

# How the human right to a healthy environment advances our right to health

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# How the human right to a healthy environment advances our right to health

## 1. Summary

A healthy environment leads to healthier lives in Scotland. This briefing explores how environmental burdens continue to exacerbate health inequalities in Scotland, using some of the defining features of the substantive right to a healthy environment. The human right to a healthy environment underpins our right to the highest standard of physical and mental health. Incorporation of these rights has the potential to transform policy choices to tackle both environmental and health inequalities in Scotland.

## 2. Context and definitions

In March 2021, the Scottish Government welcomed recommendations from its National Taskforce for Human Rights Leadership ('the Taskforce') to introduce a new legal framework which will see new categories of human rights brought into Scots law.<sup>1</sup> These new rights will be added to the existing human rights that are already protected in Scotland under the Human Rights Act 1998 and the new United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill. Included in its recommendations for incorporation are the right to a healthy environment and the United Nations International Covenant on Economic, Social, and Cultural Rights ('ICESCR') - which enshrines the right to health at Article 12.<sup>2</sup> In September 2021, the Scottish Government announced it would consult on a new Human Rights Bill 'in the coming year.'<sup>3</sup>

Article 12 ICESCR enshrines 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.'<sup>4</sup> This right is not only about access to healthcare services, but goes much beyond that. The right to health



‘creates a legal obligation on states to ensure **access** to timely, acceptable, and affordable health care of appropriate quality, as well as to providing for the **underlying determinants** of health, such as safe and potable water, sanitation, food, housing, health-related information and education, and gender equality.’<sup>5</sup> It includes freedoms, such as from unnecessary medical treatment, as well as entitlements such as equal access to healthcare. This is not simply the right to be healthy; it should be understood as a right to ‘a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health’.<sup>6</sup>

The Taskforce’s Report recommends that the right to a healthy environment be incorporated ‘with substantive and procedural elements.’<sup>7</sup> The substantive right to a healthy environment would, for the first time, give the public a legal basis to have a healthy environment as a standalone human right. The Taskforce’s Report defines the substantive right to a healthy environment as including the inter-dependent environmental features of ‘clean air, a safe climate, access to safe water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems.’<sup>8</sup> This aligns with the definition given by the UN Special Rapporteur on human rights and the environment.<sup>9</sup> 156 out of 193 United Nations Member States have already recognised the human right to a healthy environment,<sup>10</sup> and there is evidence that the incorporation of the human right to a healthy environment is associated with improved environmental outcomes.<sup>11</sup>

The procedural right to a healthy environment creates three human rights relating to democratic processes as created by the Aarhus Convention, which Scotland is obliged to implement. These are: the right of access to environmental information, the right to participate in environmental decision-making, and the right of access to justice and effective remedies in relation to environmental matters.<sup>12</sup> Scotland’s legal



system is currently not compliant with the Convention on access to justice due to the excessive costs of environmental litigation.<sup>13</sup> To find out more, see the Environmental Rights Centre for Scotland's website and resources.<sup>14</sup>

### 3. How environmental stressors impact on the right to health in Scotland

#### 3.1 The social determinants of health and health inequalities

In Scotland, not everyone enjoys the right to the highest attainable standard of physical and mental health.<sup>15</sup> The broad social and economic circumstances that together influence health throughout the life course are known as the 'social determinants of health' and there is a social gradient across many of these determinants, with people on the lowest incomes experiencing worse health outcomes.

Public Health Scotland defines health inequalities as 'the unjust and avoidable differences in people's health across the population and between specific population groups.'<sup>16</sup> It states, 'health inequalities go against the principles of social justice because they are avoidable. They do not occur randomly or by chance. They are socially determined by circumstances largely beyond an individual's control. These circumstances disadvantage people and limit their chance to live longer, healthier lives.'<sup>17</sup> For example: in the most affluent areas of Scotland men experience 23.8 more years of good health and women experience 22.6 more years good health.<sup>18</sup>

The most widely used model to illustrate the social determinants of health is the 1991 Dahlgren-Whitehead 'rainbow model' (Figure 1). The model places our individual characteristics at the centre, surrounded by the different layers of influences on our health: individual lifestyle factors, social and community networks, living and working conditions, and the wider socio-economic, cultural, and



environmental conditions. There are clear overlaps with this model and the features included within the substantive right to a healthy environment outlined above. Importantly, it highlights how where we live, and the quality of the environment, impacts on our health outcomes.



**Figure 1: The Dahlgren-Whitehead Rainbow model of the social determinants of health**

### 3.2 The impacts of environmental stressors and the ‘triple win’ of green solutions

The European Environment Agency has highlighted the clear links between a healthy environment and healthy lives in the European context.<sup>19</sup> It emphasises that the burden of health problems caused by a poor environment are not evenly spread, with the most vulnerable people in our society (for example, children, older people, people with health problems) hardest hit by environmental stressors such as air pollution, noise, chemicals and high temperatures. In addition, socially disadvantaged groups are less resilient to the impacts of climate change because they have fewer resources to adapt and recover, all of which exacerbate existing health inequalities.<sup>20</sup>

In addition, across Europe, urban areas of highest disadvantage have least access to good quality greenspace which can reduce exposure to environmental stressors and



promote health and well-being.<sup>21</sup> There is a growing body of Scottish research on 'green health' investigating the ways in which access to good quality urban greenspace mediates health and wellbeing outcomes by promoting physical activity, mental and social health, and reducing health inequalities.<sup>22</sup> Hence, green solutions offer a 'triple win' of benefitting the environment, health and society. For example, expanding high-quality green and blue spaces in urban areas could mitigate environmental pollution and support biodiversity, improve population health, and encourage social cohesion.<sup>23</sup>

#### 4. The right to a healthy environment in Scotland and the right to health

In this section, we explore how environmental stressors and health inequalities manifest in relation to our lack of enjoyment of three of the six defining features of the substantive right to a healthy environment: clean **air**, healthy and sustainably produced **food**, and healthy **biodiversity** and ecosystems. We also consider the interaction between environmental quality, access to greenspace and unequal access to the right to health in relation to **COVID-19**.

##### 4.1 Clean air

Air pollution is a major cause of premature death and disease, is considered to be the biggest environmental health risk across Europe,<sup>24</sup> and is responsible for 28000 – 36000 'attributable deaths' in the UK per year.<sup>25</sup>

Air pollution in many parts of Scotland remains at levels which are damaging to human health: local authorities have designated a total of 36 Air Quality Management Areas,<sup>26</sup> mainly in urban centres, where air quality objectives set in line with World Health Organisation safety standards<sup>27</sup> are either not being met or are likely to be unmet.<sup>28</sup>



Whilst everyone's health is impacted by air pollution, it exacerbates health inequalities because it impacts particularly on individuals with pre-existing health conditions. A 2019 global review found that in addition to adversely impacting the lungs and heart, prolonged exposure to air pollution can affect every organ in the body.<sup>29</sup> WHO has evidenced the links between exposure to air pollution and type 2 diabetes, obesity, systemic inflammation, Alzheimer's disease and dementia;<sup>30</sup> and the International Agency for Research on Cancer has classified fine particulate air pollution (PM<sub>2.5</sub>) as a leading cause of cancer.<sup>31</sup> With respect to children, a European-wide study showed a link between exposure to air pollution and restricted foetal growth - which is linked with adverse respiratory health in childhood.<sup>32</sup> In the UK, an inquest into the death of Ella Adoo-Kissi-Debrah, who died in 2013 at the age of 9, found that air pollution, which was at illegal levels at the monitoring station one mile from her home, made a material contribution to her death.<sup>33</sup>

## 4.2 Healthy and sustainably produced food

In Scotland, many people do not have access to healthy and sustainably produced food. First, in terms of access, food is unaffordable for many and there is increasing food poverty<sup>a</sup> with one in eleven people experiencing a worry that they will run out of food due to a lack of money or other resources.<sup>34</sup>

Second, in terms of 'healthy', the cheapest food is often detrimental to our health.<sup>35</sup> Moreover, Public Health Scotland notes that people on low incomes and those living in deprived areas often consume a less healthy diet and are therefore more likely to experience the adverse health outcomes associated with a poor diet. This is partly

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<sup>a</sup> [Public Health Scotland defines](#) food poverty as 'the inability to acquire or consume an adequate or sufficient quantity of food in socially acceptable ways, or the uncertainty that one will be able to do so.'



attributable to them not having affordable healthy food options available where they live, widening health inequalities.<sup>36</sup>

Third, there are a number of adverse environmental impacts across the food supply chain, which have knock on impacts on our health. These include biodiversity loss and land use change from intensive farming,<sup>37</sup> impacts on water supplies,<sup>38</sup> and use of harmful chemicals in pesticides and fertilisers.<sup>39</sup>

You can find out more information on the right to food on the Scottish Food Coalition website.<sup>40</sup>

### **4.3 Healthy biodiversity and ecosystems**

Biodiversity is in crisis.<sup>41</sup> In Scotland, 49% of species have declined in the last 25 years, and one in nine species is at risk of national extinction.<sup>42</sup> Scotland's biodiversity is now more depleted than in 88% of 240 countries and territories across the world.<sup>43</sup> Moreover, there is mounting evidence that biodiversity loss and climate changing activities make pandemics more likely.<sup>44</sup>

As well as the instrumental value of biodiversity (the practical reasons for needing a healthy environment), nature has a crucial intrinsic value (the emotional reasons): it is our 'green health service' and interacting with nature is an integral component in our right to the highest attainable standard of physical and mental health.<sup>45</sup> Yet, in 2019, 43% of people in living in the most deprived quintile visited the outdoors at least once per week, compared with 66% in the least deprived quintile.<sup>b46</sup> There continues to be inequality in the accessibility and quality of the nearest green (and

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<sup>b</sup> The most deprived quintile means the 20% most deprived areas in Scotland as defined by the Scottish Index of Multiple Deprivation





blue) space depending on where you live,<sup>47</sup> and, understandably, the frequency of use of local greenspace is influenced by this.<sup>48</sup>

#### **4.4 COVID-19 and access to greenspace**

COVID-19 has emphasised how the protection and realisation of our fundamental human rights depend on a healthy environment and tackling the climate and nature emergencies. It has also magnified pre-existing structural inequalities in society and impacted particularly on those already vulnerable to health inequalities, including those with disabilities or underlying health conditions.<sup>49</sup>

In Scotland, as well as poor access to greenspace, environmental burdens have been disproportionately experienced in deprived areas because of the cumulative impacts of polluting factories, legacies of contaminated land and landfill, and proximity to vacant and derelict land because of rapid deindustrialisation.<sup>50</sup> In addition to these burdens, there has also been an overall reduction in local environmental quality (litter, dog fouling, graffiti, fly-tipping, detritus and weeds) across Scotland.<sup>51</sup> This is declining more severely and at a faster rate in the most deprived communities, increasing the gap between them and the most affluent.<sup>52</sup>

The pandemic lockdown simultaneously brought in to focus the importance of local greenspace for our health and wellbeing, and the sharp inequalities in accessing nature and good quality greenspace.<sup>53</sup> In our unequal society, it is imperative that we work to make our spaces greener, healthier and wilder as a right for all.



## 5. The transformative potential of incorporating the right to a healthy environment

The examples of air pollution, food poverty, biodiversity loss and access to greenspace, illustrate how environmental stressors are disproportionately impacting on those already experiencing poor health, poverty and/or place-based deprivation. The right to a healthy environment underpins the right to health and unless our environment is improved, infringements of the right to health cannot be fully addressed. Equally, the call for a just and green recovery from COVID-19 is gaining momentum and is needed to address the combination of accumulated debt, climate change and environmental degradation, which will inevitably impact on the most marginalised groups.<sup>54</sup>

Incorporation of the substantive human right to a healthy environment will include the six features recommended by the Taskforce: clean air, a safe climate, access to safe water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems. All of these features impact directly on our right to health. These features now require further defining and would place a legal obligation on the Scottish Government to meet the conditions to comply with the right. For example, the human right to a healthy environment could give an individual a legal basis to challenge Transport Scotland for approving road building projects that would worsen air pollution; or it may provide a basis for an action against the Scottish Government for failing to reach biodiversity targets.

The duty on Government to comply with the right at all times, combined with ability to hold them to account through the credible threat of public interest litigation, has the potential to transform policy. For this to be achieved, both the right to a healthy



environment and the right to health must be articulated and incorporated with sufficient ‘teeth’ so that they can work in practice. These teeth must include as a minimum:

- (1) further definition, according to agreed standards, of the six defining features of the substantive human right to a healthy environment;
- (2) justiciable rights that are enforceable against state and non-state actors across all areas of policy;
- (3) affordable access to justice, meaning the ability to enforce these rights before a court or independent tribunal; and
- (4) effective remedies.

## 6. Conclusion

**The substantive right to a healthy environment articulates features that are essential for everyone to enjoy the right to the highest attainable level of physical and mental health.** The incorporation of these two rights has the potential to ‘connect the dots’ between a healthy environment and healthy lives. It could help to reprioritise policy choices to reduce environmental health hazards and burdens, increase our access to nature, and make spaces greener, healthier and wilder for all of us.

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- <sup>1</sup> National Taskforce for Human Rights Leadership (Mar 2021) [The National Taskforce for Human Rights Leadership Report](#)
- <sup>2</sup> Ibid., Recommendations 1(b) and 2; United Nations (1966) [International Covenant on Economic, Social and Cultural Rights](#) ('ICESCR'), Art 12
- <sup>3</sup> Scottish Government (Sept 2021) [A Fairer, Greener Scotland: Programme for Government 2021-22](#), p 10
- <sup>4</sup> United Nations (1966) [International Covenant on Economic, Social and Cultural Rights](#) ('ICESCR'), Art 12
- <sup>5</sup> World Health Organisation (Dec 2017) [Human Rights and Health Factsheet](#)
- <sup>6</sup> UN Committee on Economic, Social and Cultural Rights (2000) [General Comment 14](#)
- <sup>7</sup> National Taskforce for Human Rights Leadership (Mar 2021) [The National Taskforce for Human Rights Leadership Report](#), Recommendation 2
- <sup>8</sup> Taskforce report, p 77 (emphasis added)
- <sup>9</sup> United Nations General Assembly (Dec 2019) [Right to a Healthy Environment: Good Practices: Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment](#)
- <sup>10</sup> Ibid., p 4
- <sup>11</sup> Boyd (2011) [The Environmental Rights Revolution](#); Jeffords and Minkler (2016) [Do constitutions matter? The effects of constitutional environmental provisions on environmental outcomes](#), *Kyklos*, 69(2): 294–335; Jeffords (2016) [On the temporal effects of static constitutional environmental rights provisions on access to improved sanitation facilities and water sources](#), *Journal of Human Rights and the Environment*, 7(1): 74–110
- <sup>12</sup> United Nations Economic Commission for Europe (1998) [Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters \('Aarhus Convention'\)](#)
- <sup>13</sup> Aarhus Meeting of the Parties (2011) [Decision IV/9i on compliance by the United Kingdom of Great Britain and Northern Ireland](#); (2014) [Decision V/9n on compliance by the United Kingdom of Great Britain and Northern Ireland](#) § 2(a); (2017) [Decision VI/8k concerning compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention](#); Environmental Rights Centre for Scotland (Sept 2021) [Access to justice on the environment, and whether Scotland is providing it](#)
- <sup>14</sup> [Environmental Rights Centre for Scotland](#) (website accessed 26 Aug 2021); Friends of the Earth Scotland (website accessed 17 Aug 2021), [Environmental Rights](#)
- <sup>15</sup> NHS Health Scotland (2016) [Health inequalities: What are they? How do we reduce them?](#)
- <sup>16</sup> Public Health Scotland (website accessed 18 Aug 2021) [What are health inequalities?](#)
- <sup>17</sup> Ibid.
- <sup>18</sup> NHS Health Scotland (2016) [Health inequalities: What are they? How do we reduce them?](#)
- <sup>19</sup> European Environment Agency (2019) [Healthy environment, healthy lives: how the environment influences health and well-being in Europe](#), p 6
- <sup>20</sup> Ibid., p 7;
- <sup>21</sup> Ibid.; [Greenspace Scotland](#) (website accessed 25 Aug 2021); World Health Organization (2017) [Urban Green Interventions and Health - A Review of Impacts and Effectiveness](#); World Health Organization (2016) [Urban Green Spaces and Health – A Review of Evidence](#); James Hutton Institute



- et al. (2014) [GreenHealth. Contribution of green and open space to public health and wellbeing. Final Report. Project no. MLU/ECA/UGW/847/08](#); Centre for Research on Environment, Society and Health (2019) [Green Spaces and Health](#)
- <sup>22</sup> [Greenspace Scotland](#) (website accessed 25 Aug 2021); K Ord et al. (2013), Is Level of Neighbourhood Green Space Associated with Physical Activity in Green Space? *The International Journal Of Behavioral Nutrition And Physical Activity* 10(1):127-127.; J Pearce et al. (2016), Life Course, Green Space and Health: Incorporating Place into Life Course Epidemiology. *International Journal of Environmental Research and Public Health* 13:1-11; C Ward Thompson et al. (2013). Woodland Improvements in Deprived Urban Communities: What Impact Do They Have on People's Activities and Quality of Life? *Landscape and Urban Planning* 118:79-89
- <sup>23</sup> European Environment Agency (2019) [Healthy environment, healthy lives: how the environment influences health and well-being in Europe](#)
- <sup>24</sup> European Environment Agency (website accessed 18 Aug 2021) [Air pollution: how it affects our health](#)
- <sup>25</sup> Committee on the Medical Effects of Air Pollutants (2018) [Associations of long-term average concentrations of nitrogen dioxide with mortality](#)
- <sup>26</sup> Ricardo Energy & Environment, Air Quality in Scotland Website (accessed 7 Jun 2021) [Air Quality Management Areas](#)
- <sup>27</sup> Ricardo Energy & Environment, Air Quality in Scotland Website (accessed 7 Jun 2021) [Standards: Air Quality Standards and Objectives](#)
- <sup>28</sup> United Kingdom (1995) [Environment Act](#), s 83(1)
- <sup>29</sup> Schraufnagel et al., [Air Pollution and Noncommunicable Diseases: A Review by the Forum of International Respiratory Societies' Environmental Committee, Part 2: Air Pollution and Organ Systems](#), *Chest*, 155(2): 417-426
- <sup>30</sup> World Health Organisation (Oct 2015) [Expert Consultation: Available evidence for the future update of the WHO Global Air Quality Guidelines \(AQGs\)](#)
- <sup>31</sup> International Agency for Research on Cancer (17 Oct 2013) [Outdoor air pollution a leading environmental cause of cancer deaths](#)
- <sup>32</sup> Pedersen et al (15 Oct 2013) [Ambient air pollution and low birthweight: a European cohort study \(ESCAPE\)](#), *The Lancet Respiratory Magazine* 1(9): 695-704
- <sup>33</sup> BBC News Online (16 Dec 2020) [Ella Adoo-Kissi-Debrah: Air pollution a factor in girl's death, inquest finds](#)
- <sup>34</sup> Scottish Government (2019) [Scottish Health Survey: Supplementary Tables](#), Spreadsheet 16, Table 785; Public Health Scotland (website accessed 26 Aug 2021) [Food Poverty](#)
- <sup>35</sup> Food Standards Scotland (2020) [The Scottish Diet: It needs to change](#), p 4
- <sup>36</sup> Public Health Scotland (website accessed 16 Aug 2021) [Diet and healthy weight](#)
- <sup>37</sup> A Arneth et al (2019) [Framing and Context in Climate Change and Land: an IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems](#)
- <sup>38</sup> Ibid.
- <sup>39</sup> [Pesticide Action Network UK](#) (website accessed 25 Aug 2021)
- <sup>40</sup> [Scottish Food Coalition](#) (website accessed 25 Aug 2021)
- <sup>41</sup> Thomas et al (2004) [Extinction risk from climate change](#), *Nature* Vol. 427, pp. 145–148
- <sup>42</sup> State of Nature Partnership (2019) [The State of Nature 2019 report](#), p 72.



<sup>43</sup> RSPB (May 2021) [The UK's global rank for levels of biodiversity loss](#)

<sup>44</sup> Intergovernmental Science Policy Platform on Biodiversity and Ecosystem Services (IPBES) (2020) [Workshop Report on Biodiversity and Pandemics](#), p 2

<sup>45</sup> Convention on Biological Diversity Website (accessed 7 Jun 2021) [Health and Biodiversity](#); Mental Health Foundation (8 Apr 2021) [Why Nature is the theme for Mental Health Awareness Week 2021](#); Scottish Government (2020) [Edinburgh Declaration For subnational governments, cities and local authorities on the post-2020 global biodiversity framework](#); Chivian and Bernstein (2008) [Sustaining Life: How Human Health Depends on Biodiversity](#)

<sup>46</sup> Scottish Government (15 Dec 2020) [Scottish household survey 2019: annual report](#), Table 10.11

<sup>47</sup> Ibid., Table 10.22

<sup>48</sup> Ibid., Table 4.3

<sup>49</sup> Social Renewal Advisory Board: Independent report to the Scottish Government (Jan 2021) [If not now, when? – Social Renewal Advisory Board report](#); SPICe (Mar 2021) [Health inequality and COVID-19 in Scotland](#)

<sup>50</sup> J Fairburn et al. (2005) [Investigating Environmental Justice in Scotland: Links Between Measures of Environmental Quality and Social Deprivation](#); K Dunion (2003) *Troublemakers: The Struggle for Environmental Justice in Scotland*; M Poustie (2004) *Environmental Justice in SEPA's Environmental Protection Activities: A report for the Scottish Environment Protection Agency*; Richardson, Shortt and Mitchell (2010) *The Mechanism Behind Environmental Inequality in Scotland: Which Came First, the Deprivation or the Landfill?* *Environment and Planning A* 42:223-240; E Scandrett (2007) *Environmental Justice in Scotland: Policy, Pedagogy and Praxis*, *Environmental Research Letters* 2(4):045002 1-7; Scottish Government (28 Apr 2020) [Scottish Vacant and Derelict Land Survey 2019](#)

<sup>51</sup> Keep Scotland Beautiful (2016) [Scotland's Local Environment Quality in Decline: A Report by Keep Scotland Beautiful on Developing a More Strategic Approach](#); Keep Scotland Beautiful (2017) [Local Environmental Quality In Decline: Further Analysis by Keep Scotland Beautiful](#)

<sup>52</sup> Ibid.; [Keep Scotland Beautiful](#) (website accessed 26 Aug 2021)

<sup>53</sup> Social Systems Recovery Environment and Spaces Group (Mar 2021) [COVID-19 Green and Open Space Use in Autumn 2020](#)

<sup>54</sup> Just and Green Recovery for Scotland (website accessed 18 Aug 2021) [A Just and Green Recovery](#)