



Scottish  
Human Rights  
Commission

## **The Scottish Human Rights Commission Submission to the United Nation's Committee on the Elimination of All Forms of Discrimination Against Women**

**June 2018**

The Scottish Human Rights Commission (SHRC) is the National Human Rights Institution (NHRI) for Scotland, accredited with A status by the Global Alliance of NHRIs. SHRC was established by an Act of the Scottish Parliament and has a general duty to promote awareness, understanding and respect for all human rights and to encourage best practice. SHRC also has a number of powers including:

-Recommending such changes to Scottish law, policy and practice as it considers necessary.

-The power to conduct inquiries into the policies or practices of Scottish public authorities.

-The power to intervene in some civil court cases.

SHRC is one of the three NHRIs in the UK. SHRC is 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) and member of the of the UK Independent Mechanism under CRPD.

Contact: Diego Quiroz, Policy Officer, Scottish Human Rights Commission,  
Governor's House, Regent Road, Edinburgh, EH1 3DE, Scotland.  
E: [diego.quiroz@scottishhumanrights.com](mailto:diego.quiroz@scottishhumanrights.com), tel.: +44 (0)131 244 5284.

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## Introduction

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1. There have been some positive measures in Scotland since the previous examination, including on violence against women (the Domestic Abuse (Scotland) Act 2018 and the Disclosure Scheme for Domestic Abuse), childcare (Scottish government's commitment to double the hours of childcare given and the implementation of the Best Start Grant<sup>1</sup>) and Scotland's first National Action Plan on Human Rights 2013-17. The First Minister has also established an Advisory Group on Human Rights (SHRC is a member) tasked "to make recommendations, before the end of December 2018, on how Scotland can continue to lead by example in human rights".<sup>2</sup> SHRC believes it provides a real opportunity for Scotland to strengthen human rights protection for women, including by incorporating CEDAW in Scots law.
2. Since the last examination by the Committee, the UK electorate voted in favour of leaving the European Union in a referendum held in 2016. There is considerable uncertainty in the UK about what implications withdrawal from the EU will have for the protection of human rights and women's rights. SHRC considers that there should be no regression from current rights protections that have emanated from the EU. In economic terms, it is predicted that women are particularly vulnerable as workers, as well as users of public services, following withdrawal from the EU.<sup>3</sup> SHRC has supported a campaign with around 155 charities, professional bodies and civil society organisations who signed the Scotland Declaration on Human Rights, calling for leadership to protect rights in the face of Brexit.<sup>4</sup>
3. However, there is still much to be done in the protection and fulfilment of women's human rights, including in relation to sexual harassment and sexual violence

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<sup>1</sup> Currently, the Sure Start Maternity Grant is a one-off payment which has remained at the same rate of £500 for a number of years despite inflation and rising cost of living. The SG's commitment to replacing this with the new, expanded Best Start Grant (BSG) which will pay "staggered" payments to qualifying families £600 on the birth of their first child and £300 on the birth of every subsequent child has been praised for its emphasis on providing for all children

<sup>2</sup> Terms of Reference of the Advisory Group can be found at: <https://beta.gov.scot/publications/advisory-group-on-human-rights-leadership-terms-of-reference/>

<sup>3</sup> *Exploring the Economic Impact of Brexit on Women* (March 2018) Women's Budget Group and the Fawcett Society <https://wbg.org.uk/wp-content/uploads/2018/03/Economic-Impact-of-Brexit-on-women-briefing-FINAL-1.pdf>

<sup>4</sup> See the Declaration here: <https://humanrightsdeclaration.scot/>

highlighted by the global ‘#Me Too’ campaign, which also affect Scotland and the UK.<sup>5</sup> Little to no progress has been made on a number of the Concluding Observations issued by the Committee in 2013 (see below). A number of policy measures, particularly related to austerity, put women’s human rights at further risk. And there is a lack of available official disaggregated data on intersectionality which would provide vital information on women with multiple vulnerabilities and allow policy and legislation to be shaped to address those.

4. This report draws primarily on desk research<sup>6</sup> and it is informed by our operational work, including interventions and responses to legislative and policy proposals, the evidence gathered through the implementation of SNAP and the voices of women who engaged in events, run by the Scottish civil society organisation, Engender, to explore women’s enjoyment of rights in Scotland.<sup>7</sup> It also draws on other and more recent institutional, academic and external sources, including reports published by NGOs, Ombudsmen, inspectorates and regulators, EHRC Scotland.

**What this document covers:** This report covers the legal framework, policies and practices in Scotland: The Scotland Act 1998 requires both the Scottish Parliament and Scottish Government to act compatibly with both the European Convention on Human Rights (ECHR) and EU law when exercising relevant functions. In addition, ‘observing and implementing UK international human rights obligations’ are matters that can be taken forward by the Scottish Parliament or Scottish Ministers. The United Kingdom of Great Britain and Northern Ireland (UK) includes four countries – England, Scotland, Wales and Northern Ireland. 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. Therefore, responsibility for implementing CEDAW lies with UK and Scotland.<sup>8</sup>

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<sup>5</sup> A 2016 TUC report on sexual harassment in the workplace, *Still just a bit of banter?*, found that 52 per cent of women would say they have experienced some sexual harassment in the workplace, with the number going up to two-thirds among 18-24 year olds.

<sup>6</sup> The Commission would like to thank Dr Nazia Latif for her valuable assistance in the preparation of the report.

<sup>7</sup> For further information see: <https://www.engender.org.uk/>

<sup>8</sup> Issues such as justice, health and social care, education and training as well as many aspects of transport and environment are within the powers of the Scottish Parliament and responsibilities of the Scottish Government.

## Articles 2, 3 and 5

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### Legislative and Policy Measures

5. The UK has yet to incorporate all the provisions of CEDAW into its domestic legal system, as recommended by the Committee in 1999, 2008 and again in 2013.<sup>9</sup>
6. The UK Government has stated it will not withdraw from the European Convention on Human Rights (ECHR) and the EU Withdrawal Bill currently before Parliament indicates that the Human Rights Act will remain part of UK's domestic law. However, the UK Government has stated its intention to exclude the EU Charter of Fundamental Rights from retention in domestic law following withdrawal from the EU.<sup>10</sup> The Parliamentary Joint Committee on Human Rights has concluded: "...the exclusion of the Charter from domestic law results in a complex human rights landscape which is uncertain. Legal uncertainty is likely to undermine the protection of rights".<sup>11</sup> The Scottish government has announced its intention to retain the Charter in Scots law and this is a welcome move. SHRC is concerned that unless Westminster mirrors Scotland's approach, withdrawal from the Charter will likely lead to a dilution of rights protection for women in the UK.

### Recommendations

- That the UK and Scotland incorporate the provisions of CEDAW into its domestic law.
- That the UK affirm its commitment to retaining the Human Rights Act following withdrawal from the EU.
- That the UK take all necessary steps to ensure there is no future regression of the legal protection of women's rights as a result of the UK leaving the European Union.

**This includes: tracking of future legal developments at EU level after exit, and where appropriate mirroring protections; retaining the EU Charter of**

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<sup>9</sup> Concluding Observations of the UNCEDAW Committee, (2013) CEDAW/C/GBR/CO/07

<sup>10</sup> EU Withdrawal Bill

<sup>11</sup> House of Lords House of Commons Joint Committee on Human Rights Legislative Scrutiny: *The EU (Withdrawal) Bill: A Right by Right Analysis* (January 2018)

<https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/774/774.pdf>

**Fundamental Rights and the right to bring a claim based on breach of general principles of EU law; ensuring courts can properly consider future judgements of the Court of Justice of the European Union as appropriate; and ensuring proper scrutiny over the use of delegated powers to amend equality rights.**

**- That the UK and Scottish Government adopt effective measures to mitigate the negative economic impacts on women following withdrawal from the EU.**

**- That the UK and Scottish Government urgently collate and publish disaggregated data on intersectionality relating to each of the CEDAW rights.**

### **Violence Against Women**

7. The UK has still to ratify the Council of Europe's *Convention on Preventing And Combating Violence Against Women And Domestic Violence (The Istanbul Convention)*.
8. *The Domestic Abuse (Scotland) Bill 2018* received Royal Assent in March 2018. The Bill is a positive move in combating domestic abuse. It provides a broad but non-exhaustive definition of what constitutes abuse and is explicit in including psychological harm as a form of abuse and extra protective measures for victims. However, appropriate training for prosecutors and the police is necessary to ensure that the law is robustly enforced and that women and children receive the full support and access to the services they require. The legislation also needs to be accompanied by awareness raising for victims and survivors of domestic abuse, to ensure greater reporting and that they understand the broader scope of the protections.
9. A report by the Equality and Human Rights Committee of the Scottish Parliament highlights how victims of domestic violence with no recourse to public funds are particularly vulnerable to destitution because of the lack of publicly funded refuge places for those women. The Destitute Domestic Violence Concession, which allows people on a UK partner visa to claim certain welfare benefits in cases of

domestic violence, does not apply to women with no recourse to public funds. SHRC shares the Committee's concerns about the grave impact of such measures on women and children.<sup>12</sup>

10. There still exist significant barriers for victims to engage as the "*the criminal justice system places an onus on victims to seek updates, decide about special measures, find appropriate support, deal with the shifts and uncertainties in scheduling of trials and narrate what happened in an environment over which they have no control. For many dealing with the trauma of the offence, the process is too much and it explains why many simply disengage*".<sup>13</sup>

### **Recommendations**

- That the UK ratify the Council of Europe's Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention) as a matter of urgency.
- That the UK and Scotland bring forward the improvements in law, policy and practice that are required to guarantee on-going and coherent compliance with the Istanbul Convention.
- That the Scottish government seeks to ensure that all relevant agencies are appropriately trained to enforce the Domestic Abuse (Scotland) Bill and ensure that women and children receive the support and services required.
- That the UK extend the Destitute Domestic Violence Concession to all women with insecure immigration status for as long as they remain in the UK.

### **Parental Corporal Punishment**

11. While Scots law protects adults from all forms of physical assault, that is not the case for children. *The Criminal Justice (Scotland) Act 2003* provides a defence of justifiable assault of a child, available where it is claimed that such an act was

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<sup>12</sup> *Hidden Lives - New Beginnings: Destitution, asylum and insecure immigration status in Scotland* (May 2017) Equality and Human Rights Committee  
<https://sp-bpr-en-prod-cdnep.azureedge.net/published/EHRiC/2017/5/22/Hidden-Lives---New-Beginnings--Destitution--asylum-and-insecure-immigration-status-in-Scotland/3rd%20Report.pdf>

<sup>13</sup> *Thematic Review of the Investigation and Prosecution of Sexual Crimes* (2017) Inspectorate of Prosecution, <http://www.gov.scot/Publications/2017/11/3053>

physical punishment carried out in exercise of a parental right. This defence is contrary to numerous human rights standards.<sup>14</sup>

### **Recommendation**

**- That the Scottish government introduces legislation that prohibits corporal punishment of children in all settings and further promotes positive non-violent forms of discipline as an alternative to corporal punishment across Scotland.**

### **Childhood Sexual Abuse and other Forms of Abuse**

12. Many people in Scotland still suffer the impact of abuse they were subjected to in the past. SHRC has been working for nearly a decade to promote effective access to justice and remedies for survivors of historic child abuse. SHRC welcomes the fact that the three-year limitation period for filing civil claims of sexual abuse where the victim was a child has been removed<sup>15</sup>, in line with the Committee's recommendation in 2013.<sup>16</sup> However, there are a number of survivors who cannot access the civil courts for a variety of reasons (e.g. pre-1964) and the financial compensation is limited to the criminal injury scheme.

### **Media and Discriminatory Reporting**

13. In 2014 the Special Rapporteur on violence against women, Rashida Manjoo, visited Scotland and the UK. One of the key findings in examining the national situation of violence against women was that "*generally, social and cultural constructions of women's roles and status perpetuate stereotypes that disadvantage women and preclude the enjoyment of all their human rights, including the right to a life free of violence.*"<sup>17</sup> Similarly a recent domestic review into gender stereotyping found that current advertisements depict and promote

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<sup>14</sup> In 2017, SMP John Finnie introduced a consultation on a proposal to outlaw corporal punishment in the home under the Children (Equal Protection from Assault) (Scotland) Bill. The proposals were welcomed by the SHRC as well as Scotland's Commissioner for Children and Young People

<sup>15</sup> The limitation regime was removed under the Limitation (Childhood Abuse) (Scotland) Act 2017

<sup>16</sup> Concluding Observations of the CEDAW Committee (2013) CEDAW/C/GBR/CO/7

<sup>17</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo Addendum Mission to the United Kingdom of Great Britain and Northern Ireland, May 2015. p. 14 The report is available at: <http://www.ohchr.org/Documents/Issues/Women/SR/A.HRC.29.27.Add.2.pdf>



harmful gender stereotypes, as a consequence the Advertising Standards Authority will be developing standards to provide stronger regulation of advertisements.<sup>18</sup> SHRC welcomes the recognition that gender stereotypes are harmful and can limit opportunities and life chances for women and girls.

### **Recommendation**

**- That the Scottish Government engages with the media and private sector to eliminate the dissemination of stereotypical imaging of women and their objectification, especially in advertising.**

## **Article 6**

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### **Trafficking in Women**

14. The Scottish government introduced the *Human Trafficking and Exploitation (Scotland) Act* in 2015 and published the *Trafficking and Exploitation Strategy* in May 2017. SHRC welcomes the specific references to CEDAW and the *Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children* in the Strategy. However, these legislative and policy commitments operate within a wider UK framework of immigration and asylum law that makes it extremely difficult for victims of trafficking to seek help and have their story believed.<sup>19</sup> SHRC reiterates its own and the Committee's concerns about the lack of support and protection for victims of trafficking.<sup>20</sup>

### **Recommendation**

**- That the Scottish Government and the UK ensure that frontline staff in all relevant agencies are appropriately trained to identify and assist victims of trafficking.**

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<sup>18</sup>*New rule to ban harmful gender stereotypes next year* (2017) Advertising Standards Authority <<https://www.asa.org.uk/news/new-rule-to-ban-harmful-gender-stereotypes-next-year.html>>

<sup>19</sup> *Engender response to the consultation on the Scottish Government's Trafficking and Exploitation Strategy* (March 2017) Engender <<https://www.engender.org.uk/content/publications/Engender-response-to-the-Trafficking-and-Exploitation-Strategy.pdf>>

<sup>20</sup> Concluding Observations of the CEDAW Committee (2013) (CEDAW/C/GBR/CO/7)

## Article 7

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### **Participation in Political and Public Life**

15. Women continue to be underrepresented in decision-making roles in the political and public sphere in the Scotland and the UK. Just over 35% of MSPs, and 29% of councillors are women in Scotland.<sup>21</sup> All of Scotland's female MSPs are white and non-disabled and the nation regressed in global rankings from 4<sup>th</sup> place in 2003 to 27<sup>th</sup> in 2017.<sup>22</sup>
16. In Scotland, some progress has been made with regards to regulated public bodies, with more women than men appointed in 2015/2016 for the first time. However, overall women accounted for only 42% of all regulated board members in that same period.<sup>23</sup> Only 26% of public bodies are headed by women. Vertical occupational segregation is illustrated well by the fact that 81% of the total NHS workforce is comprised of women, but 81% of NHS Board chairs are men.<sup>24</sup> Women are also underrepresented in Scotland's judiciary, accounting for just over 25% of all judicial office holders in 2017.<sup>25</sup> These figures place Scotland second from the bottom of the 45 EU member states.<sup>26</sup> The *Gender Representation on Public Boards (Scotland) Act 2018*, sets out a gender representation objective for public boards to have women make up 50% of their non-executive members.<sup>27</sup> However, while secondary legislation will require Scottish Ministers and public authorities to report on progress, there are no sanctions in the Act against public authorities that fail to meet the objectives. The

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<sup>21</sup> *Women in Parliament and Government* (February 2018) House of Commons Briefing Paper Number SN01250 <http://researchbriefings.files.parliament.uk/documents/SN01250/SN01250.pdf> see also <https://www.scotsman.com/news/politics/general-election/number-of-women-councillors-in-scotland-rises-but-remains-low-1-4442054>

<sup>22</sup> *Gender Matters Roadmap: Towards Women's Equality in Scotland* (September 2017) Engender <https://gendermatters.engender.org.uk/content/resources/Gender-Matters-Roadmap---towards-womens-equality-in-Scotland.pdf>

<sup>23</sup> Commissioner for Ethical Standards in Public Life in Scotland Annual Report 2015/2016

<sup>24</sup> *Gender Matters Roadmap: Towards Women's Equality in Scotland* (September 2017) Engender <https://gendermatters.engender.org.uk/content/resources/Gender-Matters-Roadmap---towards-womens-equality-in-Scotland.pdf>

<sup>25</sup> *2017 Judicial Diversity statistics - Gender and Age* (September 2017) <http://www.scotland-judiciary.org.uk/Upload/Documents/DiversityStatsScotlandSept2017.pdf>

<sup>26</sup> Council of Europe report on European Judicial Systems 2014

<sup>27</sup> *The Gender Representation on Public Boards (Scotland) Act 2018* [http://www.legislation.gov.uk/asp/2018/4/pdfs/asp\\_20180004\\_en.pdf?view=interweave](http://www.legislation.gov.uk/asp/2018/4/pdfs/asp_20180004_en.pdf?view=interweave)

legislation does not take into account how women's social identities overlap and intersect. At present the Scottish government does not publish statistics that show for example, the number of women in public life that are also disabled or from black and minority ethnic backgrounds.

### **Recommendation**

- That the Scottish government increases efforts to increase the representation of women in all aspects of political and public life, taking into full account the intersectionality of women's identities.
- That the Scottish government strengthens data collection and maintain disaggregated data to better understand the issue and measure progress.

## **Articles 10 and 11**

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### **Education**

17. Research shows that sexist bullying and misogynistic behaviours are prevalent in education settings in the nation.<sup>28</sup> Scotland's national approach to addressing bullying makes little reference to misogyny or gender based harassment.<sup>29</sup> A recent investigation has revealed that school girls across Scotland are being subjected to alarming levels of sexual harassment on a daily basis.<sup>30</sup>

### **Recommendation**

- That the Scottish government reviews the current anti-bullying strategy to ensure it expressly recognises gender-based bullying and misogynistic behaviour in schools.

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<sup>28</sup>Get it Right for Girls (2016) Educational Institute of Scotland [www.eis.org.uk](http://www.eis.org.uk)

<sup>29</sup>*Gender Matters Roadmap: Towards Women's Equality in Scotland* (September 2017) Engender <https://gendermatters.Engender.org.uk/content/resources/Gender-Matters-Roadmap---towards-womens-equality-in-Scotland.pdf>

<sup>30</sup> *Revealed: the scandal of sexual harassment in Scottish schools* (November 2017) The Herald. Information for the report was gathered from a number of organisations including the Scottish Commissioner for Children and Young People, Rape Crisis Scotland and Girlguiding Scotland [http://www.heraldsotland.com/news/15656022.Revealed\\_\\_the\\_scandal\\_of\\_sexual\\_harassment\\_in\\_Scottish\\_schools/](http://www.heraldsotland.com/news/15656022.Revealed__the_scandal_of_sexual_harassment_in_Scottish_schools/)

## **Employment: Pay gap and occupational segregation**

In Scotland the gender pay gap sits at 14.9% when comparing men's and women's overall average hourly earnings.<sup>31</sup> Occupational segregation has been identified as one of the primary causes of the gender pay gap and women working in Scotland are clustered in a small number of jobs and sectors that are lower-paid. Drivers towards occupational segregation include women disproportionately taking on caring responsibilities which impact on choice, or lack of choice, around hours, sector and occupation, together with prevailing societal norms and discriminatory attitudes and practice.

18. Women's employment is concentrated in the public sector, with 48% of working women represented in Public Administration, Education and Health industries.

Other key features of women's representation in the workforce include:

- Around 80% of administrative and secretarial workers and those in personal service jobs are women.
- While women are more likely to work in the public sector (67% local government and 81% NHS), only a third of chief executives in the sector are women.
- Less than 3% of chartered civil engineers in Scotland are women.
- Only 10% of senior managers in the science, technology and engineering sector are women.
- Scotland's Modern Apprenticeship programme continues to be acutely segregated by gender, where women account for only 2% of construction apprentices, 20% of manufacturing apprentices but 97% of childcare apprentices, and 93% of hairdressing apprentices.<sup>32</sup>

19. The operation of the Public Sector Equality Duty to date appears to have had limited impact on tackling inequality, particularly the gender pay gap. Scotland has also introduced a number of strategies around economic development that acknowledge the need to address gender inequality.<sup>33</sup> However, these are largely voluntary initiatives with no legal underpinning and fail to address the root causes of the gender pay gap including occupational segregation.

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<sup>31</sup> Close the Gap Statistics <<https://www.closesthegap.org.uk/content/gap-statistics/>>

<sup>32</sup> Close the Gap statistics <<https://www.closesthegap.org.uk/content/gap-statistics/>>

<sup>33</sup> For example, the *Scottish Business Pledge and the Partnership for Change 50/50 by 2020*

20. *The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017* require large private and third sector organisations to report their top line pay gap, including the gender gap in bonus payments. However, the Regulations exclude smaller organisation with less than 250 employees where women are more likely to work. Since 2013, there has been a requirement in Scotland for public bodies that employ 150 people or more to report gender pay gap information every two years. This requirement was extended to public bodies that employ 20 people or more in 2016. However, research has shown that reporting on the gender pay gap remains poor, “*with many bodies publishing incorrect calculations, flawed analysis, and little action, and many appear to view publishing their pay gap as an end in itself, rather than a driver for action to tackle the causes of the pay gap that exist within their own organisation. This indicates a lack of understanding of women’s labour market inequality in general.*”<sup>34</sup> Much work is therefore needed to secure women’s right to equality in employment in practice.<sup>35</sup>

### **Recommendations**

**- The Scottish government develops a national strategy to address the causes of the gender pay gap including a commitment to mainstream gender in the design and development of new legislation, policies and programmes.**

### **Childcare**

21. As highlighted in our previous report to this Committee. The lack of affordable childcare remains a persistent problem in Scotland. Childcare costs in Scotland are amongst the highest in the UK, in turn among the highest in the world. Access to affordable childcare is a major barrier to women being able to work, study and access vocational training. The implementation of free universal childcare in other states has led to a sharp and persistent increase in women’s labour market participation. Due to the high cost of childcare, 25% of parents living in absolute poverty in Scotland have given up work, a third have turned

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<sup>34</sup> *Making Progress? An Assessment Of Public Sector Employers’ Compliance With The Public Sector Equality Duty* (2015) Close The Gap <<https://www.closesthegap.org.uk/content/resources/Making-Progress---An-assessment-of-employers-compliance-with-PSED-November-2015.pdf>>

<sup>35</sup> SHRC’s concerns were also reflected in the Concluding Observations of the Committee on Economic, Social and Cultural Rights in 2016, E/C.12/GBR/CO/6

down a job, and a further 25% have not been able to take up education or training. The situation is worse still for services inclusive of disabled children as well as those living in rural areas with limited access to affordable, high-quality and flexible childcare.<sup>36</sup> In 2014 the Scottish Government introduced legislation<sup>37</sup> that had the stated aim of improving and integrating the role of early years support in children and families' lives by increasing the amount and flexibility of early learning and childcare. The legislation includes a commitment to increase free childcare provision further by 2020 but will still fall short of realising the right of women to participate in the labour market and to train and study equally. Furthermore, childcare as a profession is undervalued and low paid. Therefore, any plans to increase affordable childcare should be part of a coherent strategy that ensures those caring for children will receive a living wage.

### **Recommendations**

**- That the Scottish government develops a model of free universal childcare provision that offer flexibility, considering both the needs of children and the situations of parents.**

### **Parental Leave**

22. Regulations introduced in 2015, enable parents to share leave over the course of a year following the birth or adoption of a child.<sup>38</sup> The Regulations are a positive step but fail to meet the financial needs of women and families. Fathers are still only entitled to two weeks of paid paternity leave, while the weekly payment for shared parental leave is less than the average weekly income for men in the UK.<sup>39</sup> This means that for many families it is simply financially unviable for the father to take parental leave. Research also suggests that there has been very

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<sup>36</sup> *Gender Matters Roadmap: Towards Women's Equality in Scotland* (September 2017) Engender <https://gendermatters.engender.org.uk/content/resources/Gender-Matters-Roadmap---towards-womens-equality-in-Scotland.pdf>

<sup>37</sup> The Children and Young People Act 2014

<sup>38</sup> The Shared Parental Leave Regulations 2014

<sup>39</sup> "Parents, Work and Care: Striking the Balance" (Jemima Olchawski, 2016) The Fawcett Society. Fathers are entitled to 90% of their salary or £145.15 a week, whichever is the lowest. Given that the mean weekly pay for men in the UK is just under £600 for many this represents a significant cut in earnings at a time when costs are increasing and their partner is also likely to be earning less.

<https://www.fawcettsociety.org.uk/Handlers/Download.ashx?IDMF=ee914eef-9b45-4f6e-84c5-57c0547727b4>

low take up (around 2%) of the arrangements by fathers. While this can be attributed in part to lack of awareness of the entitlement, cultural stigma for men of taking time off work and concerns that taking leave might lead to a perception that they are less committed to their job is also a factor.<sup>40</sup> Whilst the Scottish Government is not responsible for implementing these legal changes, it could mitigate them by developing a programme to address the current inadequacy of parental assistance.

### **Recommendation**

- That the UK address the financial barriers to take up of shared parental leave by fathers and the Scottish Government develops a programme to address the inadequacy of parental leave.**
- That the Scottish Government increases its efforts to raise awareness of parental leave entitlement and work with employers to address the cultural barriers to take up.**

## **Articles 12 and 13**

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### **Health**

23. Problems remain in Scotland with regard women's and girls' access to gender appropriate physical and mental healthcare.<sup>41</sup> Depression is twice as prevalent amongst women than men and amongst low-income women in particular.<sup>42</sup> The latter are more likely to be disabled or from a black or minority ethnic background. Mental health problems are exacerbated for refugee and asylum seeking women and the asylum process itself can become a source of anxiety and deteriorating

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<sup>40</sup> *Shared parental leave take-up may be as low as 2%* (February 2018) BBC News <http://www.bbc.co.uk/news/business-43026312>

<sup>41</sup> Strathclyde University (2016) What do you mean, I have a right to health?

<sup>42</sup> Health, Engender, see further info at: <https://gendermatters.engender.org.uk/content/health/>

mental health.<sup>43</sup> Disabled women and LGBTI report discrimination in accessing information and services regarding their reproductive health.<sup>44</sup>

24. 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. 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>45</sup>

### **Recommendations**

- That the Scottish government develops mental health strategies that consider intersectional discrimination and ensure equal access to the health care, particularly through national training programme of medical personnel and students.**
- That the Scottish government ensures that NHS services focus on equality of access for diverse groups of women.**

### **Women's Detention**

25. In its previous submission to the Committee, SHRC reported on a number of very serious issues in Cornton Vale HMP, Scotland's only women only prison. While the situation has improved the last 4 years, questions remain in relation to the appropriateness of mental health services, rehabilitation programmes and reintegration of prisoners into the community. Foreign female prisoners also experienced some levels of isolation due to limited access to appropriate educational and recreational activities as well as the lack of translated materials.<sup>46</sup>

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<sup>43</sup> *Raising Refugee Women's Voices Exploring the impact of Scottish Refugee Council's work with the Refugee Women's Strategy Group 2011-2015* Scottish Refugee Council

<[http://www.scottishrefugeecouncil.org.uk/assets/0001/0713/Impact\\_Report\\_FINAL.pdf](http://www.scottishrefugeecouncil.org.uk/assets/0001/0713/Impact_Report_FINAL.pdf)>

<sup>44</sup> Engender workshops with disabled women, 2013-2018

<sup>45</sup> *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>>

<sup>46</sup> Report On HMP & YOI Cornton Vale Full Inspection 28 September - 7 October 2015.



26. Women are more likely to be jailed than men for minor offences and two thirds of female admissions to Scottish prisons are for remand, 80% of which do not go on to receive a custodial sentence.<sup>47</sup> Therefore, much work is needed to reduce the female prison population<sup>48</sup> by changes to sentencing policy and alternatives to custodial sentences.<sup>49</sup> Recent reports show that the female prison population is significantly larger than the future plans allow for.

### **Recommendation**

**That the Scottish government continues to develop gender-specific alternatives to custody for women convicted of minor offences, in line with the Committee's recommendations in 2013.<sup>50</sup>**

### **Welfare Reform**

27. SHRC has continually raised concerns with regards the UK's social security reforms under the Welfare Reform Act 2012.<sup>51</sup> Predictions that the reforms would have a disproportionate effect on women (especially disabled women and women from minority ethnic groups as well as single parents, 92 per cent of whom are women) have been borne out and endorsed by a number of UN Committees.<sup>52</sup> Successive changes to the social security system in the UK have had significant negative impact on women.<sup>53</sup> This impact has been particularly adverse on women and children, disabled women and black and minority ethnic women.<sup>54</sup>

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<sup>47</sup> *Overcrowding warning over Scottish female prison plans* (June 2016) BBC News <<http://www.bbc.co.uk/news/uk-scotland-36427375>>

<sup>48</sup> See for example, HMP & YOI Cornton Vale Review Inspection 11-13 October 2016

<sup>49</sup> *Overcrowding warning over Scottish female prison plans* (June 2016) BBC News <<http://www.bbc.co.uk/news/uk-scotland-36427375>>

<sup>50</sup> Concluding Observations of the CEDAW Committee (2013) CEDAW/C/GBR/CO/07

<sup>51</sup> For example: SHRC's concerns were also reflected in the Concluding Observations of the Committee on Economic, Social and Cultural Rights in 2016, E/C.12/GBR/CO/6

<sup>52</sup> See for example, Concluding Observations on the UK by ICESCR in 2016 E/C.12/GBR/CO/6 , Concluding Observations on the UK by UNCRC in 2016 CRC/C/GBR/CO/5 , the Concluding Observation on the UK by UNCRPD in 2017 CRPD/C/GBR/CO/1, recommendations made under the UPR 2017 A/HRC/36/9 , the report of the Special Rapporteur on the Right to Adequate Housing in 201 A/HRC/25/54/Add.2 ,

<sup>53</sup> *The Cumulative Impact of Tax and Welfare Reforms* (2018) Equality and Human Rights Commission <https://www.equalityhumanrights.com/sites/default/files/cumulative-impact-assessment-report.pdf>

<sup>54</sup> Black and minority ethnic women are more likely to be living in poor households. In 2015/16, 50% of Bangladeshi households, 46% of Pakistani households and 40% of Black African/Caribbean households were

28. As of April 2017 there has been a two-child limit on a number of benefits, including Housing Benefit and Universal Credit. This means that families will not receive a range of benefits for a third child born after April 2017 except under exceptional circumstances. One of those exceptional circumstances being that the child was a result of rape. For a woman to be able to prove this, in order to receive these benefits she must go through a process which is likely to be deeply distressing and harmful.<sup>55</sup> SHRC is concerned about the financial impact of the limit on women and children and the discriminatory impact and potential stigmatisation of women who choose to have large families in Scotland. The onus on a woman to prove that she has been raped is of grave concern.
29. The negative impact is likely to continue with analysis of the benefit cuts and tax changes since 2010 forecasting that by 2020, Asian women in the poorest third of households will lose on average 19% of their income (over £2200). Black and Asian lone mothers, stand to lose between £4,000 and £4,200 a year on average respectively by 2020, about 15 and 17% of their net income.<sup>56</sup> In a seminal case in 2015, the UK Supreme Court recognised that the introduction of a benefit cap on housing disproportionately impacted on women and children.<sup>57</sup>
30. The Committee previously expressed concern at the introduction of Universal Credit and plans for tax credits and benefits to be paid directly into the bank account of one family member.<sup>58</sup> The Committee recommended that the UK “*adopt measures to prevent the potential exploitation of the Universal Credit system by an abusive male spouse.*”<sup>59</sup> Since the previous examination, Scotland has introduced a system whereby a couple can ask for payments to be split and paid into two separate bank accounts. We also note that the option to make a

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living in poverty compared to 19% of White British households. (*Intersecting inequalities: The impact of austerity on Black and Minority Ethnic women in the UK* (October 2017) Women’s Budget Group)

<sup>55</sup> See BMA ratifies position on the shameful ‘rape clause’ <https://www.bma.org.uk/news/media-centre/press-releases/2017/july/bma-ratifies-position-on-the-shameful-rape-clause> <Accessed 29 March 2018> Kevan Christie, “Doctors in Scotland say ‘rape clause’ is shameful” *The Scotsman*, 15 July 2017 <https://www.scotsman.com/news/health/doctors-in-scotland-say-rape-clause-is-shameful-1-4504663>

<sup>56</sup> *Intersecting inequalities: The impact of austerity on Black and Minority Ethnic women in the UK* (October 2017) Women’s Budget Group

<sup>57</sup> For further info see SHRC’s 2016 report to ICESR and CRC. However, the Supreme Court ruled by a 3-2 majority verdict that the benefit cap (housing benefit) regulations 2012 were not unlawful no breach of Article 14 ECHR and 3(1) of UNCRC. Case Ref: (2015) UKSC 16

<sup>58</sup> Concluding Observations of the CEDAW Committee 2013, CEDAW/C/GBR/CO/07

<sup>59</sup> *Ibid*

*request* for a split payment may be not a realistic one for a woman in an abusive relationship. Hence payments should be split as a matter of routine rather than upon request. Limited powers on social security were devolved to the Scottish Parliament in 2016. The Social Security (Scotland) Act 2018 has provided an opportunity for Scotland to address some of the worst impacts of Westminster's welfare reforms. SHRC 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. However, we are disappointed that the Scottish Government did not act on the opportunity to incorporate the right to social security in relevant legislation and in doing so increase direct accountability for delivery.

#### **Recommendations**

- That the Scottish government ensures that the new social security system addresses the problems experienced by women and continue to mitigate against the negative impacts of welfare reform on the most vulnerable, particularly disabled women, black and minority ethnic women and lone mothers.**
- That Universal Credit payments be split as a matter of routine to ensure that women have independent access to resources.**

31. SHRC raised in its UPR report the need for review for the adequacy of funding for social care in Scotland.<sup>60</sup> This is largely due to long term underinvestment in the sector, despite demographic trends that show that demand for care will only increase. It is expected that by 2026, the number of adults in need of care will have increased by 30%. Almost 90% of the social care workforce is comprised of women, frequently under low pay and subject to the cultural undervaluation of care.<sup>61</sup> Additionally the majority of unpaid is undertaken by women, estimated at a worth of £10.8 billion to the economy per annum is undervalued both in policy

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<sup>60</sup> SHRC's 2016 UPR report available at: <http://www.scottishhumanrights.com/media/1525/shrc-upr-submission-22-sept-2016.pdf>

<sup>61</sup> Coalition of Carers in Scotland (2017) Manifesto for Carers in Scotland.

terms and in societal terms.<sup>62</sup> In this respect the Shared Ambition on the Future of Social Care Support has called for the urgent establishment of a national independent Commission to explore the development of new approaches to social care funding as demand rises.<sup>63</sup>

### **Recommendation**

**- That the Scottish government urgently establishes a national independent Commission on social care funding.**

## **Article 15**

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### **Access to Justice and Legal Aid**

32. There have been some welcome changes in women's access to justice since the last examination. SHRC is pleased to report that employment tribunal fees have been abolished following a Supreme Court decision in July 2017 that ruled the practice of charging such as unlawful.<sup>64</sup>

33. However, independent research into Legal Aid firms in Scotland reports a legal aid system that is in great difficulty. Poor rates of pay, "*undue bureaucracy and extreme micromanagement performed by the Scottish Legal Aid Board and its approach to abatements*" have been identified as some of the reasons for these difficulties.<sup>65</sup> This has dangerous consequences for access to justice by women because firms may either struggle to take on cases funded by Legal Aid or cease to take them on at all. "*A high level of legal aid work is carried out in respect of issues that disproportionately impact on women including child contact, divorce and protective orders. For women with experience of violence or abuse, civil legal*

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<sup>62</sup> Carers UK (2015) Valuing carers 2015

<sup>63</sup> Shared ambition on the future of social care support in Scotland, Independent Living in Scotland, <http://socialcareambition.co.uk/>

<sup>64</sup> [2017] UKSC 51

<sup>65</sup> *The Financial Health of Legal Aid Firms in Scotland* (February 2017) Law Society of Scotland <<https://www.lawscot.org.uk/media/10079/legal-aid-financial-health-report-february-2017.pdf>>

*assistance can be a vital safety net. Without access to legal aid, the associated legal and court costs are unmanageable for most and impossible for many.*<sup>66</sup>

34. An independent review of Legal Aid, initiated by the Scottish government has called for greater flexibility in the system and steps to make it simpler and user friendly. It recommended an evidence-based review of pay with commitments to further regular reviews.<sup>67</sup>

### **Recommendations**

- That the Scottish government responds positively to the recommendations of the Independent Review of Legal Aid in order to make the service fairer and simpler for users.**
- That the Scottish government initiates a further review into rates of pay for Legal Aid and ensure that the review is gender proofed.**

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<sup>66</sup> *Gender, Justice and Legal Aid in Scotland* (March 2017) Scottish Women's Rights Centre  
<<https://www.scottishwomensrightscentre.org.uk/news/news/on-legal-aid-and-justice/>>

<sup>67</sup> Rethinking Legal Aid: An Independent Strategic Review (February 2018)  
<<http://www.gov.scot/Resource/0053/00532544.pdf>>

## SUMMARY of RECOMMENDATIONS

1. That the UK and Scotland incorporate the provisions of CEDAW into its domestic law.
2. That the UK affirm its commitment to retaining the Human Rights Act following withdrawal from the EU.
3. That the UK takes all necessary steps to ensure there is no future regression of the legal protection of women's rights as a result of the UK leaving the European Union. This includes: tracking of future legal developments an EU level after exit, and where appropriate mirroring protections; retaining the EU Charter of Fundamental Rights and the right to bring a claim based on breach of general principles of EU law; ensuring courts can properly consider future judgments of the Court of Justice of the European Union (CJEU) where it is relevant to any matter before the court; and introducing enhanced scrutiny over the use of delegated powers to amend equality rights.
4. That the UK and Scottish Government adopt effective measures to mitigate the negative economic impacts on women following withdrawal from the EU.
5. That the UK and Scottish Government urgently collate and publish disaggregated data on intersectionality relating to each of the CEDAW rights.
6. That the UK ratify the Council of Europe's Convention on Preventing and Combating Violence Against Women and Domestic Violence ( the Istanbul Convention) as a matter of urgency.
7. That the UK and Scotland bring forward the improvements in law, policy and practice that are required to guarantee on-going and coherent compliance with the Istanbul Convention.
8. That the Scottish government seeks to ensure that all relevant agencies are appropriately trained to enforce the Domestic Abuse (Scotland) Bill and ensure that women and children receive the support and services required.
9. That the UK extend the Destitute Domestic Violence Concession to all women with insecure immigration status for as long as they remain in the UK.
10. That the Scottish government introduces legislation that prohibits corporal punishment of children in all settings and further promotes positive non-violent forms of discipline as an alternative to corporal punishment across Scotland.
11. That the Scottish Government engages with the media and private sector to eliminate the dissemination of stereotypical imaging of women and their objectification, especially in advertising.
12. That the Scottish Government and the UK ensure that frontline staff in all relevant agencies are appropriately trained to identify and assist victims of trafficking.
13. That the Scottish government increases efforts to increase the representation of women in all aspects of political and public life, taking into full account the intersectionality of women's identities.
14. That the Scottish government strengthens data collection and maintain disaggregated data to better understand the issue and measure progress.

15. That the Scottish government reviews the current anti-bullying strategy to ensure it expressly recognises gender-based bullying and misogynistic behaviour in schools.
16. The Scottish government develops a national strategy to address the causes of the gender pay gap including a commitment to mainstream gender in the design and development of new legislation, policies and programmes.
17. That the Scottish government develops a model of free universal childcare provision that offers flexibility, considering both the needs of children and the situations of parents
18. That the UK address the financial barriers to take up of shared parental leave by fathers and the Scottish Government develops a programme to address the inadequacy of parental leave.
19. That the Scottish Government increases its efforts to raise awareness of parental leave entitlement and work with employers to address the cultural barriers to take up.
20. That the Scottish government develops mental health strategies that consider intersectional discrimination and ensure equal access to the health care, particularly through national training programme of medical personnel and students.
21. That the Scottish government ensures that NHS services focus on equality of access for diverse groups of women.
22. That the Scottish government continues to develop gender-specific alternatives to custody for women convicted of minor offences, in line with the Committee's recommendations in 2013.
23. That the Scottish government ensures that the new social security system addresses the problems experienced by women and continue to mitigate against the negative impacts of welfare reform on the most vulnerable, particularly disabled women, black and minority ethnic women and lone mothers.
24. That Universal Credit payments be split as a matter of routine to ensure that women have independent access to resources.
25. That the Scottish government urgently establishes a national independent Commission on social care funding.
26. That the Scottish government responds positively to the recommendations of the Independent Review of Legal Aid in order to make the service fairer and simpler for users.
27. That the Scottish government initiates a further review into rates of pay for Legal Aid and ensure that the review is gender proofed.