

12th September 2017



Glasgow
Council
for the
Voluntary
Sector



Scottish Council
on Deafness (SCoD)

A society where deaf people have equal access, rights and citizenship

Voluntary *Action* Scotland

**Key Issues From the Scottish Government
Consultation On The Socio-Economic Duty**

- A briefing for Members

About Us...

The three organisations are working collectively to build knowledge and capacity on human rights within the third sector and to work collaboratively with government, the Scottish Parliament and the public sector so that human rights fulfil their potential to help make Scotland fairer. We define human rights as economic, social, cultural, civil, political and environmental rights, in line with the ECHR and international treaties which the UK has ratified.

About GCVS

GCVS is the main development agency and advocate for voluntary and community organisations in Glasgow and one of the largest Council's for the Voluntary Sector in the UK. We are also one of four key partners – (GCVS, Volunteer Glasgow, Glasgow Social Enterprise Network and the Third Sector Forum) – that form Glasgow's Third Sector Interface – the partnership that supports and represents the third sector in Glasgow and through which the Scottish Government engages with the third sector. For more information visit our website <http://www.gcvvs.org.uk/>

About SCoD

The Scottish Council on Deafness (SCoD) is the lead for all matters concerning deaf people and their issues in Scotland, representing organisations working with and on behalf of deaf people: Deaf /Sign Language users, Deafblind, Deafened, and Hard of Hearing people. SCoD's membership provides an effective working partnership between the Third, Public and Private Sectors and the Scottish Government. For more information visit our website <http://www.scod.org.uk/>

About VAS

Voluntary Action Scotland is the national network organisation that champions, connects and develops Scotland's Third Sector Interfaces (TSIs) to support the third sector locally. VAS gives a national voice to the TSIs local impact. We advocate for the best possible environment in which the third sector locally can thrive and contribute to better and fairer outcomes for the people we serve. For more information visit our website <http://www.vascotland.org/>

1. Introduction

The Scottish Government Consultation on the Socio-Economic Duty (The Duty) has now closed and we have submitted our detailed response. The process of agreeing the response raised some key issues about people's understanding of what The Duty is, a frustration that so many initiatives have been launched which don't make an impact on poverty and a fear that this consultation would become another tick box exercise. However, there was also consensus that The Duty could be powerful and how could we focus on making that so. There is a role for Community Planning to co-ordinate and oversee action but there needs to be a transparent framework which delivers accountability and maps the impact. For that last part to be successful there were many suggestions including that performance on delivery of The Duty by the public sector should form part of the work of Audit Scotland.

We await the Scottish Governments deliberations on the responses which could happen as early as mid-October. In the meantime, we are aware that groups and people would like more information on why we are so clear this is a human rights issue so we have summarized our response in this document and we welcome your feedback on it. Please think about:

- Discussing it at staff meetings
- Raising it at partnership meetings
- Briefing your Board
- Advising your members and stakeholders

2. Delivering Human Rights Promises

The Duty will help deliver on existing promises made by the Scottish Government that respect for human rights and ensuring they are equally enjoyed, is the foundation of a fair society.

... But the Scottish Government wants to go beyond simply defending the Human Rights Act and the European Convention – hugely important though that is. In our view, the protections offered by the Act and the Convention should represent a floor rather than a ceiling. We should be looking to go further. In fact, the key challenge for progressive governments is not finding ways to avoid human rights responsibilities - it is finding ways to embed those responsibilities across different areas of policy.

...The basic principle of ensuring true equality of opportunity – of enabling everyone to contribute fully to society – is an issue of human rights. It's about ensuring people are free from discrimination and fear – and it's also about tackling the social and economic disadvantage which harms people's health and wellbeing and reduces access to educational opportunities. Human rights are therefore central to our concept of inclusive growth – the concept we have put at the heart of our strategy of building a stronger economy and a fairer society. That's why I so warmly welcome the growing interest in the role that human rights – including economic and social rights - can play in achieving the wealthier and fairer society we are seeking to create.¹

¹ Speech by the First Minister, 9th December 2015 available at the Scottish Government website <https://news.gov.scot/speeches-and-briefings/snap-human-rights-innovation-forum>

The Scottish Government states that ‘Over a million people are living in poverty in Scotland, including one in four children; and inequalities of income and wealth are far too wide. This unfairness simply isn’t acceptable in a country as rich as Scotland.’² GCVS, SCoD and VAS agree that is unacceptable but we also realise that income disparity and poverty, especially child poverty, are stubborn problems which have failed to be ‘fixed’ despite investment in numerous strategies and clear political commitment. For this proposal to be different ie make a real impact on people’s lives, requires a different way of implementation so that The Duty moves from being aspirational to be operational. A change of culture and practice is needed.

There is also a need to grow knowledge: rights holders need to know their rights and duty bearers need to understand and fulfill their responsibilities. The YouGov poll for the Scottish Government revealed that: one in five Scots believe human rights are for minority groups only and two in five Scots (44 per cent) say they have no bearing on their everyday life. There is a need to improve public perception and understanding of how human rights can be used to enforce social and economic equality of outcome. People need help to assert their rights and they will as the YouGov poll also revealed that two thirds of those interviewed think human rights are a positive thing and 68% said they would act if they felt their rights had been violated³.

3. Defining Human Rights

The Duty must make an impact in making Scotland fairer, especially on reducing poverty, promoting inclusion and equalising opportunity. The Duty is interpreted as rooted in the Equality Act 2010 and there are repeated references to the consequent impact on equalities. GCVS, SCoD and VAS understand delivery is also a human rights issue which gives effect to the International Covenant on Economic, Social and Cultural Rights (ICESCR). As the UK has ratified this UN treaty then all our laws and policies should comply.

ICESCR places duties and obligations on governments: specific in relation to individual rights; sets out the framework for delivery. For example, the UK and Scottish Governments have a general obligation ‘to progressively realise to the maximum extent of its available resources’ all the rights contained in ICESCR. There is an independent periodic process for the UN to measure compliance and impact of these rights, and the outcome is a report card ‘Concluding Observations’ which is an evaluation of shortcomings. The Concluding Observations on UK delivery of ICESCR were published in 2016 and a number of issues relating to Scotland remain outstanding.

What we know from UN treaties which the UK has ratified is that human rights matter across the delivery of all public services and those of a public nature. Creating a definition of decisions of a ‘strategic nature’ is false as all decisions by a duty bearer can impact on human rights either directly or indirectly.

4. Inclusive Communication

Communicating and empowering people as well as listening to them, enables some

² ‘The Socio-Economic Duty A Consultation’ pub by Scottish Government July 2017 pg. 2 available at <http://www.gov.scot/Resource/0052/00522478.pdf>

³ Scottish Government News Release ‘Fly the Flag for Human Rights’ 18th November 2015 <https://news.gov.scot/news/fly-the-flag-for-human-rights>

of the unintended consequences to be understood and mitigated. So inclusive communication need to be a core part of the delivery of The Duty.

There is a need for greater understanding about the need to and how to, communicate with people across Scotland. For example, although the implementation of the British Sign Language (Scotland) Act 2015⁴ creates opportunities to improve linguistic access by public sector bodies, its focus is on a narrow sector – 12,533 BSL users according to the 2011 Census; and there needs to be a more inclusive approach to communication generally. According to the 2011 Census, 350,492 of the Scottish population aged 3 and over listed deafness or partial hearing loss as a long-term health condition. We believe that the number of people who have a hearing loss in Scotland is one in five ⁵of the population, which is approximately 1 million people. Even if the needs of these people are looked at across the four pillars of deafness: Deaf BSL users, Deafblind, Deafened and Hard of Hearing, the possible range of communications needing to be accommodated is more complex than simply translating and interpreting information into BSL and having it available in plain English.

Guidance on Inclusive Communication and Accessible Information can be found on the “Include Us All” Inclusive Communication Hub: <http://includeusall.org.uk/> Other resources which can be used include NHS Health Scotland Guidance at <http://www.healthscotland.scot/publications/access-for-all>

Summary of Key Issues

1. The Socio-Economic Duty must move from the aspirational to become operational across public services in Scotland. That requires a change of culture as well as a change in law and in practice.
2. Under ICESCR, economic, social and cultural rights must be progressively realised to the maximum extent of the State’s available resources. Therefore, all functions which are devolved to Scotland should be covered by The Duty.
3. The focus for delivery needs to be via public services rather than the narrower ‘public sector’ proposed by the Scottish Government and such an approach aligns with the duties under Section 6 of the Human Rights Act 1998 (HRA), which requires all those delivering public services, and those of a public nature, to comply with the European Convention on Human Rights (ECHR). For example, housing associations are covered by the HRA in so far as they are delivering public functions.
4. The Duty requires to be integrated with policy and laws to achieve a shared understanding by rights holders and duty bearers of social and economic rights, which are those defined in ICESCR and other international ratified treaties. The consequent obligations on the Scottish Government, the public sector and those delivering services of a public nature require action.

⁴ See website of Deaf Sector Partnership for more information <http://deafsectorpartnership.net/bsl-scotland-act/>

⁵ The Scottish Government commissioned the report: The Long and Winding Road - A Roadmap to British Sign Language & Linguistic Access in Scotland. The British Sign Language & Linguistic Access Working Group 2008: <http://www.gov.scot/Publications/2009/07/01102537/1>

5. The Duty requires to be integrated with the development of Scotland's National Action Plan on Business and Human Rights (NAP) to give domestic effect to the UN Guiding Principles on Business and Human Rights. Until the NAP is agreed, the weaker UK NAP should be integrated with The Duty. This approach harnesses the power of the private sector to make Scotland fairer.
6. The Duty requires to be integrated with the delivery of Scotland's National Action Plan on Human Rights (SNAP).
7. The Duty should be integrated with the delivery of Scotland's public procurement strategy eg in the Scottish Government's 'Statutory Guidance on the Selection of Tenderers and Award of Contracts Addressing Fair Work Practices, including the Living Wage, in Procurement'.
8. The Duty requires to be framed, promoted, implemented and scrutinised using an inclusive communications strategy which: alerts and builds the capacity of Duty bearers; engages with and informs rights holders so they know and can assert their economic and social rights.
9. The Duty requires to be assessed and scrutinised for impact. There is no shortage of positive initiatives but the challenge remains impact. Repeatedly systemic problems have been identified which stifle success and these remain outstanding. For example, the Scottish Human Rights Commission (SHRC) noted in a briefing to the Scottish Parliament in February 2016 that: Those in power, who have a responsibility to protect, respect & fulfil people's rights must step up to discharge their duties. While progress has been made by reaching out, engaging, raising awareness and supporting Scotland's public authorities, more action is needed by them to demonstrate how they are protecting human rights in practice. A step-change is needed across the public sector, building on the willingness and commitment already shown.
10. The Scottish Government should rethink the proposals and develop a more robust model which incorporates ICESCR and ensures The Duty is annually evaluated for impact.

Conclusion

This consultation is about a complex issue that has far reaching implications for the impact of spending public money whether it is directly through public services or indirectly such as procuring services and products of a public nature. Article 10 of the European Convention on Human Rights (ECHR) is given domestic effect through sections 29 and 57 of the Scotland Act 1998 as well as the Human Rights Act 1998. Article 10 accords civil society the right to access information to make an informed opinion⁶. This consultation fails to provide sufficient information about the mechanics of delivering and enforcing The Duty, so it is impossible to conclude whether it will be effective in reducing inequality and poverty. The process of drafting this response has led to the conclusion that the Scottish Government should think through the implications of what they are proposing before legislative proposals are published at the end of the year.

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⁶ Grand Chamber decision of *MAGYAR HELSINKI BIZOTTSÁG v. HUNGARY* issued on 8th November 2016 see <http://www.ijrcenter.org/2016/11/15/ecthr-government-obligated-to-impair-information-beneficial-to-public/>