

**It is time to put #AllOurRights in law for everyone.**

## **Briefing on the Scottish Human Rights Bill**

**We all have human rights.** These are set out in international human rights treaties and have been agreed to by the UK Government.

**But we need to do more to make all of these rights a reality in everybody's lives.**

**The next best step towards this is to put #AllOurRights into Scots law so that:**

- **No one is left behind or ignored**

For so long, too many people in Scotland have lived without fulfilment of their economic and social rights, for example with damp housing, food insecurity, gaps in their education, and lack of access to healthcare. Austerity measures, the cost-of-living crisis, and the impact of COVID-19 measures only deepened poverty and disadvantage for many. Structural racism is endemic, leading to persistent discrimination and inequality for people of colour or from ethnic minorities.

A core principle of human rights is that they provide equal protection for everyone. They demand that particular attention is given to those whose rights are most at risk. Putting our international human rights into Scots law ensures an essential baseline of human rights for all, not some, so that no one is left behind.

- **Public authorities embed rights into their decision-making**

All too often, people's experience of respect for their human rights is patchy and uncertain. It often depends on a particular member of staff or whether there is enough budget to meet their needs. Building on UNCRC implementation, and the best practice that already exists, this Bill will ensure that a human rights-based approach is increasingly taken to determining priorities for budgets, for planning, for policy, for services. It requires a robust evidence base about who is left behind and the reasons for this. It gives fresh impetus and necessity to embed participative decision-making, particularly hearing from those whose rights are most often neglected.

- **We have more rights protections in law, not less**

The UK has gone backwards on protecting human rights for all of us. Recent immigration legislation has said that the Human Rights Act (HRA) does not fully apply to people seeking asylum. Either we all have human rights, or none of us do. There has also been recent proposals to repeal the HRA and replace it with a watered-down version, stripping back many of our rights.

With this threat of regression at a UK level, it is more important than ever that a Scottish Human Rights Bill says clearly that the only way is forward – more human rights in law, bringing more accountability, and making more of our rights real.

- **People will be able to name and claim their rights**

**Human rights are about a sharing of power between the state that makes decisions, and the rights-holders that are impacted by those decisions.** Putting #AllOurRights in law, with strong duties to comply with them, will mean that individuals and groups will be empowered to name and claim their rights. They will be able to access justice when their rights are not respected, even ultimately going to court where necessary. This empowering law will drive a culture of human rights which demands protection of a person's dignity.

## About the Bill

- **The story so far....**

In the UK, **we currently have some of our international human rights directly in our law.** The European Convention on Human Rights was incorporated into our law in the Human Rights Act 1998 and the Scotland Act 1998. This mainly incorporated what is known as our civil and political rights - things like freedom from torture, the right to life, the right to a fair trial, freedom of religion and belief. This means that all law and public authority actions must be compatible with the rights. It also means that, if necessary, individuals can take public authorities, some private bodies, and government to court to protect these rights. **Every day, the HRA protects all of us, including some of the most vulnerable people in the UK.**

However, **the UK has signed up to other international human rights dating back to 1976 that are still not directly embedded in UK law.** Many of these missing rights are about the basic essentials that we all need to live a life of dignity, such as food, adequate housing, and access to healthcare.

- **Then in March 2021....**

A National Taskforce on Human Rights Leadership recommended that these missing international human rights treaties, and the right to a healthy environment, should be incorporated into Scots law. This was accepted by the Scottish Government in 2021.

- **Now...**

**The Scottish Government has committed to introducing a Human Rights Bill for Scotland by June 2024,** so that it can be passed before the next Scottish Parliament elections in May 2026. This Bill was also in the SNP Manifesto, in Programmes for Government, and in letters and assurances from Scottish Ministers.

The Scottish Parliament unanimously passed the [UNCRC \(Incorporation\) \(Scotland\) Act 2023](#), embedding children's rights into Scots law. From July 2024, the UNCRC will become binding on decisions affecting children and young people in Scotland. This wider Scottish Human Rights Bill builds on the UNCRC Act and takes a broadly similar approach.

## What will be in the Bill?

There was a [public consultation](#) on the Bill proposals in 2023, so we know much of what the Bill will include.

The Bill will incorporate **four more international human rights treaties into Scots law**. These are:

- **Rights on everyday essentials:** The International Covenant for Economic, Social and Cultural Rights ([ICESCR](#)) – this includes things like the right to adequate housing, the right to food, the right to the highest attainable level of physical and mental health.
- **Women’s rights:** The Convention for the Elimination of all forms of Discrimination Against Women ([CEDAW](#)).
- **Rights related to race:** The International Convention for the Elimination of all forms of Racial Discrimination ([CERD](#)).
- **Disabled people’s rights:** The UN Convention on the Rights of Persons with Disabilities ([CRPD](#)).

**The Bill will also include the right to a healthy environment**. This includes the right to clean air, safe water, and non-toxic places to work, live, study and play, amongst others.

All new legislation that is passed by the Scottish Parliament will have to comply with these rights.

There will be **new duties on public bodies** to take these rights into account, and a duty to comply with most of them. This duty to comply will have two parts: delivering Minimum Core Obligations (MCOs) for everyone, all of the time; and taking progressive steps to realise these rights, using the maximum available resources.

The Bill consultation also asked questions around other parts of the Bill, including:

- A requirement to deliver these rights equally for all. There would be a requirement of non-discrimination against certain groups, for example older people and LGBTI people, and asked about other groups too.
- Requiring courts and others to apply the principle of dignity to decisions.
- Defining MCOs– these are the baseline level of rights that need to be delivered immediately, for everyone, all of the time. These will be defined through a ‘participatory approach’.
- More powers for the Scottish Human Rights Commission (SHRC) and Children and Young People Commissioner (CYPCS), to hold government accountable on rights.
- Improvements on how people can access justice. This includes enabling groups and organisations to take cases to court, not only individual victims. It also includes non-court routes to justice such as through the Scottish Public Services Ombudsman (SPSO).
- Requirement on the Scottish Government and public bodies to report on what they have done, and will do, to realise all of the rights.

- There were also questions about implementation. These included questions around advocacy and advice services, about participation across the Bill, and about guidance and capacity building for public bodies.

## **What we want to see in the Scottish Human Rights Bill**

We know that this Bill is complex - it incorporates multiple rights and is being developed in the midst of devolution uncertainty and constraints. We know too that it is ambitious, it is ground-breaking, and it affects so much. Scotland is the first part of the UK to plan for direct incorporation of these rights. We want, and all of us need, this Bill to be written well and implemented fully.

### **We strongly support putting #AllOurRights in law, and we are asking the Scottish Government to ensure that:**

- **Enforceability duties apply to as many rights as possible.**

This Bill needs to grapple with tricky issues around devolution limits related to equality. The Scottish Government are therefore currently proposing that the best way to deal with this is to only place a duty to take into account rights related to the 3 group treaties (CEDAW on women's rights, CRPD on disabled people's rights, and CERD on rights related to race). The stronger duty to comply will only be on our everyday essentials rights (ICESCR) and the right to a healthy environment.

We don't want this Bill to end up in court because of devolution problems. But we are urging the Scottish Government to go as far as possible on applying the strong compliance duty also to the group rights treaties – and in particular, on standalone rights for disabled people. The Government itself says, that it is the duty to comply that is 'transformative' and we agree.

- **The Bill makes big improvements to how people can access justice.**

The consultation was a bit vague on many details around access to justice. Access to justice means that everyone who experiences an infringement of their human rights can get something done about it. The Bill needs to include a right to remedy that is accessible, affordable, timely and effective. It also has to make sure courts can deal with systemic rights issues, and that there are really good non-court ways to secure justice. We are calling for parallel steps to urgently reform the legal aid system in Scotland.

- **Timescales are in the Bill.**

The first procedural duties should come into effect six months after the passage of the Bill. Then a maximum of 2 years to get MCOs and guidance all into place and then the duty to comply should take effect.

- **They must do all that they can to widen the scope**

The scope of the UNCRC Act had to be narrowed down, so that it only applies to laws passed entirely by the Scottish Parliament. It also does not apply to laws

passed by Westminster before the Scottish Parliament began. The Scottish Government need to draft this Scottish Human Rights Bill so that the scope can be widened if devolution changes. They need to audit what is currently in or out of scope, and make sure that future legislation is drafted so that it is in scope from the get-go.

- **Start planning for implementation now.**

The culture change that is required for full implementation takes time and resource. But, we know what our international human rights are already, so there is no need to wait for the Bill to pass before planning for its implementation. The Scottish Government must publish an implementation plan that begins in 2024.

## What now?

Over the last 3 years, the Scottish Government has had an Executive Board and Advisory Board advising them on the Bill. They also set up 'lived experience' boards – you can read about [their advice here](#). We need to make sure that the Government fully take on board their advice.

Civil society, community groups, and individuals within Scotland have campaigned for this Bill for years and the UN has recommended incorporation of all UN rights treaties into UK law multiple times.

**There is enormous support to see this Bill introduced from across Scottish civil society. It is the right time to put #AllOurRights in law for everyone.**

## Your voice

Whatever issue you work on, and whatever group you advocate with or for – this Bill is important.

You can get loads of information about [the Bill here](#).

Join the Consortium network for [free here](#).

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Want to discuss or have a specific question about the Bill? Contact us at [info@hrcscotland.org](mailto:info@hrcscotland.org)