

A Human Rights Bill for Scotland: Guide to the Consultation



June 2023

SECTION ONE – SETTING THE SCENE

What is the purpose of this guide?

The Scottish Government is planning to bring a new Human Rights Bill to the Scottish Parliament, so that more of our human rights are protected in law.

This guide explains what we want the Human Rights Bill to achieve. It sets out what it will mean for these rights to be placed in law in Scotland. It also describes what effect we want the Bill to have on people's daily lives if the Scottish Parliament votes to pass the Bill and it becomes an Act.

We have launched a consultation so that people can learn about the Bill and tell the Scottish Government what they think.

This guide was made to help everyone feel able to take part in the consultation. We want to hear your voice so that it helps shape the future of human rights in Scotland.

What is being proposed?

We all have human rights. We should be able to access our rights in daily life. If our human rights are not respected, we should be able to do something

about this by making a complaint, alerting an appropriate body, or taking legal action if appropriate.

The Scottish Government's proposed Human Rights Bill will bring four United Nations international human rights treaties into the law in Scotland, within the limits of the Scottish Parliament's devolved powers.

The Bill will also recognise and include the right to a healthy environment.

The Bill will be designed to make sure the rights it sets out in Scots law are available to everyone equally.

Why introduce a Human Rights Bill now?

Since devolution, Scottish Ministers have worked to respect, protect, and fulfil internationally recognised human rights in Scotland.

The Human Rights Bill is the next stage in Scotland's journey to make more of our fundamental human rights real for everyone in their day-to-day lives.

Recent events, such as the Covid-19 pandemic and the cost-of-living crisis have shown that people still sometimes have unequal access to their rights. We believe there is more we can do to address this.

That is why the Human Rights Bill will create a new human rights framework in Scotland. The Bill will provide people with stronger legal protections, put new duties on public bodies, and help to build a stronger human rights culture in Scotland.

Don't we already have human rights?

All human beings are entitled to human rights and freedoms.

The Scottish Government already works to create a society where all our human rights are upheld.

We are doing this by building human rights into the day-to-day business of government.

The Scottish Ministerial Code also requires Scottish Ministers to follow international law such as human rights treaty obligations.

Since the end of World War Two, members of the United Nations have agreed to a series of international treaties that set out what our fundamental human rights are, and how countries should work to realise them.

Over the years the UK has signed up to ('ratified') many of these treaties. This means that the Scottish Government must

ensure it respects, protects, and fulfils all the human rights found in these treaties.

The rights in these treaties exist in what is known as 'international law'. International law is different from our domestic law in Scotland. Bringing rights from international law into our domestic law will improve rights protection.

For example, the Human Rights Act 1998 brought the European Convention on Human Rights (ECHR) into law in the UK. This means that our civil and political human rights can be enforced by courts in Scotland if they are not being protected.

However, some internationally-recognised human rights – like the right to health or to an adequate standard of living – are not yet set out in Scots law. This means people don't have the same routes to access justice if those rights are not upheld.

It means public bodies and private organisations delivering public services in Scotland do not always have to show how their decisions helped to make those rights real for the people they work with or serve.

Also, public bodies cannot be held to account in court or by regulators if they fail to take actions to uphold these human

rights or take actions which undermine rights.

Public bodies provide services that people use every day to access their rights.

Local councils provide lots of services that help ensure we have an adequate standard of living. NHS Scotland is a public body that helps deliver services which provide elements of the right to health. Schools help deliver services which provide the right to education.

Private organisations also help deliver public services. For example, there are businesses that deliver social care, as well as education.

The Human Rights Bill will bring more rights into Scots law. It aims to ensure that economic, social, cultural, and environmental rights will be protected for the people of Scotland, similar to how our civil and political rights are already protected.

This means public bodies and private organisations delivering public services in Scotland can be held to account if they are found to have taken actions that fail to uphold people's rights.

How did the Scottish Government decide what the Human Rights Bill should do?

In 2018 the former First Minister Nicola Sturgeon MSP asked human rights experts in Scotland to form an Advisory Group on Human Rights. They were asked to explore how Scotland could better protect and promote human rights.

Their report called for an Act of the Scottish Parliament to create a new Human Rights Bill for Scotland. They also called for the creation of a special Taskforce to set out what the new Bill should deliver.

The National Taskforce for Human Rights Leadership was formed in 2019. It included human rights academics and human rights experts from civil society. The Taskforce met with lots of different groups with an interest in human rights.

In 2021 the Taskforce published 30 recommendations and Scottish Ministers accepted these in full.

Using these recommendations, the Scottish Government has developed plans for the Human Rights Bill. The consultation sets out these plans and invites people to tell us what they think.

The Scottish Government worked with civil society groups, public authorities, and people with lived experience of trying to access

their human rights, to develop these plans.

Does the Scottish Human Rights Bill have anything to do with the Bill of Rights which was proposed by the UK Government?

The Human Rights Bill we are consulting on will only apply to policy areas devolved in Scotland.

The Human Rights Act 1998 is about civil and political rights protected by the ECHR. Only the UK Parliament has the power to change that Act.

The Scottish Government's Human Rights Bill is about the economic, social, and cultural rights in United Nations human rights treaties, as well as the right to a healthy environment. It is also about specific protections for women, disabled people, and people and groups who experience racism.

SECTION TWO – WHAT WILL BE IN THE HUMAN RIGHTS BILL?

This section describes the treaties and rights. It also explains how we will bring them into law in Scotland.

The Human Rights Bill will bring four international human rights treaties into law in Scotland, introduce a new right to a healthy environment, and include measures to ensure those rights apply to everyone equally. It will include specific rights for women, disabled people and people and groups who experience racism.

The International Covenant on Economic, Social and Cultural Rights (ICESCR)

This treaty is about ensuring people have a standard of living that reflects their human dignity.

It sets out everyone's right to an adequate standard of living, including access to adequate food, housing, and clothing.

The ICESCR also contains rights to the highest attainable standard of physical and mental health, to education, to take part in cultural life and to enjoy the benefits of scientific progress.

All these rights should be delivered equally, without discrimination.

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

This treaty sets out how everyone can enjoy their human rights equally, regardless of their race, colour, descent, or national or ethnic origin.

Governments who agree to it must take actions to end racial discrimination, to end incitement to racial hatred, and to combat prejudices.

Governments must also promote tolerance and friendship among different national, racial, or ethnic groups.

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)

This treaty is about equality between women and men.

Governments who agree to it must make sure there are protections in place for women in relation to pregnancy and maternity, in family planning, rural living, trafficking and prostitution, and around marriage and family life.

It requires governments to work to fulfil the human rights of women and girls, end

discrimination against women and take action to change cultural practices that harm women and girls.

The Convention on the Rights of Persons with Disabilities (CRPD)

This treaty is about how disabled people face barriers to their rights.

Governments who agree to it should work to make sure people with disabilities can enjoy their human rights and live with dignity.

They should take actions to remove barriers so that the rights of disabled people are respected.

The actions they take should be informed by principles to make sure disabled people can take part fully in society and be respected and accepted.

The Right to a Healthy Environment

The human right to a healthy environment was recognised by the United Nations General Assembly in 2022.

A right to a healthy environment will help us place the environment at the heart of our decisions so that the environment we create for ourselves, and for people in the

future, is one where human rights can still be realised.

By building this right into the Bill we will help to deliver a safer climate, healthier ecosystems and biospheres, and reduce the number of toxic materials released into our environment.

How will these treaties be brought into Scots law?

Bringing these treaties into Scots law is a challenge because each treaty is different but also overlapping.

Some of the rights they contain apply to everyone, and some only apply to women, disabled people, or people and groups who experience racism.

They were written at different times over many years, and so some have more detail than others in saying what governments should do to make the rights within them real for people.

The treaties include areas reserved to the UK Parliament.

All of this affects how we could set out the treaties in the Human Rights Bill. There are different ways to do this. The consultation refers to our approach to doing this as our preferred 'model of incorporation'.

Our approach is to incorporate the rights in all four treaties into the Bill using the same wording as in the treaties themselves. We would remove any text covering areas reserved to the UK Parliament.

This will ensure we follow the treaties as closely and as clearly as we can.

We want to make sure that public bodies and private organisations delivering public services in Scotland will clearly understand what they need to do to make people's rights real in practice.

Taking this approach means that in any future legal cases about rights in the Bill, courts will use the text of the Bill and can also look at guidance from international best practice, to understand what the rights are meant to achieve in practice.

Who are duty bearers under the Bill?

The term 'duty bearers' describes the organisations in Scotland who are expected to give effect to rights and duties included within the Bill.

The Scottish Government itself is a duty bearer. Other examples of duty bearers include your local authority or health board, your school, and care providers.

Some public services are delivered by private companies. We want the duties to apply to companies when they carry out those services. This includes when they provide services under a contract with a public body.

What will duty bearers in Scotland have to do under the Bill?

We want to make sure duty bearers in Scotland are better prepared and able to respect, protect, and fulfil the rights in the framework.

Initially, they will have to show how they have built human rights into the decisions they make. This is described in our consultation as the 'initial procedural duty'.

It is 'initial' because it is the first duty that will be brought into force under the Bill once it has become an Act.

It means that duty bearers must be able to show they have thought about the rights in the Bill when making decisions and delivering services.

This duty is meant to ensure new laws, policies, plans, and budgets set by duty bearers take account of people's human rights.

The Bill will also create a duty to comply for some of the rights, to be brought in at a later point and after the initial procedural duty.

Once this duty begins, duty bearers will then have to use their resources to meet a basic minimum standard in delivering the rights, and work towards meeting the rights fully over time.

If they don't do this, they can be challenged through complaints mechanisms or the courts.

These duties will be brought into force in law at different stages. The consultation refers to this as 'stages of commencement of the duties'.

This is meant to ensure duty bearers have time to prepare to meet their new duties under the Bill. For example, they might need to train their staff, create new processes to help inform decision-making, or change procedures such as how they respond to complaints.

The Bill will also require duty bearers to report on the actions they have taken to realise the rights in the Bill and show their plans for improving rights in the future. The consultation refers to this as a 'reporting duty'.

How will duty bearers and the courts make sense of the rights?

We want the principle of human dignity to be the core value for understanding and interpreting the rights in the Bill.

Human dignity is a term used by human rights experts. It refers to the inherent equal worth of every person and access to their rights which reflects this.

Using this approach will allow courts and duty bearers to use human dignity as a guide to understand the rights in the Bill. This is referred to in the consultation as an 'interpretative provision'.

How does devolution affect the Bill?

The way we bring the treaty rights into Scots law must account for devolution. The Scottish Parliament can only make laws in areas that are not specifically reserved to the UK Parliament.

For example, healthcare and education policy are devolved to the Scottish Parliament. Defence and immigration are areas reserved to the UK Parliament.

The Scotland Act 1998 reserves the power to make laws on most equality matters to the UK Parliament. Our consultation refers to this as the 'equal opportunities reservation'.

This means there are limits on how the Scottish Parliament can make laws to prevent unequal treatment between people based on sex, race, disability, and other protected characteristics.

This limits what we can do for some of the rights in the international treaties we want to bring into Scots law.

We propose drafting our Bill carefully so that we work around these areas reserved to the UK Parliament.

We believe this will help ensure strong protections for human rights within the limits of our devolved settlement.

How will we ensure equal access to the rights in the Bill?

A key goal we have for the Bill is that everyone has equal access to the rights it includes. We want to achieve this through an 'equality provision'.

The provision will help ensure equal access to the rights in the Bill for everyone.

A Human Rights Scheme

We aim to place a duty on Scottish Ministers that will require them to report on actions they take, or plan to take, to implement the Bill. It will be

called the 'Human Rights Scheme'.

It will be published regularly so that people can check what Scottish Ministers are doing to make the rights in the Bill real in practice.

It will function as a guide for overall implementation by making sure that Scottish Ministers report on the different areas of the human rights framework the Bill will create.

This will include work to increase public participation in decision-making, and work to raise awareness about human rights.

It will also include plans for building the capacity of duty bearers to make rights real, improvements to how human rights are monitored and reported on, and work to build human rights into how budgets are set.

SECTION THREE – WHAT WILL THE BILL CHANGE ABOUT DAILY LIFE?

This section of the guide describes what changes the Bill will lead to in daily life.

Bringing new rights into Scots law should make a real difference to daily life over time. Making rights real requires a whole host of actions, from improvements in public services, to better access to justice, and a stronger human rights culture.

Progressive Realisation of Economic, Social and Cultural Rights and the Right to a Healthy Environment

Once the duty to comply has commenced, duty bearers will have to comply with certain rights. These are likely to be the economic, social, and cultural rights in the Bill as well as the right to a healthy environment.

We are considering how best to treat rights from the other treaties in a way which works clearly and accounts for devolution.

Making these rights real will require duty bearers to progressively realise these rights over time.

To do this, duty bearers will have to show they are taking steps to improve access to the rights by

using as much of their resources as they have available to do so. They will also have to show they have not taken deliberate actions to reduce the enjoyment of the rights.

Delivery of Minimum Core Obligations

As well as improving these rights over time, the Bill will require duty bearers in Scotland to deliver a minimum core of the rights.

This refers to the most basic minimum level of meeting the right to ensure everyone's life is lived with dignity.

A minimum core of rights protection aims to ensure that people who are most disadvantaged in society have their most basic needs met.

The Taskforce recommended that the people of Scotland should be involved in working out what our minimum core standards should be.

To achieve this, the Bill proposes that a public process is set up so that people can tell us their views on setting the minimum standards for economic, social, and cultural rights as well as the right to a healthy environment in Scotland.

Access to Justice and Delivering Effective Remedies

We access our human rights every day. For example, using public services such as the NHS is how we access our right to adequate health. If something goes wrong and we are let down, we can be at risk that our rights are not upheld.

Our consultation sets out proposals to ensure access to justice and remedies for people. Our aim is for the Bill to deliver improved access to justice for human rights in Scotland. This includes making sure effective remedies are available when a right is not being met.

This means we want the options available to people when things go wrong to be easier, quicker, and more effective than they are now.

When things do go wrong, we want issues to be resolved as early, quickly, and effectively as possible without going to court, where that is possible and if it's the best thing to do.

We are also looking at what improvements might be made around people's access to information about rights, access to advice and access to advocacy.

We are open to views on the most effective means of supporting people to access the rights in the Bill.

Our key aim is to improve access to justice in the context of the Bill and ensure that services are equipped to provide the support rights-holders need.

We are also looking at how we could improve front-line complaints handling mechanisms of public bodies so that they can deal with complaints related to the Bill.

We are also looking to develop complaints handling for bodies that deal with escalated complaints, such as the Scottish Public Services Ombudsman (SPSO) so that they too can deal with complaints related to the Bill.

If issues do need to go to court, we want to help reduce the burden this places on people seeking to resolve their issues.

It should be easier for issues that affect many people to be identified as a common problem and resolved in such a way that the issue stops happening again to other people.

The consultation also asks for views on new powers for the Scottish Human Rights Commission (SHRC).

The SHRC is an independent body accountable to the Scottish Parliament. It promotes human rights in Scotland and encourages best practice in relation to human rights.

We want to make sure the SHRC can play a key role in protecting and realising human rights.

We also want to create a clearer human rights remit for scrutiny bodies with an interest in human rights, such as some inspectorates and regulators, so that they can ensure the rights in the Bill are built into public services.

Improving the Human Rights Culture in Scotland

Making rights real requires us all to work together towards building and nurturing a human rights culture in Scotland.

Our aim is for the Bill to help build a better human rights culture across different sectors of society so that public bodies and private bodies delivering public services, as well as all individuals and groups, share the common goal of realising the human rights of everyone in Scotland.

To help build this culture, we propose using a multi-institutional approach.

This means bodies in Scotland with roles delivering public services are united in placing human rights at the heart of their decision-making.

It also means that the Scottish Parliament has a key role to play in checking that new laws properly protect and advance our human rights.

A stronger human rights culture will help tackle the sense people have of needing to 'fight against the system' to access their rights.

Achieving this will require a range of actions including providing guidance for duty bearers, improving human rights education, public campaigns to raise awareness of new rights and duties, and training for public officials.

It will also require improved access to information on human rights, creating more chances for the public to have a say in decisions about the services they use to access their rights, and better accountability when things go wrong.

Building a better human rights culture in Scotland is about empowering people to know their rights, know how to claim their human rights, and to be supported by duty bearers to do so.

SECTION FOUR – WHAT HAPPENS NEXT?

What happens during the consultation?

The consultation will run for 16 weeks. It will close on 5 October 2023. Everyone with an interest is encouraged to take part.

During the consultation period, the Scottish Government will take steps to make sure as many people as possible can learn about the consultation and be supported to take part.

This will include through some regional discussion events across Scotland.

We will also meet with rights groups who face historic and ongoing barriers to having their voice heard in public consultations.

We will publish information packs so that community groups can hold their own discussions and submit a group response to the consultation if they wish.

Across all this work we will make good use of accessible resources so that as many people as possible are able to get involved.

For more information, please visit the Human Rights page on the Scottish Government's website at

<https://www.gov.scot/policies/human-rights/>.

What happens after the consultation ends?

Once it has closed, the Scottish Government will use the results to inform the drafting of the Human Rights Bill.

We are aiming to introduce the Bill to the Scottish Parliament in time for it to be voted on before the end of the current parliamentary session in 2026.

Once in the Parliament, the Bill will be examined closely by Members of the Scottish Parliament (MSPs). The parliamentary process could lead to changes to the final wording and content of the Bill.

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