



RESPONSE TO A HUMAN RIGHTS BILL FOR SCOTLAND CONSULTATION

Alcohol Focus Scotland (AFS) is the national charity working to prevent and reduce alcohol harm. We want to see fewer people have their health damaged or lives cut short due to alcohol, fewer children and families suffering as a result of other people's drinking, and communities free from alcohol-related crime and violence.

GENERAL COMMENTS

AFS welcomes the Scottish Government's commitment to embed international human rights within domestic law and drive transformative change. This could go far to help create a framework which emphasises the importance of all people being treated with dignity, and which ensures that human rights play a central role in strategies, policies, and decision-making at all levels.

Alcohol, its heavy use, and the related harm on society, undermines the realisation of our human rights. In Scotland, one in four people are drinking at potentially harmful levels and 10 people die because of alcohol every day. Drinking too much, too often, increases the risk of cancer and liver disease, being involved in an accident, being a victim or perpetrator of crime, experiencing family breakdown, and losing employment. Often it is people other than the drinker who feel the effects the most: children, family, friends, colleagues and those working in front line services like the NHS and police.

Human rights can help us to address these harmful impacts of alcohol. For this to happen it will be vital that the Human Rights Bill ensures that the Scottish Government, local authorities, and the public sector adopt a human rights framework for alcohol-related laws, policies, and support services, and focus on establishing a human rights culture. People will also need to be supported to understand that they have human rights in Scotland which require to be respected, protected, and fulfilled by the State.

Due to the broad scope of the proposals, AFS has chosen to respond only to those questions that we believe have the greatest relevance to alcohol, although we have included comments that will also have relevance to other questions contained within consultation document. Given the far-reaching implications of the proposals, and complexity of the subject matter, it will also be vital that people and communities are given further opportunities to understand and help shape the proposals.

SPECIFIC COMMENTS

Part 4: Incorporating the Treaty Rights

1. What are your views on our proposal to allow for dignity to be considered by courts in interpreting the rights in the Bill?

Dignity is a core principle of human rights and AFS believes it is wholly appropriate that courts consider dignity when interpreting the rights in the Bill. The Bill could go further in this regard by requiring courts to consider dignity when interpreting the rights, not simply allowing them to.

In Scotland, people with experience of alcohol problems can often find themselves marginalised and their dignity compromised due to societal attitudes and discrimination. These challenges can profoundly impact their quality of life and ability to access essential services. AFS believes that enabling dignity to be considered by the courts could help to emphasise to both duty-bearers and rights-holders that people with alcohol problems, like anyone else, deserve to be treated with dignity and respect at all times.

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

AFS agrees with the proposal for dignity to be a key threshold for defining Minimum Core Obligations. If MCOs are in place for everyone, at all times, then no one's inherent dignity should be violated.

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

AFS agrees with the Scottish Government's proposed approach of allowing duty bearers, courts, and tribunals to be able to read, apply and interpret the rights in line with international human rights law, materials, and mechanisms e.g. UN General Comments.

While no human rights covenant specifically refers to alcohol, alcohol has been referred to in General Comments, which expand on the meaning of rights included in the treaties. References to alcohol control in General Comments have generally highlighted the importance of information on alcohol-related harm and regulation for alcohol marketing. For example, General Comment Number 14 on The Right to the Highest Attainable Standard of Health interprets the right to health as extending to underlying determinants of health including healthy environmental conditions and access to health-related education and information. As the UN Committee on Economic, Social and Cultural Rights has stated, "the obligation to protect [people's right to health] sometimes necessitates direct regulation and intervention."¹ It outlines the state's duty to protect people from an infringement of their right to health by third parties, including corporations, and urges states to discourage production, marketing and consumption of harmful substances, such as alcohol. General Comment Number 14 also explicitly recognises that information campaigns on alcohol use are relevant to fulfilling right to health obligations.

The Committee on the Rights of the Child also adopted General Comment Number 15 on the Right of the Child to the Enjoyment of the Highest Standard of Health, which recognises that to achieve the right to health children require information and education on all aspects of health, including on the dangers of alcohol, to enable them to make informed choices. The General Comment further provides that States should protect children from alcohol and recommends regulation of "the advertising and sale of substances harmful to children's health and of the promotion of such items in places where children congregate, as well as in media channels and publications that are accessed by children".²

General comments have also been adopted on the obligation of states regarding the business sector, such as the alcohol industry. For example, the Committee on the Rights of the Child adopted a

¹ UN Committee on Economic, Social and Cultural Rights (11 August 2000). General Comment No. 14 on the right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2000/4. United Nations.

² Committee on the Rights of the Child, "General Comment No 15 (2013) on the Right to the Enjoyment of the Highest Attainable Standard of Health (art 24)" UN Doc CRC/C/GC/15 (17 April 2013).

General Comment on State Obligations Regarding the Impact of the Business Sector on Children's Rights. This General Comment recognises that states have obligations to ensure that children's rights are not adversely affected by the business sector and acknowledges that the marketing of alcohol to children can have a long-term impact on their health.³ In addition, the UN Guiding Principles on Business and Human Rights highlight that states have an obligation to regulate harmful commercial practices, whilst businesses have a responsibility to ensure that they respect human rights, including the right to health and other related rights negatively affected by the marketing of alcoholic beverages.⁴

Although not legally binding, General Comments such as these, and other relevant UN materials, articulate important recommendations that can be integrated into plans, policies, legislation, and national practices to protect and promote our human rights. Furthermore, they provide important guidance for interpreting the provisions of international human right treaties, including relating to the health of groups in situations of vulnerability.

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

AFS agrees that all four treaties should be reproduced in the Bill and that the right to a healthy environment should also be recognised and included. Furthermore, we agree that there should first be a procedural duty on public bodies (and as far as possible private actors), and then movement to a duty to comply with the ICESCR rights; including a requirement to deliver MCOs as well as to demonstrate progressive realisation of the rights. However, the duty to comply should not replace a duty to have due regard but rather should be in addition to this.

The UK Government has specifically exempted addiction to alcohol and other substances from the definition of disability for the purposes of the Equality Act 2010. This means that people with an alcohol problem in Scotland are currently at high risk of discrimination and unfair treatment, for example in employment, housing and accessing healthcare services. As such, AFS believes that incorporation of the Convention on the Rights of Persons with Disabilities, in particular, could afford greater protection to people with a recognised alcohol use disorder.

The United Nations Convention on the Rights of Persons with Disabilities recognises that *"disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others."* No health conditions are specifically excluded from falling within the scope of this provision and AFS believes that the strength of this social model of disability is that it recognises disability as a social construction rather than a moral failure of any individual. Alcohol dependence is now considered a disability in discrimination law in many countries including the United States, Australia, Canada and New Zealand.

AFS also welcomes the proposal to include an equality provision (within the limits of the equal opportunities reservation) to ensure equal access for everyone to the rights, and that the provisions of the equality treaties inform the interpretation of the core ICESCR rights for those protected groups. However, the decision to not place a 'duty to comply' on the special protection treaties is a significant departure from the full incorporation of these treaties, and AFS believes that further consideration and transparency is needed as to whether it is possible to put a duty to comply on all of the special protection treaties.

³ Committee on the Rights of the Child, "General Comment No. 16 (2013) on State Obligations Regarding the Impact of the Business Sector on Children's Rights" UN Doc CRC/C/GC/16 (17 April 2013)

⁴ UN Human Rights Office of the High Commissioner (2011). Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy" Framework. HR/PUB/11/04. United Nations.

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.

As noted above, AFS would ask the Scottish Government to ensure that the proposed approach – of only placing a procedural duty, and not duty to comply, on the special protection treaties – goes as far as possible within devolution limits.

In addition, the CRPD includes several rights which do not feature in ICESCR, and so it will be vital that the Bill includes a duty to comply on these missing CRPD rights, including:

- Article 5: Equality and non-discrimination including the requirement to make “reasonable accommodation”.
- Article 19: The right to live independently and be included in the community.
- Article 17: The right to respect for physical and mental integrity.
- Article 12: Equal recognition before the law.
- Article 26: Habilitation and Rehabilitation.

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?

Public bodies (and some private actors) currently have a duty to comply with the Human Rights Act in all that they are doing. However, at present, people experiencing alcohol problems and their families can struggle to understand their human rights and how they can use them to help bring about improvements in their lives. Across the public sector in Scotland, there is also an absence of evidence that human rights have been used as an ethos, both corporately and by individual staff, and as a framework to improve the delivery of public services. As such, AFS believes that the Human Rights Act duties and rights should be fully included in implementation of this Bill, including being part of guidance, public body training and capacity building, and information and awareness raising.

AFS would also stress that legislative measures to strengthen right protections should also be supported through accompanying actions, such as awareness raising campaigns, to inform people about their human rights and why they are relevant. It is only by taking such an approach that we can hope to deliver a rights-based culture change in practice, continually driving up standards and encouraging best practice to ensure that everyone can access quality alcohol treatment and support relevant to their needs.

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

Ensuring the participation of those people whose rights are most at risk will be crucial for driving an increasing culture of human rights, promoting better decision-making, and empowering marginalised individuals and groups. As such, AFS believes that participation should be embedded throughout the framework; with participation being a core principle within the purpose clause, the Human Rights Scheme including a requirement on Scottish Ministers to consult people whose rights are at risk, and the meaningful participation of people whose rights are most at risk in determining MCOs.

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?

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

As noted in the consultation document, the success of the Bill depends on the rights being incorporated in a way which means their protection can be enjoyed and accessed by everyone equally, regardless of status.

AFS agrees that there should be an equality provision in the Bill but would also seek assurance that people experiencing alcohol problems would be protected under the catch-all 'other status' in an equality section of the Bill, or that they would be specifically named within the Bill itself. This could help to ensure the proper consideration of barriers to rights for this group by public bodies and help address the exemption of addiction to alcohol from the definition of disability within existing equalities legislation. It is crucial to recognise that individuals with alcohol use disorders deserve to be treated with the same dignity and respect as anyone else. Upholding their human rights, including access to healthcare and support services, without discrimination, is essential in helping them recover and reintegrate into society.

Consideration should also be given to specifically attaching a requirement on Scottish Ministers to publish guidance around interpretation of 'other status'. This would enable them to specify evidence and criteria that public bodies should apply in considering other groups whose rights are at risk, for example people with an alcohol use disorder.

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

The duties should apply, so far as possible, to all bodies (including private bodies) carrying out devolved public functions.

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

Driving change in the realisation of human rights will require change in how public bodies work. As such, AFS agrees that it is necessary for public bodies to have an initial period where a procedural duty applies, in order to give them time to embed human rights into their decision-making and increase their capacity around human rights. This should be the duty to have due regard, which is already well-understood, and would complement the duty to comply by embedding human rights considerations into decision making processes. However, this initial period should not be open-ended, and the Bill should include a date for the duty to comply coming into force of no more than two years after the Bill's commencement. This would also allow a reasonable period for development of minimum core obligations.

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

AFS agrees that all public bodies (and relevant private actors) should be given a duty to comply, including by delivering Minimum Core Obligations and demonstrating progressively realising rights. Guidance to public authorities should include detail on the definition of progressive realisation, including using maximum available resources. As commented in response to question five, the duty to comply should also apply to the rights within the CRPD which do not feature in ICESCR.

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?

AFS agrees that there should be a public bodies' reporting requirement to enable for transparency and proper scrutiny. Public bodies also should have to consult with people whose rights are most at risk when developing these reports to ensure that the content is accessible and can be used by rights-holders to hold public bodies to account. AFS would expect that public authorities will refine

the content and approach to the reports with each publication, in consultation with relevant stakeholders.

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

The consultation document suggests that one option would be to follow the approach taken in section 15 of the UNCRC Bill. However, if this approach was adopted then bodies such as licensing boards would fall outwith the scope of the reporting duty, as they are not named in section 15 of the UNCRC Bill (although they *may* fall within the scope of the UNCRC Bill compatibility duty as licensing board members could be considered as *'any person certain of whose functions are functions of a public nature'*). This would be a significant omission, especially given that licensing boards determine local policies and make decisions of a strategic nature, which stand to have a substantial impact on outcomes experienced by people across the country.

Licensing boards decide all applications for licences to sell and serve alcohol in their area and are required to be an independent and impartial tribunal in terms of Article 6 of the European Convention on Human Rights. They are made up of elected councillors but are a separate legal entity from councils, having their own constitution and statutory procedures which are distinct from those applicable to councils and their committees. As such, a board's licensing functions are discharged separately from the council's functions as the local authority. This has resulted in a situation whereby licensing boards are not included in local partnership arrangements on a statutory basis and are often not subject to the same duties and requirements as other local partners.

The consultation document also refers to the Scottish Specific Duties that underpin the PSED. Fortunately, Scottish Ministers recognised the important role of licensing boards in reducing inequalities by specifically listing them in the Equality Act 2010 (Schedule 19) as being relevant Scottish authorities to which the equality duty applies. AFS believes it is vital to ensure that the contribution of licensing boards to the realisation of human rights is equally acknowledged.

On balance, AFS would support an approach which largely mirrored the UNCRC reporting requirements provided that the omission highlighted above is addressed.

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

AFS agrees with this proposed duty, and the related duty on Scottish Ministers to report on actions taken in relation to the Scheme's requirements.

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

AFS agrees that front-line complaints handling by public bodies needs to be changed to take into account the rights and duties in this Bill.

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

AFS agrees with scrutiny bodies having human rights added to their remit, so that they assess public bodies on how they are doing in meeting their human rights duties, and what they could do better.

AFS is aware that many people experiencing problems with alcohol are living with serious violations of the rights referenced in this Bill. The need to urgently address and prevent such rights violations should be the primary driver behind setting the timescales for full implementation of this Bill. It will be vital that the relevant timescales are specified in the Bill and given due priority; AFS would suggest that this should be commencement of no more than 6 months after Royal Assent, and the additional duty to comply no more than 2 years later. These are reasonable timescales that allow for development of guidance, public sector capacity, and Minimum Core Obligations.

39. What are your views on our proposals to establish Minimum Core Obligations through a participatory process?

It is essential that MCOs are developed through a participatory process, and this should be particularly with more vulnerable and marginalised groups. AFS believes that this could provide a key opportunity to ensure that services for people requiring support for alcohol use are considered as a ‘minimum core obligation’ of the right to health, especially for people whose lives may be at risk.

It is clear that many people in Scotland continue to face unacceptable discrimination and barriers to access and/or poor quality of experience when seeking support in relation to alcohol. In 2022, 1,276 people lost their lives to alcohol-specific causes, an increase of 25% from 2019 and the highest number since 2008.⁵ There has also been a 40% decline in the number of people commencing specialist alcohol treatment across Scotland, from 2013/14 to 2021/22⁶.

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

AFS agrees with the proposal to have a Human Rights Scheme. This would help ensure transparency about what the Scottish Government is doing to progress the realisation of human rights, and also provide a key tool to ensure accountability for delivering the related duties and commitments on human rights.

42. How can the Scottish Government and partners effectively build capacity across the public sector to ensure the rights in the Bill are delivered?

AFS agrees that statutory and non-statutory guidance is essential. This should be developed with participation of people whose rights are most at risk and written and published in a way that it is accessible to rights-holders as well as duty-bearers.

We also welcome the development of a plan around human rights capacity building for government and public bodies. As commented above, across the public sector in Scotland, there is an absence of evidence that human rights have been used as an ethos, both corporately and by individual staff, and as a framework to improve the delivery of public services.

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

The consultation acknowledges that having available, accessible information on the rights in the Bill, and human rights more generally, is absolutely vital in order to allow rights-holders to claim them. However, disappointingly, there is very little information provided about how this might be achieved in practice, other than the stated intention to develop plans for information and awareness raising.

⁵ National Records of Scotland (2023). Alcohol-specific deaths 2022.

⁶ Written question and answer: S6W-19111 | Scottish Parliament Website:

[<https://www.parliament.scot/chamber-and-committees/questions-and-answers/question?ref=S6W-19111>]

The Scottish Government recently established the National Collaborative to integrate human rights into drug and alcohol policy development, implementation, monitoring and evaluation. The National Collaborative is currently working to empower people affected by problem substance use to enable their voices – and, critically, their rights - to be acted upon in policy and decision-making concerning the design, delivery and regulation of drug and alcohol services at a national level. It is also setting out how the rights to be included in the Human Rights Bill can be effectively implemented to improve the lives of people affected by problem substance use. The National Collaborative could therefore be a key means of supporting the implementation of the Bill in the alcohol sector.

In addition, AFS is aware that human rights organisations have called for the Scottish Government to co-produce and fund a National Network for Human Rights Information, Education, Legal Services and Advice. We believe that this proposal has merit and should be considered as part of this consultation process.