

The Scottish Children's Reporter Administration (SCRA) welcomes the opportunity to provide this Consultation Response.

Our Vision: Children will be listened to, protected and supported to realise a positive future where they are safe, valued and respected.

Our Mission: We protect and support Scotland's children by making high quality decisions, upholding their rights and working collaboratively as compassionate, inclusive corporate parents to enable the most positive and personalised experience of their Children's Hearing.

Our Values: Our values are the shared motivations, beliefs and behaviours that underpin all that we do.

Supportive We work with kindness to support children and families, our Partners and each other.

Child Centred Children are at the heart of everything we do.

Respectful Everyone is respected and treated fairly, inclusively and lawfully.

Accountable We are responsible for our decisions, our ethics and our learning.

The Scottish Children's Reporter Administration (SCRA) is a national body focused on children and young people most at risk. SCRA was formed under the Local Government (Scotland) Act 1994 and became fully operational on 1st April 1996.

The Children's Reporter works in the children's hearings 'system' - Scotland's statutory approach to child protection and children in conflict with the law. Concerns about child protection or children in conflict with the law are assessed by professionals. If a compulsory supervision order may be required then the circumstances for a child will be considered by Children's Reporters, who will decide if the circumstances need to be considered by panel members in a Children's Hearing. A Children's Hearing is the tribunal which can respond to concerns about a child's circumstances (whether about the care or treatment of the child by adults or the behaviour of the child) and can address concerns using a compulsory supervision order, or CSO.

In the Children's Hearing:

- the rights of children and families are respected.
- the needs of children or young people are addressed in an integrated approach which considers all the circumstances of the child and the child's welfare.
- the welfare of the child remains at the centre of all decision making and the child's best interests are paramount throughout.
- the child's engagement and participation is crucial to good decision making.

The Children's Hearings System is the operational setting in which SCRA and our partner agencies work.

The aim is to protect vulnerable children aged 0-18 by delivering tailored solutions which meet the needs and rights of the individuals involved. In turn this helps build stronger families and safer communities. You can find out more about our work on our website - www.scra.gov.uk

The role and purpose of SCRA is:

- To receive referrals for children/young people who may be at risk.
- To make sure that other public agencies carry out enquiries and assessments into children's circumstances so we can make informed decisions about children referred to us.
- To make the decision on whether to refer a child to a Children's Hearing, if they need compulsory measures of supervision.
- To draft the grounds for any referral to the Hearing.
- To arrange for Hearings to take place when we decide that compulsory measures of supervision are necessary and where there is sufficient evidence to prove the grounds.
- To provide accommodation for Children's Hearings.
- To provide information, support and help to people coming to Children's Hearings within the context of our statutory role .
- To maintain the independence of the Hearing and to support fair process.
- To conduct Children's Hearings court proceedings by leading evidence in proof proceedings and appearing in appeals against the decisions of Children's Hearings.
- To support children, young people and families to participate in Hearings
- To disseminate information and data to influence and inform the wider Children's Services community

- To work collaboratively with partners to support and facilitate research and policy developments for the benefit of children.

SCRA are pleased to be able to provide information to the consultation; we hope it is useful and we would be happy to provide additional information or to provide further explanation if that is required.

Questionnaire

The questions in this document refer to information contained in '[A Human Rights Bill for Scotland: Consultation](#)'.

Questions 1 – 5 refer to Part 4: Incorporating the Treaty Rights

Question 1

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

Answer:

- SCRA supports the inherent worth of every human being.
- We understand that dignity can be used as a yardstick across human rights but also think that in individual 'cases' the application of the concept could be subjective. Every human can choose to behave with dignity and to treat people with dignity, or not.
- The international law is fluid and dynamic and is also layered. This can make navigation of the relevant law, general comment or minimum core obligation difficult. Clear and applicable threshold tests can make the law more accessible.
- It may be that the interpretive clause should be in relation to inherent human worth, with concepts such as dignity one way to assess that worth. We are unable to visualise dignity as a helpful interpretive provision in our proceedings – either at the children's hearing or associated court proceedings.

Question 2

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

Answer:

- We would hope that minimum core obligations are clear and don't require to be defined through the lens of any additional concepts.
- We need to see how this proposal will be framed in order to fully understand how it might work with reference to our statutory functions.

Question 3

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

Answer:

- We agree that a wide net requires to be cast in relation to human rights in order to catch all of the relevant international law, materials and mechanisms.
- We think that there are probably two ways to do this:
 - 1) a general approach which indicates how and where international law, materials and mechanisms shall sit in Scots domestic legislation or
 - 2) a detailed approach which sets out the framework and dependencies.Given the continued relevance of the Human Rights Act 1998, the Equalities Act 2010 and the plan to incorporate UNCRC into Scots domestic law, we think that, at this stage, the 1st approach might be easier to provide an overarching framework across current and in process legislative provisions.

Question 4

What are your views on the proposed model of incorporation?

Answer:

- We think a clear and accessible human rights framework is crucial.
- We think the proposed model is clear – but could cause some complication by duplication, in repeating the international treaties.
- It might cause some difficulty in navigating the international, UK and Scots domestic legislation.

Question 5

Are there any rights in the equality treaties which you think should be treated differently? If so, please identify these, explain why and how this could be achieved.

Answer:

- At this stage we are not able to answer this question. It appears to us that some rights may need additional support and resourcing to be fully realised and that any guarantee of such supports is not within legislative competence.

Questions 6 – 11 refer to Part 5: Recognising the Right to a Healthy Environment

Question 6

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

Answer:

- The views of SCRA staff in relation to the right to a healthy environment were varied. Staff said that a healthy environment was clean, sufficient, appropriate, safe, respectful, promotes physical and mental health and people talking about what they need. Staff were concerned about pollution and how that can be managed and about the legacy for future generations of decisions taken today.
- The recognition by the UN General Assembly of the human right to a clean, healthy and sustainable environment on 26th July 2022 captures what SCRA staff wanted to say about this.

Question 7

If you disagree please explain why.

Answer:

No answer given.

Question 8

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

Answer:

- We think consideration should be given to setting out procedural aspects in guidance, rather than in primary legislation. The guidance could be statutory or non-statutory but may provide a more flexible, adaptable and applicable model for implementation than legislation.

Question 9

Do you agree or disagree with our proposed approach to the protection of healthy and sustainable food as part of the incorporation of the right to adequate food in ICESCR, rather than inclusion as a substantive aspect of the right to a healthy environment? Please give reasons for your answer.

Answer:

No answer given.

Question 10

Do you agree or disagree with our proposed approach to including safe and sufficient water as a substantive aspect of the right to a healthy environment? Please give reasons for your answer.

Answer:

No answer given.

Question 11

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

Answer:

No answer given.

Questions 12 – 18 refer to Part 6: Incorporating Further Rights and Embedding Equality

Question 12

Given that the Human Rights Act 1998 is protected from modification under the Scotland Act 1998, how do you think we can best signal that the Human Rights Act (and civil and political rights) form a core pillar of human rights law in Scotland?

Answer:

- This legislation probably needs to be written within the context of the Human Rights Act 1998, the Scotland Act 1998 and Equalities Act 2010.
- Given recent experience the legislation should be confined to those matters fully devolved to the Scottish Parliament and/or the legislation passed since its inception and future legislation within its competence.
- Whilst this may impose some limitations that may be preferable to any future protracted delay in implementation in Scotland.

Question 13

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

Answer:

- For SCRA staff participation means a right to have a say; a right to listen when things that will impact you are being discussed by others; making informed decisions and contributions; being involved and making a difference in your own life; transparency; the ability to challenge decision making; to be told in advance about decisions affecting you; to be consulted.
- Many of the responses appear to be about procedure and about actions, Clear national expectations for public bodies around work and how people affected by the work are involved in design, implementation and evaluation seem to be important.
- Participation work has been through massive change in recent years. SCRA supports further engagement from Scottish Government around this specific area of work.

Question 14

What are your views on the proposed approach to including an equality provision to ensure everyone is able to access rights in the Bill?

Answer:

- SCRA staff were unsure about this. They felt that a clause could be good, but needed to be backed up by education and resources to be meaningful and that a clause alone was not going to be the solution.
- SCRA think that the Equality Act 2010 needs to provide some of the legal context for this legislation. However, we do not think that the contents of the Equality Act require to be re-stated. We think this could dilute the effectiveness of the Equality Act and associated actions (like statutory impact assessment) and could be confusing.
- We think the clear position that human rights are universal, indivisible, interdependent and interrelated should be enough to ensure that equal access to rights is enshrined and that other approaches risk becoming too layered or complicated to make sense to people.

Question 15

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

Answer:

No answer given.

Question 16

Do you agree or disagree that the use of 'other status' in the equality provision would sufficiently protect the rights of LGBTI and older people? If you disagree, please provide comments to support your answer.

Answer:

No answer given.

Question 17

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

Answer:

No answer given.

Question 18

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

Answer:

- SCRA staff said that a right for older people should include access to services within a reasonable timescale and assistance to access services where required: no age discrimination; good health care; good transport; no poverty; affordable heating; no loneliness; financial support; places to socialise; to be looked after and respected; to have dignity.
- SCRA staff were also clear that an equal society is one where bigotry of any kind is not tolerated and that education is extremely important. In relation to the protected characteristics people can hold very strong opinions and these can be difficult to change. A clear and firm position from Government could help shift long held ideas.

Questions 19 – 26 refer to Part 7: The Duties**Question 19**

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

Answer:

- SCRA think that considering the outcome of the UNCRC Bill reconsideration in relation to duty makes sense.
- We agree that duty bearers are likely to be those bodies carrying out devolved public functions and include private bodies acting under a contract or other arrangement with a public body.

Question 20

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

Answer:

- SCRA would want to know how long the initial procedural duty would last – and if it is time limited perhaps a grace period before the duty to comply is enforced may be a clearer approach.

Question 21

What is your view on the proposed duty to comply?

Answer:

- Given the breadth of rights being proposed in this consultation there may be a unwieldy compliance burden. This could be an unintended consequence.
- The compliance and reporting regime for the legislation probably needs to be robust and fully developed in advance early on. Duty bearers need to adjust operations to fit the compliance and reporting regimes – in advance of the regimes operating with full consequential action.

Question 22

Do you think certain public authorities should be required to report on what actions they are planning to take, and what actions they have taken, to meet the duties set out in the Bill?

Answer:

- Public bodies already have established reporting requirements and would fulfil any statutory reporting as laid out. A requirement to report on a plan for reporting would seem to be an additional burden that may not be proportionate.
- It might be more effective to require public bodies to state their plan for any reporting requirement to Government. This would allow each body to align the requirement with existing reporting, where appropriate, and to propose new reporting where necessary. Government would then need to determine whether these plans were sufficient, or not.

Question 23

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

Answer:

- We think the reporting should aim to reflect practice across services where human rights, children's rights and equalities duties and obligations are integrated, aligned and have clear proximity. Any approach to reporting for relevant bodies should try to take to the same approach.

Question 24

What are your views on the need to demonstrate compliance with economic, social and cultural rights, as well as the right to a healthy environment, via MCOs and progressive realisation?

Answer:

- SCRA would ask that further refinement is done on this ask, as the demonstration of compliance could be a burden, and some areas of required compliance may not be as relevant across each public body.

Question 25

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

Answer:

No answer given.

Question 26

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

Answer:

- SCRA would like Government to make clear to everyone what the passing of human rights legislation means for them. This could take the form of a human rights scheme, but could also be managed in other ways. We think the key thing is the legislation.

Questions 27 – 37 refer to Part 8: Ensuring Access to Justice for Rights Holders**Question 27**

What are your views on the most effective ways of supporting advocacy and/or advice services to help rights-holders realise their rights under the Bill?

Answer:

- SCRA thinks that it is always very difficult for a single human who does not agree with the system. Consequently any system needs to be designed to recognise and support the individual – at every stage of their involvement with it.
- People should know what their rights are and this should be consistently and sustainably promoted.
- People should be able to recognise when their rights have not been met, have been compromised or have been breached.
- People should know what to do in order to challenge anything which has affected their rights and we agree that remedy should be effective, timely, accessible and affordable.
- Advocacy and advice will be an important part of this process, and the process should be incremental and build from front line resolution to court inquiry.

Question 28

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

Answer:

- Front line complaint resolution in an effective and timely manner gets to the heart of any issue quickly and can resolve things in the most appropriate ways for complainers. Public bodies in Scotland have existing statutory requirements in relation to complaints and there is existing and effective independent arbitration from the Scottish Public Services Ombudsman.

Question 29

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

Answer:

- We agree with plans to strengthen the SPSO remit by putting human rights at the heart of the existing system.

Question 30

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

Answer:

- We have some concern about the legal basis for sharing information about a specific complaint across different scrutiny bodies, if that has not been done in the first instance by the complainer. If it has been done by the complainer we would expect each public body to take the front line resolution response to the areas of the complaint which relates to them.
- We agree that assessment across scrutiny bodies for overlap or systemic issues seems to SCRA to be of importance – but we think further scoping of the appropriate mechanism for this needs to be done.

Question 31

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

Answer:

- SCRA would want to see more detail about the proposed change in power for the SHRC and the impact that any change is intended to have in Reporter decision making and the decision making of the children's hearing.

Question 32

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

Answer

- SCRA are not entirely clear about what is meant by mirroring these powers for the CYPCS. As in Q31 we would need to see more detail about the proposals before we are able to give an opinion.

Question 33

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

Answer:

- People and organisations should know what to do in order to challenge anything which has affected rights. Any remedy should be effective, timely, accessible and affordable.
- As such, thresholds for legal intervention need to be clear and unequivocal.

Question 34

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

Answer:

No answer given.

Question 35

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

Answer:

- Effective remedy needs to link to the initial complainer and what they want to achieve from beginning any relevant action.

Question 36

If you do not agree that existing judicial remedies are sufficient in delivering effective remedy for rights-holders, what additional remedies would help to do this?

Answer:

No answer given.

Question 37

What are your views on the most appropriate remedy in the event a court finds legislation is incompatible with the rights in the Bill?

Answer:

No answer given.

Questions 38 – 44 refer to Part 9: Implementing the New Scottish Human Rights Act

Question 38

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

Answer:

- SCRA agree with the phased implementation approach and with the use of a legislative sunrise clause. 11

Question 39

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

Answer:

- SCRA sees value in this and we are interested in the details of the participatory approach to be used.

Question 40

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

Answer:

- SCRA staff were clear that a legal framework for human rights in Scotland needs to be clear and accessible; and needs to be supported with publicity and education. This may need to be tailored towards different audiences. There should be no barriers to accessing rights across Scottish society. There has to be an obvious and accessible way to challenge and public bodies should be audited in relation to their adherence to the scheme or rights framework. The approach we take should be based on people and needs to be cross-sector.
- We think it will be helpful to see how the legislation and the scheme fit together. We support clear governance, accountability and reporting but think that a clearer sense of what that will look like in our work is important.

Question 41

What are your views on enhancing the assessment and scrutiny of legislation introduced to the Scottish Parliament in relation to the rights in the Human Rights Bill?

Answer:

No answer given.

Question 42

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

Answer:

- SCRA staff felt that investment in a generic online resource about rights could be helpful – and could be a link for existing public body websites.
- Consistent messaging to and from public bodies, alongside a common aim, was felt to be essential.
- Structured and managed interagency discussion and partnerships were seen to be helpful, as was a clear data-sharing framework with defined responsibilities and accountabilities.
- Staff did not underestimate the difficulties in this work and were clear that there are existing barriers, difficulties and people experience discrimination every day. However, SCRA staff had an optimistic vision of the incremental improvements that human rights legislation could and should bring to Scotland.

Question 43

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

Answer:

No answer given.

Question 44

What are your views on monitoring and reporting?

Answer:

No answer given.

About you

Please tell us which of the following categories best describe you (select all that apply):

- **Legal profession**
- Organisation - Private
- **Organisation – Public**
- **Rights holder**
- **Other – please specify**

SCRA Practice and Policy Team October 2023