

Scotland 2024

Information from: Scottish Human Rights Commission

Follow-up to last year's rule of law recommendations

State authorities' follow-up to regional actors' recommendations on rule of law

The Scottish Human Rights Commission (hereafter “the Commission”) reports it is not aware of any specific reference to the 2023 ENNHRI [report](#) in Scottish debate on rule of law matters. The Scottish Government does not currently track implementation of recommendations in a single, combined way, such as via a National Mechanism for Monitoring, Reporting and Follow-Up.

The [Response to the Universal Periodic Review](#), published in January 2024, provides one assessment of how these specific recommendations are being implemented.

Implementation of the Scottish National Action Plan for Human Rights

The first Scottish National Action Plan for Human Rights (SNAP 1) was published in 2013. An [independent evaluation of SNAP 1](#) published in 2019 found that it did not have adequate support to put all its commitments into practice. Examples of commitment and support from the Scottish Government, but this did not appear to be consistently given, and reduced over time. As a result, to ensure that the second Action Plan (SNAP 2) did receive the support, the Scottish Government provided funding to facilitate the short term hosting of the secretariat and to support the leadership panel, a voluntary partnership including rights holders and people who represent civil society organisations, duty bearers (public bodies), and National Human Rights Institutions via the Commission. The Leadership Panel was responsible for developing actions and priorities to be included in the plan. A Secretariat Lead was seconded to the Commission for 18 months to recruit and support the new SNAP Leadership Panel to review, revise, finalise and publish SNAP 2.

[SNAP 2](#) was published in March 2023, at which time the Commission stepped down from a co-chairing role of the SNAP Leadership Panel to take up a monitoring role in the implementation of SNAP. It was acknowledged via the Panel that the next step for the Scottish Government would be to prioritise actions within the plan, recognising that not everything could be done at once. However, having had no further update, the [Commission wrote to the Scottish Government in January 2024](#) to request information about the Scottish

Government's implementation plans.

NHRI's follow-up actions supporting implementation of regional actors' recommendations

The Commission has not undertaken specific action in response to the recommendations in the [ENNHRI 2023 Rule of Law Report](#). The Commission's strategic priorities have been identified according to [a transition strategy and a scoring mechanism for priorities](#). This seeks to shift the Commission's allocation of resource from engaging with policy processes towards accountability-focused human rights monitoring, within the statutory mandate.

Access to Justice

The Commission has identified "Access to Justice", especially for human rights complaints, as a key area of concern in the protection and realisation of rights in Scotland. The Commission has designated [Access to Justice a priority 'spotlight' project](#) for the current year. This work has so far seen the publication of a [study authored](#) by Professor Katie Boyle, Professor of Human Rights Law and Social Justice at the University of Strathclyde exploring avenues to justice for social rights in Scotland. The paper articulates the highly complex access to justice system in Scotland, which is fragmented, difficult to navigate, and often simply inaccessible to too many people. It also finds that learning from complaints and issues which are raised through existing systems does not often result in wider changes to benefit other people.

Other aspects of work on this project are forthcoming but include a programme of mapping routes to justice through existing complaints mechanisms. This work overlaps with the Commission's priorities in the Human Rights Bill ([Human Rights Bill consultation response](#)).

Other spotlight projects include:

- [Monitoring the enjoyment of ESC rights in the Highlands and Islands region of Scotland](#)
- Assessing implementation of recommendations relating to conditions of detention
- Analysis of the human rights framework relevant to the deprivation of liberty of persons with learning disabilities and autism.

It is anticipated that access to justice and other rule of law considerations will also be surfaced in these projects.

Access to justice challenges have also been highlighted through the Commission's treaty monitoring work, chiefly its [parallel report to the UK's examination under the International Covenant on Civil and Political Rights](#) and

its [parallel report on the UK's baseline assessment under the Council of Europe Convention on the on Preventing and Combating Violence Against Women and Domestic Violence](#). The Commission also published a survivors' voice report ("[It's Not a Story, It's What Happened](#)" [Victim-Survivors of Gender-Based Violence: In Our Words](#)) which highlighted specific issues throughout the justice system for victims of gender-based violence.

The Commission regularly meets with officials at all levels of Government and with ministers to encourage progress on recommendations from human rights bodies.

The Commission's monitoring and policy work in this period has included:

- [Submission to Council of Europe on the Istanbul Convention](#)
- [Response to Abortion Services \(Safe Access Zones\) Scotland Bill Consultation](#)
- [Attitudes to Human Rights in Scotland](#)
- [Human Rights Bill: Consultation Response](#)
- [Towards a New Method of Incorporation: a Legal Opinion](#)
- [A Stronger Human Rights Commission for Scotland](#)
- [Access to Justice for Everyone: A discussion paper](#)
- [Reconsideration of the UN Convention on the Rights of the Child Bill \(Statement\)](#)
- [Briefing: Social Justice and Social Security Committee Pre-Budget Scrutiny](#)
- [UKIM Submission to UN Committee on the Rights of Persons with Disabilities \[PDF\]](#)
- [European Social Charter 2023: Children, Families and Migrants](#)
- [Submission to the Council of Europe's European Commission Against Racism and Intolerance \(ECRI\)](#)
- [Response on Reforming the Criminal Law to Address Misogyny](#)
- [Response to Review of National Performance Framework National Outcomes](#)
- [Briefing on Minimum Core Obligations](#)
- [Consultation: Local Development Plans on defining Gypsies and Travellers](#)
- [Submission: ICESCR report to United Nations](#)
- [Additional evidence to United Nations Committee on the Rights of the Child \(CRC\)](#)
- [Retained EU Law \(Revocation and Reform\) Bill](#)

State authorities' follow-up to NHRI's recommendations regarding rule of law

The Commission is not aware of the Scottish Government, Scottish Parliament or other public bodies taking steps to specifically respond to the general

recommendations of the 2023 ENNHRI [Report](#) on the state of the Rule of Law in Europe. Specifically, the Commission recommended that:

- "The Scottish Parliament should formally monitor the implementation of judgments on an ongoing basis until full implementation is achieved"

This has not been progressed and the Equality, Human Rights and Civil Justice Committee continues to have a considerable remit that limits attention on targeted human rights implementation.

Scotland 2024

Information from: Scottish Human Rights Commission

Independence, effectiveness and establishment of NHRIs

International accreditation status and SCA recommendations

The Scottish Human Rights Commission was last [re-accredited with A-status in June 2021](#).

The SCA acknowledged that the NHRI interprets its human rights mandate broadly and encouraged the NHRI to continue to do so in a liberal and purposive manner to promote a progressive definition of human rights, which includes all rights set out in international, regional and domestic instruments, including economic, social and cultural rights. The SCA recommended that the NHRI advocate for appropriate amendments to its enabling law to include a more expansive definition of human rights and to extend to acts and omissions of private entities. It also took the view that the NHRI should be enabled to conduct unannounced and unaccompanied visits to places of detention as part of its protection mandate, including in cooperation with other relevant bodies as a member of the National Prevent Mechanism under the OPCAT.

Additionally, the SCA was of the view that the selection and appointment processes for the Chair and members of the Commission, as provided for in the enabling law, were not sufficiently broad and transparent. In particular, they do not require the advertisement of vacancies, establish clear and uniform criteria, ensure that such criteria are uniformly used to assess the merit of all eligible applicants, promote broad participation in the processes.

Acknowledging that, in practice, the processes are open and transparent and that the NHRI has sought to address this recommendation through dialogue with the relevant authority, the SCA encouraged the NHRI to continue to advocate for amendments to its enabling law to ensure the formalization of a process that would meet the above requirements.

Finally, the SCA encouraged the NHRI to continue to advocate for additional funding to ensure that it can effectively carry out the full breadth of its mandate.

Follow-up to SCA Recommendations and relevant developments

Proposals for new accountability bodies

The Commission is actively engaging with the SCA's observations in respect of its resourcing and mandate. In June 2023, the Commission published a discussion paper, [At a Crossroads - which way now for the human rights system in Scotland?](#), which reflects on the changing context for the Commission since its establishment and the ongoing calls for new accountability bodies that represent marginalised individuals and communities. The Commission reflects that calls for new dedicated commissioners/commission bodies should be seen as a positive challenge to current accountability mechanisms and the routes through which individuals can access justice for human rights.

In this paper the Commission also proposes a range of considerations for the parliament to reflect and recommend that national debate should consider further a) where the current gaps in accountability truly are; b) what powers and resource each new public body would require to ensure consistency of approach; and c) whether there is the potential for action to reform the legislative mandate, form, and function of the SHRC to create greater access to justice routes for all.

Review of governance arrangements

As noted in the [submission](#) to the 2023 ENNHRI rule of law report, the Commission instigated [a review of governance arrangements](#) in 2023. The Review reported in July 2023 and was published in full, with all recommendations accepted. The Governance Review also includes recommendations to the Scottish Parliament Corporate Body including the size and hours of the Commission. The Commission currently has a vacancy in the role of Chair. The Governance review made recommendations regarding the role profile and person specification and for parliament to seek human rights expert input into the appointment. Members of the Commission were able to comment on draft job descriptions ahead of the vacancy and an external expert was also able to comment. Interviews for the post took place in March

2024. Professor Angela O’Hagen was nominated by the Scottish Parliament as Chair of the Commission on 16th May 2024 and, subject to approval by the King, is expected to take up post in Summer 2024.

The forthcoming Scottish Human Rights Bill represents an opportunity to strengthen the mandate and resourcing of the Commission, as noted in [A Stronger Human Rights Commission for Scotland](#).

Regulatory framework

Expansion of mandate

The national regulatory framework applicable to the institution changed in one specific way. Following the passing of the [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#), the Commission has legal powers to bring cases under this Act and to intervene in cases brought by others. The Act also amends the [Scottish Commission for Human Rights Act 2006](#), the Commission’s founding statute, and disapplies the general prohibition on assistance in respect of proceedings brought or intervened in by the Commission relating to these new legal powers.

The Commission welcomes the expansion of its mandate in this way and is clear that it now paves the way for further legislation to apply this power to broader human rights cases. Until that point, the Commission’s ‘protection’ mandate is concentrated to one population group, namely, children. Use of the new powers will be subject to working agreement with the Children and Young People’s Commissioner for Scotland in line with the NHRI’s duty not to unnecessarily duplicate the work of other bodies provided for in the founding legislation. The Act received Royal Assent in January 2024 and is expected to commence in the Summer of 2024. The Commission will develop an implementation plan ahead of this date.

Preparation for New Human Rights Bill for Scotland

In respect of future developments, the Scottish Government is now in the final stages of planning a new Human Rights Bill for Scotland, the most significant development in the human rights’ legal framework across the UK since the Human Rights Act 1998. A consultation on the Scottish Government’s proposals for a new Human Rights Bill ([A Human Rights Bill for Scotland: consultation](#)) was held between June 2023 and October 2023, and analysis published in January 2024 ([A Human Rights Bill for Scotland: consultation analysis](#)). The model proposed by Scottish Government would establish a duty to comply with elements of the International Covenant on Economic, Social and Cultural Rights (ICESCR) in devolved competence, as well as the right to a healthy environment, and a procedural duty for public bodies to consider rights contained in Convention on the Elimination of All Forms of Discrimination

against Women (CEDAW), International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and Convention On The Rights Of Persons With Disabilities (CRPD), as well as the rights of older people and LGBTQIA+ people.

However, the UK's complex constitutional arrangement, including the untested boundaries of reserved and devolved settlements, is creating complexity in the route through which the Scottish Government can develop legislation to incorporate these treaty rights. The Commission is focused on providing advice which secures the maximal approach to incorporation of rights within devolved competence and is undertaking a [programme of analysis](#) to explore options for the enhancement of level of protection and justiciability of CEDAW, CERD and CRPD rights. The Scottish Government has indicated that its ambition is to deliver 'world leading' legislation while navigating the constitutional parameters. This presents a live opportunity for the role of the Commission, as Scotland's NHRI, to be significantly strengthened through both changes to its mandate and commensurate resourcing.

The independent Consultation analysis reaffirms that there is strong support from rights-holders and civil society for a strengthened Commission, which is foreseen to play a critical role in stronger accountability mechanisms, including judicial and non-judicial routes to remedy. The Commission is engaging with the Scottish Government on the scope of powers that may be included in the Bill as introduced at Stage 1, for example our report [A Stronger Human Right Commission for Scotland](#) and associated meetings and correspondence.

NHRI enabling and safe environment

As noted above, the Commission's mandate and resourcing has not been revisited since 2006. The Commission is increasingly subject to greater calls for our input and advice while many sections of civil society and the general public call for more bodies to be set up to protect and promote the human rights of particular groups of people. This can be perceived as a comment on the reach and impact of the Commission as Scotland's NHRI with the limited resource and mandate it has.

The Commission itself addressed the underlying access to justice concerns and experiences of rights holders behind these calls for new public bodies in a report published in June 2023: *At a Crossroads: What Next for the Human Rights System in Scotland?* This paper examined the experiences of rights holders in terms of accessing justice for human rights violations and suggested that the Commission as Scotland's NHRI could play a stronger role with a revised mandate and resource. In January 2024, the Public Finance and Administration Committee announced an Inquiry into the Strategic Landscape around calls for new legislation to create new public bodies to uphold the human rights of particular groups of people. This will conclude in the summer

of 2024.

Human resources

At the time of re-accreditation, the Commission had, in practice, 17 staff (14.1 FTE), including one on maternity leave (1 FTE), two temporary posts funded by the contingency funding (2 FTE) and one other fixed term post (0.6 FTE). As of February 2024, the Commission has 15 staff (14 FTE), this includes one member of staff (1 FTE) funded through SPCB contingency, and the budget reflects a degree of flexibility around non-salary overheads to fund research support and exercises such as the independent Governance Review.

Temporary increases to the staffing complement referred to in the NHRI's previous submission are now, following some restructuring of the specific roles, fully funded substantive posts which form part of the Commission's core staffing complement. Previous requests for above 'minimum growth' options have not been considered further in this period.

From March 2024, the Commission will enter a new [Strategic Plan period \(2024-2028\)](#). For the first year of the strategic plan, an indicative 3% and 2% non-staffing increase has been costed based on the current structure and operational capacity of the Commission. This is acknowledged to be based on the status-quo and is also subject to annual review and agreement with the SPCB.

Financial resources

The Commission's budget (including contingency funding) for 2023-24 was £1.38 million. The Commission has made a bid for £1.46 million for the next financial year (24-25) which includes no additional staffing requests (a static budget.) This also reflects a reduction in the FTE of the Chair position from 1 to 0.5 FTE following the Governance Review.

The Commission is actively seeking a strengthened mandate and increased resources to follow, and it is anticipated that this will now form part of the proposed Human Rights Bill to inform the Commission's necessary and critical role as the NHRI in development and implementation support required for a new human rights framework law in Scotland.

In line with the Belgrade Principles, the Commission is also progressing with a renewed focus on the relationship between its outputs and the role of the Scottish Parliament in receiving and considering the findings of the Commission in respect of human rights monitoring and accountability, in addition to advice to inform its consideration of proposed legislation.

NHRI's recommendations to national and regional

authorities

The Commission recommends that the state act on the recommendations in its Incorporation Paper, [A Stronger Human Rights Commission for Scotland](#).
Chiefly:

- As a minimum, the mandate should be amended to enable the following functions and powers to:
 - Provide legal advice
 - Raise legal proceedings in its own name
 - Conduct investigations
 - Conduct inquiries in less limited circumstances
 - Require and compel information
 - Make unaccompanied and unannounced visits to any human rights duty bearer
 - Hold public hearings and require duty bearers to be present
 - Issue binding guidance
- Sufficient resource must be allocated to the Commission to fulfil its current and an expanded mandate
- An expanded mandate must be applicable to all human rights defined in the UK Human Rights Act 1998, and the International Human Rights Treaties as ratified by the United Kingdom, regardless of the incorporation approach adopted by the Scottish Government.

Scotland 2024

Information from: Scottish Human Rights Commission

Democracy - checks and balances, disinformation, and other topics

Separation of powers

The Commission's monitoring work has not identified a particular challenge to separation of powers in Scotland. It is worth stressing that public access to information about ongoing court procedures and human rights cases is significantly limited in Scotland. There is slow change to the traditional reluctance to accept third party interventions in Scottish Courts. These trends have informed the Commission's strategic plan and calls for stronger legal powers.

Civil and criminal law reform

An ongoing programme of civil and criminal law reform has raised ongoing debate about the appropriate safeguards for judicial independence.

In 2022, the Scottish Government published a [Vision for Justice in Scotland](#) which acknowledges that the nature of the criminal justice system has at times not served women and children. A range of research with women and child victims of gender-based violence has shown that they find engaging with the justice system “extremely distressing and retraumatising”.

A [review of the management of sexual offences cases](#) made a number of recommendations to improve the process of conducting sexual offences cases in Scottish courts for the victim, including improving the trauma-awareness throughout the system. This also included a new special offences court, presumed use of pre-recorded evidence; measures to improve the current experience of complainers with a particular focus on improved communication; steps to enhance jury involvement; and improvements to aspects of the Children’s Hearings System.

Reflecting the findings from the review, a [Victims, Witnesses and Justice Reform \(Scotland\) Bill](#) is currently being considered by the Scottish Parliament. The Bill’s stated intention is to improve justice responses, particularly in sexual offence cases. The reforms would abolish the not proven verdict in all criminal trials in Scotland, reduce juror numbers to twelve and require a two-thirds majority for conviction. The Victims, Witnesses and Justice Reform (Scotland) Bill as drafted does not require reasons to be given by the head of the judiciary (the Lord Justice General) should a judge be dismissed from the pilot court, potentially increasing the exercise of discretionary power. One central concern of law bodies in relation to the reforms has been the [appropriateness of judicial dismissal](#) from a pilot sexual offences court.

Ministers would also be subject to an obligation to establish a pilot specialist Sexual Offences Court. The Court would hear all solemn level sexual offence cases. Cases in the sexual offences court may be heard by a single judge sitting without a jury. The Bill also proposes to introduce a statutory automatic right to anonymity in sexual offence cases, which is not currently in place in Scotland but is in the rest of the UK.

Some members of the legal profession – including [the Law Society and the Scottish Solicitors’ Bar Association](#) - have argued that some of the proposals for reform - or their cumulative effect - affect the balancing of rights between too far in favour of the complainer and put at risk the fair trial rights of the accused. Criminal defence lawyers have warned that they will boycott the pilot if proceeded with.

The composition of a tribunal, and the framework within which their decisions should be made is within the margin of appreciation of member States, and Article 6(1) does not require that the determination of guilt is made by a jury.

Although there is no individual right to trial by jury in Scots law or international law - in particular Article 6 ECHR - the use of juries in solemn cases is an important component of Scotland's criminal justice system. It is essential that the ongoing legislative process gives due consideration to the human rights of all persons affected by criminal proceedings. This means ensuring sufficient safeguards in the round for the rights of the accused and procedural safeguards for a pilot tribunal that are fully compliant with the obligations in Article 6, including independence and impartiality of a tribunal and the security of judicial tenure.

In relation to the [Regulation of Legal Services \(Scotland\) Bill](#), some in the legal profession have suggested that proposals undermine the constitutional principle of judicial independence. The Scottish Government's proposes to make the Scottish Government a co-regulator of the legal professional bodies, alongside the most senior judge (the Lord President / Lord Justice General). [The Equality, Human Rights and Civil Justice Committee](#), the Parliamentary Committee responsible for scrutiny, found that:

“On the issue of an independent regulator, we acknowledge that there are polarised views and that the Scottish Government has attempted to find a compromise. We are not convinced that such a compromise is possible between the competing positions nor that it has been achieved in this Bill as drafted... As our report makes clear, the Committee shares the concerns expressed by the Law Society, Faculty of Advocates and Senators of the College of Justice on the powers proposed for Scottish Ministers and, while unresolved, is unable to meaningfully reach a conclusion on whether or not amendments at Stage 2 will resolve these issues satisfactorily due to an absence of detailed information on what is going to be proposed.”

The Scottish Government has [confirmed](#) that it intends to amend the Bill in response to concerns. The [Law Society has welcomed](#) the intention to narrow the Scottish Minister's role while noting detail of amendments has to be scrutinised. This process is ongoing at time of writing.

Independent inquiry

A further and ongoing area of focus for the Commission is the impact of COVID-19 emergency measures on decision-making.

The Scottish Government committed to an independent inquiry into the management of the pandemic in Scotland in 2020. [The SNP manifesto](#) for the 2021 Scottish Parliament elections committed to a “statutory, person-centred and human rights based public inquiry.” However, the Commission and many civil society voices [raised significant concern](#) about the inquiry's approach to human rights and equalities. Following the resignation of the first Chair of the inquiry for personal reasons, the [Terms of Reference](#) were revised to make explicit reference to a human rights-based approach. The independent inquiries

at UK and Scotland levels are both ongoing. The Commission's previous Chair, Ian Duddy, resigned his post to take up a role as the Chief Executive of the Scottish Inquiry. Issues around the transparency of decision-making, records management and the use of emergency powers have been the subject of much recent reporting as both inquiries proceed. In the midst of the pandemic, the Commission undertook a range of briefing and advisory activity ([Human Rights and COVID-19](#)) with Government and other public authorities to emphasise the need to ensure that measures were strictly lawful, necessary, proportionate and time limited. However, given the speed at which emergency legislation was promulgated, the Commission was unable to provide specific and targeted advice in advance. However, while the Commission consistently recognised the need for emergency powers, they welcomed the Scottish Government's commitment to review the legislation and to lift restrictions as soon as they were deemed to be no longer necessary to protect against the coronavirus.

The Commission will continue to engage with inquiries as and when required.

The process for preparing and enacting laws

Insufficient time for meaningful public participation

The Commission has a general concern that consultation periods for Scottish Government policymaking are not always sufficient to promote meaningful participation in public affairs. For example, the consultation on the new human rights framework for Scotland, a fundamental piece of legislation, ran for a total of 16 weeks. However, this overlapped with school holiday periods and contained 44 highly technical questions which made it difficult for some stakeholders to engage as they may have wished to. Accessible versions of the consultation were not available at publication though subsequently published. Several NGOs criticised the Scottish Government's approach and highlighted the challenging context for them to fully engage (see the response of the [Human Rights Consortium Scotland](#), supported by 38 NGOs).

Consultation overload

Scotland Environment Link annual congress - a forum for environmental community organisations - described the current landscape as '[consultation overload](#)'. This sentiment can also be seen in some of the recent outputs from the Scottish Council for Voluntary Organisations (SCVO), the national membership organisation for the voluntary sector - see for example: [Post-legislative scrutiny: Procurement Reform \(Scotland\) Act 2014](#).

Consultation is a vital avenue to good public engagement and improves outcomes. However, the recent volume of consultation, often requiring increasingly technical competency, and combined with other resource pressures across all sectors, is not conducive to good participatory and

democratic process.

Access to information

Scotland has freedom of information rules which apply to public bodies under the [Freedom of Information \(Scotland\) Act 2002](#) (FoISA). [A private members bill](#) is currently proposed in the Scottish Parliament which argues that FOI laws need modernising through reforms to the 2002 Act. Key proposals include :

- Extending FoISA to those bodies delivering public services, services of a public nature and publicly funded services , including in some cases the third sector
- Change or increase flexibility in how specific duties are defined which cover newer methods of information storage or temporary communications / auto-delete functions on personal devices or private messages
- Mirroring GDPR obligations to establish a data protection officer through a statutory FOI Officer.

The Scottish Government has also considered its own proposals for reform. Following a public consultation the Scottish Government concluded that the existing FoISA is currently considered sufficient but that it will seek to keep the issue under review and improve application of FoISA through secondary means.

This legislative debate has coincided with public debate about transparency and appropriate records keeping heightened by the change to working practices over the course of COVID-19. In February 2024, Scottish Information Commissioner [launched an intervention](#) in response to the Scottish Ministers' practices in relation to the use and retention of informal communications using tools such as WhatsApp.

The Scottish Information Commissioner's Report - [Freedom of Information during and after the Covid-19 pandemic](#) – found that compliance over the pandemic was generally good, there was a need to ensure that FOI had the appropriate, senior-level attention and resource and that public bodies need to review whether their information records management is appropriately retained with a rise in use of new technologies.

Enabling environment for civil society and human rights defenders

Lack of legislation countering SLAPPs

The Commission is aware of campaigns among civil society actors concerning the legal regime applicable to SLAPPs ([The Campaign for Freedom of](#)

[Information in Scotland](#)). Scotland currently has no specific measures to address the use of SLAPPs, and there is no data to assess how frequently legal processes are used to prevent exercise of freedom of expression, media reporting and public participation rights. The Commission is not itself aware of any specific instances, however the chilling effect of such legal claims cannot be measured. The Scottish Government is not currently planning any legal reform, most notably of the [1](#), to deal with SLAPPs., to deal with SLAPPs.

However, in the context of the development of anti-SLAPP legislation in England and Wales, the absence of legislative reform in Scotland risks negatively impacting the effective functioning of the domestic judicial system by overburdening the court system with strategic civil litigation aimed at suppressing information on matters of public interest.

NHRI's recommendations to national and regional authorities

The Scottish Government should review the need for specific legislation to ensure the protection of freedom of expression and compliance with international standards in preventing SLAPPs.

Scotland 2024

Information from: Scottish Human Rights Commission

Securitisation's impact on the rule of law and human rights

Freedom of assembly

The Commission has not seen significant evidence of this specific to devolved policy, however notes that many areas of high risk remain reserved to the UK. For example, the [UK's Public Order Act 2023](#) does not apply to protest that happens in Scotland. Protests in Scotland are governed by devolved legislation, with the Public Order Act (1986) s.16 defining public assemblies. The Civic Government (Scotland) Act (1982) requires organisers of a public procession to provide written notification to the relevant local authority and Police Scotland and provide certain details on planned protests. Restrictions on assembly or expression in public fora may be imposed by a public authority in accordance with legal approved reasons, and there is a right of appeal to the sheriff court. Criminal laws or trespass laws may be engaged by certain protest activity in individual circumstances.

While the Public Order Act 2023 does not apply to protest activity that occurs in Scotland, it is possible that Scottish residents could face charges under the Act for engaging in protest activity south of the border. The Public Order Act further grants the police in England and Wales additional powers to restrict protest activities.

Although the Act falls beyond the NHRI's mandate, the Commission is concerned about the potential exercise of these powers as they relate to individuals who travel from Scotland to England and Wales for peaceful protest.

Legislation on minimum service levels

Similarly, the [Strikes \(Minimum Service Levels\) Act 2023](#) is UK legislation that applies to Scotland. The legislation permits the introduction of minimum service levels in six "relevant" service areas, namely health services; fire and rescue services; education services; transport services; decommissioning of nuclear installations and management of radioactive waste and spent fuel; and border security.

The Scottish Government has the right to introduce the minimum service levels for devolved service areas – health, fire and rescue, education, and transport. However, it has set out its opposition to the legislation and stated that it will not exercise the right to introduce the minimum service levels and will not enforce any minimum service obligations upon employers.

The Public and Commercial Services union (PCS) has indicated that it may challenge [Border Security Minimum Service Regulations](#) introduced under the Strikes Act on Article 11 ECHR grounds.

NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation

Restrictions on the freedom of assembly

The Commission has continually sought to remind Police Scotland and other agencies about the importance of the right to protest, for example publishing a statement in respect of ongoing protests concerning the conflict in Israel and Gaza ([Statement on Israel and Gaza](#)). The Commission wrote to Police Scotland in 2022 to raise concerns about the policing of protest during the state mourning period following the death of Queen Elizabeth II. The Commission has also highlighted restrictions on assembly activities on the Scottish Parliamentary Estate.

The Commission also proactively engaged with the Scottish Government and

Police Scotland in advance of the COP 26 meeting in November 2021. The Commission and the Equality and Human Rights Commission [made a joint statement to the Forty-eighth session of the Human Rights Council](#) in which the organisations emphasised the importance of the right to protest in the context of COP 26, welcomed Police Scotland’s recognition of its responsibilities to human rights and called for “meaningful and proactive discussions with those seeking to protest, ensuring the right to freedom of assembly is supported, and by striking a proportionate balance between competing interests in facilitating the right to protest.”

NHRI’s recommendations to national and regional authorities

State authorities should embed human rights-based decision making into all policy and resource allocation decisions. Where required, this should include a detailed and transparent assessment of the proportionality of any restrictions on the exercise of human rights.

Scotland 2024

Information from: Scottish Human Rights Commission

Implementation of European Courts’ judgments

NHRI’s actions to support the implementation of European Courts’ judgments

The Commission was pleased to engage with the Department for the Execution of Judgements of the European Court of Human Rights and attend training with them in March 2023, during the Department’s visit to the UK. However, the Commission has not undertaken action on specific judgements.

NHRI’s recommendations to national and regional authorities

The Scottish Parliament should formally monitor the implementation of judgments on an ongoing basis until full implementation is achieved. In Scotland, this would most likely be carried out by the Equalities, Human Rights and Civil Justice Committee of the Scottish Parliament. This, along with a host of other recommendations, were made in the Scottish Human Rights Commission’s response to the Equalities and Human Rights Committee of the

Scottish Parliament's Inquiry into Human Rights and Scottish Parliament ([Submission to the Equality and Human Rights Committee Human Rights and the Scottish Parliament Inquiry](#)).

Scotland 2024

Information from: Scottish Human Rights Commission

Other challenges to the rule of law and human rights

The Commission would like to report the following persisting structural human rights issues that you would like to report on in the light of their impact on the national rule of law environment:

Access to Legal Aid

The [Legal Aid \(Scotland\) Act 1986](#) is widely considered to be outdated and an independent review commissioned by the Scottish Government found wide-ranging issues with the current system. The legal aid budget for 2023-24 is £156.1 million plus £3 million to strengthen access to justice for deprived communities and vulnerable groups. [Scottish Legal Aid Board \(SLAB\)'s annual report](#) showed that costs rose to £135 million in 2022/23, in part fee rate increase. In January 2023, the Scottish Government announced £11 million package to increase fees for legal aid lawyers. The Law Society and Scottish Solicitors Bar Association welcomed the agreement as a "[step forward](#)" but called for a long-term solution to underfunding and establishment of a sustainable fee review mechanism. No proposals have yet been brought forward.

Access to justice

The access to justice landscape in Scotland is highly complex fragmented, difficult to navigate, and often inaccessible. Learning from individual complaints raised through existing systems do not often result in structural change. A review of complaints mechanisms for ESC rights published by the Commission highlights broad issues with awareness, journey complexity and processes that undermine the right to effective remedy. Remedies are primarily geared at individual resolution as opposed to structural change.

A further concern is the high cost of accessing justice via courts. Various fees are payable for submitting applications to the court and for lodging documents at different stages of the court procedure. The fees are set out in Scottish

Statutory Instruments, which are updated annually by Fee Amendment Orders. There has been an increase in court fees applying to all court users, with some court users eligible to apply for a fee exemption.

The 3-month time limit for judicial review renders it extremely difficult for individuals to challenge violations of their rights. Time limits for courts do not fit neatly with non-judicial complaints mechanisms, limiting options to seek redress. Public-interest litigation is comparatively rare in Scotland and there are limited opportunities for NGOs to take strategic litigation due to standing rules, processes, and costs (see: [Overcoming barriers to Public Interest Litigation in Scotland](#).) The Scottish Human Rights Commission cannot take cases in our own name nor behalf of individuals. From July 2024, the Commission will be able to take cases in relation to the children and young people under the UNCRC Incorporation Scotland Act.

NHRI's recommendations to national and regional authorities

- The Commission recommends that the Scottish Government ensure that access to effective and appropriate remedies for human rights violations can be improved in Scotland, including the introduction of remedies which result in systemic change.
- The Commission recommends that the Scottish Government continue to seek opportunities to ensure that the justice system is more responsive to the needs of victims, especially women and children, while ensuring an accused's right to a fair trial in accordance with Article 6(1) ECHR and Article 14(1) ICCPR.
- The Commission recommends that the Scottish Government set out how it intends to reform the legal aid system in Scotland to ensure access to justice for all, in both the short and long term.

