

Consultation response: Equality and Human Rights Mainstreaming Strategy

February 2025

The Scottish Human Rights Commission (the Commission) is a public body created by the Scottish Commission for Human Rights Act 2006.

We are an independent, expert body that works with and for the people of Scotland; we monitor, listen, speak up for all of our rights and respond when things go wrong.

The Commission is also part of the international human rights system. It is accredited by the United Nations as its trusted organisation to provide impartial evidence on the enjoyment of human rights in Scotland.

The Commission is independent of Government. We are accountable to the people of Scotland via the Scottish Parliament.

Summary

The Scottish Human Rights Commission (SHRC) welcomes the Scottish Government's commitment to progressing an Equality and Human Rights Mainstreaming Strategy in the remainder of this session of the Scottish Parliament. However, we believe that the strategy requires clearer definitions, the promotion of well-defined measurement frameworks rooted in international human rights standards, and a clear evaluation process and timeline.

In general, we see that there is a risk that public authorities may perceive 'mainstreaming' as something else to do as an additional task, rather than a way of working that integrates human rights from the outset; and without a legislative underpinning for this strategy, that may make implementation challenging. In order to ensure integration of human rights standards in the process of decision making on policy and resource allocation, it may therefore be helpful to separate out the two concepts as follows:

- Human Rights Based Approach - i.e. how we do things
- Mainstreaming - i.e. how we get there

To achieve success, this strategy must be clear in simple terms that a human rights based approach is not something additional that happens after plans have been made; but must become a standard approach to planning - in other words, the aim of this strategy must be that it becomes how we do things in Scotland. There is a wealth of international best practice to demonstrate what a human rights based approach to planning is, and toolkits to support public authorities to apply it in practice.

"Mainstreaming" is then a more accurate description of the process for ensuring that public bodies not only have these planning tools, but critically, that there are mechanisms in place to ensure that they are being used as the standard approach; this latter part of the process is less clear.

In this response, the SHRC provides an overview of key international standards on human rights mainstreaming; followed by a brief assessment of issues identified in the proposed mainstreaming strategy, rather than a detailed response to every question in the consultation.

Further, we refer to our sister organisation, the Equality and Human Rights Commission, for input on equality mainstreaming and the requirements set out in the Equality Act, including duties such as the Public Sector Equality Duty. Again, rather than something additional, it will be essential that public authorities are supported to

programme this as part of a human rights based approach, most likely as a route to demonstrating that they are applying the principle of non-discrimination and equality, as required in law by the Equality Act 2010.

Proposed Definition, Vision and Objectives

The consultation paper defines "mainstreaming" as "putting equality and human rights at the core of your business".

We have outlined above why we think it would be more helpful for the Strategy to define its ambition of ensuring that a human rights based approach becomes the way we do things in Scotland, and "mainstreaming" as the process/es by which the State ensures that this happens.

It is essential that this Strategy breaks down any conceptual barriers for people and duty bearers alike, and outlines a costed plan to take practical, actionable, and sufficiently resourced steps to support public authorities to shift their practice.

To this end, it might also be helpful to frame the positive obligations of a human rights based approach within the context of early intervention - adopting a human rights based approach as standard informs decision making about public expenditure and resource allocation which prioritises outcomes for people to live well in their communities as their rights are respected, protected and fulfilled.

PANEL = A Human Rights Based Approach

A human rights based approach is a framework, based upon international human rights standards, aimed at strengthening the capacity of duty bearers to uphold human rights obligations and empowering rights holders to claim and exercise their rights.

More explicit reference to international guidance and standards on human rights mainstreaming would significantly improve the conceptual framing of this draft strategy, and enhance the proposed actions to implement mainstreaming effectively.

One way of articulating a human rights based approach, adopted by bodies such as the United Nations (the UN) and the European Network for National Human Rights Institutions (ENNHRI)¹, is through the PANEL principles.

These are: Participation; Accountability; Non-discrimination and equality; Empowerment; and Legality. Each of these principles is essential in ensuring a human rights based approach.

For example, while it is fundamentally important that everyone has the right to participate in decisions which affect them (Participation), it is equally important that effective accountability structures are in place to monitor human rights standards and provide a route of challenge when things go wrong (Accountability).

The legislative framework that protects human rights (Legality) should also be a key consideration; this means identifying all relevant human rights standards in a given area and giving effect to them through domestic law and local policy making.

Taking this approach, it could be helpful for the Strategy to explore that the PSED processes support public authorities to take a human right based approach by demonstrating that they are taking action to address the Non-discrimination and equality element of the PANEL principles.

Whilst the PANEL principles are mentioned in the proposed objectives as "underlying principles" of a rights based approach, it would be much more helpful if the whole strategy was re-framed around the PANEL principles to show leadership in demonstrating the approach in practice.

Use of the language in the strategy is also important in this regard. For example, throughout the strategy, explicit reference to human rights standards in defining what it means by "improve how policy decisions are made and delivered" would be helpful. Similarly, the sections on 'removing systemic barriers and embedding

transparency' could be re-framed as strengthening accountability mechanisms and access to justice.

Failure to take this opportunity to reframe the Strategy by using the PANEL principles may serve to reinforce the perception for duty bearers that taking a human rights based approach is something that you do separately and afterwards - which is of course counter to the objectives of the Strategy.

Routes to Mainstreaming

The Strategy outlines the key headline elements that a mainstreaming approach requires; but is at present not clear enough on how this will be achieved.

Capacity building, leadership and accountability are definitely mission critical concepts. However, in order to implement, it is clear that this Strategy will need a significant centrally coordinated change management programme if the Scottish Government and its regulatory bodies are serious about changing how we do things in Scotland - that is, demonstrating that every decision considers how to respect, protect, and fulfil people's human rights.

Taking a human rights based approach requires subject-specific analysis of a particular policy area, and there a number of examples of guidance at the international and regional level on how to put a human rights based approach into practice.²

In pursuit of its general duty, the Commission has provided extensive guidance on what a human rights based approach looks like in the Scottish context, including how that might align with PSED reporting duties in partnership with the EHRC. These resources should be used by the Scottish Government to build on its Action Plan and the development of its toolkit. SHRC resources include:

1. Human Rights Based Approach: A Self-Assessment Tool Panel self-assessment (2018)³
2. Equality and Human Rights Impact Assessment Tool-Kit webpage (in collaboration with the EHRC)⁴
3. Human Rights Budget Work: What? Why? How? Collected Briefing Papers (2019)⁵
4. Building a New Human Rights Framework for Scotland: Key Legal Features (2022)⁶
5. Review, Recommend, Repeat: An assessment of where human rights have stalled in places of detention (2024)⁷
6. Economic, Social, and Cultural Rights in the Highlands and Islands (2024)⁸
7. "Tick Tock..."A human rights assessment of progress from institutionalisation to independent living in Scotland (2025)⁹

Through its spotlight reports on Economic, Social, and Cultural Rights in the Highlands and Islands;¹⁰ Places of Detention;¹¹ and Deinstitutionalisation;¹² the SHRC has provided a series of human rights indicators to assess and report on compliance with international human rights law. These indicators assess structures, processes, and outcomes and should be used directly by duty-bearers to mainstream human rights in their decision-making framework and hold themselves to account on their human rights responsibilities, and direct rights holders on how to hold service delivery bodies to account.

The adoption of such frameworks and associated approach as a test of change would be a strong starting point, providing duty bearers with a pathway to adopt a mainstreaming approach across a range of rights domains.

Looking ahead, the SHRC welcomes the Scottish Government's ambition to "create a cohesive legislative framework that specifically supports Scotland's ambition to be a global leader in equality and human rights." We understand that it is intended that this will lead to the incorporation and general implementation of all internationally protected human rights into the fabric of Scotland's laws, policies, budgets, services, and general decision making.

However, with or without a Bill, it is not yet fully clear how a 'formal process to ensure equality and human rights are properly considered in all legislation and policies' will be achieved.

There is a reliance on the goodwill of public sector leaders to implement a human rights mainstreaming approach, rather than a clear actionable framework to develop, lead and apply a human rights based approach.

Whilst it is a laudable aspiration, it is unlikely that public bodies will prioritise capacity building in a human rights based approach without concrete obligations to do so, or at the very least, a considerable effort from central government to support this culture change through a change management programme. Accountability can be promoted through the introduction of clearly defined expectations around process, such as public reporting, KPIs based on human rights indicators, and internal management protocols around policy and resource allocation. Other routes available to Government include through existing governance structures; for example, by setting objectives for Chairs of Public Boards to take action to lead their respective public bodies to adopt a human rights based approach.

However, even with this level of direction and provision of process templates, the implementation of such a whole system change requires support and coordination.

As an example, other Scottish Government funded models such as The Promise have demonstrated the levels of support than can be required and provided to support public authorities to deliver a systems wide culture change, through consistent support for capacity building, strong leadership and communications, and the creation of an accountability structure to monitor progress, which is currently not on a statutory footing.

Whilst legislative levers are being explored through the continued scoping and development of a Human Rights Bill, in the meantime, it would be helpful for the Strategy to be more explicit about the role of inspectorates/regulators listed in the accountability landscape, and what action might be possible in the short to medium term to ensuring that they are required to assess compliance with relevant human rights standards as route to fulfil their mandated function. An assessment of the available levers through public procurement would also be a feasible exercise to prioritise in pursuit of this Strategy.

For example, the SHRC's recent 'Tick Tock' spotlight report has highlighted that even targeted additional investment designed to improve disabled people's human rights to independent living under Article 19 of the UNCRPD can fail to deliver on these aspirations without firm guidance for commissioning teams on how to plan and monitor the use of funding in a manner that is human rights compliant.

Other comments

SNAP2:

The lack of engagement with the actions set out in the SNAP2 publications and attendant processes is both disappointing and evidence of the Scottish Government's failure to mainstream its own agreed actions on human rights. There are significant overlaps between the actions in SNAP 2 and the stated intent of the mainstreaming strategy but these are not visible, suggesting that the significant time expended by the SHRC, rights holders and civil society organisations have not been well used to inform and shape government action on human rights. The SNAP 2 process produced a series of actions for which the Scottish Government is to be held accountable, including by the SHRC. This lack of coherence across policy commitments does not augur well for an effective approach to mainstreaming.

Human Rights Budgeting:

While the strategy identifies as key objectives the need to remove systemic barriers and improve how policy decisions are made and delivered, it would benefit from more explicit inclusion of human rights budgeting as a key tool of mainstreaming.

Taking a human rights based approach to budgeting means distributing resources in a way that puts people first.

It involves thinking through how people's rights are impacted by the way that money is raised, allocated, and spent. The SHRC has produced a wealth of resources¹³ which may be helpful for the Scottish Government to consider.

Access to Justice:

The proposals in the draft strategy fall short of improvements in an addressing gaps in meaningful accountability for rights holders.

Through our domestic and international treaty monitoring and the evidence generated by the SHRC across our activities, it is clear that the current gaps in legal aid and advocacy services, availability of and access to legal advice across a range of rights issues contribute to a significant accountability gap in Scotland. If individuals are not able to access appropriate and affordable legal advice, then duty bearers remain even further from effective scrutiny and rights holders from remedy.

The SHRC has published a map¹⁴ of human rights focused advice and advocacy services in Scotland; and it would be sensible for the mainstreaming strategy to also

consider a strategic approach to investment in improving access to these services for all.

Conclusion

In conclusion, it would be more helpful for the Strategy to define its ambition as ensuring that a human rights based approach becomes the way we do things in Scotland, and "mainstreaming" as the process/es by which the State ensures that this happens.

To this end, the Strategy itself would benefit from being framed in the PANEL principles to demonstrate leadership in adopting a human rights based approach in practice from the start, and in being clearer in outlining the model of practical action that the Scottish Government will lead through a well-resourced and timebound mainstreaming plan to deliver this change.

For more information on any element of this response, please contact:

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Endnotes

¹ See, for example, ["Technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality"](#), UN Human Rights Council, 2 July 2012; [UN Office of the High Commissioner for Human Rights, "A Human Rights-Based Approach to Health"](#); [United Nations Development Programme "The Human Rights-Based Approach to Development Programming, HRBA Toolkit"](#), 2025; [European Network of National Human Rights Institutions, Human Rights Based Approach resources](#).

² See, for example, ["Technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality"](#), UN Human Rights Council, 2 July 2012; [UN Office of the High Commissioner for Human Rights, "A Human Rights-Based Approach to Health"](#); [United Nations Development Programme "The Human Rights-Based Approach to Development Programming, HRBA Toolkit"](#), 2025; [European Network of National Human Rights Institutions, Human Rights Based Approach resources](#).

³ See more at SHRC, [Human Rights Based Approach: A Self-Assessment Tool Panel self-assessment](#) (2018)

⁴ See more at [EQHRIA Home - SHRC - Equality & Human Rights Impact Assessment](#)

⁵ See more at SHRC, [Human Rights Budget Work: What? Why? How? Collected Briefing Papers](#)

⁶ See more at SHRC, [Building a New Human Rights Framework for Scotland: Key Legal Features](#)

⁷ See more at SHRC, [Review, Recommend, Repeat: An assessment of where human rights have stalled in places of detention](#)

⁸ See SHRC, [Economic, Social, and Cultural Rights in the Highlands and Islands](#)

⁹ See more at SHRC, ["Tick Tock..."A human rights assessment of progress from institutionalisation to independent living in Scotland](#)

¹⁰ See SHRC, [Economic, Social, and Cultural Rights in the Highlands and Islands](#)

¹¹ See more at SHRC, [Review, Recommend, Repeat: An assessment of where human rights have stalled in places of detention](#)

¹² See more at SHRC, ["Tick Tock..."A human rights assessment of progress from institutionalisation to independent living in Scotland](#)

¹³ [Human Rights Budgeting | Scottish Human Rights Commission](#)

¹⁴ [Access to justice for potential human rights breaches | SHRC Spotlight Projects](#)