

**ITEM No ...7.....**

**REPORT TO:** CITY GOVERNANCE COMMITTEE - 25 SEPTEMBER 2023  
**REPORT ON:** A HUMAN RIGHTS BILL FOR SCOTLAND - CONSULTATION  
**REPORT BY:** CHIEF EXECUTIVE  
**REPORT NO:** 273-2023

**1. PURPOSE OF REPORT**

1.1 This report advises members about a Scottish Government consultation on proposals for a new Human Rights Bill and sets out a proposed response to be submitted on behalf of Dundee City Council.

**2. RECOMMENDATIONS**

2.1 It is recommended that Committee:

- a note that the Scottish Government has issued a consultation paper on proposals for a new Human Rights Bill; and
- b consider and agree the draft response to the consultation, to be submitted by the deadline of 5 October 2023, which is set out in Appendix 1.

**3. FINANCIAL IMPLICATIONS**

3.1 There are no immediate financial consequences for the Council arising as a result of this report.

**4. SCOTTISH GOVERNMENT CONSULTATION**

4.1 The Scottish Government has launched a consultation on a new Human Rights Bill which it proposes to introduce into the Scottish Parliament. The Bill is designed to bring into the law of Scotland four international human rights treaties – on Economic, Social and Cultural Rights; on Elimination of Racial Discrimination; on Elimination of Discrimination Against Women; and on the Rights of Persons with Disabilities – and to introduce a new right to a healthy environment, all within the limits of the Scottish Parliament’s devolved powers. The aim is to create a new human rights framework, provide people with stronger legal protections, place new duties on public bodies to hold them to account if they fail to uphold human rights, and develop a stronger human rights culture.

4.2 The proposals follow the work of the Advisory Group on Human Rights and the National Taskforce for Human Rights Leadership. They include plans for an initial duty on bodies to show that they have thought about the rights in the Bill when making decisions and delivering services, along with a duty to comply for some of the rights which will be brought in at a later date and a duty to report on actions taken. There are also proposals on access to justice, including to complaint procedures, and on guidance and scrutiny.

4.3 Full details of the consultation are available at <https://www.gov.scot/publications/human-rights-bill-scotland-consultation/>. There is also an [Easy Read version](#) available. The results of the consultation will inform the drafting of the Bill which the Scottish Government intends to be voted on before the end of the current Parliamentary session in 2026.

**5. PROPOSED RESPONSE**

5.1 In view of the wide-ranging nature of the proposed Bill, comments have been sought from a range of officers throughout the Council and their views are reflected in the proposed response to the consultation paper which is set out in Appendix 1.

5.2 Committee is asked to consider and agree the proposed response which has to be submitted by 5 October 2023.

**6. POLICY IMPLICATIONS**

6.1 This report has been subject to the pre-IIA Screening Tool and does not make any recommendations for change to strategy, policy, procedures, services or funding, so has not been subject to an Integrated Impact Assessment. An appropriate senior manager has reviewed and agreed with this assessment.

**7. CONSULTATIONS**

7.1 The Council Leadership Team and the Strategic Equality & Diversity Steering Group were consulted in the preparation of this report.

**8. BACKGROUND PAPERS**

8.1 None.

GREGORY COLGAN  
CHIEF EXECUTIVE

ANDREA CALDER  
HEAD OF CHIEF EXECUTIVE'S SERVICE

SEPTEMBER 2023

## Appendix 1

### ***A Human Rights Bill for Scotland: Consultation***

#### **Respondent Information and Answer Return Form**

**Please Note** this form **must** be completed and returned with your response.

Please send your response to us by email or by post using the following details: Our email address is:  
[HumanRightsOffice@gov.scot](mailto:HumanRightsOffice@gov.scot)

Our postal address is:  
Human Rights Strategy & Legislation Unit  
Directorate for Equality, Inclusion and Human Rights.  
Scottish Government  
Area 3H North  
Victoria Quay  
Edinburgh  
EH6 6QQ

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?

X Organisation

Full name or organisation's name

Dundee City Council

Phone number

01382 434000

Address

21 City Square, Dundee

Postcode

DD1 3BY

Email Address

chief.exec@dundeecity.gov.uk

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

X Publish response with name

#### **Information for organisations:**

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

## 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?

Answer:

We agree with the proposal, as it allows uniformity in that the principle of human dignity, as understood in international law, and will be read across all the rights within the Bill.

#### Question 2

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

Answer:

We agree with this proposal as it will support duty-bearers to have a clearer understanding of the purpose of MCOs (Minimum Core Obligations), which will assist with policy development and service delivery.

#### Question 3

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

Answer:

An interpretive provision could be a useful tool. However, further details and discussions would be useful to allow a clearer understanding of how this would work in practice.

#### Question 4

What are your views on the proposed model of incorporation?

Answer:

We agree in principle with the proposed model of incorporation. However, as acknowledged in the consultation, using the direct text of international treaties will result in the use of detailed language. We therefore welcome the commitment to provide a clear explanation of what the rights are and what they mean, which will support duty-bearers in carrying out their functions.

**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.

Answer:

No, we agree with the proposed approach.

**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?

Answer:

Agree, as this definition has been developed using the UN Framework Principles on Human Rights and the Environment and the Aarhus Convention as guiding principles. An environmentally holistic and human rights-based approach also supports the delivery of the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 targets to reduce Scotland's emissions of all greenhouse gases to net-zero by 2045 at the latest, while ensuring climate justice and a just transition.

The basis for defining the environment also aligns with the Dundee Partnership's City Plan priorities of building resilient and empowered communities, tackling climate change, and reaching net zero carbon emissions by 2045, and is further supported by a number of our specific Service Plan priorities which include keeping people safe and protected from health hazards; safeguarding the environment and enhancing health for current and future generations; tackling climate change and achieving net zero emissions by 2045; implementing air quality strategies supporting cleaner air for Scotland; and building resilient and empowered communities.

**Question 7**

If you disagree please explain why.

Answer:

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?

Answer:

The proposed formulation of substantive and procedural aspects align with the Dundee Partnership's City Plan priorities of building resilient and empowered communities and tackling climate change and reaching net zero carbon emissions by 2045, and are further supported by our specific Service Plan priorities which include keeping people safe and protected from health hazards; safeguarding the environment and enhancing health for current and future generations; implementing air quality strategies supporting cleaner air; and building resilient and empowered communities.

**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.

Answer:

We agree, in as much as the community engagement carried out as part of developing the Dundee Community Food Plan, as well as our experiences as a city over the past few years, has highlighted that the right to adequate food is a social and economic issue. The Right to Food itself also covers a number of key areas linked to this:

- **Food should be affordable** – everyone should be able to afford food without sacrificing other basic needs, like heating or housing.
- **Food should be accessible** – where you live shouldn't restrict the quality of food you can have access to and the access to nutritious and healthy food shouldn't be compromised by income or disability. This could also incorporate the right to grow your own food, which should be supported by access to land and markets.
- **Food should be adequate** - food must be safe for human consumption, free from contaminants, as well as being culturally acceptable. It must have the nutrients necessary for healthy development and health.

It might be helpful to clarify what 'adequate' would mean i.e. adequately healthy and sustainable as well as ensuring adequate calorific intake, as the latter is only meeting very immediate needs.

There is a space for a discussion of environment in relation to food, but in an urban context like Dundee it is more around obesogenic environments with advertising and saturation of fast food/unhealthy options which the current planning system is unable to deal with.

**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.

Answer:

We agree. In its Climate Risk and Vulnerability Assessment, Dundee City Council has identified that future water quality and availability could be at risk from the changing climate in Dundee, with the projected hotter drier summers.

**Question 11**

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

Answer:

No.

**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?

Answer:

To ensure understanding that the Human Rights Act forms a core pillar would be best achieved through provision of this information in any produced statutory guidance and information resources.

**Question 13**

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

Answer:

There is precedent for engagement and involvement duties in other legislation (e.g. Part 2 of the Community Empowerment Act) and it might be useful to adopt these approaches here. It might be useful to try to embed a duty to engage with people with lived experience of inequality when implementing/delivering the proposed legislation and/or engagement with the Bill, as we know that it is often the most able, confident and articulate members of communities who are most comfortable engaging. Where engagement requires additional resource (e.g. BSL or translation services) this cost is usually borne by the public body whose responsibility it is to engage, so this should be kept in mind.

**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?

Answer:

We agree with the proposed approach, to ensure equal access of rights.

**Question 15**

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

Answer:

We agree with the approach suggested in the consultation.

**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.

Answer:

We agree meantime given neither of these groups have specific international human rights treaties to be incorporated.

**Question 17**

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

Answer:

N/A

**Question 18**

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

Answer:

Further input from these two particular groups is suggested within the consultation which we would support to see if the Bill framework could do anything more specific in these areas. If no further additions to the framework itself are made, additional information could be provided as part of a future guidance document.

**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?

Answer:

Overall, we support the view that, so far as possible, the duties should apply to those bodies carrying out public functions in line with those subject to the Public Sector Equality Duties.

**Question 20**

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

Answer:

Overall, we would support having an initial procedural duty on duty-bearers as soon as practicable after the Bill becomes an Act. However, there must be adequate lead-in time alongside appropriate guidance and support mechanisms put in place.

**Question 21**

What is your view on the proposed duty to comply?

Answer:

We would support the inclusion of a duty to comply being included. However, appropriate support and guidance should be provided to duty-bearers to ensure the desired results of better human rights outcomes for rights-holders and an improvement in the delivery of public services.



## 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?

Answer:

Yes. However, there should also be support and guidance provided.

## Question 23

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

Answer:

It is important that reporting requirements align with existing duties (Public Sector Equality Duties and Fairer Scotland Duties) and that they are proportionate, meaningful and do not duplicate existing duties.

## 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 MCOs and progressive realisation?

Answer:

Overall, we would support the view of there being a need to demonstrate compliance with the above rights. However, this is a very complex landscape, and ongoing guidance and support should also be provided to duty-bearers.

## Question 25

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

Answer:

The right to a healthy environment is as important as the other rights mentioned and therefore should fall under the same duties.

## Question 26

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

Answer:

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 Scottish Government and would assist with implementation at the local level, thus ensuring the enhancement of human rights for the people of 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?

Answer:

The Bill should provide a clear definition of both 'advocacy' and 'advice' and require authorities to ensure it is made available in any decision-making process affecting or potentially affecting rights holders. It should also build on current requirements relating to UNCRC three-year reporting arrangements and require authorities to publish a report on their compliance with this duty. These requirements will likely require cultural change and probable targeting or prioritisation of marginalised or vulnerable groups, as those most in need are typically the least likely to have access to advocacy. However, in relation to advocacy and other parts of the Bill, the Scottish Government also needs to ensure authorities have sufficient capacity and resources to meet these requirements

In addition to children’s rights, representation/third party advocacy is a huge part of other areas of work such as debt advice and welfare rights advice and in some instances requires a mandatory human rights perspective as part of the process (e.g. access to support for those with no recourse to public funds).

Joint work with third party organisations (which we would stress are not limited to the third/voluntary sectors but also exist within local authorities) on specific issues and themes (such as complaints over processing delays or duty holders failing to provide access to implicit consent for advocates) would be welcomed, especially where such deficits affect a large number of rights-holders.

In relation to the investigation powers for the SPSO, this may prove a more effective use of its powers in order to influence larger scale public authority improvements in areas highlighted as social policy failures by advocacy organisations.

**Question 28**

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

Answer:

We agree that complaints should be dealt with through existing mechanisms rather than by introducing new procedures. If monitoring/reporting is required, this will require bodies to do some work in terms of adapting complaint recording systems and providing training for staff.

**Question 29**

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

Answer:

We agree that this should be added to the SPSO’s remit. There is a procedure in place for liaison between the SPSO and local authorities which will be useful in considering the practical implementation of the changes.

### Question 30

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

Answer:

There is an opportunity in relation to proposed human rights scrutiny to replicate a similar model to that which Audit Scotland uses in its work through the Strategic Scrutiny Group, coordinating scrutiny that supports continuous improvement and shares learning. This is going to be critical given the new focus on a human rights remit, but it needs to be stressed that there is likely to be a huge learning curve across scrutiny bodies and public authorities who will no doubt be at different levels of competency in identifying human rights issues and making connections to current practice and policy. As an example of good practice, 'Children's Rights' already features strongly in education self-evaluation frameworks and independent scrutiny.

### Question 31

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

Answer:

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 co-ordinated approach would need to be taken to avoid duplication and ensure understanding of where specific responsibilities sit.

### Question 32

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

Answer

The same answer as question 31, with an emphasis on the avoidance of duplication of powers of other public bodies, such as the Care Inspectorate, Independent Care Review and Scottish Public Services Ombudsman. In addition, the approach also needs to be informed by both the 54 articles of the UNCRC and the 5 foundations of The Promise in the form of voice, family, care, people and scaffolding. However, as with advocacy, given the range of requirements, powers need to be mirrored by authorities having sufficient capacity to comply. There is likely a need for authorities' full compliance with the Bill to be staged and powers of enforcement need to be accompanied by this recognition.

### Question 33

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

Answer:

Given the importance of human rights, they must initially be supported by rights holders having an early opportunity to seek redress for actual or perceived injustice with the relevant authority instead of matters progressing through the Courts. Where this does not remedy a situation, 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.

### Question 34

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

Answer:

In the context of our response to question 33, the proposed approach of reviewing whether thresholds should be lower than the current Wednesbury test seems sensible. In carrying out a review, the Scottish Government should explore other models internationally, with the underlying principles of promoting rights holders' entitlements and their access to justice when authorities may not have complied with legal duties. It should lead to a clear and coherent definition of 'reasonableness' in language which is accessible to all rights holders.

### Question 35

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

Answer:

These remedies are listed as restitution; compensation; rehabilitation; satisfaction; and non-repetition. These appear to be adequate but could be extended following a review of models internationally and could, for instance, explicitly include mediation.

### 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?

Answer:

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?

Answer:

We have no established view on this at this stage. This area requires further consideration.

## 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?

Answer:

We agree with the approach suggested in the consultation. We also welcome the recognition of the need to produce supporting guidance for public authorities to assist with the discharging of their duties.

**Question 39**

What are your views on our proposals to establish MCOs through a participatory process?

Answer:

We agree with the suggested approach.

**Question 40**

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

Answer:

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 Scottish Government and would assist with implementation at the local level, thus ensuring the enhancement of Human Rights for the people of Scotland.

**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?

Answer:

Overall, we would support enhancing the assessment and scrutiny of legislation introduced into the Scottish Parliament in relation to the rights in the Human Rights Bill as this would help to ensure that all future legislation more fully reflects Human Rights considerations.

**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?

Answer:

The Scottish Government must ensure that they produce and bring forward statutory guidance as soon as possible. This must also be accompanied by additional financial and other resources to support duty-bearers with implementation.

**Question 43**

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

Answer:

We believe that it would be useful to develop and implement a national training/workshop programme to be delivered across the public sector.

In addition, it could be useful for the Scottish Government to utilise their Evidence Finder Tool as a resource where relevant information and data could be collated and shared.

#### Question 44

What are your views on monitoring and reporting?

Answer:

As previously suggested in this response, it is important that reporting requirements align with existing duties (Public Sector Equality Duties and Fairer Scotland Duties) and that they are proportionate, meaningful and do not duplicate already existing duties.

#### 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