



**CALL FOR
VIEWS**

Scottish Human Rights Commission

Strategic Plan 2024 - 2028

15 December 2023

Introduction

1. NASUWT welcomes the opportunity to help shape the Commission's Strategic Plan for 2024 to 2028, including its priorities, objectives and how the organisation approaches its work.

2. NASUWT is the Teachers' Union, representing teachers and school leaders in all sectors of education.

3. **Thinking about the people you work with, or drawing on your own experiences, what do you think are the most pressing human rights issues for people in Scotland right now?**

NASUWT supports the principles underpinning the four international conventions and covenants, in addition to the principle of a right to a healthy environment. We also noted in our consultation response that we do not have any objection to the incorporation of these rights within UK or Scots law.

Nevertheless, the detail regarding how this is achieved is exceedingly important and currently NASUWT has significant concerns that insufficient time has been spent unpacking this complexity and that the Scottish Government has moved too swiftly to the formal consultation phase. For any country, the incorporation of international conventions is complex because they are, for good reason, written in ways that are pitched at a high level of generality. As such, they are open to a wide

range of different interpretations. Clarity is secured through case law or through the publication of clear accompanying guidance that sets out in more detail how any particular provision in a convention might be applied in real-life instances.

The debates about the United Nations Convention on the Rights of the Child (UNCRC) Bill in Scotland highlight this issue very clearly. In effect, all there is in Scotland is the text of the Convention. This creates a great deal of scope for interested parties to impose on the text of the Convention meanings that suit particular positions. In Scotland, there remains a lack of clarity about what the UNCRC means or doesn't mean in practice: this will become a serious issue when the UNCRC is given legal standing and imparts rights that can be enforced in courts. In time, the courts will rule on cases and we may move towards a position where the specific requirements of the UNCRC will become clearer, but this is going to be a slow process. In the meantime, those impacted by the incorporation of the UNCRC might understand that complying with it is a legal obligation, but will not know what these obligations are in practice because there is no credible means available to help them find out.

The same issue could, in theory, arise with the proposed incorporation of these conventions under a Human Rights Bill for Scotland. The Union noted that it is helpful that Scottish Government wants the courts to be able to draw upon sources such as General Comments and Committee recommendations. This is considerably more helpful than the approach taken in respect of the UNCRC, where the use of these authorities has been largely discounted, and, indeed, the Union will be seeking a similar commitment to draw on international authorities in respect of the UNCRC Bill.

Nevertheless, law needs to be accompanied by a reasonable degree of certainty so that everyone has a basic understanding of what is expected of them and can act accordingly. Notwithstanding the reference to comments and recommendations, it is extremely important that the teachers and others in civil society are given as much clarity as

possible on the rights and obligations that incorporation would create before any Bill becomes law.

4. What do you think are likely to be the biggest threats and barriers to human rights in Scotland over the next four years?

Clarity is also required around the interaction with existing rights. Another source of uncertainty that NASUWT has highlighted in respect of the UNCRC is how the rights it would confer post-incorporation relate to other rights. Post-Supreme Court UNCRC ruling, this is a particularly important consideration in relation to the Human Rights Act, the Equality Act, the Public Sector Equality Duty, the Health and Safety at Work Act, the General Data Protection Regulation, the Public Interest Disclosure Act and any other legislation relating to powers that are reserved to Westminster. Presumably, any conflicts would mean that these legislative provisions take priority? This has not been clearly unpacked, but undoubtedly it is a fundamental question.

While we would acknowledge that, to some extent, it will depend on how the incorporated provisions are interpreted in practice, it is critical that central reassurance and a firm commitment from Scottish Government is given to any moves made to progress the Human Rights Bill. Any anticipated or proposed process detailing statements of incompatibility, for example, should be clearly set out alongside any implications flowing therefrom.

5. As part of the Commission's transition strategy this year, we have piloted a new 'spotlight' projects approach, to focus and report on key human rights concerns in specific thematic areas and test new methodologies and ways of working.

This year our spotlight projects have focused on:

- **Economic, social and cultural rights in the Highlands and Islands.**
- **Barriers to accessing justice and the complexity of the complaints landscape in Scotland.**

- **Outstanding human rights recommendations in places of detention and mental healthcare in prisons.**
- **The long term detention of people who have learning disabilities and autism in mental health settings or out of area placements**

We would like to know what you think of this thematic approach.

Do you think the Commission should do more of this type of ‘spotlight’ work under its next Strategic Plan?

While the Union agrees that there is a role for spotlight work, this should be ancillary to the main tasks of the Commission. As a national Commission, maintaining a strategic oversight during a period of significant change must take priority.

6. How should we decide on the areas/topics/human rights concerns to focus on each year, and what factors should we take into consideration when deciding?

In order to build a stronger culture of accountability for human rights in all its forms – from scrutiny, monitoring and measurement to enforcement – the Commission must engage and work closely with people with lived experience. It is key that the voices sought out are representative of Scottish society and, further, that the views of those who might otherwise not be heard are amplified in this process.

NASUWT suggests that the Commission seeks out the voices and views of the LGBTI community, in particular. The Union is particularly concerned to ensure LGBTI rights are not lost, because there is, of course, no convention or covenant in play that addresses those rights. The proposed Human Rights Bill runs the risk of relegating these rights relative to those of others covered by the relevant conventions.

It is incumbent on the Scottish Government to come forward with a coherent plan about how equal status would be afforded to LGBTI rights in this context and the Commission must play a role in advocating for LGBTI rights in this context. If part of the aim of the exercise of incorporation is to promote cultural and attitudinal shifts,

then the exclusion of LGBTI rights in this context is deeply problematic and undoubtedly creates a hierarchy of rights.

7. How well do you know your Commission? The Scottish Human Rights Commission is an independent public body, accountable to the people of Scotland through the Scottish Parliament. We are a National Human Rights Institution (NHRI). This means we are accredited within the United Nations (UN) system and can report directly to the UN on human rights issues. The Commission acts as a bridge between human rights in Scotland and the international human rights system. We monitor the implementation of international human rights treaties in Scotland, working closely with civil society to gather evidence and produce recommendations for change.

The Commission has a broad mandate and to fulfil its duties it has several powers which include:

- **Publishing advice and guidance**
- **Conducting research**
- **Providing education and training**
- **Reviewing and recommending changes to law, policy, and practice**
- **Conducting inspections in places of detention**
- **Conducting inquiries in a limited set of circumstances**
- **Intervening in civil proceedings before a court in certain circumstances.**

The Commission team is made up of a part-time Chair (currently vacant), three part time Commissioners and 15 members of staff (13.8 full-time equivalent posts). In 2023-24, we had a budget of £1.3m.

Like all public bodies, we have to make difficult strategic decisions about how to prioritise our limited resources, based on what we think will achieve the biggest impact. The following questions focus on whether you think the Commission currently delivers its mandate and uses its resources well.

How well do you feel you know the Commission and its work

(response in red)?

Very well

Quite well

I've heard of them but don't really know what they do

Not very well

This is the first time I have heard of them

8. Overall, what is your impression of the Commission and its work to date?

The Commission has not as yet achieved a sufficiently high profile within Scottish society and policy circles, no doubt in large part due to the uncertainty regarding the boundaries of responsibility with the Equality and Human Rights Commission.

9. Have you ever read or used any of the Commission's reports, publications or training resources?

Yes

10. If you answered yes to the above question, do you have any general comments about Commission's outputs? For example how user-friendly, accessible, useful or informative are they? What would be most useful for you and your work? What would you like to see more of?

Commission's documentation on the website is clear and accessible. However, there are concerns that these publications do not currently have sufficient reach and that an improved communication strategy may be in order.

11. Thinking about the powers and mandate that the Commission already has, do you think the Commission should do more or less of the following:

(Available responses:

The Commission should do less of this

The Commission does the right amount of this

The Commission should do more of this

Not sure/ don't care

Responses in red)

Publishing advice and guidance **The Commission should do more of this**

Conducting research **Not sure**

Monitoring human rights in different areas of Scotland / Monitoring the state of human rights in Scotland **The Commission should do more of this**

Providing education and training - for example in how to take a human rights based approach **The Commission should do more of this**
 Developing practical resources for civil society and the public sector
The Commission should do more of this
 Reviewing and recommending changes to Scottish law, policy, and practice **The Commission should do more of this**
 Engaging with the international human rights system, including monitoring and reporting on human rights treaties **The Commission does the right amount of this**
 Conducting inspections in places of detention **Not sure**
 Conducting inquiries **The Commission should do more of this**
 Intervening in civil proceedings before a court in certain circumstances
Not sure
 Engaging with people who have lived experience of human rights violations **The Commission should do more of this**
 Other

12. The future: The Commission’s role in a new human rights landscape.

The Commission has been calling for stronger protections for human rights in Scotland for more than a decade. Over the period of our next Strategic Plan, we anticipate that the Scottish Parliament will pass a new Human Rights Bill for Scotland.

What do you see the Commission’s role being in helping ensure that the Bill is successfully implemented in Scotland?

Please tick all that apply (ticks in red)

Increased role in training and capacity building for those responsible for delivering our human rights

Working with rights holders to increase awareness of their rights under the Bill and how to claim their rights

Working with regulators and inspection bodies to build their capacity and understanding of issues they encounter as human rights

Providing evidence during the passage of the bill through Parliament

Other (please specify)

13. Under its current powers, there are some things that the

Commission legally cannot do - this includes things like giving advice or assistance to individuals or raising legal proceedings in our own name.

As part of the passage of the new Human Rights Bill, the Commission may be given some new and additional powers. We do not yet know what this will look like or when it will happen.

Below are some of the powers that we think are important for the Commission to fulfil its mandate to the highest standards for rights holders.

Please tell us which of these you think should be a priority by ordering them from most to least important.

- a) Issuing Binding Guidance
- b) Requiring and compelling information
- c) Broader inquiry powers
- d) Raising Legal Proceedings in own Name
- e) Conducting Investigations
- f) Recruiting more members of the Commission to represent more voices and experiences of Scottish society
- g) Holding Public Hearings and requiring duty bearers to be present
- h) Providing legal advice to individuals

14. Final comments: Is there anything else you would like the Commission to consider as part of its next strategic plan development?

It is frustrating that, as per the UNCRC Bill, the Scottish Government is seeking to speed ahead with introducing legislation without first ensuring sufficient thought has been given to the complexities and potential unintended consequences.

The Union is keen to see a national human rights approach from the Government which will, inter alia, support existing policy around: the right to food and universal free school meals; combatting sexual harassment; addressing the climate crisis; and anti-racism, to name a few areas. But action from the Government and the Commission need not wait upon the incorporation of international treaties.

The Union strongly suggests that the Commission holds the Scottish Government to account on its actions and works to ensure the following questions are considered before any legislative process.

- Is an act capable of not only being widely understood but also supportive and facilitative of a shared understanding? Historically, as related to the named person scheme, the Scottish Government's ambitions fell short – in large part due to an overly complex and bureaucratic legal framework. Have any lessons been learned?

- How will all new rights work alongside each other and alongside pre-existing legal rights and entitlements which span UK and Scottish legislation both pre- and post-devolution?
- Will intersectionality be truly understood under any proposed incorporation or will the framework further entrench the disadvantage faced by those who have a combination of two protected characteristics, to borrow language from the Equality Act? How can intersectionality be understood and supported?
- How will the Commission advocate for flexibility for future change be incorporated? Both STUC and TUC policy is that employment law should be devolved. The International Covenant on Economic, Social and Cultural Rights (ICESCR) includes the right to work and may currently need to be carved out as not devolved. However, should this position change in the near future, we must ensure the legal framework is sufficiently malleable as to be amended to embrace that change.
- Have a variety of voices been heard?
- Has sufficient money been set aside to support not only dissemination of information but also a contingency fund for the inevitable raft of claims against the Government?

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