

Response to the Scottish Government consultation on a Human Rights Bill for Scotland

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

Dignity must be considered by courts when making decisions about human rights. A lack of dignity causes harm to people in many ways and is dehumanising. Dignity should therefore be a gateway/primary consideration. Promoting and protecting dignity is a key value of Social Work, with a vow to protect people's right to dignity recorded within the SSSC codes of practice.

It is important to note that social work services have far more responsibilities regarding personal lives and people's liberty and rights than most other public services, especially local authority services. As a result, individual social workers must be empowered and enabled to uphold the ethics and codes of practice of their profession, as outlined by the BASW code of ethics and the SSSC code of practice.

2. What are your views on our proposal to allow for dignity to be a key threshold for defining the content of MCOs?

Dignity must be a key threshold of any MCO. However, there is a need for a shared and consistent understanding and interpretation of rights in the Bill and a clear definition of dignity as a starting point, given that the experience of dignity is something entirely personal. There should also be considerations of evolving societal attitudes to dignity, for example, potential changes to legislation (and attitudes towards) the right to die.

We are keen to ensure that this **minimum** does not become the goal or measure of dignity. We believe that the challenge of setting minimum standards is that they may need to be adapted for different cultural and philosophical beliefs. Steps would need to be taken to ensure this did not become impractical.

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

If the law is applied directly from UN charters, it would appear to make sense to include the treaty body's interpretations of these as a legislative baseline.

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

Having a single body of human rights law would potentially make the system easier to understand and navigate.

We also believe that consideration needs to be given to duty-bearers. Social worker's employers will be duty bearers and a social worker's role will in large part be to uphold the

duties of the employer and the rights of the individual. An important question to answer is how the Scottish Government aims to empower and protect individual social workers to both act for their employers as duty bearers and to uphold individual rights when there is a conflict.

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.

We cannot comment.

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

We support this definition of the environment and support the right of every individual to live in a healthy environment that this Bill aims to achieve.

However, it is not clear that this is likely to be the driver for change that is required to realise this right. A social worker could identify a rights breach with a service user living in an area of high pollution or even in an unfit house. However, if there are no other houses to move to or no ways of lowering air pollution in a particular street or area this is not likely to be effective. A policy approach to enacting rights through multiagency work will not rely on individual battles to protect rights and will not rely on rights holders understanding their rights have been breached. Relying, even partially on either of these is likely to create a system where those who can challenge the system have their rights upheld, often at the expense of those who cannot challenge the system.

7. If you disagree please explain why.

NA

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

Since social workers are employed by local authorities, in the main, who are already duty bearers for many rights, the barriers associated with upholding these rights for rights bearers must be tackled via policy. As a profession social work operates across multiple disciplines of health, care and justice and is open to pressures from both internal and external authority to interpret the legislation under which it operates to support these functions in ways which may conflict. For example, winter pressures on the NHS could lead to pressure to expedite discharge processes. Social work being exposed to these pressures makes a rights-based approach more difficult to realise.

'Nothing about me without me' is a principle that must be enshrined in this legislation.

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.

We believe everyone should have the right to food and water. However, it is unclear how this would be implemented and who would be responsible for upholding the right.

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.

We believe everyone should have the right to food and water. However, it is unclear how this would be implemented and who would be responsible for upholding the right.

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

NA

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?

We believe that signalling rights is unlikely to lead to any substantial change for those who have their rights breached. Duty bearers are already very aware of this Act.

Perhaps just mentioning that the 1998 Act is in force already would be helpful. This would need to be taken into consideration so it was done within a legal framework.

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

Effective social work supports human rights. As such we believe that social work must hold a central role in upholding the rights of individuals and must be protected to do so. Social workers understand the core pillars of human rights and apply rights-based approaches. Social workers will need clear guidance on their role in upholding rights. Particularly if any changes in what this Bill change their role in balancing their duties as employees of a duty bearer and their responsibility to uphold the rights of the individual.

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?

Equal access for all to rights will be the main challenge and we are not convinced that without the changes described, this Bill will drive large-scale changes.

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

Defining groups on the face of a Bill can cause issues as time passes and the way people identify themselves evolves. Therefore, the legislation must protect all people's rights, taking particular care of those more vulnerable to discrimination. We would hope that it would be a force for equality and not, through unintended consequences, entrench stigma and discrimination.

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?

Not including LGBTI and older people could run a risk of these groups being left out or not being supported to achieve their human rights. However, including them could also pose

issues around identifying phrases, stigma, and discrimination as our understanding of equalities evolves.

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

To overtly support the rights of LGBTI and older people. Whether other is used or not, lists of those defined as other could be published and reviewed by Parliament periodically. If other is not used provision for named equalities to be updated should be made.

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

LGBTI people must have their rights protected and should have access to the rights of the Bill. Social workers understand that LGBTI people are not one homogenous group and their needs and wishes vary widely.

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

The duties of the Bill should apply to all bodies, authorities and institutions of power and influence over people's lives that the Scottish Parliament can competently legislate for.

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

Any new Bill must be properly implemented with a realistic and defined timetable that supports its safe and resourced introduction. It is vital the Scottish Government properly considers the resource implications and budgetary needs for Social Work, and other front-line services.

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

This is vital for the Bill to fulfil its functions. Protecting the rights of those most vulnerable in society is the bread and butter of the social work profession and they must continue to have the tools and legislative framework to continue to carry out their roles in society. However, it must be considered that at present rights that are already in place are breached routinely through a lack of resources in Scotland. Any new rights under this new Bill, will not be properly protected without a large-scale shift in resource allocation at a front-line and community level.

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?

Yes. Reporting must be proportionate, and should not be a tick-box exercise or overly cumbersome, therefore becoming a drain on valuable resources intended to be used to protect rights. This balance is vital. We would wish to see a top-down explanation of how the Scottish Government expects this requirement to impact day-to-day work. How much time does the Scottish Government expect this to take?

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

Cannot comment.

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 MCOs and progressive realisation?

MCOs would appear to be a sensible way to set a standard of what is minimally achieving a right. Scotland and the UK already have a strong rights foundation. What we lack is the fulfilment of these rights, whether enshrined in law or perceived as existing by societal norms. While we support the aims of the Bill, to achieve rights for all, this Bill would need to be accompanied by a defined policy agenda to tackle the issues in society that cause human rights infringement. Poverty, housing, violence, and discrimination won't be solved through legislation alone.

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

We support this as we know that the impact of an unhealthy environment is most likely to be felt hardest by society's most vulnerable members. Actionable rights based on legislation may provide social workers with better tools to do their job, for instance where an unhealthy environment is causing harm to families in a community.

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

Yes, and this must be proportionate, reporting should not be a tick-box exercise or a drain on valuable resources intended to be used to protect rights. This balance is vital.

We would suggest that reporting concerning Ministers should be used to develop policy as we believe policy will be the key driver in upholding rights.

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?

This is a complex and multifaceted question but most simply advocacy must be supported. Those most likely to have their rights breached are most likely to be least well placed to defend their rights. Conversely, those who are most likely to be able to defend their rights are likely to be members of society, who are better positioned to know their rights, understand when they have been breached and be able to lodge complaints to have their rights upheld.

Resourcing advocacy will be vital. The SPSO is stretched as it stands and having complaints tied up in a complex and lengthy process is not going to positively support rights being upheld. As the lived experience seen in this consultation and evidence from other nations such as Colombia (<https://ir.law.fsu.edu/articles/557/>) show, without sufficient resources for advocacy and external bodies researching and challenging rights breaches, this Bill runs the risk of creating a two-tier system of rights that only the better off in society can access. Creating a system of rights alone will not ensure rights are upheld.

There is already a strong fabric of rights in Scotland and systemic rights breaches across society, from housing to domestic abuse. Therefore, we believe that any focus on rights will require a concerted effort driven by policy focused on removing the barriers people face accessing their rights. Poverty is a barrier to people being accessing their existing rights and will continue to do so for any new rights Act. In short, we do not believe this Bill alone will

deliver large-scale change to public service resources, governance, and structure. That would be required to guarantee the rights of all of Scotland's people.

Social work's role as a profession is, in large part, to advocate for individuals and communities who for whatever reason are unable to access their rights, as well as providing statutory and holistic support for the most vulnerable members of our society. A well-resourced and holistic approach to social work must play a part in community and individual advocacy, supporting individuals and communities to access their rights and acting as a challenge to the status quo in society. This needs properly resourced.

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

We broadly agree that complaints should be addressed at the front-line level where possible. However, larger systemic issues will likely not be addressed on an individual basis early on. There is a risk that those who have the social and economic means to make complaints will be better heard and the most vulnerable in society, whose rights are most at risk of being violated, will be less able to make representations to have their rights respected. We believe that the social work profession does and must continue to play an important role in supporting people to uphold their rights.

We support and encourage the right of people to complain. However, there is likely to be an increase in the number of complaints to services which will in turn, especially in social services, put further strain on front-line staff who are already under pressure responding to complaints. In social work, it is front-line social workers and service managers who are responsible for gathering information and responding to individual complaints, taking them away from their duties in services which are already stretched. We see evidence of this in our annual survey in which social workers tell us that a lack of administrative support and increasing administrative tasks are their primary workplace challenges. This must be recognised, and resources increased appropriately.

We also believe there is an increased risk of fitness to practice complaints being brought out of frustration and disappointment in the system from complainers.

Increasing rights without increasing resources will lead to greater numbers of complaints in an already struggling system with no way of a resolution being reached.

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

We have no issues with these changes but do have concerns about the existing capacity of the SPSO as it stands.

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

We support the roles outlined and agree that scrutiny bodies must report to expert bodies on rights. However, it seems that these bodies already have a role in upholding rights and consideration should be given to how this will practically improve their powers and ability to enact change on the ground.

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

We believe it would be beneficial for all commissions for rights in Scotland to have equal powers.

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

It is our view that the SCYPC should have the same powers as the SHRC, and these should also be aligned with the Commissioners for older people and disabled people if they are brought into being.

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

We would support any move that will make the justice system more accessible and make it easier for civil society groups, advocates, and anyone else to challenge rights breaches.

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

The proportionality test seems to offer a greater chance for those who have experienced rights breaches to have the court be able to uphold them. Making the bar inaccessibly high for decisions on breaches of rights would seem to counter the overall aims of the Bill.

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

Cannot comment.

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?

Cannot comment.

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?

Cannot comment.

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

There is a balance to be struck:

- on one hand, if the Bill is to make any substantial difference on the ground there will need to be large-scale structural reform of public services and resources. This is bound to take time.
- on the other hand, there must be a clear timetable for implementation and the Act cannot be allowed to sit unenforced.

39. What are your views on our proposals to establish Minimum Core Obligations through a participatory process?

We would support the introduction of Minimum Core Obligations through a participatory process. There would need to be minimum standards for rights breaches to be challenged.

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

It is appropriate that Scottish Ministers and therefore the Scottish Government have accountability for human rights through the legislation. We hope that this will mean there will be less discrepancy in the implementation of human rights in Scotland as governments change.

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?

We strongly support increased scrutiny of legislation in the Scottish Parliament if it does not significantly increase the administrative burden currently carried by under-resourced social workers. Any focus that could make future legislation more compatible with the rights in this Bill would be beneficial.

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

From a social work perspective, it will take substantial effort, resources, and structural and governance changes to ensure the rights of the most vulnerable in our society are upheld. At present resource and intervention is rationed and intervention is often only possible when crisis points are reached in people's lives. In essence, this creates a system where statutory interventions are made once rights have been breached. It is SASW's view that holistic and early intervention in social work supports individuals and communities to uphold their rights. In addition, the Scottish Government must consider the moral injury (stress caused to professionals who cannot fulfil their duties due to lack of resources or systemic barriers) caused when social workers, and other public servants, identify issues with rights breaches or when rights are likely to be breached but are unable through structural design and resource rationing to intervene until this has already happened, and crisis point has been reached.

The Bill should not place a responsibility of duty (duty bearer) on an individual social worker or service manager when rights are breached through lack of resources or systemic and structural barriers. This would be the equivalent of holding a nurse responsible for NHS waiting times.

A scarcity mindset encourages practitioners to consider diagnosis, treatment, and outcome—a medical model rather than the complex inter-relationships between individuals, communities and resources that are affecting an individual or community.

It will be essential that the financial memorandum for this Bill reflects the actual cost of building human rights supporting public services that will be able to routinely uphold the rights this Bill sets out. What accountability there will be and where that will lie?

We would be interested in seeing further accompanying guidance that suggests; how this Bill will tackle the need for food banks, deliver housing for everybody who needs it and be a driver in reducing child poverty.

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

There will need to be a comprehensive campaign to raise awareness as well as ensure that those responsible for upholding rights have a responsibility to explain rights to rightsholders.

44. What are your views on monitoring and reporting?

Monitoring and reporting will be important to ensuring that progress is being made and issues identified, a balance needs to be struck between being overly burdensome and tick box exercise that does not reflect the reality.