

UNITED NATIONS WORKING GROUP ON BUSINESS AND HUMAN RIGHTS

SCOTTISH GOVERNMENT SUBMISSION

THE GENDER DIMENSION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

The United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises is developing guidance to provide practical recommendations for what it means to “protect, respect and remedy” the rights of women in a business context in line with the UN Guiding Principles on Business and Human Rights (UNGPs).

The Scottish Government is committed to the progressive realisation of internationally-recognised human rights. This submission sets out action the Scottish Government is taking to advance gender equality in a range of areas relevant to the issues identified by the Working Group in its call for evidence.

The Scottish Government’s Purpose is:

“To focus on creating a more successful country with opportunities for all of Scotland to flourish through increased wellbeing, and sustainable and inclusive economic growth.”

Scotland’s National Performance Framework¹ contains eleven specific national outcomes to reflect this vision and promote the Scottish Government’s commitment to the Sustainable Development Goals. The outcomes include:

- We respect, protect and fulfil human rights and live free from discrimination
- We tackle poverty by sharing opportunities, wealth and power more equally
- We have thriving and innovative businesses, with quality jobs and fair work for everyone

Human rights in Scotland

Human rights are devolved to the Scottish Parliament under the constitutional settlement which has applied in Scotland since 1999.

The Scotland Act 1998, in combination with the regime in the Human Rights Act 1998 (HRA), for which the Westminster Parliament is responsible, ensures that both Scottish legislation and the actions of public bodies are subject to an overriding requirement to comply with core human rights standards.

Specifically, legislation passed by the Scottish Parliament is ‘not law’ to the extent that it is incompatible with rights derived from the European Convention on Human Rights (ECHR). These ‘Convention Rights’ are formally defined in the HRA. Scottish legislation can be challenged in the courts and independent judges are able to rule on

¹ <http://nationalperformance.gov.scot/>

whether the legislation breaches relevant Convention Rights. Where a court finds that legislation is incompatible, the legislation can be struck down and ceases to have effect.

The Scottish Ministers similarly have no power to act in a manner that is incompatible with the Convention Rights. The HRA ensures that other public bodies are subject to a similar obligation. It is unlawful for a public body to act incompatibly with the Convention Rights. The actions of both the Scottish Ministers and public bodies can be challenged in the Scottish courts.

In addition to these legally-enforceable guarantees, the Scottish Ministerial Code explicitly reminds all Scottish Ministers of the overarching duty they have, as members of Scotland's Government, 'to comply with the law, including international law and treaty obligations.'

First Minister's Advisory Group on Human Rights Leadership

Scotland's First Minister has established an expert advisory group to make recommendations on how Scotland can continue to lead by example in human rights, including economic, social, cultural and environmental rights.

The Group is carrying out its work independently of government and will report on Human Rights Day, 10 December 2018. It will examine the human rights impacts of UK withdrawal from the EU and how best to protect and promote all human rights across all potential scenarios. In doing so, it will apply the three principles articulated by Scotland's Standing Council on Europe:

- there must be no regression from current standards;
- Scotland must keep pace with future EU standards; and
- Scotland should demonstrate leadership on human rights.

The Group will also give particular consideration to the potential for incorporation of international human rights treaties into domestic law, and the means by which this might in practice be undertaken. It is supported by a wider Reference Group of civil society organisations.

*Delivering for today, investing for tomorrow: the Government's Programme for Scotland 2018-2019*² (2018-19 PfG) commits the Scottish Government to responding in full to the Advisory Group's recommendations.

Scotland's Economic Strategy

Inclusive Growth is central to *Scotland's Economic Strategy*,³ which aims to increase productivity and reduce inequality through fostering innovation, increasing investment, and promoting internationalisation.

² <https://beta.gov.scot/publications/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/>

³ <https://beta.gov.scot/publications/scotlands-economic-strategy/>

The Scottish Government defines inclusive growth as: “Growth that combines increased prosperity with greater equity; that creates opportunities for all and distributes the dividends of increased prosperity fairly”.

UN Guiding Principles on Business and Human Rights

The Scottish Government is working with a range of partners to develop a national action plan to give effect to the UNGPs in Scotland, building on the UK’s Action Plan.

A national baseline assessment was published in 2016 and sets out the current legal, policy and institutional framework in Scotland in relation to the UNGPs.⁴ Its findings, alongside engagement with stakeholders, will inform the drafting of a national action plan for consultation.

Fair Work

Scotland’s Fair Work Convention provides independent advice to the Scottish Government on matters relating to innovative and productive workplaces, industrial relations, fair work and the Living Wage in Scotland.

The *Fair Work Framework*⁵ defines fair work as work that offers effective voice, opportunity, security, fulfilment and respect, and that can generate benefits for individuals, organisations and society.

Gender equality

The Scottish Government is committed to achieving equal rights between women and men.

The First Minister has established an independently-chaired National Advisory Council on Women and Girls⁶ to help drive forward action to tackle gender inequality. The role of the Advisory Council is to raise awareness of gender inequality; to act as a champion for positive progress and policies, and to provide effective challenge and be a catalyst for change.

The Scottish Government continues to champion the *Partnership for Change 50/50 by 2020* campaign,⁷ encouraging organisations and businesses from the private, third, and public sectors, to make a voluntary commitment to work towards gender balance on their boards by 2020.

The Scottish Government is also leading by example by having one of the very few gender-balanced cabinets anywhere.

⁴ <http://www.snaprights.info/action-areas/better-world/business-and-human-rights>

⁵ <http://www.fairworkconvention.scot/framework/FairWorkConventionFrameworkFull.pdf>

⁶ <https://onescotland.org/equality-themes/advisory-council-women-girls/>

⁷ <https://onescotland.org/equality-themes/5050-by-2020/>

Intersectionality

The Scottish Government's *Race Equality Action Plan*⁸ sets out actions for the current parliamentary session to drive positive change for minority ethnic communities. The plan acknowledges that there is a particular disadvantage for women from minority ethnic groups within the labour market, and includes an action to: "Work in partnership with key delivery partners to develop and co-ordinate a Minority Ethnic Women's Network to develop skills and understanding for women to participate in local and national decision making processes."

*A Fairer Scotland for Disabled People*⁹ has five long-term ambitions aimed at changing the lives of disabled people in Scotland and ensuring that their human rights are realised. The plan sets out 93 actions which will be taken forward during the current parliamentary session, and includes halving the employment gap for disabled people; setting a target to increase the percentage of disabled people in the public sector workforce; and increasing supply of wheelchair accessible housing.

Gender representation on public boards

The purpose of the Gender Representation on Public Boards (Scotland) Act 2018¹⁰ is to improve the representation of women on the boards of Scottish public authorities. The Act sets an objective that 50% of the non-executive members of boards should be women. Public authorities, appointing persons and Scottish Ministers are subject to a range of duties in connection to their role in achieving the gender representation objective.

The Act requires that appointments must be made on merit. But in a 'tie-break' situation, where there are two or more equally qualified candidates for an appointment, the Act requires the appointing person to appoint a candidate who is a woman unless there are particular circumstances which would justify appointment of another candidate.

In addition, public authorities, appointing persons and Scottish Ministers must take such action as they consider appropriate to encourage applications from women.

An important element of the legislation is a requirement to report on progress in order to highlight action that is being taken and ensure transparency. To support the implementation of the Act, Scottish Ministers must publish guidance and those with duties under the Act must have regard to the guidance.

⁸ <https://beta.gov.scot/publications/fairer-scotland-race-equality-action-plan-2017-2021-highlight-report/>

⁹ <https://beta.gov.scot/publications/fairer-scotland-disabled-people-delivery-plan-2021-united-nations-convention/>

¹⁰ <http://www.legislation.gov.uk/asp/2018/4/contents/enacted>

Employment

Skills Development Scotland's *Equalities Action Plan for Apprenticeships*¹¹ outlines actions to improve underrepresented groups' participation in the Scottish Government's Apprenticeship family of offerings. It includes activity to address gender imbalance within some Apprenticeship occupational frameworks (for example females in STEM-related apprenticeships). The second annual Apprenticeship Equality Action Plan update was published on Wednesday 8 August 2018.¹²

The Scottish Government's *Science, Technology, Engineering and Mathematics education and training strategy*¹³ aims to improve STEM (science, technology, engineering, mathematics) learning and teaching in the school curriculum through enhanced professional learning and a new network of STEM specialist advisers.

The *Women in Enterprise Action Framework*¹⁴ identifies priority areas of action and how best they can be collaboratively supported. The Scottish Government is doubling the overall support (from £200,000 in 2016-17 to £400,000 in 2017-18) it provides for actions delivered through the Framework.

The *Women's Enterprise Ambassadors Project*¹⁵ provides a public platform for case studies and good practice examples of women on the enterprise journey. This year, ten new Ambassadors will be recruited and trained, and their business case studies and personal stories will achieve significant reach.

In 2018-19, the Scottish Government has awarded £159,000 funding to the Family Friendly Working Scotland Partnership, working with Working Families (a leading UK work-life balance organisation), Parenting Across Scotland and Fathers Network Scotland to support and promote the development of family-friendly workplaces across Scotland.

In September 2017, the Scottish Government launched the *Flexible Jobs Index Scotland*,¹⁶ which analysed the flexible jobs market in Scotland for the first time. The index showed that demand for flexible working outstrips supply, meaning that there is a significant opportunity to grow the flexible jobs market, with benefits for employers, workers and families.

The Children and Young People (Scotland) Act 2014¹⁷ increased the amount of funded early learning and childcare to 600 hours per year for all three to four-year olds. This has been extended to around a quarter of two-year olds who may benefit most, including those with a parent in receipt of out of work benefits or on low income; and those who are looked after, the subject of a kinship care order, or with a parent

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https://www.skillsdevelopmentscotland.co.uk/media/40691/2869_sds_equalities_action_plan_digital_v7.pdf

12 <https://www.skillsdevelopmentscotland.co.uk/media/44830/apprenticeship-equality-action-plan.pdf>

13 <https://beta.gov.scot/publications/science-technology-engineering-mathematics-education-training-strategy-scotland/>

14 <https://www.wescotland.co.uk/framework>

15 <https://wesambassadors.co.uk/>

16 <https://www.familyfriendlyworkingscotland.org.uk/resources/FINAL-Timewise-Scotland-Report.pdf>

17 <http://www.legislation.gov.uk/asp/2014/8/contents/enacted>

appointed guardian. The statutory entitlement will increase to 1,140 hours a year by August 2020. The total public sector investment in delivery of early learning and childcare is expected to reach around £990 million by 2021-22.

The Scottish Government continues to fund *Women Returners* programmes, which offer advice, guidance and access to paid work placements across a variety of industrial sectors where occupational segregation and the lack of women in senior positions is a concern. Building on an initial £235,000 Returner's Programme Fund that assisted experienced women to return to the workplace in the STEM, finance, security, manufacturing sectors and business start-up support, the 2018-19 PfG committed an additional £5 million over 3 years to support around 2,000 women to return to work following a career break.

To help improve workplace practices, the Scottish Government is providing £750,000 to the *Workplace Equality Fund*¹⁸ to deliver employer-led, innovative solutions to overcome workforce inequality. Round 1 of the Fund supports nine projects targeted at supporting older workers, women, disabled people and people from ethnic minority communities. Round 2 closed for applications on 30 August 2018.

Gender pay gap

In Scotland, the gender pay gap for full-time employees decreased from 7.7% in 2015 to 6.6% in 2017 and to 5.7% in 2018. Tackling gender inequality and the gender pay gap continues to be a priority for the Scottish Government, which has established a Gender Pay Gap Working Group with stakeholders such as Close the Gap, Engender and STUC. The working group will help to inform the development of the Scottish Government's Gender Pay Gap Action Plan, which is due for publication by the end of 2018.

In February 2016, the Scottish Government reduced the threshold for listed public authorities to report their gender pay gap and publish statements on equal pay and occupational segregation, from those with more than 150 employees to those with more than 20 employees.

Pregnancy and maternity discrimination working group

The Minister for Business, Fair Work and Skills chairs a working group that is undertaking action to tackle pregnancy and maternity discrimination in the workplace. Its work has included improving the quality and promoting the availability of guidance to pregnant women, new mothers and employers about rights and responsibilities in the workplace.

The Scottish Government is working with ACAS (Advisory, Conciliation and Arbitration Service) to provide training courses across Scotland for employers on maternity and paternity rights and responsibilities, for both employers and employees, before, during and after pregnancy. It is also funding Family Friendly Working Scotland to deliver a series of seminars, conferences and training for employers on the benefits of flexible working.

¹⁸ <https://www.voluntaryactionfund.org.uk/funding-and-support/workplace-equality-fund/>

Political participation

The Scottish Government's Access to Elected Office Fund Scotland¹⁹ helps to meet the additional costs disabled people face when seeking election in local authority elections. In May 2017, 15 disabled candidates were successful, of which seven are women. The Fund will remain in place until the Scottish Parliament elections in 2021.

Access to justice

The Scottish Government is pleased that the UK Supreme Court has ruled the level of employment tribunal fees previously set across the UK to be unlawful. The Scottish Government will continue to work with stakeholders to ensure that the new employment tribunal system in Scotland provides access to justice and contributes to the Scottish Government's vision for Fair Work to be embedded in all workplaces in Scotland. This will help ensure that all women can challenge discrimination in the workplace and access justice.

Violence against women and girls

The Scottish Government is implementing *Equally Safe*,²⁰ Scotland's strategy to tackle all forms of violence against women and girls.

The Scottish Government provides funding for the Scottish Women's Rights Centre, a resource to ensure that women in Scotland who have or are experiencing gender-based violence are able to access timely and appropriate legal advice and information. The Scottish Government is also funding the development of an accreditation scheme for employers called *Equally Safe at Work*, which is being piloted with local authorities in the first instance. The Scottish Government plans to run a major national campaign on sexual harassment and sexism in Spring 2019, which includes a specific focus on employers.

Human rights defenders

The Scottish Government has established a Scottish Human Rights Defender Fellowship in partnership with the University of Dundee and other stakeholders. From September to December 2018 three human rights defenders will spend three months in Scotland, combining study at the university with the chance to build relationships and share expertise with Scottish human rights and equality organisations.

¹⁹ <http://inclusionScotland.org/what-we-do/employability-and-civic-participation/access-to-politics/aeofs/>

²⁰ <https://www.gov.scot/Publications/2014/06/7483>