

Scotland's Public finances in 2022-23 and how they have been affected by COVID-19?
Evidence to the Finance and Public Administration Committee

Professor Fiona de Londras, Dr Pablo Grez Hidalgo and Daniella Lock
COVID-19 Review Observatory, Birmingham Law School, University of Birmingham

1. How should the Scottish Government's Budget for 2022-23 address the need for a fair and equal recovery from the Covid crisis?

1.1 We submit that addressing the need for a fair and equal recovery from the Covid crisis requires putting human rights at the centre of governmental decision making, including on matters of expenditure and the arrangement of public funding. There are international human rights obligations and obligations under the Human Rights Act 1998 which apply to all government activity, including the arrangement of public expenditure. In practice, this means that in making resource-allocation decisions, which have rights-fulfilling roles for instance on matters such as social care and housing provision, the Government is expected to take into account its human rights obligations. This includes especially obligations to respect, protect, and fulfil rights like the right to equality and non-discrimination, the right to life, the right to health, the right to education, and the right to food.

1.2 As the Committee which examines “Scotland’s public finances” and the “National Performance Framework”, the Finance and Public Administration Committee (‘FPAC’) has a legitimate role in assessing the extent to which the Government is fulfilling its human rights obligations in the expenditure and arrangement of public funding.¹ Indeed, doing so is integral to assessing the effectiveness of public expenditure, as effectiveness must encompass successfully discharging legal obligations, including human rights obligations. As courts generally exercise deference in respect of government expenditure, Parliament and its committees play a critical role in ensuring accountability for public expenditure including for its human rights implications. The FPAC is critical to that accountability and scrutiny work.

1.3 The significance of human rights and equality considerations to the Scottish budgeting process is highlighted by two key recent legislative developments, and by the content of the “National Performance Framework” itself. Firstly, the Scottish Parliament passed a Bill in March 2021 to incorporate into Scots Law the United Nations Convention on the Rights of the Child. Furthermore, the Scottish Government plans to introduce this parliamentary session a new Human Rights Bill, which will reassert Scotland’s commitment to the UK’s international human rights obligations. This Bill will enshrine into Scots Law specific rights arising from four United Nations Human Rights treaties, namely, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Elimination of All Forms of Racial Discrimination and

¹ Description of the Finance and Public Administration Committee provided on the Committee webpage: <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-finance-and-public-administration-committee>

the Convention on the Rights of Persons with Disabilities.² The incorporation of international human rights law into Scots law highlights the significance of international human rights law to all areas of public life. We welcome this announcement as another expression of the Scottish Government’s intention to ensure that human rights do not merely exist in the abstract, but are subject to concrete enforcement mechanisms at the domestic level and inform policy decision-making.

1.4 Secondly, the Scottish Parliament decided that human rights and equality considerations ought to be incorporated as an integral part of governmental decision-making in the Covid-19 pandemic context. Thus, MSPs introduced a statutory duty on Scottish Ministers in the two Scottish Coronavirus Acts to “have regard to opportunities to advance equality and non-discrimination” in exercising the emergency powers conferred under these Acts, including in the making of subordinate legislation.³ These duties have informed governmental decision-making throughout the pandemic. For instance, in taking decisions regarding lockdown policies, the Government has sought to minimise the impact of these policies on “Four Harms” arising from the COVID-19 pandemic, namely, direct health impacts, other health impacts that are not directly related to COVID, societal impacts and economic impacts. Equality assessments have featured as a key component of these analyses.⁴ Notably, the Government’s approach has been to look at how the measures have an impact on different protected characteristics such as gender, ethnicity, age, sexual orientation, religion and disabilities shape an individual’s identity, and how these interact with an individual’s socio-economic circumstances. The two monthly reports on the exercise of emergency powers under the Scottish Acts show how this analysis has been integrated into the Government’s thinking.⁵

1.5 Thirdly, the FPCA’s remit includes the Scottish’s “National Performance Framework”. This framework puts human rights and equality considerations at the heart of the committee’s scrutiny work. Indeed, the framework aims to give opportunities to all people living in Scotland and increase their wellbeing, reduce inequalities and give equal importance to economic, environmental and social progress.⁶ The framework also sets out a series of “national outcomes”, aligned with the United Nations Sustainable Development Goals. Among the expected outcomes are the respect, protection and fulfilment of human rights, that people lives free from discrimination, and that Scotland tackles poverty by sharing opportunities, wealth and power more equally.

1.6. Recently, two ad hoc advisory bodies have highlighted the need to incorporate a human rights-based approach to budgeting in Scotland. We respectfully call the committee’s attention to two of their recent reports. The first report, published in January 2021, was made by the Social Renewal Advisory Board.⁷ This advisory body was convened by the Scottish Government as a short-term group to propose ideas to deliver “real change as Scotland embarks on its journey of renewal after the pandemic.” This report contains a series of policy proposals

² <https://www.gov.scot/news/new-human-rights-bill/>

³ S. 9(1)(b) Coronavirus (Scotland) Act 2020 and S. 6(1)(b) Coronavirus (Scotland) (No.2) Act 2020.

⁴ <https://data.gov.scot/coronavirus-covid-19/equality.html>

⁵ <https://www.gov.scot/collections/coronavirus-covid-19-legislation/>

⁶ <https://nationalperformance.gov.scot/what-it>

⁷ Social Renewal Advisory Board, If not now, when?, January 2021, available at:

<https://www.gov.scot/publications/not-now-social-renewal-advisory-board-report-january-2021/documents/>

to accelerate system change in order to achieve a fairer and equal society, underpinned by a strong commitment to human rights and economic justice. The Advisory Board made a number of calls for action. We respectfully call the FPAC's attention to "call for action 11", regarding the incorporation of key international human rights instruments into Scots Law. While the Government has already announced its plans to undertake this incorporation, as indicated above, the Advisory Board also recommends a "commitment to integrate equality and human rights budgeting in the Scottish Budget process to ensure that needs are reflected in policy and resource allocation processes through the Scottish Budget to public authorities charged with delivering on the National Outcomes."

1.7 It is worth noting that the commitment to incorporate human rights budgeting has also been promoted by the Scottish Human Rights Commission, which published a series of briefing papers on this subject matter in 2019.⁸ These papers outline key substantive concepts arising from fulfilling human rights standards, which are relevant for the budget, such as those of "minimum core", "progressive realisation" and "non-retrogression". The briefings also provide relevant guidance in employing these standards as criteria to take budget policy decisions in a way that complies with international human rights obligations. The briefings contain significant principles, measures and criteria that we fully endorse.

1.8 The second report was published only a month ago by the Equality Budget Advisory Group.⁹ This report outlines a series of "**recommendations for equality and human rights budgeting**" for the "**2021-2026 parliamentary sessions**". This is a significant report, for three reasons: it outlines current challenges on human rights budgeting, it makes a series of critical recommendations, and it triggered various governmental commitments to improve internal practices. We will refer to these below.

1.9 Before outlining what we think are the critical issues arising from the report, it is worth noting that the report depicts a mixed picture of the Scottish Government's practices regarding equality analysis and the budget. Thus, on the one hand, the report recognises that the Scottish government has a long-standing practice of performing equality analysis of its budget for some twelve years. The report also identifies an overall governmental discourse that stresses the significance of tackling inequality and promoting human rights, as the legislative initiatives described above. Nevertheless, the Advisory Group took the view that the Equality and Fairer Scotland Budget Statements which are published alongside every year's budget contain mainly a post-hoc narrative. Critically, according to the Advisory Group, equality budgeting throughout the rest of the year remains limited. The Advisory Group's findings suggest that human rights analysis has not been fully integrated into core budget processes. There is still work to do to secure that equality impact assessments inform policy decision-making and have a real impact on spending. We respectfully suggest the FPCA to look at the various Advisory Group's recommendations. In what follows, we focus on three key recommendations to improve human rights budgeting processes in Scotland contained in their report.

⁸ The briefing papers are available at:

<https://www.scottishhumanrights.com/projects-and-programmes/human-rights-budget-work/>

⁹ <https://www.gov.scot/publications/equality-budget-advisory-group-recommendations-for-equality-and-human-rights-budgeting---2021-2026-parliamentary-session/>

1.10 The first recommendation is that “equality and human rights budgeting” should be understood as “a year-round process”. The post-hoc narrative contained in the current Statements should be replaced by a fully fleshed year-round process which includes a pre-budget statement, in-year reports and mid-year reviews. The second recommendation is closely connected with the first. The Advisory Group’s report notes that “high-quality analysis of budget decisions is dependent on equality analysis being fully embedded into all stages of policy-making and throughout scrutiny of policy and spending decisions and outcomes.” In other words, as Aoife Nolan et al. claim, human rights budgeting requires not only retrospective but also “prospective” integration of human rights and equality assessments into policy-making.¹⁰ To tackle these challenges, the Advisory Group recommends increasing training and advice across the various governmental departments to build knowledge and improve the quality of published equality and human rights analysis.

1.11 In connection with the abovementioned, we respectfully suggest the FPAC to consider James Harrison and Mary-Ann Stephenson’s recommendations regarding human rights budgeting,¹¹ among which we highlight the following: (i) to improve guidance and examples of good practice for those carrying out equality and human rights assessments; (ii) to monitor practices and ensure that poor instances are corrected; (iii) to introduce consideration of economic, social and cultural rights, and not limit the analysis exclusively to those rights contained in the Human Rights Act 1998 and the Equalities Act 2010; and (iv) to foster different departments working together to produce impact assessments that explore the combined impact of different policies on particularly vulnerable groups. By following these recommendations, human rights budgeting could become a powerful tool for analysing and addressing the impact that policies contained in the budget have on the most vulnerable and disadvantaged members of our society, and for better fulfilling human rights’ transformative potential, in line with the recommendations of the Social Renewal Advisory Board.

1.12 A third key area for action is that of transparency and participation. As the Advisory Group rightly notes, “lengthy and complicated budget documents are not conducive to good public engagement or public and parliamentary scrutiny.” Since human rights budgeting is an “evidence-based assessment”, proper consultation is critical to gather evidence on the impact of policies on vulnerable and underrepresented groups. In addition, wider participation and consultation is likely to improve the quality of equality and human rights impact assessments on budgetary processes.¹² However, budgetary processes tend to be highly complex to understand, putting barriers on people’s ability to engage with the process. For this reason, we commend the Advisory Group call for the Scottish Government to commit to producing a clear, concise and accessible “Citizens” budget, as well as a bespoke budget website dedicated to “publishing analysis, reporting, evaluation reports, and other tools related to equality and human rights budgeting.” This will improve vertical accountability for budgeted decision-making between citizens and the Scottish political institutions, but also parliamentary accountability, as it will furnish MSPs with accessible and transparent information about the human rights implications of budgetary proposals.

¹⁰ Nolan, Aoife, O’Connell, Rory and Harvey, Colin, Introduction, in: Aoife Nolan et al, *Human Rights and Public Finance*, Hart Publishing, 2013, p. 8.

¹¹ Harrison, James and Stephenson, Mary-Ann, Human Rights, Equality and Public Spending, in: Aoife Nolan et al, *Human Rights and Public Finance*, Hart Publishing, 2013, pp. 219-241.

¹² *Ibid.*, p. 220.

1.13 We fully endorse the Advisory Committee's recommendations and commend the decision of the Scottish Government to make various commitments to ensure step change improvement in budgeting appraisal processes, including on the three critical areas outlined above.¹³ We also note that, in our view, the FPCA has a relevant role to perform in scrutinising the implementation of the Advisory Group's recommendations.

2. How should the Scottish Government's Budget address the different impacts of the pandemic across age, income and education groups and across places?

2.1 In this respect, we would like to briefly reiterate key points already mentioned in our response to question No. 1. Firstly, the significance of wider participation and consultation, not least, with underrepresented and vulnerable members of the community, and NGOs advocating for their rights. Secondly, the need to undertake an intersectional approach to protected characteristics, such as age, disabilities, gender, religion, sexual orientation and ethnic background, among others, and their relationship with socio-economic circumstances. Thirdly, the significance of evidence-based assessments of the impact of budget policies on equality and human rights, including socio-economic and cultural rights. Finally, the need to integrate these assessments as an integral part of policy-making, and not merely as a tick-box exercise, or a retrospective narrative.

3. In 2022-23, it is likely that there will be reduced levels of available Covid-related financial support for the public and private sector. Given this, what should be the priorities for the Scottish Government's Budget?

3.1 In terms of priorities, without encroaching into the domain of policy, we respectfully submit that the FPCA may benefit from looking at key reports that help to identify priorities for the Scottish Government's Budget from a human rights perspective. Firstly, the Equalities and Human Rights Committee published a report in March 2021 "on the impact of the COVID-19 pandemic on equalities and human rights."¹⁴ This report provides an overall picture of the impact of the pandemic on various themes, including the right to food, social care, inclusive communication, digital exclusion, as well as an assessment of the situation of protected characteristics and people in vulnerable situations.

3.2 Secondly, two reports mentioned in our response to question No. 1, published by the Equality Budget Advisory Group and the Social Renewal Advisory Board, also contain essential information for decision-making in the budget process and prioritization of human rights considerations. While the first report focuses on procedural improvements to secure a

¹³ See the Appendix to the Equality Budget Advisory Group, available at:

<https://www.gov.scot/publications/equality-budget-advisory-group-recommendations-for-equality-and-human-rights-budgeting---2021-2026-parliamentary-session/pages/appendix/>

¹⁴ Equalities and Human Rights Committee, Report on the impact of the COVID-19 pandemic on equalities and human rights, SP Paper 966, 1st Report. 2021 (Session 5), available at:

<https://sp-bpr-en-prod-cdnep.azureedge.net/published/EHRiC/2021/3/2/1283533c-8aed-4a8c-8034-1ab216baca73-1/EHRiCSO52021R5.pdf>

human rights-based analysis in policy decision-making, the Social Renewal Advisory Board's report sheds light on human rights prioritization. In what follows, we would like to mention three areas for action briefly.

3.3 First, the report identifies various needs regarding the right to housing. For instance, increasing needs for affordable houses, as the number of people at risk of homelessness might increase once the ban on evictions ends; and suitable accommodation that meets the needs of women victims of abuse, people with disabilities, and larger families suffering overcrowding (something that may be more prevalent among minority ethnic communities).¹⁵ The right to food represents a second relevant area for action. The report identifies food insecurity faced by children, lone parents, minority ethnic communities, disabled people and those living in deprived neighbourhoods. The report notes that although there have been multiple governmental measures to address these issues, it may be worth considering direct cash transfers as this addresses the food needs of families with dignity and choice.¹⁶ Finally, we would like to highlight the increasingly relevant problem of “digital inclusion”. While the Government has put in place the “Connecting Scotland” programme, there are still challenges to achieve full digital inclusion by means of providing the skills and addressing barriers in accessing digital services in the case of older and disabled people.

About Us

Fiona de Londras is Professor of Global Legal Studies at Birmingham Law School, University of Birmingham. Email: f.delondras@bham.ac.uk

Dr Pablo Grez Hidalgo is a Research Fellow at the COVID-19 Review Observatory, Birmingham Law School, University of Birmingham. Email: p.grezhidalgo@bham.ac.uk

Daniella Lock is a Research Fellow at the COVID-19 Review Observatory, Birmingham Law School, University of Birmingham. Email: D.Lock.1@bham.ac.uk

The **COVID-19 Review Observatory** is a UKRI-funded (AHRC) research initiative located at Birmingham Law School, University of Birmingham. It tracks, assesses, and engages with parliamentary reviews of responses to the COVID-19 pandemic with a view to ensuring effective consideration of rights protection, and to enhancing accountability and legitimacy by supporting parliamentary review. A key part of its work is participating in such reviews by, for example, submitting to committee inquiries.

¹⁵ Social Renewal Advisory Board, *If not now, when?*, p. 28.

¹⁶ *Ibid.*, p. 29.