

Respondent Information and Answer Return Form

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Please send your response to us by email or by post using the following details:

Our email address is: HumanRightsOffice@gov.scot

Our postal address is:
Human Rights Strategy & Legislation Unit
Directorate for Equality, Inclusion and Human Rights
Scottish Government
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To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

Scottish Care

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- Yes
- No

Questionnaire

The questions in this document refer to information contained in '[A Human Rights Bill for Scotland: Consultation](#)'.

Questions 1 – 5 refer to Part 4: Incorporating the 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?

Allow

Don't Allow

Please give us your views:

Scottish Care supports the proposal to allow for dignity to be considered by courts in interpreting the rights in the Bill. We have highlighted as an organisation that dignity is one of the underpinnings of human rights in adult social care. In our 2021 report '*What Does a Human Right to Social Care Look Like?*' we explained that at the heart of human dignity lies 'the ability to allow others to grow into the fullest expression of their own humanity and individuality'. Simply put within the confines of the laws and obligations set by our society we must prioritise choice for adults in social care. Scottish Care also supports the recommendation by HRCS to include a purpose clause that mentions other key human rights principles alongside dignity for a better and more robust understanding.

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)?

Allow

Don't Allow

Please give us your views:

We support the proposal to allow for dignity to be a key threshold for defining the content of minimum core obligations.

Question 3

Please give us your views¹:

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

Scottish Care supports the Government's proposal to include international human rights law, materials and mechanisms including General Comments and recommendations of UN Committees, concluding observations of UN treaty monitoring bodies and other mechanisms at the international or regional level.

¹ International standards- Normative standards and obligations under international law in relation to the promotion and protection of the human rights of older persons, 2022 (A/HRC/49/70), Update to the 2012 Analytical Outcome Study on the normative standards in international human rights law in relation to older persons (2021), Expert on the enjoyment of all human rights by older persons, 2016 (A/HRC/33/44).

It is important to note that there is currently not a comprehensive international human rights framework on older people in contrast to the rights of children and rights of people with disabilities. Recommendation 6 by the National Taskforce was 'a right for older people to be included in the statutory framework'. They acknowledged in policy objective 6 that a starting point of rights for older people could be created focusing on 'an overall right to lead a life of dignity and independence and to take part in social and cultural life, as previously provided by the EU Charter of Fundamental Rights'. Subsequently, legislation could identify other rights in areas prominent to older people. There is growing international recognition that there are substantive and procedural rights which are unique to older people. We know that we have an aging population and while we are living longer, we are not necessarily living healthier lives. This current proposal for a human rights bill must not miss the opportunity to acknowledge and protect these rights with or without an international UN convention.

In our 2021 '*Scottish Care Manifesto*', we outlined some substantive and procedural rights for older people accessing social care in Scotland. This should inspire the Scottish Government to consider that there are specific rights for older people and further consultation is needed to establish these rights, so this vital group does not miss out on the progression of their human rights.

- *'That every citizen in receipt of social care support, regardless of age, should be given a human rights care statement to evidence their involvement, informed choice and agreement.'*
- *Introduction of mandatory human rights impact assessments for all social care policy and practice with an independent body developed to assess and monitor these.*
- *The human right to social care, which should be further delineated to include a human right to palliative care and bereavement support.*
- *A new national outcome as we, Oxfam Scotland and others have advocated for.*
- *That every care home resident and user of homecare services should be entitled to a Human Rights Statement which shall detail how any organisation, public or private, will uphold their human rights, including access to visitors etc.*
- *All stakeholders work together to develop a human rights-based approach to the Infection, Prevention and Control framework.'*

Firstly, we urge the Scottish Government to outline how this bill would interact with the substantive and procedural rights of older people protected by an international convention if created in the future. This should be done after further consultation with relevant researchers, older people and the organisations that represent the interests of older adults. However, if such a framework is not introduced this bill should draw guidance from existing international and regional instruments, reports and studies conducted by the Independent Expert on the enjoyment of all human rights by older persons as well as initiatives on ageing guided by human rights. Furthermore, at a national level the Scottish Government should consult with older people, relevant researchers and the organisations that represent their interests to better understand what they would like implemented in the development of human rights for older adults.

Question 4

What are your views on the proposed model of incorporation?

Please give us your views:

Scottish Care supports the Scottish Government's proposal to incorporate ICESCR, CEDAW, CRPD, CERD and the right to a healthy environment into Scots law. We note that where some aspects of a right are reserved to the UK Government, the Scottish

Government should adopt a maximalist approach to the other elements that still fall within their jurisdiction. To assist with this approach, we support calls from the Alliance and HRCS for the Scottish Government, to clearly outline the rights and elements of other rights that fall within their devolved competence. This transparency will help to highlight how the Scottish Government is taking steps to ensure 'as much as possible that all law, policy and decision-making by Scotland's public authorities and services contributes to the advancement of the full range of international human rights standards contained in the Bill.'

To support this Bill, we are calling for the establishment of a clear human rights budget allocation system. This will enable fiscal allocation of resource to sectors that support older adults, sectors such as social care. We support the Scottish Government's proposal to place a duty to comply on public bodies and relevant private actors. However, as a representative of independent, small to medium size care providers who operate some governmental contracts, we must note that the duty to comply must be weighed against the resources to enable delivery of public services provided by the Scottish Government or public authority commissioning bodies such as local Health and Social Care Partnerships. Where those resources are inadequate for the full realisation of an individual's human rights within an existing contracted service, a re-assessment and reallocation of the contracted resource as given by the public authority or by Scottish Government must be made.

We note concern over the Scottish Government's proposal of a procedural duty on the 'equalities treaties' instead of a duty to comply. As stated in the National Taskforce report the duty to comply is necessary 'to provide rights-holders with access to an effective remedy where necessary'(p35). Without a duty to comply placed on these treaties, we are concerned that there will be a limitation on the progression of everyone's rights. As recommended by the Taskforce any procedural duty placed on the treaty right should be followed by a sunrise clause which leads to a duty of compliance (p35). This will allow for the progressive realisation of human rights in Scotland.

As outlined in Q3, there is currently not a convention on the protection of older people's rights. We will continue to advocate for a realisation of substantive and procedural rights to be outlined for older people. However, we recognise that currently the Scottish Government aims to utilise the 'equalities treaties' and ICESCR to instruct their policies and laws towards realising the rights for older people. By placing only, a procedural duty on some of these rights, we are concerned that older people's rights will be further neglected.

We support placing and including an equality provision to allow equal access for everyone to their rights. Furthermore, we support the proposal that the 'equalities treaties' should inform the interpretation of ICESCR rights and the right to a healthy environment for the relevant groups. However, we further urge that an obligation is placed for duty bearers to align their interpretations with human rights standards set by instruments such as General Comments and Recommendations by UN Treaty Bodies and ILO, UN Policy Instruments and resolutions and Key UN reports when interpreting the proposed treaty rights and the right to a healthy environment for older people. As stated in Q3 we also urge the Scottish Government to outline how the Bill will interact with a future convention protecting the substantive rights of older people. This is to ensure that once such a convention is created, older people will be able to enjoy the full realisation of their human rights.

Question 5

Are there any rights in the equality treaties which you think should be treated differently? If so, please identify these, explain why and how this could be achieved.

Yes

No

Please provide reasons for your answer:

By international standards there is the indivisibility of rights, meaning that one set of right cannot be enjoyed without the others. While we appreciate that certain rights and the elements of other rights might fall out of the powers of devolution, we are concerned that this approach by Scottish Government will lead to a hierarchy of rights signalling to duty bearers that some are more important than others and therefore they do not have to be prioritised. Additionally, this approach will limit the progressive realisation of everyone's rights. The Taskforce recognised that there would need to be a starting point for the realisation of older people's rights but outlined that subsequent legislation should provide more specific rights. This approach identifies that a starting point does not have to limit subsequent substantive rights. By treating certain rights from the 'equalities treaties' differently, the progressive realisation of each right could be hindered. Scottish Care calls for the Scottish Government to respect the indivisibility of the rights in the 'equalities treaties' and place a duty of compliance on all substantive rights in these treaties. This will set the correct standard for the incorporation of any future convention on older people's rights into Scots law.

Questions 6 – 11 refer to Part 5: Recognising the Right to a Healthy Environment

Question 6

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

Agree

Disagree

We encourage the Scottish Government to draw particular attention to the objective and definitions in Article 1 and 2 of the convention when defining the environment. This will align any interpretation with the intentions of the convention for a holistic approach to the Right to a Healthy Environment. We note that this approach, will place a duty on care providers providing public services on behalf of Scottish Government or public administrative bodies. Scottish Care would like to re-iterate that any duties, policies or initiatives created for the fulfilment of this right must also contain a costed component within social care support commissioning and procurement.

Question 7

If you disagree please explain why:

N/A

Question 8

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

Please give us your views:

We welcome the Scottish Government's proposal that substantive aspects of the right to a healthy environment should be understood as including clean air; safe and sufficient water; non-toxic environments (in which to live, work, study and play); healthy ecosystems and biodiversity; and safe climate. Additionally, we support HRCS and the Alliance's calls to include the right to adequate sanitation under safe and sufficient water and the right to healthy and sustainably produced food as additional substantive elements of the 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? Please give reasons for your answer.

Agree

Disagree

Please provide your reasons why:

Scottish Care has previously highlighted that the right to adequate food can prevent the malnutrition of older adults. With this right, we envision a future where older adults who live at home do not have to make decisions between being warm and being hungry. Additionally, this right will place a duty on those who commission care and support for people in the community, a duty that can only be fulfilled with adequate allocation of resource and finance from the Scottish Government. This will ensure real nutritional and health-beneficial sustainable and environmental food is allocated to those cared for and supported in care home and hospital alike.

We support Nourish Scotland's call to include the right to food as a substantive element of both the right to a healthy environment and as part of the right to an adequate standard of living under the ICESCR. This inclusion will allow for the progressive realisation of this right and will further exemplify the interdependency of all the rights in the Human Rights Bill.

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? Please give reasons for your answer.

Agree

Disagree

Please give us your views:

N/A

Question 11

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

Yes

No

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

N/A

Questions 12 – 18 refer to Part 6: 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?

Please give us your views:

Scottish Care supports the original calls by the national taskforce to re-state ‘the civil and political rights contained within the Human Rights Act’. This will re-affirm the interdependence of all human rights and their importance in Scottish Law.

We support recommendations from the HRCS for the SG to provide clarity and confidence for duty bearers and right holders by including the Human Rights Act in any capacity building and awareness-raising plans for this bill.

Question 13

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

Please give us your views:

In our report ‘*What Does a Human Right to Social Care Look Like?*’ 2021, we highlighted that participation is not simply about ensuring individuals feel engaged, consulted and involved but that everyone’s protected characteristics are addressed. On several occasions there has been a failure of social care systems to meet the cultural, ethnic, religious, sexual and gender needs of individuals. This in turn limits their participation in the improvement and development of social care in Scotland. We support the Taskforce’s recommendation 29 that further consideration should be given to include an explicit right to participation. Scottish Care believes this right should form a procedural element of all the other rights in the Bill.

The Scottish Government should consider releasing a report on what they received from the consultation and how they plan to incorporate it, in the creation of the bill. This helps those who have responded to work with the Scottish Government in tracking what has been incorporated and what still needs to be discussed. Furthermore, this will set a good example for duty bearers, to help them understand how they should be engaging with human rights and rights holders.

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?

Please give us your views:

Scottish Care supports the proposal to model the equality provision on Article 2 of ICESCR or Article 14 of the European Convention on Human Rights. This will ensure that the right within the convention cannot be restricted on the grounds race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth.

Question 15

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

Please give us your views:

Scottish Care agrees that older people and LGBTI should be explicitly named as protected characteristics in the equality provision. As explained in answers to Q3 and 4, the protection of older people in international human rights law is still developing. Therefore, this Bill should consider how it will incorporate new protections given to older peoples if or when a convention for the rights of older people is introduced. With or without such a convention, it is still important to include older people on the face of the Bill to re-iterate that they must be protected to the same degree as other groups who have defined conventions. Furthermore, any definitions given to this group must acknowledge that there are protections unique to them. Q3 outlines materials and stakeholders to be consulted when creating any such definitions.

This approach will illustrate a strong response from Scottish Government to correct the decades of inadequate protections which have led to the infringement of older people's human rights.

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

- Agree
 Disagree

Question 17

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

Scottish Care believes that 'older people' should be specifically named in the equality provision. Please see answers to Q15.

Question 18

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

- Yes
 No

Please give us your views:

Please see answers to Q3, 4 and 15.

Questions 19 – 26 refer to Part 7: The Duties

Question 19

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

Please give us your views:

We support the Scottish Government proposal that duties should apply to bodies carrying out devolved public functions including actors carrying out functions of a public nature and private bodies acting under a contract or other arrangements with a public body.

Scottish Care once again re-iterates that within the social care sector any duties, policies or initiatives created for the fulfilment of any right must also trigger a re-assessment of the costed component in social care support, commissioning and procurement. This assessment must be publicly available for scrutiny and negotiation by an independent body taking into account the views of all relevant actors.

Question 20

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

Please give us your views:

As noted in Q4, Scottish Care welcomes an initial procedural duty to help to embed rights in decision making. We support the approach set out in the NT's Recommendation 12, this should provide for an adequate period of time for public bodies and private actors to prepare for the duty of compliance. We encourage the Scottish Government to clearly outline an appropriate timeframe for this sunrise clause, to deter any confusion for when the duty of compliance comes into force. Additionally, once this period comes to a close the procedural duty to have regard, should exist alongside the duty of compliance. This will create a proactive environment for enforcing human rights.

We echo calls from the Alliance that appropriate training, support, capacity building, and adequate resources should be allocated to duty bearers, especially actors and private entities carrying out public functions. This should help to better define the responsibilities created by this Bill and how it should be enforced, therefore limiting the potential infringement of people's human rights.

Question 21

What is your view on the proposed duty to comply?

Please give us your views:

Please see Q20.

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?

Please give us your views:

Scottish Care supports the proposal that would require all duty-bearers to give periodic reports on the actions they have taken, are taking and intend to take to ensure the rights in the Bill are being fulfilled and built into decision-making. We urge the Scottish Government to place a requirement in the reporting process, requiring public bodies to consult with those whose rights are affected by their actions. In addition, they should ensure there is adequate resources provided to the actors who are carrying out functions of a public nature. Scottish Care has been robust in highlighting the limited resources of medium to small private and third sector care providers. To ensure that they are also able to effectively participate in this reporting process, adequate resources from the Scottish Government must be allocated to these actors to ensure that accurate reports can be given.

We also support calls from HRCS that the Scottish Human Rights Commission should have the power to monitor and scrutinise these reports giving binding recommendations to the public authorities on what can be improved. Public authorities must then engage with this feedback outlining how it will be incorporated into their work.

Question 23

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

Please give us your views:

N/A

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?

Please give us your views:

We welcome the Scottish Government's proposal for the incorporation of the minimum core obligations and progressive realisation standards set in international human rights. Additionally, the acknowledgement that a participatory approach is necessary for defining what falls within the minimum core of each right is important. The principle of MCO is to be understood as the basic standard which is required as opposed to the foundation of a right. This understanding is necessary to ensure that there is a time sensitive response to the progressive realisation of human rights and to prevent Scotland from retrogression. Where Scotland is already meeting certain standards of a right there should be efforts by public authorities and relevant actors to build on that basic standard while working to fulfil other necessities MCOs.

Question 25

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

Please give us your views:

Scottish Care supports the proposal for the right to a healthy environment to fall under the same duties as economic, social and cultural rights.

Question 26

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

Please give us your views:

We support the proposal for a human rights scheme which will include a reporting duty on Scottish Ministers to report on actions taken in relation to the Scheme's requirements. The Scottish Government aims to utilise this scheme to ensure accountability for the progressive realisation of human rights. However, we would like to re-iterate active and altering input is needed from external bodies such as the Scottish Human Rights Commission, right holders and organisations that represent their interests. Without this, such a scheme could be undermined by inaccuracies thus rendering it an inefficient mechanism for enforcement and the progressive realisation of human rights in Scotland.

Questions 27 – 37 refer to Part 8: Ensuring Access to Justice for Rights Holders

Question 27

What are your views on the most effective ways of supporting advocacy and/or advice services to help rights-holders realise their rights under the Bill?

Please give us your views:

We support the Scottish Government's proposal to create a duty for public authorities to report on the provision of advocacy/ advice support in their area of work. As previously stated, this report must be co-produced with the Scottish Human Rights Commission, right-holders and organisations which also promote their interests. We are concerned with the suggestion that such a report will be produced every three years as this may not provide timely remedies to people who have had their rights infringed.

Scottish Care believes that the most effective way to support advocacy and advice services to help rights holders is by giving them diversity of choice. In our 2021 report, '*Coileanadh- Manifesting a flourishing social care future for Scotland*' we discussed the need to 'enable informed choice tailored to the needs and experiences' of those who access social care.

We outlined some practical steps that can support advocacy and advice services:

- 1.) Right holders need mechanisms to feedback positive and negative experiences in engaging with their human rights and advocacy/advice services. This will help to identify areas where implementation continues to be challenging and to enable consistency of approach.
- 2.) It is important to understand how rights holders navigate and gain information about their human rights. This will help to identify effective methods of information sharing and to improve access.

- 3.) Ensure that these advocacy and advice services are available at local level to work with individuals to facilitate discussions, support decision making and help with enforcing rights.
- 4.) Do not ignore the role that technology can play in improving accessibility to these services and thus diversifying choice. However, technology cannot be seen as a solution to an understaffed and poorly resourced service.

Though we created these steps to help improve choice for service users in social care we believe that the practicality of our actions for change can also be applied to supporting advocacy and advice services under the Bill. It is important to note that these steps cannot be taken with a poorly resourced advocacy and advice sector. We acknowledge that the free advocacy sector is currently struggling to manage an overwhelming caseload.

We are concerned that without significant improvement to this sector, rights holders especially those at most risk will not be able to enforce their rights due to long waiting lists and a lack of choice.

Question 28

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

Please give us your views:

Please see Q29.

Question 29

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

Please give us your views:

In our 2016 report *'Convention on The Rights of Adults and Older People Receiving Care at Home or Housing Support'*- we produced a set of rights. These rights are needed to promote and protect the rights and inherent dignity of adults and older people receiving Care at Home and Housing Support Services. We highlighted the right to be heard, explaining that 'all individuals and their families have the right to voice any suggestions or concerns...about their care and support'. These complaints or suggestions should not just be listened to but be heard. This means progressive actions towards the investigation of these complaints, transparency about who is involved in the investigation of these complaints and a clear, detailed outline of how a decision was reached.

We have found that there have been significant inefficiencies in the handling of complaints made by those who provide and access social care services. There is the fear for those who provide social care services on behalf of the Scottish Government that blame might be passed to them without clear and transparent investigations.

We are also concerned about the lack of clarity between how the new powers proposed for the SPSO will interact with the powers proposed for the SHRC and the powers

already owned by the Care Inspectorate especially as we and several organisations are calling for additional powers for the SHRC. Furthermore, as we have previously stated the need for an improved Care Inspectorate, any defined lines which re-allocates powers to the SPSO from the Care Inspectorate must be made with the improvements suggested.

Once these powers have been defined, there should be a further consultation with the public. As previously stated, any complaint system must offer rights holders variety of choice, it would be inefficient to expect rights holders to escalate their complaints only when they have exhausted the SPSO's processes.

Question 30

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

Please give us your views:

We welcome the proposal of the role that scrutiny bodies will play in enforcing human rights and agree that information sharing between the scrutiny bodies could lead to better accountability.

However, we are concerned that some of the inefficiencies of the current way the scrutiny bodies operate, will leak into their enforcement of human rights. In our response to the Independent Review of Inspection, Scrutiny and Regulation we outlined that-

‘the social care sector is one of the most highly regulated and scrutinised sectors. Regulation and scrutiny are important, particularly in a sector focused on care and support of vulnerable people (although that term is of itself often disempowering and inaccurate in defining an individual and their rights and capabilities). However, the cluttered landscape that currently exists is both confusing for individuals and their loved ones to understand and navigate, and often has the counterproductive effect of detracting from care and support delivery and consistency due to the time, processes and sometimes contradictory information and outcomes of regulation, inspection and scrutiny demands. Focus should be given to how to maximise the value and effectiveness of these processes in ways that are streamlined, conducive to care planning and delivery and make best use of relevant expertise at the right time. Over-regulation does not produce better outcomes for individuals, staff or services.’

We encourage the Scottish Government to outline how the Care Inspectorate and other scrutiny bodies will ensure that human rights are being embedded in public services considering the suggested improvements that have been made about their regulations.

Furthermore, information sharing between these bodies should be a transparent process so the right-holders and actors delivering these services are notified when information is shared with another body. Additionally, we have repeatedly described the pressures on the social care sector and believe that any form of additional monitoring and reporting in this sector cannot lead to increased workloads that will take care staff and managers away from their frontline duties. Not all care providers will have the necessary expertise or time resource to be able to embed and monitor the enforcement of human rights in their care services.

We call for the creation of human rights officers, who are appropriately and consistently funded by the Scottish Government, to exclusively work with care providers. These officers will be able to articulate any extra workload placed on care providers at a time

where they have limited resources and assist them in understanding what new duties will be placed on them with the creation of this Bill. These officers will also work with scrutiny bodies and the Scottish Government in outlining what further assistance these care services require to fulfil their human rights duties.

Question 31

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

Please give us your views:

We welcome proposals to give the SHRC more powers to bring or intervene in civil proceedings under the Bill and an investigatory power which allows for accountability for systemic issues relating to the rights in the Bill. As noted by the Scottish Government these increased powers should help with the implementation, oversight and accountability of the Human Rights Bill.

We have highlighted in previous questions that the implementation of the Bill would benefit from even further powers being given to the SHRC.

- In their capacity of protecting human rights the SHRC should be able to
 - Receive individual complaints and escalate them to the appropriate court or specialised tribunal if deemed necessary.
 - Monitor the efficiency and issue binding recommendations to public authorities in their actions enforcing human rights.
 - Hold public inquiries into human rights violations that fall within devolved competence.
 - Provide advice to individuals and private actors performing public functions.

The Scottish Government acknowledges that there has been a ‘number of wider asks in relation to specific Commissioners focused on advancing rights for specific groups’ including older people. However, they do not highlight a summary of these requests or suggest how the powers given to the SHRC could incorporate the protections requested through these commissioners. While Scottish Care welcomes powers given to the SHRC to speak out in defence of older people and publish binding recommendations of how their human rights can be enforced we still call for the urgent creation of a Commissioner for Older People. There are specific issues in Scotland that affect the interests of older people issues such as ageism, lack of appropriate data and a lack of funding to create a society where older people can thrive as opposed to being portrayed as an economic burden. We look forward to a day that an Older Person’s Commissioner for Scotland and the SHRC can work together to improve the rights of older people. Both bodies will be needed for the future progression of older people’s human rights and to address current inadequacies in our society.

These powers will not be enforceable without adequate and consistent funding for the SHRC. We call on the Scottish Government to allocate funding for this body that matches the powers that they are given and the impact they are expected to have.

Question 32

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

Please give us your views:

N/A

Question 33

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

Please give us your views:

We support the Scottish Government's proposal to allow for civil proceedings to be brought under the Human Rights Bill. 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.

Question 34

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

Please give us your views:

N/A

Question 35

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

- Agree
- Disagree

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?

N/A

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?

Please let us know your views:

N/A

Questions 38 – 44 refer to Part 9: Implementing the New Scottish Human Rights Act

Question 38

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

Please give us your views:

Scottish Care understands that public authorities will need a period of adjustment to understand what their duties will be under the Bill. We once again urge the Scottish Government to clearly define a timeline, so rights holders and public authorities know when a duty to comply comes into force. We would like to re-iterate our concern, that due to the intricacies of understanding and enforcing human rights, public authorities might lag behind their duties and rights-holders will continue to be neglected.

Question 39

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

Please give us your views:

Please see Q24 for additional clarification.

We understand that it will take time to interact with rightsholders and ensure that their suggestions are heard. However, from the experiences we have had with the National Care Service, we are concerned that a participatory process might be ineffective without a defined timeline and sufficient responses to people's suggestions. We call for an improved process in welcoming and implementing participation from right holders and other relevant actors, a process carried out by an independent body. Given the appropriate funding the independent body carrying out this process should be able to guide rightsholders in understanding their human rights and how this Bill will affect and improve their everyday lives. We support calls from other organisations that the process of defining these minimum core obligations is carried out by an independent body like the SHRC.

Question 40

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

Please give us your views:

Please see Q26.

We welcome the Scottish Government's proposal for a human rights scheme to ensure ministerial accountability over the Bill. We would like to re-iterate the importance of having the SHRC being granted the ability to also scrutinise these reports, this will help to assess whether sufficient progress is being made by the ministers.

We support the HRCS calls to embed additional elements into the scheme. Elements such as:

- Improvements in data collection and publication.
- Access for all to appropriate individual and collective independent advocacy,
- Provision of rights advice.
- Inclusive communications embedded across the system.

- Engagement of Scottish Ministers with UK Ministers regarding human rights.
- Provision of services aimed at rehabilitation from torture.
- Participation of individuals and groups whose rights are most at risk in informing the Bill's implementation.
- Monitoring emerging case law and interpretation of rights.
- Plans for the development and review of Minimum Core Obligations (MCOs),
- Plans or proposals to ensure access to justice is accessible, effective, timely, affordable, and supportive.
- Human rights budgeting (not only embedding human rights into budgeting processes as proposed in the consultation)

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?

Please give us your views:

N/A

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?

Please give us your views:

We welcome proposals from the Scottish Government to create some form of guidance for public authorities and other actors who will have duties created by the Bill. This is to help build capacity for the implementation of rights across the public sector. We understand that the Scottish Government plans to develop this guidance after working closely with its established implementation working group.

We recognise that this Bill will create duties for independent, charitable and third sector care providers who perform a public function. While we welcome the intentions of this Bill to improve human rights for service users, care staff and care providers, we note concern about the added pressure this will bring to an already struggling sector. Most care providers are not human rights experts, while they strive to deliver excellent care for their service users and care staff, a guidance document and workshops will not be effective in building their capacity to understand and implement the procedural and substantive duties that will be created by this Bill. Similar to public authorities, they will need consistent advice and support in the coming years and adequate resources to fulfil their duties under this Bill, not least because currently they have limited resources including their time. Please note Q30, to better understand how to help build capacity in the social care sector. As a consequence, without the appropriate and requested assistance from the Government, pressures will fall on the independent, charitable and third sectors to deliver guidance which we believe will be an unacceptable outcome.

We call on the Scottish Government to co-produce guidance not only with the implementation working group but also with the actors who perform public functions, including independent, charitable and third sector social care organisations. This will

help all participating actors to understand how they also can help to implement and progressively realise the rights of people in Scotland.

Question 43

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

Please give us your views:

There is a lot of misinformation, negative stereotyping and messaging which is currently floating around about human rights, and we welcome the Government's acknowledgement that there is a need to raise awareness.

The Scottish Government should consider the best way to raise and reinforce information about human rights around Scotland. This would mean considering the 'contact points for people to receive information'- places such as their workplace, leisure centres, community hubs, retail hotspots etc. For this to be successful the Government should aim to work closely with relevant factors such as civil society, charitable and third sector organisations.

Additionally, we also call on the Scottish Government to work with rights holders to understand how to best reach and empower them.

Question 44

What are your views on monitoring and reporting?

Please give us your views:

Please see Q30, 31 and 40 for our views.

About you

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

- Legal profession
- Organisation - Private
- Organisation – Public
- Rights holder
- Other – please specify

Additional space for answers

(Please specify the question information relates to)