), which it has an obligation to make use of in order to maximise the available resources.

The Scottish Government has claimed that it is 'the fairest taxed part of the UK'<sup>256</sup>. Whilst they have been willing to increase personal taxation, it has been argued that their reluctance to take forward more substantive reforms (especially around property taxation) and the reduction in burden of business taxation through non-domestic (business) rates, means that in practice, currently policy divergence from the rest of the UK equates to less than 2 per cent of the government's resource budget<sup>257</sup>.

In order to maximise the Scottish Government's available resources to tackle poverty and social inequality, more use is required of their tax varying and tax raising powers at the local and national levels. The following have been suggested by David Eiser (Adviser to the Scottish Parliament's Finance and Constitution Committee since August 2016), including:

- Evaluating the reliefs system in non-domestic rates and determine whether the current £750 million opportunity costs are justified;
- Fulfilling the commitment to give local authorities the ability to introduce taxes on workplace parking spaces and transient visitors;
- Reforming/replacing council tax with a more progressive tax on land value; and

- Committing to publishing an assessment of the possibilities of ‘new taxes’ that the government now has the power to introduce under the Scotland Act 2012<sup>258</sup>.

29. The Commission recommends that the Committee asks the UK Government how it intends to address the serious cumulative and disproportionate impacts of reforms by successive UK Governments since 2010.

30. The Commission also recommends that the Committee asks the UK Government how it could better tackle tax evasion, avoidance and debt that currently deprives the UK treasury of tens of billions of pounds annually.

31. The Commission further recommends that the Committee asks the Scottish Government how it plans to maximise its available resources through including through use of its tax varying and tax raising powers at the local and national levels.



## **7. Article 14 – The right to benefit from social welfare services**

### **7.1. Article 14.1 – Promotion or provision of social services<sup>xviii</sup>**

#### **7.1.1. Impact of COVID-19 on the operation of social services**

In Scotland Self-Directed Support (SDS) was developed as a means to enable disabled people to make informed choices about social care and how it is delivered. However, despite having rights based legislation that was well supported by disabled people and their organisations, in practice, even before the pandemic, concerns were raised about its implementation, including reports of insufficient packages and chronic underfunding<sup>259</sup>.

It was reported that information disclosed in response to a Freedom of Information request showed that in the region of 4000 care packages had been ceased or reduced across Scotland compared to January 2020<sup>260</sup>. The full scale of the cessation or reduction of care packages is not known because several Health and Social Care Partnerships failed to provide data, and others provided it in a form that was not comparable. Research by Inclusion Scotland found that:

*‘almost half of people responding on this issue told us, they said that the COVID-19 pandemic has had an impact on the social care support they get, formal and informal. Around 30% of respondents told us their support had either stopped completely or had been reduced’<sup>261</sup>.*

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xviii SDG Goal 1 Target (1.3) focuses on the Implementation of nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable; SDG Goal 3 Target 3.8 focuses on access to quality essential health-care services. Both are relevant in the context of social care provision.

In Glasgow, where only people with ‘critical’ needs were receiving support, almost 2000 people’s care packages were affected<sup>262</sup>. More than half of the members of Glasgow Disability Alliance who took part in their lockdown surveys reported that they were worried about food, money and medication. Eighty per cent were not aware of local services they could access, and 90 per cent were worried about their physical or mental health<sup>263</sup>.

This has had, and in some instances continues to have, a severe impact on the enjoyment of rights by a whole range of groups and individuals including disabled people, older people, people with learning disabilities, people with dementia, family carers, including parent carers, young carers and others. These impacts were predictable. The strain in the social care system, in terms of underfunding, understaffing, limited participation and voice for people, their families, and to some extent, even providers, has been known and understood for some time. The identity of the workforce is well-understood, in terms of gender and immigration status<sup>264</sup>.

In October 2020, the Commission published research<sup>265</sup> which reconfirmed that a considerable proportion of people who used social care support at home had experienced either a reduction or complete withdrawal of support during the COVID-19 pandemic. Evidence from research participants showed how the reduction or withdrawal of care and support at home led to circumstances in which people were left without essential care, such as assistance to get up and go to bed, to wash and use the toilet, to eat and drink, and to take medication. The report detailed how the removal of care plans during COVID-19 had a direct and detrimental effect on people’s rights, including potential unlawful interferences and non-compliance with rights contained in the European Convention on Human Rights and the United Nations Convention on the Rights of Persons with Disabilities.

The Commission expressed deep concern about the current social care support available to people whose packages were reduced or withdrawn. The report set out 24 recommendations in total, some of which call for urgent action to resolve immediate human rights concerns<sup>266</sup>.

32. The Commission recommends that the Committee asks the Scottish Government to jointly commit with the Convention of Scottish Local Authorities (COSLA) to the return of care and support at pre-pandemic levels, as a minimum.

33. The Commission also recommends that the Committee asks how the Scottish Government intends to address the 24 recommendations set out in the Commission's Monitoring of Social Care report.

## **7.2. Article 14.2 – Public/ civil society participation in the establishment and maintenance of social services<sup>xix</sup>**

The Commission has strongly encouraged public and civil society participation in the development and implementation of law, policy and practice in Scotland. Much of the Commission's capacity building work has focused on taking a human rights based approach to public services through the PANEL Principles of Participation, Accountability, Non-Discrimination, Empowerment and Legality. One clear example of this work was the encouragement of the Scottish Government to work with people with lived experience of the UK social security system to inform the new Social Security (Scotland) Act, the Charter and a monitoring system for the implementation of the Act.

As noted above in relation to Article 12, the Commission believes, however, that the engagement of the experience panels should not be time-bound to four years.

The Commission would also like to see the Scottish Government and other public bodies develop more systematic processes to ensure the participation of rights holders in the development, implementation and monitoring of public services, as well as in the scrutiny of budgetary

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<sup>xix</sup> SDG Goal 17 focuses on strengthening the means of implementation for sustainable development. This includes a focused target (17.17) on encouraging and promoting effective public, public-private and civil society partnerships, building on the experience and resources strategies of partnerships.

decisions. In doing so, this could help to avoid an actual or perceived tokenistic inclusion of rights holders in such processes, which has been a common experience to date<sup>267</sup>.

The Commission is pleased that the Scottish Government accepted all 30 of the recent recommendations of the [Human Rights Leadership Taskforce](#)<sup>268</sup>, which includes an agreement to both further consider including an explicit right to participation, drawn from the principles of international human rights law, within the forthcoming Scottish human rights legislation; as well as recognising the crucial importance of effective public participation in the development and implementation of the new framework. This, if fulfilled, has the potential to transform public and civil society engagement in the establishment and maintenance of social services.

34. The Commission recommends that the Committee asks the Scottish Government to set out its plans with regard to improving public and civil society participation in the establishment and maintenance of social services.

### **7.3. Article 14.2 - Responses to comments and queries from 2017 conclusions**

#### **7.3.1. Implementation of effective supervisory system of social services**

In April 2018 the new [Health and Social Care Standards](#)<sup>269</sup> came into effect. The new Standards are relevant across all health and social care provision, including regulated care settings, social care, early learning and childcare, children's services, social work, health provision, and community justice. The Care Inspectorate and Healthcare Improvement Scotland led a development group that co-produced the new Standards, working alongside people using services, providers and other agencies.

Through Scotland's National Action Plan, the Commission sat on the new Standards Project Board for a number of years and provided periodic advisory input to the development of the Standards. We also submitted evidence to the Scottish Government's consultation<sup>270</sup> on the new Standards. We thoroughly welcomed the commitment to the new

Standards taking a human rights based approach. Embracing the importance and the practical application of human rights to the provision of health and social care services within these new Standards has the potential to deliver effective services which produce better results for both service users and staff in a culture which respects, protects and fulfils human rights obligations.

As noted above in Section 4.3.5.3, a recent [Mental Welfare Commission's report](#) was published regarding discharges of adults with incapacity from hospitals to care homes during the pandemic. The Scottish Government has also been instructed to monitor the delivery of the above recommendations and work with Health and Social Care Partnerships and the Care Inspectorate to support consistency and address any barriers to delivery over the next two years (MWC Recommendation 11).

35. The Commission recommends that the Committee asks the Scottish Government how it intends to monitor the delivery of the Mental Welfare Commission report's recommendations regarding discharges of adults with incapacity from hospitals to care homes during the pandemic.

**End**

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# Appendix 1: Summary of Recommendations

## Recommendations relating to reporting period 2016-19

### Article 11

3. The Commission recommends that the Committee asks the Scottish Government to explain how they plan to address this stagnation in progress on improving life expectancy, and years of life spent 'in good health' in Scotland.

4. The Commission recommends that the Committee asks the Scottish Government how it is planning to improve its policy frameworks to address the sexual and reproductive health of disabled people.

5. The Commission recommends that the Committee asks how the Scottish Government plans to ensure that NHS services focus on equality of access for diverse groups of women.

6. The Commission recommends that the Committee asks the Scottish Government what plans it has to improve the implementation of its strong health policy intentions in order to achieve its policy aspirations to reduce health inequalities including improvements in life expectancy.

7. The Commission recommends that the Committee asks the Scottish Government what plans it has to improve the implementation of its strong health policy intentions in order to achieve its policy aspirations to reduce health inequalities and make improvements in obesity rates.

8. The Commission also recommends that the Committee asks the Scottish Government when it intends to progress its Good Food Nation plans.

9. The Commission recommends that the Committee asks the Scottish Government how it plans to reverse the rising trend in suicide rates, and achieve its target reduction by 2022.

10. The Commission recommends that the Committee asks the Scottish Government describe what it is doing to address the concerns regarding the availability of services to address children and young people's mental health.

11. The Commission recommends that the Committee asks the Scottish Government what plans it has to reduce the mental health waiting times for children & young people.

12. The Commission recommends that the Committee asks the Scottish Government how it intends to address the grave concerns around disabled people, including people with learning disabilities and their carers and DNR notices.

13. The Commission also recommends that the Committee asks the Scottish Government when it plans to undertake a comprehensive a review of the legislation that governs non-consensual care and treatment that reflects the CRPD requirements for a supported decision-making framework.

14. The Commission recommends that the Committee asks the Scottish Government how it intends to address the concerns in Dame Angiolini's report relating to health care in custody.

15. The Commission recommends that the Committee asks the Scottish Government to set out how it intends to address the slow progress in driving forward improvements to prisoner healthcare.

16. The Commission recommends that the Committee asks the Scottish Government to set out how it intends to address the multiple, grave and long standing concerns voiced by the NPM, CPT and the Commission around the health care needs, in particular the mental healthcare needs, of women in prison.

17. The Commission recommends that the Committee asks the Scottish Government to set out how it intends to address the changing health needs of older prisoners across the whole Scottish prison estate.

18. The Commission recommends that the Committee asks the Scottish Government to set out how it intends to address the health needs, risks, vulnerabilities of young people on remand during their early days in custody and the systemic interagency shortcomings across the justice sector.

20. The Commission recommends that the Committee asks the Scottish Government when it will undertake the audit of availability of specialist services for individuals with highly complex needs, who are not appropriately accommodated in learning disability or mental health settings as requested by the Mental Welfare Commission.

21. The Commission recommends that the Committee asks the Scottish and UK Governments how they intend to meet their obligations and ensure that a rights based approach is taken to pollution and other toxic threats to the health and wellbeing of today's and future generations.

## **Article 12**

26. The Commission recommends that the Committee asks the Scottish Government how it intends to remedy this failure to improve the legislation in human rights terms and address the clear accountability gap it has created.

## **Article 13**

28. The Commission recommends that the Committee asks the UK and Scottish Governments, how, beyond current policy efforts, they intend to tackle the unacceptably high level of child poverty in Scotland.



29. The Commission recommends that the Committee asks the UK Government how it intends to address the serious cumulative and disproportionate impacts of reforms by successive UK Governments since 2010.

30. The Commission also recommends that the Committee asks the UK Government how it could better tackle tax evasion, avoidance and debt that currently deprives the UK treasury of tens of billions of pounds annually.

31. The Commission further recommends that the Committee asks the Scottish Government how it plans to maximise its available resources through including through use of its tax varying and tax raising powers at the local and national levels.

#### **Article 14**

34. The Commission recommends that the Committee asks the Scottish Government to set out its plans with regard to improving public and civil society participation in the establishment and maintenance of social services.

35. The Commission recommends that the Committee asks the Scottish Government how it intends to monitor the delivery of the Mental Welfare Commission report's recommendations regarding discharges of adults with incapacity from hospitals to care homes during the pandemic.

#### **Recommendations relating to COVID**

A number of recommendations have been raised in relation to the Committee's COVID-specific questions. Overall, the Commission believes that the full range of issues as outlined below could be addressed within the structure of a public inquiry into the response to the pandemic that takes a human rights based approach.

### **Article 3**

1. The Commission recommends that the Committee ask the UK and Scottish Governments what steps they will take to ensure that in a future such event (or a resurgence of COVID), personal protective equipment and testing will be available to everyone who requires or provides personal care in a social care environment.

2. The Commission recommends that the Committee ask the Scottish Government to reconfirm its commitment to taking a human rights based approach to a public inquiry into the response to the pandemic, which specifically gives consideration as to whether human rights standards and principles have been met.

### **Article 11**

19 a-c. The Commission recommends that the Committee asks the Scottish Government to set out how it intends to address:

a- where prison conditions experienced could amount to inhuman and degrading treatment, in breach of Article 3 of the ECHR,

b- the lack of availability of transparent and accessible data to enable adequate monitoring of prison conditions and their compliance with human rights standards,

c- the outstanding health-care related CPT recommendations.

22. The Commission recommends that the Committee asks the Scottish Government what processes are in place for the ongoing review and independent scrutiny of test and trace.

23. The Commission recommends that the Committee asks the Scottish Government how it intends to address the concerns raised by the Mental Welfare Commission's report regarding discharges of adults with incapacity from hospitals to care homes during the pandemic.

24. The Commission recommends that the Committee asks the Scottish Government how it intends to improve the transparency of the National Records for Scotland and the Care Regulator and ensure they do not in future withhold data that is in the public interest to view.

25. The Commission recommends that the Committee asks the Scottish Government how it intends to ensure that in future such prioritisation processes can better account for and adapt to emerging evidence of priority risk amongst certain population groups.

## **Article 12**

27. The Commission recommends that the Committee asks the UK Government, what social security measures it intends to have in place to ensure that the exit from lockdown and withdrawal of temporary support does not leave people unable to realise their right to an adequate standard of living.

## **Article 14**

32. The Commission recommends that the Committee asks the Scottish Government to jointly commit with the Convention of Scottish Local Authorities (COSLA) to the return of care and support at pre-pandemic levels, as a minimum.

33. The Commission also recommends that the Committee asks how the Scottish Government intends to address the 24 recommendations set out in the Commission's Monitoring of Social Care report.

# Endnotes

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1 The Commission works in close collaboration with the Equality and Human Rights Commission (in relation to the exercise in Scotland of reserved powers), and when appropriate the Northern Ireland Human Rights Commission (in relation to UK-wide legislation, policy and practice), to ensure that each of the three NHRIs plays its part in securing effective protection.

2 <https://rm.coe.int/rap-cha-uk-40-2021/1680a1b556>

3 See <https://www.scottishhumanrights.com/media/1165/3rdstrategicplan2016-2020pdf.pdf>

4 See

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC%2fIFN%2fGBR%2f23800&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC%2fIFN%2fGBR%2f23800&Lang=en)

5 See [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2f6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2f6&Lang=en)

6 See <https://www.scottishhumanrights.com/media/1559/crpdfeb2017ukimuksubmission.pdf>

7 See <https://www.scottishhumanrights.com/media/1264/uncrpdeliveryplanjan16sub.doc>

8 See

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNHS%2fGBR%2f34432&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNHS%2fGBR%2f34432&Lang=en)

9 See

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fCSS%2fGBR%2f33660&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fCSS%2fGBR%2f33660&Lang=en)

10 See <https://www.scottishhumanrights.com/media/1525/shrc-upr-submission-22-sept-2016.pdf>

11 See <https://globalgoals.scot/scottish-sdgs-national-review-2020/>

12 See <https://www.scottishhumanrights.com/media/1689/getting-it-right-an-overview-of-human-rights-in-scotland.pdf>

13 See <https://globalgoals.scot/scottish-sdgs-national-review-2020/>

14 Through Scotland's National Action Plan for Human Rights, the Commission established a Reference Group on the right to an adequate standard of living, whose members are people with lived experience of poverty, including homelessness, food, fuel and rural poverty. The members have a wide range of individual and collective experiences and almost all of them identify as disabled. The group has been meeting up to 6 times a year since 2015 and have contributed to many policy submissions, on changes to social security, fuel poverty, community development, the Commission's strategic plan and they also met with the UN Special Rapporteur on Extreme Poverty when he visited Scotland in 2018. The group has recently reviewed its purpose, membership and terms of reference and has now evolved to become a Lived Experience Leadership Group with a formal relationship to the Commission rather than the National Action Plan.

15 See <https://www.scottishhumanrights.com/covid-19/health-social-care/>

16 The Commission has made a series of recommendations in relation to both emergency legislation and administrative policy measures introduced to tackle the COVID-19 pandemic. All of the Commission's recommendations in relation to COVID-19 are collated and curated in a dedicated section of our website - <https://www.scottishhumanrights.com/covid-19/>

17 <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/general-publications/weekly-and-monthly-data-on-births-and-deaths/deaths-involving-coronavirus-covid-19-in-scotland> ;

<https://www.nrscotland.gov.uk/files/statistics/covid19/covid-deaths-infographic-week-31.pdf>

18 See [Coronavirus \(COVID-19\): daily data for Scotland - gov.scot \(www.gov.scot\)](#); and [The full picture of Covid-linked deaths in Scotland's care homes - BBC News](#)

19 See, for example: 'Care home coronavirus deaths in Scotland overtake hospitals', The Guardian, 3 June 2020; Age UK response to DNR forms during COVID-19 crisis; Official Report, Meeting of the Parliament (Hybrid) 3 June 2020, First Minister's Question Time; Official Report, Meeting of the Parliament (Virtual) 27 May 2020, First Minister's Question Time; Official Report, Meeting of the

Parliament (Hybrid) 24 June 2020, First Minister's Question Time.

20 See <https://www.scottishhumanrights.com/media/2102/covid-19-social-care-monitoring-report-vfinal.pdf>

21 *ibid.*

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- 22 Ibid.
- 23 Ibid.
- 24 See [Covid-19: Personal protective equipment \(audit-scotland.gov.uk\)](https://www.audit-scotland.gov.uk/covid-19-personal-protective-equipment)
- 25 See [Covid-19: Personal protective equipment \(audit-scotland.gov.uk\)](https://www.audit-scotland.gov.uk/covid-19-personal-protective-equipment)
- 26 See [Covid-19: Personal protective equipment \(audit-scotland.gov.uk\)](https://www.audit-scotland.gov.uk/covid-19-personal-protective-equipment)
- 27 This commitment was made on 27 May 2020.
- 28 Official Report, Meeting of the Parliament (Virtual) 27 May 2020, First Minister's Question Time. Available at: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12660&i=114533>
- 29 <https://www.scottishhumanrights.com/news/briefing-care-homes-and-human-rights-during-covid-19/>
- 30 See [letter-to-dfm-and-cab-sec-health-re-covid-inquiry-may-2021.pdf \(scottishhumanrights.com\)](https://www.scottishhumanrights.com/letter-to-dfm-and-cab-sec-health-re-covid-inquiry-may-2021.pdf)
- 31 See Fentona, Lynda, Grant Wyper, Gerry McCartney, and Jon Minton. (2019) Socioeconomic inequality in recent adverse mortality trends in Scotland. Online from <https://jech.bmj.com/content/73/10/971>
- 32 NHS Scotland. (2015) Health inequalities - what are they and how do we reduce them? Inequality briefing, NHS Health Scotland, First published on 18 March 2016. Online from [www.healthscotland.scot/media/1086/health-inequalities-what-are-they-how-do-we-reduce-them-mar16.pdf](http://www.healthscotland.scot/media/1086/health-inequalities-what-are-they-how-do-we-reduce-them-mar16.pdf)
- 33 See NHS Scotland. (2017) People with Learning Disabilities in Scotland: 2017 Health Needs Assessment Update Report. Online from <http://www.healthscotland.scot/media/1690/people-with-learning-disabilities-in-scotland.pdf> ; UKIM (February 2017) Disability Rights in the UK, pp 39-40; EHRC & SHRC (February 2017) Disability Rights in Scotland, p 17
- 34 See Hughes, Dominic. (2011) Mentally ill have reduced life expectancy, study finds. BBC News. Online from <https://www.bbc.co.uk/news/health-13414965>
- 35 See UKIM (February 2017) Disability Rights in the UK, pp 39-40; EHRC & SHRC (February 2017) Disability Rights in Scotland, p 17 and UKIM (February 2017) Disability Rights in the UK, pp 39-40.
- 36 See <https://www.equalityhumanrights.com/sites/default/files/crpd-shadow-report-august-2017.docx>
- 37 See Members' Business: Celebrating Scotland's Gypsy/Traveller Community – 24 May 2018. <https://www.youtube.com/watch?v=vlhZPde05pI&t=72s> ; Gypsy Travellers in Scotland A resource for the media [https://www.basw.co.uk/system/files/resources/basw\\_111911-7\\_0.pdf](https://www.basw.co.uk/system/files/resources/basw_111911-7_0.pdf)
- 38 NHS Scotland. (2015) Health inequalities - what are they and how do we reduce them? Inequality briefing, NHS Health Scotland, First published on 18 March 2016. Online from [www.healthscotland.scot/media/1086/health-inequalities-what-are-they-how-do-we-reduce-them-mar16.pdf](http://www.healthscotland.scot/media/1086/health-inequalities-what-are-they-how-do-we-reduce-them-mar16.pdf)
- 39 See <https://www.gov.scot/publications/scotland-sustainable-development-goals-national-review-drive-action/>
- 40 See <https://www.equalityhumanrights.com/sites/default/files/crpd-shadow-report-august-2017.pdf>
- 41 Engender is Scotland's feminist policy and advocacy organisation <https://www.engender.org.uk/#:~:text=Engender%20is%20Scotland's%20feminist%20policy,safe%20and%20secure%20from%20harm.>
- 42 See <https://www.engender.org.uk/files/our-bodies,-our-rights-identifying-and-removing-barriers-to-disabled-womens-reproductive-rights-in-scotland.pdf>
- 43 Engender (2016), 'Our Bodies, Our Choice: The case for a Scottish Approach to Abortion'.
- 44 See <https://www.engender.org.uk/files/our-bodies,-our-rights-identifying-and-removing-barriers-to-disabled-womens-reproductive-rights-in-scotland.pdf>
- 45 See [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fGBR%2fCO%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fGBR%2fCO%2f1&Lang=en)
- 46 See <http://www.scottishhumanrights.com/media/1781/shrc-cedaw-submission-june-2018.docx>
- 47 See 45 A Healthy Start? Experiences of pregnant refugee and asylum seeking women in Scotland (2016) British Red Cross <http://www.redcross.org.uk/~media/BritishRedCross/Documents/About%20us/A%20Healthy%20Start%20Report.pdf>
- 48 See <https://nationalperformance.gov.scot/>
- 49 See <https://globalgoals.scot/scottish-sdgs-national-review-2020/>
- 50 See <https://www.nrscotland.gov.uk/files//statistics/vital-events-ref-tables/2019/vital-events-ref-tables-19-publication.pdf>
- 51 See <https://www.nrscotland.gov.uk/files//statistics/births-marriages-deaths-quarterly/19/q4/quarter-4-19-publication.pdf>

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- 52 See <https://www.isdscotland.org/Health-Topics/Heart-Disease/Publications/2019-01-29/2019-01-29-Heart-Disease-Report.pdf>
- 53 See <https://www.isdscotland.org/Health-Topics/Heart-Disease/Publications/2019-01-29/2019-01-29-Heart-Disease-Report.pdf>
- 54 See NHS Scotland and National Statistics. (2019) Body Mass Index of Primary 1 Children in Scotland, School Year 2017/18. Online from <https://www.isdscotland.org/Health-Topics/Child-Health/Publications/2018-12-11/2018-12-11-P1-BMI-Statistics-Publication-Report.pdf>
- 55 This is defined as Body Mass Index (BMI) above 2nd percentile and below 85th percentile of the UK growth reference charts.
- 56 This is considered to be having a Body Mass Index of 18.5 to less than 25.
- 57 See <http://uwsoxfampartnership.org.uk/wp-content/uploads/2019/06/On-Target-July-2019-Web-FINAL.pdf>; Scottish Health Survey 2017: <https://www.gov.scot/publications/scottish-healthsurvey-2017-summary-key-findings/pages/7/>
- 58 See <https://www.refworld.org/publisher.CRC.,GBR.573d76574.0.html>
- 59 See <http://www.scottishhumanrights.com/media/1845/good-food-nation-shrc-consultation-response-final-4-april-2019.docx>
- 60 Ibid.
- 61 Ibid.
- 62 See <https://www.scotpho.org.uk/health-wellbeing-and-disease/mental-health/data/depression-and-anxiety#:~:text=Data%20on%20the%20prevalence%20of,have%20increased%20since%202012%2F3.>
- 63 See <http://www.healthscotland.scot/health-topics/mental-health-and-wellbeing/overview-of-mental-health-and-wellbeing>
- 64 Ibid.
- 65 See [Scottish trends - ScotPHO](#)
- 66 Ibid.
- 67 See <https://globalgoals.scot/scottish-sdgs-national-review-2020/>
- 68 Ibid.
- 69 See The ALLIANCE, Scottish Association for Mental Health, MWC <http://archive2021.parliament.scot/parliamentarybusiness/currentcommittees/100622.aspx>.  
See also Mental Health in Scotland – a 10-year vision: analysis of responses to the public engagement exercise: [https://consult.gov.scot/mental-health-unit/mental-health-in-scotland-a-10-year-vision/supporting\\_documents/mentalhealthstrategy.pdf](https://consult.gov.scot/mental-health-unit/mental-health-in-scotland-a-10-year-vision/supporting_documents/mentalhealthstrategy.pdf)
- 70 The ALLIANCE, Mental Welfare Commission, Royal College of Psychiatrists, available here: <http://archive2021.parliament.scot/parliamentarybusiness/currentcommittees/100622.aspx>
- 71 See <https://www.gov.scot/publications/mental-health-strategy-2017-2027/>
- 72 See <https://www.scottishhumanrights.com/media/1559/crpdfeb2017ukimuksubmission.pdf>
- 73 See <https://globalgoals.scot/scottish-sdgs-national-review-2020/>
- 74 See <https://www.scottishhumanrights.com/news/commission-welcomes-the-review-of-the-scottish-mental-health-act/>
- 75 See <https://www.scottishhumanrights.com/media/1559/crpdfeb2017ukimuksubmission.pdf>
- 76 See <https://www.isdscotland.org/Health-Topics/Waiting-Times/Publications/2019-12-03/2019-12-03-WT-PsychTherapies-Summary.pdf?>
- 77 See [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC%2fIFN%2fGBR%2f23800&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC%2fIFN%2fGBR%2f23800&Lang=en)
- 78 See [Mental Health Strategy 2017-2027 - gov.scot \(www.gov.scot\)](#)
- 79 See [https://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr\\_180913\\_mental\\_health.pdf](https://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180913_mental_health.pdf)
- 80 Ibid.
- 81 See [https://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr\\_180913\\_mental\\_health.pdf](https://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180913_mental_health.pdf)
- 82 See <https://www.gov.scot/publications/children-young-peoples-mental-health-task-force-recommendations/>
- 83 See <https://globalgoals.scot/scottish-sdgs-national-review-2020/>
- 84 See [Protecting Scotland's Future: the Government's Programme for Scotland 2019-2020 - gov.scot \(www.gov.scot\)](#)
- 85 See <https://www.mwscot.org.uk/news/rise-number-young-people-mental-illness-being-treated-non-specialist-wards-0>
- 86 See <https://www.audit-scotland.gov.uk/report/children-and-young-peoples-mental-health>

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- 87 Ibid.
- 88 See [Rejected referrals to child and adolescent mental health services: audit - gov.scot](https://www.gov.scot/publications/rejected-referrals-to-child-and-adolescent-mental-health-services-audit-2017-2018/pages/default.aspx) ([www.gov.scot](http://www.gov.scot))
- 89 <https://www.isdscotland.org/Health-Topics/Mental-Health/Child-and-Adolescent-Mental-Health/>
- 90 See <https://www.gov.scot/publications/nhsscotland-performance-against-ldp-standards/pages/camhs-waiting-times/>
- 91 See <https://www.bbc.co.uk/news/uk-scotland-56257753#:~:text=The%20statistics%20are%20contained%20in,the%20end%20of%20last%20year.>
- 92 See [Child mental health year-long waits at record high - BBC News](https://www.bbc.com/news/health-56257753)
- 93 See <https://www.scottishhumanrights.com/media/1559/crpdfeb2017ukimuksubmission.pdf>
- 94 See NHS Scotland (2016), 'Do Not Attempt Cardiopulmonary Resuscitation (DNACPR) Integrated Adult Policy'. See <https://www.gov.scot/publications/decisions-cardiopulmonary-resuscitation-integrated-adult-policy/>
- 95 See <https://inclusionsscotland.org/wp-content/uploads/2020/04/SILC-Statement-on-NHS-and-rights-of-Disabled-People-17.04.20.pdf> and <https://www.autismeye.com/learning-disabled-dying-coronavirus/> and <https://www.scottishhumanrights.com/news/briefing-care-homes-and-human-rights-during-covid-19/>
- 96 See [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fGBR%2fCO%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fGBR%2fCO%2f1&Lang=en)
- 97 Ibid.
- 98 See <https://www.equalityhumanrights.com/sites/default/files/crpd-shadow-report-august-2017.docx>
- 99 Ibid.
- 100 Ibid.
- 101 See [crpdfeb2017scotlandsupplement.pdf](https://www.scottishhumanrights.com/media/1559/crpdfeb2017scotlandsupplement.pdf) ([scottishhumanrights.com](http://www.scottishhumanrights.com))
- 102 See [https://www.mwscot.org.uk/sites/default/files/2019-10/MHA-MonitoringReport-2019\\_0.pdf](https://www.mwscot.org.uk/sites/default/files/2019-10/MHA-MonitoringReport-2019_0.pdf)
- 103 See MWC (2015) Visits to people on longer term community-based compulsory treatment orders: [https://www.mwscot.org.uk/sites/default/files/2019-06/ccto\\_visit\\_report.pdf](https://www.mwscot.org.uk/sites/default/files/2019-06/ccto_visit_report.pdf)
- 104 Due to differences in geography, NHS resources, service provision, funding, healthboard structures and varying levels of custody in each area. See 'Independent Review of Complaints Handling, Investigations and Misconduct Issue in relation to Policing: Final Report' (Nov 2020), The Rt. Hon. Dame Elish Angiolini DBE QC, available at: <https://www.gov.scot/publications/independent-review-complaints-handling-investigations-misconduct-issues-relation-policing/>
- 105 'Inspection of Custody Centres across Scotland' (Oct 2018) HMIPS, available at: <https://www.hmics.scot/sites/default/files/publications/HMICS20181019PUB.pdf>
- 106 Also recalling recommendations that dated back to 2012 such as having access to a doctor from the outset of detention
- 107 See 'Report to the Government of the United Kingdom on the visit to the UK carried out by the European Committee for the Prevention of Torture and Inhuman and degrading treatment (CPT) from 17 to 25 October 2018 (11 Oct 2019), available at: [1680982a3e \(coe.int\)](https://www.coe.int/en/web/torture/visits-to-the-uk)
- 108 Ibid.
- 109 'Independent Review of Complaints Handling, Investigations and Misconduct Issue in relation to Policing: Final Report' (Nov 2020), The Rt. Hon. Dame Elish Angiolini DBE QC, available at: <https://www.gov.scot/publications/independent-review-complaints-handling-investigations-misconduct-issues-relation-policing/>
- 110 Ibid..
- 111 Ibid.
- 112 See [Inspections of the provision of healthcare to people in prison \(healthcareimprovementscotland.org\)](https://www.healthcareimprovementscotland.org/inspections-of-the-provision-of-healthcare-to-people-in-prison)
- 113 [briefing\\_report\\_prison\\_health\\_colloquium.pdf \(ed.ac.uk\)](https://www.ed.ac.uk/healthcareimprovementscotland/inspections-of-the-provision-of-healthcare-to-people-in-prison/briefing-report-prison-health-colloquium)
- 114 See 'Healthcare in Prisons' (10 May 2017), Health and Sport Committee, Scottish Parliament. SP paper 135, 5th report (session 5), available at: <https://sp-bpr-en-prod-cdneq.azureedge.net/published/Hs/2017/5/10/Healthcare-in-Prisons/5th%20report.pdf>
- 115 Policy context - [ScotPHO](https://www.scotpho.org.uk)
- 116 'Healthcare in Prisons' (10 May 2017), Health and Sport Committee, Scottish Parliament. SP paper 135, 5th report (session 5), available at: <https://sp-bpr-en-prod-cdneq.azureedge.net/published/Hs/2017/5/10/Healthcare-in-Prisons/5th%20report.pdf>
- 117 Ibid..

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118 Policy context - [ScotPHO](#)

119 For example see inspection report for HMP Grampian (Nov 2020), available at: [Report on Liaison Visit to HMP YOI Grampian on 4 & 5 November 2020 | HMIPS \(prisonsinspectoratescotland.gov.uk\)](#)

120 For example Stirling University have undertaken work with some healthboards to promote prison healthcare to nurses and some prison are exploring recruiting band 6 rather than band 5 nurses by introducing career progression pathways.

121 As 21 May 2021, the female prison population was 276, with 66 of those awaiting trial, 21 convicted and awaiting sentencing and 189 sentenced, stats available at: <https://www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx>

122 'International Review of Custodial Modes for Women' (2015), Scottish Government Social Research, available at: <https://www.gov.scot/publications/international-review-custodial-models-women-key-messages-scotland/>

123 BBC News (19/09/18): 'Work Needed' to cut women prison numbers in Scotland: <https://www.bbc.co.uk/news/uk-scotland-45566790>

124 [Justice - vision and priorities: report - gov.scot \(www.gov.scot\)](#)

125 The CPT highlighted in 2019 that redesigned female prison estate is only likely to have enough space if the overall female prison population is below 300, see [1680982a3e \(coe.int\)](#)

126 'Report to the Government of the United Kingdom on the visit to the UK carried out by the European Committee for the Prevention of Torture and Inhuman and degrading treatment (CPT) from 17 to 25 October 2018 (11 Oct 2019), available at: [1680982a3e \(coe.int\)](#)

127 See figures at: [file://scotland.gov.uk/dc1/fs6\\_home/N333742/FOI%20HQ%20182976364\\_3012.pdf](file://scotland.gov.uk/dc1/fs6_home/N333742/FOI%20HQ%20182976364_3012.pdf)

128 For example, see [Why Women Scotland.pdf \(prisonreformtrust.org.uk\)](#)

129 [Associations between significant head injury and persisting disability and violent crime in women in prison in Scotland, UK: a cross-sectional study - The Lancet Psychiatry](#)

130 [Nearly 65% of prisoners at women's jail 'show signs of brain injury' | Prisons and probation | The Guardian](#)

131 [Four in five female prisoners in Scotland found to have history of head injury | Prisons and probation | The Guardian](#) and [Associations between significant head injury and persisting disability and violent crime in women in prison in Scotland, UK: a cross-sectional study - The Lancet Psychiatry](#)

132 'UK NMP Response to the CPT report to the UK on the 2018 visit to Scotland (Oct 2019)' [NPM-response-to-CPT-Scotland-report-Final-for-Website.pdf](#)

133 *Ibid.*

134 'Report to the Government of the United Kingdom on the visit to the UK carried out by the European Committee for the Prevention of Torture and Inhuman and degrading treatment (CPT) from 14-18 October 2019 (Oct 2020), available at:

[16809fdebc \(coe.int\)](#)

135 There were 11 transfers from Cornton vale between March and Oct 2020 see Cornton Vale Inspection Report on Liaison Visit 7-8 October 2020, available at [Report on Liaison Visit to HMP Cornton Vale on 7-8 October 2020 | HMIPS \(prisonsinspectoratescotland.gov.uk\)](#)

136 Scotland uses approx. 1-2 beds per year- see Forensic mental health review

137 [Independent Forensic Mental Health Review: final report - gov.scot \(www.gov.scot\)](#)

138 See [forensic-mental-health-review-hr-framework.pdf \(scottishhumanrights.com\)](#)

139 [Independent Forensic Mental Health Review: final report - gov.scot \(www.gov.scot\)](#)

140 In a prison context, those over the age of 50 are defined as an older person due to health issues presented by people in prison.

141 See 'Healthcare in Prisons' (10 May 2017), Health and Sport Committee, Scottish Parliament. SP paper 135, 5th report (session 5), available at: <https://sp-bpr-en-prod-cdnepe.azureedge.net/published/HS/2017/5/10/Healthcare-in-Prisons/5th%20report.pdf>

142 [Healthcare in Prisons \(azureedge.net\)](#)

143 From 280 prisoners in 2017 to 405 prisoners in 2020, see 'Who Cares? A follow up review of the lived experience of older person's in Scotland's Prisons' (2020) HMIPS, available: <https://www.prisonsinspectoratescotland.gov.uk/publications/hmips-who-cares-follow-review-lived-experience-older-prisoners-scotlands-prisons>



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144 'Understanding the social care support needs of Scotland's prison population: Research report' (Jan 2021), Scottish Government/ Alma Economics, available at: <https://www.gov.scot/publications/understanding-social-care-support-needs-scotlands-prison-population/pages/9/>

145 Ibid.

146 CPT reports 2018, 2012

147 Moreover - Twenty-two per cent had received a trauma diagnosis over that time-frame and 45 per cent had experienced sexual exploitation, an issue that may require specialist counselling and support.

<https://digitalpublications.parliament.scot/Committees/Report/J/2019/11/26/Secure-care-and-prison-places-for-children-and-young-people-in-Scotland>

148 'Secure Care and Prison places for children and young people in Scotland' (26 Nov 2019), Scottish Parliament Justice Committee, available at: <https://digitalpublications.parliament.scot/Committees/Report/J/2019/11/26/Secure-care-and-prison-places-for-children-and-young-people-in-Scotland>

149 For an explanation of what being on remand means see - [Being charged with a crime: Remand - GOV.UK \(www.gov.uk\)](#)

150 'Report on the Expert Review of the provision of mental health services for young people entering and in custody at HMP YOI Polmont' (May 2019), HMIPS, available at: [Report on Expert Review of Provision of Mental Health Services at HMP YOI Polmont - Final Version.pdf \(prisonsinspectoratescotland.gov.uk\)](#)

151 Ibid.

152 See [Secure care and prison places for children and young people in Scotland \(azureedge.net\)](#)

153 Ibid.

154 'Submission from the Royal College of Speech and Language Therapists to the Justice Committee' (2019), available at: [https://archive2021.parliament.scot/S5\\_JusticeCommittee/General%20Documents/RC.pdf](https://archive2021.parliament.scot/S5_JusticeCommittee/General%20Documents/RC.pdf)

155 See [terms-of-reference-independent-review-into-the-handling-of-deaths-in-prison-custody.pdf \(scottishhumanrights.com\)](#)

156 For example, see [NPM letter for Cabinet Secretary \(2 April 2020\)](#), available at [Microsoft Word - NPM letter to Cabinet Secretary for Justice re. COVID-19](#)

157 For an explanation of what being on remand means see - [Being charged with a crime: Remand - GOV.UK \(www.gov.uk\)](#)

158 See 'Briefing for Scottish Cabinet Secretary for Justice: Update on Prisons and the prisons and young offender institute (Scotland) Amendment Rules 2020' (21 April 2021), available at [20\\_04\\_21\\_briefing-for-cabsecjustice-prisons.pdf \(scottishhumanrights.com\)](#)

159 See <https://rm.coe.int/rap-cha-uk-40-2021/1680a1b556>

160160 <https://www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx>

161 [Microsoft Word - Letter to Humza Yousaf MSP 15012020 \(scottishhumanrights.com\)](#)

162 See [20\\_05\\_letter-to-justice-committee-prisons-covid-vfinal2.pdf \(scottishhumanrights.com\)](#)

163 Ibid.

164 For example see letter to convenor of Justice Committee (18 May 2020), available at: [20\\_05\\_letter-to-justice-committee-prisons-covid-vfinal2.pdf \(scottishhumanrights.com\)](#); letter to the Cabinet Secretary for Justice (17 June 2020), available at: [shrc-letter-to-cabinet-secretary-for-justice-june-2020.pdf \(scottishhumanrights.com\)](#); letter to interim chief executive of SPS (17 Sept 2020), available at [letter-to-sps-sep-2020.pdf \(scottishhumanrights.com\)](#); letter to Cabinet Secretary for Justice (15 Jan 2021), available at: [Microsoft Word - Letter to Humza Yousaf MSP 15012020 \(scottishhumanrights.com\)](#)

165 [Microsoft Word - NPM letter to Cabinet Secretary for Justice re. COVID-19](#)

166 Although HMIPS has resumed undertaking physical prison inspections, these now take place over one to two days, as opposed to one to two weeks and are combined with remote monitoring.

167 See inspection reports for HMP Grampian (Nov 2020), HMP Glenochil (Dec 2020)

168 See inspection reports for HMP Grampian (Nov 2020) and HMP YOI Polmont (Aug 2020)

169 All recently published reports available here: [Publications | HMIPS \(prisonsinspectoratescotland.gov.uk\)](#)

170 See

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC%2fIFN%2fGBR%2f23800&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC%2fIFN%2fGBR%2f23800&Lang=en) and

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[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fGBR%2fCO%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fGBR%2fCO%2f1&Lang=en)

171 See <https://www.gov.scot/publications/inpatient-census-2016-part-1-mental-health-learning-disability-inpatient/>

172 See [https://www.equalityhumanrights.com/en/file/22361/download?token=H\\_JT2A1r](https://www.equalityhumanrights.com/en/file/22361/download?token=H_JT2A1r).

173 See [scotland supplementary submission to crpd uk loi - ehrc shrc.pdf](#)

174 *ibid.*

175 This includes people with autistic spectrum disorders, acquired brain injury, a personality disorder label, a dual diagnosis (e.g. learning disability plus mental illness), or women and young people needing secure care.

176 *Ibid.*

177 See <https://www.nrscotland.gov.uk/news/2020/drug-related-deaths-increase>

178 *Ibid.*

179 See <https://www.bbc.co.uk/news/uk-scotland-48853004>

180 See <https://globalgoals.scot/scottish-sdgs-national-review-2020/>

181 See <https://www.scottishhumanrights.com/media/1732/shrc-statement-to-sr-on-hr-and-toxic-waste-for-unhrc-sept-13-2017.docx>

182 *Ibid.*

183 *Ibid.*

184 *Ibid.*

185 See [https://www.ohchr.org/Documents/HRBodies/UPR/A\\_HRC\\_36\\_2\\_E.docx](https://www.ohchr.org/Documents/HRBodies/UPR/A_HRC_36_2_E.docx)

186 See <https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/>

187 See, in particular, SHRC recommendations in relation to COVID-19 Guidance: Clinical Advice, 9 April 2020. Available at:

[https://www.scottishhumanrights.com/media/2009/2020\\_04\\_09\\_clinicalguidance\\_vfinal.pdf](https://www.scottishhumanrights.com/media/2009/2020_04_09_clinicalguidance_vfinal.pdf)

188 See, for example: 'Care home coronavirus deaths in Scotland overtake hospitals', The Guardian, 3 June 2020; [Age UK response to DNR forms during COVID-19 crisis](#); Official Report, Meeting of the Parliament (Hybrid) 3 June 2020, First Minister's Question Time; Official Report, Meeting of the Parliament (Virtual) 27 May 2020, First Minister's Question Time; Official Report, Meeting of the

Parliament (Hybrid) 24 June 2020, First Minister's Question Time.

189 Council of Europe Commissioner for Human Rights, 'Lessons to be drawn from the ravages of the COVID-19 pandemic in long-term care facilities', 20 May 2020. Available at:

<https://www.coe.int/en/web/commissioner/-/lessons-to-be-drawn-from-the-ravages-of-the-covid-19-pandemic-in-long-term-care-facilities>

190 See the Commission's briefing on COVID 19: Human Rights implications of digital contact tracing technology

<https://www.scottishhumanrights.com/media/2028/contact-tracing-briefing-180520-final.pdf>

191 See Public Health Scotland. Discharges from NHS Scotland Hospitals to Care Homes between 1 March and 31 May 2020.

October 2020. [www.publichealthscotland.scot/news/2020/october/discharges-from-nhsscotland-hospitals-to-care-homes-between-1-march-and-31-may-2020](http://www.publichealthscotland.scot/news/2020/october/discharges-from-nhsscotland-hospitals-to-care-homes-between-1-march-and-31-may-2020).

192 See [Discharges from NHSScotland Hospitals to Care Homes between 1 March and 31 May 2020 - News - Public Health Scotland](#) and <https://www.bmj.com/content/371/bmj.m4225>

193 See [follow-up-letter-to-covid-19-committee.pdf](#) (scottishhumanrights.com)

194 See [Coronavirus \(COVID-19\): daily data for Scotland - gov.scot \(www.gov.scot\)](#)

195 See [Coronavirus \(COVID-19\) statistics | Northern Ireland Statistics and Research Agency \(nisra.gov.uk\)](#)

196 See [Deaths involving COVID-19 in the care sector, England and Wales - Office for National Statistics \(ons.gov.uk\)](#); [Deaths in the UK | Coronavirus in the UK \(data.gov.uk\)](#)

197 See [Evolution and impact of COVID-19 outbreaks in care homes: population analysis in 189 care homes in one geographic region | medRxiv](#)

198 *Ibid.*

199 See [Decision 079/2021 \(itspublicknowledge.info\)](#)

200 See <https://www.sclد.org.uk/impact-of-covid-19-on-people-with-a-learning-disability-in-scotland/>

201 See <https://www.gov.scot/publications/covid-19-disabled-people-scotland-health-social-economic-harms/pages/5/>; [https://www.sclد.org.uk/wp-content/uploads/2020/12/Human-Rights-Statement-on-Vaccinations-final\\_-1.pdf](https://www.sclد.org.uk/wp-content/uploads/2020/12/Human-Rights-Statement-on-Vaccinations-final_-1.pdf);

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<https://www.mencap.org.uk/press-release/eight-10-deaths-people-learning-disability-are-covid-related-inequality-soars>;  
<https://www.gov.uk/government/news/people-with-learning-disabilities-had-higher-death-rate-from-covid-19>;  
<https://www.learningdisabilitytoday.co.uk/covid-19-deaths-remain-dramatically-higher-in-learning-disability-groups>;  
<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/articles/coronaviruscovid19relateddeathsbydisabilitystatusenglandandwales/24januaryto20november2020>

202 Ibid.

203 Once it is fully operational, it had been anticipated that Social Security Scotland would administer a total of 14 entitlements, providing £3.5 billion in payments every year to approximately 1.4 million people.

204 The Scottish Government cannot change the levels of UC that are paid.

205 Replacement for UK Government's Healthy Start Vouchers scheme. Paper vouchers will be replaced by a Payment Card giving eligible low income families more choice and flexibility to buy healthy food such as: fresh/ frozen/tinned fruit and vegetables; cow's milk and infant formula; eggs; and dried or tinned pulses e.g. peas, lentils beans and barley. Best Start Foods is a prepaid card that can be used to buy foods for children under 3. The card can be used in shops and online.

206 In 2020, Carer's Allowance was increased by 13 per cent, providing an extra £452.40 per carer, lifting the income of over 90,000 carers.

207 In autumn 2019 a yearly payment of £300 was introduced for young people aged 16 to 18 who care for someone 16 hours or more each week.

208 This comprises of three possible payments for parents or carers who are already in receipt of certain social security or tax credits. These replace the Sure Start Maternity Grant for pregnancy and birth payment, with additional payments at early learning and school stages.

209 Providing assistance for relatives on low-income social security with the cost of funerals.

210 The new Scottish Child Payment is £10 per week given to eligible families for each child under the age of 6. Payments start from Monday 15th February 2021. It is expected to be rolled out to children under the age of 16 by the end of 2022.

211 See <https://www.citizensadvice.org.uk/scotland/benefits/help-if-on-a-low-income/job-start-payment-s/>

212 This will replace Disability Living Allowance (DLA) (Child).

213 This will replace Personal Independence Payment (PIP).

214 This will replace Attendance Allowance (AA)

215 In Scotland, every child who attends a local council school can access free school lunches in primary 1, 2 and 3, irrespective of a family's financial circumstances.

216 See [https://www.parliament.scot/S5\\_Local\\_Gov/20200421ACtoConvener.pdf](https://www.parliament.scot/S5_Local_Gov/20200421ACtoConvener.pdf)

217 See <https://scvo.org.uk/p/38035/2020/05/08/new-round-of-wellbeing-fund-to-help-charities-and-social-enterprises-support-those-impacted-by-coronavirus>

218 See [https://www.parliament.scot/S5\\_Local\\_Gov/20200421ACtoConvener.pdf](https://www.parliament.scot/S5_Local_Gov/20200421ACtoConvener.pdf)

219 See Women's Budget Group: Crisis Collide: Women and COVID – 19: <https://wbq.org.uk/analysis/reports/crises-collide-women-and-covid-19/> and Scottish Government analysis: <https://data.gov.scot/coronavirus-covid-19/index.html>

220 ONS Labour Force data accessed via: <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2020/06/towardsrobust-resilient-wellbeing-economy-scotland-report-advisory-group-economic-recovery/documents/towardsrobust-resilient-wellbeing-economy-scotland/towards-robust-resilient-wellbeing-economyscotland/govscot%3Adocument/towards-robust-resilient-wellbeing-economy-scotland.pdf>

221 See

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/cc021regionallabourmarketclaimantcountforscottishparliamentaryconstituenciesexperimental/current>

222 See <https://www.standardlifefoundation.org.uk/docs?editionId=d1d29721-a5fd-48d6-811e-a755e572fce2>

223 [Open letter to the First Minister on coronavirus support for low income families | CPAG](#)

224 Ibid.

225 See <https://news.stv.tv/scotland/four-fold-increase-in-scots-seeking-help-over-employment?top>

226 See <https://www.gov.scot/publications/coronavirus-covid-19-framework-decision-making/>

227 See <https://cpag.org.uk/news-blogs/news-listings/open-letter-first-minister-coronavirus-support-low-incomefamilies>

228 See <https://cpag.org.uk/news-blogs/news-listings/open-letter-first-minister-coronavirus-support-low-incomefamilies>

229 See <https://wbg.org.uk/media/low-paid-women-at-highest-risk-of-exposure-to-covid-19/>

230 The extent to which women are disproportionately shouldering the financial hardship caused by the current pandemic cannot be captured in this brief, however the Women’s Budget Group have released a detailed report illustrating key areas where the current social security system creates a disadvantage for women, alongside recommendations for its improvement. See Women’s Budget Group: Crisis Collide: Women and COVID – 19 <https://wbg.org.uk/wp-content/uploads/2020/04/FINAL.pdf>

231 See <http://www.legislation.gov.uk/asp/2020/7/contents/enacted>

232 See <https://spice-spotlight.scot/2020/04/01/coronavirus-covid-19-scottish-social-security/>

233 £22m of which to be distributed immediately according to the usual formula, and £23m to be distributed later based on need.

234 This amounted to an additional £19.2 million investment.

235 See <https://data.gov.scot/poverty/#Poverty> for further details and equalities breakdowns.

236 Persistent poverty identifies the proportion of people in relative poverty for three or more out of four years.

237 See <https://data.gov.scot/poverty/#Poverty> for further details and equalities breakdowns.

238 See [Poverty and Income Inequality in Scotland 2017-20 \(data.gov.scot\)](#)

239 Corlett, Adam. (2019) Wrong direction: can Scotland hit its child poverty targets? Resolution Foundation. [Online from https://www.resolutionfoundation.org/publications/wrong-direction-can-scotland-hit-its-child-poverty-targets/](https://www.resolutionfoundation.org/publications/wrong-direction-can-scotland-hit-its-child-poverty-targets/)

240 See <http://uwsoxfampartnership.org.uk/wp-content/uploads/2019/06/On-Target-July-2019-Web-FINAL.pdf>

241 See <https://www.gov.scot/publications/scottish-budget-2021-2022-equality-fairer-scotland-budget-statement/>

242 See [Every child, every chance: tackling child poverty delivery plan 2018-2022 - gov.scot \(www.gov.scot\)](#)

243 See Accounts Commission. (2018) Decisive leadership needed as council savings “increasingly critical”. Online from [https://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr\\_180405\\_local\\_government\\_pr.pdf](https://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180405_local_government_pr.pdf)

244 See <https://www.equalityhumanrights.com/en/publication-download/cumulative-impact-tax-social-security-and-public-spending-decisions-scotland>

245 See <http://www.scottishhumanrights.com/media/1845/good-food-nation-shrc-consultation-response-final-4-april-2019.docx>

246 See Independent Food Aid Network, June 2020, IFAN Scotland June 2020 data release, available at <https://uploads.strikinglycdn.com/files/378499b3-c557-4d97-879ea3a1692bed01/Scotland%20breakdown%20for%20IFAN%20data%20release%20June%2020160620V2.pdf>

247 See <http://www.scottishhumanrights.com/media/1845/good-food-nation-shrc-consultation-response-final-4-april-2019.docx>; <https://www.trusselltrust.org/news-and-blog/latest-stats/mid-year-stats/>

248 See <https://www.trusselltrust.org/news-and-blog/latest-stats/end-year-stats/>

249 UPR 2017 <https://lib.ohchr.org/HRBodies/UPR/Documents/Session27/GB/MatriceRecommendationsUK.docx> ICCPR 2015 [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GBR/CO/7&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GBR/CO/7&Lang=En) ICESCR 2016 [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/GBR/CO/6&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/GBR/CO/6&Lang=En) CRC 2016 [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5&Lang=En) CEDAW 2019 [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GBR/CO/8&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GBR/CO/8&Lang=En) CRPD 2017 [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GBR/CO/1&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GBR/CO/1&Lang=En)

250 See Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23881>

251 *ibid.*

252 See [The State of Tax Justice 2020 - Tax Justice Network](#)

253 *Ibid.*

254 *Ibid.*

255 *Ibid.*

256 Budget 2019/20 speech by Scottish government Cabinet Secretary for Finance, Derek MacKay.

257 See <https://askcpag.org.uk/publications/-230997/let-s-talk-about-tax>

258 *Ibid.*

259 HRC and SHRC (2017), ‘Disability Rights in Scotland’, - Available here <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/un-convention-rights-persons-disabilities> ; The Alliance (2017),

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'Personal experiences of Self-Directed Support', pp. 61-70. Available here <https://www.alliance-scotland.org.uk/blog/resources/personal-experiences-of-sds-reports/>

260 BBC Disclosure, 27th April 2020, 'I have lost care support because of coronavirus', available at <https://www.bbc.co.uk/news/uk-scotland-52415302>

261 See <https://www.scottishhumanrights.com/media/2063/covid-19-ehric-submission.pdf>

262 See [covid-19-ehric-submission.pdf \(scottishhumanrights.com\)](https://www.scottishhumanrights.com/media/2063/covid-19-ehric-submission.pdf)

263 See *ibid.*

264 See *ibid.*

265 See <https://www.scottishhumanrights.com/media/2102/covid-19-social-care-monitoring-report-vfinal.pdf>

266 See *ibid.*

267 See <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2019/05/local-governance-review-analysis-responses-democracy-matters/documents/community-level-decision-making-analysis-responses-democracy-matters/community-level-decision-making-analysis-responses-democracy-matters/govscot%3Adocument/community-level-decision-making-analysis-responses-democracy-matters.pdf> ; <https://www.tandfonline.com/doi/full/10.1080/09638237.2020.1818708> ; [https://www.pkc.gov.uk/media/42330/What-Works-in-Local-Decision-Making/pdf/What\\_Works\\_in\\_Local\\_Decision-Making](https://www.pkc.gov.uk/media/42330/What-Works-in-Local-Decision-Making/pdf/What_Works_in_Local_Decision-Making)

268 See [National Taskforce for Human Rights Leadership Report \(www.gov.scot\)](https://www.gov.scot/publications/national-taskforce-for-human-rights-leadership-report/documents/national-taskforce-for-human-rights-leadership-report/national-taskforce-for-human-rights-leadership-report.pdf)

269 See <http://www.newcarestandards.scot/>

270 See <https://www.scottishhumanrights.com/media/1695/shrc-response-to-standards-consultation.doc>