**Submission on First Minister's Advisory Group on Human Rights Leadership Proposals**

Possible recommendation: a new Rights Act for Scotland

At present the UK Human Rights Act 1998 gives everyone in Scotland civil and political rights such as the rights to freedom of speech and religion, liberty, privacy, fair trial, non-discrimination and freedom from inhuman or degrading treatment. These rights come from the European Convention on Human Rights and all public bodies in Scotland have a legal duty to comply with them. There are concerns that in the future the UK Parliament may repeal the Human Rights Act 1998.  
  
The UK has signed up to the rights from United Nations (UN) human rights treaties but not put them into our law in the same way as it has with the rights referred to above. These UN treaties include economic, social and cultural rights such as:

The right to an adequate standard of living.

The right to the highest attainable standard of physical and mental health.

The right to adequate housing.

The right to social security.

The right to take part in cultural life.

Some other UN treaties which have been signed by the UK but not put into our law contain rights for children, people with disabilities, women and rights relating to race.  
  
There are also internationally recognised rights to a healthy environment which have not been put into law in the UK and Scotland.

**Do you agree there should be a new Rights Act for Scotland?**

Yes

As a membership organisation committed to ensuring that the best quality care and support is delivered to some of the most vulnerable citizens of Scotland, Scottish Care believes that it is fundamentally important that the rights of older persons and those who support them are enshrined in law. Scottish Care has long argued that the best mechanism for achieving this is the retention of the Human Rights Act with its whole emphasis upon ‘bringing rights home’ enabling easier redress to citizens and improving accessibility to justice. Given the merging and increasing threats against the Human Rights Act we would agree that the development of a new Rights Act is a proportionate measure in order to retain, defend and promote the rights of individuals living in Scotland.

Further we have long argued that it is important that the Human Rights Act is recognised as a starting point and baseline towards the fuller realisation of human rights. The incorporation into Scottish law of the extant United Nations treaties will be a step in that direction. We would further contend that there is potential for this new Rights Act to go even further by addressing areas of human rights deficit within practice and policy in Scotland.

**If there was a new Rights Act for Scotland, which of the following benefits would you want to see (select all that apply)**

Confirmation of the civil and political rights contained in the UK Human Rights Act 1998

Legal status given to economic, social and cultural rights and other rights contained in UN human rights treaties

Establishment of specified environmental rights

Scottish Care believes that any new legislation should consolidate but also advance existing legal protections. In particular, given the focus of the work of our membership we believe that it is fundamentally important that existing Treaties such as the rights of persons with disabilities are incorporated into the new Act. Further we would be pleased to see a much greater emphasis of the rights enshrined in Treaties on economic, social and cultural rights, being embedded within Scottish legislation and practice.

**Please give examples of the potential benefits of a new Rights Act for you or the community that you are part of.**

There is a wide range of potential benefits within a new Rights Act. In addition to those indicated above which would bring greater public awareness of rights, easier access for remedy , and more focused promotion, Scottish Care believes there is a potential for even further development in establishing Scotland as a country where human rights are not only acknowledged but are progressively realised across the whole of society. The embedding of the rights of people with disabilities is especially important to us given the number of people who are living with dementia in Scotland. We would further hope that there might be a possibility for the development of additional rights-based protection for older persons. In addition we recognise the potential for addressing key and emerging societal issues which the new Act may offer. We would especially highlight issues such as the3 use of technology, AI and robotics in the health and social care systems within Scotland.

**If a new Rights Act for Scotland is introduced, do you agree that public bodies should have a legal duty to comply with it?**

Yes

Scottish Care strongly believes that for any Rights Act to achieve its aims and to gain the confidence of the general public then there must be proportionate legal duties placed upon public bodies to comply with the terms of the Act. These must be developed within a robust framework of independent evaluation and monitoring. We believe that the lack of robust monitoring has detrimentally affected the ability and desire of public bodies to implement the provisions of many previous pieces of equality legislation, such as the Equality Act 2010. It will be important for such monitoring to have a degree of robustness and independence, perhaps through an increased role of the Scottish Human Rights Commission. It will equally be important for the duties to encompass the role of public bodies as commissioners and procurers of services and for there to be an acknowledgement of the resource implications of extending duties to third or contracted parties.

**Do you agree that the public needs to be fully engaged in the preparation of a new Rights Act, including being involved in making sure it is implemented as effectively as possible?**

Absolutely we agree. For any Rights Act to be meaningful and relevant to contemporary Scotland, the terms and provisions of the Act, especially if it is considered that new provisions and duties are necessary or desirable, must be the result of an extensive process of co-design and co-production that truly engages citizens. This process in itself will help to embed appreciation of and understanding of the new Act. This Rights Act must speak to the aspirations and hopes of the people and citizens of Scotland if it is to become something which has an authenticity and voice of its own. Failing to do so risks any new Act becoming the conserve and preserve of a few rather than the many.

**If you agree, what do you think are the best ways for the public to be engaged?**

Public events

Websites and social media

Through civil society bodies, such as charities or community organisations

**Please tell us any other ideas**

All of the above are important – we would also suggest specific focus groups targeted at individuals who might find accessing public spaces challenging, e.g., those in care homes, sheltered accommodation, prisons, etc. Creative methods such as pop ups, Big Brother Rights Chairs, video feedback etc should also be considered. Given the prospect of extending rights into the private and economic sphere it will also be important to be inclusive of the private and wider business sector as key right holders and enablers.

**Possible recommendation: Implementing the Rights Act**

**If a new Rights Act is introduced how can we ensure that the people of Scotland are aware of their rights and are able to exercise them? (Select all that apply)**

Public education campaigns

Websites and social media

via civil society organisations, such as charities and community organisations

via public sector bodies (duty-bearers)

Through schools

Other (please specify)

All of the above. Collective design of the Act will assist an awareness process but it will be important to make the awareness of the Act real and vibrant – so for instance by utilising hashtags, lapel pins, photo opportunities, and creative models such as video and drama.

**Are there any groups of people that are likely to need support to ensure they are aware of their rights? Please tell us who they might be.**

Scottish Care members seek to support those living in care homes and those in the community who may be isolated from community interaction, to understand and exercise their rights. We would also acknowledge that there are particular challenges not solely brought about by age, but my ethnicity, sexual orientation, race and ethnicity etc. In particular we would highlight the need to support people with fluctuating mental health conditions and people living with dementia who may have reduced capacity.

**Do you agree that public sector bodies and civil society organisations will need support to improve their knowledge and skills to help the public understand and exercise their rights?**

Yes

Whilst there may be some understanding of the duties and responsibilities placed upon public sector bodies and civil society under the Equality Act it is our feeling that there is very little awareness of the duties under human rights provisions. For this not to be the case under any new Rights Act it will be very important that sufficient support and resource is identified to develop and build capacity across the public, voluntary and independent sectors. Rights are rarely realised on the cheap. It will be equally important that there is appropriate stress on not simply compliance but the enabling of organisations and their staff to have confidence in embedding human rights skills and knowledge.

**If yes, what form should this take? Please tick all that apply.**

Awareness-raising / education programmes

Staff training

Independent advocacy

Government guidance

Good practice case studies

Other (please specify)

We would argue all of the above. What is most important is that training and learning is bespoke and developed in collaboration with the specific sector involved rather than attempts be made to apply one approach across the board.

**Possible recommendation: a new Scottish Government human rights body**

The Advisory Group may recommend the establishment of a new human rights body to sit within the Scottish Government with its own staff and budget. It would have three core functions:

It would monitor and report to the Scottish Government, Parliament and the public what is happening with the rights transferred from the European Union to the UK Parliament following Brexit.

It would monitor and report to the Scottish Government, Parliament and public any relevant developments in rights within the European Union following Brexit so that consideration could be given as to whether Scotland should introduce similar rights where it has the powers to do so.

It would coordinate Scotland’s reporting to and implementation of recommendations from relevant European and United Nations human rights bodies so as to continually improve human rights in Scotland.

**Do you agree that there is a need for a new Scottish Government body to carry out the functions described above?**

Yes

In broad terms Scottish Care recognises the need for an explicit body to monitor and report post Brexit and to act on behalf of the Scottish Government in terms of reporting to relevant human rights bodies. However we are concerned that there must be a clear delineation between the functions and role of this body – and its adequate resourcing – and the consolidation of the independent role of the Scottish Human Rights Commission. The creation of a new body unless carefully handled risks a confliction within the landscape. The ability of any Government to be held to account for its realisation of human rights is critical and the SHRC must remain wholly independent and free from undue influence, especially in an environment where the Government is seeking to achieve the progressive realisation of human rights.

**How might such a body be made accessible and accountable to the public? Please tick all that apply**

By producing an annual report to Parliament

By regularly engaging with civil society organisations, such as charities and community groups

By undertaking public engagement across Scotland

**Please tell us why**

All of the above but it should also seek to utilise more creative mechanisms.

**Do you have any other comments about the Advisory Group's recommendations?**

Scottish Care believes the recommendations are a significant contribution to enhancing human rights in Scotland. The establishment of a new Act and the creation of supporting bodies resourced could go a long way to creating a Scotland in which the human rights of all are at the centre of economic, social, cultural and political discourse and decision making.