

A Human Rights Bill for Scotland

Analysis of consultation responses

This is an independent analysis by Alma Economics commissioned by the Scottish Government

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About the authors



Alma Economics combines unparalleled analytical expertise with the ability to communicate complex ideas clearly.

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Executive Summary

The Scottish Government ran a written consultation between 15 June 2023 and 5 October 2023, seeking views on a Human Rights Bill for Scotland (referred to as 'the Bill'). Alma Economics was commissioned by the Scottish Government to analyse the responses to that consultation. This report provides an independent summary and, as such, does not represent the Scottish Government's response.

The consultation posed a total of 52 questions, including 10 closed questions (e.g. receiving yes / no / don't know responses) and 42 open-text questions (receiving free text responses). Questions addressed proposals for the Human Rights Bill and its implementation in its entirety, soliciting views on various aspects of the Bill, which were divided into six parts. The six parts were: (i) incorporating the treaty rights, (ii) recognising the right to a healthy environment, (iii) incorporating further rights and embedding equality, (iv) the duties, (v) ensuring access to justice for rights-holders, and (vi) implementing the Bill as an Act.

Responses to the consultation were accepted through four formats, including (i) the Citizen Space online platform, (ii) email (including PDF attachments, Easy Read question responses and child-friendly version responses), (iii) post (hard copy responses, which could be scanned as PDFs), and (iv) by participating in consultation public engagement events (outputs from these events are captured in seven reports that inform this consultation analysis report).

A total of 397 responses were received, 277 of which were submitted through Citizen Space and 120 were sent via email. In addition, a total of 7 Scottish Government-led public consultation events with breakout discussion sessions were held, with over 150 attendees in total. The public consultation events hosted by the Scottish Government took place between 27 July 2023 and 19 September 2023. Respondents included individuals, local councils, civil society organisations, public sector organisations (including non-departmental public bodies (NDPBs)), academic institutions, legal professionals, private bodies, and third-sector service delivery organisations.

Parts 1-3 of the consultation did not include any consultation questions, so the analysis of responses begins from Part 4. Part 1 presented an overview of Scotland's human rights journey by first presenting the context of international and UK human rights legislation, as well as human rights in Scotland within the context of devolution. Part 2 introduced the high-level objectives for the Bill. Part 3 presented an overview of the rights and the corresponding international treaties that the [National Taskforce for Human Rights Leadership](#) recommended be incorporated into Scots law by the Bill.

Descriptive quantitative analysis was conducted on the closed-format questions, and thematic analysis was used to synthesise themes extracted from open-text questions and reports from public consultation events. Recurrent emerging themes in open-text questions were identified and are outlined below for each part of the consultation.

Key findings

Incorporating the Treaty Rights

Part 4 of the consultation focused on the proposed incorporation of the four United Nations (UN) human rights treaties in the Bill. These treaties are: The International Covenant on Economic, Social and Cultural Rights (ICESCR),¹ The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),² The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)³, The Convention on the Rights of Persons with Disabilities (CRPD).⁴

The Bill will seek to incorporate, insofar as possible, the rights described in the four treaties and to include and recognise the right to a healthy environment (which does not derive from a specific treaty) while also addressing the wider recommendations of the [National Taskforce for Human Rights](#). The Bill intended to operate clearly within devolved competence. Since the concept of human dignity is to be put at the heart of the Bill, the respondents were asked for their opinion on dignity being considered by courts in interpreting the rights in the Bill and making dignity a key threshold for defining the content of Minimum Core Obligations (MCOs).⁵ Additionally, respondents were asked about their views on the international law, materials, and mechanisms to be included within the proposed interpretative provision, which is expected to ensure duty-bearers, courts and tribunals can interpret the rights in light of international human rights standards. Respondents were asked about their views on the proposed incorporation model and whether there are any rights in the four UN treaties which should be treated differently.

The common theme that emerged in this part of the consultation was the respondents' support for the proposals regarding the concept of human dignity as well as some elements of the model of incorporation (there was support for the proposed treaties and rights to be incorporated and support for the proposed direct treaty text approach, but there was some disagreement on the proposed duties and

¹ According to the [consultation document](#): 'Ratified by the UK in 1976, the ICESCR sets out the obligations on states (those countries who have signed and ratified the treaty) to guarantee the economic, social and cultural rights contained in the treaty, which should be exercised without discrimination as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

² According to the [consultation document](#): 'Ratified by the UK in 1969, the ICERD requires states to pursue by all appropriate means a policy of eliminating racial discrimination in all its forms and to promote understanding among all races.'

³ According to the [consultation document](#): 'Ratified by the UK in 1986, the CEDAW places obligations on states aimed at eliminating discrimination against women.'

⁴ According to the [consultation document](#): 'Ratified by the UK in 2009, the CRPD sets out the human rights of disabled people and the obligations on states to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.'

⁵ MCOs '[set a minimum threshold \[in delivering a set of rights\] which must be always upheld \[...\] irrespective of resources](#)'.

the differential treatment of the four treaties). The respondents agreed with the proposals regarding dignity, and they suggested that courts should be required (not only allowed) to consider the principle of dignity during their decision-making. At the same time, though, the request for further clarity was common among the responses to these questions. Respondents asked for clarity and guidance regarding the definitions of 'human dignity' and 'key threshold' (for defining the content of Minimum Core Obligations), as well as the intended operation of the incorporation model.

Another overarching theme related to the proposals around the duties in the Bill. Respondents commonly supported the proposals for an initial procedural duty⁶ for public bodies, and subsequently moving to a duty to comply⁷ (discussed in further detail in Part 7), which should supplement and not replace the procedural duty, according to the respondents. A commonly raised request among the responses was for a stronger duty to comply on public bodies that will be applied to all four treaties, not only to ICESCR and the right to a healthy environment. Additionally, there was an overarching request for particular attention to safeguarding the rights of certain groups of people, with disabled people being most frequently mentioned. Other groups of people with protected characteristics (such as children and young people, older people, and women) were frequently mentioned, along with vulnerable groups like people experiencing homelessness, people living in deprivation, people currently in care and care experienced people, or people in prison.

Recognising the Right to a Healthy Environment

Part 5 of the consultation focused on the recognition and inclusion of a right to a healthy environment in the Human Rights Bill, as well as the substantive and procedural aspects of this right. Questions on this part sought the respondents' views on (i) the proposed definition of the environment and the proposed content of a right to a healthy environment, (ii) the proposed approach to safeguarding healthy and sustainable food through the ICESCR, and (iii) the consultation's approach to protecting safe and sufficient water.

Respondents overall agreed with the proposed formulation of both the definition of the environment and the right to a healthy environment. Across various questions, respondents suggested the inclusion of additional substantive elements in the right to a healthy environment. Among those, the most commonly raised were healthy and safe food, clean water and adequate sanitation. A proportion of respondents also offered criticisms and comments for improving this part of the proposed Bill more generally. The most common point was a general sense that the consultation is unclear or vague in terms of (i) the language used, as some respondents urged

⁶ According to the [consultation document](#), the initial procedural duty aims to integrate the rights outlined in the Bill into decision-making processes and the delivery of services, ensuring that duty-bearers take them into account.

⁷ According to the [consultation document](#), the duty to comply focuses 'on compliance with the right' and will ensure that 'specific rights-respecting outcomes are fulfilled by duty-bearers'.

the need for both a clearer definition for specific terms used in the right to a healthy environment and in the definition of 'environment', as well as for more actionable and enforceable language that sets clear requirements, (ii) presenting specific plans for enforcing the rights, including guidance, investment in infrastructure and capacity building, as well as (iii) setting up a clear accountability structure, thus improving access to justice.

Respondents also largely agreed with the proposed approach to including a right to safe and sufficient water as a substantive aspect of the right to a healthy environment, albeit they urged the Scottish Government to also include adequate sanitation as part of safe and sufficient water in light of concerns regarding sewage pollution. On the other hand, the only area of considerable disagreement with the consultation proposals was the proposed approach to healthy and sustainable food. Respondents overwhelmingly supported including healthy and sustainable food as a substantive aspect of the right to a healthy environment across questions in this Part.

Incorporating Further Rights and Embedding Equality

Part 6 of the consultation focused on incorporating further rights into the Bill and employing approaches to ensure the delivery of the rights in the Bill to everyone without discrimination. Questions in this part centred around exploring the best possible ways to (i) signal that the Human Rights Act 1998 (and civil and political rights) form a core pillar of human rights law in Scotland and (ii) embed participation into the Bill framework. Another set of questions sought respondents' views on including an equality provision in the Bill, aiming to ensure equal access to rights for everyone while exploring the best way to define specific population groups and protect the rights of LGBTI⁸ and older people under the equality provision.

Regarding the question about signalling the Human Rights Act 1998 as a core pillar of human rights law, the key suggestion raised by consultation respondents was to integrate the Act into the implementation of the Bill, including its incorporation into guidance, public body training, any capacity-building initiatives, as well as information and awareness-raising plans for the Bill. Concerning the best way to embed participation in the Bill framework, the primary suggestion emerging from consultation responses was to include an explicit right to participation in the Bill while also ensuring participation in decision-making of those who are more at risk of or with lived experience of rights infringement.

Focusing on people who are more at risk of rights violations, particularly LGBTI and older people who are not protected by specific international treaties, was a major theme emerging from responses in this part of the consultation. Introducing an equality provision in the Bill framework that explicitly states specific population groups, such as LGBTI and older people, as well as disabled people and care

⁸ Whilst the term 'LGBTI' is used throughout the consultation document and this analysis report, we note that respondents may have used different terminology (e.g. LGBTQ+, LGBTQIA+, LGB) to reflect their own preferences or to describe a subgroup of LGBTI people.

experienced people, was commonly expressed by respondents. An overarching theme across this set of questions was the request for providing guidance and additional information to support the implementation of the Bill framework, defining terms such as ‘other status’ and specifying what population groups this covers. This would ensure that both duty-bearers and rights-holders are aware of and understand all human rights and relevant duties.

The Duties

Part 7 of the consultation centred on creating duties related to the rights in the Bill for those delivering devolved public functions. These duties seek to create a framework that better prepares and enables duty-bearers to respect, protect, and fulfil the rights of individuals in Scotland in line with international obligations. Respondents were asked for their views on who the duties should apply to and on the design of the proposed duties. Respondents were also invited to share their perspectives on aligning the right to a healthy environment with the way in which the consultation proposes treating the other economic, social, and cultural rights and on how duty-bearers can demonstrate compliance with the rights.

Respondents predominantly supported the proposed approach outlined in the consultation. They commonly agreed on the importance of demonstrating compliance through progressive realisation⁹ and minimum core obligations (MCOs) for economic, social, and cultural rights as well as applying these to the right to a healthy environment. However, some respondents called for the duty to comply to also apply to the equality treaties¹⁰, particularly when it comes to certain rights in the CRPD.

A call for guidance and support provided by the Scottish Government to duty-bearers was also prevalent in this section. Although this view was widespread throughout the entire section, respondents most commonly expressed this need when discussing the initial procedural duty, the duty to comply, the proposed reporting requirement and methods for demonstrating compliance. The need for further clarification on aspects of the proposed approach was also commonly expressed by respondents. They most frequently requested clarifications centred around who should be considered a duty-bearer, and how progressive realisation and MCOs are defined as terms. Following this, respondents also requested clarification on how progressive realisation and MCOs as methods to demonstrate compliance would work in practice.

Ensuring Access to Justice for Rights-Holders

Part 8 of the consultation document was focused on proposals that aim to ensure access to justice for rights-holders. A core aim of the Bill is to provide remedies to issues related to human rights that are accessible, affordable, timely, and effective.

⁹ Progressive realisation refers to the ongoing and gradual fulfilment of rights using maximum available resources.

¹⁰ “Equality treaties” refers to the shorthand for discussing ICERD, CEDAW and CRPD together.

Another core aim is to provide adequate protection of human rights that will minimise the need for escalated complaints and litigation.

In this part, respondents were asked about their views on the most effective ways of supporting advocacy and advice services. They were also asked about their views on the proposals regarding the front-line complaints handling mechanisms of public bodies. Part 8 of the consultation also requested feedback on the proposed changes to the remit of scrutiny bodies, including the Scottish Public Services Ombudsman (SPSO), and the respondents were asked about the proposed additional powers for the Scottish Human Rights Commission (SHRC) and the Children and Young People's Commissioner Scotland (CYPCS). The consultation asked for feedback on the proposals for the Bill's approach to 'standing' (that is, who has the legal right to raise an issue with the courts for judicial review) and assessing 'reasonableness'.¹¹ Finally, the respondents were asked about their views on existing judicial remedies, whether any additional remedies would be required, and what would be the most appropriate remedy in the event a court finds legislation incompatible with the rights in the Bill.

Support for the proposals was a major theme that emerged through the responses in this part of the consultation. This included the proposals regarding the complaints handling system, the proposed changes to the remit of scrutiny bodies and the SPSO, the additional powers for the SHRC and the CYPCS, and the proposed approaches to 'standing' and assessing 'reasonableness'. There was a common request for ensuring access to justice for certain groups of people, such as disabled people and women, among other vulnerable groups of people or people with protected characteristics. However, another overarching theme across the questions was the request for further clarity regarding the proposals, the expected impact or outcomes that such changes could have, and the way that the various public authorities and scrutiny bodies will interact under the Bill. In addition, a common theme that emerged through the responses was that adequate funding, resourcing, and training would be required for these proposals to be implemented successfully.

Implementing The New Scottish Human Rights Act

Part 9 of the consultation covered proposals for the implementation of the Human Rights Bill once its provisions come into force. It covered the Scottish Government's proposals for (i) adopting a sequential approach to implementation through an initial procedural duty followed by a duty to comply, (ii) establishing MCOs, (iii) establishing a duty for Scottish Ministers to publish a Human Rights Scheme, and (iv) enhancing parliamentary scrutiny of future legislation in relation to the rights in the Bill. The consultation also sought views on how to effectively build capacity across the public sector, foster information sharing and awareness raising, and establish an effective monitoring and reporting process.

¹¹ The [consultation document](#), considered an approach to assessing reasonableness that lowers the threshold for a decision-maker being found to have acted unlawfully.

Overall, respondents supported the Scottish Government's proposals for implementation of the Bill, including a sequential approach to implementation, adopting a participatory process in establishing MCOs, and placing a duty on Scottish Ministers to publish a Human Rights Scheme.

Respondents emphasised the importance of several elements for the effective implementation of the Bill. A key theme among responses to several questions was support for a participatory approach across implementation through the inclusion of and co-production with right-holders whose rights are most at risk and third-sector organisations. Respondents felt that the development of clear guidance in accessible and inclusive formats for both duty-bearers and rights-holders would support implementation and awareness raising. Finally, respondents felt that a clear accountability mechanism should be established in the Bill implementation process and that parliamentary scrutiny, the human rights scheme, and monitoring and reporting will support this aim.

Respondents also stressed areas where the proposals should expand as the Bill and implementation work continues to develop. Specifically, across questions, respondents highlighted the need for capacity building through the investment of resources in public services and third-sector organisations who are duty-bearers, as well as offering training, clear guidance and support. Respondents felt that this is particularly important given the current capacity and resource limitations faced by the public sector. Finally, respondents often felt that the plans for implementing the Bill were too vague and recommended that they should include specific timeframes, actions and plans.

1. Introduction

Human rights are the foundation of just and equitable societies, safeguarding the dignity and freedom of all individuals. The Scottish Government's commitment to introducing a new Human Rights Bill before the end of the 2023-24 parliamentary year will be a significant step forward in Scotland's ongoing efforts to strengthen and protect human rights.¹² At the core of the international understanding of human rights lie three foundational texts, collectively forming what is known as the 'International Bill of Human Rights'. The [Universal Declaration of Human Rights](#), adopted by the UN General Assembly in 1948, was the first international acknowledgement of universal rights, spanning civil, political, economic, and cultural domains. The [International Covenant on Civil and Political Rights](#) (ICCPR) and the [International Covenant on Economic, Social and Cultural Rights](#) (ICESCR) also form the International Bill of Rights, both signed and ratified by the UK.

The rights articulated in the International Bill of Rights were incorporated at a regional level through the European Convention on Human Rights (ECHR), which was ratified by the UK in 1951. The UK played a noteworthy role in developing the ECHR. The main rights protected by the ECHR include "[the right to life, the right to a fair hearing, the right to respect for private and family life, freedom of expression, freedom of thought, conscience and religion and the protection of property](#)". Subsequently, these rights were incorporated into UK law through the Human Rights Act 1998, empowering UK courts to address human rights cases. To supplement the Human Rights Act 1998, the [Equality Act 2010](#) was introduced to protect people from 'discrimination in the workplace and in wider society'.

The [Scotland Act 1998](#), which established the Scottish Parliament and its devolved powers, wove human rights protections into the Scottish legal framework. Notably, this Act allows for the overturning of Scottish laws that contravene ECHR rights and mandates Scottish Ministers to operate within the bounds of these rights. The establishment of the [Scottish Human Rights Commission](#) in 2008 further emphasises Scotland's enduring dedication to safeguarding human rights. In 2018, an independent [Advisory Group on Human Rights Leadership](#) was established to examine the impact of Brexit on human rights in Scotland. The Group suggested the establishment of a National Taskforce for Human Rights Leadership which, in 2021, made several [recommendations](#) to further protect human rights domestically. The Taskforce recommended the creation of a new statutory human rights framework for Scotland. The Scottish Government responded to the recommendations of the Taskforce by committing to introduce a new Human Rights Bill for Scotland during the current 2021-26 parliamentary session.

The [proposed Human Rights Bill](#) aims to 'bring internationally recognised human rights into Scots law'. It is proposed that the Bill takes a direct treaty text approach as it seeks to incorporate the ICESCR, the Convention on the Elimination of All

¹² Introducing a Human Rights Bill has been confirmed in the Scottish Government's Programme for Government 2023-2024.

Forms of Discrimination Against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the Convention on the Rights of Persons with Disabilities (CRPD). The Bill aims to enhance existing human rights and equality protections by using the devolved powers of the Scottish Parliament to ensure that all rights-holders in Scotland can understand and claim their international human rights domestically. To achieve this, the Bill seeks to create a clear, robust, and accessible legal framework that places a set of specific duties on those delivering devolved public functions. Among other goals, the Human Rights Bill aims to guarantee the enjoyment of rights without discrimination through an equality provision, recognise the right to a healthy environment and provide accessible avenues to remedy when rights are not upheld. It also includes specific rights for women, disabled people and people experiencing racism. The Bill hopes to foster a human rights culture, placing rights at the centre of decision-making so that everyone can live with dignity.

To inform the development of the Bill, the Scottish Government conducted a [consultation](#) that sought to inform the public about the proposed Bill and provide an avenue for feedback. The consultation launched on 15 June 2023 and ended on 5 October 2023. It posed 52 questions with a mixture of open and closed-answer questions. There were 7 Scottish Government-led public consultation events carried out, each with two breakout discussion sessions.

Rigorous independent analysis of responses to consultations is central to evidence-based policymaking and will assist the Scottish Government as it continues to develop proposals for a new Human Rights Bill. The aim of this project was to conduct a transparent, rigorous, and systematic analysis of valid responses to the Human Rights Bill for Scotland consultation. This report is a balanced and impartial presentation of the analysis, ensuring that the full range and nature of views are presented.

2. Methodology

The consultation opened on 15 June 2023 and closed on 5 October 2023. Response collection was conducted through the online Citizen Space portal. Respondents could submit a response to the consultation via the following means: (i) via the Citizen Space online platform, (ii) email (including PDF attachments, Easy Read question responses, and child-friendly version responses), (iii) post (hard copy responses would be scanned as PDFs), and (iv) by participating in a public consultation event.

The consultation consisted of 52 questions, divided into two categories: 10 closed questions, which prompted multiple choice answers (e.g. yes/no or agree/disagree), and 42 open-text questions, inviting free text responses.

These questions were asked across six parts of the consultation document:

- Incorporating the Treaty Rights;
- Recognising the Right to a Healthy Environment;
- Incorporating Further Rights and Embedding Equality;
- The Duties;
- Ensuring Access to Justice for Rights-Holders;
- Implementing the New Scottish Human Rights Act.

A total of 397 responses were received, 277 directly via Citizen Space and 120 separately via email (in some cases including PDF attachments).

Answers were combined into a final Excel file used for subsequent coding. Only email or PDF responses that explicitly addressed consultation questions were added to respective Excel sheets per question. A total of 315 unique submissions answering the consultation questions were reviewed accordingly. A separate analysis sheet was added for email responses that did not directly answer the consultation's questions, as well as for general comments about the consultation contained in email responses and were coded separately as "unstructured responses". Reports from public consultation events were also coded separately.

All responses were reviewed in full. Before turning to the qualitative analysis of consultation responses, we first analysed the responses to the closed questions, calculating the total counts for each available option within each closed question, as well as the respective percentages in relation to the total number of responses received for each corresponding closed question. We also produced charts and tables to better present the distribution of responses to each closed question. All charts have Alt Text to enable full accessibility.

Open-text questions were categorised using a thematic analysis whereby responses were assigned key themes and coded accordingly. This qualitative research method (Braun and Clarke 2006) involved manually reviewing each

response to identify common themes; connecting these themes to specific questions of the consultation to develop a narrative for each theme; cross-referencing the emerging themes to ensure the accuracy of the analysis; identifying responses that did not align with the general emerging themes but provided additional insights. These insights were included in the analysis, even though they were not raised by many respondents.

This report lists the number of responses to each question at the beginning of each section. The main body of this report follows the consultation's question order, and themes for each open-text question are presented in order of frequency (descending by the number of respondents mentioning the respective theme). The three most frequently mentioned themes are presented in full, followed by a summary of other emerging themes.

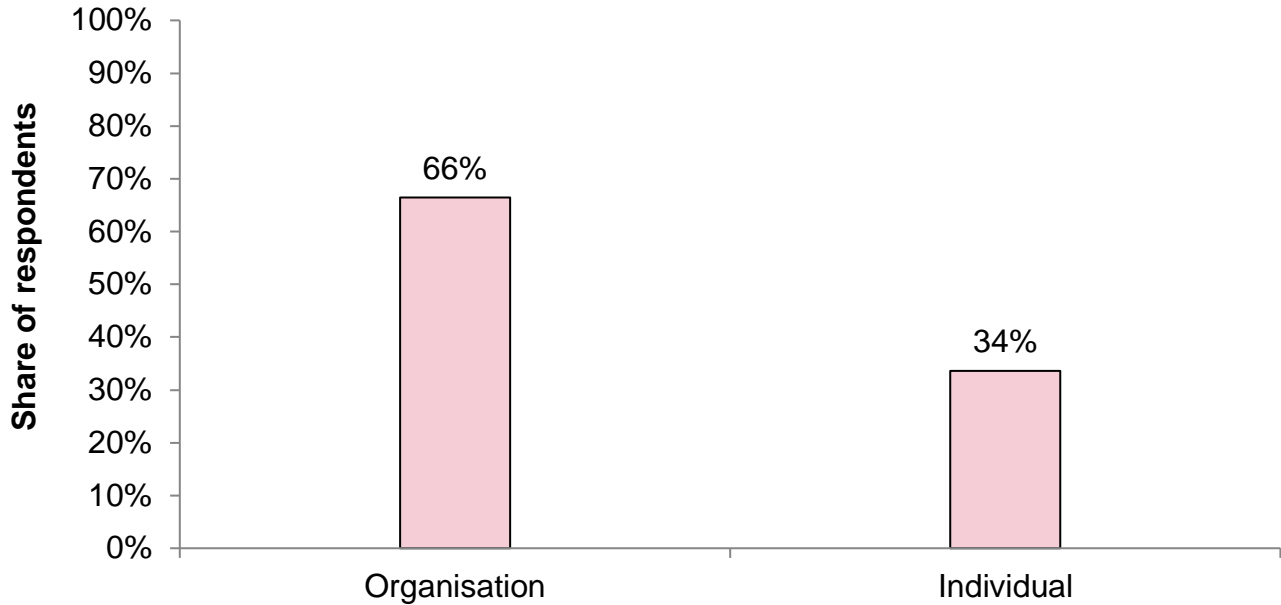
While the analysis of open-text questions is qualitative and cannot be quantified, a general rule of thumb was applied to indicate the frequency of emerging themes using specific phrases, which could provide an estimate of the number of respondents discussing each respective theme. In particular:

- “a small number” indicated up to 5 respondents.
- “a few” indicated around 6-9 respondents.
- “a small minority” indicated more than 9 respondents but less than 10%.
- “a significant minority” indicated between approximately 10-24% of respondents.
- “a large minority” indicated more than a quarter of respondents but less than half.
- “a majority” indicated more than 50% of those who commented on the question.

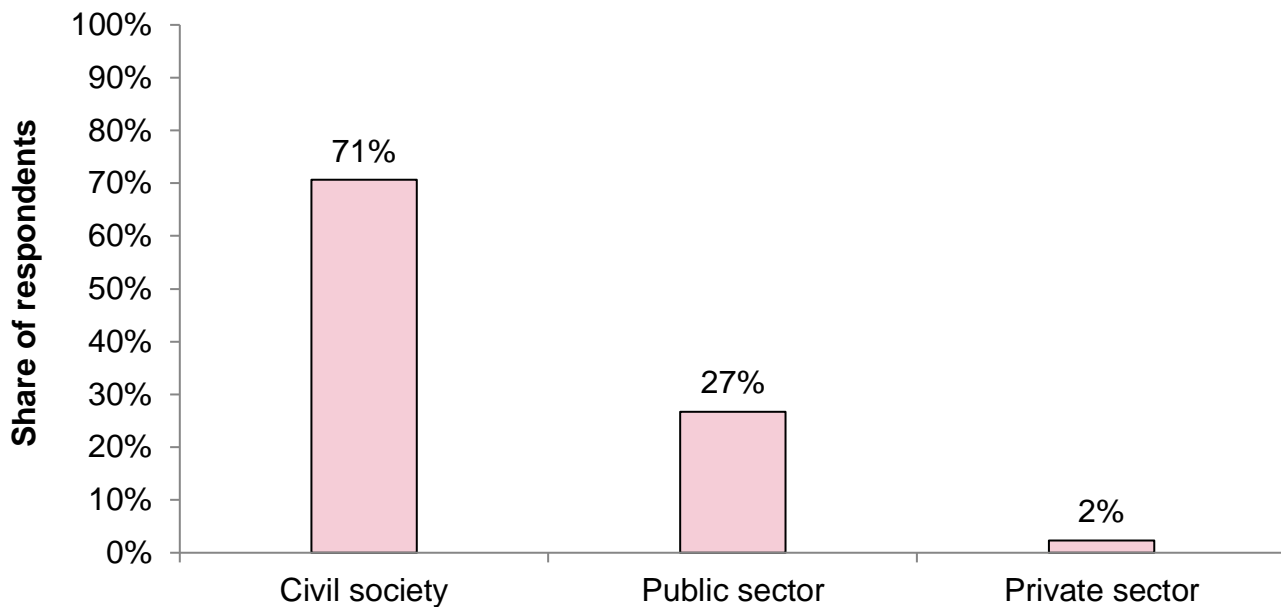
Respondents were self-selecting and may not represent wider public opinion across Scotland. Where appropriate, individual quotes have been used to illustrate the narrative around specific themes, with quotes selected only from respondents who provided permission for their views to be published, and any potential identifiers (such as the name of a specific organisation) removed in cases where confidentiality restrictions applied. Typos in selected quotes have been corrected to ensure uninterrupted readability of shared views.

Respondent characteristics

A total of 397 respondents participated in this consultation, with 264 (66%) representing organisations and 133 (34%) being individual respondents.



Among the 264 responses from organisations, 71% were classified as civil society organisations, 27% were public sector organisations, and 2% were private sector organisations.

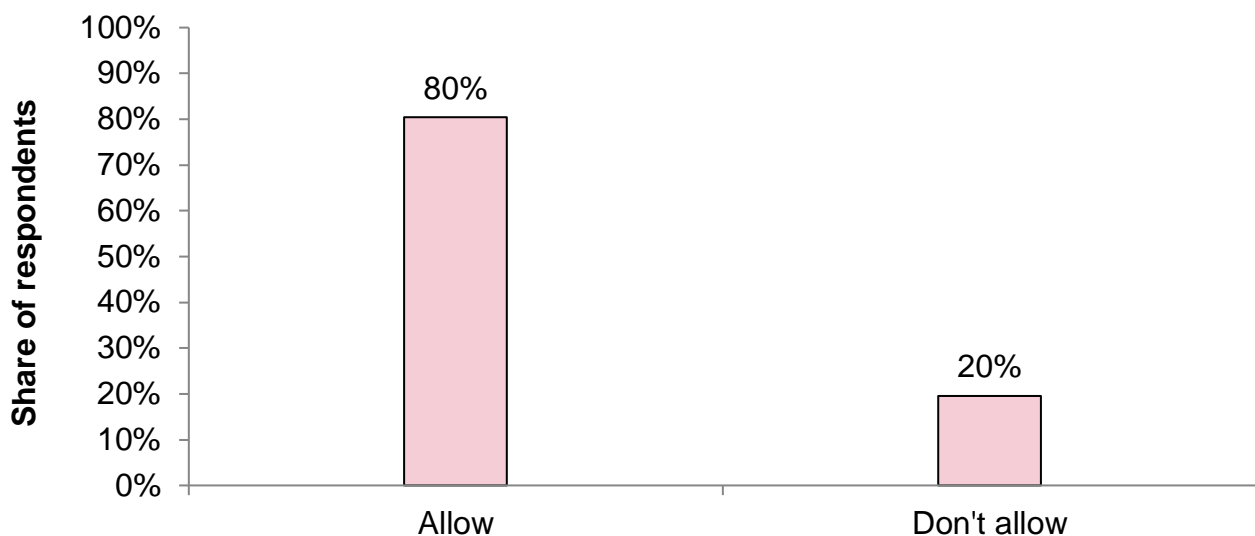


3. Views on: Incorporating Treaty Rights

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?

Closed question

There were 240 responses to this question.



The majority of respondents (80%) supported the proposal to allow for dignity to be considered by courts in interpreting the rights in the Bill. Conversely, 20% of respondents were of the opinion that dignity should not be allowed to be considered by courts.

Open question

There were 220 responses to this question in the consultation.

Support for the proposal

The majority of the responses to this question expressed views that were supportive of the proposal to allow for dignity to be considered by courts in interpreting human rights in the Bill. The majority of the responses that supported the proposal came from civil society organisations, with a significant minority coming from public or private organisations. A significant minority of the individuals who responded to this question also mentioned this theme.

It was highlighted that the concept of 'dignity' is central and essential in human rights, and the United Nations (UN) human rights framework was extensively referred to argue in favour of the proposal. The Universal Declaration of Human Rights along with the ICESCR, the ICERD, the CRPD, and the CEDAW were most frequently suggested as potential references that could be used to define 'dignity' in the Bill. In addition, the jurisprudence of the European Court of Human Rights and

the European Committee of Social Rights was described as a potentially useful source for the Scottish Courts. It was also mentioned that this proposal is in alignment with Scottish Government commitments and strategies like the 'Building a new Scotland' series of papers or the 'Getting it right for every child' (GIRFEC) commitment.

Out of the respondents who expressed their support for the proposal, the majority pointed out that the courts should be required, not only allowed, to consider dignity (and other values like the universality and indivisibility of human rights) in interpreting the rights in the Bill. The rationale behind this suggestion was that dignity is a fundamental value of human rights and taking it into consideration is something that should not be left to the discretion of the courts. According to the respondents, this mandatory consideration could provide a consistent safeguard for individuals' dignity and reinforce the principle in legal practice.

A few respondents who expressed their support for the proposal urged the Scottish Government to take into consideration how the concept of dignity has been incorporated into human rights legislation of other countries. The cases of South Africa, Germany, Switzerland, Finland, Colombia, and Brazil were mentioned as examples.

"Dignity is a central concept in international human rights law and is explicitly referenced in the International Covenant on Social, Economic and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Allowing courts to consider dignity when interpreting the rights in the Bill would therefore be in line with international standards and the United Nations (UN) human rights framework." (Public Law Project)

"We strongly support the proposal to allow for dignity to be considered by courts in interpreting the rights in the Bill. Indeed, we would strongly urge that courts should not simply be allowed to consider dignity but should, in fact, be required to do so, such is its fundamental importance to the understanding and interpretation of human rights. The concept of dignity is explicitly referenced in each of the four treaties that the Human Rights Bill will incorporate, in addition to being referenced in the UNCRC and as such, inclusion of the concept of dignity on the face of the Bill in this way would ensure alignment with these treaties. [...]" (Organisation – Other)

Need to clearly define the term 'dignity'

The next most prevalent theme among the responses to this question was the view that the concept of 'dignity' is very subjective and open to interpretation, and it must be clearly defined before allowing courts to take it into consideration.

The majority of respondents mentioning this theme were in favour of the proposal and suggested that a purpose clause defining the term should be included in the

Human Rights Bill. It was pointed out that vagueness cannot be acceptable if dignity is to be treated as a right in the context of the Bill. According to the respondents' point of view, a statutory requirement for the Scottish Courts to interpret the term without any directions could lead to its inconsistent application and public confusion. A clear and comprehensive purpose clause could offer the necessary guidance and reduce unfairness. The purpose clause was regarded as an important measure to ensure that all interested parties are aware of the definition of dignity and that there is a wide understanding of it and how the concept is applied in various contexts.

"[...] dignity means different things to different people, thus, there will be differing expectations of how underpinning ideas of human dignity should support instances of interpretation of rights in the statute. Taking this into account, we support the call for clarity around the legal definition of 'dignity' in this Bill. (LGBT Health and Wellbeing)

"However, dignity on its own is subjective. Therefore, if using this principle, there must be a clear and complete purpose clause to reduce any unfairness in situations. Courts should be required to consider dignity (and any other principles) when interpreting these rights at all times. This mandatory consideration, and clear explanation, will provide a consistent safeguard for disabled people's dignity." (Organisation – Other)

More information about this theme can be found in Chapter 9, 'General themes of the consultation responses'.

Safeguarding the rights of various groups of people

The next most prevalent theme was about the interconnectedness between dignity and the rights of various groups of people (e.g. people with protected characteristics and vulnerable groups of people). A significant minority of the respondents mentioned that there should be more consideration for the dignity of people with different protected characteristics, especially when it comes to accessing the courts and justice system. The respondents made a specific mention of the need to protect the dignity of disabled people or older people. The rights of children, young people and their families were mentioned with a similar frequency, followed by the rights of LGBTI populations and women. It was mentioned that people in those groups face a higher risk of unequal treatment and may receive treatment by the courts (or other services), which does not always ensure their dignity. However, according to the responses, some people with protected characteristics might exhibit a certain degree of tolerance to unfair treatment as a coping mechanism against discrimination or might be simply unable to react. For these reasons, the courts should show more consideration for the dignity of people with protected characteristics so that not only people with the necessary confidence or social capital to challenge undignified treatment are able to do so.

More information about this theme can be found in Chapter 9, 'General themes of the consultation responses'.

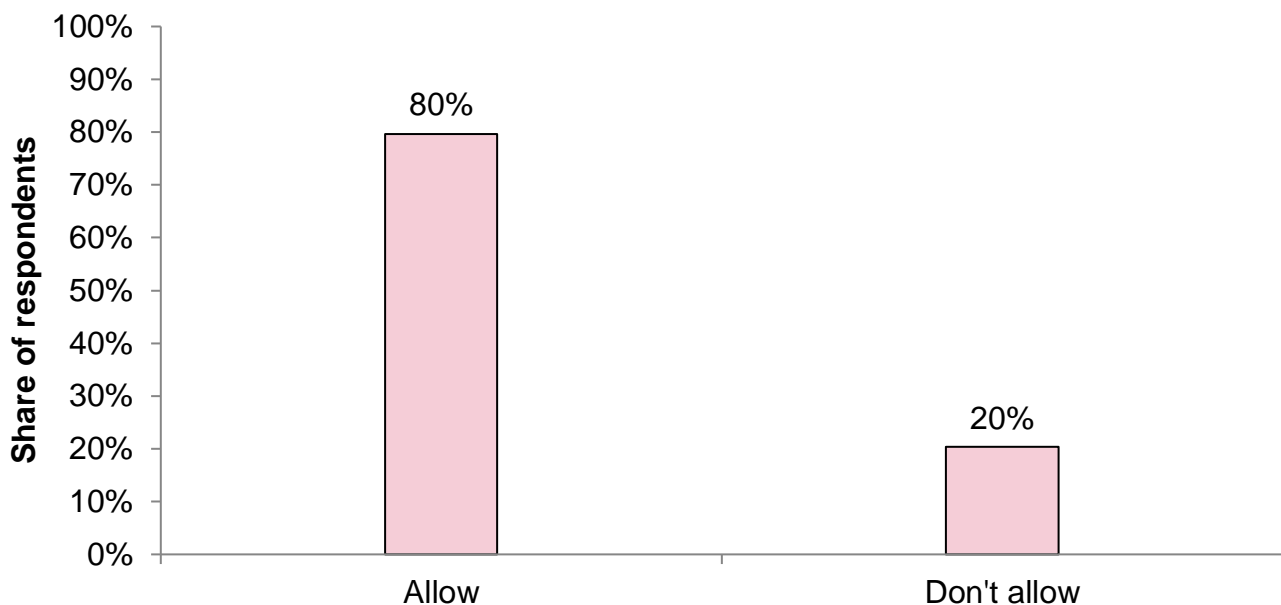
Summary of other emerging themes

Apart from the most frequent themes, there were a few other emerging themes. The most frequent among them was the recommendation of a significant minority of the respondents to allow courts to consider dignity in combination with other basic human rights principles like universality, interdependence, and indivisibility. It was also highlighted that intersectionality is a concept that should be taken into consideration along with dignity. Another emerging theme included concerns about or disagreement with the proposal that a significant minority of respondents expressed. There were several reasons mentioned by the respondents explaining their stance, with the most common ones being that the proposal is not necessary, it can lead to duplicate legislation, and implementing it would be an inefficient use of public resources. In addition, a small minority of the respondents to this question expressed concerns about the potential misuse or abuse of the provision included in the proposal (for instance, about excessive litigation or one individual's appeal to dignity being used to undermine the dignity and inherent value of others).

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)?

Closed question

There were 236 responses to this question.



Most respondents to this question (80%) answered that dignity should be a key threshold for defining the content of MCOs. A significant minority of respondents (20%) held the opposing view.

Open question

There were 213 responses to this question in the consultation.

Support for the proposal and suggestions to exceed MCOs

The majority of the respondents to this question expressed their support for the proposal to allow for dignity to be a key threshold for defining the content of MCOs. This theme was mostly raised by civil society organisations with only a few responses coming from public organisations and individuals.

The main argument of the respondents was that the MCOs set a baseline of human rights protection, below which the realisation of rights should never slip, and dignity is a key measure for examining whether human rights are being met. For that reason, they found it sensible to allow for dignity to be a key threshold for defining MCOs. It was highlighted that MCOs should be just a bare minimum of human rights protection, not a ceiling or a goal, and that duty-bearers should set their standards at a much higher level. A significant minority of the respondents who supported the proposal mentioned that it should be required, not only allowed, for dignity to be a key threshold.

A significant minority of the proposal's supporters expressed their views on how dignity should be incorporated into the MCOs as a key threshold. They stressed that incorporating dignity should be a participatory process,¹³ including people who may face a higher risk of being treated without adequate dignity (e.g. people with protected characteristics), and people with lived experience of discrimination or other forms of violation of their dignity. In addition, it was mentioned that a wide network of learning practitioners and experts should be engaged with the co-design of MCOs, together with the representatives of communities that will be most impacted by this Bill.

There were a few responses mentioning that the Scottish Government and the Scottish Courts could draw on the experience of other countries that have implemented MCOs regarding dignity. Some of the countries mentioned were Germany, Switzerland, Belgium, Brazil, and Colombia, and the respondents claimed that there are examples of good practices in these countries which could help with the implementation of MCOs in Scotland.

“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. [...] 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.”
(Organisation – Other)

“[...] Many countries embed the right to a social minimum reflecting the concept of the minimum core – i.e. a social floor, and not a ceiling, that ensures no one falls into destitution. This concept is built on the premise that in a functioning society, individuals must be able to access essentials to participate. Often the

¹³ They requested that people in certain groups be consulted on their views on what dignity means.

threshold for assessing compliance with a minimum core is based on the concept of human dignity. This approach is used in different constitutions across the world, for example, in Germany, Belgium, Switzerland, Colombia, and Brazil. [...]” (JustRight Scotland)

Safeguarding the rights of various groups of people

The next most frequent theme emerged through a large minority of responses to this question, expressing the view that the rights of certain groups of people should be protected in order to achieve a meaningful implementation of the proposal.

A significant minority of the responses expressing these views included concerns about how the needs of people in marginalised groups may intersect. For instance, there were responses that pointed out the housing and homelessness issues that specifically women or LGBTI people face.

“[...] When considering the needs of those who have received a terminal diagnosis or are nearing the end of life, then there is also the need to consider the intersection of MCOs across different areas – such as the right to adequate housing and welfare support as well as health and social care.” (Hospice UK)

“[...] We know that certain groups of women are more likely to experience housing instability, poor housing, homelessness or negative treatment by housing services, such as BME; disabled and refugee women; women who have been in the criminal justice system; LGBTI, particularly transgender women; older and younger women; women who sell sex; lone parents and women with other caring responsibilities. For rights which cover housing in the Bill, MCOs must be able to take into account the different intersectional inequalities of populations in Scotland, especially those who are most at risk of having such rights violated in practice. [...]” (Engender)

More information about this theme can be found in Chapter 9, ‘General themes of the consultation responses’.

Clarification of the ‘key threshold’ and ‘dignity’ terms is needed

The third most frequent theme among the responses to this question was the request for more clarity and guidance on the terms ‘key threshold’ and ‘dignity’. More information about this theme can be found in Chapter 9, ‘General themes of the consultation responses’.

Summary of other emerging themes

The next most frequent theme was the view of a significant minority of respondents that dignity should be introduced alongside other provisions and core principles of human rights. As in Question 1, the respondents mentioned that the principles of universality, indivisibility, interdependence, and interrelatedness should be considered alongside dignity for the proposal to be successfully implemented. Another emerging theme through the responses of a significant minority was the

disagreement with or concerns about the proposal. These respondents expressed concerns about the broad misuse of the Bill if dignity is used as a key threshold for MCOs, and they disagreed with the proposal because they found it unnecessary or inapplicable.

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

Open question

There were 196 responses to this question in the consultation.

United Nations guidance and conventions to be considered

The most prevalent theme among the responses to this question was the view that the United Nations guidance and conventions should be included within the proposed interpretative provision of the Human Rights Bill. This theme was more frequently raised by civil society and private organisations, and a large minority of public organisations mentioned this theme. In addition, a significant minority of the individuals who responded to this question raised the theme.

The respondents referred to various UN treaties (or conventions) and other materials, with the General Comments on the UN Conventions¹⁴ being the most frequently mentioned. According to the respondents, including the General Comments would assist in interpreting the rights contained in the Bill. Additionally, the UN Concluding Observations¹⁵ were mentioned by a significant minority of the respondents, while a few respondents mentioned the reports of the UN Special Rapporteurs.¹⁶ The majority of the respondents raising this theme expressed the view that such materials collate the best available evidence and insights, providing greater coherence, clarity, and guidance to inform the implementation of the rights in the Bill.

Moreover, the respondents pointed out certain UN conventions that should be considered for inclusion in the interpretive provision of the Human Rights Bill. The most frequently cited treaties were the United Nations Convention on the Rights of the Child (UNCRC) and the ICESCR, with the CEDAW and the CRPD coming next. In addition, the ICERD, the ICCPR, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), among others, were cited by a few respondents. A few respondents who cited the above-

¹⁴ The UN General Comments are published by the body (or committee) of each treaty and are the interpretations of the treaty's content.

¹⁵ The UN Concluding Observations are published by the treaty bodies (like the General Comments) and discuss a State's implementation of a specific treaty, including the positive aspects and the areas of concern, where the treaty bodies recommend further action be taken by the State.

¹⁶ The UN Special Rapporteurs, on the other hand, are experts called upon by the UN to report or advise on human rights from a thematic or country-specific perspective.

mentioned treaties suggested that they should be considered in their entirety, while others were more focused on specific parts of them, like Article 12 of ICESCR (the right to physical and mental health).

“We agree that courts and duty bearers should be able to use the existing international interpretation of human rights, including UN General Comments. We believe that the proposals would be stronger if courts were required to use these mechanisms. ICESCR’s original definitions of rights are often broad. However, the significant body of international human rights materials, comments and mechanisms gives far more detail on what rights are generally interpreted to mean. Ensuring courts and duty bearers can rely on existing international interpretations to support them in better understanding the rights they must uphold. [...] We also know that making rights as specific as possible helps people to understand and claim their rights in practice. Therefore, we believe that where these materials and interpretations are adopted by courts and duty bearers, this will also support rights holders by providing greater depth and specificity. [...]” (Chest Heart and Stroke Scotland)

“The existing international framework, including UN General Comments and recommendations, provides a strong foundation for interpreting and applying human rights in practice. We further note that including this provision will help to enable clarity of the law and for the Bill to align well with the UNCRC Incorporation Bill.” (Organisation – Other)

General agreement with the provision

The next most prevalent theme among the responses to this question was general agreement with the inclusion of international law, materials, and mechanisms within the proposed interpretative provision. This theme emerged mainly through the responses of a significant minority of civil society and public organisations that responded to this question. There was a small number of responses that came from individuals.

The majority of the respondents who supported the proposal commented that the proposed approach is appropriate and that the Scottish Government should build on the existing international sources. This would allow for a clear and consistent framework for courts and duty-bearers to follow. In addition, there was a small number of respondents who clarified that, despite their limited knowledge on the topic, they are supportive of the proposed approach or expressed their agreement in a very laconic way.

“We agree with the proposed approach. It is appropriate to build on the existing system of international consideration, development, and interpretation of rights when incorporating these international rights.” (Organisation – Other)

UK and Scottish legislation and other materials should be considered

The next most frequent theme was suggestions that legislation and other materials (like judicial interpretation and case law) from Scotland and the UK should be

considered for the interpretive provision in the Human Rights Bill. This theme was commonly mentioned by organisations as well as individuals. More specifically, among the organisations that responded to the question, a significant minority of the public organisations and a small minority of the civil society organisations raised this theme.

Respondents mentioned various Acts that should be considered for the interpretive provision. The Human Rights Act 1998 and the Equality Act 2010 were the most frequently mentioned Acts. It was highlighted that the provisions of the Human Rights Bill should not contradict these acts. Legislation such as the Procurement Reform (Scotland) Act 2014, the Gaelic Language (Scotland) Act 2005, and the National Parks (Scotland) Act 2000 were mentioned in the responses.

“[...] The interpretative clause could also contain clarification that, for the avoidance of doubt, nothing in this Act modifies the Equality Act 2010 or the Human Rights Act 1998 and a general statement that the rights can only be applied in areas of devolved competence to allow for future variations to the devolution settlement. [...]” (Organisation – Other)

Summary of other emerging themes

The next most frequent theme was respondents’ concerns about the implementation of this proposal, or complete disagreement with it, raising several challenges to including international law, materials, and mechanisms within the interpretive provision. A challenge mentioned by the respondents was the difficulty for international treaties to be specific, given the different context in various societies. Another challenge highlighted by the respondents was that it may prove cumbersome and, in the context of non-treaty rights such as the right to a healthy environment, very difficult to specify potentially relevant sources of law. An equally frequent theme, expressed by a small minority, was that EU legislation and case law should be considered for the proposed interpretive provision. Respondents mentioned the materials issued by the Council of Europe, the European Convention on Human Rights, the jurisprudence (and case law) of the European Court of Human Rights, and the EU Charter of Fundamental Rights. Another emerging theme was the request of a significant minority of the respondents to this question to provide further clarity and guidance regarding interpretation. Respondents mentioning this theme suggested that the interpretive provision should be very clear, as well as understandable and accessible to as many people as possible. They argued that there might be contradictions in the definitions and interpretations of human rights in different treaties (even among the UN treaties), and clarity would be essential to avoid confusion or inconsistency among the actions of duty-bearers, rights-holders, and the courts.

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

Open question

There were 236 responses to this question in the consultation.

Support for the overall proposition of incorporating the four UN treaties and the right to a healthy environment

The most prevalent theme was the expression of support for the overall proposition of incorporating the four UN treaties, along with the right to a healthy environment. This theme was equally expressed by organisations and individuals. Among the organisations raising this theme, the majority were civil society organisations, with public organisations following next.

Respondents mentioned that incorporation of the four UN treaties would strengthen human rights protection in Scotland, allow for a progressive realisation of rights, and align the country's policy with international law and standards. A large minority of the respondents who mentioned this theme explicitly supported the approach of using text directly from the treaties in the Human Rights Bill (sometimes described as a 'direct treaty text' approach). They held the view that this would allow for greater consistency and coherence among the Bill's provisions. A few respondents explicitly expressed their support for the inclusion of the right to a healthy environment. A few respondents not only supported the proposed incorporation model but they urged the Scottish government to follow a 'maximalist approach' and go beyond the treaties by incorporating as many rights as possible.

"We support the incorporation of ICESCR, CEDAW, CRPD, CERD and the right to a healthy environment into Scots law. This is a significant step forward in the advancement of human rights in Scotland and will provide a robust framework that will enable people to name and claim their rights, will embed rights into decision-making by public bodies, and will lead to the progressive realisation of all of our rights for everyone. We support the proposal that all four treaties should be reproduced in the Bill and aware that there are restrictions around text that are related to areas reserved for the UK Parliament. [...] It is essential that the Bill takes a maximalist approach to include as many rights as possible within the Bill [...]" (Human Rights Consortium Scotland)

"[...] We support direct copying and pasting of text from the treaties over a transposition approach. This will allow for greater consistency and continuity overall, as precedent has already been set interpreting the rights of each treaty in jurisdictions elsewhere, and will help to minimise ambiguity in the implementation phase. We agree that the right to a healthy environment should be recognised and included in this Bill. [...]" (Environmental Rights Centre for Scotland)

Views on the procedural duty and the duty to comply

The next most frequent theme emerged through responses that commented on the proposals regarding the procedural duty and the duty to comply with duty-bearers and public bodies. This theme was solely expressed by organisations, with the majority of them being civil society organisations and a few of them being public organisations. Across the civil society organisations that responded to this question, the majority had human rights, disability, gender, or race as their main fields of interest.

The majority of the respondents, who expressed their views on these duties, supported the inclusion of a procedural duty¹⁷ and a duty to comply in the Bill. More specifically, the proposal for an initial procedural duty for public bodies that should eventually be supplemented with a duty to comply was supported with respondents noting the importance of the move to compliance happening in a reasonable timeframe (approximately two years). A few respondents pointed out that the duty to comply should not replace the procedural duty, but it should work as an additional provision. A large minority of the respondents urged for the duty to comply to apply to the equality treaties, highlighting that failure to place a duty to comply with the equality treaties (also called special protection treaties by some respondents) is a significant departure from fully incorporating them into Scots law via the Bill. According to the respondents, including a duty to comply with those treaties would improve the accountability of public bodies, would facilitate the progressive realisation of the rights over time, and would allow for achieving certain policy goals faster.

“[...] We support Human Rights Consortium Scotland’s position that there should initially be a procedural duty on public bodies (and as far as possible private actors) to ICESCR and the right to a healthy environment. The period of time where there is only a duty to have due regard should be no more than two years and be specified in the Bill. After this, a duty to comply should be added and applied to ICESCR and the right to a healthy environment. [...]” (Scottish Independent Advocacy Alliance)

“[...] We are very concerned about the proposal to not place the stronger duty to comply on the specific protection treaties. As the consultation itself acknowledges, the duty to comply has the potential to be ‘transformative’, and it is this duty that can enable people to name and claim these rights. Any decision to limit incorporation of the specific protection treaties to only a procedural duty is a significant departure from the detail and intent of the National Taskforce recommendations and from full incorporation. [...]” (Human Rights Consortium Scotland)

¹⁷ Consultation respondents used the term ‘procedural duty’ interchangeably with the term ‘duty to have due regard’. However, the term ‘duty to have due regard’ is not mentioned in the consultation document.

Safeguarding the rights of various groups of people

The next most prevalent theme expressed the views of a significant minority of respondents about the rights of various groups of people. More information about this theme can be found in Chapter 9, 'General themes of the consultation responses'.

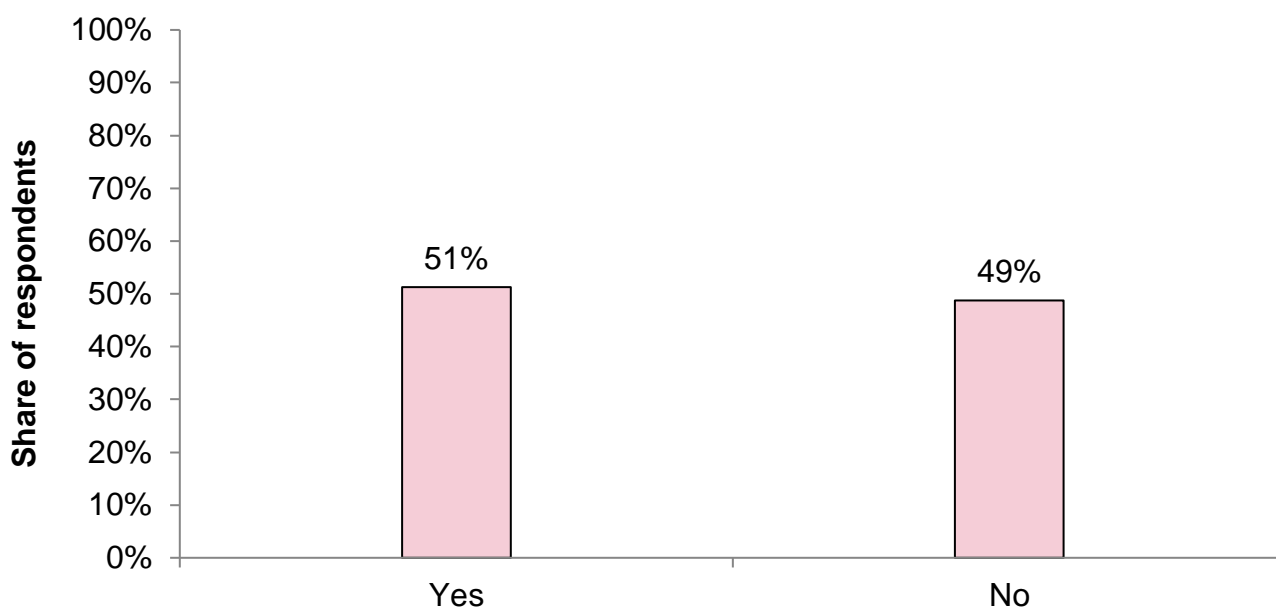
Summary of other emerging themes

There were several other themes that emerged from the responses to this question. One of these themes was the request for additional clarity (and caution) about the model. Respondents who made this request highlighted that proposals around the model could be clearer and more detailed to enhance the accountability of obligations and consistency. Another emerging theme was the views of respondents on how to strike a balance between devolved and reserved powers. Most respondents mentioning this theme stressed the need for a careful inclusion of the treaties in the Bill, eliminating text related to areas reserved for the UK Parliament, while a few others encouraged the Scottish Government to go as far as possible within their devolved limits. A few respondents pointed out that the indivisibility and interdependence of human rights could make it more difficult to strike the necessary balance between devolved and reserved powers.

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

Closed question

There were 158 responses to this question.



A nearly equal split of opinions was expressed among respondents, with 51% expressing that there are some rights in the equality treaties which should be treated differently. Conversely, 49% opposed this idea.

Open question

There were 176 responses to this question in the consultation.

The rights of disabled people

The most prevalent theme among responses focused on the rights of disabled people (including people with learning disabilities and mental health issues), especially those protected by the CRPD. This theme was predominantly expressed by organisations. The majority were civil society organisations, followed by public organisations. A small number of responses came from private organisations and individuals. A large minority of the civil society organisations who mentioned this theme stated issues related to human rights, disability, and gender as their main areas of interest.

Respondents who mentioned this theme highlighted the fact that there are substantive rights described in the CRPD which are not featured in the ICESCR and must be incorporated fully into the Human Rights Bill. Among these rights was the right of disabled people to equal recognition before the law (Article 12), the right to independent living (Article 19), the right to personal mobility (Article 20), the right to education (Article 24), and the right to the highest attainable standard of health (Article 25). It was mentioned that disabled people often face serious infringements of their human rights, such as not being treated with dignity by public bodies or while receiving health and social care. Intersectionality among different protected characteristics (e.g. disabled women, disabled LGBTI people, or older disabled people) was described as a significant factor in exacerbating infringements of human rights. Respondents cited that disabled people face discrimination regarding cultural, social, and employment opportunities. For these reasons, the respondents pointed out the need to take into consideration the provisions of the CRPD. The majority of respondents who mentioned this theme suggested that articles which they consider to sit firmly in devolved competence (like the above-mentioned) must be treated differently and fully incorporated through a duty to comply and a procedural duty. This duty means that the courts and duty-bearers will be required to consider these rights for their decision-making, and it is further discussed in the following parts of the consultation.

“Whilst it might be said that the CRPD sets out rights that already exist in other treaties, it is important to recognise that the CRPD in fact, includes rights that are specific to disability and in a manner which requires non-discrimination in rights enjoyment for people with disabilities. [...]” (Edinburgh Napier University Centre for Mental Health Practice, Policy and Law Research)

“[...] It is especially important for LGBTI+ people that the rights to independent living, habilitation and rehabilitation, and personal mobility be placed under a duty to comply. [...] The LGBTI+ community is diverse and made up of people with many intersecting characteristics. We do, therefore, need the protection from sexism, ableism, and racism these treaties provide if they are implemented to their maximum extent.” (Equality Network)

Views on the proposed duties in the Bill

The next most prevalent theme was the views of a large minority of respondents on provisions of the Bill regarding the duties of those delivering devolved public functions. While this theme was raised in question 4, it was brought up by respondents in this question, too. The theme was primarily expressed by civil society organisations, with a few relevant responses coming from public organisations and individuals. Among the civil society organisations, a large minority were organisations with a main interest in human rights, disability, gender, and race.

Respondents who mentioned this theme focused on the procedural duty and the duty to comply for bodies delivering devolved functions, and they are closely related to the responses to the theme regarding the rights of disabled people. A few respondents discussed the need for a procedural duty, but most respondents referred to the duty to comply. They strongly recommended that the Bill incorporates all the rights in the treaties to the greatest extent possible within devolved competencies. Specifically, a few of these respondents stressed that the decision to not place a duty to comply represents a significant departure from the full incorporation of the treaties. In addition, the majority of respondents who supported the inclusion of a duty to comply in the Bill discussed the need to safeguard the rights of disabled people. These respondents highlighted that the only way to successfully deliver human rights for disabled people is through including a duty to comply with the substantive rights in the CRPD.

“To realise the rights for more people in Scotland and help to address serious issues of inequality and unsustainability, public bodies should have a duty to have due regard (‘procedural duty’) for an initial phase of integration; as well as a duty to comply with substantive rights in the Bill across all of the treaties incorporated in the bill (with timescales specified in the Bill). We appreciate that there are limits placed by devolution on what rights can be granted by the Scottish Parliament but believe that the CEDAW, CERD and CRPD rights can be given more stringent protection within these limits to ensure that the specific barriers faced by disabled people, women, and people from ethnic minorities are addressed.” (Organisation – Other)

Equality treaties referred to as ‘special protection treaties’

The next most frequent theme emerged among responses, which referred to the UN three equality treaties (i.e. ICERD, CEDAW, CRPD) described in the consultation as ‘special protection treaties’. The majority of respondents who mentioned this theme were civil society organisations, with only a few responses coming from public organisations and individuals. Among the civil society organisations, a large minority were organisations with a main interest in areas related to human rights, disability, gender, and race.

The responses that mentioned this theme were split between those simply referring to the UN treaties as ‘special protection treaties’ and those providing an explanation of why this term was preferred. The respondents who provided an explanation of

their choice expressed that although they understand the rationale behind using the term ‘equality treaties’, they felt it is not the most appropriate term. The main reason provided for this concern was that the term ‘equality treaties’ may undermine their full scope and obligations, while at the same time, the treaties do not ensure equality for all minority groups.

“At the outset of this question, we would like to flag that while we understand the use of the term ‘equalities treaties’ and the accessible and positive way this encapsulates CERD, CEDAW and CRPD, we are not convinced that it is a term we would encourage. We are concerned that the use of such a term could potentially undermine the full scope and obligations of these treaties, with particular regard to the substantive rights they confer. [...]” (Just Fair)

“[...] we note others also refer to these as the special protection treaties, partly because together they do not confer full equality for all minority groups [...].” (LGBT Youth Scotland)

Summary of other emerging themes

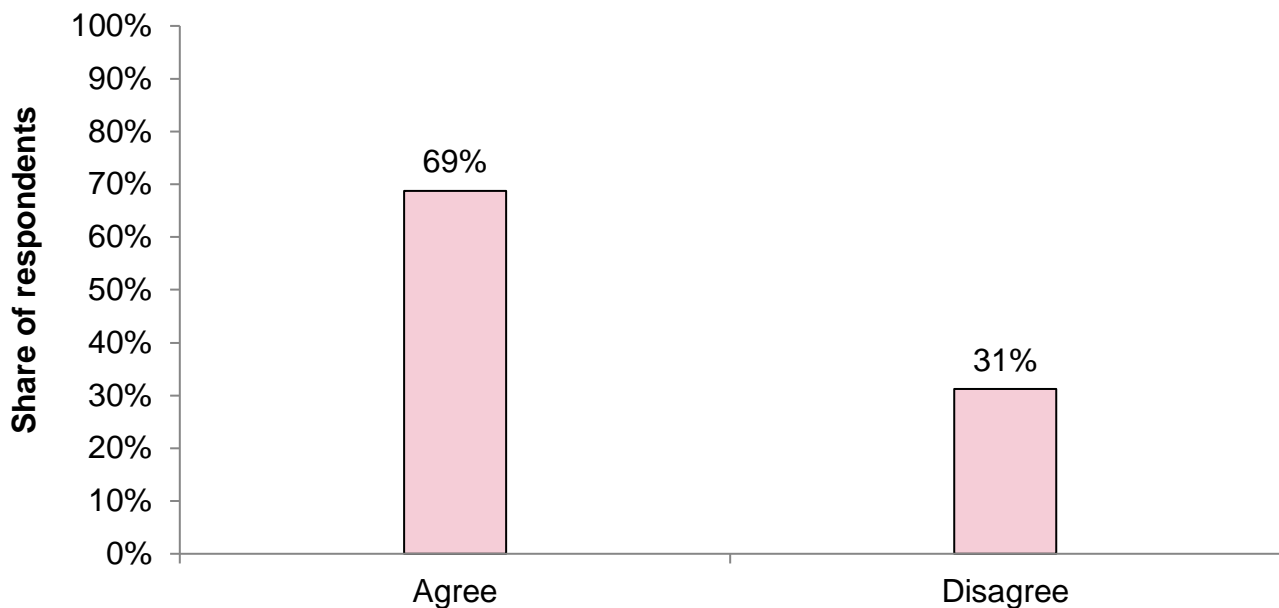
There were various other themes emerging from the responses. They were mostly focused on other types of rights (e.g. cultural, economic, and social rights) or the rights of different groups of people. The groups mentioned included people with specific protected characteristics (i.e. women, refugees, ethnic and other minorities, children and young people, LGBTI people) as well as people in care and care experienced people. There was a small minority of respondents who did not identify any specific rights that should be treated differently.

4. Views on: Recognising the Right to a Healthy Environment

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

Closed question

There were 205 responses to this question.



Most respondents to this question (69%) agreed with the proposed basis for defining the environment, while a significant minority (31%) expressed disagreement with the proposed basis.

Question 7: Do you agree or disagree with our proposed basis for defining the environment? - If you disagree, please explain why

Open question

There were 155 responses to this question in the consultation.

Agreement with the proposal

The most prevalent theme among respondents to this question was the agreement with the proposal brought forward by the Scottish Government to include a right to a healthy environment in the Human Rights Bill. The majority of respondents raising this theme agreed with using the Aarhus Convention definition of environment as a foundation for the right to a healthy environment in the Human Rights Bill. Among them, a significant minority of respondents made specific reference to the Aarhus Convention Preamble and Articles 1 & 2, suggesting that similar provisions should be included in the Human Rights Bill. Finally, a significant minority of the respondents raising this theme stated that the definition of a healthy environment

should make specific mention of ecosystems and the biosphere. This theme was more commonly mentioned by organisational respondents and was particularly common among responses from public sector organisations.

“We welcome the ambition within the Bill for everyone in Scotland to live in a healthy environment and support the use of the Aarhus definition, which makes specific reference to ecosystems and the biosphere. As we face the twin global challenges of climate and ecological emergencies, it is vital that the right to a healthy environment is retained within this Bill.” (Organisation – Public)

Right to a healthy environment should expand to include additional topics

The second most common theme mentioned in the responses to this question was the view that the definition of the right to a healthy environment should be expanded to include more elements and offer specific suggestions. This theme was more common among organisational respondents and particularly civil society organisations. While they agreed with the proposal, a few respondents argued that the definition should have a broader scope and include more types of environmental protection, as well as consider the interconnectedness of environmental rights with other rights. Additionally, a few respondents stated that the Bill should consider the rights of and the impact of the Bill on vulnerable and disadvantaged groups such as disabled people.

A small minority of respondents raising this theme argued that the right to access healthy and safe food should be included in the Bill. A few respondents felt the right to a healthy environment should consider health, mental health and wellbeing, as well as the right of individuals to psychologically safe environments, for example, at the workplace. A few respondents suggested that the right to a healthy environment should include provisions related to housing and the right to healthy housing, for example, including provisions against mould and poor insulation and sanitation.

A large number of suggestions for inclusion in the Bill were made, each by a small number of respondents. Examples included: (i) that the Bill should ensure that global environmental sustainability is considered in meeting the duties under the right to a healthy environment, (ii) that the new laws should include mechanisms promoting increased accountability, (iii) that the right to a healthy environment should make specific reference to the right to safe water, including sanitation and sewage, (iv) measures related to city life including air quality noise pollution, and the right to environmentally sustainable travel including safe walk and cycle, and finally (v) that the right to a healthy environment should include provisions for the right of access to green and blue spaces.

“[...] Access to healthy and sustainable food, and built environments which actively promote and facilitate health, are also important and should be included in any definition of the environment. Food is not currently mentioned in the information on page 21 of the consultation document where this is discussed, which is a significant omission. [...]” (Organisation – Other)

“[...] We would like to additionally recognise the impact of the social determinants of health on an individual’s environment. Other aspects of the Bill, like the Right to Health in ICESCR, acknowledge the wider factors of health, such as housing, poverty, education, social support, and community. However, the recognition of these factors under the environment could provide an additional level of importance since these factors have a large impact on the conditions of individuals' lives. [...]” (Organisation – other)

More detail needed

The next most prevalent theme among respondents to this question was wider comments regarding the Bill, and most argued that more detail as to what will be included is needed. More information about this theme can be found in Chapter 9, ‘General themes of the consultation responses’.

Summary of other emerging themes

A significant minority of respondents posed criticisms to the proposal to include the right to a healthy environment in the Human Rights Bill. The most common concern raised was that environmental protection does not fall in the same category as human rights, as the right to a healthy environment is not an individual right. In that sense, those respondents felt that it would not be appropriate to include the right to a healthy environment in the Human Rights Bill, as some disagreed with mixing social and environmental principles. A small number of respondents felt that defining a right to a healthy environment as an individual right could pose democratic concerns as it could be used to drive policy that does not necessarily represent the views of the majority.

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

Open question

There were 208 responses to this question in the consultation.

Agreement with the proposed formulation

The most prevalent theme among responses to this question was general agreement with the Scottish Government’s proposed formulation of the right to a healthy environment. This theme was most commonly mentioned among organisational respondents rather than individual respondents, and particularly among public sector organisations. The majority of respondents who mentioned this theme agreed with the proposed definitions to the right. A significant minority emphasised their agreement with the substantive elements proposed for inclusion, such as the right to clean air. Additionally, a significant minority agreed that the right to a healthy environment should include both substantive and procedural elements. A small minority of respondents noted the potential positive health outcomes

derived from the right to a healthy environment. Finally, a few respondents expressed their support for adopting UN and international standards in defining the right to a healthy environment.

“We agree with the inclusion of clear and tangible environmental rights in the proposed human rights bill. The experience of individuals, families and communities supported by our members makes clear that these rights are interconnected and a significant influencing factor in overall health and wellbeing.” (Coalition of Care and Support Providers in Scotland)

“We agree with the proposed formulation of the substantive aspects of the right. These aspects, including clean air, a safe climate, safe and sufficient water, non-toxic environments, and healthy biodiversity and ecosystems, are essential components of a comprehensive right to a healthy environment. [...]” (Human Rights Consortium Scotland)

Criticisms of proposal and comments for improvement

The next most prevalent theme among responses to this question was criticisms of the proposal, and comments for improving the formulation of the right to a healthy environment. This theme was most common among respondents representing civil society organisations. A significant minority of respondents who mentioned this theme expressed concerns regarding the feasibility of enforcing the proposed provisions of the right. Respondents who held this view often stated that the right should be defined in a way that makes it enforceable. On a similar note, a significant minority of respondents who mentioned this theme noted that the language used in the proposal is too vague and is not actionable. For example, a few respondents suggested that the terms ‘environment’ and ‘safe climate’ should be clearly defined.

A significant minority of respondents highlighted the importance of recognising that while the substantive elements of the right to a healthy environment are interdependent, they should be considered as standalone rights with necessary provisions for their safeguarding. Additionally, a significant minority of respondents suggested that implementing the right as proposed would require government investment in infrastructure, local capacity building and assets, and the development of relevant policy. A few respondents added that the Bill should include clear guidance for its implementation. Finally, a few respondents proposed that the Scottish Government should consider and potentially align with more international frameworks in developing and defining the right to a healthy environment. Examples of guidance and conventions mentioned by respondents include: (i) the UN Committee on the Rights of the Child’s General Comment 26 on children’s rights and the environment, and (ii) the UN Special Rapporteur on human rights and the “Promoting Environmental Democracy: Procedural elements of the human right to a clean, healthy and sustainable environment” report.

“[...] It is important to identify and recognise these six substantive features as both interdependent, and in need of standalone protections. We must see these protections robustly outlined in the bill. [...]” (Friends of the Earth Scotland)

Right to a healthy environment should include additional components

The third most commonly raised theme among the responses to this question was the view that the right to a healthy environment should include additional components. This theme was raised more frequently by organisations than individuals, and particularly among civil society organisations. A significant minority of respondents mentioning this theme particularly disagreed with the decision to exclude the element of healthy and sustainable food, as well as the element of adequate sanitation as part of safe and sufficient water. A few respondents added that the definition of a right to a healthy environment needs to be broader and consider social and cultural factors for achieving a healthy environment. A few other respondents noted the importance of access to green spaces, particularly for younger people and children, and stated that a right to access green spaces should be included in the right. Finally, a few respondents noted that the definition of the right to a healthy environment should include a commitment to addressing pollution, protecting the environment and achieving climate and Net Zero targets.

“I question the exclusion of adequate sanitation under safe & sufficient water, given the systemic problems of sewage pollution and wastewater treatment in Scotland. I also disagree with the exclusion of the right to healthy and sustainably produced food because I believe it is a core feature of the substantive right to a healthy environment.” (Individual)

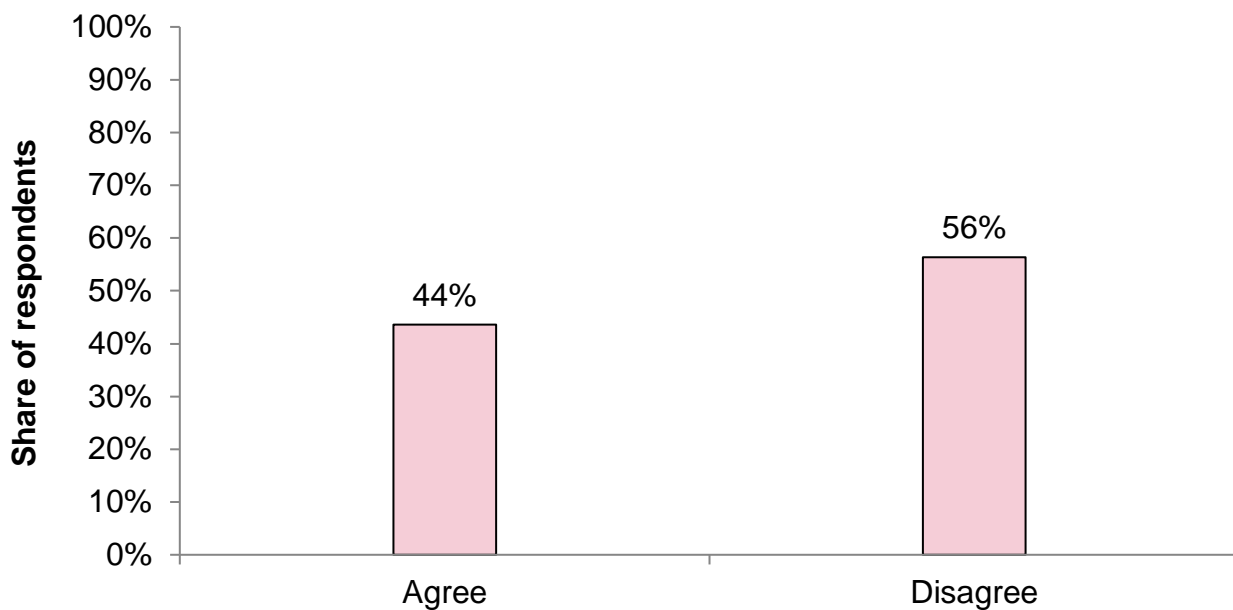
Summary of other emerging themes

A significant minority of respondents to this question emphasised the importance of improving accessibility to environmental justice, reducing the legal costs that an individual seeking justice would have to face, and ensuring that those breaching the right to the environment are held accountable and, where warranted, award compensation for rights violations. Respondents raising this theme noted that Scotland is currently in breach of Article 9c of the Aarhus Convention and that the procedural element of the right should include action to address this. A significant minority of respondents stressed the importance of incorporating a right to a healthy environment and noted that this right is essential for the future livelihood and life quality of children, young people and future generations. Another significant minority of respondents agreed with the draft Bill’s emphasis on public participation and discussed the importance of engaging with a wide range of stakeholders and local communities. A small minority of respondents expressed their agreement with the inclusion of awareness raising and education as procedural elements of the right. Finally, a small minority of respondents stressed the importance of upholding the rights of individuals who are disadvantaged, vulnerable or have protected characteristics and hence are more likely to be negatively impacted by a breach of their right to a healthy environment.

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?

Closed question

There were 195 responses to this question.



The majority of respondents, 56%, disagreed with the proposed approach for the protection of healthy and sustainable food. A significant minority, 44% of respondents, agreed with the proposal to protect healthy and sustainable food through the incorporation of the right to adequate food in the ICESCR, instead of including the right to food as a substantive aspect of the right to a healthy environment.

Open question

There were 180 responses to this question in the consultation.

Food should be a part of the right to a healthy environment

The most prevalent theme among the responses to this question was the view that the protection of healthy and sustainable food should be part of a right to a healthy environment. This theme was most common among organisations, and particularly respondents representing civil society organisations. A large minority of respondents who answered this question disagreed with the exclusion of food from the right to a healthy environment. They argued that food production and agriculture have a significant effect on environmental sustainability and the climate, and thus are an essential component of making the Bill effective. Specifically, respondents who held this view often pointed out that food production produces significant

greenhouse gas emissions, hence is a key contributor to climate change, and expressed environmental concerns related to food production, such as soil erosion, as well as phosphate and nitrate run-off.

Respondents often felt that food and the environment are interconnected concepts and should be protected under the same right. These respondents advocated adopting a holistic food systems approach to protecting healthy and sustainable food in the context of the right to a healthy environment. A small minority of respondents felt that the ICESCR definition of the right to food is lacking, particularly in terms of covering food sustainability and health quality, and hence favoured protecting healthy and sustainable food as part of the right to a healthy environment. Finally, a small number of respondents stated that the non-inclusion of food limits the scope of the right to a healthy environment.

“The right to adequate food and right to healthy and sustainable food whilst similar aren’t the same. The right to healthy and sustainable food could carry greater weight if it was incorporated as a substantive aspect of the right to a healthy environment, this would further encourage changes to food production practices and supply chains to ensure the food is both healthy and sustainably produced. [...]” (Organisation – other)

“International Covenant on Economic, Social and Cultural Rights (ICESCR) does not provide adequate environmental perspective on food production. It appears to cover rights to food and efficient development of food resources, it does not relate to the damage that current industrial food systems inflict on our environment. A substantive right focused on the right to food, combined with the right to a healthy environment, is an essential catalyst needed to tackle our unsustainable food systems and degraded ecosystems that impact our right to enjoy a healthy environment.” (Planning Democracy)

Support of inclusion of food in both ICESCR and in the right to a healthy environment

The second most frequently raised theme was support for safeguarding the element of healthy and sustainable food through both the provisions in the Bill incorporating the ICESCR and as a substantive aspect of the recognition of the right to a healthy environment. This theme was more common among respondents representing organisations, and particularly among civil society organisations. A significant minority of respondents felt that there are various complementary aspects of food rights protection that should be considered, covering economic, social, health, and environmental considerations. Respondents felt that it is important to highlight the distinct economic and social rights related to food. It was argued that the best way to achieve that would be to incorporate both the right to adequate food as defined in ICESCR, and the element of healthy and sustainable food as part of the right to a healthy environment.

“[...] The right to food must be recognised as a standalone feature, that underpins and interacts with other substantive features of the right. It is important to distinguish between the economic/social right to food as it relates to nutrition,

access/affordability, adequacy, and culture, and the right to healthy and sustainably produced food as a constituent part of broader environmental health. Both interpretations are necessary but distinct elements of the right to food, and since the consultation report has recognised the merit in defining the right to water under both ICESCR and the right to a healthy environment, it is inconsistent to then exclude the right to food. Both are essential to a healthy environment.” (Individual)

Importance of affordability and accessibility of food

The next most common theme identified in responses to this question was the importance of food affordability and accessibility to all. This theme was most commonly mentioned among organisations, and particularly among civil society organisations. Respondents stressed that given the current cost of living crisis, high quality and sustainable food is not always accessible to many people. The majority of respondents who mentioned this theme expressed the view that all people should have the right to access good quality food at affordable prices. A significant minority of respondents who mentioned this theme discussed issues related to food poverty and the challenges faced by financially disadvantaged households in relation to the right to adequate food. A few respondents noted that some households are unable to afford healthy and sustainable options, causing them to choose unhealthy food options. Additionally, a few respondents expressed concerns about the nationwide diet and nourishment trends in Scotland.

“[...] The right to access healthy and sustainable food must be made clear as its own component, as people continue to suffer due to rising costs and the Cost of Living crisis. There are a number of aspects that must be taken into consideration on top of the economic impact, for example, nutrition, access to healthy food, and increasing affordability for low-income families. [...]” (Fife Centre for Equalities)

“While access to adequate food is an area of concern for many of the children, young people, and families we work with at [Organisation name], this issue extends further than simply the availability of produce - encompassing a range of factors such as the quality of available food, sustainability of agricultural practices, and affordability of groceries which can be considered healthy or sustainable. During internal consultation, colleagues told us that many of the families they work with rely on bulk buying, often ultra-processed, produce which is cheap and able to be stored for long periods of time. While often necessary on a restricted budget, this food is simply not able to provide the balanced and nutritious diet that children and young people need to develop and thrive. [...]” (Barnardo's Scotland)

Summary of other emerging themes

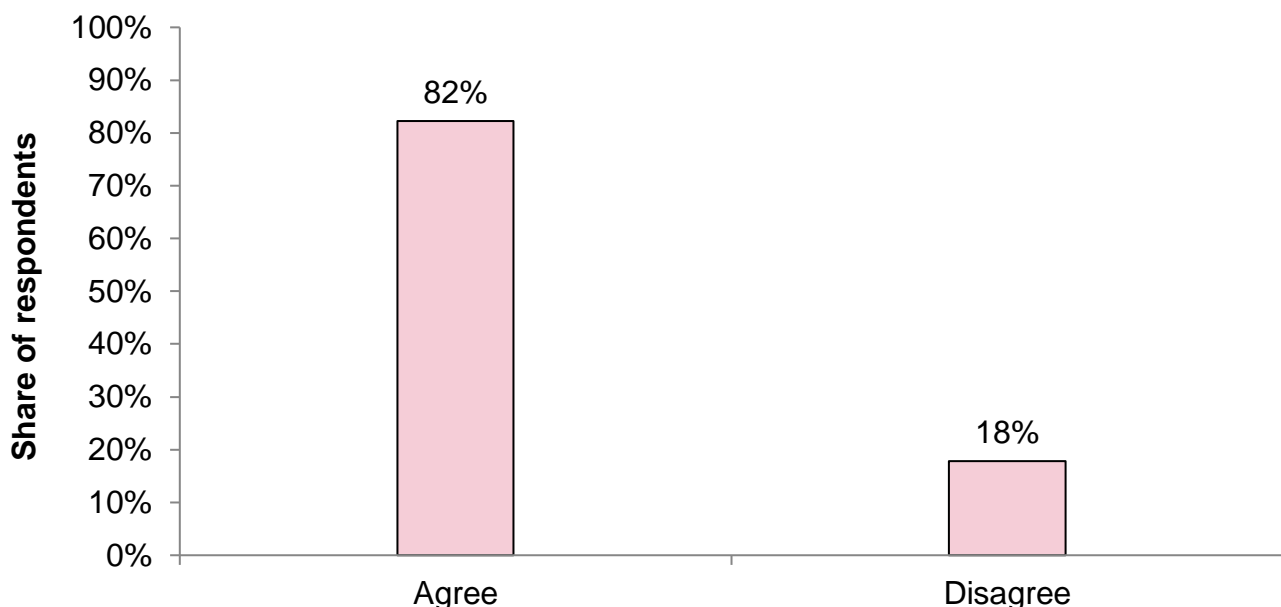
A significant minority of respondents to this question agreed with the Scottish Government’s proposed approach to the protection of healthy and sustainable food through incorporating the right to adequate food in the ICESCR. Another significant

minority of respondents did not comment on their preferred approach to safeguarding the right to food but emphasised the importance of food rights and improving food quality as well as ensuring people have access to healthy food choices. A small minority of respondents discussed the importance of food sustainability and its relation to the environment. Another small minority of respondents discussed the importance of considering contextual aspects when defining a right to food. These respondents discussed a range of socioeconomic, geographical, and cultural aspects, as well as the likely effect of different protected characteristics, arguing that the personal experiences and circumstances of various groups should be considered. A few respondents felt that there were aspects of the proposal that were not clear, including what the implementation would include and how accountability would be established. To that end, a small number of respondents elaborated that the ICESCR does not clearly define what “adequate” food means. Finally, a small minority of respondents disagreed with the need to incorporate a right to 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?

Closed question

There were 191 responses to this question in the online consultation.



The overwhelming majority of respondents (82%) agreed with the proposed approach to including safe and sufficient water as a substantive aspect of the right to a healthy environment. A significant minority of respondents (18%) answered that they disagreed with the Scottish Government’s proposed approach.

Open question

There were 165 responses to this question in the consultation.

Agreement with the Scottish Government’s proposed approach

The most prevalent theme identified among responses to this question was agreement with the Scottish Government’s proposal to include the right to safe and sufficient water as a substantive aspect of the right to a healthy environment. The majority of respondents who mentioned this theme expressed general agreement that water should be part of the right to a healthy environment without elaborating on specific reasons behind their view. A minority of respondents who mentioned this theme argued that protecting the right to water is crucial to ensuring the right to a healthy environment.

A significant minority of respondents agreed that rights related to water should be protected by the rights incorporated from the ICESCR and by the right to a healthy environment, as both provide different protections related to the right to water. Additionally, a significant minority of respondents commented that they agreed with the distinction made in the consultation between water for consumption and water in the context of a healthy environment. Another minority of respondents suggested that protecting both of the above aspects of the right to water would protect the people’s standard of living and is essential for the health and wellbeing of citizens. Finally, a few respondents felt that it is important to recognise access to water as a human right.

“We agree that, in addition to incorporating the human right to water through ICESCR, including ‘safe and sufficient water’ as an integral component of the right to a healthy environment is essential. This approach rightly recognises both the right to water for human consumption and the broader concept of safe and sufficient water as a critical element of environmental health. It aligns with the need to address both the human right to water and the environmental imperative for clean and adequate water sources. [...]” (Organisation – Other)

Include sanitation in the right to safe and sufficient water

The second most commonly raised theme identified among responses to this question was the view that adequate sanitation should be included as part of the substantive element related to water in the right to a healthy environment. Respondents who mentioned this theme criticised the Scottish Government for not proposing to include sanitation as part of the substantive element of safe and sufficient water, as they felt sanitation is an essential element in realising the objectives of the right to a healthy environment. Respondents who raised this theme felt the right to adequate sanitation would assist in addressing issues related to sewage pollution. They felt sanitation is crucial in ensuring the provision of safe and potable water. Finally, respondents argued that sanitation will continue to be a key element in achieving the right to a healthy environment due to challenges stemming from climate change.

“I 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. [...]" (Individual)

"[...] In this instance, it was suggested that 'safe and sufficient water' should be included to incorporate prevention of the likes of nutrient pollution so habitats and communities can be effectively supported. However, the exclusion of sanitation as part of the substantive aspects covering water was noted as a potential negative, in addition to insufficient protection for wildlife. In particular, it was felt that including these could help tackle the ongoing pollution of our waterways by private water companies. Furthermore, the risk of increased pollution and lack of accountability by those responsible were also highlighted as an implication of not including the right to adequate sanitation. [...]" (2050 Climate Group)

Concerns about the current situation

The third most frequently mentioned theme was concerns regarding sewage pollution and its impact on water spaces in Scotland. Most respondents emphasised the need to address existing sewage issues, as they felt this would be crucial in delivering a right to safe and sufficient water. Respondents who raised this theme expressed their concern for water pollution, sewage problems, and dumping on beaches as current issues related to water which should be addressed. A few respondents mentioned that all these issues lead to a reduction in the number of environmentally safe waterways. A few other respondents felt that existing legislation regulating water pollution is not appropriately enforced and stated that this should be addressed. It was mentioned that the current situation limits the respondents' trust that the newly proposed right will be upheld. Finally, a small number of respondents were concerned about the use of fluoride, as they felt it would lead to adverse health effects.

"[...] As we have seen in Scotland, there are persistent issues of sewage pollution, which impact the quality and availability of water that humans come in contact with, not to mention the effects this has on local and wider ecosystems. [...]" (Organisation – Other)

Summary of other emerging themes

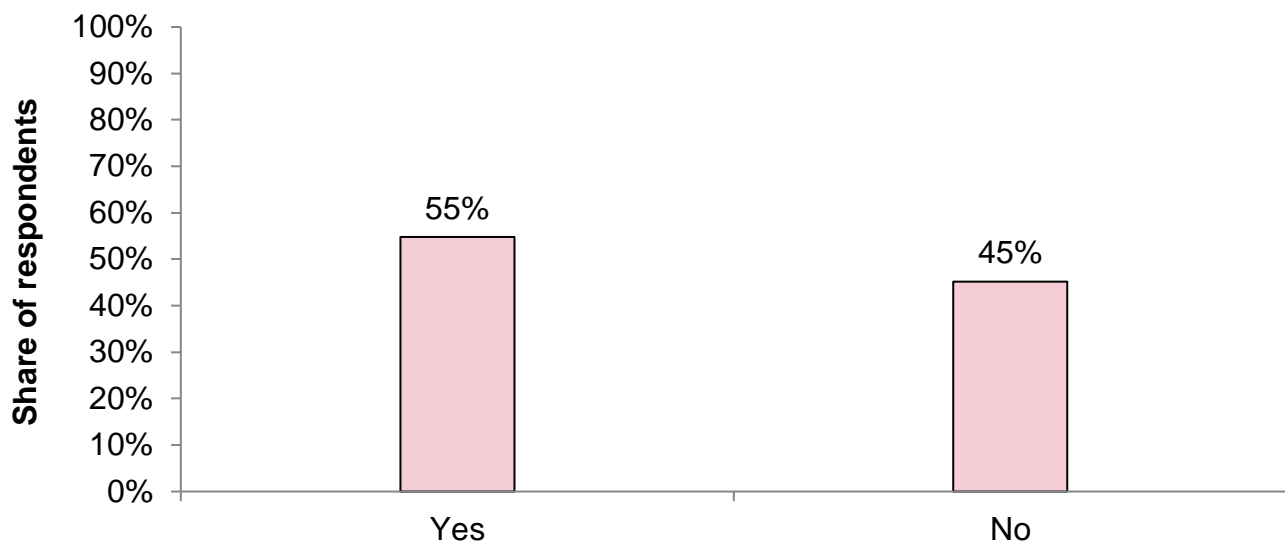
A theme commonly observed among responses to this question was suggestions for action to protect water sources in Scotland. Respondents who mentioned this theme highlighted the importance of accountability, stating that polluters should be held accountable. They held the view that the government should not procure firms that do not conduct human rights and environmental due diligence. Additionally, respondents who mentioned this theme emphasised the need for improved water monitoring. A minority of respondents commented that the proposal needs more clarity regarding its contents, implementation, feasibility of the proposal, and proposed mechanisms of accountability.

Another theme that was frequently raised in consultation responses was the importance of safe and sufficient water. A few respondents, in particular, highlighted the importance of safe and sufficient water for a healthy environment. A minority of respondents who agreed with the proposed approach for the right to safe and sufficient water, proposed that a similar approach should be followed for food, incorporating it as a right both in the rights incorporated from the ICESCR, and in the right to a healthy environment.

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

Closed question

There were 157 responses to this question.



The majority of respondents (55%) answered that there are additional elements that should be understood as aspects of the right. On the other hand, a significant minority of respondents (45%) did not think there were other substantive or procedural elements that should be part of the right to a healthy environment.

Open question

There were 128 responses to this question in the consultation.

Clarity in the Bill on enforcement, accountability, and access to justice

The most prevalent theme among responses to this question was a call for clarity in the Bill on various areas, including enforcement, accountability and access to justice, thus focusing mostly on procedural elements of the right. This theme was more commonly raised by organisational respondents, both from civil society and public sector organisations.

Regarding accountability, a significant minority of respondents highlighted the importance of ensuring improved access to justice, including reducing legal costs for individuals seeking justice, while a few mentioned the need for establishing a

specialised environmental court and providing additional training to the judiciary on the provisions of the new Bill. Finally, a few respondents mentioned the importance of ensuring access to information for citizens to allow effective public participation. Finally, a few respondents emphasised that there should be standalone protections for each of the substantive features of the right.

“To make this right a reality, the Scottish Government must create dedicated reforms with clear timelines to make the Right to a Healthy Environment fully enforceable. Each part of this right must be defined according to expert guidance and international best practice, and adhere to the highest standards, with appropriate and effective enforcement mechanisms to ensure compliance. [...]” (Children in Scotland)

“[...] Rights must be enforceable in a court of law, with appropriate mechanisms in place to effectively hold public bodies and polluters to account. A dedicated environmental court would give people a formal route through which they could enforce rights to a healthy environment and request remedies. At present, anyone seeking a remedy for environmental pollution or harm has to navigate a web of different public bodies and procedures to establish accountability. This is inefficient and a significant barrier for anyone who wants to act to protect the environment, human health and Scotland’s wild places.” (John Muir Trust)

Further information about the requests for clarity can be found in Chapter 9, ‘General themes of the consultation responses’.

Right to an environmentally healthy life

The second most common theme identified in the responses to this question was a discussion around substantive aspects relating to an environmentally healthy life. This theme was similarly common among individual and organisational respondents. Respondents who mentioned this theme noted the importance of considering the interaction of the environment with conditions of human life, such as culture and striving for healthy human environments (e.g. neighbourhoods, cities, public spaces, and housing). Under this theme, respondents presented various examples of potential substantive elements that fall within this category. These included: (i) access to green spaces, as well as play spaces, (ii) healthy and adequate housing, free from mould, dampness and parasites, and (iii) protection from noise pollution in cities. Finally, a few respondents called for reform in the transport system, supporting the provision of sustainable public transport, as well as emphasising the need to encourage more walking and cycling.

“We believe that The Right to a Healthy Environment within Scots Law must encompass the whole of the environment that people live in that can affect their enjoyment of a healthy life. We believe that this right should be broadly interpreted to include – domestic living conditions and neighbourhood, sanitation and safety, and conditions that can allow for human flourishing - as well as, for example, the more widely understood rights to clean water, clean air, and access to healthy natural ecologies. [...]” (Equality Network)

General disagreement with the Human Rights Bill

The third most frequently raised theme among responses to this question was wider disagreement and criticisms of the Human Rights Bill. More information about this theme can be found in Chapter 9, 'General themes of the consultation responses'.

Summary of other emerging themes

Another theme frequently raised was the need for a broader understanding of the environment. Respondents who mentioned this theme called for a 'whole environment' approach to defining the environment and suggested that the substantive elements of the right should include the right to a healthy biodiversity and protected wildlife.

Finally, the last common theme in the responses to this question was discussions surrounding inequalities related to the right to a healthy environment. Respondents noted that it is important to consider that some groups (e.g. vulnerable, disadvantaged, people with protected characteristics) are more likely to be impacted by environmental factors. It was felt that the right to a healthy environment may be more accessible and easier to safeguard for some people than others. Thus, respondents emphasised that in delivering the right to a healthy environment, the government's approach should be mindful of the different circumstances related to these inequalities.

5. Views on: 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?

Open question

There were 170 responses to this question in the consultation.

Suggestion for integrating the Human Rights Act 1998 into the implementation of the Human Rights Bill

The first most frequently raised theme was a suggestion for integrating the Human Rights Act 1998 in the implementation of the Bill. This theme was more frequently raised by organisations, mainly by civil society organisations. In particular, a large minority of respondents to this question supported including the Human Rights Act 1998 in the implementation of the Bill as part of the guidance, public body training, capacity building and information and awareness-raising plans for the Bill. A significant minority of respondents supported this to help ensure that duty-bearers and rights-holders are aware of the 1998 Act and understand all human rights and relevant duties when implementing the new Bill. Another suggestion raised by a significant minority of the consultation respondents was the need to reference the Human Rights Act 1998 and the ECHR in the Bill, as well as noting that all human rights (including ICCPR and ICESCR) are indivisible and interdependent.

“We accept the Scottish Government’s conclusions that it is not possible to restate rights included within the Human Rights Act 1998, however, this should not preclude public bodies from implementing the duties and rights included in the 1998 Act. The rights enshrined in the HRA should be included as part of the guidance, public body training and capacity building, and information and awareness raising.” (Environmental Rights Centre for Scotland)

“[...] A suggested approach is to make reference to the interdependence and indivisibility of all categories of rights, and to ECHR rights as are set out in the Human Rights Act 1998 which must be read, applied and interpreted in accordance with international human rights treaties as higher sources of international law (which indeed the European Court of Human Rights should do) in the Bill. [...]” (Edinburgh Napier University Centre for Mental Health Practice, Policy and Law Research)

Agreement on not restating the Human Rights Act 1998 in the Bill

The second most frequently mentioned theme was the agreement to not restate the Human Rights Act 1998 in the Bill. This theme was more common among

individuals and civil society organisations. A large minority of respondents to this question supported the notion that there should be no restatement of the Human Rights Act 1998 in the Bill. They were concerned that the restatement of the 1998 Act might conflict with the UK-wide legislation, emphasising the importance of alignment with the UK Government to prevent potential challenges to the Bill. It was discussed that the restatement of the 1998 Act in the Bill could add further burden to protecting Human Rights. In particular, a significant minority of respondents noted that the Human Rights Act 1998 is well established with a high level of public awareness in Scotland. Therefore, any restatement of this in the Bill would be an unnecessary duplication, potentially causing confusion about changes to the Human Rights Act.

“Albeit vital to a human rights culture, the civil and political rights outlined in the Human Rights Act 1998 cannot be inserted directly to a new Human Rights Bill for Scotland without risking challenge from the UK Government and potentially endangering the Bill itself.” (Organisation – Other)

“We do not consider that it is either necessary or desirable to ‘restate’ or ‘re-enact’ these rights into a separate Act of the Scottish Parliament. The European Convention on Human Rights is already part of the constitutional settlement through the mechanism of the Scotland Act 1998 and the Human Rights Act. In our experience these rights are now well known and well understood. Re-stating them within the Bill runs the risk of confusion.” (Senators of the College of Justice)

Concerns about specific population groups’ rights and suggestions on incorporating the UNCAT into the Bill

The third most frequently raised theme was concerns about specific population groups’ rights as well as suggestions on incorporating the UNCAT into the Bill. This theme was raised by a significant minority of respondents to the questions, and it was more common among civil society and public organisations.

A small minority of respondents to this question expressed concerns about the protection of the rights of specific population groups, such as people with learning disabilities, people who have been imprisoned, and those who have experienced violence. They emphasised the importance of ensuring equal access, inclusion, and protection of the rights of these groups. A small minority of respondents to this question suggested incorporating the UNCAT into the Bill. However, it is worth noting that the suggested approach outlined in the consultation was not to incorporate the UNCAT within the framework legislation. Another small minority of respondents to this question supported the idea that, instead of incorporating the UNCAT into the Bill, the Scottish Government should be required to deliver services aimed at rehabilitating victims of torture. They argued that an effective remedy under this Bill should include fair and appropriate levels of compensation.

“The absence of an obligation to rehabilitate torture victims in line with UNCAT Article 14 is a further gap in the existing protection against torture and cruel,

inhuman or degrading treatment in Scotland. While there is an obligation on the state to ensure access to physical and mental health services for individuals qualifying for care with the NHS, the existing legal framework does not explicitly address the rehabilitation of torture victims.” (Organisation – Other)

“[...] In addition, in relation to the United Nations Convention against Torture, while we accept the proposal in the consultation not to include this in the current Bill, the Scottish Government should be required to deliver services aimed at rehabilitation from torture and effective remedy under this Bill should include fair and appropriate levels of compensation. [...]” (Just Fair)

Summary of other emerging themes

Another emerging theme raised was a general suggestion for Scotland to ensure the protection of the civil and political rights of its residents, regardless of the method chosen for implementation. A few respondents supported restating the Human Rights Act in the Bill, while others argued that there is no need to explicitly signal that the Human Rights Act (and civil and political rights) form a core pillar of human rights law in Scotland. A few consultation respondents asserted that further consideration on including the Human Rights Act 1998 in the Bill is necessary, while others called for the use of clearer language and definitions in the Bill.

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

Open question

There were 214 responses to this question in the consultation.

Ensuring participation of those who are more at risk or with lived experience of human rights violations

The most frequently raised theme was the participation of those who are more at risk or with lived experience of human rights violations, as well as discussions about steps to ensure their meaningful participation. The majority of respondents to this question raised this theme, and it was equally common among civil society and public sector organisations.

In particular, a large minority of consultation respondents highlighted that people with lived experience should have the right to participation, including the most marginalised, hard-to-reach communities, as well as people with protected characteristics. Specific groups highlighted were people experiencing poverty, disabled people, and refugees. There were some suggestions that the Lived Experienced Board should be consulted during the development of the Bill.

A large minority of respondents to the question discussed the steps that should be taken in order to ensure effective participation from everyone, including those whose rights are at risk. Specifically, examples of steps to achieve effective participation included addressing barriers to participation, such as the provision of

childcare, compensation, availability of translation services, and providing guidance and information to clarify definitions and other elements for which participation is required. In addition, ensuring accessibility, providing participation opportunities through representative bodies, as well as ensuring feedback loops were deemed appropriate steps to effective participation.

A significant minority of respondents to the question highlighted the importance of meaningful participation, providing examples of meaningful involvement and engagement in decision-making, as well as co-design and co-production. These consultation respondents emphasised that participation should not be a tick-boxing/tokenistic exercise.

“Embedding lived experience throughout the Human Rights Bill is a key commitment that must be made to ensure human dignity is carried throughout. This is of particular importance to groups who are seldom listened to, such as ethnic minority women and disabled women. Women from these groups have explained that they often give their views on a range of subjects, but this rarely translates into action from government bodies. They have stated that only through meaningful participation can they effectively influence policy, and as such it is vital that the proposed Human Rights Bill embeds participation throughout. This could be achieved through consultation with third sector organisations who actively work to promote lived experience, as well as the creation of a lived experience board, responsible for holding government officials to account.” (The Scottish Women's Convention)

“It costs money to facilitate meaningful participation; for example, to hire venues, to pay for transport so people can attend events, for childcare so parents can take part, for interpreters, e.g. in BSL and community languages, for staff to facilitate sessions, etc. Participation must not be an add-on or a one-off; to be effective it needs planning, time, and funding, and it must be an ongoing process. In the case of the Human Rights Bill, participation must involve an ongoing dialogue with people across society in Scotland.” (Outside the Box)

Including an explicit right to participation in the Bill

The second most commonly raised theme was to include an explicit right to participation in the Bill. This theme, raised by a majority of respondents to the question, was equally common among civil society and public sector organisations.

A large minority of respondents generally called for this inclusion, with a subset of them highlighting that participation could be included as a Minimum Core Obligation, while others emphasised that it should be embedded throughout the Bill, including its purpose, reporting, implementation, monitoring and accountability. A significant minority of respondents provided specific examples of models on how participation could be embedded in the Bill, the most common of them being the UNCRC Bill, the Aarhus Convention, the Panel Principles of Participation, and the Lundy Model of Participation. Less commonly raised examples included a model used by the Poverty and Inequality Commission, the Scottish Government's

National Standards for Community Engagement and Participation, Part 2 of the Community Empowerment Act, the Committee on the Rights of Persons with Disabilities General Comment No.7 (2018), UN OHCHR Guidelines of the Effective Implementation of the Right to Participate in Public Affairs, the Declaration on the Right to Development 1986, Declaration on the Right of Indigenous Peoples 2007, Sherry Arnstein's Ladder of Citizen Participation, the Scottish Government consultation on proposals for the review into the effectiveness of the Public Sector Equality Duty (PSED) in Scotland, Scotland's Volunteering Action Plan, the Community Empowerment Act, the Carers (Scotland) Act 2016), the Council of Europe's Principles of Participation, and the Community Empowerment (Scotland) Act 2015.

“Participation should be embedded throughout the Bill, including in its purpose, in reporting on the implementation of the Bill, and in monitoring and accountability.”
(Individual)

“CJVSF appreciates that the right to participation is intrinsic to the implementation of this Bill. [...], we think that participation should be included as a minimum core obligation. It is also important that participation is embedded in the development of this Bill as well as being a requirement for duty bearers.”
(Criminal Justice Voluntary Sector Forum (CJVSF), hosted by CCPS)

A set of additional suggestions concerning the specificities of embedding participation in the Bill

The third most frequently raised theme was a set of additional suggestions on supporting embedding participation in the Bill. This theme, raised by a large minority of respondents to this question, was more common among civil society organisations.

A significant minority of respondents to the question supported the idea that public bodies should have a duty to ensure public participation in decision-making as a human-rights-based approach. This included participation in planning policy and services, contributing evidence and insights to human rights and equality impact assessments, engaging in human rights budgeting processes, and monitoring and reporting against human rights duties. In addition to this, respondents supported the idea that public bodies should monitor and provide evidence of participation while using feedback mechanisms for participants, including follow-ups, to make participation meaningful for individuals. A subset of these respondents explicitly supported the idea that the proposed Human Rights Scheme in the Bill should include a requirement for Scottish Ministers to consult people whose rights are at risk.

A significant minority of respondents to this question argued that individuals and groups whose rights are most at risk should be engaged in defining Minimum Core Obligations (MCOs). A small minority of respondents to this question usually provided a set of additional proposals, including the suggestion that the Scottish Human Rights Commission (SHRC) should have a clear duty to embed the

participation of people whose rights are most at risk in all aspects of its work, especially concerning its monitoring role, as this would strengthen the SHRC's effectiveness in promoting and protecting human rights. Another suggestion was that courts should be mandated to consider the views and perspectives of complainants when determining remedies as per the UNCRC Bill.

“[...] There should be a programme of participation of people whose rights are most at risk in determining Minimum Core Obligations. The Scottish Human Rights Commission should have a duty to embed the participation of people, whose rights are most at risk in all that they do, and particularly with regard to their monitoring role. Courts should be required to consider the complainants' views in determining a remedy. [...]” (Carers Trust Scotland, on behalf of the National Carer Organisations)

Summary of other emerging themes

Another small minority of respondents discussed the potential interaction of the right to participation with the PSED while emphasising the need to strengthen the PSED. A few respondents supported the idea that independent advocacy provision is a way of embedding the right to participation in the Bill. A few other respondents either disagreed or expressed their concerns about including the right to participation in the Bill, mainly suggesting that participation could increase the time and investment required within the communities sector to ensure public participation on the subject matters.

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?

Open question

There were 221 responses to this question in the consultation.

General agreement with including an equality provision in the Bill

The most frequently raised theme was the general agreement to include an equality provision in the Bill. This theme was equally common among civil society and public sector organisations.

A majority of respondents agreed with the suggested approach to including an equality provision in the Bill, emphasising that such an approach would ensure equal access and protection of everyone's rights. While the majority of those who supported the inclusion of an equality provision did not specify their preference for which model should be followed, a few respondents endorsed the approach of modelling the equality provision on Article 14 of the European Convention on Human Rights, covering the same population groups. Only a small number of respondents agreed with the approach of modelling the equality provision based on Article 2 of ICESCR without justifying their preference.

“We strongly support the principle of an equality provision in the Bill, which underscores the ambition that the Bill will protect the rights of everyone in Scotland and that rights can be accessed by everyone equally, regardless of status.” (JustRight Scotland)

Request for clarity on the introduction of the equality provision in the Bill and mechanisms to secure rights

The second most frequently raised theme was requests for further clarity on the introduction of the equality provision in the Bill, as well as additional mechanisms to ensure equal access and protection of rights. A significant minority of respondents to this question requested further clarity on how the equality provision will interact with existing law. More information about this theme can be found in Chapter 9, ‘General themes of the consultation responses’.

LGBTI, older people and other population groups with protected characteristics should be explicitly mentioned in the Bill

The third most frequently raised theme was the request for explicitly stating LGBTI, older people and population groups with protected characteristics in the Bill. This theme, raised by a significant minority of respondents, was more common among civil society organisations.

In particular, a significant minority of respondents to the question supported that stronger protection of rights would be achieved by specifically naming LGBTI and older people, instead of using ‘other status’ to cover their rights. Another significant minority of consultation respondents supported that the equality provision should include more population groups, such as care experienced people, unpaid carers, disabled people, children and young people, people who have been in prison, and families affected by imprisonment. They also mentioned that the equality provision should consider the intersectionality of different characteristics.

“We agree that there should be an equality provision and that LGBTI and older people should be specifically named. There is significant benefit in these groups being visible in the Bill, given the particular consideration needed to address barriers to their rights being met.” (Organisation – Public)

“SIAA supports the inclusion of an equality provision in the Bill. We echo calls from experts across civil society [...] that LGBTI, older people and Care Experienced people should be specifically named on the face of the Bill. There is a significant benefit in these groups being visible, given the particular consideration needed to address barriers to their rights. A naming approach would also help to overcome the fact that Care Experienced people have historically not been recognised by the broad category of ‘other status’.” (Scottish Independent Advocacy Alliance)

Summary of other emerging themes

A small minority of respondents expressed their concerns about the legislative competence of including such a provision in the Bill. Furthermore, a small minority of respondents suggested that UN CRPD and other conventions or principles (e.g. 1991 UN Principles for Older Persons, Aarhus Convention) should be considered and enforced.

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

Open question

There were 199 responses to this question in the consultation.

Agreement with stating specific groups to be protected by the equality provision

The most frequently raised theme was the agreement with stating specific groups in the Bill framework. This theme was more common among civil society organisations.

A large minority of respondents to the question expressed their agreement with including specific groups in the equality provision, with a large minority of them supporting the explicit naming of LGBTI and older people. A significant minority of respondents under this theme supported the explicit inclusion of people with physical or mental health issues, disabilities, autism or neurodiversity. Similarly, a significant minority of respondents under this theme supported the inclusion of care-experienced individuals and groups in the equality provision. Other less frequently mentioned groups included unpaid carers, minority language speakers, migrants, refugees or asylum seekers, Gypsy/Travellers, people with substance misuse issues, people experiencing poverty and other forms of social exclusion, armed forces families, families affected by imprisonment, children, and holders of certain philosophical beliefs.

“Close the Gap agrees [...] that LGBTI people, older people and Care-Experienced people should be specifically named within the non-discrimination aspect of the equality provision.” (Close the Gap)

“[...] the strengthening of the equality provision for people with physical, mental and intellectual disabilities should be considered and should be made explicit in the Bill. The key aim of the equality provision is to ensure that all protected people’s rights are promoted and protected, in particular those less heard and the most vulnerable in society.” (Mental Welfare Commission for Scotland)

Suggestion on aligning with existing laws and requests for providing guidance

The second most frequently raised theme was suggestions on aligning the equality provision with existing laws and requests for guidance. This theme, raised by a large minority of respondents to the question, was more common among public sector organisations.

In particular, a significant minority of respondents to this question suggested that the equality provision should cover the protected characteristics outlined either by the Equality Act 2010, Article 14 of ECHR, or Article 2 of ICESCR. Another significant minority of respondents requested clarity on how the equality provision will be included in the Bill and which groups of people will be covered. For example, guidance could be provided alongside the Bill, defining the term ‘other status’.

“It is important to align the equality provision with the protected characteristics with the Equality Act 2010 to ensure the equal opportunities reservation is respected. [...]” (CEMVO Scotland)

Disagreement with stating specific groups in the equality provision

The third most frequently raised theme was the disagreement with stating specific population groups in the Bill’s framework. In particular, a significant minority of respondents to this question disagreed with this inclusion, citing different reasons. For example, these population groups are already protected by existing law; there should be a universal right for everyone and there should be no need for a distinction of specific population groups; stating specific population groups might leave other non-stated groups unprotected. This theme was more common among individual respondents.

“Any definition that specifies certain groups inevitably downgrades the position of other groups and leads to compartmentalised thinking based on stereotypes, as opposed to genuinely valuing everyone in all the diversity we see, with all their combinations of personal and group identities.” (Individual)

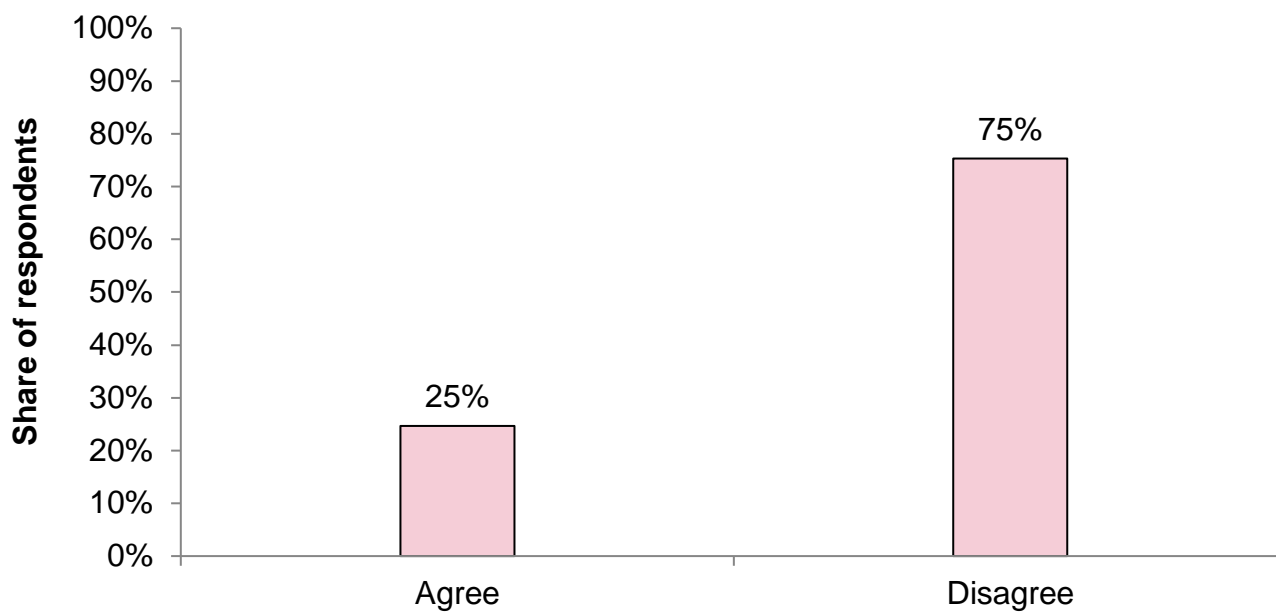
Summary of other emerging themes

Another emerging theme was the importance of considering the intersectionality of the characteristics of different population groups. Yet another emerging theme was concerns about the legislative competence of including the equality provision in the Bill, as well as concerns about how this would interact with other existing acts (e.g. the Equality Act 2010).

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?

Closed question

There were 178 responses to this question.



The majority of respondents (75%) disagreed that the use of ‘other status’ in the equality provision would sufficiently protect the rights of LGBTI and older people. A significant minority of respondents (25%) agreed that using this term in the equality provision would sufficiently protect these population groups.

Question 17: 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.

Open question

There were 170 responses to this question in the consultation.

‘Other status’ would not sufficiently protect the rights of LGBTI and older people and stated reasons why

The majority of the respondents supported the view that the ‘other status’ would not sufficiently protect the rights of LGBTI and older people. This theme was equally common among civil society and public organisations. A vast majority of organisations with an interest in LGBTI and older people, along with a majority of organisations focused on human rights that responded to this question, supported this theme.

They emphasised the need to explicitly state these population groups in the equality provision. The primary reason for requiring an explicit reference to these groups beyond 'other status' in the Bill was that 'other status' fails to distinguish the needs, experiences, and barriers faced by these population groups. The second most frequently mentioned reason was that by explicitly naming those groups, individuals would be able to legally challenge discriminatory protection of their rights under this provision in the Bill. Explicit reference to these groups will enable LGBTI and older people to access legal remedies and justice, especially considering that both groups currently lack the protection of any international treaty. Furthermore, specifying these population groups would provide clarity to duty-bearers regarding the intended beneficiaries of the provision. An explicit reference to those groups beyond 'other status' is deemed necessary, as anything less than full inclusion might create a hierarchy of rights, introducing ambiguity regarding who is afforded protection under this Bill.

“We disagree with the use of 'other status' to cover LGBTI+ and Older People. Encompassing LGBTI+ people only under 'other status' would suggest that LGBTI+ people are somehow less included, and of less importance than other marginalised characteristics. There is a danger of creating a 'hierarchy of rights' within this process [...]. The use of 'other status' provides far less clarity as to whether our rights are to be protected than if they were included on the face of the Bill.” (Equality Network)

“For the reasons stated in the consultation document that these groups are yet currently unprotected in an international treaty, and so by using the non-specific term of 'other status' it would not help establish their rights in matters going to the court.” (Organisation – Public)

Additional protected characteristics should be specified in the equality provision

The second most frequently mentioned theme was about including additional population groups or protected characteristics in the equality provision. A majority of the organisations with an interest in LGBTI people responding to this question supported this theme.

A significant minority of respondents to this question supported the inclusion and explicit mention of additional population groups, such as care experienced people, in the equality provision. Another significant minority of respondents suggested including an equality provision in the Bill that aligns with the Equality Act 2010 or explicitly referencing protected characteristics, such as sexual orientation, gender, gender reassignment, and age.

“Care Experienced people share the various characteristics listed, and we agree with the Scottish Government that naming these groups in the text of the equality provision to 'help to ensure clarity of exactly who the provision is intended to protect'. For Care Experienced people as a group in their own right, they have historically not been recognised by the broad category of 'other status' under the Bill.” (Who Cares? Scotland)

“We would disagree that ‘other status’ is a strong enough provision to protect the rights of LGBTI and older people. Whilst human rights frameworks such as the European Convention on Human Rights use this ‘other status’ designation, we believe this equality provision should align with the protected characteristics underpinning the Equality Act 2010, which are more comprehensive. The protections offered by this model are far more specific and would also help ensure that this Bill sits within Scotland’s devolved competence. LGBTI and older people would be better protected by the specific mention of ‘age’, ‘sexual orientation’ and ‘gender reassignment’, as would people living with HIV or other legally defined disabilities by the protected characteristic of ‘disability’.” (National AIDS Trust)

Suggestion on keeping ‘other status’ in the equality provision but request for clear guidance on this definition

The third most frequently raised theme was a suggestion for keeping ‘other status’ in the equality provision, but the Bill should be accompanied by further guidance on how ‘other status’ is defined. A significant minority of respondents to this consultation question requested clear guidance on defining ‘other status’ and how to implement it effectively. This includes clear language and further definitions, such as what older age means and differences between gender and sexual orientation. In particular, consideration should be given to attaching a specific requirement for Scottish Ministers to publish guidance around the interpretation of ‘other status’. A small minority of respondents to this question supported that there should be a separate reference to LGBTI and older people, but keeping ‘other status’ as well would ensure protection for particular groups of people, such as children and young people and care experienced people. A large minority of organisations specifically focused on human rights raised this theme.

“[Organisation name] agrees with the Taskforce on their point that older people and LGBTI+ lack protection in international human rights law and that explicit protection of these groups in the Bill is required. We support the decision to put these groups on the face of the Bill to ensure clarity and solidarity on who the provision is intended to protect. However, we would still advise keeping ‘other status’ to ensure that while we grow to recognise and appreciate the diversity of our society, no one is left out without sufficient protection.” (Organisation – Other)

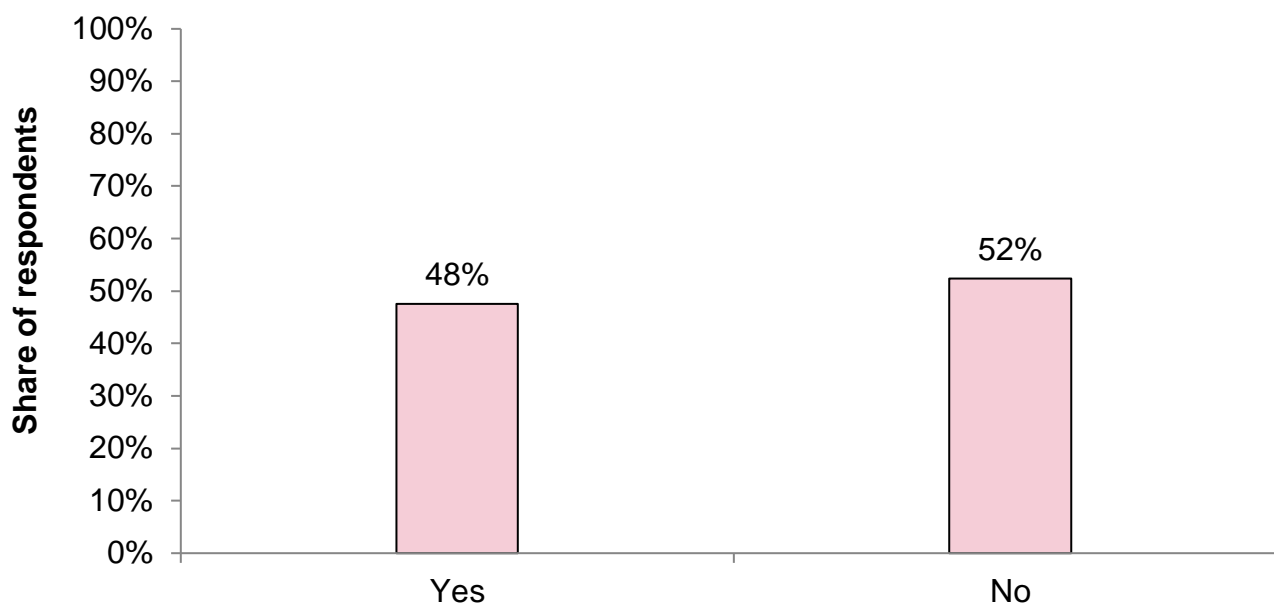
Summary of other emerging themes

A significant minority of respondents to this question supported the idea that there is no need to distinguish these population groups, as they are all human beings covered by existing law. Another theme raised by a significant minority of respondents was disagreement with explicitly stating these population groups in the equality provision as ‘other status’ in the equality provision would sufficiently support their rights.

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

Closed question

There were 145 responses to this question.



The majority of respondents (52%) argued that the Bill framework does not need to do anything additionally for LGBTI or older people. On the other hand, 48% supported that the Bill framework needs to do more for LGBTI or older people.

Open question

There were 116 responses to this question in the consultation.

Specifying LGBTI and older people in the equality provision

Similar to question 17, the first most frequently raised theme in this question was requests to specify LGBTI and older people in the equality provision. A large minority of respondents to this question emphasised that the Bill framework needs to explicitly include LGBTI and older people, while a small number of respondents supported expanding the equality provision to include more population groups with protected characteristics, particularly care experienced people. This theme was raised by a vast majority of organisations with an interest in older people that answered this question, and a majority of organisations with an interest in LGBTI people and human rights, which provided a response.

“[...] we recommend the Bill names LGBTI people, older people and Care Experienced people specifically in the equality provision in the Bill.” (Poverty Alliance)

Additional measures to complement and inform the Bill

The second most frequently raised theme was additional measures to complement and inform the Bill, including the provision of guidance and allowing participation of LGBTI, older people and other people with lived experience of rights violations to provide their views and insights to inform the Bill. This theme was raised by a majority of the organisations with an interest in older people who answered this question. A large minority of organisations with an interest in LGBTI people and a significant minority of organisations with human rights interests supported this theme.

A small minority of respondents to this question requested providing guidance and information complementary to the framework, such as material from international law and treaty bodies, including the Yogyakarta Principles.¹⁸ A few respondents argued that the Bill framework should be informed by additional evidence from the literature and the participation of those population groups (or organisations representing them) to ensure that the Bill will adequately protect their rights. Additional measures raised by a small number of respondents to the question included suggestions on data collection for monitoring purposes of the Bill, incorporation of a statutory right to independent advocacy into the Bill, and the provision of staff training regarding all protected characteristics. A small number of respondents highlighted the importance of ensuring the protection of trans and intersex people while distinguishing trans and intersex people from LGB people. Another small number of respondents suggested the introduction of an Old Person's Commissioner to ensure the protection of the rights of older people.

“We support [...] that in addition to specifically naming LGBTI+ and older people in the equalities clause, the Bill must also be explicit about including material from international law and treaty bodies that contributes to the evolving and progressive realisation of LGBTI+ rights and older people. For example, including the Yogyakarta Principles as material that the court system and duty bearers can utilise when interpreting human rights of LGBTI+ people. Such supporting material will provide further strengthening of the Bill's ability to protect LGBTI+ and older people's rights in practice, and contribute important detail in the absence of a UN treaty stating the explicit rights of LGBTI+ and older people.”
(Engender)

Ensuring a clear understanding of experiences of LGBTI and older people and strengthening the protection of their rights

The third most frequently raised theme was ensuring a clear understanding of the experiences of LGBTI and older people while strengthening the protection of their rights. This theme was raised by a majority of organisations with an interest in older

¹⁸ The Yogyakarta Principles address a broad range of international human rights standards and their application to Sexual Orientation and Gender Identity issues. More information on the Yogyakarta Principles can be found on the [Yogyakarta Principles website](#).

people that answered this question, as well as by a large minority of organisations with human rights interests.

A small minority of respondents to this question supported ensuring a clear understanding of the experiences, barriers, and needs of these population groups to determine any additional measures related to their rights. A significant minority of respondents highlighted the importance of strengthening the protection, effective access and remediation of human rights for LGBTI, older people and other groups with protected characteristics. Some examples of additional ways to support the protection of their rights included: (i) affirming rights in settings like community-based and long-term care for individuals receiving care, (ii) making legal preparations for the elderly, taking into account adherence to religious and philosophical beliefs, (iii) recognising the consequences of various forms of discrimination, like discrimination based on sexuality, and (iv) affirming the human rights of children, including their entitlement to exercise their philosophical beliefs. A small number of respondents to this question highlighted the need for the provision of additional services to further support these population groups (e.g. ensuring the provision of palliative care to older people).

“Rights for older people must reflect their experiences and the challenges they face on account of their age. Issues including social and digital exclusion, barriers to accessing services and resources, physical and cognitive decline and the perceptions of the value of older people must be considered when assessing how best to support and uphold the rights of older people to enable them to be treated as equals across all parts of society. Equally, the rights of people from the LGBTI community must also reflect their experiences and needs. Much work needs to be done to ensure that there is a clear understanding of the experiences, challenges and needs of these specific groups to enable a rights-based approach that supports their ability to live as equals, free from discrimination.” (Alzheimer Scotland)

Summary of other emerging themes

A few respondents to this question highlighted the importance of considering the intersectionality of population groups with protected characteristics, including LGBTI and older people. A general comment on ensuring the protection of everyone’s rights, including the rights of LGBTI and older people, was made by a few respondents. A small number of consultation respondents supported that the Bill framework does not need to include anything additional for these population groups. Finally, another small number of respondents supported that there is no need for further distinction between LGBTI and older people, as they are human beings like everyone else, meaning that they are already protected by current law.

6. Views on: The Duties

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

Open question

There were 236 responses to this question in the consultation.

Agreement with the view presented in the consultation

The most common theme among respondents who answered this question was general agreement with the proposed definition of who should bear the duties. This theme was mentioned by the majority of respondents representing organisations, specifically civil society organisations and public sector bodies. A significant minority of individual respondents also mentioned this theme.

The consultation proposed that “the duties should apply, so far as possible, to bodies carrying out devolved public functions” and, “private bodies acting under a contract or other arrangements with a public body”. This approach mirrors the UNCRC Bill’s approach. The majority of respondents who mentioned this theme agreed with the definition of duty-bearers exactly as it was framed in the consultation. A significant minority of respondents who mentioned this theme agreed with applying the duties to public bodies carrying out public functions and private bodies acting under a contract or other arrangements with a public body, but did not explicitly mention that these duties should apply when executing devolved public functions. A significant minority of respondents who expressed general agreement with the proposed definition recommended that third-sector bodies carrying out public functions be included as duty-bearers.

A few respondents, although they generally agreed with the definition presented by the consultation, recommended modifications to it. For instance, they recommended applying the duties to all bodies operating in Scotland, irrespective of the Scottish Government’s devolved competence. A small number of respondents recommended that this should be achieved through collaboration with the UK government and recommended that the duties be applied to all private businesses irrespective of whether they are commissioned by the Scottish Government.

“I agree on the proposed approach to duties both on public bodies and on relevant private bodies carrying out public functions.” (Individual)

“We agree that the duties in the Bill should apply as widely as possible to bodies carrying out devolved public functions. In addition to public bodies, this should include private, and third sector organisations contracted to deliver devolved public functions when carrying out those functions.” (Dundee Health and Social Care Partnership)

Public bodies and/or the Scottish Government should be duty-bearers

The second most frequently mentioned theme was the view that the public sector should bear the duties outlined in the Bill. Respondents who mentioned this theme did not explicitly agree with the proposed definition for duty-bearers, but generally held the view that public bodies, Scottish Ministers, and/or the Scottish Government should bear the duties. A large minority of respondents who mentioned this theme argued that the duties should apply to public bodies within Scotland's devolved limits. Conversely, a small number of respondents expressed that all public bodies, irrespective of falling under the responsibility of the Scottish Government or Scottish Parliament, should be duty-bearers. A large minority of respondents who mentioned this theme held the view that public bodies should be the sole duty-bearers. A few respondents held the view that the duties in the Bill should be borne by the Scottish Government and/or ministers in general.

“The duties should apply to as many public bodies as possible within devolution, including but not limited to community partnerships, integrated joint boards, Scottish Government, Local Authorities, listed public bodies, etc. [...]”
(Organisation – Other)

“All public bodies should have the duty to respect and protect everyone's rights equally without prejudice”. (Individual)

Confusion expressed and further clarification required

The third most frequently mentioned theme was the need for further clarification when defining duty-bearers, as well as some confusion about how the Bill will interact with pre-existing human rights legislation in the UK. A large minority of these respondents expressed that it is difficult to discern whether a body is under Scottish or UK-wide authority and for this reason, the Scottish Government should provide further clarification on this matter when defining duty-bearers. Respondents generally showed awareness of the devolved competency of the Scottish Government, with some respondents noting that UK public authorities may not be required to uphold the rights outlined in the Bill. These respondents called for the Scottish Government to collaborate with the UK to achieve some or all of the following: ensure UK public bodies uphold the rights, incorporate the rights at a UK level, and/or further incorporate international human rights at the UK level.

More information about this theme can be found in Chapter 9, 'General themes of the consultation responses'.

Summary of other emerging themes

The next most common theme was the view that duty-bearers should be defined using alternative characteristics to those stated in the consultation (i.e. private bodies, public bodies). Instead, respondents named specific groups which they felt should be duty-bearers. These included (i) providers of care and services, (ii) all individuals, (iii) everyone with a legal standing, (iv) providers working with children, and (v) everyone providing public services. Another theme identified was the view

that private bodies should be duty-bearers. Respondents who mentioned this theme did not explicitly agree with the proposed definition for duty-bearers, but generally held the view that private bodies under government direction should be duty-bearers. A significant minority of respondents who mentioned this theme expressed that all private bodies should bear the duties outlined in the Bill.

Another emerging theme involved recommendations for drafting and implementing the Bill. These centred around two areas (i) using existing legal frameworks and (ii) collaborating with the UK government to ensure public bodies uphold the rights at the UK level. Another emerging theme was the view that if duties are applied to private and/or third sector bodies, the Scottish Government should provide support and guidance to enable the fulfilment of their duties. Lastly, another theme identified was the view that a two-tiered system should be avoided when applying the duties. That is, avoiding a system which gives more advantages to one group over another.

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

Open question

There were 218 responses to this question in the consultation.

Support for the proposed initial procedural duty

The most common theme mentioned by respondents was general agreement with the initial procedural duty proposed in the consultation. Agreement with a procedural duty was expressed by a greater proportion of respondents representing organisations. As stated in the consultation, the procedural duty would be placed on duty-bearers as soon as practicable after the Bill becomes an Act with the aim to 'ensure that the rights in the Bill are taken into account by duty-bearers, built into the fabric of their decision-making processes and adequately taken into account in the delivery of services'. According to the consultation, measures could include 'policy or programme development, new legislation, as well as budgetary processes and decision-making'. Respondents typically held the view that an initial procedural duty would allow duty-bearers to adapt their processes and build their capacity to respect, protect and fulfil rights. They expressed that this duty would provide the necessary time for consistent and thorough implementation, and they mentioned specific processes that they felt would need adapting; these included financial processes, general decision-making, and service provision.

A significant minority of respondents stated that they would agree with implementing an initial procedural duty only if specific conditions were met. These included the provision of adequate support and guidance to duty-bearers, a clear timescale for implementing the initial procedural duty and further information on who would bear the duties.

"[...] There should be a 'procedural duty' on public bodies which means human rights must be considered when they are setting their priorities, making

decisions, deciding their budget, and funding allocations, shaping new policies and developing, tendering or delivering services. This Bill will give them a new duty to embed economic, social, cultural, and environmental rights and special protection treaties, into all they do. [...] This duty will ensure rights in the Bill are taken into account. It will be necessary for public bodies to have time to embed human rights into their decision-making, to increase their capacity around human rights and to implement changes in how they work and reach decisions. [...]" (Women's Support Project)

Timescale for implementing the Human Rights Bill

The second most frequently mentioned theme related to the timescale for implementing the duties outlined in the Bill. The most common view held by respondents who mentioned this theme was that a timescale for implementing the Bill should be stated in the Bill itself or presented right after it is enacted. Respondents typically held the view that a timescale would help guide duty-bearers in planning and embedding the legislation within their operations. A majority of respondents who asked that a timescale be provided expressed their support for the timescale proposed by Human Rights Consortium Scotland (HRCS). That is, a procedural duty is implemented no more than six months after royal assent and the duty to comply is implemented no more than two years after royal assent. Support for this timescale was almost exclusively held by respondents representing civil society organisations. Respondents expressed that this timescale would guide duty-bearers with their preparations whilst ensuring the prompt implementation of the duty to comply; for this reason, it would ensure that a duty to comply is thoroughly and consistently enforced. A few respondents held the view that procedural duty should be implemented immediately after the Human Rights Bill is enacted.

"[...] Timescales for implementation should be stated in the Bill. The timescale for the commencement of this procedural duty should not exceed six months from the date of Royal Assent. This gives sufficient time for the preparation of guidance but also does not mean any unnecessary delay in starting to embed these rights across duty-bearers' work. Any longer period denies the serious rights infringements that people are living with every day. Bringing in this procedural duty will also help to focus public body attention and resources on the change needed to comply with the rights." (Human Rights Consortium Scotland)

Support should be provided to duty-bearers

The third most frequently mentioned theme was that the Scottish Government should provide guidance and support to duty-bearers. Respondents typically held the view that duty-bearers will require guidance to understand their duties and support for building their capacity to uphold them. This is especially true if duty-bearers are not familiar with human rights law and how it is applied. Support in capacity building can also be exhibited as guidance from the Government to duty-bearers on how they can best adjust their processes to fulfil their duties. For organisations facing resource constraints, capacity building will pose a particular

challenge; for this reason, respondents expressed that the Scottish Government should provide financial assistance. A few respondents expressed that support should be provided specifically to duty-bearers in the third sector.

More information about this theme can be found in Chapter 9, 'General themes of the consultation responses'.

Summary of other emerging themes

The view that the initial procedural duty should be a duty to have 'due regard' was the next most prevalent theme. Respondents typically held the view that 'due regard' would provide the strongest and clearest framework for a procedural duty. Respondents supported this view by citing that 'due regard' is an established and well-understood principle in Scots law. Another emerging theme was the disagreement with the initial procedural duty. Those who expressed disagreement with the procedural duty argued that it would be redundant and inconsequential to uphold human rights. The status of the initial procedural duty after the duty to comply takes effect was another theme mentioned by respondents. The majority of respondents who raised this theme argued that the procedural duty should remain in effect beyond the enactment of the duty to comply. They expressed it is complementary and essential for comprehensive duty implementation. However, a small number of respondents held the contrasting opinion that a procedural duty should cease the moment the duty to comply is enacted. Respondents also commonly sought further clarification on the initial procedural duty and the Bill. They requested details on enforcement mechanisms, a clearer definition of 'procedural duty', and insights into legal procedures addressing conflicts between the Bill and existing legislation. A few respondents sought clarity on duty-bearers before forming opinions on the initial procedural duty. Lastly, another emerging theme mentioned by respondents was the view that the procedural duty should be informed by or aligned with the PSED and/or the Fairer Scotland duty.¹⁹

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

Open question

There were 227 responses to this question in the online consultation.

General support for the proposed duty to comply

The most common view held by respondents was general agreement with the duty to comply proposed in the consultation. This theme was most commonly mentioned by organisational respondents, specifically civil society organisations as well as public sector bodies. As outlined in the consultation, the duty would 'focus on

¹⁹ The [PSED](#) requires public authorities to bear in mind how their policies or decisions may impact individuals who are protected by the Equality Act 2010. This duty is applicable only to public authorities rather than private organisations and individuals. The [Fairer Scotland Duty](#) is set out in the Equality Act 'places a legal responsibility on particular bodies in Scotland to actively consider how they can reduce inequalities of outcome caused by socio-economic disadvantage when making strategic decisions.'

compliance with the rights’ and go beyond the initial procedural duty, which would focus on decision-making. In doing so, this duty would ‘help deliver better human rights outcomes for rights-holders, help to drive improvements in the delivery of public services, strengthen accountability, and encourage public authorities to embed human rights approaches in their operations’.²⁰ The proposed duty to comply would be placed in ‘respect of the core ICESCR rights and the right to a healthy environment’. A majority of respondents who expressed a general agreement with the duty to comply agreed with the proposed duty as it is. Respondents who held this view typically argued that the duty to comply would provide the most meaningful recognition of the rights outlined in the Bill; this would ensure the ultimate enforceability of economic, social, and cultural rights.

A large minority of respondents who mentioned this theme expressed partial agreement with the duty to comply. These respondents stated that although they agree with the duty to comply in principle, they would only agree with the duty under specific conditions or would like to recommend adjustments to some of its components. The most common condition/recommendation provided by these respondents was that the duty to comply should apply to the CRPD, too. For other respondents, a condition/recommendation was to apply the duty to all the special protection treaties outlined in the Bill (i.e. CEDAW, ICERD, CRPD). Respondents who expressed conditional agreement with the duty to comply were concerned that by applying the duty only to the ICESCR and the right to a healthy environment, the Bill would lack the enforceability required to uphold the rights outlined in the other treaties being incorporated. This could hinder many rights-holders from receiving remedies for human rights infringements in a court of law. Respondents warned that by including solely some of the treaties in the duty to comply, there is a risk of creating a hierarchy of rights; specifically, the ICESCR rights and the right to a healthy environment may be considered more significant. A few respondents who called for the Scottish Government to include the other treaties acknowledged that this should be done within the Scottish Government’s devolved competence.

“Direct legal enforceability is central to the definition of something as a legal right and therefore a duty to comply is essential if there is to be meaningful legal recognition of the rights in question. Thinking about ultimate enforceability is an important consideration in the earlier stages of defining the rights and their minimum core requirements.” (Individual)

“[Organisation name] agrees that public bodies and other bodies carrying out devolved public functions should have a duty to comply with all the rights within the Bill and is concerned that not all conventions will move to a duty to comply. By keeping procedural duty for some treaties, a hierarchy of rights is created. This means that some rights will be legally enshrined and upheld, whilst the others will not have the same support, leading to the assumption that certain rights have more prominence than others. [...]” (Organisation - Other)

²⁰ As described in the [consultation document](#).

“Members agree that there should be a duty to comply with all rights, including substantive CRPD rights, on all public bodies and private companies and individuals. Without a duty to comply, citizens will not have a way to claim their rights effectively or challenge public bodies who are not meeting their rights. [...] A duty to comply would ensure that Government and Government bodies can be held accountable on their human rights record.” (People First (Scotland))

Inclusion of progressive realisation and minimum core obligations

The second most frequently mentioned theme was support for specific components of the duty to comply. A large minority of civil society organisations mentioned this theme, followed by a small minority of public sector organisations. Respondents who raised this theme agreed that the duty to comply should require duty-bearers to deliver a set of minimum core obligations (MCOs) and demonstrate the progressive realisation of the rights outlined in the Bill. Among the respondents who held this view were respondents who expressed support for the duty to comply overall. This view was held mostly by civil society organisations. A few respondents stated that their view was in line with that prepared by the HRCS, with many respondents using similar phrasing to that presented by HRCS. By including MCOs, respondents felt that the duty to comply would be more effective in protecting the rights in a timely and comprehensive manner. A small number of respondents recommended that if MCOs are included in the duty, the Scottish Government should provide further clarity on how the MCOs will be developed and what they will encompass.

Additionally, respondents argued that by including progressive realisation in the duty to comply, duty-bearers would be required to take the necessary steps to realise the rights. Respondents expressed that progressive realisation should include the principle of non-retrogression; specifically, that once duty-bearers take certain actions to protect the rights in the Bill, they cannot take actions detrimental to the realisation of the rights. Respondents stated that when demonstrating progressive realisation, duty-bearers should utilise the maximum available resources. A majority of respondents suggested that both components, MCOs and progressive realisation, should be included in the duty to comply, whereas a few respondents mentioned only the latter. A small number of respondents held the view that human rights budgeting would allow for progressive realisation and the realisation of MCOs. They recommended that the adoption of human rights budgeting should be required by duty-bearers. In line with this proposition, a small number of respondents recommended that the Bill should provide general reporting requirements for monitoring and measuring duty-bearers’ progress in fulfilling the rights.

“The duty to comply should include delivering on the Minimum Core Obligations and demonstrating progressive realisation of rights. [...]” (Voluntary Health Scotland)

“[...] We strongly agree that the Bill should include a strong and enforceable ‘duty to comply’ to ensure that duty bearers are demonstrating that they are

progressively realising human rights (and therefore ensuring non-regression of those rights), including via the delivery of MCOs. [...]" (Organisation – Other)

"[...] The duty to comply should comprise the delivery of MCOs, which necessitates the immediate and consistent fulfilment of baseline rights for all individuals, all the time; and the progressive realisation of rights, which compels public bodies to take deliberate steps towards realising these rights by utilising maximum available resources, while ensuring non-retrogression. However, we note that a third crucial element to this must be human rights budgetary processes. Only by embedding these tools in our fiscal decision-making processes can we ensure that public and third sector bodies are resourced to comply and ensure that we are approaching all levels of governance through a human rights lens. [...] To ensure clarity and effectiveness, guidance provided to public, private and third sector bodies should include guidance around the demonstration of progressive realisation, use of maximum available resources and non-retrogression." (Poverty Alliance)

Support should be provided to duty-bearers

The third most commonly mentioned theme was that the Scottish Government should provide support and guidance to duty-bearers, which will assist them in fulfilling the duty to comply. The majority of public sector organisations mentioned this theme followed by a significant minority of civil society organisations.

A significant minority of respondents who mentioned this theme called for the Scottish Government to provide further clarifications on specific terms used in defining duty-bearers. Specifically, respondents asked that definitions for the following terms be clarified: duty to comply, procedural duty, due regard, progressive realisation, maximum available resources, and non-regression. Respondents argued that a better understanding of these principles would help inform their view on the proposed duty to comply and/or provide further guidance to duty-bearers in fulfilling their duties.

"[...] A comprehensive suite of guidance should be issued, including any training or information sharing opportunities. The duty to comply will help ensure that duty-bearers apply the framework. However, compliance should be monitored fairly and proportionately; duty-bearers should be clear on the consequences of non-compliance." (Falkirk Integration Joint Board)

"[...] The duty should be clearly explained in the Bill and supporting guidance, including accessible explanations of what principles like progressive realisation, maximum available resources and non-regression mean and look like in practice. Guidance should also include specific measures to ensure robust disaggregated equality and human rights data-gathering and analysis. This will help better identify gaps and where improvements are needed to (progressively) realise rights. [...]" (Organisation – Other)

Further information about the requests for support, guidance, and resources for the duty-bearers can be found in Chapter 9, 'General themes of the consultation responses'.

Summary of other emerging themes

The next most prevalent theme among responses focused on the timescale for implementing the Bill, particularly the duty to comply. The most popular suggestion was that the duty should be in effect within two years of the Bill's enactment. A few respondents expressed that this timescale should be communicated in the Bill directly. A large minority of respondents who discussed timescales emphasised the general need for a timescale, asserting that providing one would enable duty-bearers to plan any adjustments to their resources, capacity, and general decision-making in time to fulfil the duty. Another emerging theme was the disagreement with the proposed duty to comply; this theme was voiced mostly by individual respondents. Respondents who disagreed with the duty to comply raised concerns about increased administrative burden and redundancy of the duty. The need for further clarification was another theme mentioned by respondents. Respondents most frequently requested that duty-bearers and rights-holders be better defined and clarified. A small number of respondents requested other clarifications, which included what the implications of the Bill will be for local authorities as well as how the courts will enforce the equality provisions in the Bill when assessing the obligations of duty-bearers to meet the MCOs. Lastly, another emerging theme identified addressed the status of the initial procedural duty after the legal enforcement of the duty to comply, with respondents advocating for the continued application of the procedural duty. Emphasising the complementarity of the procedural duty and the duty to comply, respondents argued that incorporating both would result in a more comprehensive and detailed provision for the duties outlined in the Bill.

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?

Open question

There were 221 responses to this question in the consultation.

General support for a reporting duty

The most common view held by respondents was general agreement that duty-bearers should be required to report on what actions they have taken or are planning to take to fulfil their duties. This theme was raised by the vast majority of civil society organisations who responded to this question. This was followed by a large minority of public sector organisations. The majority of respondents supported the proposition outlined in the report, specifically that certain public authorities should be required to report on their actions. This view was held by a proportionately greater number of civil society organisations, followed by public

sector organisations. Respondents who held this view typically stated that a reporting duty would ensure transparency and accountability when implementing the rights outlined in the Bill. Requiring public bodies to report would allow their efforts to be scrutinised, encouraging a process which would help identify areas for improvement. For this reason, respondents felt that the proposed duty would promote a comprehensive implementation of the legislation. A small minority of respondents who were in general agreement with a requirement to report conveyed this view without explicitly supporting the proposed requirement. These respondents mentioned that there should be greater demands on public bodies and duty-bearers in general for reporting. A small minority of respondents who expressed general support for the reporting duty held the view that all duty-bearers should be required to report on their actions. They argued that this requirement should be extended to private bodies and/or third sector organisations who are duty-bearers.

“[...] We agree that public authorities should be obligated to report on what actions they are planning to take, and what actions they have taken, to meet duties set out in the Bill, including maximising resources to support rights’ realisation of the most marginalised. This is crucial for ensuring transparency and accountability in the implementation of human rights. [...]” (Poverty Alliance)

“[...] All duty bearers, as far as possible and appropriate to their function, should be required to report on what actions they are planning to take, and what actions they have taken, to meet duties set out in the Bill. [...] It will also make it easier for policy advocacy organisations to scrutinise the work of public bodies on human rights and enhance accountability across the board. [...]” (Close the Gap)

Proposals for the content and structure of reports

The second most frequently mentioned theme was suggestions from respondents on how the reports should be structured and what they should include. The most common recommendation was that the reports should be accessible, both as to how they are written and how they can be made available for review by the rights-holders. Respondents typically held the view that this would allow rights-holders to hold duty-bearers accountable. The second most common proposal was that rights-holders, especially those at risk of human rights violations, should be consulted during the composition of these reports. Respondents felt that by involving these individuals, the reports would accurately reflect the experiences central to evaluating whether duty-bearers have met their duties. The reasoning provided for this recommendation is connected to the third most popular recommendation made by respondents: that reporting should be based on people’s experiences of their rights, highlighting where there are gaps and outlining how they will be addressed. Respondents felt that by including these components, the reports would be as meaningful as possible in promoting and ensuring human rights. Other recommendations on the structure and content of the reports included that the indicators cohere with other reporting frameworks (e.g. National Performance Framework, Planning (Scotland) Act 2019) and that both qualitative and quantitative data should be used.

“[...] It should be a requirement that public bodies consult with people whose rights are most at risk when developing these reports. These reports should not simply be a list of all activity but be about identifying gaps in rights realisation and setting out the action they are taking to address these gaps. Public bodies should be required to publish these reports, with a specific focus on ensuring that the content of these reports is accessible and meaningful [...]”. (Organisation – Other)

“[...] Importantly, reports shouldn’t just include the activities public authorities have done or will do, but should report on the lived experience of rights and where there are gaps. It should take a holistic approach highlighting the impact of different policies and where a lack of progress in one area may result in further action required elsewhere [...]”. (Shelter Scotland)

Guidance and support for those required to report

The third most frequently mentioned theme was the guidance and support that the Scottish Government should provide to the duty-bearers who would be required to report. A significant minority of respondents expressed the view that public bodies will be overburdened with a requirement to report and that the Scottish Government should be mindful of this when deciding on a reporting requirement. A significant minority of respondents also held the view that the reporting process needs to be proportionate. More information about this theme can be found in Chapter 9, ‘General themes of the consultation responses’.

Summary of other emerging themes

Another theme brought up by respondents was the disagreement with the proposed duty to report. The most common reason expressed for this disagreement was either concern that public bodies would be overburdened or that reporting requirements are covered by pre-existing legislation. Recommendations regarding the oversight and monitoring of the reporting duty were an emerging theme identified in the responses. The most popular suggestion made by respondents who raised this theme was that independent bodies should review and scrutinise the reports made by duty-bearers; a majority of respondents who made this recommendation held the view that the Scottish Human Rights Commission (SHRC) should be one of the bodies with this role. Suggestions about the framework for reporting were another emerging theme. Specifically, respondents held the view that the reporting requirement should align with other reporting duties, such as the PSED and the Fairer Scotland Duty. A few respondents expressed that rights-bearers and marginalised groups should be consulted during the development of the reporting framework itself. Respondents also mentioned that the Scottish Government should outline a timescale for the reporting duty; a small number of respondents recommended that the reporting be conducted every two years. The final emerging theme related to whom the reporting duty should apply. Some respondents expressed that they were confused about which public bodies would be required to report, whilst others recommended that the pre-existing frameworks be used to define who should bear the reporting duty.

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

Open question

There were 179 responses to this question in the consultation.

The duty to report should align and complement or be combined with existing reporting obligations

The most commonly mentioned theme regarded the alignment or combination of the reporting duty with existing reporting obligations and frameworks. This theme was mentioned by a majority of civil society organisations and public sector organisations. The majority of respondents who mentioned this theme held the view that the duty to report should exist alongside other reporting obligations and complement them. As there may be considerable overlap, respondents felt that drafting the reporting duty in this Bill in a way that complements existing reporting duties will avoid duplication and provide the most straightforward reporting process for duty-bearers. In achieving this, respondents felt the reporting process would be as efficient, consistent, and thorough as possible. A significant minority of respondents provided specific frameworks with which they felt the new reporting duty should align. These included both Scottish and international frameworks such as the PSED, the Fairer Scotland Equality duty, the UNCRC and UN reporting requirements generally. This view was held exclusively by respondents representing organisations. A few respondents mentioned only the UNCRC as the framework they felt the reporting duty should align with. A few respondents felt that the Scottish Government should audit current reporting frameworks and duties to identify where overlap may exist.

A significant minority of respondents held the view that the reporting requirement should be combined with existing frameworks. Respondents who held this view argued that current reporting requirements could be amended to encompass any additional reporting requirements outlined by the Bill. They felt that rather than implementing a new reporting duty, the same can be achieved by adjusting the existing framework.

“[...] It is important that this information would complement equalities reporting (e.g. PSED and the Fairer Scotland duty), opting for as much alignment as possible while keeping the recognition that equality and human rights are separate but complementary. [...] the goal of alignment in process and content in the reporting procedure, is to make for better analysis and better efficiency in the reporting process, and for the analysis to report on the realisation of rights as experienced across multiple characteristics [...]” (Human Rights Budget Working Group)

“The proposed duty to report should be aligned with existing reporting obligations on public authorities to ensure consistency and efficiency. It is crucial that this reporting requirement complements and strengthens other public body reporting

duties to avoid duplication, streamline the reporting process and strengthen accountability [...]” (Human Rights Consortium Scotland)

“[...] Our view is that the Scottish Government could examine how the duty could be combined with existing reporting duties, such as those arising from the Scotland Specific Duties under the Public Sector Equality Duty and our environmental reporting duties.” (Organisation – Public)

General recommendations for implementing the reporting duty

The second most commonly mentioned theme was recommendations made by respondents on how the Scottish Government should implement the reporting duty, including specific components it should consider. This theme was most commonly mentioned by civil society organisations and public sector organisations. The most common recommendation made by respondents who mentioned this theme was that the Scottish Government should provide clear guidance on what to report and how duty-bearers should report it. Respondents held the view that this guidance should be developed after consulting groups and individuals at risk of human rights violations. Typically, respondents felt that the provision of clear guidelines would optimise the quality of the reports and, by consulting with marginalised groups, tokenistic references to their experiences in reporting would be avoided. The second most common recommendation related to this theme was that the reporting must be made accessible to rights-holders; that is, being both easy to understand and widely available to the public. Respondents held the view that this would ensure that rights-holders are able to hold duty-bearers accountable for what they report. Other recommendations made by respondents included that (i) rights-holders participate in the reporting process so that their experiences are conveyed, (ii) the Scottish Government provides support to duty-bearers to fulfil the duty to report, and (iii) the reporting duty should be proportional.

“[...] Clear guidance on what and how duty-bearers are required to report on compliance will be essential. Building public sector bodies’ understanding of the framework [...] will support them in applying good judgement about what information will most meaningfully contribute to its aims. [...]” (Audit Scotland, Accounts Commission and Auditor General for Scotland)

“People whose rights are at risk should shape what is reported on and the content of each report. Reports should be legible and comprehensible to laypeople and not only those with specialist or technical knowledge. This will ensure reporting can enable rights-holders to use this information to hold public bodies [...] to account. ERCS also supports publishing reports in a range of different formats and mediums [...] The Scottish Government should be required to consult with people whose rights are most at risk when developing guidance on reporting requirements”. (Environmental Rights Centre for Scotland)

Recommendations on the content of the reports

The third most frequently mentioned theme was the presentation of specific recommendations on what the reports should include. This theme was most commonly mentioned by civil society organisations. The recommendations referred to items that respondents felt should be included in the framework of the reporting duty. The most common of these recommendations was that qualitative data which reflects the experiences of rights-holders should be included. The second most common recommendation for the content of the reports is that they should analyse the outcomes of the experiences of rights-holders based on the actions that duty-bearers have taken. Respondents expressed that this would promote accountability and evaluation of duty-bearers' actions. In line with the content of the reports, a small number of respondents expressed that access and quality of data are essential components for good reporting and something which the Scottish Government should consider. A small number of respondents held the view that a non-exhaustive list of topics included in the report should be provided by the Scottish Government prior to the implementation of this duty.

“Public body reporting should report on the activities they have done or will do and also include lived experience evaluation on progress made and any ongoing or emerging gaps. Lived experience, particularly including the most marginalised, should shape what is reported on, the content and format of each report.”
(Women’s Support Project)

“Accountability and evaluation of the outcomes experienced by rights-holders as a result of the duty should be the priority of creating any reporting obligations.”
(Organisation – Public)

Summary of other emerging themes

Disagreement with the proposed duty to report overall was another frequently mentioned theme among respondents. Among the reasons provided by respondents were that the proposed duty would be unnecessary and it might negatively impact bureaucratic processes. General support for the reporting duty was also mentioned by respondents although to a lesser degree than the theme for disagreement. The need to establish a timescale for the reporting duty was a frequently mentioned theme. Respondents who mentioned this theme typically held the view that the duty’s timescale should align with those of existing reporting duties. A small number of respondents expressed that the reporting duty should be monitored, especially through reviewing the reports provided. The final emerging theme was general support for human rights and the importance of holding perpetrators to account.

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?

Open question

There were 192 responses to this question in the consultation.

Support for suggested methods to demonstrate compliance

The most prevalent theme for this question was support for the suggested methods to demonstrate compliance with economic, social and cultural rights as well as the right to a healthy environment. This theme was most prevalent among civil society organisations and public sector bodies. The suggested methods would require duty-bearers to progressively realise these rights by fulfilling a set of MCOs and ensuring non-retrogression.²¹ The majority of respondents who agreed with the suggested methods expressed their agreement in general or by reiterating the components of the suggested method (i.e. MCOs, progressive realisation and non-retrogression). Respondents typically held the view that progressive realisation through MCOs would provide a strong minimum standard; this would establish a strong precedent for the protection of human rights and provide the grounds for the complete realisation of the rights outlined in the Bill. This view was held mostly by respondents representing organisations. A few respondents expressed their agreement solely for the establishment of MCOs to fulfil the rights outlined in the Bill.

“We support the need to demonstrate compliance with economic, social and cultural rights, as well as the right to a healthy environment through minimum core obligations (MCOs) and progressive realisation. MCOs and progressive realisation are particularly important with regards to rights under ISESCR, as they set the core minimum under which protections cannot fall and are useful in crisis situations, for example, where emergency action has previously resulted in erosion of some rights.” (Organisation – Other)

“We strongly support the need to show compliance with economic, social, and cultural rights, the right to a healthy environment, and as many rights within the special protection treaties as possible within devolved competence through the delivery of Minimum Core Obligations (MCOs) and the demonstration of progressive realisation. [...] These obligations create an absolute baseline for providing essential subsistence rights, below which no individual should fall. Public bodies must be held accountable if they fail to deliver these MCOs for any individual or group through legal means if necessary. Furthermore, the principle of progressive realisation requires that public bodies not only meet the minimum requirements but also actively take targeted and concrete steps to continually

²¹ For further information on MCOs, progressive realisation and non-retrogression, please refer to the [consultation document](#) available online.

enhance the realisation of people's rights. This includes using their maximum available resources to ensure that rights are progressively achieved and preventing any backward steps in rights implementation.” (Human Rights Consortium Scotland)

Further clarity and guidance needed for the suggested methods to demonstrate compliance

The second most frequently mentioned theme was the view that further clarifications and guidance for the suggested methods are needed. More information about this theme can be found in Chapter 9, ‘General themes of the consultation responses’.

Developing the framework for progressive realisation and MCOs

An equally mentioned theme involved the framework for progressive realisation and MCOs, and specifically, how it should be developed. The most popular view expressed by respondents under this theme was that MCOs, general targets and indicators to demonstrate compliance with economic, social, and cultural rights as well as the right to a healthy environment should be developed in participation with rights-holders and individuals at greatest risk of human rights violations. This view aligns with the approach suggested in the consultation; however, recommendations for how the methods to display compliance should be developed. A few respondents expressed that a timescale is provided for the development of MCOs as well as their implementation. A small number of respondents expressed that international frameworks should be used to inform the Scottish framework for progressive realisation and the establishment of MCOs.

“[...] There must be accessible and meaningful participation and engagement with duty bearers and rights holders, including those whose rights are most at risk, as well as expert practitioners in their respective socio-economic public policy fields of education, health, housing, social protection etc. [...]” (Amnesty International UK)

“We agree with the principle of progressive realisation, but we feel that clearly defined timescales and deadlines for each phase need to be implemented.” (Age Scotland and Age Scotland About Dementia Programme)

Summary of other emerging themes

Specific recommendations for how the MCOs should be implemented were another emerging theme; among others, there were three equally popular recommendations. The first was that the consequences and remedies for failure to fulfil an MCO should be established. The second was that duty-bearers should provide the necessary resources to fulfil the MCOs, with a few respondents mentioning that human rights budgeting would be the best method to achieve this. The third was that the government should provide funding and support for duty-bearers. Disagreement with the proposal to demonstrate compliance with economic, social and cultural rights as well as the right to a healthy environment

through MCOs and progressive realisation was also expressed by a significant minority of respondents. Another emerging theme involved recommendations on what should be included in the MCOs. Some of the topics respondents felt should be included were healthcare (e.g. palliative care, rehab care, mental health), education, volunteering, access to food, housing and gender equality. Agreement with a duty to comply and a procedural duty, as well as recommendations for how these should be structured, was another emerging theme. Another commonly mentioned theme identified among responses was the demonstration, tracking and monitoring of progress for the fulfilment of the rights outlined in the Bill. Respondents conveyed that it is essential for duty-bearers to demonstrate compliance, especially through reporting. Concerns for the effectiveness of MCOs in upholding human rights were also mentioned by respondents. Respondents conveyed that the instances where progress is limited to the MCOs must be avoided, with some arguing that MCOs must be ambitious from the outset. Another emerging theme included the review of MCOs; respondents who mentioned this theme held the view that MCOs should be reviewed so that standards can be set progressively higher.

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

Open question

There were 159 responses to this question in the consultation.

Agreement with the proposed alignment of the right to a healthy environment with economic, social, and cultural rights

The most prevalent theme for this question was support for the proposal to align the right to a healthy environment with economic, social and cultural rights. This theme was mentioned by the majority of civil society organisations and public bodies who responded to this question. The most commonly held view was the agreement with applying the same duties on the right to a healthy environment as to economic, social and cultural rights (e.g. the duty to comply). Therefore, the same requirements will be applied to these rights. A few respondents expressed that in addition to these rights, the same duties should apply to all special protection treaties (i.e. ICESCR, CEDAW, ICERD, CRPD). A small number of respondents stated that their support was conditional. These conditions included that (i) the Scottish Government collaborates with the UK government to ensure that the rights are adequately upheld, (ii) the Scottish Government provides guidance and support on this matter and (iii) further clarifications on the content of the Bill are provided.

A small minority of respondents agreed with the alignment of the rights in general terms; these respondents did not express their support for aligning the duties across the rights, but they supported the recommendation outlined in the Bill aligning the right to a healthy environment with economic, social and cultural rights. The most popular argument for supporting the alignment of these rights (either

general or specific to the duties) was that these rights are inherently interconnected. Respondents felt that the proposed approach reinforced the natural link between these rights and would, therefore, provide a coherent and cohesive view of all the rights. The second most common reasoning provided was that the link formed between the right to a healthy environment and economic, social and cultural rights would ensure that the right to a healthy environment is perceived as equally important; for this reason, it will increase the likelihood that it is upheld. These respondents based their view on the premise that economic, social, and cultural rights are typically held to a higher standard, and they expressed that including these rights together would make it easier to implement them.

“[...] Including the right to a healthy environment under the same duties as economic, social and cultural rights serves to enhance all four categories of rights and therefore the ARA supports this proposal. [...] As society faces the consequences of past actions in climate change, embedding the right to a healthy environment should ensure that the impact of decisions on the environment is considered equally with the impact on economic, social and cultural life. [...]” (Archives and Records Association (UK and Ireland))

“We agree with the proposal that the right to a healthy environment should fall under the same duties as economic, social, and cultural rights. This alignment ensures that the duty to comply, which includes delivering Minimum Core Obligations (MCOs) and progressively realising rights, applies consistently to all these rights [...] Bringing together these rights under the same duties simplifies the implementation process, promotes comprehensive rights protection, and underscores the importance of safeguarding environmental rights alongside other fundamental human rights. It also simplifies the monitoring and enforcement mechanisms, facilitating a more effective and cohesive approach to upholding these critical rights.” (Human Rights Consortium Scotland)

Disagreement with the proposals made in the consultation or the Bill

The second most common theme identified was disagreement either with components of the proposals made in the consultation or with the Bill itself. Disapproval of including the right to a healthy environment under the same duties as economic, social and cultural rights was the most common form of disagreement expressed. This view was held mostly by individual respondents. The reasoning provided for this disapproval included the view that environmental rights should be addressed in a different manner and hence cannot be placed in the same category, that a different legislative approach should be applied to secure a healthy environment, and that including the right to a healthy environment will result in an overwhelming number of rights categories included in the Bill. Disapproval of the Bill overall was the second most common form of disagreement expressed by respondents.

“The right to a healthy environment should fall under different duties to the economic, social and cultural rights. [...] Whether a right has been breached or secured very much depends on the experience of the person and whether they have been treated with dignity and respect. Whereas, the duties under the right

to a healthy environment are such that whether a right has been breached or secured can be answered in a more objective way. [...]" (Public Health Scotland)

"[...] The right to a healthy environment and economic, social and cultural rights] should be totally separate as legislation [...] There is no sensible reason to overly complicate a single piece of legislation by integrating catch-all [...] legislation that is impossible to adequately implement and enforce." (Hamish Taylor)

Further information about general disagreement can be found in Chapter 9, 'General themes of the consultation responses'.

General recommendations for implementing the human rights framework

The next most frequently mentioned theme included general recommendations for how the framework outlined in the Bill should be implemented. One of the views held by respondents under this theme was that effective reporting on human rights is essential, and respondents mentioned that reporting requirements in this Bill should align with existing reporting requirements. A small number of respondents recommended specific topics such as housing, poverty and access to food, which they felt should be further addressed by the Bill. Another view held by respondents who made general recommendations for implementing the human rights framework was that consideration should be given to the number of resources needed and from duty-bearers, specifically when implementing it.

"[...] the Authority agrees with the sentiment, however more detail is required on what this would mean in practice and in relation to resourcing to ensure that the right to a healthy environment would be upheld in a way that is meaningful and impactful." (Scottish Police Authority)

"The inclusion of the right to a healthy environment under the same duties as economic, social and cultural rights make sense, although consideration should be given to aligning reporting in relation to existing duties [...]." (West Dunbartonshire Health and Social Care Partnership)

Summary of other emerging themes

Another prevalent theme identified in the responses was support for the proposed duty to comply. Views on its implementation were another commonly mentioned theme. Under this theme, respondents most commonly expressed their support for the duty to comply to apply to the right to a healthy environment specifically, with a small number of respondents expressing their support for the duty in general. Another prevalent theme was the request for further clarifications on the consultation itself as well as the proposal to include the right to a healthy environment with economic, social and cultural rights. Some of the clarifications requested by respondents included: (i) who are the duty-bearers, (ii) how a healthy environment is defined and (iii) what the procedure will be to ensure a healthy environment. Another emerging theme included specific recommendations on how the framework should be applied specifically for the right to a healthy environment. These recommendations included (i) separate standards should be used for the

right to a healthy environment and (ii) pre-existing standards should be used as a guide to inform the framework. Respondents also expressed concern for the wording used in the bill (i.e. MCOs, progressive realisation, adequate), arguing that they may not be the best to set ambitious targets, which may, in turn, impact the Bill's success in upholding the rights. The final emerging theme involved support for the initial procedural duty as proposed by the Scottish Government with recommendations on how it should be implemented (i.e. timescale, due regard format being used).

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

Open question

There were 196 responses to this question in the consultation.

Agreement with the proposed Human Rights Scheme or the Human Rights Bill overall

The most prevalent theme identified for this question was support for the proposed Bill and for specific proposals relating to the Human Rights Scheme or the Scheme overall. This theme was mentioned by the majority of civil society organisations and public sector organisations who answered this question. A large minority of individuals who answered this question also mentioned this theme. The most common view held by respondents who expressed agreement was support for applying a duty to publish a Human Rights Scheme on Scottish Ministers. As outlined in the consultation, the duty to publish would place a reporting duty on Scottish Ministers to document the measures taken in compliance with the Scheme's requirements. This duty seeks to establish accountability for actions directed towards advancing and realising human rights in Scotland and provides Scottish Ministers with the means to publish their 'plans for implementation and report on progress'.²² Respondents typically held the view that the duty to report to the Scottish Parliament would foster transparency and ensure that Scottish Ministers are held accountable for their actions; both in upholding and promoting human rights. The reasoning provided in support of the duty included: (i) that the duty would help align reporting requirements across existing frameworks, (ii) it would provide further clarity to duty-bearers and rights-holders, (iii) it would facilitate information sharing, and (iv) it would provide a valuable avenue for public scrutiny. For a few respondents, this support was conditional to aligning the scheme to other implementation plans, implementing a Women's Rights Scheme and providing clarity on specific provisions of the Scheme and the Bill overall.

A few respondents expressed general support for the Human Rights Scheme and with Scottish Ministers reporting on the Scheme; these individuals did not explicitly state that they agreed with the reporting requirement taking the form of a duty. A few respondents expressed their support for the Scheme's alignment with the

²² More information can be found in the [consultation document](#).

UNCRC Bill and specifically the proposed Children’s Rights Scheme. The positive impact of the prospective Children’s Rights Scheme was provided as a reason to support the alignment of the Schemes.

“[Organisation name] agrees with the proposed duty to publish a Human Rights Scheme to better ensure accountability and meaningful actions by Scottish Ministers to track and progress duties as they apply under this Bill.”
(Organisation – Public)

“We agree that there should be a duty on Scottish Ministers to publish a Human Rights Scheme. This would help duty-bearers understand the national approach being taken by the Scottish Government and would assist with implementation at the local level, thus ensuring the enhancement of human rights for the people of Scotland.” (Dundee City Council)

“Together supports the proposed duty to publish a Human Rights Scheme. The Human Rights Scheme provisions should be modelled on those for the Children’s Rights Scheme. We are already seeing the positive impact of the prospective Children’s Rights Scheme – even before the UNCRC Bill has entered into force. [...]” (Together (Scottish Alliance for Children's Rights))

Support for stakeholder engagement

The second most prevalent theme raised by respondents was support for stakeholder engagement in the development of the Scheme and for drafting the reports published through the Scheme. This theme was mentioned exclusively by respondents representing organisations. Respondents who expressed support for stakeholder engagement most commonly argued that Scottish Ministers should consult rights-holders, and especially those vulnerable to human rights violations, when reporting on the Scheme. A small number of respondents held the view that duty-bearers and relevant organisations (e.g. advice and advocacy organisations) should be consulted. Respondents typically argued that incorporating this communication within the reports would enhance their accuracy and uphold accountability more effectively. A few respondents held the view that rights-holders should be consulted when developing the Scheme. Respondents typically argued that this would enhance accountability and ensure that the Scheme addresses the most important areas for human rights. A small number of respondents expressed their support for stakeholder engagement more widely.

“[...] As per our previous comments in relation to monitoring and reporting, we would suggest that it should not be reporting on the activity itself. Instead, it should be reporting on activity or decisions that have led to the realisation of rights, as determined, and evidenced through the participation of people whose rights are most at risk.” (Criminal Justice Voluntary Sector Forum (CJVSF), hosted by CCPS)

“[...] The Human Rights Scheme should include a requirement to meaningfully consult with the information, advice and advocacy sector as well as rights holders, especially those whose rights are at risk, both when developing the Scheme and when reporting against it every year.” (Citizens Advice Scotland)

Recommendations on the components and content to be published

The third most common theme mentioned by respondents involved recommendations as well as views on the content of the reports published under this duty. This theme was mentioned by a small minority of respondents representing civil society organisations and public sector organisations. The most prevalent recommendations made by respondents were that specific actions and progress made by Scottish Ministers to implement the rights are reported on and that the content published under this Scheme is accessible to all rights-holders. Respondents held the view that the reports should be based on experiences and outcomes to ensure an accurate reflection of human rights in the country, and emphasised that the experiences of vulnerable groups and individuals should be included when publishing on the Human Rights Scheme. Other recommendations made by respondents on the content of the reports included (i) a summary of the Scottish Minister’s engagement with UK Ministers on human rights issues, (ii) a timescale of MCOs and when they will be reviewed, and (iii) that human rights budgeting is implemented and reviewed through this Scheme. A small number of respondents agreed with the elements of the Scheme recommended by the consultation.²³ A small number of respondents argued that the Scheme should include the provisions that have been made through existing legislation on rights-holders’ access to justice; including advice, interpretation of rights, how accessible access to justice is, and rehabilitation services.

“Reports should not only be on activities undertaken and policy, but on people’s experiences of rights being realised, or where progress is still required. [...] Qualitative and quantitative data will be crucial here to understand the experience of particular groups most at risk of having their rights not realised, including women, some minoritised ethnic groups and disabled people. Where there are gaps, specific actions should be identified to target these, including any required resources to be made available to enable duty bearers to deliver on their duties and therefore for rights holders rights to be realised.” (Shelter Scotland)

“[...] It is important that reporting is transparent and focuses on outcomes to assess whether the Bill is delivering the intended benefits and making a difference for people in equality of access and realising their rights. Reporting also needs to be accessible to all rights holders, and steps should be taken to ensure this. [...]” (Audit Scotland, Accounts Commission and Auditor General for Scotland)

²³ These are stated in Part 9: Implementing The New Scottish Human Rights Act.

Summary of other emerging themes

Disagreement with the duty to publish a Human Rights Scheme was another emerging theme identified. This view was held by a significant minority of respondents who answered this question. Respondents characterised this duty as redundant or a bureaucratic procedure with minimal capacity to promote human rights. Another theme mentioned by respondents was recommendations for legislation specific to women's rights. Respondents who mentioned this theme argued that a Women's Rights Scheme should be implemented alongside the Human Rights Scheme. Respondents typically argued that this would complement the proposed Children's Rights Scheme, a component of the UNCRC Bill, and ensure women's rights are held to an equal standard. Another emerging theme identified was the view that the Human Rights Scheme should align with other frameworks, including the PSED, Fairer Scotland Duty and Scotland's second National Human Rights Action Plan (SNAP2). The resource implications of the Scheme and Bill overall were also frequently mentioned among respondents. Respondents who raised this theme typically expressed their concern for the implications on capacity and financial resources that duty-bearers will face in order to fulfil their responsibilities.

7. Views on: Ensuring Access to Justice for Rights-Holders

Question 27a: 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

Open question

There were 206 responses to this question in the consultation.

Advocacy for certain groups of people

The most prevalent theme among the responses to this question discussed the need for advocacy and advice services focused on the rights of certain groups of people. More information about this theme can be found in Chapter 9, ‘General themes of the consultation responses’.

Accessibility of the services

The next most frequent theme was about the accessibility of advocacy and advice services. The theme was mostly expressed by civil society organisations, with only a few responses coming from public organisations and individuals.

The respondents who discussed the matter of accessibility highlighted the need for building a network of services that will be inclusive and available to as many people as possible. It was mentioned that advocacy and advice services could be provided through existing trusted community organisations and mechanisms. Also, the need for sufficient and inclusive digital channels of support was pointed out. At the same time, a few respondents mentioned that for different groups of people (e.g. disabled people) the existing provisions are not helpful enough, hence, reasonable adjustments should be made to the extent that this is possible.

“[...] Awareness of and the availability of timely, accessible, free, well-provisioned, and ‘disability competent’ information, advice and independent advocacy support is essential for disabled people, for routes to justice, and for the realisation of our human rights. [...] Advice is frequently ‘digital by default’ yet disabled people are not all online as they cannot afford the necessary kit and connectivity and it can be inaccessible to them. [...]” (Organisation – Other)

“[...] We would recommend building advocacy support through existing trusted community organisations and mechanisms, [...] and for budget dedicated to improving internet resources explaining individuals’ rights and how they can be enforced. In addition, justice must be accessible at all levels, and the lived experience of people who go to court [...] must be considered.” (Organisation – Other)

Funding and capacity of advocacy and advice services

The other most prevalent theme was expressing the need for adequate funding, capacity, and resources allocated for advocacy and advice services. More information about this theme can be found in Chapter 9, 'General themes of the consultation responses'.

Summary of other emerging themes

The rest of the emerging themes were focused on elements that advocacy services need to effectively help with the realisation of the rights in the Bill. The most frequent among these themes was the request for independent advocacy services, with the respondents claiming that independence is essential for advocacy to be effective and can help with early intervention and prevention of rights infringement. Another frequent theme was the one highlighting the need for education and effective information dissemination about human rights that will reach every group of people. A significant minority of the respondents focused on the quality of the services provided and the need for specialised staff training.

Question 27b: 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 legal aid

Open question

There were 111 responses to this question in the consultation. Although this question was not intended to be included in the consultation document, it was mistakenly included in the online survey. As respondents had already answered this question in the online survey, their responses were analysed as usual and are discussed below.

Accessibility and affordability of legal aid

The most prevalent theme was the need for legal aid to become more accessible, either by making it easier to receive the right services for each case or by making legal aid more affordable. This theme emerged mostly through the responses of civil society organisations, with the responses of individuals following right after, while there were a few responses from public organisations.

The respondents raising this theme highlighted the importance of legal aid services becoming equally available to every person in Scotland who may need it, regardless of their economic, social, or ethnic background, disability status, health condition, or any other characteristics. A significant minority of the respondents mentioned that for disabled people (e.g. people who may need British Sign Language interpretation or people with learning disabilities), there are barriers to effectively accessing legal aid. Moreover, it was suggested that information regarding legal aid should be available in inclusive formats like Braille, Easy Read,

and other formats. A small number of respondents mentioned that the geographic location of one's residence should not pose a barrier to legal aid. Another point made was that the process of receiving legal aid should become less complex and more transparent in order to achieve equal access to it. In addition, a significant minority of the respondents mentioned that it is essential that legal aid is affordable so people without the necessary financial means do not get excluded from access to justice.

"[...] There should not be additional barriers for any person requesting consideration for Legal Aid. In early discussions of potential Legal Aid applications, there is no support for the cost of interpretation for BSL or other languages. If this continues, it will potentially impact access to the rights in this Bill." (Dundee Health and Social Care Partnership)

"Justice should be accessible to all. Having legal aid allows a proportion of individuals to access this fairly. However, any costs relating to failings of human rights should be removed. [...] Effective legal aid needs to be accessible in order to comply with the principles of human rights." (Organisation – Other)

Reforming the judicial / legal aid system

The next most prevalent theme was the request of a significant minority of respondents to reform the legal aid system. The theme emerged primarily through the responses of civil society organisations and secondarily through the responses of individuals.

It was pointed out that, in order to achieve equal access to justice and uphold the human rights in the Bill, it is necessary to reform the legal aid system, while a few respondents suggested making amendments to the judicial system as well. The majority of respondents who discussed the need for reform did not make specific suggestions, but they highlighted that the reform of the legal aid system must prioritise the users (i.e. the rights-holders) and aim to address inequalities. It was also noted that the Bill is expected to increase demand for legal aid, and this makes the need for reform more imperative. A few respondents were more specific and suggested reforms like the creation of a supra-organisation body that will specialise in human rights. Another point made was that the courts should be relieved of some burden in cases where independent advocacy can provide a solution.

"[...] An updated, newly designed legal aid system which is fit for purpose and clearly aligned to the needs of citizens in Scotland is required. We would ask Scottish Ministers to consider enhancing independent advocacy services as an alternative for some to remedy through the courts. This informal mechanism would be cheaper, potentially quicker and would allow courts to focus on other matters." (Partners in Advocacy)

"[...] simpler appeal and review procedures and various aspects of court structure and processes are also in need of attention." (Individual)

Legal aid for certain groups of people

Another frequent theme was the one expressing the request of a significant minority of respondents for legal aid services that are context-informed and focused on the needs of certain groups of people. More information about this theme can be found in Chapter 9, 'General themes of the consultation responses'.

Summary of other emerging themes

There were a few other themes that emerged through the responses to this question. A few respondents expressed their support for the Bill's provisions without making any specific comment on legal aid. The remaining emerging themes focused on certain aspects of legal aid: one theme was the view of a few respondents that adequate funding and resource allocation to legal aid can make it more effective. Another theme was the need for timely and high-quality legal aid services provided to people whose rights are most at risk. On the other hand, there were a few respondents who claimed that access to legal aid should have a high threshold of requirements to avoid abuse of such services and excessive spending of public funds. Moreover, a few responses pointed out the need to limit the number of vexatious complaints, while others expressed concerns about the clarity of the Bill's provisions.

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

Open question

There were 176 responses to this question in the consultation.

More efficient, effective, and accessible handling of complaints is required

The most frequent theme that emerged through responses discussing the complaints handling system was the need for improvement at various levels. This theme was mainly expressed by civil society organisations, while there were a few responses by public organisations and individuals.

The responses mentioning the need for improvement were focused either on the effectiveness and efficiency of the complaints handling system or on its accessibility. While a few respondents mentioned the need for improvement in general, there was a significant minority who pointed out specific issues with the processes and presented potential solutions. Regarding the effectiveness and efficiency of the system, it was mentioned that the handling of complaints must take place in a timely manner because otherwise, the alleged infringement of rights could be exacerbated. It was also mentioned that the processes should become less bureaucratic and more transparent, while front-line workers and other staff need to be properly trained and supported to handle the cases effectively. Regarding the accessibility of the complaints handling system, it was highlighted that such services must be known and available to every involved person regardless of their financial means, disability status, educational or other

background, meaning that the complaints processes must become simpler and more inclusive.

“[...] Such complaint handling mechanisms should adhere to the standard of accessibility, affordability, timeliness, and effectiveness, expected from all routes to remedy. In this sense, for example, such mechanisms should seek to be: Transparent, ensuring that information about their existence is widely available, in different forms and languages, in order to ensure the population is aware of the existence of such mechanisms; Simple and not unreasonably complicated; Prompt, ensuring that there are no unwarranted delays, and guarantee that the mechanism can address urgent cases.” (Scottish Human Rights Commission)

“[...] Of fundamental importance is the need to ensure [that] as streamlined a process as possible is developed for individuals, families and carers to access complaints in ways which are not unintentionally exclusionary by any complicating mechanisms. We hear from individuals, families and carers how they simply do not engage with the system as the current complaints system can be experienced as unwieldy, bureaucratic and dissatisfying; individuals, families and carers tell us they can barely cope with managing their own situation and simply do not have the strength to pursue a complaint, at any level. The current Bill and associated infrastructure is an opportunity to improve managing access to justice for all rights holders.” (Mental Welfare Commission for Scotland)

Comments on the role of the Scottish Public Services Ombudsman

The next most frequent theme included comments that the respondents made about the role of the Scottish Public Services Ombudsman (SPSO). Although there was a question specifically on the role of the SPSO (Question 29), respondents chose to speak about the SPSO in this question, too. This theme was mainly expressed by individuals, with responses from civil society and public organisations following right next.

There was a wide range of comments regarding the SPSO, but the main element was that the role of SPSO needs to be upgraded and adapted to the new context that the Human Rights Bill will create. It was noted that the remit of the SPSO is quite often not specific enough, and her powers are too limited to deal with escalated human rights complaints. A significant minority of the respondents suggested that the SPSO should be further empowered and resourced to ensure that her work reflects the obligations in the Bill. Such actions would include the training of the staff or the power to issue ‘declarations of non-compliance’ when a specified public authority is found to not follow the updated procedures (although further clarity was requested on the matter of declarations of non-compliance). Another suggestion was to extend the SPSO’s remit to deal with complaints that are considered relevant to human rights, even if this is not explicitly mentioned in the complaints.

“[...] We agree that the SPSO’s remit should be extended to deal with complaints relating to rights under the Bill, even without the complainer specifying human rights as such. While we support the principle of the SPSO being given new

powers to conduct investigations into recurrent issues it sees, resourcing must be a key consideration - bureaux across the network regularly express concerns that the SPSO and other complaints bodies are already overstretched and seem to lack the capacity to respond to the current volume of complaints being raised [...]” (Citizens Advice Scotland)

Complaints handling should consider the needs of certain groups of people

Another frequent theme was the one pointing out that the complaints handling system should consider the needs of certain groups of people. More information about this theme can be found in Chapter 9, ‘General themes of the consultation responses’.

Summary of other emerging themes

Several other themes emerged through the responses to this question. The next most frequent theme was the request of a significant minority of respondents to reform the complaints handling system. A few of the respondents who raised this theme made specific suggestions like building new procedures for continuous improvement and feedback, while others simply highlighted the need for structural reform. Another emerging theme was the request for adequate funding and resource allocation to the complaints handling mechanisms. Other, less frequent themes were a general agreement with the Bill without any specific views mentioned, a request for better and more effective communication with front-line workers, and concerns that the complaints handling system is not operating effectively and transparently.

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

Open question

There were 162 responses to this question in the consultation.

General agreement and support for the expansion of the SPSO’s remit

The most frequent theme was the general agreement with the proposals or explicit support for the expansion of SPSO’s remit. This theme was equally expressed by organisations (civil society and public ones) as well as individuals.

The respondents either clearly expressed their support for amending the remit of the SPSO to include the rights and duties described in the Bill or made more general and supportive statements. Most respondents mentioning this theme made some more specific comments on the role of the SPSO (as described below) even though a large minority simply provided their endorsement for the expansion and strengthening of the SPSO’s remit.

“We agree that SPSO should have an expanded remit to consider rights issues within complaints. [...]” (Age Scotland and Age Scotland About Dementia Programme)

Comments on specific aspects of the SPSO's role

The next most frequent theme came up through responses that discussed certain aspects of the SPSO's role and expressed either agreement or concerns about some of the proposed changes to the remit and powers of the SPSO. This theme was mostly expressed by civil society and public organisations, while there were a few responses from individuals.

The comments were about the remit and powers of the SPSO and about the process of submitting complaints to it. Regarding the powers of the SPSO, the majority of respondents raising this theme supported the extension of SPSO's remit to consider the rights in the Bill. The respondents who mentioned the power of own-initiative investigations agreed with this proposal, with only a small number of respondents expressing disagreement with or some concerns about the way this power will work in practice. The respondents who mentioned the declarations of non-compliance when a specified public authority acts incompatibly with the updated model complaints handling procedures, were in favour of such a provision. However, the ones who discussed the non-binding character of the SPSO's recommendations were divided. A few respondents suggested that the recommendations should be binding, while a few others highlighted that the approach of non-binding recommendations would be more in accordance with the SPSO's way of functioning and would allow for more flexible and innovative solutions to the detected issues.

When it comes to the procedure of submitting complaints to the SPSO, the respondents stressed the need for an accessible, affordable, and timely procedure. Additionally, it was mentioned that oral complaints should be accepted by the SPSO and that third parties (e.g. organisations) should be able to file complaints regarding human rights violations.

“[...] Additionally, we strongly support the suggestion of expanding the SPSO duties to include ‘initiative investigation’ powers. [...]” (Organisation – Other)

“[...] We find the flexibility that a non-binding recommendation brings is beneficial in supporting innovation in finding solutions, in enabling public bodies to take ownership of the solution and supports longer-term and sustainable improvements. We have a concern that making binding recommendations, changes both the relationship with stakeholders and the role of the scheme, which would undermine these benefits. [...]” (Scottish Public Services Ombudsman)

Clarity regarding the proposed changes

Another frequent theme was the one expressing the request of a significant minority of respondents for further clarity regarding the proposed changes to the SPSO's remit. More information about this theme can be found in Chapter 9, ‘General themes of the consultation responses’.

Summary of other emerging themes

Another emerging theme was concerns about the SPSO and the complaints handling system in general. The respondents who expressed these concerns were not against the Bill but did not find the proposals regarding the SPSO particularly useful or effective, and their main argument was that public services should be improved to reduce the need for complaints in the first place. Additionally, the next emerging theme was the view that changes to the SPSO's remit should focus on supporting certain groups of people, like disabled people (or other protected characteristics) and people who face a greater risk of rights infringement in general. The least frequent theme was the one that emerged through responses that highlighted the need for better funding and resourcing of the SPSO to increase its capacity and support it with the changes to its remit.

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

Open question

There were 177 responses to this question in the consultation.

General agreement and support for the proposals

The most prevalent theme among the responses to this question was support for the proposals in relation to scrutiny bodies. This theme was equally expressed by organisations (civil society and public) and individuals.

The respondents that raised this theme either expressed their support along with more specific views regarding the scrutiny bodies and the proposals, or they simply made supportive statements without making any further comments. Those who further commented on the proposals mentioned that the provisions described in the consultation document will allow for further accountability of public bodies and will ensure that human rights principles are integrated into the delivery of public services.

“We support the proposal to extend the responsibilities of Scotland's scrutiny bodies to include human rights considerations. This expansion will provide an additional layer of accountability by assessing public bodies' compliance with the provisions of the Bill. It is a positive step towards ensuring that human rights principles are actively integrated into the delivery of public services. [...]”
(Human Rights Consortium Scotland)

Comments on specific aspects of the scrutiny bodies' role

The next most frequent theme emerged through responses that included the views of the respondents on various aspects of the scrutiny bodies' role. The theme was mainly expressed by public organisations, with civil society organisations following right after, while there were also a few responses from individuals.

There was a wide range of areas and matters discussed among the responses raising this theme. One of the most common areas discussed was the collaboration and coordination among scrutiny bodies. The proposal to enable scrutiny bodies to collaborate more closely and to share information relating to human rights effectively was widely welcomed. Additionally, there were respondents pointing out that scrutiny bodies need to become more accessible to rights-holders, and the process of filing a complaint should be as simple, prompt, and effective as possible. A few respondents discussed the legal aspects of reports from scrutiny bodies and how the role of scrutiny bodies interacts with or complements the role of standard legal remedies like litigation. A small number of respondents highlighted that it should be investigated whether specific human rights obligations are met during the assessment of scrutiny bodies, even if these obligations derive from the Human Rights Act 1998 or the European Court of Human Rights (ECHR) case law. Some of the referred rights were the right to life, the right to a fair trial, the right to liberty, and the right to a healthy environment.

“The Vegan Society support these proposals in relation to scrutiny bodies, including encouraging collaboration to share human rights information, being able to work together when looking at human rights issues and identifying overlap in the human rights issues they are looking at. [...]” (The Vegan Society)

“We welcome the proposals, however, we know that the current scrutiny bodies are not always accessible to rights-holders. We frequently hear from older social care users and their family members who are experiencing rights breaches or inadequate provision, but are reluctant or nervous to complain for a variety of reasons including fear of losing their space or service.” (Age Scotland and Age Scotland About Dementia Programme)

Funding, resources, and training are required for the scrutiny bodies

The next most frequent theme was the one expressing the view of a significant minority of respondents that scrutiny bodies need to be adequately resourced and supported to successfully deliver their duties as described in the Human Rights Bill. More information about this theme can be found in Chapter 9, ‘General themes of the consultation responses’.

Summary of other emerging themes

Apart from the most prevalent themes, four other main themes emerged through the responses to this question. One of those was the disagreement of a significant minority with the proposals for scrutiny bodies. Along with this theme, there was a small number of respondents who expressed their reservations and mistrust regarding scrutiny bodies. Another frequent theme was the request of a significant minority of respondents to focus on the needs of certain groups of people. These respondents mentioned that scrutiny bodies should take into account the context-specific nuances regarding the needs of groups of people like children and young people, disabled people, homeless people, minorities, women, and generally people who may face a higher risk of rights infringement. Another emerging theme was about the need for further clarity on the provisions in the Bill and their

implications for every type of involved stakeholder. A few of these respondents also requested further clarity on what the definition of 'scrutiny bodies' is going to be and how scrutiny bodies are expected to operate in various situations. Along with this theme, a small minority of respondents expressed their concerns about potential issues and challenges that may arise with the implementation of the Bill. Such challenges could be overlaps and conflicts of duties among scrutiny bodies or legal constraints regarding the sharing of information.

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

Open question

There were 183 responses to this question in the consultation.

General agreement and support for the proposals

The majority of respondents in this question expressed their support for the proposed additional powers for the Scottish Human Rights Commission (SHRC). This theme was mostly expressed by civil society and public organisations, with a significant minority of responses coming from individuals.

Most respondents mentioning this theme expressed their support for the proposals along with more specific views regarding the additional powers of SHRC and its role, while a significant minority of these respondents only provided their endorsement without presenting specific arguments. Those who provided an explanation for their support pointed out that the Human Rights Bill will create new responsibilities and requirements, but the SHRC does not have sufficient powers to hold the authorities accountable. For this reason, the SHRC should be given additional powers to ensure that the Bill will be implemented. A few respondents explicitly supported a similar approach for the Children and Young People's Commissioner (CYPC).

“At present Scottish human rights organisations do not hold sufficient power to effectively manage the proposed Human Rights Bill. Therefore, the Scottish Human Rights Commission (SHRC) must be given additional powers to hold the relevant authorities accountable. [...]” (The Scottish Women's Convention)

Comments on specific aspects of the additional powers for the SHRC and its role

The next most prevalent theme emerged through responses that commented on specific aspects of the proposals and the role of SHRC. The theme was expressed mainly by civil society organisations, with public organisations following next. There were a few responses from private organisations or individuals.

There were various aspects discussed, with comments on the types of additional powers for the SHRC being the most common. A significant minority of respondents

mentioning this theme explicitly requested a specific set of additional powers. These powers were for the SHRC to:

- Provide advice to individuals.
- Conduct investigations into specific human rights issues.
- Hold inquiries into the practices of individual public bodies.
- Monitor and scrutinise public body reports on the implementation of rights outlined in the Bill.
- Compel public bodies to provide necessary information for inquiries or investigations.
- Issue binding guidance.

A small number of respondents also asked for SHRC to be empowered to represent more voices and experiences of Scottish society, to raise legal proceedings in its own name, and to make unaccompanied and unannounced visits to any human rights duty bearer. On the other hand, a small number of respondents claimed that they were not convinced that SHRC should be allowed to raise cases or intervene in existing court cases.

Matters like the consideration of certain rights, the creation of new public bodies to ensure the protection of certain rights or groups of people and the accessibility and effectiveness of SHRC were also discussed. A small minority of the respondents commented on whether it would be beneficial to create new public bodies to ensure that the rights in the Bill will be upheld. A few respondents mentioned that it may be more beneficial to give additional powers in the proposals to new Commissioners like the ones mentioned in the SHRC's report 'At a Crossroads – which way now for the human rights system in Scotland?' (e.g. Disability Commissioner, Older People's Commissioner, LGBT (Conversion Practices) Commission), while others argued that such an approach would be ineffective and would create further confusion. Additionally, a few respondents pointed out that the new powers or functions of the SHRC should focus more on the protection of rights like the right to a healthy environment, and that any new powers which relate to the right to a healthy environment should recognise Environmental Standards Scotland's (ESS) remit to monitor the effectiveness of environmental law in Scotland. A small number of respondents stressed that the additional powers should make the SHRC more accessible, transparent, independent, and effective.

“Scotland needs its National Human Rights Institution to be authoritative and fit for purpose. [...] The SHRC also cannot provide any advice or services to individuals, but NHRIs elsewhere in the UK can do so. [...] We consider that additional SHRC powers should include: 1. Providing advice to individuals; 2. Conducting investigations into specific human rights issues; 3. Holding inquiries into the practices of individual public bodies; 4. Monitoring and scrutinising public body reports on the implementation of rights outlined in the Bill and requiring public bodies to implement its recommendations; 5. Compelling public bodies to provide necessary information for inquiries or investigations; 6. Issuing binding guidance [...]” (Organisation – Other)

“[...] We note with interest that the consultation document mentions wider asks in relation to specific Commissioners focused on advancing the rights of specific groups and areas. [...] we call for an LGBTI+ Commissioner with a broad remit for all LGBTI+ rights, rather than a narrow focus on conversion practices.”
(Equality Network)

Funding, resources, and training are required for the SHRC

The next most frequent theme was expressing the view of a large minority of respondents that the SHRC must be adequately funded and resourced to deliver its new duties. More information about this theme can be found in Chapter 9, ‘General themes of the consultation responses’.

Summary of other emerging themes

There were another four themes that emerged through the responses to this question. The most frequent among those was the view of a significant minority that the additional powers in the proposals should be more focused on the needs of certain groups of people. Such groups would be disabled people, children and young people, women, LGBTI people, as well as other vulnerable groups like people experiencing homelessness, people in prison, or generally people that face greater risks of human rights infringement. The next most frequent theme was the request of a significant minority for further clarity regarding the proposals and how the additional powers for the SHRC would work in practice. It was also requested that the roles of the Scottish Human Rights Commission and the Equalities and Human Rights Commission (EHRC) be clearly distinguished. This theme was associated with another emerging theme, the concerns of a significant minority about potential issues, overlaps and conflicts of duties. These concerns were expressed by respondents who supported the proposal as well as by respondents who opposed it. The last emerging theme was the disagreement with the specific proposals. Those who disagreed argued that further enhancing the powers of quasi-autonomous non-governmental organisations could diminish the influence of the electorate and government’s accountability and that the EHRC is better suited for such duties.

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

Open question

There were 141 responses to this question in the consultation.

General agreement and support for the proposal

The most prevalent theme, by far, was the support of the respondents for the proposal to mirror the additional powers of the SHRC for the Children and Young People’s Commissioner Scotland (CYPCS). This theme was mostly expressed by civil society organisations, with public organisations following next. Additionally, a

large minority of the responses came from individuals, and a small number of responses came from private organisations.

Most of these respondents either expressed their support without providing further comments or argued that the proposal to mirror the additional powers for CYPCS would ensure the utmost protection of children's rights and would allow for a cohesive and comprehensive approach to human rights protection across all age groups in Scotland. A few respondents mentioned that this approach would help to maintain consistency with the content of the UNCRC (Incorporation) (Scotland) Bill²⁴ and urged the Scottish Government to ensure that the provisions of the Human Rights Bill and the UNCRC (Incorporation) (Scotland) Bill are aligned.

“Just as the SHRC plays a crucial role in protecting and promoting human rights for the broader population, the CYPCS similarly advocates for the rights of children and young people. Ensuring that both institutions have comparable powers will help maintain a cohesive and comprehensive approach to human rights protection across all age groups in Scotland.” (Human Rights Consortium Scotland)

Concerns about potential issues, overlaps and conflicts of duties

The next most frequent theme was the concerns of a significant minority of respondents regarding potential issues and overlaps or conflicts of duties among the CYPCS and other public bodies. This theme was mainly expressed by public organisations, with civil society organisations following next. There were also a few responses from private organisations or individuals.

There were various potential issues discussed in the responses, with the duplication of roles and powers being the most common issue. Most respondents raising this theme supported the proposal, although there were a few respondents who either disagreed with it or did not explicitly support it. It was mentioned that the Scottish Government should focus on avoiding the duplication of powers between the CYPCS and the SHRC or other public bodies such as the Care Inspectorate, the Independent Care Review, and the SPSO. According to the respondents, this could lead to unnecessary conflicts and a more complex landscape that will mostly affect the rights-holders. For that reason, a few respondents highlighted the need for effective communication channels between the involved public bodies that would allow for better coordination and collaboration.

“Overall, we agree that it could be beneficial for the SHRC to have additional powers as outlined in the consultation. However, further discussions would need to take place with other relevant bodies or organisations and a coordinated approach would need to be taken to avoid duplication and ensure understanding of where specific responsibilities sit.” (Dundee Health and Social Care Partnership)

²⁴ The [UNCRC \(Incorporation\) \(Scotland\) Bill](#) incorporates the United Nations Convention on the Rights of the Child (UNCRC) into the law in Scotland.

No further legislation is required / UK-wide matter

The next most frequent theme emerged through responses claiming that it is not necessary to mirror the powers of CYPSC and that children's human rights are a UK-wide and devolved matter. More information about this theme can be found in Chapter 9, 'General themes of the consultation responses'.

Summary of other emerging themes

There were a few other emerging themes among the responses to this question. The most common among them was the request of a small minority for the Bill to focus on the needs of certain groups of people. Most respondents that raised this theme agreed with the proposal but at the same time highlighted the need to safeguard the rights of various groups like young women and girls or children with certain philosophical beliefs (e.g. veganism). A few respondents pointed out the need for safeguarding the rights of children with disabilities (including learning disabilities) and children with mental health issues, and stressed that there should be provisions to ensure that the support they receive as children will not be discontinued when they reach adulthood. Along with that, a small number of responses mentioned that there should be a similar Commissioner for older people and a Commissioner for autistic people and people with learning disabilities. The next most frequent theme was the request of a few respondents for further clarity regarding the proposal for the CYPSC. It was mentioned that the term 'mirroring these powers' is not entirely clear, while the way that the CYPSC will interact with other public bodies and authorities was not considered perfectly clear either. The next theme was the view of a few respondents that the CYPSC would need to receive adequate funding, resourcing, and support to successfully deliver its new duties.

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

Open question

There were 162 responses to this question in the consultation.

Support for the 'sufficient interest' test as the approach to 'standing'

The most common theme mentioned by respondents to this question was support for the 'sufficient interest' test²⁵ as the proposed approach to 'standing'²⁶ for civil proceedings. This theme was most commonly mentioned by civil society and public sector organisations; a significant minority who held this view were individuals.

²⁵ As stated in the Court of Session Act 1988 and amended by the Courts Reform (Scotland) Act 2014, the sufficient interest test requires an individual to 'demonstrate a sufficient interest in the subject matter of the [judicial review] application'.

²⁶ As indicated in the consultation, 'standing' refers to who has the legal right to raise an issue with the courts for judicial review.

A majority of respondents expressed support for the ‘sufficient interest’ test as a proposed approach to ‘standing’ for civil proceedings so that individuals and organisations with sufficient interest in a case will be able to raise judicial review proceedings if deemed appropriate by the courts. A large majority of respondents favoured adopting a ‘sufficient interest’ test rather than the narrower ‘victim’ test. In this way, these respondents advocated for collective approaches rather than individual action. The ‘sufficient interest’ test allows individuals and organisations to bring cases to court when they can demonstrate sufficient interest, and it also gives civil society organisations the power to raise cases on behalf of rights-holders, as opposed to the ‘victim’ test, where a person must demonstrate that they are directly affected by the breach they are alleging. Respondents emphasised the importance of avoiding undue burdens on individuals, ensuring access to justice, and promoting public interest litigation. They held the view that an inclusive approach can lead to more effective protection and promotion of human rights in Scotland. A significant minority of respondents also discussed their view on the relevance of the ‘sufficient interest’ test approach for cultural and environmental rights since they are pervasive rather than specific to an individual.

“We agree with the Scottish Government’s proposed approach that organisations with ‘sufficient interest’ should be able to bring cases. Such an approach will enable organisations to bring claims on behalf of individuals. This means that group interests may be advanced more clearly as organisations may be in a position to highlight multiple examples of similar violations. It means that responsibility for holding decision-makers to account is not left on the shoulders of those who are already experiencing the difficulties of rights violations [...] and may be vulnerable to further violations or victimisation as a result of raising complaints. If a person has suffered a violation of their rights, it seems an odd approach to justice that we require them to take action by themselves and shoulder this extra burden. [...]” (Just Fair)

“[...] mirroring the “sufficient interest” test in judicial review rather than the “victim” test under s.7 of the Human Rights Act 1998. The narrow “victim” test has demonstrably prevented important issues being litigated and prevented victims from securing justice.” (Public Law Project)

Support for a clear definition of ‘sufficient interest’

The second most frequent theme emphasised the necessity for clear guidance in defining ‘sufficient interest’ to guide both the courts and potential litigants. This theme was predominantly expressed by civil society and public sector organisations. A significant minority of respondents highlighted the need for explicit guidelines in court rules. They argued this would ensure transparency for both the courts and NGOs considering human rights cases as well as provide clear steers on who will be deemed to have ‘sufficient interest’. These respondents underscored that a well-defined ‘sufficient interest’ criterion is essential for individuals and organisations to navigate the legal process, fostering access to justice and strategic litigation for the protection of human rights in Scotland.

“[...] For clarification and transparency, we would encourage the Scottish Government to explicitly outline in the Bill the formulation for the sufficient interest test. This will enable people and organisations to identify if they believe they fulfil the test before investing in the resources needed to bring the case before court.” (Scottish Care)

More information about this theme can be found in Chapter 9, ‘General themes of the consultation responses’.

Accessible complaint system

The third most commonly raised theme was the need for an accessible and affordable complaint system. This theme was primarily raised by civil society organisations, with a few responses from individuals, public sector organisations, and private organisations.

A small minority of respondents indicated that the complaint system must be effective, timely, affordable, and accessible to everyone. Respondents who raised this theme stressed that access to justice should not be hindered by a lack of capacity or cost. They held the view that, given the paramount importance of human rights, it is essential for rights-holders to have an initial opportunity to seek redress with the relevant authorities. According to respondents, if this initial step does not resolve matters, the Bill should employ accessible language and provide clearer instructions to guide the process. Respondents who mentioned this theme agreed on the need to streamline and make the complaint system accessible to everyone, ensuring that procedural barriers or financial constraints do not leave anyone without a remedy.

“People and organisations should know what to do in order to challenge anything which has affected rights. Any remedy should be effective, timely, accessible, and affordable. As such, thresholds for legal intervention need to be clear and unequivocal.” (Organisation – Public)

“[...] the Bill should include accessible language and the current definition of ‘sufficient interest’ needs to be much more clearly explained. It also needs to be underpinned by absolute clarity on how a rights holder can raise an issue of concern, the timescales within which they can expect matters to be reviewed, and how they might obtain advocacy, advice and/or legal support. Their entitlement to any of these supports should not be affected by lack of capacity or cost.” (Dundee Health and Social Care Partnership)

Summary of other emerging themes

Another theme was the support for preserving the existing framework in which the ‘sufficient interest’ approach to standing is not extended to civil proceedings. Another theme raised by a few respondents was disagreement with applying the sufficient interest test, indicating that it might give rise to potential abuse of power and lack of transparency from public bodies. These respondents also mentioned that courts will not be able to cope with the increasing workload this approach might

entail. Another theme highlighted by a small minority of respondents was the general agreement with the Bill. A few respondents emphasised the importance of making sure this Bill is in line with the UNCRC Bill and civil law. Finally, a small number of respondents highlighted the need for more clarity on: (i) the definitions regarding the scope of civil society organisations to which standing should be extended, (ii) how a rights holder can raise an issue of concern, (iii) the timescales within which they can expect matters to be reviewed, and (iv) how they might obtain advocacy, advice, and/or legal support.

Question 34: What should the approach be to assessing ‘reasonableness’ under the Human Rights Bill?

Open question

There were 132 responses to this question in the consultation.

Proportionality approach for ‘reasonableness’

The most frequently mentioned theme was support for implementing the ‘proportionality’ test²⁷ as a standard of review of the reasonableness of a measure.²⁸ This theme was primarily brought up by civil society organisations and a few respondents representing public organisations.

A large majority of respondents to this question favoured the ‘proportionality test’ over the ‘Wednesbury test’²⁹ when assessing reasonableness. These respondents advocated for lowering the threshold for a decision-maker being found to have acted unlawfully with the aim of ensuring court remedies are accessible for rights-holders. They felt that the Wednesbury test sets strict criteria that ultimately hinder individuals’ ability to challenge rights violations effectively. Respondents favoured a proportionality test, emphasising its use in the Human Rights Act 1998 and the Equality Act 2010 to provide a more balanced and structured approach. In addition to requesting a test that ensures and enhances access to justice and accountability in courts, respondents felt that implementing the proportionality approach would align Scottish law with international standards. They argued that this shift would facilitate the resolution of a greater number of potential violations and promote consistency in rights adjudication. Respondents held the view that this shift would reinforce a culture of justification in decision-making and provide effective remedies for individuals experiencing rights violations.

“[...] As the proposals recognise, the Wednesbury test of reasonableness sets a very high bar. It seems to us that it would be more appropriate to seek

²⁷ As mentioned in the consultation, the ‘proportionality’ test assesses whether any restrictions of a right by a decision-maker are a proportionate means to achieving a legitimate aim.

²⁸ Aligning with the consultation, ‘standard of review’ means the legal standards that courts use to reach a decision about whether a decision maker has acted lawfully.

²⁹ In line with the consultation, the ‘Wednesbury test’ deems a decision unlawful if it is so unreasonable that no reasonable decision-maker could have reached it. It is a test applied by the courts in judicial review proceedings on public law grounds.

consistency across domestic human rights incorporation legislation and therefore, adopt the proportionality test of the Human Rights Act 1998 [...].” (Scottish Association for Mental Health)

“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.” (Scottish Association of Social Work)

General disagreement with the Bill and support for maintaining the Wednesbury approach for ‘reasonableness’

The second most prevalent theme was general disagreement with the Bill and opposition to lowering the reasonableness approach from the Wednesbury test to the ‘proportionality’ test. This theme was primarily brought up by individuals and a small number of civil society respondents.

A significant minority of respondents voiced opposition to adopting the ‘proportionality’ test as the test for reasonableness of the standard of review. These respondents questioned the motivations behind this proposal, suggesting it might undermine the authority of the courts and introduce an administrative difficulty in decision-making. Concerns were also expressed about the prospect of an incessant stream of lawsuits. Respondents held the view that adopting the proportionality test would encourage frivolous, publicity-seeking cases, leading to a waste of court time and funds, as well as potential abuse of power. They emphasised the adequacy of current legal protections and doubted the necessity for changes. Furthermore, they emphasised that the Wednesbury test is well understood by courts and legal practitioners, requesting the Scottish Government to proceed with caution in considering a departure from this established standard. These respondents raised a concern regarding how adopting a new approach might raise budgetary and staffing constraints.

“The Wednesbury test is well understood by courts and legal practitioners. The Scottish Government should be slow to move from this standard. The proposals do not clearly identify what standard is proposed to replace the Wednesbury test. This is problematic, because a subjective assessment of what is ‘reasonable’ can vary hugely depending on the person or persons involved. An objective test is required and rights-holders have a reasonable expectation of having this fully explained to them. Changing the standard of reasonableness will require time and resourcing for public sector organisations to allow them to become familiar with the new standard and to implement this.” (Organisation – Public)

More information on general disagreement and criticisms of the Bill can be found in Chapter 9, ‘General themes of the consultation responses’.

Precision and clarity in defining 'reasonableness'

The third most prevalent theme was the request for an appropriate and detailed definition of reasonableness to be provided. A small minority of respondents

emphasised the need for a detailed definition of reasonableness to avoid ambiguity and ensure consistency in judicial interpretation. They expressed concerns about the vagueness of the term, highlighting its subjective nature within the legal system. To address potential subjectivity, respondents highlighted the need for clarity when adopting a proportionality test as proposed in the consultation. Respondents suggested the use of other international models to formulate a clear and accessible definition of 'reasonableness,' which will align it with human rights principles and enhance rights-holders' access to justice. They held the view that this will ensure that any assessment of reasonableness is performed without prejudice. More information about this theme can be found in Chapter 9, 'General themes of the consultation responses'.

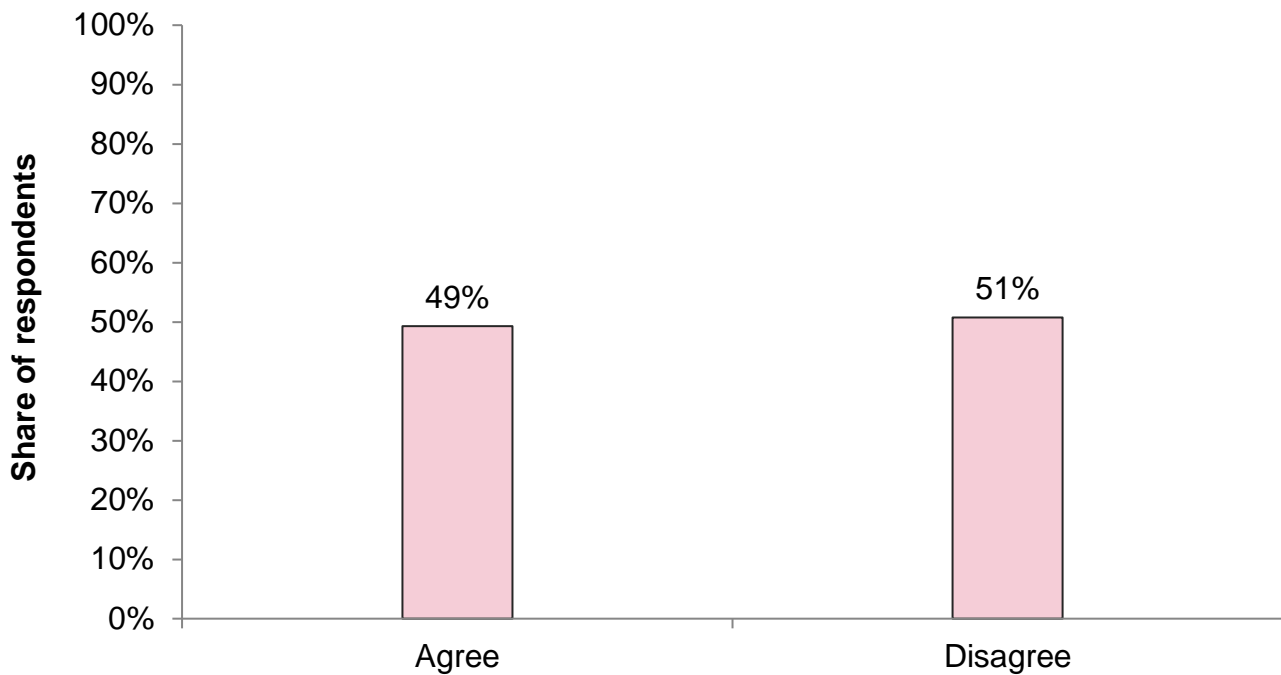
Summary of other emerging themes

The next most mentioned theme is regarding further suggestions provided by respondents. A small number of respondents held the view that although the current threshold for assessing reasonableness is too high, it might be satisfactory if accompanied by improved provisions that reduce the need for litigation as a first instance. Another suggestion provided by a small number of respondents was that, independently of the approach followed, courts should implement a strict review of decisions, as well as evaluate whether the authority had complied with all procedural requirements. A small minority of respondents raised the theme of general concerns, indicating they are worried about the consultation being subjective or pointless and about the possibility the new approach might encourage abuse of power and/or spurious seeking cases leading to wasted resources. Another emerging theme encompassed the view that any potential change should be progressive, involving careful consideration of public opinion. This theme was brought up by a small minority. Respondents who mentioned this theme stressed the importance of discussing and developing assessments of reasonableness collaboratively with public authorities and rights-holders in Scotland. An additional theme mentioned by a few respondents was recommendations for other factors that should be considered in the test for assessing reasonableness. These included existing budgetary and staffing constraints, consultations carried out, and whether the public body took account of them. They endorsed the exploration of alternative routes or tests to remedy, not just judicial reviews that can only be raised in the Court of Session. Respondents expressed that this will ensure accessible, affordable, timely and effective routes to remedy. Finally, a few respondents noted that regardless of which test is decided upon or what label is given to the test, it should be the most effective to safeguard human rights.

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

Closed question

There were 134 responses to this question in the consultation.



A nearly equal split of opinions was identified among respondents, with 51% of respondents disagreeing that existing judicial remedies are sufficient to deliver an effective remedy for right-holders. On the other hand, 49% of respondents expressed that existing judicial remedies are sufficient in delivering an effective remedy.

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?

Open question

There were 104 responses to this question in the consultation.

Existing judicial remedies are not sufficient

The most frequent theme mentioned by respondents was that existing judicial remedies in Scotland are insufficient in delivering effective remedies for rights-holders. This theme was primarily mentioned by civil society organisations, while there were a few responses from individuals and public sector organisations.

A majority of respondents expressed dissatisfaction with the existing judicial remedies, highlighting their inadequacies in addressing the diverse needs of rights-holders. They emphasised that structural and systemic barriers within the legal system hinder rights-holders from accessing courts efficiently. In this sense, these respondents mentioned the need to ensure judicial remedies that are tailored to suit the circumstances and rights of every person, as well as align with international human rights standards. They stressed the need for judicial remedies to be timely, effective, and affordable. They also emphasised that the right to an effective remedy should be explicitly stated in the Bill, as well as the provision of financial and legal aid to rights-holders.

“We agree that existing judicial remedies are generally insufficient in delivering effective remedies for rights-holders. While the current remedies may address some rights violations, they do not cover the full range of human rights abuses, especially systemic or structural issues. There is a need for more comprehensive and flexible remedies to ensure justice for all rights-holders. [...]” (Human Rights Consortium Scotland)

“[...] the Bill must include the substantive international human right to an Accessible, Affordable, Timely and Effective remedy for breach of the rights contained in the Bill. Incorporation of the right to an effective remedy will ensure a connection to international standards on access to justice, which will continue to evolve and be elaborated upon. [...]” (East Ayrshire Advocacy Services)

Support for remedies for non-repetition

The second most frequently mentioned theme was the support to implement remedies (or guarantees) of non-repetition of the breach. Particular emphasis was placed on structural interdicts, which is a specific type of remedy.³⁰ This theme was most commonly mentioned by civil society organisations, as well as a small number of individuals and public sector organisations.

Most respondents who supported the implementation of remedies for non-repetition expressed that structural interdicts are a sufficient, effective, and internationally recognised judicial remedy for rights-holders. Respondents advocated integrating structural interdicts into the legal framework as a tool to address systemic issues and ongoing rights violations, as well as to ensure the enforcement of rights in a more comprehensive and flexible manner. Those who further explained this perspective also emphasised the advantage that when guarantees of non-repetition effectively thwart potential violations, individuals no longer need to pursue legal action. These respondents highlighted the importance of the proactive nature of structural interdicts, reducing the necessity for individuals to engage the judicial system to secure their rights in the face of anticipated harm. A small number of respondents mentioned they support structural interdicts because these remedies can address systemic issues without depending on a single individual. They highlighted that these remedies provide rights-holders and their advocates with multiple avenues to instigate enduring, structural changes, thereby making a substantial impact on a wider spectrum of people.

“[...] CEMVO Scotland welcome the inclusion of structural interdicts remedies to bring justice for different people on different rights. This will allow systemic issues to be brought to court without relying on one individual, recognising the trauma that this may cause. [...]” (CEMVO Scotland)

³⁰ As stated in the consultation, structural interdicts are intended to address structural issues, which impact a large number of people, rather than individual issues. They could involve an aggregate of remedies, where the courts combine different options. However, they could also potentially involve a greater role for the courts in reviewing progress or approving plans of action.

“[...] We are, however, supportive of the proposal to use structural interdict as a form of remedy. The proposal on ‘Guarantees of Non-Repetition’ provides the rights-holder and/or their advocates with various opportunities to create longer-lasting, structural change with a significant impact on a wider range of people. We can envisage such a route being of use with respect to serious and ongoing rights violations [...].” (National Autistic Society Scotland)

Other proposed judicial remedies

The third most common theme mentioned in responses to this question was the proposal of additional judicial remedies that could be implemented in Scotland. This theme was mentioned by a significant minority of respondents who answered this question and mainly brought up by civil society organisations, with a few responses from individuals and the public sector.

Respondents recommended additional judicial remedies that could be implemented in the Scottish legal framework with the aim of creating a swift and low-cost process for legal redress. These included rehabilitation, compensation, restitution, satisfaction, and mediation. The most popular judicial remedy respondents proposed was compensation to mitigate losses and prevent discontent of rights-holders regarding the judicial process. Respondents mentioned that compensation could be used to ensure the recognition of the impact of rights infringements and incentivise public bodies to prioritise rights. The second most popular judicial remedy proposed by respondents was rehabilitation. They typically held the view that rehabilitation remedies are particularly important in cases where human rights violations result in medical or psychological harm, given the traumatic effects they can have on rights-holders. Respondents suggested that rehabilitation can include medical and psychological care, as well as legal and social services to repair the human rights violation caused. A small number of respondents also noted that experiencing traumatic interactions involving human rights violations can lead individuals to become sceptical about their capacity to persist in the pursuit of justice, which is why rehabilitation is essential. The third most popular additional judicial remedies recommended by a small number of respondents were restitution and the provision of legal aid. Other judicial remedies mentioned by respondents included satisfaction (including public apology, sanctions, and amendments to educational materials), mediation and hybrid remedies.

“[...] We consider that the Bill should provide a suite of tailor-made remedies available to judges which include, but go beyond, those available for administrative judicial review, such as restitution, rehabilitation, satisfaction and guarantees of non-repetition (structural interdicts).” (Individual)

“[...] While the Scottish Courts are currently able to issue a wide range of remedies, two specific types of remedies – expected as part of international legal standards – are not available. The first of these is the Measures to Rehabilitate. This can include medical and psychological care as well as legal and social services that might be necessary to repair the human rights violation caused. This is, at times, essential given the traumatic effects that human rights violations

can have on victims. This was echoed in our session with people living on low incomes who noted that mental health struggles and previous traumatic interactions with human rights violations can make people sceptical of their ability to persevere in seeking justice. It was considered critical that people were offered support for this to achieve justice. [...]” (Poverty Alliance)

Summary of other emerging themes

Another emerging theme was the view that courts should provide rights-holders with the opportunity to decide on the remedies they are granted while pursuing legal action when an infringement of human rights has been found. This theme was raised by a few respondents. Additionally, a few respondents proposed that the Bill should adopt a comprehensive approach to remedies similar to the ones from the Human Rights Act 1998 and the UNCRC in the Scottish system. In this way, according to respondents, courts would be required to grant a remedy that is considered effective, just, and appropriate for rights-holders.

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?

Open question

There were 111 responses to this question in the consultation.

Support for courts to have the power to ‘strike down’ legislation and issue declarators of incompatibility

The most frequently mentioned theme in this question was the support for courts to have the power to either ‘strike down’ legislation that is incompatible with the Bill or recommend changes to it. The majority of responses were brought up by civil society organisations, with only a few individual respondents and a small number of private and public sector organisations mentioning this theme.

A large majority of respondents held the view that courts should possess the authority to ‘strike down’ legislation or issue declarators of incompatibility when Acts of the Scottish Parliament are not aligned with the rights outlined in the Bill. These respondents emphasised that this approach is considered a robust remedy for ensuring that legislation complies with human rights standards provided in the Bill. This way, it can be remedied immediately with the aim of preventing further rights violations. A small number of respondents also conveyed that declarators of incompatibility should only be issued as long as they do not overstep on devolved matters.

“Courts should be able to ‘strike down’ laws or issue declarators of incompatibility where Acts of the Scottish Parliament are not compatible with rights in the Bill. This approach upholds the non-negotiable foundation of human rights in law and reinforces the principle that no legislation should ignore or violate these fundamental rights.” (Organisation – Other)

General disagreement with the Bill

The second most frequently mentioned theme was a general disagreement with the Human Rights Bill. More information about this theme can be found in Chapter 9, 'General themes of the consultation responses'.

New legislation should be compatible with the existing rights

The third most commonly mentioned theme was the view that any legislation passed in Scotland should, from the very beginning, be compatible with the already existing rights. This theme was mainly mentioned by civil society organisations, although a small number of individual respondents also mentioned this theme.

A few respondents advocated that any new legislation should align with the rights outlined in the Bill, and if it does not, then it should be withdrawn. These respondents also highlighted that the Scottish Parliament legislation should comply with the European Convention on Human Rights. Respondents who held this view were also commonly in support of courts 'striking down' law that is found to be incompatible with the rights in the Bill. A small number of respondents who emphasised the necessity for legislation to be compatible with existing rights also suggested implementing an interpretative provision of the Scottish Parliament legislation to ensure its compatibility with the Human Rights Bill. Among these respondents, a small number held the view that this interpretative provision should apply to both individual cases and systemic considerations.

“All Scottish legislation should comply with the Human Rights Bill and so there should never be legislation passed by the Scottish Parliament which ignores or tramples on human rights. Currently the Scottish Parliament legislation must comply with the European Convention on Human Rights, and if it does not, courts can ‘strike down’ part or all of that law or require amendments [...]”

(Women’s Support Project)

Summary of other emerging themes

General agreement with the Bill was commonly mentioned among respondents. Another emerging theme was the view that there should be a provision giving time to the Scottish Government and Parliament to consider how best to align incompatible legislation with the Bill before any declaration or strike-down takes effect. Another theme mentioned included the view that when there is an incompatibility between the Bill and existing legislation, it should be referred back to Parliament for consideration rather than being altered directly by the courts. Concerns about the potential abuse of power if courts are given the power to strike down legislation was another theme identified. Additionally, a small number of respondents held the view that the outcome of the UNCRC Bill reconsideration process is necessary before providing suggestions for a consistent way forward. Finally, a small number of respondents suggested setting a time limit on incompatible legislation, which is automatically repealed if there is no government intervention to replace it.

8. Views on: Implementing the New Scottish Human Rights Act

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

Open question

This question was answered by 198 respondents to the consultation.

Support for a sequential approach to implementation and suggestions for specific timescales

The most prevalent theme raised by a large minority of respondents in this question was an overall agreement with the proposal for the sequenced implementation of the duties included in the Human Rights Bill. This theme was more common among respondents representing organisations, and specifically among civil society organisations. A significant minority of respondents noted that given the significant resource implications that the new duties would impose on duty-bearers, sequenced implementation was the appropriate approach to implement the Bill in order to allow a sufficient amount of time for organisations and public services to prepare.

A significant minority of respondents discussed specific timescales for the implementation of the Bill. Proposals put forward by respondents followed a sequenced adoption approach, specifically (i) as a first stage, the implementation of a procedural duty within 6 months after the Bill receives royal assent, and (ii) establishing the duty to comply within 2 years of the Bill's royal assent. Respondents explained that this structure would ensure a smooth transition from current duties to the duties set out by the new Human Rights Bill.

“We would agree with a “sunrise clause approach”. The duties should be commenced in a sequential manner to allow public bodies time to prepare for the Bill and The Act coming fully into force. Public bodies require time to prepare to become familiar with the new standards and to ensure that there is an infrastructure in place to support implementation and compliance. [...]”
(Organisation – Public)

“[...] we welcome the staged approach to implementation. While we acknowledge that the Bill should be implemented as quickly as possible, it is also important that public bodies are given the time, resources, and ability to build the capacity needed to get it right. In addition, it is time to meet the basic requirements and then to build on that foundation in recognition that public bodies are at different stages and will need more or less time to develop practice and procedures.” (Organisation - Public)

Need for a clear implementation plan

The second most frequently raised theme among respondents to this question was the view that the proposal should be clearer regarding what the proposed plan entails, especially in relation to implementation timescales. More information about this theme can be found in Chapter 9, 'General themes of the consultation responses'.

Call for government support, guidance and capacity building

The third most common theme in the responses to this question was the view that Scottish Government support through guidance, capacity building and resources would be paramount to the successful implementation of the Bill. This theme was more commonly raised by organisations and, specifically, public sector organisations. A large minority of respondents suggested that the Scottish Government should develop and offer comprehensive guidance and support in order to assist duty-bearers in understanding their new duties, as well as how this legislation fits with other human rights and equality laws, and competing duties. For instance, staff training was the suggested method of support mentioned by respondents. A significant minority of respondents argued that the successful implementation of the Human Rights Bill depended on capacity building across public services, which would require significant government investment and support. It was often mentioned that this support should include additional resources and financial investment to ensure that the additional duties do not negatively impact the quality and breadth of services provided by public organisations.

“[...] Public sector capacity requires careful consideration so that duty-bearers understand and are able to evidence with confidence that Minimum Core Obligations are being met through progressive realisation. We do not currently have a distinct training offer around human rights. We recommend and would welcome the development of a national resource and a distinct programme of engagement to build the capacity of the sector. Any training resources will need to work effectively for different organisation types – for example, for territorial as well as special NHS boards. [...] We anticipate a need for specialist staff support for colleagues as they start to evidence human rights considerations in their work. [...] In our experience delivering existing duties, ongoing support and leadership is needed to establish and maintain good practice.” (Organisation – Public)

“Implementation must be backed up with training, support, capacity building and adequate and sustainable resources so that duty bearers can understand their obligations and how to comply with them.” (RNIB Scotland (Royal National Institute of Blind People Scotland))

Summary of other emerging themes

A significant minority of respondents stressed the need for swift implementation of the Bill. Among them, some respondents noted that many of the rights to be

incorporated are already internationally established; hence, implementation for some rights could commence without delay. In addition, a significant minority of respondents raised concerns that the rights of various disadvantaged and marginalised population groups are not currently met.

A significant minority of respondents expressed general agreement with what was proposed in the consultation, while a small minority discussed the importance of implementing this Bill in order to safeguard people's rights. Additionally, another theme raised by a few respondents was the view that this Bill should help improve accountability related to Human Rights and support improved access to justice for rights-holders. Another theme mentioned by a small minority of respondents was the need for public participation and stakeholder engagement in delivering the provisions in this Bill, including both engagement with stakeholder organisations and rights-holders. A small number of respondents emphasised the need for improving monitoring through data collection. Finally, a few respondents discussed the effects of the ongoing cost of living crisis.

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

Open question

This question was answered by 207 respondents to the consultation.

Agreement with the proposed approach of a participatory process in establishing MCOs

The most prevalent theme among the responses to this question was general agreement with the Scottish Government's proposal. This theme was more common among organisational respondents than individual respondents.

Specifically, the majority of respondents raising this theme agreed with implementing a participatory process in establishing MCOs. A few respondents commented that a participatory process would help incorporate the views of those affected by the Bill, including rights-holders. Finally, a small number of respondents noted that a participatory process would help the public and stakeholders understand the new Bill and embed the law's principles and duties in their practices.

“We support proposals to establish MCOs through a participatory process, and would suggest that the Scottish Government can prioritise engaging all those individuals who experience the poorest outcomes. For example, when developing and establishing an MCO on employment, the Scottish Government could engage autistic and people with a learning disability, since they experience the poorest employment outcomes of any groups in Scotland. [...]” (National Autistic Society Scotland)

“Defining MCOs will be challenging and having a participatory process will help ensure broader views, inputs and understanding, hopefully leading to clearer definitions. Given the importance of MCOs in relation to the duty to comply, it will be vital to ensure duty-bearers are included in the participatory process.”
(Scottish Environment Protection Agency)

Suggestions on the approach to a participatory process

The second most commonly raised theme among responses to this question included specific suggestions regarding who the participatory process should include, and how it should be delivered to achieve the most positive effect. This theme was most commonly raised by respondents representing organisations and, particularly civil society organisations. A large minority of respondents suggested that the participatory process should include consulting those most vulnerable or at greatest risk of their rights being violated, as well as individuals with protected characteristics (e.g. women and disabled people). A few respondents mentioned that the process should include representatives and experts from stakeholder organisations who represent and interact with vulnerable groups.

A significant minority of respondents stated that MCOs should be reviewed and updated through a participatory process at regular intervals. A small minority of respondents discussed administrative aspects of the participatory process, and particularly whether it should be led by the Scottish Government or independent organisations. Among them, many highlighted that the Scottish Human Rights Commission (SHRC) might be best placed to lead the participatory process that would support the development of MCOs. Finally, a small number of respondents noted that the process should be communication-inclusive and easily accessible to all interested individuals and stakeholders. This could include intensive, proactive stakeholder engagement with communities that had been underreached by the Scottish Government in the past.

“Fife Council agrees 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 the Scottish Government or by the Scottish Human Rights Commission.” (Fife Council)

“[...] we believe that including a wide range of people in the establishing of MCOs is highly beneficial, through lived experience panels. This is of particular value to groups who are seldom listened to, such as ethnic minority women, who have expressed continued frustration that their needs are not being met by public bodies. It is also important that the feedback given across the participatory process is adhered to, with measures put in place to ensure that participation does not become tokenistic, a common pitfall of participatory practice. To avoid this outcome review is essential, and as such should be carried out at regular intervals.” (The Scottish Women's Convention)

Wider comments and suggestions regarding MCOs implementation

The third most frequent theme among responses to this question was wider comments regarding the planning surrounding the adoption of MCOs as presented in the consultation document. This theme was more common among organisational respondents and particularly civil society organisations. A few respondents suggested that MCOs should be established as soon as possible. Additionally, a few respondents felt that MCOs should be established sooner than proposed by the consultation, and particularly before the Human Rights Bill is finalised.

“[...] Because the MCO’s are so important, we think that people and organisations participating in setting them must be resourced properly. We need to have the time to do our research, explain our point of view, and not compete with other interest groups such as professionals working to maintain the status quo. As we said previously, clear timescales for this process should also be included to ensure this process is completed in a timely matter.” (People First (Scotland))

“[...] waiting until the legislation has concluded the Parliamentary process risks undermining confidence in the practicality of the legislation and the benefits that should be immediately realisable. The participatory process does not require legislative effect and we would encourage the Government to start the participatory process in parallel with the Bill to give greater meaning to what MCO/ Human Rights Bill means in practice and to give Parliament greater clarity about the cost of implementation. [...]” (Chartered Institute of Housing Scotland)

Summary of other emerging themes

A few respondents had various disagreements with specific aspects of the proposal for MCOs. Most common among them were (i) the view that MCOs are conceptually incompatible with human rights, as there should be no minimum standard of human rights, and (ii) that MCOs should be in primary legislation rather than in secondary legislation. A few respondents emphasised the importance of ensuring accountability through this framework. Furthermore, a few respondents offered specific suggestions for which topics to be included in the MCOs; these included MCOs to guarantee sufficient access to rehabilitation services for those who require them. Finally, a small number of respondents expressed concern about the risk of ineffective engagement with people with lived experience, and particularly the risk of tokenism.

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

Open question

This question was answered by 196 respondents to the consultation.

Agreement with the proposal for a Human Rights Scheme

The most prevalent theme among responses to this question was agreement with the proposal for a Human Rights Scheme. A large minority of respondents expressed general agreement without elaborating on specific reasons for agreeing with the Scottish Government's proposal. Another large minority noted that Human Rights Schemes would improve the accountability of the Scottish Government on actions taken to implement the Human Rights Bill. A few respondents felt that a Human Rights Scheme would support the implementation of the Bill. This theme was more common among respondents representing organisations, both civil society and public sector organisations.

“[Organisation name] would welcome the creation of a Human Rights Scheme. We especially welcome the intent that it will provide an overarching framework for the delivery of Human Rights and inform about the direction and work that the Scottish Government is planning, and the provision of a mechanism for Ministers to be held accountable. It will also be useful to understand the current position on Human Rights and how ministers intend to address any gaps or to focus on areas for development. [...]” (Organisation – Public)

“[...] We agree with the proposal to have a Human Rights Scheme to ensure ministerial accountability for the implementation and commencement of the future Act. It is good that there will be a duty to report to Parliament and for Parliament to undertake due scrutiny on progress. [...]” (Organisation – Other)

Comments for improvement of the Human Rights Scheme

The second most frequently raised theme in the consultation responses to this question was comments on various aspects that could be improved regarding both the overall proposal and elements that could be included in the Human Rights Schemes. This theme was more common among respondents representing organisations, both from civil society and public sector organisations.

A significant minority of respondents stated that the proposal requires more clarity regarding specific elements that the Human Rights Scheme would involve and how they would be carried out. Another small minority of respondents suggested there is a need to improve data collected about human rights to support accountability as part of the Human Rights Scheme. Specifically, these respondents often noted that more disaggregated data should be collected (e.g. data on outcomes by protected characteristics such as ethnic group, and/or disability). Similarly, a small number of respondents felt that the Human Rights Scheme should provide transparent and accessible information to foster effective monitoring and government accountability. A few respondents argued that an important feature of the Human Rights Scheme should be supporting planning on realising the rights in the Bill, including identifying gaps in existing provisions and setting out plans for improvement.

A few respondents suggested that as part of the Human Rights Scheme, the Scottish Government should have a duty to produce and distribute guidance and clear information on actions taken. Related to this point, a small number of

respondents highlighted that the Scottish Government should ensure capacity building, including through providing resources, training and support.

Respondents also discussed what the Human Rights Scheme should report on. A few respondents felt that the Human Rights Scheme should include detailed reporting on numerous areas related to delivering on the rights, while a few respondents felt that reporting should also focus on right holders' outcomes, highlight people's experiences of their rights being realised, as well as include assessments of the impact of policies on vulnerable groups. Finally, a few respondents suggested that the Human Rights Scheme should be annual to enhance government scrutiny.

“There needs to be a clear understanding of the scope and coverage of the Scheme (for example, it is all Ministers that are being held accountable for its implementation). A clear distinction needs to be made in relation to the duties being placed on duty-bearers, including reporting requirements.” (Scottish Environment Protection Agency)

“[...] It should also be accessible and meaningful to the people of Scotland - a positive (hopefully) report card, if you will, on the progressive realisation of rights in Scotland that becomes part of the national conversation, something we can be proud and work towards improving on.” – (C-Change Scotland)

“[...] Ministerial accountability should include evidenced updates to parliament – which requires improved data collection and publication, including reporting of outcomes at population levels. There is currently no robust, national measurement of experiences of palliative and end of life care which needs to be addressed. The evidence/data gathered to measure delivery of minimum core obligations and ultimately maximum realisation of rights need to drive improvements in inclusivity. This will require improvements in data collection and sharing. [...]” (Hospice UK)

Government should consult with stakeholders and rights-holders

The third most common theme among responses to this question was the view that the government should consult with stakeholders and rights-holders as part of the Human Rights Scheme. This theme was raised by a significant minority of respondents who highlighted that specific focus should be placed on consulting those most at risk of their rights being violated. A small number of respondents discussed the importance of the participatory process, while a small number of respondents stressed the importance of adopting rights-based approaches to participation. Respondents also noted specific rights-holder groups that should be consulted. Suggestions included people with learning and other disabilities.

“[...] There should be a duty to consult with rights holders, including people whose rights are most at risk, when developing the scheme [...]” (RNIB Scotland (Royal National Institute of Blind People Scotland))

“[...] The Human Rights Scheme should include a requirement to meaningfully consult with the information, advice and advocacy sector as well as rights holders, especially those whose rights are at risk, both when developing the Scheme and when reporting against it every year.” (Citizens Advice Scotland)

Summary of other emerging themes

A significant minority of respondents raised the topic of human rights budgeting. These respondents felt that the Scottish Government should consider the human rights protected in the Bill as part of their budget-setting decisions. Finally, a few respondents discussed the importance of accountability and scrutiny of government decisions and actions.

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?

Open question

This question was answered by 161 respondents in the consultation.

Agreement with the Scottish Government’s proposal

The most prevalent theme among responses to this question was general agreement with the approach proposed in the Bill to enhance the assessment and scrutiny of legislation introduced in Parliament in relation to the rights in the Bill. This theme was more common among respondents representing organisations, and particularly public sector organisations.

The majority of respondents who mentioned this theme did not elaborate on what aspects of the proposal they agreed with or their reasoning. A significant minority of respondents highlighted the importance of ensuring legislative compatibility and felt that enhanced parliamentary assessment and scrutiny would support this. A small number of respondents noted that this could include past and current Bills, and some gave specific examples (e.g. the Agricultural Bill and the Circular Economy Bill). A significant minority of respondents to this question welcomed the enhancement of assessment and scrutiny as they felt that this proposal would improve the overall accountability of the Scottish Government.

“Nourish Scotland agrees with the requirement for all public Bills to be accompanied by a statement of compatibility with rights in this Bill. It will be especially important to ensure that current legislation going through parliament is forward-compatible. For example, the Agricultural Bill, Circular Economy Bill and all Good Food Nation plans will need to be assessed in relation to the rights, especially the right to a healthy environment and the right to food. That is, these Bills and plans will need to show that they have had regard to the rights contained within this Human Rights Bill, given their impending implementation. [...]” (Nourish Scotland)

“[...] We believe that a robust approach to parliamentary scrutiny is necessary to ensure that the legislation is fit for purpose and has been considered, tested and challenged appropriately. We agree with proposals to engage the Scottish Parliament to conduct enhanced scrutiny.” (Alzheimer Scotland)

Assessment should promote stakeholder engagement

The second most commonly raised theme was support for ensuring wide engagement with stakeholders and rights-holders as part of the proposed enhancements to human rights assessment processes for legislation introduced to the Scottish Parliament. This view was more common among respondents representing organisations, specifically civil society organisations. Respondents who mentioned this theme stressed that all assessments should ensure that the voices of people whose rights are most at risk, as well as relevant stakeholder organisations, are engaged during processes to develop legislation.

“[...] We recommend that the statement of compatibility should also include evidence to demonstrate that meaningful consultation had taken place with groups whose rights are engaged by the proposed legislation, to ensure that their rights have been properly taken into account. [...] (The Joint Council for the Welfare of Immigrants)

“[...] Parliament must also act to maximise opportunities for organisations with expertise on the inequalities experienced by different specified groups, and those with lived experience, to participate in the legislative process. This should encompass all stages of the legislative process, e.g. at the committee stage, and in public debates. Parliament should take a co-production approach where possible. [...]” (Close the Gap)

Human rights Impact Assessments

The third most frequent theme was support for conducting human rights impact assessments. This theme was more common among organisational respondents, and particularly civil society organisations. Respondents who mentioned this theme suggested that there should be thorough impact assessments evaluating the possible effects of the new legislation on people’s rights. Respondents felt that similar Human Rights Impact Assessments should be conducted for any future legislation proposed.

“[...] In addition, the [Organisation name] suggests that Scottish Ministers should conduct Human Rights Impact Assessments for any Bill introduced to Parliament. Both of these would be a step in the right direction in terms of centring human rights within policymakers' decision-making. [...]” (Organisation – other)

“I agree that there should be a human rights assessment of new legislation. In relation to the rights incorporated under this Bill, there could also be a statement of the extent to which the legislation is contributing to the realisation of certain rights.” (Individual)

Summary of other emerging themes

A small minority of respondents argued that the current scrutiny process requires improvement. The main point raised by those respondents was a need for increased transparency, public awareness and participation in the scrutiny process. Specifically, respondents noted that there should be better access to the public of the parliamentary scrutiny process.

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?

Open question

This question was answered by 190 respondents to the consultation.

Capacity building resource requirements

The most prevalent theme among responses to this question was discussions surrounding the resources and support required to foster capacity building, especially in the light of existing resource and public services capacity constraints. More information about this theme can be found in Chapter 9, 'General themes of the consultation responses'.

Collaborative approach and stakeholder engagement

The second most frequently raised theme in the responses to this question was proposals to adopt a collaborative approach to delivering capacity building, ensuring the involvement of a wide range of relevant stakeholders. This theme was more commonly mentioned by respondents representing organisations, and primarily civil society organisations. A significant minority of respondents highlighted the importance of engaging with rights-holders, communities, and service users. Another significant minority of respondents supported including organisations representing or interacting with rights-holders in the development of guidance.

“We support the plan to develop guidance for public authorities and those subject to the duties. This guidance should be co-designed by individuals and communities whose rights are most at risk. [...]” (Feniks. Counselling, Personal Development and Support Services)

“Capacity can be built across the public sector to ensure the rights in the Bill are delivered by working with stakeholders inclusive of trade unions and those in the third sector. This collaborative work could help the Scottish Government identify opportunities to build capacity across the public sector to help ensure that the Bill is delivered. This is particularly true for trade unions who can often help to identify areas where the public sector could be improved due to the nature of representing the workers on the front line of the sector.” (Organisation – Other)

Support for developing guidance

The third most common theme among responses was the view that developing guidance should be an important component of the capacity-building approach. Respondents noted that guidance developed should be directed and accessible both by duty-bearers and rights-holders. A significant minority of respondents noted that both statutory and non-statutory guidance should be included. More information about this theme can be found in Chapter 9, 'General themes of the consultation responses'.

Summary of other emerging themes

Respondents often discussed the importance of awareness-raising and education being part of the capacity-building efforts. Specifically, a significant minority of respondents suggested that service staff who interact with rights-holders should be provided with Human Rights and Equalities training. Furthermore, a significant minority of respondents discussed the importance of embedding Human Rights principles in education, improving access to information related to human rights, and enhancing awareness-raising efforts.

A significant minority of respondents criticised the existing proposal and stated they required more clarity and detail regarding what implementation would entail. A significant minority of respondents recommended that the Scottish Government should aim to align the implementation of new duties with existing practices, as well as review what worked well and did not work well in the past to improve provision using existing infrastructure. Finally, a significant minority of respondents called for the Scottish Government to begin building capacity before the Bill passes, they felt that early work on capacity building could be completed before the Bill is finalised.

A significant minority of respondents expressed general agreement with the proposals set out in the draft Bill, without elaborating on specific reasons for their support, and others agreed with the importance of capacity building for the effective delivery of the Bill.

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

Open question

This question was answered by 196 respondents to the consultation.

Awareness campaigns, community engagement, and provision of training

The most prevalent theme in the responses to this question was various suggestions on ways that the Scottish Government could ensure the relevant information could reach rights-holders. This theme was more common among respondents representing organisations, and specifically public sector organisations. A significant minority of respondents highlighted the importance of

direct engagement with communities, including in local settings. There were various recommendations, including organising local discussions and focus groups with rights-holders, rights-holders' training, and active engagement to reach hard-to-reach groups.

A significant minority of respondents felt that launching a wide-ranging awareness campaign would substantially support the goal of increasing awareness about the Bill. Finally, a significant minority of respondents emphasised the importance of capacity building, including funding and provision of training to public sector and third sector organisations engaging with rights-holder communities.

“For people to be able to claim their rights, they have to know about them. It is essential that the Scottish Government commission large-scale campaigns to let the general public know about the changes and what they mean to them. It should be clear where they can find help, and what areas are covered. There should be additional funding available for organisations that support minority groups so they can communicate specific rights that may be of use / interest for their own communities.” (LGBT Youth Scotland)

“Training and clear guidance in accessible formats is essential to raising awareness for rights holders in Scotland, especially marginalised groups. Training should include outreach to rural and isolated areas and training in schools and community groups, etc. Funding should be provided to existing human rights CSOs to support and expand 'making rights real' programmes and capacity building within communities.” (Individual)

Accessible and clear guidance

The second most common theme in responses to this question was discussions of accessible and inclusive ways to disseminate guidance and information. A significant minority of respondents noted that there should be a varied approach to awareness campaigns or information dissemination efforts to reach a variety of different audiences, including social media posts, physical leaflets and in-person engagement. More information about this theme can be found in Chapter 9, 'General themes of the consultation responses'.

Stakeholder involvement and co-production

The third most frequently raised theme was support for stakeholder involvement and co-production. This theme was more commonly raised by organisational respondents and predominantly civil society organisations. A large minority of respondents highlighted the importance of co-production with rights-holder communities whose rights are most at risk in developing all guidance and awareness-raising material and planning any awareness-raising and information-sharing campaigns. Some respondents noted that this engagement could be achieved through lived experience boards. A significant minority of respondents suggested that subject matter experts and stakeholders from third sector organisations could provide useful insights for designing an effective approach to raising awareness about the contents of the Bill.

“[...] This should be designed and co-produced in conjunction with rights holders and civil society and should draw on good practice and principles such as those contained within the National Standards for Community Engagement.” (Scottish Community Development Centre)

“[...] We recommend that the Scottish Government engages with the work of the lived experience boards in this area and considers following a similar model to ensure that public human rights information and education programmes are led by lived experience experts and are fit for purpose. [...]” (Amnesty International UK)

Summary of other emerging themes

A significant minority of respondents discussed the overall importance of effective information and public awareness for delivering the provisions of the Human Rights Bill. A significant minority of respondents supported the establishment of free information hubs where members of the public could access information regarding their rights. Relevant to this point, a few respondents specifically called for a National Network for Human Rights Information, Education, Legal Services, and Advice.

A small minority of respondents expressed concerns about what they perceived as insufficient detail in the draft Bill on this topic. Respondents who raised this theme felt the proposal set out by the Scottish Government was not comprehensive enough. Furthermore, a small minority of respondents discussed their current concern over instances where information sharing from services to rights-holders is ineffective. Respondents who mentioned this theme emphasised that rights-holders very often do not know their rights and, hence, often miss out on services and benefits to which they are entitled. A few respondents highlighted that this is particularly the case with individuals whose first language is not English.

A few respondents noted the importance of public education for cultivating an understanding of individuals' rights. Finally, a few respondents expressed general agreement with the approach set out in the draft Bill without elaborating further on specific suggestions.

Question 44: What are your views on monitoring and reporting?

Open question

This question was answered by 175 respondents in the consultation.

Specific suggestions for implementing a monitoring and reporting framework

The most prevalent theme in responses to this question was specific suggestions for building a monitoring and reporting framework. Responses that raised this theme were mainly from respondents representing organisations, and particularly respondents from civil society organisations. A significant minority of respondents advocated involving rights-holders in developing and delivering the monitoring and

reporting process. Furthermore, a significant minority of respondents suggested that monitoring and reporting should be independent through the involvement of the third sector or non-governmental bodies such as the Scottish Human Rights Commission or the Care Inspectorate. Respondents raising this point often elaborated that duty-bearing public services should not be evaluating their own compliance with the Bill. Finally, a few respondents argued that reporting should be linked to a robust accountability framework, with clear consequences and remedies where duty-bearers fail to meet the requirements of the Bill.

A significant minority of respondents suggested that the monitoring and reporting framework should capture both actions taken towards delivering on the rights in the Bill and outcomes related to delivering the human rights safeguarded by the Bill. A small minority of respondents suggested that the reporting framework should be designed in a manner that helps drive improvement in the delivery of the Bill. On this point, a few respondents suggested that the Scottish Government should adopt a holistic systems approach to considering the feedback from the reporting phase, focusing on the interdependencies between services. Additionally, a few respondents expressed the view that reporting on the delivery of the Bill should be carried out regularly. Lastly, a few respondents felt the monitoring and reporting framework should include reporting on whether Human Rights are considered in budgeting decisions.

“[...] There must be a public bodies’ reporting requirements. This should function in the following way: (i) Public bodies should have to consult with people whose rights are most at risk when developing these reports, including ensuring that the content is accessible. (ii) The Scottish Government should be required to consult with people whose rights are most at risk when developing guidance on reporting requirements. (iii) Public bodies should also be required to submit their reports to the Scottish Human Rights Commission for monitoring, and the SHRC must ensure representation of people whose rights are most at risk, including people living on low incomes.” (Poverty Alliance)

“Monitoring and reporting are critical to understanding whether the Bill has made a difference. Reporting needs to focus on activity but more importantly impact. Co-designing reporting to capture what is important to people, particularly those whose rights are most at risk and those furthest from justice.” (C-Change Scotland)

Support for monitoring and reporting of the Human Rights Bill implementation

The second most common theme among responses to this consultation question was discussion regarding the importance of enhancing monitoring and reporting of the delivery of the Bill. This theme was mainly raised by organisation representatives, and particularly respondents from civil society organisations. A significant minority of respondents discussed the importance of thorough accountability in the enforcement of the Bill and explained that monitoring and reporting will improve efforts in that area. Another significant minority of respondents discussed the overall importance of monitoring and reporting

specifically for tracking progress towards implementing the Bill, tracking actions taken, and identifying gaps in provision. On a similar note, a minority of respondents argued that consistent reporting on progress would support the implementation of the Bill and rights protection.

“Monitoring of and reporting on the steps planned or taken by public authorities to progressively realise rights is essential for accountability and to ensure effective implementation of the Bill. [...]” (Organisation – Other)

“[...] monitoring of and reporting on the steps that public authorities have taken or plan to take to progressively realise rights, is essential for both accountability and improving the effectiveness of action. [...] The new human rights framework must guarantee that regulators, inspectorates, ombudspersons and Scotland’s national human rights institution are provided with the appropriate powers and resources to ensure effective human rights monitoring.” (Human Rights Budget Working Group)

Calls for a resource-efficient approach

The third most frequently mentioned theme in the responses to this question was the need for a resource-efficient approach to a Human Rights Bill monitoring and reporting framework. This theme was predominantly raised by respondents representing public sector organisations.

The respondents who mentioned this theme argued that the approach to monitoring and reporting should be proportionate and align with reporting arrangements and mechanisms for existing duties such as the PSED. A few respondents elaborated that such an approach would help minimise the administrative burden imposed on public services from additional reporting requests. Finally, a few respondents called for additional investment in public services and third sector organisations where additional duties are introduced to support the development of and build capacity for a monitoring and reporting framework, citing current resource and capacity constraints.

“We agree that monitoring and reporting are important. We would like to see this done in a way that integrates it into existing monitoring, scrutiny and reporting in the public sector. For example, as part of existing performance management arrangements.” (NHS Education for Scotland)

“Monitoring and reporting requirements under the Human Rights Bill should, to the fullest possible extent, be integrated into existing requirements on local authorities to avoid unnecessary duplication of work and mitigate the impact on council officers’ workload in this area. It is imperative that any approach seeks to be strategic and rationalise reporting. It is worth considering, rather than adding additional human rights reporting duties, if this could be combined with existing reporting on children’s rights. [...]” (Organisation – Public)

Summary of other emerging themes

A significant minority of respondents mentioned the Scottish Human Rights Commission, suggesting that the Scottish Government should involve the SHRC in the monitoring and reporting process. Furthermore, a significant minority of respondents argued that there is a need for improvements in human rights data collection to effectively monitor progress. Additionally, another significant minority of respondents argued that public awareness and transparency regarding the findings of the reporting process should be improved by ensuring all information is easily accessible and presented in inclusive forms of communication.

A few respondents called for more information on the Scottish Government's proposals than what was presented in the draft Bill. A few respondents suggested that the Scottish Government should develop the monitoring and reporting framework for the HR Bill, following an approach similar to that taken in the implementation of the UNCRC Bill. To add to that, a few respondents argued that there should be a reporting duty on the Scottish Parliament. Finally, a few respondents expressed the view that the current monitoring and reporting arrangements are lacking and would require improvement to support effective monitoring and reporting of the implementation and progress of the Bill. Finally, a small number of respondents were against additional reporting duties to those currently in effect, as they felt this would cause significant administrative and resource burdens.

9. General themes of the consultation responses

This section provides an overview of emerging themes identified across all consultation questions. The themes presented in this section are not necessarily the most prevalent in all responses to each question. However, they are the themes that were consistently raised by respondents throughout the consultation questions.

Request for further clarification and guidance

The request for further clarification and guidance on specific topics and areas was commonly mentioned among respondents throughout the consultation. Respondents expressed confusion with specific terms used as well as with the proposals made throughout the Bill. Among those who mentioned this theme, there were also respondents who stated that their views on the proposals were conditional to further clarifications being provided.

Respondents typically held the view that further clarification would facilitate the interpretation of the Bill's provisions by all stakeholders. Therefore, they argued that explanatory guidance would ensure the consistent understanding and interpretation of the rights of all stakeholders, including rights-holders and duty-bearers. Specific terms that respondents requested further clarification on included dignity, safe climate, clean air, public functions, sufficient interest, and reasonableness. Respondents requested guidance on the procedural elements of the right to a healthy environment, the duties, the proposed equality provision, the implementation of MCOs, and the process for seeking recourse through non-judicial routes (e.g. the SPSO). Respondents held the view that any guidance provided should be accessible and easy to understand.

Request for resources and support for capacity-building

Another theme identified throughout the consultation responses was the request for resources and support from the Scottish Government for capacity-building. Respondents commonly called for the provision of support (including financial assistance) to duty-bearers, scrutiny bodies as well as advice and advocacy services. A few respondents also requested that support should be provided to the third sector specifically. Respondents stated that these stakeholders may currently face resource constraints that will inhibit their ability to adjust their processes to adhere to the Bill's provisions. Funding, resources and training were also requested for the SHRC. Respondents expressed that the SHRC does not currently have sufficient resources to effectively perform its functions, hence, they argued that adding new functions and duties without additional resources would be ineffective.

Safeguarding the rights of specific groups of people

Another emerging theme identified across all questions in the consultation was the need to safeguard the rights of specific groups of people. These groups included

LGBTI people, disabled people, older people, children, ethnic minorities, women, people in care and care experienced people and people with mental health issues. Respondents typically held the view that these groups are most vulnerable to violations of their human rights and therefore, provisions should be in place to specifically protect their rights. Respondents expressed that there should be greater consideration for the dignity of people with different protected characteristics, especially when it comes to accessing the courts and justice system. They also held the view that the need to protect the rights of these individuals should be reflected in the equality provision and that the intersectionality of the characteristics should be considered. Respondents argued that any provisions regarding advocacy, legal aid and complaints handling should specifically consider and refer to the aforementioned groups.

General disagreement with the Bill

Another emerging theme identified across the responses involved specific views disagreeing with the Bill overall. This theme was predominantly raised by individual respondents. The most common views under this theme were that the Bill is unnecessary and that it is outwith the Scottish Government's devolved competence. Respondents who raised this theme argued that existing UK legislation, such as the Human Rights Act 1998 and the Equality Act 2010, are sufficient legislation for human rights. Respondents argued that the proposed Bill would be redundant and cause confusion on human rights legislation. A small number of respondents expressed that this would have negative consequences on the safeguarding of human rights overall. Another view held by respondents who expressed general disagreement with the Bill was that it goes beyond the devolved competence of the Scottish Government and that human rights legislation should be UK-wide.

10. Summary of views from public consultation events

Introduction

This section summarises the key points raised during the 7 Government-led public consultation events, which were held in addition to the consultation between 27 July 2023 and 19 September 2023. In total, there were over 150 attendees at the events, including rights-holders and representatives from public and civil society organisations.

The public consultation events consisted of two parts, focussing on different aspects of the proposals and asking a series of related questions.

Part 1

Question 1a: Do you think new human rights protections are needed?

There was broad support for the Human Rights Bill, emphasising the importance of implementing additional rights protections into law and ensuring accessibility to those currently unable to claim them. Attendees cited the erosion of human rights by the UK Government as a reason for such new protections. There was also a call for cultural change in public services, with an emphasis on compliance duties to drive change and make bodies more accountable.

Attendees expressed concerns about potential inequalities in the implementation of the Human Rights Bill, suggesting that those who vocalise their issues may receive more support than those who remain silent. Some argued that the Human Rights Bill should align with existing policies and legislation, addressing issues such as discrimination against migrants.

Attendees also suggested embedding ECHR rights to ensure protection in Scotland in case the UK Government regresses on these rights. While there was general support for the Bill, concerns were raised about potential confusion between existing and new legislation. Some argued that existing protections, such as the Equality Act 2010 and PSED, are sufficient, and introducing a new Human Rights Bill may lead to confusion. Participants also discussed the need for clarity and awareness regarding the proposed legislation's scope and impact.

Question 1b: What do you think about the treaties and our approach to incorporation?

Concerns were raised that certain groups, such as refugees and those subject to immigration rules, may not be adequately protected by the new rights. Participants emphasised the need for thorough incorporation of the CRPD, and questioned engagement with the UK Government and existing international law commitments. Clarity on the interaction between Westminster legislation and Scottish Government

proposals was requested. Urgency in enforcing duties, especially for people subject to immigration control and individuals with mental health issues, was stressed.

Support was expressed for a duty to comply, with a preference for Human Rights to integrate with existing legislation and duties. Concerns about funding challenges and potential limitations in the procedural duties for equality treaties were also raised.

The importance of creating a human rights culture and raising awareness was highlighted, along with the need for clear definitions and parameters, especially in addressing conflicting rights. Participants also highlighted the importance of involving individuals with lived experience in the development of rights.

Question 1c: What do you think about plans to recognise the right to a healthy environment in law?

Strong support was expressed for the inclusion of the right to a healthy environment, driven by concerns about climate change and accountability for environmental harm. Participants raised concerns about enforcement and access to justice, particularly when private bodies are involved.

Questions were posed about the definition of the right to a healthy environment and whether minimum core obligations would define what a healthy environment is. The importance of making the right accessible and clear in relation to social and economic rights was emphasised. A comparison with Norway's right to a healthy environment, which was noted to be non-enforceable, was also brought up.

There was also broad overall support for the right, with questions about the right's applicability to the natural environment, as well as potential conflicts with other rights. Some participants raised questions about how the Bill will demand this right from businesses and private actors with significant environmental impacts, especially in reserved areas like energy and oil.

Question 1d: What do you think about our proposals for (i) having basic minimum standards for the right in the Bill and (ii) the requirement for the rights to be fully realised over time?

There was a request for more information on how minimum standards will be developed and what they could entail. Participants discussed what MCOs might look like for different rights, such as health, work, culture, social security, housing, and the environment. They stressed the importance of adopting a staggered approach to commencing duties, allowing public bodies ample time to prepare. Concerns were raised about the absence of clear timelines in the consultation and the need for clarity on when MCOs will be developed and updated. There was also a preference for a participatory approach to developing MCOs, ensuring dignity, and allocating sufficient resources to the process.

Some participants proposed a pilot for the duty to comply, emphasising the importance of shared learning before a national rollout. Others expressed concerns

about the limited resources available to public and third-sector organisations to fulfil these rights. There were also concerns that some rights may be fully realised while others may not meet the minimum threshold. Participants also emphasised the importance of setting high minimum standards, particularly for a fairly well-off country like Scotland.

Summary of general comments about Part 1

Participants sought more details on the proposals and requested clarifications regarding funding for public bodies and their integration with existing equality work. Various participants raised questions about delivery timelines, the inclusion of specific groups (such as care-experienced individuals), and potential conflicts with UK legislation.

There were calls for clear definitions, roles and responsibilities for scrutiny bodies, and increased advocacy resources. Concerns about accessibility and understanding at a layman's level were voiced, emphasising the need for clear communication and information regarding decision-making processes.

Some participants highlighted regional disparities and stressed the importance of cultural rights, while others questioned the effectiveness of the Scottish Government in delivering the proposed Bill. Additional concerns included the potential alignment of the Human Rights Bill with the Scottish Constitution. Participants also emphasised the importance of maintaining an independent judiciary for effective accountability under the Human Rights Bill.

Part 2

Question 2a: What do you think needs to happen where something goes wrong, and rights are not upheld?

Participants shared diverse perspectives on addressing rights breaches under the Bill. A primary concern was the need for immediate redress of rights breaches, ensuring dignity regardless of the nature of the violation. Respondents advocated for duty-bearers to address breaches through reviews or meetings, highlighting the importance of establishing timelines for rights-holders to track redress stages. While support for the sufficient interest test was discussed, caution was urged to preserve individuals' right to access courts.

Holding organisations accountable for repeated rights violations and advocating for accessible advocacy services were also prominent points. Prevention strategies, such as upskilling local authorities and centralising human rights information, were emphasised to address issues at the root. The significance of legal redress, affordability, and closing existing legislative loopholes were recurrent themes. Participants also made suggestions for specific resource allocation and the appointment of human rights complaints officers within local authorities.

Respondents emphasised the need for cultural shifts in handling complaints, highlighting the importance of apologies, transparency, and reasonable

adjustments for complainants. Discussions included mental health and policing complaints, sector-specific complaint processes, and the role of the Scottish Human Rights Commission. The priority of upholding human rights was stressed, with examples illustrating the consequences of insufficient resources and delays in obtaining remedies. Critical improvements identified included faster complaint responses, increased funding for advocacy organisations, and easier access to legal aid.

Concerns about the affordability of using civil courts were raised. Other topics covered included the distrust of statutory services in certain communities, the potential use of AI technology for case signposting, and the importance of independent advocacy, particularly for neurodiverse individuals. Key support mechanisms identified were ensuring duty-bearers understand their obligations, releasing early guidance, and streamlining the process for individuals.

Question 2b: Who should help resolve the problem and what should they do to help?

Participants emphasised several key points on who should help resolve problems and how they can assist. The most frequently mentioned theme highlighted the need for support in accessing non-judicial and judicial systems, including clear signposting, funding, and defined timelines for escalated complaints. Public bodies required additional resources and frontline staff training to respond effectively to complaints. Another prevalent theme underscored the importance of non-judicial routes, with a preference for support over complex and resource-intensive judicial processes, especially for young people. Suggestions to enhance accountability included building trust in complaints processes, allowing anonymous complaints, and seeking support from organisations like Citizens Space.

The importance of independent advocacy, mediation, and communication between rights-holders and duty-bearers was also emphasised to resolve issues before resorting to court. Concerns about the effectiveness of the Scottish Public Services Ombudsman (SPSO) were raised, with calls for improvements, support for public authorities, and the use of mediation. The involvement of practitioners, collaborative working, and the inspection of organisations to ensure compliance featured prominently. The ideas of collective advocacy, peer advocacy, and group advocacy models were also discussed.

A suggestion was made for each authority to have a named person overseeing rights implementation. The potential role of commissioners, such as the proposed Older Person's Commissioner, was discussed. Participants also proposed allocating higher budgets to civil society organisations to resolve issues via the courts. The Scottish Human Rights Commission (SHRC) was suggested to play a role as a critical friend, supporting duty-bearers alongside a regulatory role, and ensuring equitable access to justice, legal aid, and training for court spaces.

Question 2c: What information and support do you think would help you if you have a problem with your rights?

Respondents highlighted the need for widespread awareness and support mechanisms for individuals facing rights-related issues. Key themes included the importance of community-level resources and awareness campaigns to educate people about their rights, the obligations of duty-bearers, and the necessity for public authorities to have publicly available criteria. Participants emphasised the vital role of the third sector and community organisations in raising awareness, calling for increased capacity in these sectors. Specialised advocacy, especially for individuals with specific needs like those living with dementia, mental health issues, environmental justice concerns, and those affected by digital exclusion, was a key focus.

Collaboration between legal, advocacy, and public body services was deemed crucial to streamline processes and minimise bureaucracy. The importance of using plain language, providing accessible information in various formats, and upskilling the workforce to handle complaints effectively were also underscored. Suggestions included creating technology-enabled support, offering free independent advocacy, and utilising platforms like the Human Rights Town app to amplify diverse voices. Additionally, there was a call for trauma-informed strategies, safe spaces, and fully accessible consultation methods to ensure that everyone's stories are heard.

Summary of general comments about Part 2

Community event participants emphasised a prevailing perception that people view human rights as something distant or unrelated to them, emphasising the importance for the Scottish Government to communicate that the proposed Bill will significantly enhance the legal standing of rights, giving them more impact. There was a call for capacity building on both sides of the duty-bearer/rights-holder spectrum, emphasising education and cultural shifts, particularly at the frontline level, including organisations like nurseries. Concerns were raised about the potential for a tick-box approach to reporting duties and the urgent need for a widespread culture change regarding human rights.

During the community events, discussions also touched on the inclusion of marginalised groups and the potential risk of centralisation in advocacy services for community groups. Lived experience was deemed crucial in government and local authority decision-making. Participants also raised concerns about the challenges of implementing the Bill, especially in rural areas, potential budget reallocation, and the need for capacity building for duty-bearers. Discussions also touched on the need to define the concept of 'reasonableness' and potential risks in the interpretation of cases by individual judges. Additionally, participants discussed the need for resources and e-learning in the public sector.

11. Conclusion

As a significant step in Scotland's ongoing efforts to strengthen and protect human rights, the Scottish Government has conducted a consultation for a forthcoming Human Rights Bill for Scotland. The Bill proposes to take a direct treaty approach to embed into domestic law the internationally recognised human rights outlined in the ICESCR, ICERD, CEDAW and CRPD. To achieve this, the Bill seeks to create a clear, robust, and accessible legal framework while defining the duties of public bodies. Among other goals, the Human Rights Bill aims to guarantee the enjoyment of rights without discrimination through an equality provision, recognise the right to a healthy environment and provide accessible avenues to remedy infringements of human rights.

Between 15 June 2023 and 5 October 2023, the Scottish Government launched a consultation gathering the public's views on the proposed Human Rights Bill. This will inform the drafting of the Bill which will be introduced to the Scottish Parliament before the end of 2023-24 parliamentary year. Seven public consultation events were also held between 27 July 2023 and 19 September 2023.

The consultation posed questions on the proposed Bill overall and solicited views on specific aspects of the Bill, divided into six parts. These were: incorporating the treaty rights, recognising the right to a healthy environment, incorporating further rights and embedding equality, duties, ensuring access to justice for rights-holders, and implementing the Bill as an Act.

The consultation posed a total of 52 questions, including 10 closed questions (e.g. receiving yes/ no/ don't know responses) and 42 open-text questions (receiving free text responses). A total of 397 responses were received, in addition to 7 public consultation events, with over 150 attendees. Responses were received from individuals, local councils, civil society organisations, public body representatives (including executive agencies, NDPBs etc.), academic institutions, legal professionals, private bodies, and third-sector service delivery organisations. Amongst respondents representing organisations, 71% were civil society organisations, 27% were public sector organisations, and 2% were public sector organisations.

Alma Economics was commissioned by the Scottish Government to analyse all responses. Descriptive analysis was conducted on the closed-format questions, and thematic analysis was used to synthesise themes raised in the open-text questions and public consultation event reports.

Following the thematic analysis, the recurring themes for each part of the consultation were identified across consultation responses and public consultation events. A brief summary of these themes is presented below; for a more detailed description, please refer to the executive summary.

Incorporating the Treaty Rights

This section focused on incorporating the rights described in the four UN treaties (the ICESCR, the ICERD, the CEDAW, and the CRPD) and the right to a healthy environment in the Human Rights Bill. The concept of human dignity is an essential element of the Bill, and the respondents were asked for their views on that matter. The respondents were also asked about their views on international law, materials, and mechanisms to be included within the proposed interpretative provision and whether there are any rights in the four UN treaties which should be treated differently. The respondents widely supported the proposals regarding the concept of human dignity as well as the overall proposition of incorporating the four UN treaties and the right to a healthy environment.

However, the request for further clarity was also common among the responses to these questions. The respondents asked for clarity and guidance regarding the definitions of 'human dignity' and 'key threshold' (for defining the content of Minimum Core Obligations), as well as the intended operation of the incorporation model. Another overarching theme was the views that the respondents expressed regarding the Bill's proposed duties. The respondents commonly supported the proposals for an initial procedural duty for public bodies, and subsequently moving to a duty to comply, but they also requested a stronger duty to comply on public bodies that will be applied to four treaties, not only ICESCR and the right to a healthy environment. Additionally, the consultation asked about the safeguarding of the rights of certain groups of people. Disabled people were most frequently mentioned by respondents, as well as other groups of people with protected characteristics and various vulnerable populations.

Recognising the Right to a Healthy Environment

This section centred on recognising a right to a healthy environment in the Human Rights Bill, proposing various substantive and procedural aspects of the right. Questions aimed at gathering perspectives on the proposed definition of the environment and the proposed content of a right to a healthy environment, safeguarding food under the ICESCR, and safeguarding safe and adequate water. Respondents generally endorsed the suggested formulations for both the definition of the environment and the right to a healthy environment, yet proposed additional substantive elements for inclusion, such as safe and healthy food, access to clean water and adequate sanitation. Feedback also highlighted areas for improving the proposals for the Bill, particularly regarding unclear or vague language in definitions, the need for specific plans to enforce these rights, and establishing a clear accountability structure to enhance access to justice. While respondents largely supported the approach to ensuring safe and sufficient water, they emphasised the necessity of including adequate sanitation in the right to a healthy environment due to concerns about sewage pollution. However, notable disagreement emerged concerning the proposed approach to safeguarding food, as respondents overwhelmingly advocated for its inclusion as a substantive aspect of the right to a healthy environment.

Incorporating Further Rights and Embedding Equality

This section focused on incorporating additional rights into the Bill and implementing strategies to ensure the universal delivery of rights without discrimination. The questions centred around identifying the best approaches to signal the Human Rights Act 1998 as a fundamental aspect of human rights law in Scotland and embedding participation into the Bill's framework. Respondents' opinions were sought on including an equality provision in the Bill, aiming for equitable access to rights and effective definitions of specific demographic groups, particularly LGBTI and older people. Suggestions included integrating the Human Rights Act 1998 into the Bill's implementation and incorporating it into guidance, public body training, capacity-building initiatives, and awareness plans. For embedding participation, there was a call for an explicit right to participation, ensuring the involvement of the more vulnerable or those with lived experiences of rights violations. Respondents also commonly supported the introduction of the equality provision in the Bill's framework, explicitly mentioning specific groups, primarily LGBTI and older people not currently covered by international treaties, as well as disabled people and people with care experience. A recurring theme was a request for guidance accompanying the framework that the Bill will create to clarify terms and specify population groups, ensuring awareness and understanding of all human rights and relevant duties for both duty-bearers and rights-holders.

The Duties

This section focused on the proposed duties related to the rights outlined in the Bill, specifically for those delivering devolved public functions. The proposed duties aim to establish a framework enhancing duty-bearers' capacity to uphold the rights of individuals in Scotland. Respondents most commonly supported the suggested approach, endorsing the proposed duties: the initial procedural duty, duty to comply, reporting requirement, and duty to publish a Human Rights Scheme. However, respondents expressed that the duty to comply should also be applicable to the equality treaties, especially the CRPD. The majority also supported aligning the duties associated with the right to a healthy environment with economic, social, and cultural rights. Support for demonstrating compliance through progressive realisation and meeting MCOs was also common among respondents. A consistent call for guidance and support from the Scottish Government to duty-bearers was echoed, particularly regarding the initial procedural duty, duty to comply, reporting requirement, and methods for demonstrating compliance. Respondents commonly sought further clarification on key terms, including duty-bearers, progressive realisation and MCOs.

Ensuring Access to Justice for Rights-Holders

This section focused on proposals for ensuring access to justice for rights-holders. The respondents were asked about their views on the most effective ways of supporting advocacy and advice services and their views on the proposals regarding the front-line complaints handling mechanisms of public bodies. Additionally, they were asked for feedback on the proposed changes to the remit of

scrutiny bodies, including the SPSO, and the proposed additional powers for the SHRC and the CYPSC. The consultation also asked for feedback on the proposals for Bill's approach to 'standing' and assessing 'reasonableness'. Moreover, the respondents were asked about their views on existing judicial remedies, whether any additional remedies would be helpful, and what would be the most appropriate remedy in the event a court finds legislation incompatible with the rights in the Bill.

Support for the proposals was the major overarching theme here. There was common support for the proposals regarding the complaints handling system, the proposed changes to the remit and powers of the scrutiny bodies, and the proposed approaches to 'standing' and assessing 'reasonableness'. Nonetheless, another overarching theme across the questions was the request for further clarity regarding the proposals, the expected impact or outcomes that such changes could have, as well as the way that the various public authorities and scrutiny bodies will interact under the Bill. In addition, a common theme was that adequate funding, resourcing, and training would be required for these proposals to be implemented successfully.

Implementing The New Scottish Human Rights Act

This part of the consultation focused on plans for implementing the Human Rights Bill upon its provisions coming into force, outlining the Scottish Government's proposals regarding a sequenced implementation strategy for the duties, the establishment of MCOs, the requirement for Ministers to publish a Human Rights Scheme, and measures to enhance parliamentary assessment and scrutiny of new legislation in relation to human rights. It also sought input on building capacity across the public sector, facilitating information sharing and awareness, and establishing an efficient monitoring and reporting process.

Overall, respondents expressed support for the Scottish Government's proposals for ensuring effective Bill implementation, endorsing the sequenced approach, MCOs, and the Human Rights Scheme, while highlighting crucial elements for effective execution. They emphasised the need for a participatory approach involving right-holders, especially those most at risk of their rights being violated, and third-sector organisations alongside the creation of clear and inclusive guidance for both duty-bearers and rights-holders. However, respondents urged the development of clearer accountability mechanisms and called for more specificity regarding timelines, actions, and plans. They emphasised the necessity for comprehensive capacity building, including resource investment in public services and third-sector entities, to address existing limitations in capacity and resources within the public sector.

12. Appendix

Appendix A: Tables with a breakdown of responses

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?

Responses	Count	Share
Allow	193	80%
Don't allow	47	20%
All respondents	240	100%

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 obligation (MCOs)?

Responses	Count	Share
Allow	188	80%
Don't allow	48	20%
All respondents	236	100%

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

Responses	Count	Share
Yes	81	51%
No	77	49%
All respondents	158	100%

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

Responses	Count	Share
Agree	141	69%
Disagree	64	31%
All respondents	205	100%

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

Responses	Count	Share
Agree	85	44%
Disagree	110	56%
All respondents	195	100%

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?

Responses	Count	Share
Agree	157	82%
Disagree	34	18%
All respondents	191	100%

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

Responses	Count	Share
Yes	86	55%
No	71	45%
All respondents	157	100%

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?

Responses	Count	Share
Agree	44	25%
Disagree	134	75%
All respondents	178	100%

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

Responses	Count	Share
Yes	69	48%
No	76	52%
All respondents	145	100%

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

Responses	Count	Share
Agree	66	49%
Disagree	68	51%
All respondents	134	100%

Appendix B: Tables with a breakdown of responses by respondent type (individuals and organisations)

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?

Respondent type	Allow	Don't allow
Organisation	139 (99%)	1 (1%)
Individual	54 (54%)	46 (46%)
All respondents	193 (80%)	47 (20%)

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 obligation (MCOs)?

Respondent type	Allow	Don't allow
Organisation	135 (99%)	2 (1%)
Individual	53 (54%)	46 (46%)
All respondents	188 (80%)	48 (20%)

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

Respondent type	Yes	No
Organisation	58 (69%)	26 (31%)
Individual	23 (31%)	51 (69%)
All respondents	81 (51%)	77 (49%)

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

Respondent type	Agree	Disagree
Organisation	89 (85%)	16 (15%)
Individual	52 (52%)	48 (48%)
All respondents	141 (69%)	64 (31%)

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

Respondent type	Agree	Disagree
Organisation	38 (39%)	59 (61%)
Individual	47 (48%)	51 (52%)
All respondents	85 (44%)	110 (56%)

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?

Respondent type	Agree	Disagree
Organisation	91 (98%)	2 (2%)
Individual	66 (67%)	32 (33%)
All respondents	157 (82%)	34 (18%)

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

Respondent type	Yes	No
Organisation	50 (70%)	21 (30%)
Individual	36 (42%)	50 (58%)
All respondents	86 (55%)	71 (45%)

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?

Respondent type	Agree	Disagree
Organisation	21 (22%)	76 (78%)
Individual	23 (28%)	58 (72%)
All respondents	44 (25%)	134 (75%)

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

Respondent type	Yes	No
Organisation	49 (78%)	14 (22%)
Individual	20 (24%)	62 (76%)
All respondents	69 (48%)	76 (52%)

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

Respondent type	Agree	Disagree
Organisation	21 (32%)	44 (68%)
Individual	45 (65%)	24 (35%)
All respondents	66 (49%)	68 (51%)



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