

Respondent Information and Answer Return Form

Please Note this form **must** be completed and returned with your response.

Please send your response to us by email or by post using the following details:

Our email address is: HumanRightsOffice@gov.scot

Our postal address is:
Human Rights Strategy & Legislation Unit
Directorate for Equality, Inclusion and Human Rights
Scottish Government
Area 3H North
Victoria Quay
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To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

Organisation

Full name or organisation's name

Social Enterprise Scotland

Phone number

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

Questionnaire

The questions in this document refer to information contained in '[A Human Rights Bill for Scotland: Consultation](#)'.

Questions 1 – 5 refer to Part 4: Incorporating the Treaty Rights

Question 1

What are your views on our proposal to allow for dignity to be considered by courts in interpreting the rights in the Bill?

Allow

Don't Allow

Please give us your views:

Allowing for dignity to be considered by courts in interpreting the rights in the Bill means that the concept of human dignity, which is seen as a fundamental value underlying all human rights, will play a significant role in legal decision-making. Specifically, it proposes that courts should take into account the principle of human dignity, as understood in international law, when adjudicating on the rights outlined in the Bill. This would put Scotland in the same purview as other countries of the same size, especially across Europe.

When it comes to the effect on Social Enterprises (SEs) this would allow higher levels of protection for vulnerable groups, many of which SE's work with or help in their enterprises. Additionally, it would allow for these groups to have greater legal protections which should be encouraged.

Question 2

What are your views on our proposal to allow for dignity to be a key threshold for defining the content of minimum core obligations (MCOs)?

Allow Please give us your views

Allowing for dignity to be a key threshold for defining the content of Minimum Core Obligations (MCOs) means that the concept of human dignity will serve as a fundamental standard in determining the essential level of rights and services that must be provided to individuals. In practical terms, this means that MCOs, which represent the basic and non-negotiable elements of certain rights, will be defined with a strong consideration for upholding and respecting human dignity. This approach aims to ensure that the rights protected by the Bill maintain a level of provision that safeguards individuals' inherent dignity and prevents anyone from falling below this basic threshold.

This safeguarding is crucial to continue Scotland's growing reputation as a country that protects and looks after its citizens regardless of background. To make sure that organisations have MCOs would not deter SEs but rather it would mean that private and public organisations would be matching many SEs who already implement these obligations.

Question 3

What are your views on the types of international law, materials and mechanisms to be included within the proposed interpretative provision?

Please give us your views:

We would likely advocate for a comprehensive inclusion of various types of international law, materials, and mechanisms within the proposed interpretative provision. This would ensure a robust framework for interpreting and applying human rights in accordance with global standards.

Some additional international considerations to possibly apply would be: European Convention on Human Rights (ECHR), Germany's Grundgesetz, Swedish Instrument of Government and potentially Australia's new constitution – depending on the outcome of the current referendum.

Question 4

What are your views on the proposed model of incorporation?

Please give us your views:

- We agree with some of the core elements of the Scottish Government's approach. However, the model of incorporation needs to be made much better and stronger if it is to realise the rights for more people in Scotland and to have the transformational change that we need.

- Public bodies should have duty to have due regard plus a duty to comply with rights in the Bill, with timescales specified in the Bill.
- Further consideration and transparency are needed around whether it is possible to put a duty to comply on all of the special protection treaties.

We are concerned that there needs to be a duty to comply with the substantive rights in the CRPD – to not do so is to not live up to the commitment to incorporate the CRPD as far as possible within devolved competence.

Question 5

Are there any rights in the equality treaties which you think should be treated differently? If so, please identify these, explain why and how this could be achieved.

Yes

No

Please provide reasons for your answer:

It has been highlighted, but a disabled person's right to independent living is of huge importance and we would recommend discussing with disabled person's organisation to take this further.

Additionally, we ask the Government to ensure, and demonstrate transparently, that its proposed approach – of only placing a procedural duty, and not duty to comply, on the special protection treaties – goes as far as possible within devolution limits.

- It is very important that the Bill should include a duty to comply on these missing CRPD rights

Questions 6 – 11 refer to Part 5: Recognising the Right to a Healthy Environment

Question 6

Do you agree or disagree with our proposed basis for defining the environment?

Agree

Question 7

If you disagree please explain why:

Question 8

What are your views on the proposed formulation of the substantive and procedural

Substantive Aspects:

1. **Clean Air:** Supporting the inclusion of clean air as a substantive aspect aligns with the idea of a healthy environment. Clean air is vital for public health and well-being.
2. **Safe and Sufficient Water:** Recognizing both safe drinking water and water essential for the broader environment is essential. This distinction emphasizes the importance of water for both human survival and the health of ecosystems.
3. **Non-Toxic Environments:** Acknowledging the need for environments free from harmful chemicals or toxins is crucial for safeguarding public health and well-being.
4. **Healthy Ecosystems and Biodiversity:** Including this aspect is important for maintaining ecological balance and ensuring the sustainability of natural systems.
5. **Safe Climate:** While not explicitly defined, a stable and safe climate is integral to a healthy environment, as it impacts various aspects of human well-being.

Procedural Aspects:

1. **Awareness-Raising and Education:** Promoting awareness and education is essential for ensuring that individuals and communities are informed about their rights and how to protect the environment.
2. **Access to Information:** Providing access to relevant information empowers individuals and communities to participate effectively in environmental decision-making.
3. **Public Participation:** Involving the public in decision-making processes related to the environment ensures that a diverse range of perspectives are considered.
4. **Remedies:** Ensuring effective, affordable, and timely remedies is crucial for holding those responsible for environmental harm accountable.
5. **Policies, Planning, and Action:** Establishing suitable policies and taking action is necessary to translate the right to a healthy environment into tangible outcomes.

aspects of the right to a healthy environment? Please give us your views:

Question 9

Do you agree or disagree with our proposed approach to the protection of healthy and sustainable food as part of the incorporation of the right to adequate food in ICESCR, rather than inclusion as a substantive aspect of the right to a healthy environment? Please give reasons for your answer.

Agree

Please provide your reasons why:

While the ICESCR definition (and subsequent elaborations including through General Comment 12) includes consideration of both health and sustainability, there has been a tendency – given the severe, persistent and widespread household food insecurity still affecting so many people across the world – to foreground the dimensions of availability and access. Over the last five decades the damage caused by the global food system to nature, climate and health has become more acute, widespread and visible. Adverse environmental impacts across the food supply chain include biodiversity loss/land use change from intensive farming, impacts on water supplies, use of harmful pesticides and fertilisers, emissions from transportation, waste from packaging, and wasted food. There is therefore value in restating as part of the right to a healthy environment the right to healthy sustainable food.

Question 10

Do you agree or disagree with our proposed approach to including safe and sufficient water as a substantive aspect of the right to a healthy environment? Please give reasons for your answer.

Agree

Please give us your views:

We agree with the need to include safe and sufficient water but believe this feature should also refer to the right to adequate sanitation given the widespread and persistent issues of sewage pollution in Scotland. 'Safe and sufficient' must be conceived of in broad terms, with the aim of restoring the ecosystem health of Scotland's inland waterways, rivers, and lochs. It must address wastewater and pollution from sewage, agricultural discharge, and other sources, the impacts of climate change on water availability, and measures for enhanced water monitoring, testing, and enforcement against polluters.

Question 11

Are there any other substantive or procedural elements you think should be understood as aspects of the right?

No

If yes, please specify what substantive or procedural elements and explain how this could be achieved:

Questions 12 – 18 refer to Part 6: Incorporating Further Rights and Embedding Equality**Question 12**

Given that the Human Rights Act 1998 is protected from modification under the Scotland Act 1998, how do you think we can best signal that the Human Rights Act (and civil and political rights) form a core pillar of human rights law in Scotland?

Please give us your views:

The Human Rights Act 1998 duties and rights should be fully included in implementation of this Bill, including being part of guidance, public body training and capacity building, and information and awareness raising.

The Scottish Government should be required to deliver services aimed at rehabilitation from torture.

Effective remedy under this Bill should include fair and appropriate levels of compensation.

Question 13

How can we best embed participation in the framework of the Bill?

Please give us your views:

Participation of those whose rights are most at risk is crucial for driving an increasing culture of human rights, for better decision-making and for empowerment of marginalised individuals and groups. Therefore, participation should be embedded throughout the framework.

Question 14

What are your views on the proposed approach to including an equality provision to ensure everyone is able to access rights in the Bill?

Please give us your views:

In favour

Question 15

How do you think we should define the groups to be protected by the equality provision?

Please give us your views:

If those groups consent to this

Question 16

Do you agree or disagree that the use of 'other status' in the equality provision would sufficiently protect the rights of LGBTI and older people? If you disagree, please provide comments to support your answer.

Agree

Question 17

If you disagree, please provide comments to support your answer.

Question 18

Do you think the Bill framework needs to do anything additionally for LGBTI or older people?

Yes

No

Please give us your views:

We agree that there should be an equality provision, and that LGBTI and older people should be specifically named. This is because there is significant benefit in these groups being visible in the Bill given the particular consideration needed to address barriers to their rights.

- Consideration should be given to specifically attaching a requirement on Scottish Ministers to publish guidance around interpretation of 'other statuses. This will allow them to specify evidence and criteria that public bodies should apply in considering other groups whose rights are at risk, for example Care Experienced people.

Questions 19 – 26 refer to Part 7: The Duties**Question 19**

What is your view on who the duties in the Bill should apply to?

Please give us your views:

The duties should apply to as many public bodies as possible within devolution
The Scottish Government should engage with the UK Government concerning UK public bodies.

- The duties should apply to all private bodies carrying out public functions.

Question 20

What is your view on the proposed initial procedural duty intended to embed rights in decision making?

Please give us your views:

We agree that there should be a procedural duty placed on public bodies. This should be the duty to have due regard.

- The timescale for commencement should be no more than 6 months from Royal Assent. Applying the stronger duty to comply should be no more than two years later, and this date should be specified in the Bill.
- The duty to have due regard should continue to apply after this time, but should be then accompanied by the duty to comply.

Question 21

What is your view on the proposed duty to comply?

Please give us your views:

We agree that all public bodies (& relevant private actors) should be given a duty to comply with rights in the Bill.

- We agree that this duty to comply should include delivering Minimum Core Obligations and demonstrating progressively realising rights. Guidance to public authorities should include detail on the definition of progressive realisation, including using maximum available resources.

Question 22

Do you think certain public authorities should be required to report on what actions they are planning to take, and what actions they have taken, to meet the duties set out in the Bill?

Please give us your views:

All public authorities should be required to report on the actions they take to meet the duties set out by the bill.

Question 23

How could the proposed duty to report best align with existing reporting obligations on public authorities?

Please give us your views:

We agree that there should be a public bodies' reporting requirement - this should largely mirror the UNCRC reporting requirements. Public bodies should have to consult with people whose rights are most at risk when developing these reports, including to ensure that the content is accessible.

- The Scottish Government should be required to consult with people whose

Question 24

What are your views on the need to demonstrate compliance with economic, social and cultural rights, as well as the right to a healthy environment, via minimum core obligations (MCOs) and progressive realisation?

Please give us your views:

See answer Q.21

Question 25

What are your views on the right to a healthy environment falling under the same duties as economic, social and cultural rights?

Please give us your views:

We agree they should be held on the same standard

Question 26

What is your view on the proposed duty to publish a Human Rights Scheme?

Please give us your views:

We agree with these duties

Questions 27 – 37 refer to Part 8: Ensuring Access to Justice for Rights Holders

Question 27

What are your views on the most effective ways of supporting advocacy and/or advice services to help rights-holders realise their rights under the Bill?

Please give us your views:

This Bill should include access for all to independent advocacy, and access to these services should be included in the Human Rights Scheme.

- There should be a step-change in the provision of rights advice in Scotland, including co-production and resourcing of a National Hub for Human Rights Education, Information and Advice

Question 28

What are your views on our proposals in relation to front-line complaints handling mechanisms of public bodies?

Please give us your views:

We agree that front-line complaints handling by public bodies needs to be changed to take into account rights and duties in this Bill. These changes, including any by SPSO or by bodies not covered by SPSO such as courts and the police, should be co-produced with people whose rights are most at risk

Question 29

What are your views in relation to our proposed changes to the Scottish Public Services Ombudsman's remit?

Please give us your views:

N/A

Question 30

What are your views on our proposals in relation to scrutiny bodies?

Please give us your views:

We agree with scrutiny bodies having human rights added to their remit
• Consideration is needed on ensuring capacity of these bodies around human rights.

Question 31

What are your views on additional powers for the Scottish Human Rights Commission?

Please give us your views:

- The SHRC general mandate should be expanded and should include participation of people whose rights are most at risk.
- The SHRC should be given a range of new powers.
- The SHRC's new powers must be matched by increased and sufficient resources to use these powers fully

Question 32

What are your views on potentially mirroring these powers for the Children and Young People's Commissioner Scotland where needed?

Please give us your views:

Yes

Question 33

What are your views on our proposed approach to ‘standing’ under the Human Rights Bill? Please explain.

Please give us your views:

We agree with the Scottish Government’s proposed approach.
• Further consideration is needed on court rules that clearly define ‘sufficient interest’ so that this is clear for courts and for NGOs who are considering taking a case

Question 34

What should the approach be to assessing ‘reasonableness’ under the Human Rights Bill?

Please give us your views:

N/A

Question 35

Do you agree or disagree that existing judicial remedies are sufficient in delivering effective remedy for rights-holders?

Agree

Question 36

If you do not agree that existing judicial remedies are sufficient in delivering effective remedy for rights-holders, what additional remedies would help to do this?

Question 37

What are your views on the most appropriate remedy in the event a court finds legislation is incompatible with the rights in the Bill?

Please let us know your views:

Courts should be able to ‘strike down’ laws or issue declarators of incompatibility for any part of Scottish Parliament law that is not compatible with rights in the Bill

Questions 38 – 44 refer to Part 9: Implementing the New Scottish Human Rights Act

Question 38

What are your views on our proposals for bringing the legislation into force?

Please give us your views:

All of these international human rights are in place now, so public body implementation of these rights can and should begin now.

- Timescales need to be specified in the Bill and given due priority. This should be commencement of no more than 6 months after Royal Assent; and the additional duty to comply no more than 2 years later. These are reasonable timescales that allow for development of guidance, public sector capacity, and Minimum Core Obligations.

Question 39

What are your views on our proposals to establish minimum core obligations (MCOs) through a participatory process?

Please give us your views:

We agree that it is essential that MCOs are developed through a participatory process, and this should be particularly with groups whose rights are most at risk. Consideration should be given to whether this process is led by Scottish Government or by the Scottish Human Rights Commission.

- Many MCOs might reflect provision that is already in our law, but public bodies can be held accountable for delivering these through the human rights framework

Question 40

What are your views on our proposals for a Human Rights Scheme?

Please give us your views:

- Many MCOs might reflect provision that is already in our law, but public bodies can be held accountable for delivering these through the human rights framework

The Scheme should

also include: requirements around improvements to data collection and publication; access for all to appropriate individual and collective independent advocacy (not only with regards to access to justice); provision of rights advice; inclusive communications; Scottish Minister's engagement with UK Ministers around human rights; provision of services aimed at rehabilitation from torture; the extent to which participation of people whose rights are most at risk is informing implementation of the Bill

Question 41

What are your views on enhancing the assessment and scrutiny of legislation introduced to the Scottish Parliament in relation to the rights in the Human Rights Bill?

Please give us your views:

Statements of compatibility should include a requirement to demonstrate that consultation with people whose rights are at risk has been undertaken in order to assess a Bill's compatibility with human rights.

- Mirroring the UNCRC Bill, Ministers should be required to carry out Human Rights Impact Assessments for any Bill or SI introduced to the Scottish Parliament.
- We will also be asking the Scottish Parliament to engage with people whose rights are at risk in determining any enhancements to their legislative scrutiny around human rights compliance.

Question 42

How can the Scottish Government and partners effectively build capacity across the public sector to ensure the rights in the Bill are delivered?

Please give us your views:

We agree that statutory and non-statutory guidance is essential. This should be developed with participation of people whose rights are most at risk and written and published in a way that it is accessible to rights-holders as well as duty-bearers.

- We welcome the development of a plan around human rights capacity building for government and public bodies. We already know what our international human rights are - building capacity should not, and does not need to, wait for the Bill to be passed.
- Scottish Government should demonstrate learning from what has worked or not worked in bringing change related to implementation of other rights-related duties and shape the guidance and capacity building efforts on this Bill accordingly.

Question 43

How can the Scottish Government and partners provide effective information and raise awareness of the rights for rights-holders?

Please give us your views:

Co-produce and fund a National Network for Human Rights Information, Education, Legal Services and Advice

Question 44

What are your views on monitoring and reporting?

Please give us your views:

Consideration should be given to a Scottish Parliament reporting duty, mirroring the approach taken in the UNCRC Bill.

- At every stage of monitoring and reporting, it should not be reporting on activity itself. Instead, it should be reporting on activity or decisions that have led to the realisation of rights, as determined, and evidenced through participation of people whose rights are most at risk

About you

Please tell us which of the following categories best describe you (select all that apply):

- Legal profession
- Organisation - Private
- Organisation – Public
- Rights holder
- Other – please specify

Organisation – Social Enterprise Scotland

Additional space for answers

(Please specify the question information relates to)