

Respondent Information and Answer Return Form

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:

As Quakers, we strongly support interpreting the rights in the Bill in line with the value of human dignity. We believe there is “that of God in everyone” (Quaker *Advices & Queries*, 17): each and every person has inherent worth and dignity, which should be respected. Rights must be grounded in this value. In order to ensure that personal dignity is given its proper significance, dignity must be considered by courts when interpreting these rights. It should be a requirement for dignity to be considered by the courts, rather than something they are “allowed” to consider.

It is also significant that in the engagement prior to this consultation, dignity was found to be a helpful tool in understanding the meaning of key human rights. Ensuring concepts are grounded and comprehensible to everyone in society is critical to making these rights meaningful.

In order to build a culture of human rights and guard against narrow duty compliance, the Bill should have a purpose clause which includes dignity, universality, participation and other key human rights principles. This will ensure a shared and consistent understanding and interpretation of rights in the Bill.

We would also note that when interpreting the notion of ‘dignity’ the Scottish government should follow through on its commitment and embed a fully trauma-informed approach. We recommend Unicef’s Handbook on the subject, available at <https://www.unicef.org/northmacedonia/reports/trauma-informed-approach>. While this relates to children, the concept of involving those who have experienced trauma in defining dignity should be for people of all ages. The report looks at a greater field of accountability including community and institutions who can also be responsible, not just the victim and the person who did the harm. This increases resilience for those whose dignity has suffered by the harm.

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:

Given the importance of dignity in interpreting human rights, we believe that it is appropriate that this be consistently embedded in the MCOs as a key threshold.

Question 3

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

Answer:

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.

Question 4

What are your views on the proposed model of incorporation?

Answer:

For consistency with the UNCRC Bill, and to avoid the stated risks of loss of international consistency after the rights are transposed, we agree with the direct treaty text approach to incorporation. Where there are rights that include both devolved and reserved elements, there should be careful consideration of how to adopt a maximalist approach to having as many rights as possible within this Bill derived from the treaties.

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:

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 UNCRPD 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.

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:

We agree with the use of the Aarhus Convention definition of the environment which is recognised internationally and therefore promotes consistency. It is good that the Aarhus definition specifically references ecosystems and the biosphere. We agree with the preamble of the Aarhus Convention which recognises "that adequate protection of the environment is essential to human well-being and the enjoyment of basic rights, including the right to life itself."

Question 7

If you disagree please explain why.

Answer:

Not applicable.

Question 8

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

Answer:

We welcome the inclusion of a right to a healthy environment. As Quakers, we believe in the inherent worth and dignity of all people and the need to care for the earth as an expression of our faith.

We are pleased to see the substantive aspects of this right as drafted encompass clean air, a safe climate, safe water, non-toxic environments, and healthy biodiversity. These elements are integral to a liveable environment and human flourishing. They are not only hoped-for rights for human beings, but urgent necessities, which are under serious threat as biodiversity plummets and damage to our environment continues at a rate that threatens the survival of our ecosystems. The

drafting of their protection should recognise where these aspects may be interdependent as well as standalone.

However, we question the exclusion of adequate sanitation and the right to healthy, sustainably produced food. There are systematic problems with sewage pollution and wastewater treatment in Scotland. Sustainable food systems are an integral part of the substantive right to a healthy environment – see our response to Questions 9 and 10 for further detail.

On process, Quakers have long upheld the importance of transparency, accountability, and access to justice. We urge the Scottish government to implement reforms to fully comply with Aarhus Convention obligations on access to information, participation, and justice in environmental matters. This includes ensuring judicial remedies are fair, timely and not prohibitively expensive.

The procedural aspects of this right present an opportunity to model Quaker values of equality, community, integrity, and care for the planet. We encourage shaping an open and just process that empowers people to defend the environment, fulfils Scotland's international commitments, and upholds the dignity of all.

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 disagree with the proposed approach and believe that the right to healthy, sustainably produced food should be included as a substantive aspect of the right to a healthy environment.

While we agree the ICESCR provides important protections around nutrition, affordability, and cultural adequacy of food, sustainability must also be brought to the fore. Historically the right to food under ICESCR has tended to focus on availability and access rather than health and sustainability. However, industrial agriculture has severely damaged biodiversity, climate, and human health. A right to environmentally sustainable food is essential, and there is value in restating the right to healthy, sustainable food as part of the right to a healthy environment. The right to food was previously excluded from the Good Food Nation Act, on the grounds that it would be incorporated in the Human Rights Bill. It now needs to be comprehensive.

As Quakers, we are called “to ensure that our increasing power over nature is used responsibly, with reverence for life” (Advices & Queries, 42). An intensive, extractive food system contradicts these values. Instead, we support ecologically regenerative practices that heal the land and provide dignified livelihoods. Healthy communities and ecosystems are interdependent, and we believe that substantive rights have an important role to play.

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 with the approach of including safe and sufficient water as a substantive aspect of the right to a healthy environment but believe that this feature should also refer to the right to adequate sanitation given the widespread and persistent issues of sewage pollution in Scotland. In line with the integration principle, it is important that “sufficient” be interpreted in a way which is sustainable. “Sufficient” water is defined by the WHO as amounting to 50 to 100 litres of water per person per day, which is well below the UK’s current consumption levels of an average of 142 litres per person per day.

As Quakers, we believe protecting Scotland's rivers, lochs, and groundwater is part of our responsibility to show a loving consideration for the beauty and variety of the world. Guaranteeing safe, sustainable water affirms the interdependence between human and environmental wellbeing. This has implications for robust and robustly enforced regulations, for example on planning and buildings.

While the ICESCR recognises the right to water for human consumption, we agree that safe and sufficient water warrants separate protection as a distinct feature of a healthy environment, as long as the right is confined to what is truly “sufficient” for human needs and not interpreted in a way which encourages excessive consumption in a way which undermines ecosystems. We believe the same logic applies to the right to food (please see our response to Question 9).

Question 11

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

Answer:

We believe dedicated reforms with clear timelines are needed to make the right to a healthy environment fully enforceable. As Quakers, we have long upheld access to justice as a basic right. We support establishing clear definitions and standards for the substantive aspects of this right based on expert guidance and best practices. Each component should have robust enforcement mechanisms.

We also endorse embedding Scotland’s five environmental principles into policies and decisions across sectors, to ensure policy coherence and coordination. In particular, we note that the principle of “polluter pays” needs to be more prominent as a way of safeguarding human rights within Scotland and beyond; and to improve fairness and equality. Per the “integration principle”, these principles must cut across all sectors in order to be truly effective.

Additionally, the procedural dimension must guarantee affordable access to courts and effective remedies, with appropriate mechanisms in place to effectively hold public bodies and polluters to account. This requires legal aid reform, cost protections, and potentially a dedicated Environmental Court.

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:

It continues to be important to help people understand what their ECHR rights are, as stated under the Human Rights Act 1998 and shared with people across Europe, and to exercise them. To embed the HRA duties and rights, these should be fully included in implementation of the Bill including in guidance, public body training and capacity building, and information and awareness raising. We would encourage the government to work closely with expert bodies such as the Human Rights Consortium, and to ensure they have funding for this purpose. Charities such as Together Scotland are also important for raising awareness, particularly amongst younger members of our society.

Question 13

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

Answer:

We recognise the engagement that has been done with a variety of stakeholders to date in relation to human rights in Scotland. We believe that this approach must continue, and that there should be investment in inclusive, community-level participation and involvement in shaping rights frameworks. It is important to engage with communities and listen to people whose rights are most at risk to ensure that the right protections are in place. This should include people from faith groups, including minority faiths. Without community and individual ‘ownership’ of the rights in the Bill, the Bill risks being ineffective as individuals may not be aware of the rights that they have.

Participation should be a core principle within the purpose clause, and any schemes set up should include a requirement on Scottish Ministers to consult people whose rights are at risk.

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:

As Quakers we have a core belief in equality. We welcome the inclusion of an equality provision which prevents discrimination and aims to ensure equal access to rights.

Question 15

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

Answer:

We would encourage the legislation to be as far reaching as possible, so that it is not simply concerned with citizens' rights but with human rights. As is already the case for rights under the European Convention on Human Rights, rights should be accorded to everyone within the jurisdiction. Our rights are interconnected: either everyone has human rights, or nobody does. While we recognise there are practical and political considerations here, we believe there are important precedents, such as the recent decision to extend the right to vote in Scottish government and local authority elections to refugees and asylum seekers.

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:

Disagree: given a widespread familiarity in Scotland with the 'protected characteristics' named under the Equality Act 2010, for consistency and to ensure that the rights of LGBTI and older people are not diminished, we would prefer to see a fuller list of 'protected characteristics' stipulated in the equality provision, including gender reassignment, sexual identity, and age. This is all the more important as the human rights treaties that are to be incorporated under the Bill do not explicitly include rights of LGBTI and older people. Specifically labelling that individuals with these characteristics should have equal access to the rights in the Bill would be in line with the Taskforce's recommendation that the equality clause should align with the Equality Act 2010.

In addition, further consideration should be given to guidance around the interpretation of 'other status', so that public bodies know which evidence and criteria they should apply in considering other groups whose rights are at risk (for example, one group whose rights can be at particular risk are prisoners, as seen by the introduction in 2020 of voting rights for prisoners in Scotland serving short sentences).

Question 17

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

Answer:

See response to Question 16

Question 18

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

Answer:

See response to Question 16: we believe that protections for LGBTI and older people should be explicit.

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:

We appreciate the limitations placed on the scope of the duties by devolution and would urge the scope to be as wide as possible within these limits. Accordingly we agree to the duties applying to the bodies carrying out devolved public functions, including private bodies acting under a contract or other arrangements with a public body.

We ask the Scottish Government to discuss this with the UK Government in a constructive and cooperative spirit to see whether there is any possibility of consented extensions to the scope of human rights protection; as well as to urge them to incorporate all of our international human rights at a UK level. This will help to give better clarity to rights-holders on which rights they can access.

Question 20

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

Answer:

We believe it is important to ensure adequate dedicated resource to embedding the rights in decision-making process and welcome an initial phase for duty-bearers to review their current processes and prepare for this integration. In order to ensure that the rights are made effective as soon as possible, this preparation period should not be overly lengthy, and could overlap with community engagement to raise awareness of communities about their rights and responsibilities towards one another.

The Bill should include a specific date for the duty to comply coming into force of no more than two years after the Bill's commencement. This will also allow a reasonable period for development of minimum core obligations. The procedural duty should be the duty to have "due regard" which is already well-understood. The duty to have due regard complements the duty to comply, by ensuring that human rights are embedded in a holistic way and built positively and proactively into decision-making.

Question 21

What is your view on the proposed duty to comply?

Answer:

We agree that all public bodies (and relevant private actors) should be given a duty to comply with rights in the Bill. This duty should accompany the duty to have due regard after an initial embedding period. The duty to comply should go as far as possible, including standalone substantive rights for disabled people given under CRPD which do not appear in ICESCR.

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, a reporting duty is important to ensure that the duties set out in the Bill are being taken seriously. This is essential for transparency and accountability. Reports should be in Plain English and understandable by members of public, so they can be used by rights-holders to hold public bodies to account.

Question 23

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

Answer:

Given the subject matter is so similar, we would suggest that a proposed duty could align with the approach taken in section 15 of the UNCRC Bill.

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:

We agree that it is important to future-proof the Bill and allow for continued improvements in standards via progressive realisation, while ensuring that there is from the start of the enforcement period, an initial minimum level set.

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:

As Quakers, our faith compels us to recognise the interconnection between human and ecological wellbeing. For centuries we have understood that unjust systems damage both people and the planet. Over a century ago Chief Seattle said in words now famous ‘*The Earth does not belong to man – man belongs to the Earth... Whatever befalls the Earth, befalls the sons of the Earth. Man did not weave the web of life, he is merely a strand in it.*’ This statement is echoed in a fundamental part of Quaker belief, that ‘we do not own the world, and its riches are not ours to dispose of at will.’ (Quaker *Advices and Queries* 42). Today’s environmental crises demand urgent action guided by this ethic of equality and stewardship. The proposed law helps us to recognise this.

We are alarmed by the unprecedented rate of climate change and biodiversity loss damaging communities worldwide. Quakers know we must nurture a society that prioritises ecological and social flourishing over profit.

Clean air, stable climate, and thriving ecosystems are prerequisites for human dignity, health, culture, and economic stability. Therefore, we agree that the right to a healthy environment should fall under the same duties as other economic, social, and cultural rights.

Question 26

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

Answer:

No response

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:

It is very important for rights to be more than theoretical. From experience, we know that the law does not protect everyone equally. If the concept of rights is to be maintained and developed, then there must be appropriate levels of resource and support to ensure delivery, including robust routes to remedy. We would recommend building advocacy support through existing trusted community organisations and mechanisms, for example by way of additional funding and training for staff at citizens advice bureaux and other organisations; 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 (both for individuals and groups; and in taking a case and intervening) must be considered. Court rules should be revised to ensure that the system works clearly and effectively for rights-holders. Affordability should also be taken into account, with urgent reform of the legal aid framework; no court fees for human rights claims; and limits on costs recovery if a case is lost. The 'polluter pays' principle is particularly key here, and could be a source of funding to offset some of the costs that will be entailed by the enforcement of the Bill.

Question 28

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

Answer:

Having well-publicised complaints-handling mechanisms integrated into public bodies is likely to increase accessibility for those whose rights may have been infringed. However, it is important to also have a Court route available where no satisfactory resolution is found via the complaints-handling mechanism. Those handling the complaints would need to be well-trained both in the substance of individuals' rights, and also in conflict resolution techniques, to allow effective remedies to be reached at an early stage.

Independence from both employer (i.e. the public body) and the complainant is fundamental to successful complaints handling. If the initial recipients of a formal complaint are employees of the public body being complained against, there is a risk that those employees will have a natural bias in favour of their employer. If the complainant is not satisfied that their case has been handled objectively, there should be a clear and rapid route to *independent* consideration of a case before recourse is taken to the courts. The design of complaints-handling procedures should be assessed as a significant marker of how seriously and openly public bodies are embracing this legislation at the procedural stage.

Question 29

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

Answer:

We agree with the proposal to use and adapt current structures, as long as these are appropriately publicised with an education and awareness campaign to ensure that people are aware of the changes. As part of the Bill, it may be appropriate for there to be an additional regulation about the duty on duty-holders to signpost the SPSO as a means of dispute resolution if they are unable to resolve matters satisfactorily inhouse. We note that this has the potential to significantly increase the remit of the SPSO and therefore there would need to be increased funding / resource to enable SPSO to effectively fulfil this role.

Question 30

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

Answer:

No response

Question 31

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

Answer:

We support enhanced powers for the Commission to investigate systematic issues and support rights-holders. These new powers must be matched by increased and sufficient resources to use these powers fully.

Question 32

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

Answer:

Agree.

Question 33

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

Answer:

We agree. Guidance should be given to ensure that it is clear who has 'sufficient interest' to bring a case to allow civil society organisations to consider whether they meet the 'standing' test.

Question 34

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

Answer:

An approach should ensure that those whose rights are violated can access justice and accountability through the courts. Account must be taken of the five guiding principles on the environment set out in Section 13(1) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

Question 35

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

Answer:

No response.

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:

No response.

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:

As for the UNCRC Bill, if legislation is incompatible with the rights in the Bill, then courts should be able to strike down the incompatible access, or issue a declarator of incompatibility.

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 that time is needed to ensure awareness amongst rights-holders and those providing public services in Scotland. However, it is important to bear in mind that these international human rights treaties are already in place, so public body implementation of these rights can and should begin now. We agree with the Human Rights Consortium of Scotland's view of a 6 month commencement period for the procedural duty to have due regard after Royal Assent; and then for an additional duty to comply starting a maximum of 2 years later. These timescales would allow for the development of guidance; capacity-building; and definition of MCOs.

Question 39

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

Answer:

We agree that there should be inclusive, community-level participation in shaping the MCOs. Care should be taken to speak with groups whose rights are most at risk. In order to assist with the process, the Scottish Government should provide details of UN Guidance on MCOs and examples of MCOs in Scotland, before the Bill is introduced to Parliament.

It is important that participation continues to be a key element of the evolution of the MCOs, and the MCOs should be subject to review through a parliamentary process every 10 years.

Question 40

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

Answer:

We welcome proposals for a Human Rights Scheme which would be a clear way for rights-holders to know what the Scottish Government is doing to keep on progressing the realisation of human rights. It is also important that the Human Rights Scheme be developed in consultation with people whose rights are most at risk.

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:

Agree that there should be statements of compatibility, including a requirement to demonstrate that consultation with people whose rights are at risk has been undertaken, in order to assess a Bill's compatibility with human rights.

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:

No response.

Question 43

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

Answer:

It is crucial for everyone to have information on their rights. Currently we are aware that rights-holders can find it difficult to understand what rights they have and how to enforce them. There needs to be greater guidance tailored to communities and those advising them, for example Citizens Advice Bureaus.

Question 44

What are your views on monitoring and reporting?

Answer:

Please see responses to Qs 22 and 40. Consideration should be given to a Scottish Parliament reporting duty, mirroring the approach taken in the UNCRC Bill. Reports should be clear and accessible so they can be effectively used by rights-holders and campaign groups.