

Response ID ANON-6XVX-YB8T-3

Submitted to A Human Rights Bill for Scotland: Consultation
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Part 1: Scotland's Human Rights Journey

Part 4: Incorporating the Treaty Rights

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

Please give us your views:

We believe that it should be a requirement, that Scottish courts consider dignity when interpreting the rights in the Bill.

The Scottish Community Safety Network feel strongly about the importance of respecting people's dignity and upholding these principles within Scotland to enable a safer society.

We have concerns that individuals' dignities are not always upheld in our country (for example within the criminal justice sphere, for those living in poverty, for those experiencing homelessness, for those experiencing addiction, for those trying to live without fear of hatred) and we have hopes this legislation will be a catalyst for change by empowering rights holders and placing more responsibility on duty bearers.

We understand new duties and access to rights will only be meaningful where there is public education for rights holders and guidance and adequate resources available for duty bearers.

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

Allow

Please give us your views:

We agree with the proposal for dignity to be a key threshold for defining Minimum Core Obligations. Once again, we believe that courts should be required to consider dignity when interpreting the rights in the Bill.

In order for the bill to be as meaningful as possible, we believe the MCOs need explanatory guidance to ensure a shared and consistent understanding and interpretation of the rights within the Bill. This guidance may also be helpful for public awareness and to help create a culture of human rights in Scotland.

We would stress that any definitions should be co-produced with rights holders, especially those with relevant lived experience. We feel this is an opportunity for greater participation with communities and deeper engagement with duty holders.

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

If so, please identify these, explain why and how this could be achieved.:

We agree with the Scottish Government proposed approach.

4 What are your views on the proposed model of incorporation?

Please give us your views.:

We agree that the four international treaties should be incorporated into Scots law, and include the right to a healthy environment, within the limits of devolved competence, making them binding and justiciable to the greatest extent possible.

In order for the bill to be as meaningful as possible, and to achieve the transformational change needed in Scotland, we believe the model of incorporation needs adequate strength so that public bodies do not simply have to have due regard to the rights within the bill but a duty to comply.

The community safety sector has an important role to play in incorporation of greater access to human rights. The sector will therefore need time, training and capacity built for duty bearers to prepare for any new duties and associated systematic change. Currently, the sector has been subjected to huge financial cuts, so we would be very keen to see plans for how these new duties will be resourced.

5 Are there any rights in the equality treaties which you think should be treated differently?

No

If so, please identify these, explain why and how this could be achieved:

Part 5: Recognising the Right to a Healthy Environment

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

Disagree

7. If you disagree, please explain why:

We would like to see more detail about the how those, for example, in the justice system, care and residential systems, those experiencing homelessness and living in social housing, will be able to access a healthy indoor environment. This detail should encompass the tenets of trauma-informed practice.

8 What are your views on the proposed formulation of the substantive and procedural aspects of the right to a healthy environment?

Please give us your views:

We are in support of the proposed formulation of substantive and procedural aspects to the right to a healthy environment, as this gives clear direction and encourages accountability. We are especially supportive of the procedural elements that support public participation in environmental decision-making and access to justice.

However, as previously mentioned, we would like to see more detail around indoor healthy environments and how these will be defined.

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 International Covenant on Economic, Social and Cultural Rights (ICESCR), rather than inclusion as a substantive aspect of the right to a healthy environment?

Disagree

Please provide your reasons why:

We agree that the right to adequate food is also captured as a social right under the right to an adequate standard of living in ICESCR, and that the onus should stay on poverty and standards of living. However, as the effects of climate change are fast becoming a reality in Scotland, we feel it is important to also be understood as a substantive aspect of the right to a healthy environment as protected by the Bill.

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?

Agree

Please give us your views:

Yes we agree with the proposed approach to including safe and sufficient water as a substantive aspect of the right to a healthy environment. Along with others, we question the exclusion of adequate sanitation under safe and sufficient water, which will become ever more important as the effects of climate change are borne out.

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

Yes

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

We would like to see the inclusion of adequate sanitation under safe and sufficient water.

Part 6: Incorporating Further Rights and Embedding Equality

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 Scottish Government need to be seen to lead the way and set an example with their own practice and policy ambition. It would be very harmful to the quest for meaningful change for this to be seen as rhetoric and not reality. Again, this is where we feel public bodies should have a duty to comply, rather than only 'due regard' which has been written into the Bill in many instances.

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

Please give us your views:

As mentioned before, we would want to see co-production of definitions, inclusion of lived experience and community participation, as a minimum. We see this legislation as a vehicle for greater inclusion and participation and think it is paramount that the opportunity to make it such is not missed.

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:

We are supportive of an equality provision, but are keen to stress that within that provision, intersectionality should be taken into full account. As should other determinants which are a barrier to rights realisation, such as income.

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

Please give us your views :

As discussed above, we feel that intersectionality and those with other determinants that prevent rights realisation should be protected in law.

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?

Agree

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

We agree that there should be an equality provision, and that LGBTI and older people should be specifically named.

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

Yes

Please give us your views:

As discussed above, we feel that intersectionality and those with other determinants that prevent rights realisation should be protected in law.

Part 7: The Duties

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

Please give us your views:

We agree that the duties should apply, so far as possible, to bodies carrying out devolved public functions.

However, we feel strongly that this must be accompanied with adequate guidance, training and resources, when community safety partners are facing unprecedented cuts.

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 to have due regard but that this should progress to be a duty to comply, within an allocated time.

21 What is your view on the proposed duty to comply?

Please give us your views:

In line with the Scottish Human Rights Consortium, we agree that all public bodies (& relevant private actors) should be given a duty to comply with rights in the Bill.

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:

We agree that 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

However, again we feel strongly that this must be accompanied with adequate guidance, training and resources, when community safety partners are facing unprecedented cuts.

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 which should largely mirror the UNCRC reporting requirements. Public bodies should have to consult with communities, and work with the third sector to reach the most seldom heard voices, where rights realisation is at most risk.

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:

In line with the Scottish Human Rights Consortium, we agree that all public bodies (& relevant private actors) should be given a duty to comply with rights in the Bill.

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 feel that the right to a healthy environment should fall under the same duties.

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

Please give us your views:

We agree that Scottish Ministers should be given a duty to publish a Human Rights Scheme, and a related duty to report on actions taken on the requirements in the Scheme.

Part 8: Ensuring Access to Justice for Rights-Holders

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 on advocacy:

We feel that advocacy is crucial in helping right-holders access, understand and fulfil their human rights as well as their human right to remedy a violation. Advocacy services also help to enable more community empowerment and resilience, which we know is a huge lever in making communities safer. In the field of community safety, advocacy for victims and those accused is essential.

Please give us your views on legal aid:

We strongly support legal aid in order to make access to justice a reality for many who will be currently denied this due to their circumstances. Alongside others, we believe there should be a commitment to consult on legislative change to radically reform legal aid.

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 with proposals in relation to front-line complaints handling mechanisms in that they should be improved and able to robustly uphold the duties in the Bill. We would like to see guidance and support for all public bodies, to ensure front-line complaint handling is understood and rights are upheld across the piece. We think there are many meaningful opportunities to include lived-experience in designing any new system.

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

Please give us your views:

We agree that the SPSO should be given this remit.

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

Please give us your views:

We feel that independent scrutiny bodies are a crucial component to upholding the duties in this bill and ensuring it becomes meaningful for the people of Scotland.

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

Please give us your views:

Yes we support more powers for the Scottish Human Rights Commission.

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:

We support mirroring these powers for the Children and Young People's Commissioner Scotland where needed.

33 What are your views on our proposed approach to 'standing' under the Human Rights Bill?

Please give us your views:

We agree with the Scottish Government's proposed approach.

34 What should the approach be to assessing 'reasonableness' under the Human Rights Bill?

Please give us your views:

We would defer to the Scottish Human Rights Consortium on this issue.

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

Agree

36. If you do not agree that existing judicial remedies are sufficient in delivering effective remedy for rightsholders, what additional remedies would help to do this?:

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. :

We would defer to the Scottish Human Rights Consortium on this issue.

Part 9: Implementing the New Scottish Human Rights Act

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

Please give us your views:

We strongly agree that public bodies will need time to become familiar with the new standards and ensure they have the right infrastructure in place to support implementation and compliance.

Guidance and training should be involve deep engagement with stakeholders and be co-produced, making best use of lived experience.

Resourcing must be appropriate to support implementation of the identified actions at both a national and a local level.

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

Please give us your views:

We strongly agree and believe it is a great opportunity to involve deep engagement with stakeholders using co-production and lived experience to their utmost.

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

Please give us your views:

Once again, we must point to adequate resourcing to build capacity and the opportunity for participation in creating the guidance. We support our third sector partners in their calls for parity of esteem in consideration of funding and capacity building.

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:

We agree with the Scottish Government proposal.

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:

As discussed previously, we think capacity building is paramount and should involve deep engagement with stakeholders, co-production and community participation and utilisation of lived experience. It is crucial the resources are directed to capacity building in order to fully realise the potential of this legislation.

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:

Awareness raising of rights to rights holders is vital to this legislation becoming meaningful for the people of Scotland.

We feel that adequate resourcing and the importance of participation must be taken into account here.

It is crucial to work extensively with the third sector, who have built trusted relationships with those whose rights have not been realised.

44 What are your views on monitoring and reporting?

Please give us your views:

We support the Scottish Human Rights Consortium in their statement: " 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

What is your name?

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Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Scottish Community Safety Network

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

Other

If other, please specify:

Charity and network organisation

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

Publish response only (without name)

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

I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy.

I consent

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Very satisfied

Please enter comments here.:

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Very satisfied

Please enter comments here.: