

# Submission to the Scottish Government

## A Human Rights Bill for Scotland:

### Consultation

#### October 2023

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#### About us

The Poverty Alliance is Scotland's anti-poverty network. Together with our members, we influence policy and practice, support communities to challenge poverty, provide evidence through research and build public support for the solutions to tackle poverty. Our members include grassroots community groups, academics, large national NGOs, voluntary organisations, statutory organisations, trade unions, and faith groups.

#### Introduction

Being in poverty means being unable to make ends meet, it means making sacrifices, and it means a life where you are not afforded dignity. It is a situation that is incompatible with realisation of our basic human rights.

It is for that reason that poverty is a breach of our fundamental human rights. The incorporation of international human rights treaties is urgently needed to provide dignity for all, complementing our aims to see Scotland free from the grip of poverty. We therefore strongly welcome this consultation on a Human Rights Bill for Scotland.

In 2020, alongside Human Rights Consortium Scotland (HRCS), the Poverty Alliance began speaking to people with experience of poverty to ask them what they believed should be central components of a Human Rights Bill for it to work for people living on low incomes in Scotland. Overall, participants highlighted that people are broadly unaware of their specific rights and how to enforce them; that the language around Human Rights is too technical for it to be reasonably accessible; and that there is a dearth of support and information available for people to claim their rights and challenge violations. Our response below reflects these sentiments. To make Human Rights realisation fully universal, we must ensure that the incorporation, compliance and monitoring of this Bill includes people with experience of poverty and this requires embedding the voice of lived experience of poverty within the Human Rights framework, meaningfully.

Our response has been informed by sessions with people with lived experience of poverty; an exploratory session conducted in partnership with Human Rights

Consortium Scotland exploring wider civil society perspectives on the Bill, and evidence gathered through our Rights in Action project.<sup>1</sup>

## 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

The Poverty Alliance welcomes the inclusion of dignity as a basis for Courts to interpret the rights in the Bill. In partnership with Human Rights Consortium Scotland, we hosted an engagement session with members of the Poverty Alliance and wider civil society to garner views towards the proposals for the Bill. There was wide support for the use of the concept of dignity for courts to interpret the Bill.

Organisations felt, particularly when linked to people with experience of poverty, that people living on low incomes are often robbed of their dignity through policy design and so it is important that dignity this is used as an absolute minimum benchmark for interpretation of rights.

However, organisations had some concerns regarding both the definition of dignity and its enforcement. Member organisations felt that there are many ways to define and measure dignity which creates a lack of certainty around parity regarding interpretation. For example, stating that people deserve 'access to dignified housing' conjures different ideas for different individuals depending on their unique perspective. This was reflected in research by Dr Elaine Webster at the Centre for the Study of Human Rights Law. Dr Webster found that whilst the concept of dignity was helpful in explaining concepts in Human Rights, some participants did not understand what this meant, and others had a wide range of definitions based on context and experience.<sup>2</sup>

Without underpinning the concept of dignity with clear legal guidance on how the concept should be operationalised, there risks individuals being presented with different outcomes when trying to enforce their rights due to subjective interpretations by duty bearers. For example, the Cross Party Group on Poverty conducted an inquiry into poverty-related stigma and found that the role of stigma can prevent individuals from accessing public services and support and in-turn stigma can impact the treatment they receive due to unconscious and conscious bias against people with experience of poverty. Notions of the 'deserving and undeserving poor' could contribute to ill-treatment in rights enforcement proceedings due to notions of who does and does not deserve dignity and at what level. Illustrating this,

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<sup>1</sup> Poverty Alliance's Rights in Action project works with communities to add human rights to their collective power. It has three main components: workshops raising awareness of how human rights can be used as a tool to combat poverty; learning groups to support action; participatory research exploring the intersection between rights violations and other forms of marginalisation.

<sup>2</sup> Webster. E. (2022) "*I Know it When I See it*". Centre for the Study of Human Rights Law, Strathclyde Law School. University of Strathclyde. Available at:

[https://www.strath.ac.uk/media/1newwebsite/departmentsubject/law/cshrl/Can\\_Talking\\_about\\_'Dignity'\\_Support\\_the\\_Growth\\_of\\_Human\\_Rights\\_Culture\\_.pdf](https://www.strath.ac.uk/media/1newwebsite/departmentsubject/law/cshrl/Can_Talking_about_'Dignity'_Support_the_Growth_of_Human_Rights_Culture_.pdf)

in our session with civil society organisations representatives from an advocacy and support organisation noted experiences where survivors of domestic violence witnessed differences in how they were treated depending on the Sheriff Officer present and this would leave survivors approaching courts on different days to ensure good treatment.

We are also concerned about the enforcement of the notion of dignity. Whilst we welcome dignity being considered as an underpinning, the framing in the consultation presents this as an optional undertaking by the courts. We strongly support courts considering dignity when interpreting these rights. Supporting this should be robust and clear guidance that demonstrates how the concept of dignity is applied within rights interpretation in legal settings. This is central to ensure consistency and non-discrimination when considering the role of bias and stigma.

We would echo calls from rights-based scholars such as Dr Elaine Webster who called for the Scottish Government to fund work to explore comparative uses of dignity in law with results used to shape guidance for Scotland.

Lastly, although not explicitly mentioned in the consultation questions, we would also strongly urge the inclusion of a purpose clause that explicitly defines and enforces the use of other human rights principles in interpreting right such as universality and participation. This will help to ensure just treatment for all regardless of identify or background and clear interpretation for duty bearers.

## **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

As detailed in Q1, we strongly support the use of dignity as a key threshold for defining the content of minimum core obligations. Central to this is maintaining a strong link to the international human rights regime for example, reflecting the MCO's of the United Nations. This must be considered an absolute floor for our expectations when defining and operationalising MCO's.

The use of dignity as the key threshold for defining MCO's must be accompanied by development of clear guidance on MCOs for all public bodies that can be clearly interpreted and can guarantee parity of treatment. This came out strongly from organisations who took part in our joint session with HRCS. It is also central that defining content for MCO's includes the perspectives of people with lived experience of poverty in this defining process. People with experience of poverty are often under-represented in decision-making processes and policymaking, meaning their voices are less likely to be heard and their opinions may be undervalued or even ignored. Fundamentally, human rights are about ensuring that we are all able to lead dignified lives. Poverty can strip people of their dignity and is a human rights failure,

which has further consequences in terms of limiting the ability of individuals to realise their wider human rights. For this reason, it is central that these voices are a core component when defining the absolute minimum standards for public bodies to underpin their progressive realisation of human rights. We have detailed more in Q13 on how this should work in practice.

### **Question 3**

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

N/A

### **Question 4**

**What are your views on the proposed model of incorporation?**

Please give us your views:

Whilst we agree with some elements of the proposed model of incorporation, we believe this must be enhanced further to ensure that this Bill does not become a tick-box exercise and provide the Bill with the underpinnings to ensure enforcement and the protection of people's rights.

Firstly, we need to ensure a greater emphasis on paying due regard to human rights in budgetary choices. There are processes that underpin decision making processes such as taxation systems, budget and the Programme for Government. Only through taking a human rights based approach to budgeting and resource allocation can we ensure that adequate resources are being invested in public bodies to ensure duty bearers are able to realise people's rights. The proposed model of incorporation is in danger of focusing too closely on current processes, procedure and practice and ignoring the budgets and choices that underpin these and may undermine the ability of public bodies to comply with MCOs and progressively realise rights. To this end, a holistic view of compliance should be taken throughout this period and past decisions that impact present day working should be reviewed, particularly budgetary choices.

We echo calls by organisations such as HRCS and the ALLIANCE who called for a legislative audit at an early stage to identify which Acts of the Scottish and UK Parliaments – that fall within devolved competence – fall short of human rights standards; and latterly to enable amendments to be passed before the Bill takes effect.

On the elements of the procedural duty and the duty to comply, we echo calls that the procedural duty should be a duty to pay due regard and that this should not be phased out. Instead, this should coexist with the duty to comply. Latterly, there must be given explicit timescales on the duty to comply and the initial procedural duty to

provide clarity to and protection for both rights bearers and duty holders. The Bill should explicitly state that the duty to have due regard begins when the Act receives Royal Assent, while the duty to comply starts two years after Royal Assent. The duty to comply should include requirements to deliver MCOs and progressive realization, using maximum available resources and non-regression.

Lastly, there must be careful consideration about the limitations and boundaries of devolution. To this end, we agree that the text within ICESCR, CEDAW, CERD, and CRPD should be replicated however with the removal of any areas that are reserved to the UK Parliament. Where there are rights that include both devolved and reserved elements the Scottish Government should adopt a maximalist approach. We must ensure that this Bill does not face the same legal challenges as the UNCRC. However, we do not agree with the current proposals around the 'equalities treaties', as outlined in our answer to Q5.

### **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:

We agree with our members Human Rights Consortium Scotland, Glasgow Disability Alliance and The Alliance that referring to special protections treaties CERD, CEDAW and CRPD as 'equalities' treaties is unhelpful.

We do not agree that all rights in the 'equalities' treaties should only have the duty to comply as we feel this fails some of the most marginalised in society. We urge the Scottish Government to incorporate these rights in the strongest way possible within the confines of devolution.

UNCRC includes substantive and meaningful rights for individuals with disabilities that are absent from other human rights agreements such as ICESCR or the Equality Act. These human rights are currently unprotected by the proposed legislation. The substantive rights absent from ICESCR are:

- Article 5, Equality and non-discrimination, including the requirement to make "reasonable accommodation".
- Article 7(3), Participation of disabled children.
- Article 9, The right to accessibility of the physical environment, transportation, information and communication, and services open to the public.
- Article 11, Situations of risk.
- Article 12, Equal recognition before the law.
- Article 13, Access to justice.

- Article 14, Liberty and security of the person.
- Article 16, Freedom from exploitation.
- Article 17, The right to respect for physical and mental integrity.
- Article 19, The right to live independently and be included in the community.
- Article 20, Personal mobility.
- Article 24, Inclusive education.
- Article 26, Habilitation and rehabilitation

That devolution presents challenges for human rights incorporation in Scotland has been illustrated by the experience of the UNCRC (Incorporation) (Scotland) Bill and the Supreme Court judgement of October 2021, we would like to draw attention to the legal opinions highlighted in the Scottish Human Rights Commission's paper *Towards a new method of Incorporation: A legal Opinion*. Particularly that 'it is not clear why' the consultation appears not to seek to fully incorporate substantive rights included the special protection treaties. The Scottish Human Rights Commission states that legal advice sought on this matter has shown 'it is clear that several important substantive rights could be incorporated within devolved competence'.<sup>3</sup>

In line with this legal advice, we agree with our members the ALLIANCE, Human Rights Consortium and Glasgow Disability Alliance, among others calling for the government to explore including a duty to comply on the substantive rights included in the 'equalities' treaties.

We echo calls made by the Glasgow Disability to ensure that all substantive rights in the CRPD that should have a duty to comply as well as a duty to have due regard. These are:

- Equality and non-discrimination including the requirement to make "reasonable accommodation (Article 5)
- Right to Accessibility (Article 9)
- Participation of disabled children (Article 7(3))
- Right to Life (Article 10)
- Rights in 'Situations of risk and humanitarian emergencies' (Article 11)
- Right to equal recognition before the law (Article 12)
- Right to Access to Justice (Article 13)
- Liberty and security of the person. (Article 14)
- Freedom from torture or cruel, inhuman or degrading treatment or punishment (Article 15)
- Freedom from exploitation (Article 16)
- The right to respect for physical and mental integrity (Article 17).
- Right to live independently and being included in the community (Article 19)
- Right to personal mobility (Article 20)
- Right to education (Article 24)

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<sup>3</sup> Scottish Human Rights Commission (2023) *Towards a new method of incorporation: A legal opinion*. Available at: <https://www.scottishhumanrights.com/media/2506/towards-a-new-method-of-incorporation-a-legal-opinion.pdf>

- Right to health (Article 25)
- Right to habitation and rehabilitation e.g. health, education, employment and social services (Article 26)
- Right to work and employment (Article 27)
- Right to adequate standard of living and social protection (Article 28)
- Right to participate in political and public life (Article 29)
- Right to Participation in cultural life, recreation, leisure and sport (Article 30)

In the Scottish Human Rights Commission paper, *Towards a New Model of Incorporation: A Legal Opinion*, legal expert Mr Mure KC highlights:

*“There are various rights contained within the “equalities treaties” that would not appear to be impacted by the equal opportunity’s reservation. To take a further example, article 4 of the CERD deals with incitement to racial discrimination and article 6 obliges states to assure to everyone effective protection and remedies against acts of racial discrimination. Where these matters concern devolved matters such as justice or education, I see no reason why they should not be incorporated into Scots law.”<sup>4</sup>*

Consequently, we would also call upon the Scottish Government to explore the possibility of the full incorporation (with a duty to pay due regard and to comply) of other substantive rights included in CEDAW and CERD to ensure the Bill has the strongest possible impact on the realisation of people’s rights.

## Question 6

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

Agree

Disagree

## 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:

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<sup>4</sup> Scottish Human Rights Commission (2023) *Towards a new method of incorporation: A legal opinion*. Available at: [Towards a new method of Incorporation: A legal opinion \(scottishhumanrights.com\)](https://www.scottishhumanrights.com/towards-a-new-method-of-incorporation-a-legal-opinion)



We support the proposed formulation of the substantive aspects of the right including clean air, a safe climate, safe and sufficient water, non-toxic environments, and healthy biodiversity and ecosystems.

In Scotland, people living in poverty and the communities they live in are less likely to have access to both the substantive and procedural aspects of the right to a healthy environment.

Substantively, people living on the lowest incomes are more exposed to air pollution<sup>5</sup>, more likely to live in areas of environmental neglect<sup>6</sup>, and due to this are more likely to face poor health outcomes in part linked to exposure to negative environmental conditions.<sup>7</sup> As detailed in the consultation document, it is important to emphasise that each of these substantive elements are interdependent and in need of standalone protections; for this reason we echo concerns raised by HRCS and Environmental Rights Centre Scotland (ERCS) that there has been an exclusion of adequate sanitation under the right to safe and sufficient water give systemic issues relating to sewage pollutions and waste water treatment in Scotland<sup>8</sup>. We also disagree with the exclusion of the right to healthy and sustainably produced food because we believe it is a core feature of the right to a healthy environment – see our response to Q9 and 10 for further detail.

We fully agree with procedural aspects of the rights such as awareness raising, promoting education and capacity building, access to information, public participation in decision making, ensuring effective, affordable and timely remedies, and suitable policies, planning and action.

We do however have concerns regarding the realisation of the procedural elements of this right for people with experience of poverty. It is important that the Scottish Government recognise the links between progressive human rights realisation and other sectors and their capacity. Third sector organisations for example will be central in supporting these procedural aspects for people living on low incomes. We know from our own research that awareness of benefits, training and support can often come from engaging with third sector organisations whether this be community activities, advice centres or emergency food providers such as food banks and pantries. This will likely be no different in regard to boosting awareness of human rights and supporting and providing advocacy for people encountering violations. Yet, the capacity and sustainability of the third sector has long been under threat due to insecure, inefficient, and unreliable funding mechanisms. Research from Scottish Council for Voluntary Organisations (SCVO) found that third sector organisations are

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<sup>5</sup> Joanna H. Barnes, Tim J. Chatterton, James W.S. Longhurst (2019). *Emissions vs exposure: Increasing injustice from road traffic-related air pollution in the United Kingdom*, Transportation Research Part D: Transport and Environment, Volume 73, 2019, Pages 56-66, ISSN 1361-9209,

Available at: <https://doi.org/10.1016/j.trd.2019.05.012>.

<sup>6</sup> Pinoncely (2016) *Poverty, place and inequality: why place-based approaches are key to tackling poverty and inequality*. Royal Town Planning Institute. Available at: <https://www.rtpi.org.uk/media/2212/povertyplaceinequality-policypaper2016.pdf>

<sup>7</sup> *ibid*

<sup>8</sup> Environmental Rights Consortium Scotland (2022) *Water Pollution is a Problem in Scotland*. Available at: [https://www.ercs.scot/wp/wp-content/uploads/2022/11/Water-Pollution-FAQ\\_Nov22.pdf](https://www.ercs.scot/wp/wp-content/uploads/2022/11/Water-Pollution-FAQ_Nov22.pdf)



struggling to recruit volunteers, to raise sufficient income through fundraising and to cope with rising running costs due to inflation.<sup>9</sup> Without sufficient resource, the support that third sector organisations will be able to provide will be significantly strained and this is a critical risk given the central role of the third sector in providing support and advice to those living on low incomes. It is worth noting that the First Minister has previously committed to fairer funding arrangements for the voluntary sector in the Scottish Government's policy prospectus *Equality, Opportunity, Community*, including exploring options to implement multi-year funding deals.<sup>10</sup> This has been a long-standing Scottish Government commitment, and something the anti-poverty movement have been calling out for many years. Poverty Alliance members told us ahead of the First Minister's anti-poverty summit that a renewed partnership agreement with the third sector, including fair funding arrangements, must be a priority.

Particularly in relation to procedural aspects such as affordable and timely remedies to human rights infringements, public services must be supported financially to respond to the initial procedural duty and the duty to comply. Local authorities for example have faced year upon year real-terms funding cuts rendering them vulnerable to being unable to make provisions for rights such as the right to a healthy environment. Given the linkages between a healthy environment and public services such as transport, housing, and waste management, and their propensity to be administered and indeed funded by local authorities, there is a need for the Scottish Government to actively recognise this relationship and note the risks associated with inefficient funding of local authorities (and other public services) within this context.

## 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:

Whilst we support the linkages between the right to food within the context of ICESCR and how it pertains to nutrition, affordability, and culture, we strongly oppose the decision to exclude this element under the right to a healthy environment. As an organisation, we are focused on the need to end poverty in

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<sup>9</sup> Scottish Council for Voluntary Organisations (2023) *The Scottish Third Sector Tracker – wave 6 summary report (Spring 2023)*. Available at: <https://scvo.scot/policy/research/evidence-library/2023-the-scottish-third-sector-tracker-wave-6-summary-report-spring-2023>

<sup>10</sup> Scottish Government (2023) *Equality, opportunity, community: New leadership – A fresh start*. Available at: <https://www.gov.scot/publications/equality-opportunity-community-new-leadership-fresh-start/>

Scotland and see this as being inextricably linked to questions of environmental justice and the need to ensure that people on the lowest incomes are protected from the impact of the climate emergency. Evidence consistently shows that people living on the lowest incomes are most impacted by the climate emergency, despite contributing the least in terms of emissions. Food security is of critical importance to achieving climate and social justice, with sustainable food systems being a central component of alleviating poverty. It is for this reason that the right to food must be included in the context of a healthy environment.

While the ICESCR definition includes health and sustainability, this fails to consider the issues of availability and access to food. Given the severe, persistent and widespread household food insecurity numerous people globally, including one third of Scottish households who lack high food security.<sup>11</sup> Moreover, more people in our society are being left with no option but to turn to community food projects to feed themselves and their families. In 2022/23, the Trussell Trust reported that they had distributed a record number of food parcels with a 30% increase on the previous year.<sup>12</sup> This is even more stark when we consider that one third of all food produced globally going to waste<sup>13</sup>, this must be considered within the context of a healthy environment as well as ICESCR.

As identified by ERCS, the damage caused by the global food system to nature, climate and health has become more acute, widespread, and visible over the past five years. They note that intensive farming, increased transport emissions, packaging waste and other elements of food production all have negative impacts on the environment which impede our global food supply. In Scotland, a significant proportion of our greenhouse gas emissions are routed in agriculture and our biodiversity has depleted further than 88% of countries and territories globally. Despite this, the UK is only 60% self-sufficient in food.<sup>14</sup> And we know that when resources are limited, it is those on the lowest incomes who are left unable to afford or access them. More broadly, measures to support reductions in carbon emissions can support access to food such as greater availability of public transport, more greenspace to grow community based fresh food, and greater provision of active travel. For these reasons, it is important that the right to food is included as an element of the right to a healthy environment as well as a feature of ICESCR.

The consultation document has itself identified that human rights are universal, indivisible, and interdependent, to this end we are uncertain why the right to food was not included as both an element of ICESCR and as a part of the right to a healthy environment as was the case regarding defining the right to water. We again

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<sup>11</sup> Scottish Government (2023) *Poverty and Income Inequality in Scotland 2019-2022*. Available at: [https://data.gov.scot/poverty/#Food\\_security](https://data.gov.scot/poverty/#Food_security)

<sup>12</sup> The Trussell Trust (2023) *Hunger in Scotland*. Available at: <https://www.trusselltrust.org/wp-content/uploads/sites/2/2023/06/2023-Hunger-in-Scotland-report-AW-web.pdf>

<sup>13</sup> United Nations Environmental Programme (2021) *UNEP Food Waste Index Report 2021*. Available at: <https://www.unep.org/resources/report/unep-food-waste-index-report-2021>

<sup>14</sup> ERCS (2021) *The relationship between the human right to a healthy environment and the right to food*. Available at: [https://www.ercs.scot/wp/wp-content/uploads/2021/10/Right-to-a-healthy-environment-and-right-to-food\\_Sept21.pdf](https://www.ercs.scot/wp/wp-content/uploads/2021/10/Right-to-a-healthy-environment-and-right-to-food_Sept21.pdf)

echo ERCS who note that the right to food must be recognised as a standalone feature, that underpins and interacts with other substantive features of the right.

### **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:

We agree with the proposal however echo calls from ERCS to incorporate the right to adequate sanitation. As detailed in Q8, people living in low incomes communities are more likely to be exposed to pollution including water pollution due to lack of efficient sanitation. We again link this right to the need to adequately fund public services in order to ensure this right is realised and delivered.

### **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:

The Poverty Alliance echo the ERCS response, we welcome the proposal to incorporate the right to a healthy environment with a duty to comply for public bodies and private actors delivering public functions. We echo their concerns that accompanying this must be dedicated reforms with clear timelines to ensure services act to achieve this right. As detailed in other part of this consultation response, the duties to comply must be accompanied by efficient resource and budgets in order to support public and private actors to adhere to rights realisation practices.

HRCS and ERCS also called for rights to be enforceable in a court of law, with appropriate mechanisms in place to effectively hold public bodies and polluters to account and the establishment of a dedicated environmental court with a comprehensive jurisdiction would increase access to justice, address the current fragmentation in routes to remedy, and develop judicial expertise to improve effectiveness and efficiency. We agree with both of these calls however we refer to questions 28 which detail the concerns and complexities surrounding accountability and access to justice and action we need to see to ensure this is also accessible for people with experience of poverty.

## 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:

Although we recognise the motivations behind and believe it should be feasible to incorporate a restatement or acknowledgment of the commitments outlined in the Human Rights Act within a preamble to the Bill, we do not object to the consultations proposal to not restate the Human Rights Act in this Bill. We have taken this stance as we are concerned that the UK Government may mount a legal challenge claiming this fall beyond the scope of the Scottish Parliament's powers.

## Question 13

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

Please give us your views:

Participation is a key component in the implementation of ICESCR and of taking a human rights based approach more generally. Incorporating participation into the framework of the Human Rights Bill for Scotland is vitally important to ensure that the Bill aligns with key international human rights principles. Meaningful participation is also crucial to ensure that this Bill effectively safeguards the rights of groups and individuals who are most marginalised, which includes those who are experiencing poverty.

The incorporation of ICESCR is a key part of the proposed human rights Bill. This Covenant inherently includes the right to participation as an essential element of its implementation. The proposals for this Bill also include the incorporation of three special protection treaties. Participation is also a key component of the implementation of special protection treaties.

The Poverty Alliance held a workshop with people with experience of poverty to explore where people felt that participation should feature in the Bill. Participants welcomed the prospect of increased participation and they overwhelmingly felt that public bodies should have a duty to include people in policy and service design, and in monitoring and scrutiny and that public bodies should have to evidence the fact that they have engaged with people, particularly those who are often deemed 'harder to reach'.<sup>15</sup>

Consequently, we propose that participation should be a core requirement at every part of a Scottish Human Rights framework. This includes:

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<sup>15</sup> Poverty Alliance (2023) *Participation: Human Rights Bill for Scotland*. Unpublished.

- Explicitly designating participation as a core principle within the purpose clause of the Bill to underscore the fundamental importance of participation in achieving the Bill's objectives.
- Including a requirement for Scottish Ministers to consult with individuals and groups whose rights are most at risk in the Human Rights Scheme. Due to the persistent rights violations experienced by people living on low incomes, it will be of the utmost importance that they are included in these processes and are understood as members of this group.<sup>16</sup><sup>17</sup><sup>18</sup> This consultation process should follow guidance developed for the Poverty and Inequality Commission by Poverty Alliance and Scottish Poverty and Inequality Research Unit (SPIRU).<sup>19</sup> This process must also ensure that people's voices are heard and considered in decision-making and that the impact of this process is clearly communicated to participants.
- Engaging people's whose rights are most at risk, including people living on low incomes, in participatory processes to define Minimum Core Obligations.
- Ensuring that public bodies engage people whose rights are most at risk in decisions that impact them. Lived experience workshops have highlighted that this should be at both the level of policy development and service design.
- Strengthening the SHRC's effectiveness in promoting and protecting human rights by including a clear duty for the SHRC to embed the participation of people's whose rights are most at risk in all aspects of its work, especially its monitoring role.
- Mirroring the UNCRC Bill, courts should be mandated to consider the views and perspectives of complainants when determining remedies.
- Capacity building for public bodies should include effective approaches to participation of people whose rights are most at risk, learning from what has worked previously and what has not.

As we have previously noted, due to the consistent and persistent human rights failures experienced by people living on low incomes, effective participation of people living on low incomes will be an important part of the implementation of this Bill. Models already exist for engaging effectively and ethically with people living on low incomes. Participants of the lived experience workshop we facilitated to inform

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<sup>16</sup> Poverty Alliance (2022) *Poverty and Inequality are Creating a Human Rights Crisis in the UK*. Available at: [Poverty and inequality are creating a human rights crisis in the UK - The Poverty Alliance](#)

<sup>17</sup> Poverty Alliance (2022) *Governments must keep their human rights promises*. Available at: [Governments must keep their human rights promises - The Poverty Alliance](#)

<sup>18</sup> Human Rights Consortium Scotland (2023) *International Covenant on Economic, Social and Cultural Rights: Report to the UN Committee on Economic, Social and Cultural Rights A Joint Civil Society report from: Human Rights Consortium Scotland, The Poverty Alliance, Who Cares? Scotland, Inclusion Scotland, Clan Childlaw, The ALLIANCE, Article 12, The Food Train, Close the Gap, Scottish Commission for Learning Disability (SCLD), Environmental Rights Centre for Scotland (ERCS), Community Policy Forum, Alcohol Focus Scotland, United Nations Association Scotland, and UN House Scotland*. Available here: [International-Covenant-on-Economic-Social-and-Cultural-Rights-Report-to-the-UN-Committee-on-Economic-Social-and-Cultural-Rights-Joint-Report-Dec-2022.pdf \(hrcscotland.org\)](#)

<sup>19</sup> Poverty Alliance, SPIRU (2020) *Guidance for the Poverty and Inequality Commission Involving Experts by Experience* Available at: [Guidance-on-involving-experts-by-experience-PIC-Guidance.pdf \(povertyinequality.scot\)](#)

this consultation response highlighted the model used by the poverty and inequality commission as an example of best practice that can be drawn upon in the implementation of Bill and as something which could be used as guidance<sup>20</sup>.

Poverty Alliance and the Scottish Poverty and Inequality Research Unit developed guidance on how experts by experience should be involved in the work of poverty that was developed by the Poverty Alliance and the Scottish Inequality Research Unit.<sup>21</sup> The guidance, which was commissioned by the Poverty and Inequality Commission, provides a framework for the Commission and other anti-poverty organisations/initiatives, specifically setting out a 10-step good practice guide on supporting the involvement of people with experience of poverty. We would recommend this is used when considering the participation of people's whose rights are most at risk.

Other successful models for engagement of people with experience of poverty are:

- The development of Social Security (Scotland). Experts by experience were involved from the introduction of the Social Security (Scotland) Act 2018 informing the development of priorities in the Social Security Charter<sup>22</sup> and the continued engagement of people with experience of the social security system<sup>23</sup>.
- Poverty Alliance's Get Heard projects from 2018- present<sup>24</sup>.
- Poverty Fairness Commissions which have been found to be an effective way of involving people with lived experience of poverty in local decision making. A key strength of the approach taken by many commissions is involvement of experts by experience in a collaborative panel with council members, third sector and business representatives.<sup>25</sup>

Other key points that emerged during workshops with people with lived experience of poverty was the importance in participation being meaningful and not just a tick box exercise and the importance of being able to see the impacts of your participation<sup>26</sup>. This can include feedback on how the knowledge generated by the participation was used, what changes it has made to thinking and how it has impacted policy making. This is also something which is expressed often during our Get Heard Scotland work and is seen as a key part of making participation meaningful for individuals.

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<sup>20</sup> Poverty Alliance (2023) *Participation: Human Rights Bill for Scotland*. Unpublished.

<sup>21</sup> Poverty Alliance, SPIRU (2020) *Guidance for the Poverty and Inequality Commission Involving Experts by Experience* Available at: [Guidance-on-involving-experts-by-experience-PIIC-Guidance.pdf \(povertyinequality.scot\)](#)

<sup>22</sup> Scottish Government (2019) *Developing the Scottish Social Security Charter: co-design in action*. Available at: [Writing the Scottish Social Security Charter: co-design in action \(www.gov.scot\)](#)

<sup>23</sup> Scottish Government. Social Security Experience Panels: publications. Available at: <https://www.gov.scot/collections/social-security-experience-panels-publications/>

<sup>24</sup> Get Heard Scotland (GHS) helps people affected by poverty get their voices heard on the policies and decisions that most impact their lives. The programme is coordinated by the Poverty Alliance and funded by the Scottish Government as part of its Child Poverty Delivery Plan. For more information see - [Get Heard Scotland - The Poverty Alliance](#)

<sup>25</sup> Laura Roberston (2021) *Chapter 10: Lived Experience of Poverty*. In: *Poverty in Scotland 2021*. Available at: [Ask CPAG | Poverty in Scotland 2021](#)

<sup>26</sup> Poverty Alliance (2023) *Participation: Human Rights Bill for Scotland*. Unpublished.



The workshop participants also highlighted the importance of providing support to break down barriers to participation, including the lack of affordable and flexible childcare. Workshop participants also emphasised the importance of paying people for participation. This is also something which The Poverty Alliance strongly support and is a key part of our own practice. The Scottish Human Rights Commission states 'it is important that... contributions are recognised as a core part of effective human rights work- and valued on an equal footing with professional efforts and expertise. Payment – whether monetary, or in the form of vouchers or 'in kind' resources- can help to acknowledge the value of these contributions. I can enable people to participate, particularly those who may face financial hardship'<sup>27</sup>

When thinking about implementation of the human rights Bill and ensuring people's participation, the cost and value of participation should be considered in the development of budgets.

Workshop participants also noted the importance of using the resources, knowledge and experience of community organisations and other trusted third sector groups such as Glasgow Disability Alliance, Includem Scotland and Poverty Alliance to support effective participation<sup>28</sup>.

The group also noted the importance of asylum seekers being included in participatory processes as a community who faces consistent human rights violations. That this group facing particular challenges accessing their rights has been highlighted in research undertaken by Poverty Alliance as part of our Rights in Action project<sup>2930</sup>

## **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:

We agree with the proposed approach of including an equality provision in the Bill.

## **Question 15**

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

Please give us your views:

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<sup>27</sup> Scottish Human Rights Commission (2021) *Paying people with lived experience for their participation*. Available at: <https://www.scottishhumanrights.com/media/2251/paid-participation-report-vfinal.pdf>

<sup>28</sup> *ibid.*

<sup>29</sup> Poverty Alliance (2023) *Education is supposed to be free for all*. Available at: ['Education is supposed to be free for all' - Research briefing - The Poverty Alliance](#)

<sup>30</sup> Poverty Alliance (2023) *The Life of Pigeons is more Certain: Mental Health and Wellbeing Amongst People Navigating the Asylum System*. Available at: [Research: 'The life of Glasgow pigeons is more certain' - The Poverty Alliance](#)



We agree with the recommendations made by the task force that LGBTI people and Older People should be named in the Bill due to the specific difficulties these groups face accessing their rights.

We support the calls by our member Who Cares Scotland's for their response to this question. We also recommend naming people with care experience specifically in the Bill and highlight the overwhelming evidence for doing so outlined in their consultation<sup>31</sup>. Care Experienced people as a group have historically not been recognised by the broad category of 'other status' yet we know they face significantly worse outcomes than the general population in terms of poverty, homelessness and other violations of their economic, social and cultural rights<sup>32</sup>. We believe that naming them as a specific group in the equality provision in the text of the Bill will support their specific needs to be considered and support them to access their rights.

Consideration should also be given to how the equality provision may be applied in recognising the impact of the particular and multiple barriers faced in accessing their rights by people experiencing intersectional inequalities such as disabled women or Black and Minority ethnic women.

### 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.

We do not believe that the 'other status' would sufficiently protect the rights of LGBTI, older people and Care Experienced people. As outlined in Q15 we believe these groups should be named groups in the Bill.

In regards to 'other status' clear guidance for public bodies and other duty bearers must be developed regarding any 'other status' provision to ensure it is implemented effectively and consistently. We echo Human Rights Consortium call that the Scottish Government should consider attaching a requirement for Scottish Ministers to publish guidance regarding the interpretation of 'other status'.

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<sup>31</sup> Who Cares Scotland (2023) *A Human Rights Bill For Scotland Response to the Scottish Government's Public Consultation*. Available at: [WCS-Scottish-Human-Rights-Bill-consultation-response-Oct-2023-Final.pdf](https://www.whocarescotland.org/WCS-Scottish-Human-Rights-Bill-consultation-response-Oct-2023-Final.pdf) ([whocarescotland.org](https://www.whocarescotland.org))

<sup>32</sup> Human Rights Consortium Scotland, Who Cares (2023) *Incorporating International Human Rights: The Protection of Care Experienced People's Human Rights In the Scottish Human Rights Bill*. Available at: [Layout 1](https://www.hrcscotland.org/Layout%201) ([hrcscotland.org](https://www.hrcscotland.org))

This guidance should specify the evidence and criteria that public bodies should apply when considering other groups whose rights may be at risk and should provide clarity around groups that are traditionally marginalised and would occupy 'other status' and sit in a difficult position between devolved and reserved competencies, such as asylum seekers.

### **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:

As outlined in Q15, 16 and 17 we recommend the Bill names LGBTI people, older people and Care Experienced people specifically in the equality provision in the Bill.

### **Question 19**

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

Please give us your views:

We agree that the duties described in the Bill should apply to, as far as possible, all bodies carrying out devolved public functions. It is important that careful consideration is made to define the boundaries between devolved and reserved functions, particularly in areas with crossover such as social security.

We however would emphasise the need for clarity on the roles and duties held by public bodies for rights bearers; this is essential to ensuring that people are able to realise their rights and indeed be able to challenge violations. HRCS rightly point out that rights bearers may face confusion regarding whether a public body is a Scottish or UK body and so clarity should be sought in that regard. More broadly, awareness of rights in general must be tackled to ensure that rights bearers can fully realise their rights.

In our participation session with people living on low incomes, participants highlighted that language around human rights as being overly technical. The lack of rights information that is easily accessible, written in clear, simple terms accompanied by the lack of knowledge about a clear route for complaints meant that although people living on low incomes may experience rights violations, they had very little idea of where to go to raise the issue and felt alone in the process. Participants felt that this results in many people feeling disempowered and not pursuing justice or clarity despite clear human rights infringement.

Our participation processes have highlighted that that awareness on where to access information on rights was particularly subjective depending on an individual life experience and that there was no centralised space that was perceived as being fully and easily accessible to all. One participant noted using simple google searches or going to their local Citizens Advice Bureau, but only because they had previously worked in a CAB and so understood their remit. However, it was noted that some rural residents may not have access to CAB so this is a further barrier to rights information in rural spaces. Another participant who had experience of the asylum process noted going to their solicitor. Other participants highlighted third sector organisations like Glasgow Disability Alliance and Inclusion Scotland as spaces they felt they were able to approach for information on rights. The lack of advocacy was a further area that participants felt must be resolved in order to support people living on low incomes to realise their rights and challenge violations, Participants noted that there is a significant lack of information on how to fight for their rights and a lack of advocacy to support people to do this.

For this reason, it must be understood as centrally important that the Scottish Government ensures its citizens are empowered rights holders. This, and the ambitions of this Bill, can only be realised if citizens are informed of their rights, understand who has accountability for this, and are unrestricted in accessing support to challenge rights violations.

To this end, it is crucial that information on who duties apply to in the Bill is widely available, in a variety of accessible forms written in simple language (such as leaflets, a centralised website dedicated to rights awareness) and that there is a long term, sustainably funded organisation to do this who embed outreach into low income communities and other groups who are more vulnerable to rights infringements. This should take the form of a Human Rights Hub (HRH) as recommended by HRCS and the SHRC. The HRH would function as a centralised source of information on human rights and provide clear, concise and accessible information to anyone who needs it.<sup>33</sup> The HRH would be coproduced by people who are seldom heard and more vulnerable to rights infringements at a national level but used to support community organisations to divulge this information throughout local communities. The HRH should embed support for people seeking to call out rights violations. Participants felt that this must be embedded in legislation to ensure longevity and ensure that it covers different areas across Scotland. As detailed earlier in Q8, the success of any HRH will be determined by adequate allocation of resource and investment.

We strongly support calls made by HRCS noting that that the most effective and comprehensive way for all of our international human rights to be incorporated is for this to happen at a UK level, to fully encompass all areas of law and policy affecting

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<sup>33</sup> Human Rights Consortium Scotland & Scottish Human Rights Commission (2020) *All our Rights in Law: views from the wider public*. Available at: [https://hrcscotland.org/wp-content/uploads/2021/03/HRCS\\_all-our-rights\\_report\\_48pp\\_web\\_single-pages.pdf](https://hrcscotland.org/wp-content/uploads/2021/03/HRCS_all-our-rights_report_48pp_web_single-pages.pdf)

people's lives. This is particularly crucial for people such as asylum seekers and refugees who, in our session with third sector organisations, participants highlighted concerns of this Bill creating a two-tier system where certain groups such as asylum seekers face less protections of their rights due to the limitations on devolved issues. We urge the Scottish Government to engage with the UK Government around this, and specifically to engage around the implementation of international human rights across rights-holder interactions with UK public bodies and resolve any potential inconsistencies.

Lastly, we agree with HRCS that the duties should apply to all private bodies and third sector organisations when carrying out public functions, as they too play a significant role in upholding human rights for example in their contributions to housing, transport, and indeed the right to a healthy environment. We agree with HRCS that this should mirror the approach taken by the UNCRC Incorporation Bill.

## **Question 20**

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

Please give us your views:

We strongly support the proposal of an initial procedural duty however echo calls from HRCS that this procedural duty to be a duty to 'pay due regard'.

This duty must be underpinned by investment, particularly in order to support public bodies in their transition. We are therefore calling for a budgetary review to take place upon Royal Assent of the Bill to ensure that public bodies are adequately resourced to begin the initial procedural duty. This should be underpinned through a Human rights budgeting adoption for all Scottish Government budgets and embedded in public body decision making. Human rights budgeting means that decisions on how money is raised, allocated and spent are determined by the impact this has on people's rights.<sup>34</sup>

We further echo HRCS and note that the duty to have due regard (the procedural duty) must continue to apply after the full duty to comply is in effect. The procedural duty to have due regard complements the duty to comply, ensuring that human rights are incorporated holistically and proactively into decision-making processes.

We share concerns that explicit timescales for implementation have not been stated as this can lead to delay and avoidance. To rectify this, we echo HRCS and call for the commencement of this procedural duty (alongside the budgetary review) to not exceed six months from the date of Royal Assent. This gives sufficient time for the preparation of guidance but also does not mean any unnecessary delay in starting to embed these rights across duty-bearers' work. Any longer period denies the serious

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<sup>34</sup> SPICe (2022) *Human Rights Budgeting*. Available at: <https://sp-bpr-en-prod-cdnep.azureedge.net/published/2022/10/20/862a68a0-a6a9-46cd-9fdb-87cc7a877406/SB%2022-61.pdf>

rights infringements that people are living with every day. Bringing in this procedural duty will also help to focus public body attention and resources on the change needed to comply with the rights.

## Question 21

### What is your view on the proposed duty to comply?

Please give us your views:

We agree with HRCS's response on applying the proposed duty to comply on all public bodies, and relevant private and third sector entities. In our session with people with lived experience of living on a low income, there were concerns around ensuring this Bill would make real, impactful change and would not result in a simply tick-box exercise that fails to bring about meaningful change. This was echoed by participants in our workshop with civil society organisations. The duty to comply is therefore a central component and necessary to give the Bill 'teeth' by ensuring that these rights are enforceable in court. This enables individuals and communities who have no other way to be heard can raise their voice through the judicial process. This duty to comply will ensure that government and government bodies can be held to account on meeting their human rights obligations.

We agree with HRCS that the duty to comply should comprise the delivery of MCOs, which necessitates the immediate and consistent fulfilment of baseline rights for all individuals, all the time; and the progressive realisation of rights, which compels public bodies to take deliberate steps towards realising these rights by utilising maximum available resources, while ensuring non-retrogression. However, we note that a third crucial element to this must be human rights budgetary processes. Only by embedding these tools in our fiscal decision-making processes can we ensure that public and third sector bodies are resourced to comply and ensure that we are approaching all levels of governance through a human rights lens.

It is also worth highlighting the international definition of 'maximum available resources'. The duty of public bodies to use their maximum available resources to advance economic, social and cultural rights has important implications for Scotland's taxation system. Article 2(1) of ICESCR does not just refer to current budgetary allocations; it requires the state to maximise resources by economic or fiscal policy more broadly.<sup>35</sup> The Committee on Economic, Social and Cultural Rights in its *Concluding Observations on the Sixth Periodic report of the United Kingdom of Great Britain and Northern Ireland* highlighted the importance of ensuring that 'fiscal policy is adequate, progressive and socially equitable' and called on the UK to ensure it 'improves tax collection so as to increase resources available for

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<sup>35</sup> See Office of the High Commissioner on Human Rights (1990) *CESCR General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*. Available at: [General comment No. 3: The nature of States parties' obligations \(refworld.org\)](#) and Scottish Human Rights Commission (2019) *Human Rights budget Work: What, Why, How?* Available at: [hrbw-collected-briefing-papers-vfinal.pdf \(scottishhumanrights.com\)](#)

implementing economic, social and cultural rights<sup>36</sup>. The incorporation of ICESCR places a duty upon the Scottish Government to explore how to increase the resource base for realising economic, social and cultural rights for those who are most marginalised, including by introducing more progressive taxation measures within the boundaries of the devolved settlement. Earlier this month, the Poverty Alliance published a briefing<sup>37</sup> alongside other organisations in the third sector, including the Scottish Women's Budget Group, IPPR Scotland and Oxfam, putting forward the case for tax reform in Scotland in order to raise the revenue that is necessary to invest in our social safety net.

To ensure clarity and effectiveness, guidance provided to public, private and third sector bodies should include guidance around demonstration of progressive realisation, use of maximum available resources and non-retrogression.

As was noted with the initial procedural duty, the duty to comply must be implemented within a specified period of no more than two years from the Bill's commencement, and this should be stated in the Bill. Assuming this is underpinned by investment from the Scottish Government, this will allow public bodies enough time to adapt their practices, build capacity around human rights, identify concrete steps for progressive realisation of rights, and deliver on MCOs – any longer would be unnecessary delay in the Bill's full implementation, despite people living in poverty facing human rights infringements now.

## 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:

As with other policy priorities such as local child poverty action reports, we agree that public authorities should be obligated to report on what actions they are planning to take, and what actions they have taken, to meet duties set out in the Bill including maximising resources to support rights realisation of the most marginalised. This is crucial for ensuring transparency and accountability in the implementation of human rights.

It should be a requirement that public authorities consult with people whose rights are most at risk when developing these reports. Participants in our session with people with lived experience of poverty noted the need for consultation of people

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<sup>36</sup> Economic and Social Council (2016) *Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland* Available at:

[tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=E/C.12/GBR/CO/6&Lang=En](http://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=E/C.12/GBR/CO/6&Lang=En)

<sup>37</sup> IPPR Scotland, Oxfam Scotland, Poverty Alliance, CPAG in Scotland, Scottish Women's Budget Group, One Parent Families Scotland, and the Wellbeing Economy Alliance Scotland (2023) *The Case for Fair Tax Reforms in Scotland*. Available at: <https://www.ippr.org/news-and-media/press-releases/fair-tax-changes-in-scotland-could-boost-spending-on-key-national-priorities-by-hundreds-of-millions-per-year-say-campaigners>



living on low incomes to be embedded throughout planning, delivery and evaluation of the policy development process.

These reports should be about identifying gaps in rights realisation and setting out the action they are taking to address these gaps. Public authorities should be required to publish these reports annually with a specific focus on ensuring that the content of these reports is accessible and meaningful. We would also embed the need for these reports to focus on progressive realisation of rights to ensure that progress does not stagnate.

### **Question 23**

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

Please give us your views:

As outlined in our response to question 22, we believe that the obligation to report is essential in ensuring the accountability of duty bearers under this Bill. It is imperative that this reporting mandate aligns with and reinforces existing public body reporting obligations. It is essential to release clear guidelines regarding reporting requirements that are frequently updated.

There are many ways this could work. Both civil society organisations and people with lived experience of poverty noted the importance of participation and transparency in this process to ensure that human rights reporting it is not a tick box exercise.<sup>3839</sup> Public body reporting needs to not only focus on the activities an organisation has done or plans to do but also on the lived experience of rights holders and where there may be implementation gaps. The participation of rights holders, particularly those who's rights are most at risk – including named groups, those covered by 'other status' including those experiencing poverty- in report development is vitally important. It is also vitally important that reporting duties require public bodies to outline how they are fulfilling the requirements of Article 2 of ICESCR and advancing ESCRs using the maximum available resources.

One model that could provide this would be utilising similar provisions to those in the UNCRC Incorporation Bill. The UNCRC reporting model requires Scottish Government to develop guidance for public bodies on their reporting duties with the participation of children, young people, the Children's and Young Peoples' Commissioner Scotland, SHRC and anyone else who they feel is appropriate. In the context of the Human Rights Bill for Scotland, this guidance could also be followed here, but it would need to be developed in consultation with people's whose rights are most at risk, including people living on low incomes.

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<sup>38</sup> Poverty Alliance (2023) *Participation: Human Rights Bill for Scotland*. Unpublished.

<sup>39</sup> Human Rights Consortium Scotland, Scottish Human Rights Commission (2021), *All Our Rights in Law*. Available at: [https://hrcscotland.org/wp-content/uploads/2021/03/HRCS\\_all-our-rights\\_report\\_48pp\\_web\\_single-pages.pdf](https://hrcscotland.org/wp-content/uploads/2021/03/HRCS_all-our-rights_report_48pp_web_single-pages.pdf)



## **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:

As detailed in our response to Q21, we strongly support the necessity of demonstrating compliance. We have detailed in Q21 that this must be underpinned by adequate resource through human rights budgeting processes, particularly for local authorities to ensure that rights are able to meet at least the defined MCO level. This was highlighted in the Know Your Rights session with a local authority participant stated:

*'...we have had cuts after cuts- when we did our funding cuts, we looked through the third sector funding and we basically said, 'if we pull funding out of this, who isn't going to die' and that was the criteria, that is how brutal it is becoming and it is going to get worse'*

It is of further importance that MCOs are viewed as the absolute baseline for progressive rights realisation and not treated as a level to meet and then to maintain. This links into our earlier calls for robust reporting processes that foster year-upon-year improvement and progressive realisation.

## **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:

As detailed in our response to Q9, we support the inclusion of the right to a healthy environment 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 agree with the proposed duty to publish a Human Rights Scheme.

## **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:

Independent advocacy and advice are a vital way for people to access their rights. Independent advocacy is currently embedded within various pieces of legislation in Scotland and grants certain groups the right to advocacy, to be informed about advocacy, or imposing obligations on public authorities to provide these services<sup>40</sup> Nevertheless, a significant shortfall in resources has resulted in extended waiting lists and strained capacity to deliver these critical services. In addition, there are groups who do not fit into the established categories whose rights are frequently jeopardised by a lack of rights to advocacy. For example, there is no statutory provision of advocacy for individuals impacted by incarceration, people with experience of poverty, or care experienced adults, among others.<sup>41</sup>

The ability of all those who need independent advocacy to access it should be seen as an essential part of Scotland's justice system. We call on the Scottish Government to deliver and resource independent advocacy services for all those who need them to access remedy. We believe it is vital the Bill includes access to independent advocacy for all, and that plans to implement this take a human rights-based approach and prioritise those whose rights are most at risk, including people living on low incomes. We agree with proposals that Scottish Government Ministers should have to report on how they are ensuring access to these services in the Human Rights Scheme. We place a particular emphasis on the importance of adequately resourcing independent human rights information, advocacy and advice as we are currently hearing reports from our members of current advocacy and advice services being overwhelmed and similar sentiments were echoed in conversations with people with experience of poverty around the Bill.

During our engagement with people living on low incomes, participants were asked what kind of support they would need if they faced a rights violation participants emphasised the importance of impartial support and advice and access to legal aid. Many cited accessing advice through services they had already engaged with such as CAB. However, participants noted difficulties in accessing independent advocacy and advice. A key part of ensuring access to advice and advocacy is sustainably and fairly funding the services situated in communities that deliver this critical work.

Participants felt that there was insufficient information available currently about human rights and that people need to be able to access information and advice as a step to seeking remedy. This is in line with the findings of Human Rights

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<sup>40</sup>Human Rights Consortium Scotland, Scottish Independent Advocacy Alliance (2021) *Incorporating International Human Rights: Putting independent advocacy at the heart of new human rights statutory framework in Scotland*. Available at: [https://hrcscotland.org/wp-content/uploads/2021/03/HRCS\\_all-our-rights\\_report\\_48pp\\_web\\_single-pages.pdf](https://hrcscotland.org/wp-content/uploads/2021/03/HRCS_all-our-rights_report_48pp_web_single-pages.pdf)

<sup>41</sup> *ibid.*

Consortium's All Our Rights in Law project.<sup>42</sup> Poverty Alliance supports Human Rights Consortium's call for a step change in rights information provision and that Scottish Government should work with groups of people whose rights are most at risk to co-produce the development of a National Hub for Human Rights Information.<sup>43</sup><sup>44</sup> Interestingly this was also an idea that emerged in discussions with people with experience of poverty, as outlined in our response to Q43. We also note that this also reflects one of Scotland's second National Human Rights Action Plan.<sup>45</sup>

### *Legal Aid*

We were disappointed at the lack of focus on legal aid in this consultation. Legal aid is fundamental to guaranteeing equal access to justice for marginalised people and those who live in poverty, the very people for whom the rights in this Bill are particularly at risk. The Scottish Government has ample evidence around the current issues with legal aid, including the *Rethinking Legal Aid, an Independent Strategic Review report*, and from consultation responses around legal aid reform. We call on Scottish Government to urgently consult on legislative reform to rebuild our legal aid system to enable access to human rights justice for all.

### *Access to justice*

We echo wider calls regarding access to justice made by HRCS. In particular:

- Remove court fees for all equality and human rights cases.
- Introduce Qualified One-Way Cost Shifting.
- Reform the legal aid process and ensure that cost is not a barrier to achieving justice and challenging rights violations.

Lastly, we want to draw attention to wider recommendations we make in our joint report entitled 'Make Human Rights Justice a Reality' which will be published in the coming weeks.<sup>46</sup>

## **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:

In order for complaints processes to work for people with experience of poverty the existing mechanisms must be enhanced and designed in manner that embeds compassion and dignity as part of the process. We agree with points raised by

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<sup>42</sup> Human Rights Consortium Scotland, Scottish Human Rights Commission (2021), *All Our Rights in Law*. Available at: [https://hrcscotland.org/wp-content/uploads/2021/03/HRCS\\_all-our-rights\\_report\\_48pp\\_web\\_single-pages.pdf](https://hrcscotland.org/wp-content/uploads/2021/03/HRCS_all-our-rights_report_48pp_web_single-pages.pdf)

<sup>43</sup> *ibid*

<sup>44</sup> Human Rights Consortium Scotland, Poverty Alliance et al. (2023) *Make Human Rights Justice a Reality*. Unpublished.

<sup>45</sup> SNAP Leadership Panel, *Scotland's second National Human Rights Action Plan*. Available at: [snaprights.info/wp-content/uploads/2023/03/SNAP-2-March-2023-FINAL-PDF.pdf](https://snaprights.info/wp-content/uploads/2023/03/SNAP-2-March-2023-FINAL-PDF.pdf)

<sup>46</sup> Human Rights Consortium, Poverty Alliance, et al. (2023) *Make Human Rights Justice a Reality*. Unpublished.

organisations such as HRCS who note the need for the process to consider more than the procedural elements of the decision but also whether the fundamental rights of the individuals were protected during the process.

We know that people living on low incomes are less likely to seek redress due to being time-poor; having a lack of income to pay for legal fees or indeed public services that enable them to seek redress (i.e. transport to appointments, childcare, paid time off work etc); have lower levels of trust in complaints processes; and are less likely to have awareness of their rights and where to go for advice and support.<sup>47</sup> It is therefore central that the complaints process designed to identify and seek redress for human rights violations is co-produced with people with lived experience of poverty to ensure their needs are embedded into the process.

People who experience rights violations may have experienced trauma, especially if the person is experiencing poverty. In our session with people with lived experience of poverty, participants noted that human rights violations have impacts on mental health and a lack of support or flexibility from complaints processes can impeded a person from completing a complaints claim. In the development of the Scottish Government's trauma informed toolkit, it was found that one in seven adults in Scotland reported four or more adverse childhood experiences (ACE's) however those in the most deprived areas twice as likely than those in the least deprived areas to have ACE's.<sup>48</sup> It is therefore essential that any complaints processes be designed with a trauma informed lens, we would encourage this the use of the above mentioned National Trauma Toolkit as a starting point for this.<sup>49</sup>

Participants also raised the need for there to be one clear, standard process that people can follow. They highlighted that complaints processes can often be overly complex and inaccessible which disincentives people from initiating and persevering with complaints, particularly if the person is experiencing mental health struggles. For this reason, it is essential that there is clear guidance written in jargon-free, accessible language and available in a variety of spaces and formats (online, in-person forms, available in a variety of languages, accessible formats inc. braille).

Within this process, participants highlighted the need for flexibility to accommodate an individual's needs. For example, if a person uses English as a second language, has a disability or have experienced domestic violence, then there is a need for tailored approaches to support these individuals through the process. This both concerns trauma-informed emotional support as detailed above but also practical support through provision of financial support for transport and flexibility regarding appointment times and locations, particularly if the person has caring responsibilities. This is in addition to an efficient and widely understood Legal Aid system that

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<sup>47</sup> UK Government (2015) *Redress for people on a low income*. Available at:

<https://competitionandmarkets.blog.gov.uk/2015/03/13/redress-for-people-on-a-low-income/>

<sup>48</sup> Scottish Government (2021) *Trauma-informed practice: toolkit*. Available at: <https://www.gov.scot/publications/trauma-informed-practice-toolkit-scotland/>

<sup>49</sup> For more information see: <https://transformingpsychologicaltrauma.scot/>

ensures a person living on a low income does not face additional barriers to redress due to costs. It must be understood that any cost attached to accessing legal assistance or advice creates barriers to people living on low incomes. It is only through considering these structural mechanisms that support individuals through a process like seeking redress can we make this process truly equitable and ensure dignity for the person.

Lastly, participants spoke about their concerns regarding the use of compensation as a substitute for real change. They perceived that there was a risk of this complaints process becoming a culture of claims whereby public bodies who violate a person's rights are able to pay their way out of responsibility and thus fail to address the root causes of these issues and preventing further violations. It was felt therefore that the use of compensation should be mediated.

## **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 session with people with lived experience of poverty, participants were positive about the proposed changes. One participant had worked for a bank in a previous role and noted the concerted effort from management to meet SPSO requirements; it was felt there was therefore utility in having a human rights function for the SPSO. Participants felt that aspects of the proposal such as the ability for the SPSO to take verbal complaints and for the SPSO to investigate services without there being an official written complaint as making the process more accessible. This process was viewed as a good starting point. There were, however, concerns regarding the lack of general awareness of SPSOs and their role; it was felt for SPSOs to be effective, there must be greater efforts to boost awareness of these services.

We echo these sentiments and agree that the proposals are a good start. However, we do agree with the concerns raised by HRCS and other organisations regarding the lack of analysis around this change to the SPSO's role.

Additionally, there must be considerations made to ensure that interactions with the SPSO is effective, timely, trauma-informed and accessible. A quick search on the SPSOs website shows a current four month delay for allocations (as per 6<sup>th</sup> October 2023); for SPSO to function effectively, there must be adequate resource to ensure efficacy and timeliness. We would also welcome more research around people's experiences of going to the SPSO for complaints, particularly those with lived experience of poverty. Lastly, the process for reaching out to an SPSO with a human rights complaint should be designed in collaboration with people with experience of poverty to ensure that the process is dignified and informed by lived experience.

## Question 30

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

Please give us your views:

Poverty Alliance supports the Human Rights Consortium's answer to this question, in particular the stipulations that:

- Extending the responsibility of scrutiny bodies is the right approach.
- Scrutiny bodies must be adequate and securely resourced in order to fulfil these functions.
- There must be a collaborative approach across different scrutiny bodies.
- Provision must be made to ensure adequate information sharing between scrutiny bodies.

Within scrutiny bodies, there is a need to meaningfully embed participation of rights holders into the scrutiny process. This requires significant resource and investment to help public bodies break down barriers to ensure participation of people who may be excluded from participatory processes such as people with experience of poverty. We refer back to our answer for Q13 for information on best practice for this.

Participants recommended that reporting should involve scrutiny by the Scottish Human Rights Commission however with embedding participation of people living on low incomes through this process. This must be underpinned through increased investment and resource for the SHRC to break down additional barriers faced by people living on low incomes to allow them to participate in scrutiny processes. Again, refer to Q13 for detail on this.

There is also a need for scrutiny in this capacity to take place at a local level, this would ensure that public authorities are involving lived experience in their rights realisation processes. This could follow the examples of localised poverty and fairness commissions for example End Poverty Edinburgh or Dundee Fighting for Fairness.

## Question 31

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

Please give us your views:

We support expanding the powers of the Scottish Human Rights Commission, in particular we call for the SHRC to have the power to:

- Provide legal advice
- Raise legal proceedings in its own name
- Conduct investigations
- Conduct inquiries in less limited circumstances
- Require and compel information

- Make unaccompanied and unannounced visits to any human rights duty bearer
- Hold public hearings and require duty bearers to be present
- Issue binding guidance
- Recruit more members of the Commission to represent more voices and experiences of Scottish society<sup>50</sup>

We also call on the Scottish Government to adequately fund the Scottish Human Rights Commission. As our National Human Rights Instrument the Scottish Human Rights Commission has an important role to play. However, it currently received significantly less funding than comparative NHRI's and this has an impact on its scope, even within the current legislative framework. An increase in funding is required to ensure that the organisation is able to carry out the key scrutiny, monitoring and investigatory powers that will help to ensure accountability.<sup>51</sup>

### **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:

Poverty Alliance supports the Human Rights Consortium Response on this question.

### **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 proposed approach to standing allowing for individuals and organisations to simply demonstrate sufficient interest in cases related to human rights. We however note the issues we have raised in Q8 regarding resource and funding for third sector organisations in order to support individuals in human rights cases. Latterly, we echo calls by HRCS to make amendments to court rules to clearly define the criteria for 'sufficient interest' so there is clarity for organisations and individuals who are considering human rights cases.

### **Question 34**

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

Please give us your views:

Poverty Alliance supports the Human Rights Consortium Response on this question.

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<sup>50</sup> Scottish Human Rights Commission (2023) *A Stronger Human Rights Commission for Scotland*. Available at: <https://www.scottishhumanrights.com/media/2505/a-stronger-human-rights-commission-for-scotland.pdf>

<sup>51</sup> *ibid.*



### 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?**

We disagree that existing judicial remedies are sufficient in delivering effective remedy for rights holders. As called for by the SHRC, while the Scottish Courts are currently able to issue a wide range of remedies, two specific types of remedies – expected as part of international legal standards – are not available.

The first of these is the Measures to Rehabilitate.

This can include medical and psychological care as well as legal and social services that might be necessary to repair the human rights violation caused. This is at times essential given the traumatic effects that human rights violations can have on victims. This was echoed in our session with people living on low incomes who noted that mental health struggles and previous traumatic interactions with human rights violations can make people sceptical of their ability to persevere with seeking justice. It was considered critical that people were offered support for this to achieve justice.

Secondly, there should be a guarantee of non-repetition.

When we asked people living on low incomes what they think should happen when things go wrong, they described the need for a clear, succinct process for people to follow which has outcomes which are non-negotiables.

Participants had concerns that without the legal assurance that duty bearers will be forced to deal with structurally reinforced rights infringements, that organisations who are found to have infringed on an individual's human rights may refuse to take responsibility or that organisations may simply offer compensation instead of changing structures, systems, and policies to avoid rights violations in the future. As put by SHRC, the guarantee of non-repetition is intended to ensure that current violations are not perpetuated over time. They intend to respond to structural situations, that require measures that go beyond the sole victim of the case in question. Participants supported this approach noting that there must be an avenue to encourage public bodies to acknowledge mistakes and remedy these, a process whereby there will be less harm to them if they fix the problem.

### **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:

Poverty Alliance support the HRCS response to this question. Courts should be able to 'strike down' laws or issue declarators of incompatibility for any part of Scottish Parliament law that is not compatible with rights in the Bill.

### **Question 38**

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

Poverty Alliance supports the Human Rights Consortium Scotland's response to this question.

### **Question 39**

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

Please give us your views:

We strongly agree that MCO's should be established through a participatory process. As detailed throughout this consultation response, people living on low incomes are more vulnerable to rights infringements and less resourced to be able to advocate for themselves in situations of rights infringements. It is therefore imperative that we ensure that people living on low incomes are adequately represented in these participatory processes and that participants in these processes cover a vast intersection of identities. These participatory processes must be designed and conducted in-line with guidance produced in partnership with people living on low incomes, the Poverty and Inequality Commission and the Poverty Alliance.

Contextually, we must consider that the UN has already outlined minimum core standards for several ESCR rights and provides guidelines for how to do so. As international human rights are supposed to be minimum standards for human dignity, we should take note at the levels defined by the UN and ensure these are taken into consideration. Given that MCO's set the absolute minimum, it is essential that these are clear, specific, and adequately communicated. We therefore share concerns with HRCS that there is a lack of clear timescales for MCO's to be defined and echo their calls that this timescale should be no more than two years after the Bill received Royal Assent; only this can ensure that the full duty to comply is introduced and adequate.

### **Question 40**

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

Please give us your views:

The Poverty Alliance agree with the proposals but with additional reporting on the steps around maximum resources available and definitions around how to measure the maximum level of resources; the exact limitations given devolution - this is particularly important for groups such as asylum seekers and people receiving social security. There should be greater emphasis with this scheme on the use of participation and impartial people living on low incomes.

### **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:

We support the proposal to enhance the assessment and scrutiny of legislation introduced to the Scottish Parliament in relation to the rights in the Human Rights Bill and echo the calls of HRCS.

### **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:

As we have detailed in Q20, adequate funding based on a human rights budgeting approach is central to building capacity in the public sector.

### **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:

In our facilitated conversation with people with experience of poverty, we asked participants how they felt about the introduction of a Human Rights Hub as recommended by HRCS and the SHRC. The HRH would function as a centralised source of information on human rights and provide clear, concise and accessible information to anyone who needs it.<sup>52</sup> The HRH would be coproduced by people who are seldom heard and more vulnerable to rights infringements at a national level but

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<sup>52</sup> Human Rights Consortium Scotland & Scottish Human Rights Commission (2020) *All our Rights in Law: views from the wider public*. Available at: [https://hrcscotland.org/wp-content/uploads/2021/03/HRCS\\_all-our-rights\\_report\\_48pp\\_web\\_single-pages.pdf](https://hrcscotland.org/wp-content/uploads/2021/03/HRCS_all-our-rights_report_48pp_web_single-pages.pdf)

used to support community organisations to divulge this information throughout local communities.

Participants were overall positive about this approach and believed that there was a utility in such a body. However, there was a feeling that more must be done to ensure awareness of rights happens at an early age through school to ensure that awareness was universal. It was felt that information on rights needed to be displayed in work places and other spaces where people regularly go. It was clear that information needed to be brought to communities rather than relying on people to seek out information on rights themselves. The use of community based educators was considered important as was the need for this hub to be truly co-produced to ensure it was not a 'top down' approach where people in communities are told what their rights are and instructed in how to advocate for them as opposed to a partnership approach.

This opportunity however is only possible through sustainable and fair funding for the third sector who are often best placed to work with those seldom heard communities vulnerable to rights infringements. This point is also important in regard to ensuring good availability of advocacy and advice which is again likely to be provided by the third sector. We have detailed more on advocacy in question 27.

## **Question 44**

### **What are your views on monitoring and reporting?**

Please give us your views:

Along with HRCS, we agree that there must be a public bodies' reporting requirements. This should function in the following way:

- Public bodies should have to consult with people whose rights are most at risk when developing these reports, including to ensure that the content is accessible.
- The Scottish Government should be required to consult with people whose rights are most at risk when developing guidance on reporting requirements.
- Public bodies should also be required to submit their reports to the Scottish Human Rights Commission for monitoring, and the SHRC must ensure representation of people whose rights are most at risk including people living on low incomes.

#### **For more information, please contact:**

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