

Human Rights Bill Consultation – Fife Centre for Equalities Response

About Fife Centre for Equalities:

Fife Centre for Equalities (FCE), funded by Fife Council, started in 2014 with the vision to inspire and enable everyone we work with to take action that makes Fife a more equal, fairer place to live, work and study.

FCE's mission is to develop a harmonised approach to build a collective voice to champion equality, diversity, inclusion and social justice.

Our values are to work with honesty, integrity, respect and transparency, and strive to demonstrate a fully inclusive approach in everything we do. We want everyone we work with to share these values in the belief that they will help make Fife a fairer and more equal place.

For more information please visit <https://centreforequalities.org.uk>, email info@centreforequalities.org.uk, call 01592 645310 or write to us at New Volunteer House, 16 East Fergus Place, Kirkcaldy KY1 1XT.

A special thanks to:

- **People First Scotland (Fife).**
- **The attendees of our consultation workshop on Tuesday 26 September 2023.**

For their inputs to this response.

Incorporating the Treaty Rights	
1.	What are your views on our proposal to allow for dignity to be considered by courts in interpreting the rights in the Bill?
2.	What are your views on our proposal to allow for dignity to be a key threshold for defining content of MCOs?
Response to Q1 & 2: FCE agrees that dignity should be at the heart of defining the minimum core obligations, however there should be other factors that compliment this. From our consultation, it was found that dignity is valued differently for different groups of people.	

We mean by this that we think that there is a need to carefully consider how the concept applies to groups of people from different protected characteristics and their lived experience, due to a risk of unequal treatment.

This is particularly in relation to people who have had to develop coping mechanisms to endure discrimination, repeated trauma, or other demeaning attacks on their dignity (e.g. because of a disability, or by being from a specific ethnicity or sexual orientation) over their lifetime. From conversations with our services users, we know that while several individuals react to unfair treatment from the first incidence, and gain confidence over their lifetime in doing so, many choose to adopt a higher threshold of 'tolerance' and decide to ignore a degree of everyday microaggressions in order to get by at the daily level.

People in those circumstances are likely to react less indignantly to an injustice compared to someone experiencing it the first time. We therefore think the concept needs to be carefully considered by courts, so that not only persons who have the confidence, psychological outlook or social capital required to challenge undignified treatment are able to do so.

As such, it is our view that dignity is a key component of the justice system, and as such should be required when interpreting the rights as opposed to it being optional. FCE and People First believe that there should be more consideration for the dignity of people with different protected characteristics, especially when it comes to accessing the courts and justice system.

From service users experience, their dignity has not always been taken into account when navigating the justice system and as such are concerned that the "threshold" will not be sufficient. Dignity in combination with other factors would be a better judge for the minimum core obligations required.

There are also concerns that at-risk individuals and groups may slip through the cracks, with their voices not being included in the participatory phases of the Bill.

3.	What are your views on the types of international law, materials and mechanisms to be included within the proposed interpretative provision?
<p>Response to Q3</p> <p>No comment.</p>	
4.	What are your views on the proposed model of incorporation?
<p>Response to Q4</p> <p>Overall, FCE agrees with the proposed model for incorporation, although there are some areas that may require attention. Whilst it is good that ministers will be regularly reporting their progress as part of the bill, it would be beneficial for there to be clear timescales and targets to create and track real change.</p> <p>It is noted that public services in Scotland have pre-existing responsibilities to ensure that they are meeting their commitments to the Equality Act 2010. FCE recommends creating a more rigorous “duty to comply” that applies to all of the special protection treaties, ensuring that all of the rights are treated with the same level of attention.</p> <p>FCE agrees that the right to a healthy environment should be recognised and included, it affects everyone, no matter their background or characteristics, although the impact of having an unsafe climate can disproportionately impact others. In our consultation workshop it was noted that many young people are already aware of the impact of the climate crisis, and that it is working age and older people who may also need additional information to ensure they are doing their best to reduce emissions and waste.</p> <p>We believe that there should be provisions to make sure that LGBT and older people have equal access to the rights. One concern that was raised was the digital skills gap between older and younger generations, there were concerns that older people will be indirectly excluded from using services and participating in public life due to greater reliance on online resources and platforms, with less emphasis on physical spaces and materials for those who are unable to access the internet or use digital devices.</p>	

Concerns were also raised with the rights incorporated specifically for people with disabilities, it is felt that there should be a bigger focus on these and that they should be re-stated to ensure clarity. For example, the rights of those currently living in institutions or special schools at risk of inhumane treatment.

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.
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Response to Q5

FCE believes that all of the rights incorporated within the treaties should be included to the best of the government’s ability. As mentioned previously, it was disappointing to see that there was no “duty to comply” on the special protection treaties. Meaning that it will be more difficult for individuals and groups to ensure that services are always performing best practice.

Recognising the Right to a Healthy Environment

6.	Do you agree or disagree with our proposed basis for defining the environment?
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Response to Q6

FCE agrees with the Aarhus definition of the environment. The protection of the environment is crucial to enabling everyone to exercise their human rights.

7.	If you disagree please explain why?
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Response to Q7

N/A

8.	What are your views on the proposed formulation of the substantive and procedural aspects of the right to a healthy environment?
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Response to Q8

FCE believes that the right to healthy and sustainable food should be included as part of this Bill, as opposed to being mentioned solely in ICESCR. Sustainability and access to healthy food is a key component to healthy lives for all.

As we have mentioned previously, the focus on educating young people is good however it would be beneficial to have educational resources that are useful to working age and older people as well.

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.
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Response to Q9

FCE disagrees that the protection of healthy and sustainable food should only be included in ICESCR.

The right to access healthy and sustainable food must be made clear as its own component, as people continue to suffer due to rising costs and the Cost of Living crisis.

There are a number of aspects that must be taken into consideration on top of the economic impact, for example nutrition, access to healthy food, and increasing affordability for low-income families. On top of this, the culture of food brings together people from all backgrounds and protected characteristics, improving relationships within communities.

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.
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Response to Q10

FCE agrees with this. Scotland's waters, Lochs and rivers are key to sustaining many communities and individuals alike. Concerns raised with us include pollution due to illegal "dumping", as well as sewer pollution and "run-offs" from industrial activity.

11.	Are there any other substantive or procedural elements you think should be understood as aspects of the right?
<p>Response to Q11</p> <p>As mentioned before, having clear targets and timelines would be beneficial when measuring progress and making sure that these rights are being enforced.</p>	
<p>Incorporating Further Rights and Embedding Equality</p>	
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?
<p>Response to Q12</p> <p>As the new Act would apply to a number of public bodies and service, FCE believes that there should be guidance and training provided to the necessary staff so that there is a comprehensive understanding of what the rights are and how they impact day-to-day services and users.</p>	
13.	How can we best embed participation in the framework of the Bill?
<p>Response to Q13</p> <p>Participation at all levels is crucial, FCE recognises that there are a number of groups that are more at risk of not utilising their rights in comparison to others. Through consultation, it was identified that the following groups are more at-risk:</p> <ul style="list-style-type: none"> ● Older People. ● People with Disabilities. ● Women and Girls. ● People from Ethnic Minority Backgrounds. ● Those in institutions (Prisons, Hospitals etc.) ● People who can't "speak up". <ul style="list-style-type: none"> ○ People experiencing homelessness. ○ Older people (digital barriers). ○ People with learning disabilities. 	

FCE recommends that a program of participation be created to specifically target these core groups, listening to what they have to say in regard to their rights. This will help in ensuring that their rights are not at risk and are able to be exercised with the same freedom as everyone else.

It was mentioned in our consultation workshop that the sheer scale and complexity of this legislation and the questions themselves made it difficult for individuals to feel that they could contribute effectively. It was noted that the easy-read version of the guidance was useful for members with learning disabilities and difficulties. For future participation it may be beneficial to make sure that the format of these opportunities are concise and easy-to-understand.

14.	What are your views on the proposed approach to including an equality provision to ensure everyone is able to access rights, in the Bill?
15.	How do you think we should define the groups to be protected by the equality provision?
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?
17	If you disagree, please provide comments to support your answer.
18.	Do you think the Bill framework needs to do anything additionally for LGBTI or older people?

Response to Q14-Q18

FCE understands that there are protected characteristics that face barriers to accessing their rights at high levels than others, for example older people and LGBT people.

FCE believes that due to the nature of the barriers face by these groups, it may be beneficial to the Bill to have them included as their own protected groups. As mentioned previously, older people, especially those with additional requirements, face a plethora of barriers when it comes to accessing public services and exercising their rights currently.

The Duties	
19.	What is your view on who the duties in the Bill should apply to?
Response to Q19	
<p>Everyone should be able to be treated with dignity across all aspects of their lives, whilst having their human rights respected. These must be protected by every public body applicable.</p>	
20.	What is your view on the proposed initial procedural duty intended to embed rights in decision making?
Response to Q20	
<p>It is good that public bodies will be given time to implement these new rights into their decision making and practices. It is not something that should be taken lightly or as a “tick box” exercise that takes place after key decisions are made.</p> <p>Training and awareness raising are key components of this, once the Bill is in place services must be given a reasonable timescale in order to provide the necessary guidance to staff and shift their decision-making process.</p> <p>Some organisations may need additional support in doing this, with guidance and resources.</p>	
21.	What is your view on the proposed duty to comply?
Response to Q21	
<p>FCE believes that the duty to comply is necessary to ensure that these rights are put into practice effectively.</p> <p>With support from People First, it was found that the proposed duty does not go far enough in terms of respecting the dignity of people with disabilities, specifically looking at UNCRPD rights. The current “procedural duty” puts people at additional risk, possibly resulting in no recourse to justice. By having a strict duty to comply, it helps reduce the number of individuals at risk of being denied access to their rights and being treated with dignity.</p>	

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 duties set out in the Bill?
23.	How could the proposed duty to report best align with existing reporting obligations on public authorities?
<p>Response to Q22 & Q23</p> <p>Public authorities should be required to report on their actions and proposals as part of their work to improve accessing human rights. Fife Council currently reports on its Equality Outcomes every two years, it would be helpful for individuals and organisations such as FCE if the reporting period was of a similar rhythm.</p>	
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?
25.	What are your views on the right to a healthy environment falling under the same duties as economic, social and cultural rights?
<p>Response to Q24 & Q25</p> <p>It is FCE's belief that all must have the same duty to comply. As mentioned in question 21, if there is no duty to comply individuals are at risk of being unable to access services.</p>	
26.	What is your view on the proposed duty to publish a Human Rights Scheme?
<p>Response to Q26</p> <p>There should be a duty on Scottish Ministers to publish a human rights scheme and to regularly report on their progress. This is a good way to keep track of what is currently happening in the different localities and improves accountability.</p>	
<p>Ensuring Access to Justice for Rights-Holders</p>	

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?
<p>Response to Q27</p> <p>FCE believes that placing advocacy at the heart of the new framework will encourage services and individuals to raise concerns that they have, improving access to local services and justice.</p>	
28.	What are your views on our proposals in relation to front-line complaints handling mechanisms of public bodies?
<p>Response to Q28</p> <p>In Fife the council has a complaints procedure in place for frontline staff, as mentioned previously it would be helpful for them to be given the appropriate training and guidance to ensure that they are aware of the different rights and how to navigate them effectively.</p>	
29	What are your views in relation to our proposed changes to the Scottish Public Services Ombudsman's remit?
<p>Response to Q29</p> <p>FCE agrees with expanding the remit of the SPSO to include human rights grievances within complaints. It is good that the restrictions on oral complaints are being lifted to improve accessibility.</p>	
30	What are your views on our proposals in relation to scrutiny bodies?
<p>Response to Q30</p> <p>FCE believes that the current proposal for scrutiny bodies to include a human rights focus will be beneficial for handling complaints efficiently.</p>	
31	What are your views on additional powers for the Scottish Human Rights Commission?
32	What are your views on potentially mirroring these powers for the Children and Young People's Commissioner for Scotland where needed?

Response to Q31 & Q32

FCE agrees with granting additional powers for the Scottish Human Rights Commission, although there should be a focus on those whose rights are at a higher risk than others. Engagement may be needed with these groups, for example those mentioned in the question 13 response.

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

Response to Q33

No comment.

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

Response to Q34

No comment.

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

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?

Response to Q35 & Q36

No comment.

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?

Response to Q37

No comment.

Implementing the New Scottish Human Rights Act

38.	What are your views on our proposals for bringing the legislation into force?
<p>Response to Q38</p> <p>There must be clear timescales and updates on the implementation of the bill. Not only should it give time for public bodies to adjust their current operations and processes, but it should also give opportunity for participation and feedback on progress.</p>	
39.	What are your views on our proposals to establish Minimum Core Obligations through a participatory process?
<p>Response to Q39</p> <p>FCE believes that great effort must be made to ensure that groups from protected characteristics have the opportunity to engage with the participation process and contribute their views effectively.</p> <p>As mentioned previously, many groups are unable to access public participation opportunities due to barriers such as digital exclusion, disability, poverty, language barriers and people within institutions.</p> <p>It is crucial that the participation process is accessible and easy to understand, the views of easy-to-ignore communities must be taken into consideration to ensure that individuals are able to exercise their rights freely and at a lower risk of “falling between the cracks”.</p>	
40.	What are your views on our proposals for a Human Rights Scheme?
<p>Response to Q40</p> <p>FCE believes that a Human Rights Scheme is a good idea for measuring progress and improving accountability.</p>	
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?
<p>Response to Q41</p>	

Agreed that the statement of compatibility is required. It must be demonstrated that efforts have been made to effectively engage with at-risk groups to share their experiences and views when it comes to assessment.

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

Response to Q42

Training and guidance for staff across all areas to make sure they are aware of the changes to rights and what that entails for their day-to-day service provision.

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

Response to Q43

FCE believes a large-scale public awareness campaign would be beneficial to spreading the message. The messaging should be accessible with minimal jargon.

Targeted promotion to easy-to-ignore groups.

Special focus given to those who are digitally excluded, the information should be easily accessible for anyone in their local community to access at locations such as libraries, community centres, noticeboards, bus-stops, local radio stations etc.

44. What are your views on monitoring and reporting?

Response to Q44

Public bodies should report and monitor their human rights activities, possibly in a similar way to their current equalities monitoring e.g. equal opportunities monitoring, HR surveys and regular accessibility evaluations.