

SCOTTISH GOVERNMENT RESPONSE TO EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE 2022/23 PRE-BUDGET SCRUTINY RECOMMENDATIONS

A human rights approach to budgeting

1. The Committee asks the Scottish Government to set out in the budget documents what its next steps are to develop a human rights budget approach.

The Scottish Government has committed to further embedding equality and human rights within the Scottish Government's budgeting process and are exploring practical options to do so. The 2021-22 Equality and Fairer Scotland Budget Statement (EFSBS)¹ provided an outline of what incorporating human rights into the Scottish Budget involves and detail on the Scottish Government's wider work to promote equality and human rights. The 2022-23 Equality and Fairer Scotland Budget Statement followed the same process as 2021-22, providing an update on the impact of spending decisions on equality and human rights.

Building on this work, the Scottish Government will provide a response to the Equality Budgeting Advisory Group (EBAG) in Spring 2022 on their 2021 recommendations, which include recommendations on human rights budgeting. This response will be shared with the Equalities, Human Rights and Civil Justice Committee.

Equalities budgeting

2. The Committee considers that the response to the detailed report from EBAG requires some urgent consideration, and requests an update on the Scottish Government's thinking as part of the budget.

We welcome the recommendations submitted to the Scottish Government from the EBAG in their report 'Equality Budget Advisory Group: recommendations for equality and human rights budgeting – 2021-2026'². These recommendations link with the Scottish Government's aim to further embed equality and human rights into the budget process. The recommendations ask for increased transparency and participation in the budget process, improved Scottish Government staff capability to collect and use equality and human rights evidence in the development of policies and budget decisions and creation of further mechanisms to promote the importance of and provide greater accountability for equality and human rights in the development of the budget.

¹ [Equality and Fairer Scotland Budget Statement 2021-22 \(www.gov.scot\)](http://www.gov.scot)

² [Equality Budget Advisory Group: recommendations for equality and human rights budgeting - 2021-2026 parliamentary session - gov.scot \(www.gov.scot\)](http://www.gov.scot)

The recommendations from EBAG were published in July 2021, and since then we have been giving them careful consideration including as part of the 2022-23 budget process and as part of our longer term budget improvement work.

In the Programme for Government published in September this year, we made a commitment to further embed equality and human rights within all stages of the Scottish Government's budget process, taking account of EBAG's recommendations, to ensure our spend advances equality and human rights for all of Scotland's people. This is part of the shared policy programme between the Scottish Government and the Scottish Green Party. As previously stated, we will respond to the EBAG recommendations in Spring 2022.

3. The Committee asks the Scottish Government to take renewed steps to strengthen the (intersectional) gender analysis of the budget, and specifically to set out the options for putting intersectional gender budgeting on a legal basis, as proposed by the Advisory Council, and whether that would be an effective way of driving better informed analysis to underpin decisions on the budget.

The Scottish Government will set out its response to the Year 3 report of the First Minister's National Advisory Council on Women and Girls (NACWG) later this month which includes this recommendation, and we will write to the Committee separately in relation to this recommendation once we have done so.

4. The Committee considers that work on other 'structural' equalities analysis is also essential and asks the Scottish Government to note this and ensure this continues to be sharpened (see below for recommendations on data).

The Equality and Fairer Scotland Budget statement in 2021-22 adopted a new template structure to allow portfolios to be more explicit about the structural inequality experienced according to different protected characteristics. This approach has been repeated for the 2022-23 Budget. The EFSBS in 2021-22 budget also outlined 10 key existing or emerging risks to progressing national outcomes as a result of the COVID-19 pandemic and EU Exit. The EFSBS in 2022-23 provides an update on how spend in the 2021-22 year was used to mitigate some of these risks.

More generally the National Performance Framework (NPF)³ sets out the key national outcomes for Scotland. Data is presented for protected groups wherever possible to highlight where outcomes are significantly different. As part of the Equality Data

³ [National Outcomes | National Performance Framework](#)

Improvement Programme⁴ there is ongoing work to increase the number of breakdowns portrayed in the NPF dashboard and the Equality Evidence Finder⁵ in order to enable better understanding of structural inequality and inform actions to tackle it.

The Budget Process – Funding and Procurement

5. The Committee's predecessor made a number of recommendations in 2019 on funding for the third sector. The Committee would welcome an update from the Scottish Government on progress. The Committee also calls on the Scottish Government to consider how a shift to a more sustainable, multiyear funding model for third sector organisations could be achieved by the government and across the public sector.

A programme of 'Strengthening Collaboration' was announced in March 2021 in a joint statement between the Scottish Government, SCVO⁶, COSLA⁷ and the Third Sector Interface (TSI)⁸ network. This partnership is working to address barriers faced by the third sector and in particular, we want to ensure the third sector is at the heart of designing policy solutions to the issues they face.

The Programme for Government⁹ highlighted that we will use our Strengthening Collaboration programme with SCVO and COSLA to progress further a multi-year funding model.

We recognise the importance both of long-term funding stability and of timely payments for the third sector to fulfil its vital role in Scotland's communities. The Scottish Government has committed to seek to extend three-year rolling funding to third sector organisations where possible and we are actively progressing this work. To provide early certainty, our practice is wherever possible to confirm future grant offers before the preceding funding period ends.

To provide certainty to the sector and support effective planning, the Cabinet Secretary for Finance and the Economy has launched a multi-year Resource Spending Review process. The consultation framework for this process was published alongside the Budget 2022-23 on 9 December and sets out the intention to develop and publish longer term spending plans by the end of May 2022. We would welcome the Committee's input into this consultation.

⁴ [Equality Data Improvement Programme \(EDIP\) project board - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2021/04/Equality-Data-Improvement-Programme-EDIP-project-board-2021-22-5.pdf)

⁵ www.equalityevidence.scot

⁶ [Scottish Council for Voluntary Organisations \(scvo.scot\)](https://www.scvo.scot)

⁷ [COSLA | COSLA](https://www.cosla.gov.scot)

⁸ [TSI Scotland Network - Supporting Scotland's Third Sector](https://www.tsiscotland.org.uk)

⁹ [fairer-greener-scotland-programme-government-2021-22 \(5\).pdf](https://www.gov.scot/resources/documents/2021/04/fairer-greener-scotland-programme-government-2021-22-5.pdf)

6. The distribution of funds from the equality, human rights and inclusion budget lines appears to provide an example of good practice in providing more sustainable and useful funding to the third sector. The Committee would welcome evidence of how this has worked in practice under these budget lines, and the Scottish Government's view on the scope to apply similar principles to other parts of the budget.

Changing the equality, inclusion and human rights funding streams to three years was a direct result of feedback from stakeholders. The first awards for the Equality and Human Rights Fund and Delivering Equally Safe Fund were made in October 2021 with the first review due 6 months after. We will continue to monitor these funds and would be pleased to share evidence with the Committee on how this is impacting in practice.

As part of the Strengthening Collaboration programme mentioned under the response to recommendation 5, we would be looking to apply learning from things that have worked well and to test some of the innovations and changes we want to see. This includes how we work with the third sector across the Scottish Government, progressing multi-year funding in particular.

7. The Committee asks the Scottish Government to set out the role of procurement in delivering high quality services, how this is evaluated, and what improvements can be made.

The Sustainable Procurement Duty¹⁰ (the duty) of The Procurement Reform (Scotland) Act 2014¹¹ requires public bodies to consider how their procurement activity can be used to contribute to social, economic and environmental well-being, with a focus on reducing inequality; involve SMEs, third Sector, supported business; or promote innovation through procurement. We use the duty as a means of driving positive outcomes in our contracts through a range of means, for example, Fair Work First, community wealth building/community benefits, climate action, etc. Buyers are being encouraged to comply with the duty, and to embed relevant and proportionate economic, social and environmental outcomes in their procurements through use of the sustainable procurement tools¹² and associated guidance, this includes a focus on human rights and equality. The tools and guidance link to our National Performance Framework providing a line of sight between our procurement activity and local and national strategic priorities through the National Outcomes and Indicators.

The Procurement Reform (Scotland) Act 2014 requires public bodies to produce a corporate procurement strategy and report against its delivery at the end of each year. This includes a requirement to include a statement of the authority's general policy on

¹⁰ [Procurement Reform \(Scotland\) Act 2014 \(legislation.gov.uk\)](https://legislation.gov.uk)

¹¹ [Procurement Reform \(Scotland\) Act 2014 \(legislation.gov.uk\)](https://legislation.gov.uk)

¹² [Sustainable Procurement \(sustainableprocurementtools.scot\)](https://sustainableprocurementtools.scot)

consulting and engaging with those affected by its procurements; and compliance with the sustainable procurement duty, and report on progress.

We have published research into the effectiveness of the Sustainable Procurement Duty and the findings from a supplier survey with over 1500 responses, establishing a cross-sector short life working group which has considered the findings of this research and identified priorities for action. These include driving greater consistency in local procurement practice and ensuring public bodies utilise the full flexibility of the legislation. This work, along with outputs from ongoing benchmarking and engagement activity - including regular roundtables with the business community and third sector representatives - are informing a series of improvement programmes which are underway. These include, for example, the current commitments in the Programme for Government to embed Fair Work First, Climate and Local Considerations in to more contracts, against which we have since announced our decision to mandate the real Living Wage in relevant Scottish Government contracts.

8. The Committee agrees that staff in third sector organisations should not be spending such a high proportion of their scarce time, applying for funding, and on other funding administration. The Committee asks the Scottish Government to consider and set out ways which it considers the administrative burden could be reduced.

As part of the Strengthening Collaboration partnership, we are looking to identify and overcome the various barriers the third sector face to achieving their outcomes. One of the barriers that has been identified is over-burdensome funding applications and reporting and so we will continue to work with stakeholders to tackle those issues. We already promote our Positive Partnerships¹³ programme across the Scottish Government. This work brings third sector organisations and officials together with the help of Evaluation Support Scotland, an organisation that specialises in supporting third sector organisations and funders to improve services and report on the difference they are making, to embed good practice in grant making and grant management.

Tax and human rights

9. The Committee asks the Scottish Government to set out how human rights budgeting principles are being reflected in the principles and policy on Scottish taxation.

On 24 November, the Cabinet Secretary for Finance and the Economy chaired a round table of civil society organisations, including EBAG Chair Dr Angela O'Hagan and Dr Alison Hosie from the Scottish Human Rights Commission (SHRC), to discuss

¹³ [Principles for Positive Partnership - Evaluation Support Scotland](#)

taxation as part of wider pre-budget engagement. We welcome the SHRC's positive engagement with the Framework for Tax consultation¹⁴ and look forward to ongoing dialogue on these issues. We are currently analysing the consultation responses and intend to publish the finalised Framework thereafter.

Whilst we would not pre-judge the outcome of the consultation analysis, the draft Framework set out the principles, strategic objectives and processes that underpin our Scottish Approach to Taxation, and which we believe live up to the human rights budgeting principles set out by the SHRC - in particular our commitment to transparency, which the Framework itself plays a role in. The Framework also affirms our commitment to delivering on progressivity in tax policy and outcomes under the National Performance Framework, as well as the importance of raising revenue to fund our vital public services, including those that deliver on and protect the rights of everyone who lives and works in Scotland.

10. The Committee asks the Scottish Government to explore and set out any options it is considering for a shift to taxation on wealth, and how that might help the budget to deliver human rights.

The vast majority of tax and fiscal levers remain reserved to the UK Government, including existing taxes on wealth. It is therefore not possible for the Scottish Government to implement a shift in taxation on wealth within current powers. Where possible, however, we have used our devolved tax powers to deliver a more progressive approach to tax in Scotland, such as our decisions on Scottish Income Tax, which has protected lower and middle income taxpayers while raising additional revenue for the NHS, the economy and to support those in need. The five bands of the Scottish Income Tax system ensure that the system is fairer, as it asks those who earn more and are able to pay more tax do so.

Data, tracking spend and understanding the impacts of spend

11. To help give the public services a chance to respond, the Committee considers there is a strong case for a step change in our investment in equalities data, and, as a first step, asks the government to set out some options if there were to be significant additional investment.

And

12. The Committee would welcome estimates of potential costs, what the money could buy, and how that investment might improve understanding of equalities, including better intersectional analysis.

¹⁴ [Tax policy and the Budget - a framework for tax - Scottish Government - Citizen Space \(consult.gov.scot\)](https://www.consult.gov.scot/)

The Scottish Government has recognised the gaps in equality data and to address this we have established the Equality Data Improvement Programme (EDIP), which aims to strengthen Scotland's equality evidence base. The Programme is led by a Board which includes representatives from key public sector organisations. The first phase of the programme is ongoing and focusses on identifying and sharing good practice as well as developing equality data. This work will lead to the development and publication of a revised Equality Evidence Strategy and a second phase of the programme in late 2022. The programme is led by a team of Equality Analysts and utilises analytical resources from around the Scottish Government for a number of its projects. Following agreement from the Scottish Government's Analytical Leaders Group an internal network of analysts from each Analytical Services Division (ASD) was established to support the programme, and in particular participate in a new Equality Data Audit. The purpose of the Data Audit is to provide an accurate picture of equality data collection and publication in each analytical area. This will lead to development of Improvement Plans setting out short and longer term actions that could be taken forward to improve the data. Improvement Plans will be discussed with stakeholders to ensure that the top priority datasets are being identified. The actions in the Improvement Plans will also consider the potential costs of improving the equality data-set.

In addition to utilisation of Scottish Government staff resource, the EDIP programme has externally commissioned work to produce case studies of good practice in equality data collection across the public sector in Scotland. It is also considering commissioning independent research with people who have lived experience of holding different and intersecting protected characteristics to explore response issues, to investigate data fears and to understand what positive messaging would help allay fears and encourage participation in surveys as well as encourage responses in administrative data-sets.

We recognise the limitations of sample surveys and do invest in boosted samples in some priority cases. For example, the Scottish Government have further increased the boost of the Family Resource Survey, at an estimated total cost of £650K, to enable better sub-group analysis for Scotland. However, despite this investment it is unlikely to be able to provide the ideal range of data for characteristics such as detailed ethnic breakdowns.

Administrative data is likely to be the preferred route to enable more detailed equality data analysis. The Equality Data Linkage project will bring together health, education and census data with protected characteristics to provide a single data store which will be available for future research purposes. At this juncture it is not known the exact nature of the research projects which will come forward, however the aim of the new data store is that it will enable intersectional equality analysis to inform service provision in health and education. The investment to date has been achieved from existing budget sources in Scottish

Government, Public Health Scotland, Education Services and National Records Scotland, with an extra injection of £70K to oversee the delivery of the project.

13. The Committee asks the Scottish Government to review its approach to the equalities impact assessments of individual budget decisions to ensure that they cover not only equalities issues, but also start to assess them on a human rights basis as well. The Scottish Government should also consider the potential of investment in infrastructure like the National Care Service and the role that has in delivering equality and human rights for women and disabled people.

We have convened an internal group with relevant expertise to examine current use of impact assessments in the Scottish Government and develop a programme of work to ensure a coherent approach to impact assessment that is further integrated into policy development and decision making processes. This will focus on opportunities for systematic improvement and practical means to implement them in support of policy making; guidance and training; and measures to strengthen accountability and oversight and ensure quality.

In Programme for Government we have committed to develop and take forward implementation of an equality and human rights mainstreaming strategy, bringing forward a consultation in 2022. As part of this work we are developing a strategic approach to improving the skills and expertise in Government and the wider public sector to embed equality, inclusion and human rights, including Equality Impact Assessment. Our shared policy platform with the Scottish Green Party commits us to the development of a human rights impact assessment framework for all policy and legislative work.

The consultation on the National Care Service made clear that the proposals aim to put a human rights-based approach at its heart and to refocus the system to one that upholds the human rights of people who access and who offer care and support. All investment decisions made will consider the results of the public consultation and ongoing engagement with stakeholders to ensure investment can have the best impact on outcomes and people's care.

14. The Committee welcomes the work on financial transparency and asks the Scottish Government to provide an update.

As part of our continuing work to improve financial transparency we have recently co-created, with civil society partners (including representatives from the SHRC and EBAG) a commitment on *Fiscal Openness and Transparency – improving the accessibility and usability of our data and information about public finances*, for Scotland's third Open Government Partnership (OGP) Action

Plan (2021-25)¹⁵. This commitment will seek to provide better access to fiscal data and information, increasing the accessibility, usability and presentation of information about the public finances, to enable better understanding and scrutiny for a wide range of users, including the public. We are using analysis and recommendations from our Fiscal Transparency Discovery Report to establish a programme to take forward this work, which will include a multi-stakeholder approach to inform long term development, including a mechanism to engage with a range of users who will use fiscal information.

As part of the commitment on financial transparency we have also committed to benchmark our progress on fiscal openness and transparency with other countries/ international standards, as well as developing engagement and participation on the public finances - which includes public engagement on the Tax Framework, the 2021 Capital Spending Review and the forthcoming 2022 Resource Spending Review.

In taking forward the implementation of the commitment on financial transparency we will report progress against milestones to the OGP Steering Group. We will also establish a mechanism, which will include civil society representatives, to monitor progress on the financial transparency commitment.

Participation and Engagement

15. The Committee asks the Scottish Government to set out the ways in which good practice is being resourced and rolled out across government, and the wider public sector, so that it becomes the norm rather than the exception.

A Participation Framework is currently being developed as part of our membership of the Open Government Partnership¹⁶, as a tool to support and promote good practice in participation and engagement across Government. We are working to embed inclusion throughout this. The Participation Framework is designed to make clear the benefits of involving the public and relevant stakeholders early in any process, and equip staff with the skills to identify the most effective ways to carry out their engagement. The Participation Framework will be published in early 2022.

The Institutionalising Participatory and Deliberative Democracy (IPDD) Working Group was convened in Summer 2021, to develop and present options for institutionalising participatory and deliberative democratic processes into the current system in Scotland. This includes a specific focus on the commitments for Citizens' Assemblies, including for children and young people. The Working Group is currently finalising a report which will make a range of recommendations. These will include defining

¹⁵ Publication pending – Scotland's Open Government Action Plan 2021-25 can be provided once published

¹⁶ <https://www.opengovpartnership.org/members/scotland-united-kingdom/>

standards, values and principles for the use of participation, deliberation and engagement; identifying methods of governance for delivering credible and trustworthy participatory and deliberative processes; and setting out for Ministers options for their routine use. The report will also provide an indication of the resources necessary (both within public services and in the wider community) to establish and deliver this routinely and sustainably.

16. The Committee recognises the value of high-quality advocacy services and asks the Scottish Government to ensure there is adequate provision in the budget to support advocacy, and to set out how it may need to increase budgeting in this area within the context of the new human rights framework.

The Scottish Government is committed to supporting high-quality advocacy services and recognises the integral role that advocacy plays in empowering people and communities to claim their rights. We are currently supporting a range of advocacy services, including in Social Security, Child Rights and Legal Aid, as detailed below.

Advocacy in Social Security

We will launch a new independent Social Security advocacy service early next year, which will support disabled people who need such support to engage effectively with Social Security Scotland. The Scottish Government has committed to investing £20 million in the provision of an advocacy service over the next four years. The free service will build on our human rights-based approach, making Social Security more accessible to disabled people in Scotland – supporting them to be more involved in processes and decisions which affect them. The service will provide free advocacy to anyone who identifies as disabled and requires support to communicate. This will be a person-centred service, and advocates will provide the most appropriate form of advocacy support to each individual based on their circumstances.

Advocacy and Child Rights

A national advocacy scheme to reinforce the rights of children involved in the Children's Hearings System was launched in November 2020. A network of ten organisations provides independent advocacy services to children and young people at Children's Hearings. These organisations have an important role in helping children and young people's voices to be heard, their wishes taken into account and their rights upheld. The demand-led service supported over 500 children and young people who wanted this help through the national advocacy scheme in the period up to 31 March 2021. From July 2021, the provision was expanded to also reinforce the right of siblings to participate in Children's Hearings, where they are invited to give their views on when or how they want to see their brothers or sisters. The national scheme was backed by £1.5 million in 2020-21, and investment has increased to £1.8 million in 2021-22. The funding supports the training and provision of advocacy workers. A Children's Hearings Advocacy Expert Reference Group directs the design, delivery and implementation of the scheme. Learning

and evidence from implementing the national scheme will help development of wider advocacy policy and provisions, including support for care-experienced people as highlighted in The Promise¹⁷ for driving the change programme 2021-24 demanded by the findings of the Independent Care Review.

Advocacy and Legal Aid

The Scottish Legal Aid Board is managing funding in 2021-22 of approximately £2.4 million on behalf of the Scottish Government Justice Directorate, through funding from the Legal Aid Fund, which is a demand led budget. This is for projects under the Early Resolution and Advice Programme; the Making Advice Work Programme; and for the Scottish Women's Rights Centre. The Early Resolution and Advice Programme (ERAP) has been operational since October 2012 while the Making Advice Work Programme (MAW) started in October 2013.

Projects are funded under the Early Resolution and Advice Programme (ERAP) to provide direct assistance and representation for people at risk of or facing court action related to debt in respect of mortgage or tenancy repossession. Projects also provide direct assistance to tackle the multiple and serious debt issues underlying these court actions. ERAP also supports projects who provide information, advice and signposting for people with small claims problems (and now simple procedure problems) and provide help with other civil court matters to increase people's ability to navigate the court process themselves.

The Making Advice Work is designed to focus funding on projects that can provide advice, information and representation for people across a geographic area, with a focus on help to resolve benefit and complex debt problems and to provide targeted assistance to help people successfully make the transition to the new benefits system.

Funding is also provided through the Scottish Legal Aid Budget for the Scottish Women's Rights Centre Legal Project. The project managed by Rape Crisis Scotland in partnership with JustRight Scotland continues to provide help to women needing legal advice and representation for gender based violence. The project continues to provide assistance on telephone helplines and operate legal surgeries, these have taken place remotely since the start of the pandemic. Project clients are helped to resolve their problems or are referred to other appropriate help. The majority of enquiries are linked to children's matters, in particular child contact and to dissolution of a relationship. Where legal intervention is required and no alternative sources of help are available, the project will take on the client.

¹⁷ [Home - The Promise](#)

The 2021-22 Programme for Government commits the Scottish Government to engage with both legal professionals and victim support organisations to review the Legal Aid system, and will introduce a Legal Aid Reform Bill in this Parliament, ensuring that the system is flexible, easy to access and meets the needs of those who use it. The public consultation on Legal Aid Reform showed support for more targeted provision to improve access to legally aided services in certain geographical areas or for groups with specific legal needs, such as domestic violence. It is intended to introduce a legal aid reform bill during this Parliament.

Advocacy and Human Rights

As part of the development and implementation of the new Human Rights Bill, working in collaboration with a range of stakeholders there will be further exploration of access to justice. This work will support our work to understand how rights holders may be supported, and will be informed by key stakeholders and individuals with lived experience of seeking remedy.