

Scottish Government Human Rights Bill consultation

Independent Age draft response – Sept 2023

[human-rights-bill-scotland-consultation-june.pdf \(www.gov.scot\)](https://www.gov.scot/publications/human-rights-bill-scotland-consultation-june/pdf/pages/default.aspx)

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

Independent Age welcome the intention to incorporate economic, social, cultural and environmental human rights into Scots law. For older people living in poverty, the incorporation of these international human rights marks a positive step forward. Through ensuring adequate minimum core obligations and the resource for progressive realisation – alongside adequate route to remedy and access to justice – the Human Rights Bill could set in motion a process of rights realisation for older people in Scotland.

Currently, too many older people face an assault on their dignity and violation of their human rights due to living in poverty. The number of older people in poverty in Scotland has increased 25% over the past decade.¹ Scotland also has an ageing population, by 2040, 1 in 4 of us will be over 65.²

Whilst we agree that there should be an equality provision in the Bill, which ensures equal access for everyone to the rights included in the Bill. Certain groups are more likely to be discriminated against, so securing non-discrimination on certain grounds must include naming older people on the face of the Bill. See more in answer to question 17.

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

Independent Age welcome the formulation of substantive aspects of the right to include clean air, safe climate, safe and sufficient water, non-toxic environments, and healthy biodiversity and ecosystems. Older people facing financial hardship in Scotland should be able to live in homes which are free from toxins and airborne hazards.

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

¹ DWP, HBAI, 2023

² Projected Population of Scotland, ONS (2020-based)

Independent Age believe participation should be embedded throughout the Bill, including in its purpose, in reporting on implementation of the Bill, and in monitoring and accountability.

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?

Independent Age agree that an equality provision should be included in the Bill.

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?

Disagree

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

Independent Age strongly recommend that older people are included on the face of the Bill rather than within the use of 'other status' in the equality provision. Too often older people, particularly those on a low income, are hidden from view and this Bill should not continue that trend.

Independent Age support the recommendation made by the National Taskforce for Human Rights³ that older people have the right to be included in the statutory framework. The Taskforce also noted that older people lack the protection of an international treaty and recommended explicit protection of them in the Bill. Putting these groups specifically on the face of the Bill could help to ensure clarity of exactly who the provision is intended to protect.

Although the UN Committee on Economic, Social and Cultural Rights (CESCR) has clarified that prohibitions on discrimination on the grounds of "other status" ICESCR can be interpreted to include age. General Comment 6 of the CESCR also states that the omission of an explicit reference to age in the ICESCR and the Universal Declaration of Human Rights is not an intentional exclusion, but can be "best explained by the fact that, when these instruments were adopted, the problem of demographic ageing was not as evident or as pressing as it is now".⁴

For Scotland to be a world-leader in human rights, older people must be included on the face of the Bill. There is significant benefit in older people

³ [National Taskforce for Human Rights Leadership Report \(www.gov.scot\)](http://www.gov.scot)

⁴ [General comment No. 6: The economic, social and cultural rights of older persons \(globalhealthrights.org\)](http://globalhealthrights.org)

being visible in the Bill given the particular consideration needed to address barriers to their rights and the significance of the issues faced by those in later life.

Independent Age recommend older people are included on the face of the Human Rights Bill.

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

The First Minister's Advisory Group on Human Rights recommended an Act of the Scottish Parliament to provide human rights leadership and noted 'the Act will additionally provide rights for older persons, LGBTI communities, as well as protection against poverty and social exclusion.'⁵

At present the United Nations Principles (1991) set out principles national governments should include in their national programmes to uphold the dignity of older persons.⁶ Currently the rights of older people are not explicitly included in a UN Treaty. The First Minister's advisory group noted the importance of now including specific recognition and rights for older people 'in recognition of domestic public opinion, international standards and best practice, and of the current process regarding a potential UN treaty on the rights of older persons. It is about Scotland demonstrating human rights leadership.'⁷

The National Taskforce for Human Rights Leadership recommended a new right of older people to a life of dignity and independence be included in any Scottish Human Rights Bill.⁸ Independent Age believe that consideration of inclusion of this right and further development of rights specifically related to older people should be informed by close monitoring and engagement with the current preparations by the Open-Ended Working Group on Ageing for a new UN treaty on the rights of older people. Independent Age recommend that any new UN treaty on the rights of older people be incorporated into Scots Law in future.

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

Independent Age agree with the proposal set out that the duties should apply to bodies carrying out devolved public functions. The duties should

⁵ [First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf \(humanrightsleadership.scot\)](#)

⁶ [United Nations Principles for Older Persons | OHCHR](#)

⁷ [First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf \(humanrightsleadership.scot\)](#)

⁸ [National Taskforce for Human Rights: leadership report - gov.scot \(www.gov.scot\)](#)

apply to as many public bodies as possible within devolution. The duties should apply to all private bodies carrying out public functions.

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

Independent Age agree that it is necessary for public bodies to have an initial period where a procedural duty applies, to give them time to embed human rights into their decision-making. If the Bill is to help to drive positive change in the realisation of human rights, it will require change in how public bodies work. We agree that public bodies will need some time to increase their capacity around human rights and shift the way in which they make decisions.

Independent Age agree that there should be a procedural duty placed on public bodies. The procedural duty should be the duty to have due regard. This duty is already well-understood. The duty to have due regard complements the duty to comply, by ensuring that human rights are embedded in a holistic way and built positively and proactively into decision-making.

The timescale for commencement of the duty to have due regard should be no more than 6 months from Royal Assent. Applying the stronger duty to comply should be no more than two years later, and this date should be specified in the Bill.

The duty to have due regard should continue to apply after this time but should be then accompanied by the duty to comply.

It is important that this initial period is not open-ended – a definite timescale for full duties is required both for rights-holders confidence, for integrity of the Bill itself, and for public authority planning. The Bill should include a date for the duty to comply coming into force of no more than two years after the Bill's commencement. This will also allow a reasonable period for development of minimum core obligations.

Independent Age recommend timescales for the initial procedural duty and duty to comply are included in the Bill.

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

Independent Age agree that all public bodies (including relevant private actors) should be given a duty to comply with rights in the Bill.

We agree that this duty to comply should include delivering Minimum Core Obligations and demonstrating progressively realising rights.

Guidance to public authorities should include detail on the definition of progressive realisation, including using maximum available resources.

As above, we consider that this duty should apply after a specified time of no more than two years. This duty to comply should also accompany the duty to have due regard, rather than replace it.

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?

Yes

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

Independent Age agree that there should be a public bodies' reporting requirement – this should largely mirror the UNCRC reporting requirements. 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.

We agree that it makes sense for these reporting requirements to complement and strengthen other public body reporting requirements.

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?

Independent Age agree that public bodies and private bodies executing public functions should demonstrate compliance.

As noted in response to question 21, Independent Age recommends that timescales for the development of minimum core obligations are included in the Bill. There should also be a process of review of the minimum core obligations over time (the Scottish Human Rights Commission have proposed every ten years) where minimum core obligations are updated. Independent Age believe such an approach is necessary if MCOs are to act as a minimum floor that can be raised as rights are progressively realised.

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

Independent Age agree with the proposed duties. See answer to question 40 for further detail.

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?

The Bill should include access for all to independent advocacy, and access to these services should be included in the Human Rights Scheme.

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

Independent Age agree with scrutiny bodies having human rights added to their remit.

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

Independent Age welcome the additional powers for the Scottish Human Rights Commission. New powers for the Scottish Human Rights Commission must be matched by increased and sufficient resources to use these powers fully.

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

Independent Age believe mirroring these powers for the Children and Young People's Commissioner would be a positive step. Whilst welcoming these suggested additional powers it is important to note that older people in Scotland currently do not have a Commissioner representing their rights and interests (unlike in the other devolved nations of Wales and Northern Ireland).

Independent Age call for the establishment of an Older People's Commissioner for Scotland. We believe that the Scottish Government should reconsider their position, at least in line with the recommendation from Scotland's National Action Plan 2 on human rights: *'Taking a rights-based approach, organise a national consultation and engagement process on the potential creation, role and function of an Older People's Commissioner for Scotland.'*⁹ An Older People's Commissioner would be another bastion of human rights in Scotland – similar to the role of the Children and Young People's Commissioner. We believe it is necessary for the diverse and growing community of older people in Scotland to have an independent voice to champion their needs, rights and interests.

In May 2023, over 30 organisations co-ordinated by Independent Age joined together behind a statement of support for the introduction of an

⁹ [SNAP-2-March-2023-FINAL-PDF.pdf \(snaprights.info\)](https://www.snaprights.info/SNAP-2-March-2023-FINAL-PDF.pdf)

Older People's Commissioner. The statement specifically referred to the rights of older people being forgotten by decision makers:

'A sharper focus on the range of experiences in later life is required. Not everyone enjoys a financially secure retirement - indeed an alarming proportion are struggling to make ends meet - and too often, older people's rights and interests are forgotten by decision-makers, particularly as we face unprecedented crisis.'

At this time of a new dawn for human rights in Scotland, the introduction of an Older People's Commissioner for Scotland (along with including older people on the face of the Bill) would send a strong signal that older peoples' human rights matter, and are a priority, in Scotland.

Independent Age recommend the introduction of an Older People's Commissioner for Scotland.

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

Independent Age supports the introduction of the Bill. Too many older people in Scotland are currently having their economic and social rights violated. Independent Age believe that timescales need to be specified in the Bill and given due priority. This should be commencement of no more than six months after Royal Assent; and the additional duty to comply no more than two years later.

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

Independent Age agree that it is essential that MCOs are developed through a participatory process, and this should be particularly with groups whose rights are most at risk and who are seldom heard, including older people in poverty across Scotland.

Many MCOs might reflect provision that is already in our law, but public bodies can be held accountable for delivering these through the human rights framework.

Major decisions that relate to the impact and planning for this Bill should not be simply avoided and left to be resolved through this MCO development process after the Bill has passed. The Scottish Government should provide details of UN guidance on MCOs and examples of MCOs in Scotland, before the Bill is introduced to Parliament.

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

Independent Age agree with the proposal to have a Human Rights Scheme. Scottish Ministers should have to consult with people whose rights are most at risk when developing the Scheme and report against it annually.

In addition to this list of proposed requirements above, the Scheme should also include: requirements around improvements to data collection and publication; access for all to appropriate individual and collective independent advocacy (not only with regards to access to justice); provision of rights advice; inclusive communications; Scottish Minister's engagement with UK Ministers around human rights; the extent to which participation of people whose rights are most at risk is informing implementation of the Bill; emerging case law and interpretation of rights; timescale and plans to develop/review MCOs; plans or proposals to ensure access to justice is accessible, effective, timely, affordable and supportive; and, Human Rights Impact Assessments.