

CEDAW: a superhero for women in Scotland



“Discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity.”

**Introduction to the Convention on the Elimination of
all forms of Discrimination Against Women¹**

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¹ UN (1981) *The Convention on the Elimination of all forms of Discrimination Against Women* UN. Available at: <https://treaties.un.org>

What is CEDAW?

Often referred to as the ‘women’s bill of rights’, the Convention on the Elimination of all forms of Violence Against Women (CEDAW) is the UN’s human rights treaty devoted to women; it spells out in detail women’s human right to equality and non-discrimination, which states that have ratified it must then act to realise. CEDAW contains 30 articles, which include minimum standards for women’s rights in work, politics, marriage, education, the economy, and other areas.

The UK ratified CEDAW in 1986, which means it is bound observe and protect the rights in the convention under international law. CEDAW is not currently incorporated into either domestic English or Scots law, which means women cannot take a case to the UK or Scottish courts on the basis of a breach of their rights under CEDAW.¹

Because Scotland is part of the United Kingdom, the Scottish Government is not able to ratify treaties directly, and the ‘state party’ to CEDAW is the UK. However, the Scotland Act places a responsibility on the Scottish Government and Scottish Parliament to fulfil all of the UK’s international obligations.

The implementation of CEDAW in the UK and around the world is monitored by the UN’s CEDAW Committee, a body of 23 independent experts who are responsible for holding the UK to account on its legal obligations towards protecting and realising women’s human rights. The Committee does so by examining the UK and devolved government representatives and then making recommendations for steps that governments must take to address gender inequality at all levels including family, community, business and state.

CEDAW in the UK

In 2017, the CEDAW Committee began its examination of the UK Government. The examination involves several stages, which are set out below.

1. The state party report

The CEDAW Committee requires a report from the government of the country they are examining, known as the 'state party report', which sets out gender-disaggregated data,² descriptions of policy, legislation, and programmes, and picks up on issues the Committee was concerned about in its previous examination.

The UK Government's state party report was released in November 2017.³

2. The shadow reports

To contextualise what it's told by the state party, the Committee accepts shadow reports from civil society organisations, which often differ sharply in views and emphasis from the government's version of events. The Committee also hears from National Human Rights Institutions (NHRIs),⁴ and in 2018-19, Scottish Government also submitted a statement to the Committee.⁵

Four civil society organisations were funded by the Equality and Human Rights Commission (EHRC) to produce civil society 'shadow reports' for each nation of the United Kingdom, as well as a collaborative 'four nations report'. Engender was the Scottish organisation commissioned to collect evidence on current issues regarding women's rights in Scotland, and develop a list of questions for the CEDAW Committee to ask representatives from the UK Government.

² Gender-disaggregated data is data that is disaggregated by sex and is produced using concepts, definitions and methods that reflect gender roles, relations, and inequalities in society.

³ UK Government (2017) *Eighth periodic report submitted by the United Kingdom of Great Britain and Northern Ireland UN* https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/GBR/CEDAW_C_GBR_8_7322_E.pdf

⁴ There are three of these bodies, which must meet independently-assessed standards for independence and competence called the Paris Principles, in the UK: the Equality and Human Rights Commission (EHRC), the Scottish Human Rights Commission (SHRC), and the Northern Irish Human Rights Commission. In Scotland, the EHRC is responsible for reserved human rights issues and the SHRC for devolved human rights issues. The SHRC takes the lead on treaty obligations in Scotland. The Northern Ireland Equality Commission is not an NHRI but it is also invited to take part in the NHRI presentations to the CEDAW Committee, as it leads on work around CEDAW in Northern Ireland.

⁵ Scottish Government (2018) *Convention on the Elimination of all forms of Discrimination Against Women: position statement* Scottish Government <https://www.gov.scot/publications/scottish-government-position-statement-convention-elimination-forms-discrimination-against-women/>

Engender engaged in civil society consultation while writing the Scotland shadow report, including:

- Workshops and webinars, including specific sessions for disabled women, BME women, and women living in the Highlands and Islands;
- An online survey for women in Scotland asking for their views about progress for women's equality in Scotland;
- A call for evidence for organisations and groups working on equality in Scotland.⁶

Engender produced a Scotland shadow report, and contributed to a four nations shadow report, in June 2018.⁷

3. The pre-sessional working group

Once the shadow reports are in, the Committee examines them and delegates a sub-group to decide on specific areas of focus. At the pre-sessional working group (PSWG), this sub-group of the Committee meets with civil society organisations to get a steer on areas that they want the Committee to focus its list of issues around.

The pre-sessional working group meeting took place in Geneva in July 2018.

4. The List of Issues

The Committee then produces something called a 'List of Issues', which is a set of questions and areas of clarification that they then write to the state party about. The state party (in our case, the UK Government) then writes back to the Committee with some answers and evidence.

The List of Issues was released in August 2018, and responded to by the UK Government in November 2018.⁸

⁶ Available to view at <https://www.engender.org.uk/content/cedawsubmissions/>

⁷ Engender (2018) *Convention on the Elimination of all forms of Discrimination Against Women shadow report: Eighth periodic report of the government of the United Kingdom on measures taken to give effect to CEDAW* Engender <https://www.engender.org.uk/content/publications/Engender-CEDAW-report.pdf>

Engender, NIWEP, Wen Wales and NAWO (2018) *Convention on the Elimination of all forms of Discrimination Against Women: Shadow report from the four nations of the United Kingdom* Engender <https://www.engender.org.uk/content/publications/Eighth-periodic-report-of-the-government-of-the-United-Kingdom-on-measures-taken-to-give-effect-to-CEDAW---four-nations-report.pdf>

⁸ CEDAW Committee (2019) *List of issues and questions in relation to the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland, and Replies of the United Kingdom of Great Britain and Northern Ireland* UN https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/GBR/CEDAW_C_GBR_Q_8_Add-1_31122_E.pdf

5. The revisions

There is a final opportunity for civil society organisations to feed in substantive thoughts, by revising its shadow report to start to set out recommendations.

The revised shadow Scotland and four nations reports were released in January 2019.⁹

6. The examination

The examination itself takes the form of a long Committee hearing. The UK Government representatives open with a statement and CEDAW Committee members ask questions, following the order of CEDAW articles.

During the examination process civil society organisations can challenge the statements being made by civil servants by providing their own evidence directly to Committee members.

The UK's examination took place in February 2019.

7. The Concluding Observations

After the examination, the Committee produces a set of draft 'concluding observations' that set out areas where action needs to be taken by the state to address outstanding violations of rights. The rapporteur with responsibility for the UK examination, who is a Committee member, will meet with civil society organisations one final time to hear final thoughts on what should be in the concluding observations before she or he begins to draft.

The Concluding Observations of the CEDAW Committee were released on March 29th 2019.¹⁰

⁹ Engender (2019) *Convention on the Elimination of all forms of Discrimination Against Women shadow report: Eighth periodic report of the government of the United Kingdom on measures taken to give effect to CEDAW* Engender <https://www.engender.org.uk/content/publications/CEDAW-Scotland-report-Jan-2019.pdf>

Engender, NIWEP, Wen Wales and NAWO (2019) *Convention on the Elimination of all forms of Discrimination Against Women: Shadow report from the four nations of the United Kingdom* Engender <https://www.engender.org.uk/content/publications/CEDAW-4-nations-report-Jan-2019.pdf>

¹⁰ CEDAW Committee (2019) *Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland* UN. Available at: <https://www.ohchr.org/EN/Countries/ENACARegion/Pages/GBIndex.aspx>

What did Scotland say about CEDAW?

Engender's shadow CEDAW committee spoke to specific CEDAW articles, and also presented three broad themes: Austerity, Intersectionality, and Devolution.

The report made the following recommendations:

Discrimination (Article 2)

- The Scottish Government should incorporate CEDAW into Scots law.
- The Scottish Government should set out its plans for protecting women's statutory rights to the fullest extent of its powers, post-Brexit.
- The Scottish Government should ensure that public bodies have the necessary capacity to deliver their obligations to advance women's equality under the Public Sector Equality Duty (PSED).
- The Scottish Government should publish its plans for recasting the Scottish specific duties that underpin PSED in order to maximise their capacity to advance women's equality and rights, following its 2019 review.
- The Scottish Government should review its Equality Evidence Strategy 2017-2021 to build on the systematic collection and monitoring of intersectional gender disaggregated equalities data.

Equality (Article 3)

- The Scottish Government should legislate to ensure that women victimised by men's domestic abuse are made safe without having to leave their own homes.
- The Scottish Government should address high rates of homelessness amongst older girls and young women.
- The Scottish Government should develop a sustainable funding model to ensure that rape and sexual assault services meet rising demand.
- The Scottish Government should make specific arrangements to address high levels of domestic and sexual abuse of disabled girls and women.
- The Scottish Government should introduce legislative reforms to reduce the use of remand where a defendant is unlikely to receive a custodial sentence if convicted.
- The Scottish Government should increase the use of diversion services and ensure they meet women's needs.
- The Scottish Government should reconfigure Scottish Legal Aid provision to enable access by all victim-survivors of domestic abuse.

Special Measures (Article 4)

- The Scottish Government should push for amendments to the Equality Act and to electoral law that would allow the implementation of parliamentary quotas in Scotland.

Stereotyping and Cultural Prejudices (Article 5)

- The Scottish Government should resource a body to monitor and map levers to tackle stereotyping and sexism in Scottish media.
- The Scottish Government should recognise care as a key sector in Scotland's Economic Strategy.
- The Scottish Government should develop a social care workforce strategy to reposition care as highly-skilled and appropriately remunerated work.

Political and Public Life (Article 7)

- The Scottish Government should develop and publish an intersectional strategy to address barriers to political participation.
- The Scottish Government should set out how it will increase the diversity of women's influence within policymaking, particularly for BME and disabled women.
- The Scottish Government should ensure that public boards not captured in the Gender Representation on Public Boards (Scotland) Act 2018 increase their representation of women.
- The Scottish Government should ensure a diversity of women, including BME, disabled and working-class women, are represented on public boards.

Education (Article 10)

- The Scottish Government should introduce mandatory, age-appropriate and inclusive sexual and reproductive rights education in school curricula.
- The Scottish Government should ensure that RSHPE includes factual information about access to safe abortion.
- The Scottish Government should ensure that data on sexist and misogynist bullying is collected, with separate categories for sexual harassment and assault.
- The Scottish Government should review the Scottish anti-bullying strategy to ensure it adequately tackles gender-based bullying in schools.

Employment (Article 11)

- The Scottish Government should set out how it will develop service provision models that offer flexibility, fitting the needs of all children and the realities of all parents.
- The Scottish Government should extend eligibility for funded childcare to all children between 6 months and school age.
- The Scottish Government should focus on workforce development and addressing occupational segregation as part of its childcare expansion plans.
- The Scottish Government should implement an intersectional national strategy to close the gender pay gap.

Health (Article 12)

- Scottish Government should set out plans to decriminalise abortion.
- The Scottish Government should develop abortion healthcare service provision so that terminations up to the 24th week of pregnancy can be carried out in Scotland.
- The Scottish Government should ensure equality of access to abortion with a national standards framework.
- The Scottish Government should develop actions to address the systemic misdiagnosis and mismanagement of endometriosis.
- The Scottish Government should set out how it will ensure the new Managed Clinical Network on perinatal mental health focuses on equality of access for diverse groups of women.
- The Scottish Government should undertake an intersectional review of reproductive health services.

Economic and Social Benefits (Article 13)

- The Scottish Government should continue to build on its approach to mainstreaming gender equality in Scotland's social security system.
- The Scottish Government should set out how it will monitor and evaluate the impact of social security policy on women's equality.
- The Scottish Government should develop a programme to address the inadequacy of maternal benefits.
- The Scottish Government should create a strategy to address the inadequacy of financial support for unpaid carers.

- The Scottish Government should abolish restrictions on Carer's Allowance related to education, employment and multiple caring roles.
- The Scottish Government should develop a destitution policy that includes a minimum income standard.
- The Scottish Government should provide women leaving prison with immediate access to social security entitlements.
- The Scottish Government should establish an independent social care tribunal to protect the rights of carers and those for whom they care.
- The Scottish Government should establish and resource a minimum entitlement to breaks from caring.
- The Scottish Government should ensure that its employability services are tailored to support carers to access education, training and employment opportunities.
- The Scottish Government should launch an independent review of social care to develop a system reflecting its human rights obligations and gender equality commitments.
- The Scottish Government should develop a nationwide and sustainable infrastructure of social care support.

Equality Before the Law (Article 15)

- The Scottish Government should act on the findings in the Scottish Courts and Tribunal Service's evidence and procedure review.
- The Scottish Government should implement a clear process for notifying complainers of their rights whenever access to medical or sensitive records is sought.

Marriage and Family Life (Article 16)

- The Scottish Government should set out how it will ensure that disabled and care-experienced women's maternal and reproductive rights are protected.

The report was endorsed by 25 organisations including national women's, race and LGBT equality organisations, disabled people's organisations, and organisations working on the rights of young people.

What did CEDAW say about Scotland?

The CEDAW Committee's concluding observations broadly relate to the whole of the UK, although the Committee also took pains to specifically highlight issues relating to Northern Ireland, which was without a devolved administration at the time of the examination. Several things were relevant for Scotland within the concluding observations, including:

- Incorporation of CEDAW into Scots Law
- Reviewing and amending the Public Sector Equality Duty (PSED)
- Cumulative impact assessment of austerity
- Ensuring that women are not negatively impacted by Brexit
- Access to justice for victim-survivors of rape, sexual assault and domestic abuse
- Better intersectional gender-disaggregated data
- Ratification of the Istanbul Convention
- Decriminalising women in prostitution
- Undertaking temporary special measures (quotas) to improve women's representation
- Improving sex and relationship education
- Repealing the two child limit (family cap) on Universal Credit and other reserved benefits

Since then, there has been some progress in Scotland towards delivering the actions set out in the concluding observations.

The CEDAW Concluding Observations recommended “that the State party continue to engage with the media to eliminate stereotypical imaging and the objectification of **women in the media**, and take further measures to eliminate negative gender stereotypes and to promote positive and diverse gender portrayals, including in schools and through public campaigns.” In June 2019, in their response to the first report of the First Minister's National Advisory Group on Women and Girls, the Scottish Government committed to resourcing a ‘women in media body’, explicitly citing the recommendation in the Concluding Observations.¹¹

Equal pay is a key element of Article 11 of CEDAW, and the Concluding Observations welcomed the partial progress on encouraging large firms to publish their pay gaps through pay transparency measures introduced by UK Government. They also, however, highlighted their concerns that “women belonging to marginalized groups continue to

¹¹ Scottish Government (2019) *Scottish Government's Response to the National Advisory Council on Women and Girls* Scottish Government <https://www.gov.scot/publications/scottish-governments-response-national-advisory-council-women-girls/pages/1/>

face obstacles in gaining access to employment and are concentrated in low-paying job sectors". In March 2019, on International Women's Day, the Scottish Government launched Scotland's first **pay gap action plan** 'A Fairer Scotland For Women', which is bold and well gendered.¹² Signatories to Scotland's Business Pledge are also required to go further than UK pay transparency measures in setting out, explaining, and acting to tackle their gender pay gaps.

Austerity was a key theme in both the Scottish and UK-wide shadow reports, and the CEDAW Committee recommended that the UK undertake a comprehensive assessment on the **impact of austerity** measures on the rights of women and adopt measures to mitigate and remedy the negative consequences without delay. While the UK Government has made no moves towards this, the conversation around social security in Scotland has a different tone, and the new social security agency has committed to intersectional data-collection that would enable this kind of analysis. It has also agreed to use its powers for administrative flexibility on social security to make individual payments of Universal Credit to members in a household, rather than a regressive 'household payment'.

As well as being an explicit recommendation in the CEDAW Concluding Observations, the **incorporation of CEDAW into Scots Law** has been a key ask of Engender for some decades. Engender published a paper making a specific call for incorporation in 2016,¹³ and this was also a recommendation of the First Minister's National Advisory Council on Women and Girls in 2018.¹⁴ The First Minister's Advisory Group on Human Rights Leadership made a recommendation that a range of instruments, including CEDAW, be incorporated in 2018.¹⁵ The Scottish Government has made progress on this recommendation, announcing in June 2019 the creation of a National Taskforce for Human Rights Leadership to oversee work for human rights legislation covering all areas of devolved responsibility.¹⁶ The Programme for Government 2019-20 included incorporation of the UN Convention on the Rights of the Child, and the Scottish Government has committed to incorporation of rights belonging to women.¹⁷

¹² Scottish Government (2019) *A fairer Scotland for Women: gender pay gap action plan* Scottish Government <https://www.gov.scot/publications/fairer-scotland-women-gender-pay-gap-action-plan/>

¹³ Engender (2015) *Gender Matters Manifesto: 20 for 2016* Engender <https://www.engender.org.uk/files/Engenders-Gender-Matters-Manifesto---Twenty-by-2016.pdf>

¹⁴ First Minister's National Advisory Council on Women and Girls (2018) *First Report and Recommendations* Scottish Government <https://www.gov.scot/publications/scottish-government-position-statement-convention-elimination-forms-discrimination-against-women/>

¹⁵ First Minister's Advisory Group on Human Rights Leadership (2018) *Recommendations for a new human rights framework to improve people's lives* Scottish Government <https://humanrightsleadership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf>

¹⁶ Scottish Government (2019) *New national taskforce for lead on human rights in Scotland* Scottish Government <https://www.gov.scot/news/new-national-taskforce-to-lead-on-human-rights-in-scotland/>

¹⁷ Scottish Government (2019) *Protecting Scotland's Future: the Government's Programme for Scotland 2019-20* Scottish Government <https://www.gov.scot/programme-for-government/>

What's next?

CEDAW sets out women's rights to equality and non-discrimination. While this report has set out that Scotland is taking steps to recognize many of the rights included in CEDAW, while it exists only as an international treaty to which the Scottish Government is not directly accountable to, there is no legal obligation for them to act.

Successive UK governments have failed to act despite repeated recommendations for CEDAW's full incorporation into UK law by the CEDAW Committee. The incorporation of the rights enshrined in CEDAW into Scots Law would show both political commitment to women's equality, and empower women to use the Scottish Courts to uphold their rights.

The Scottish Government is making moves towards incorporating CEDAW into Scots Law but while this is happening, the rights which are meant to be protected under CEDAW are being violated every day. Scotland must use all the tools at its disposal – in politics, the economy, public life, business, education and society - to ensure that we take every measure we can for women's equality.

Further Reading

All available at engender.org.uk/CEDAW

-  UK Government Report
-  Scottish Government position statement
-  Scotland Shadow Report (2018)
-  Four Nations Shadow Report (2018)
-  CEDAW Committee List of Issues
-  Scotland Shadow Report (2019)
-  Four Nations Shadow Report (2019)
-  CEDAW Committee Concluding Observations
-  Annotated Concluding Observations
-  Should CEDAW be incorporated into Scots Law?