

A Human Rights Bill for Scotland

SUBMISSION FROM SOCIAL WORK SCOTLAND TO SCOTTISH GOVERNMENT CONSULTATION RESPONSE

August 2023

Introductory remarks

Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services. Human rights, and specifically the actions social services take to give effect to those rights, are a central focus of our work. Arguably, human rights realisation is the purpose of social work, and certainly legislation such as the Human Rights Act 1998 provides part of our operational framework¹.

We therefore feel well positioned to reflect on the opportunities and challenges incorporation of Human Rights covenants, into Scottish domestic law, may mean for people, communities, and public servants. Social workers see, on an hourly basis, the impact of structural and economic factors which inhibit individual's ability to realise their human rights. Through relational, person-centred practice social workers try to redress those inequities. But would a Human Rights Act for Scotland make that work easier? Would it make a material difference to the lives of those who struggle to realise their rights (as determined by the European Convention of Human Rights and other international law)? Of the various actions the Scottish Government and Scottish Parliament could take to "make rights real" for people, is the Human Rights Bill it?

To all these questions our answers are, at present, ambivalent. We absolutely wish to see human rights strengthened, and woven more concretely into the fabric our politics, national governance, and public services. But as a profession with a front row view on the realities of people's lives, we doubt whether a piece of legislation, alone, will do what the Scottish Government hope it will.

Language, symbols, and culture matter, however in the expansion and improvement of quality public services, financial resources matter as much, if not more. If this legislation helps unlock the resources Scotland needs to bring thresholds (to access

¹ <https://hub.careinspectorate.com/national-policy-and-legislation/government-legislation/>

services) down, or to create and maintain services in areas where there are none, then it is a worthwhile endeavour. If the legislation is seen as the means through which rights will be realised, without that parallel release of resources, it will be a disappointment. And, potentially, a problematic piece of additional legislative architecture, complicating an already complicated statutory environment, and tying public authorities up in legal processes which pull resources away from the support and services which people need.

Furthermore, social workers understand that a human's rights are relational; they exist in reference to another human being's actions and rights. Our profession must often operate in that liminal space between two people's 'rights', assisting in the adjudication of which right takes precedence, e.g. the right of a parent to care for their child, balanced with the right of the child to grow up safe from harm.

We understand that rights do not exist in a vacuum; other obligations abut them, such as a public duty to keep individuals and communities safe. An individual may seek privacy and exert their right to live in whatever manner they deem fit, but if those decisions put their health and wellbeing significantly at risk, or the health of others, society empowers social workers to intervene on its collective behalf. This context is important when considering the opportunities and challenges of a Human Rights Bill; will it facilitate or unhelpfully complicate the critical and necessary work of social workers and other relevant professionals.

Finally, the questions in the consultation are lengthy and technical in nature. Ironically, considering this a consultation about human rights, this creates issues around accessibility. Even for social workers, operating in busy, overstretched environments, the size and technical nature of the consultation has hampered their opportunity to digest the content and provide thoughtful feedback. Consideration should have been given to exploring a consultation process that aimed more specifically to gathering the views of distinctive sectors and having questions framed more appropriately on that basis.

Consultation questions

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

Dignity is the right of a person to be valued and respected for their own sake, and to be treated ethically. To uphold human rights and dignity, social workers need to understand the unique human beings they are working with. They require time to

consider the risks and rights of the person/people involved and how to support them through to a place where their distinctive outcomes and desires can be realised ².

Promoting and protecting the right to dignity is defined within the values, ethics, theory, and principles of social work practice. Social Works' statutory duty to protect people's right to dignity is recorded within the SSSC codes of practice.

I WILL-1.4 Respect and maintain the dignity and privacy of people who use services³.

The responsibilities that fall on social work services affect personal lives, individual rights, and liberties to an extent that other local authority services do not.

For example, this can be noted in The Social Work (Scotland) Act 1968: Chief Officer Role and the responsibilities and duties Chief Officers uphold within this. The Chief Social Work Officer (CSWO) must be empowered and enabled to provide professional advice and contribute to decision-making in local authority and health and social care partnership arrangements, raising issues of concern regarding effective governance arrangements for the management of the complex balance of need, risk, and civil liberties, in accordance with professional standards.

There are a small number of areas of decision-making where legislation confers functions directly on the CSWO by name. These areas relate primarily to the curtailment of individual freedom and the protection of both individuals and the public. These are:

- deciding whether to implement a secure accommodation authorisation in relation to a child (a decision made with the consent of a head of the secure accommodation and the CSWO), reviewing such placements to ensure that secure accommodation is still required and removing a child from secure accommodation if appropriate.
- the transfer of a child subject to a Supervision Order in cases of urgent necessity.
- acting as guardian to an adult with incapacity where the guardianship functions relate to the personal welfare of the adult and no other suitable individual has consented to be appointed.
- decisions associated with the management of drug treatment and testing orders.
- carrying out functions as the appropriate authority in relation to a breach of a supervised release order, or to appoint someone to carry out these functions.

² <https://en.m.wikipedia/wiki/Dignity>

³ <https://www.sssc.uk.com/the-scottish-social-services-council/sssc-codes-of-practice/>

In addition to these specific areas, the CSWO is responsible for decision making in areas which have been assigned by individual local authorities to CSWOs reflecting, “the particular responsibilities which fall on social work services in that they affect personal lives, individual rights and liberties to an extent that other local authority services do not”⁴. These areas may include responsibilities assigned through guidance or other routes, such as, but not limited to:

- MAPPA
- Adult Support and Protection
- Child Protection
- Mental Health Services
- SDS

Legislation and Principles

Social Work holds a vital role in ensuring that the principles found within legislative frameworks are upheld to protect individual and collective dignity of the people and communities they serve. The preservation of dignity needs to be managed within complex systems that often command that social workers balance need, risk and civil liberties whilst ensuring that their professional standards as noted above are adhered to.

Effective application of the principles found within legislative frameworks enable consideration of the impact of legislation on human rights. For example, the five principles within the Adults with Incapacity (Scotland) Act 2000 and the six principles within the Adult Support and Protection (Scotland) Act 2007.

The overarching principle within both Acts, notes that any intervention into affairs of an individual should provide benefit and should be the least restrictive option of those that are available to meet the purpose of the intervention ⁵.

The Scottish Mental Health law review is considering a fusion of three important pieces of legislation. The Mental Health (Care and Treatment) (Scotland) Act 2003, Adults with Incapacity (Scotland) Act 2000 and the Adult Support and Protection (Scotland) Act 2007. Discussion is taking place around a blending of some aspects of the legislation and a sharing of the same principles. The aim of this work is to strengthen the voice of people who use services and to reduce the need for coercion in the system by giving effect to all people’s rights including economic and social rights⁶.

⁴ The Role of the Chief Social Work Officer, Guidance Issued by Scottish Ministers: pursuant to Section 5 (1) of the Social Work (Scotland) Act 1968, July 2016.

⁵ <https://www.gov.scot/publication/adult-support-protection-scotland-act-2007-short-introduction-part-1-act/>

⁶ <https://www.gov.scot/publications/mental-health-law-review-update-december-2019/>

Legislation applicable to children such as the Children (Scotland) Act 1995, centre on the needs of children and their families and defines both parental responsibilities and rights in relation to children. This legislation sets out the welfare duties and powers available to public authorities to support children and their families and to intervene when the child's welfare requires it (section 22)⁷.

The Children and Young People (Scotland) Act 2014, details the welfare/wellbeing duties around GIRFEC and children in need, Corporate Parenting, named person and Continuing Care, after care up to the age of 26, Kinship Care, and children's rights and secure authorisation⁸.

The above is by no means exhaustive, and we simply seek to demonstrate the breadth and depth of the social work role across many legislative and policy areas. The complicated political and social landscape in which social work operate can undermine the professions capacity to build relationships with people to understand them and their needs.

The Evolution of Social Work

The grassroots of the profession have changed over time. The 1980's, increasing dominance of neoliberal political and economic ideology saw public services move to a managerialism approach, rooted in the principles of economy, efficiency, and effectiveness. There was a turn towards targets and performance management. This pushed social work into adopting a technical/rational approach as opposed to its grassroots approach as ethical and relational ⁹.

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 (MCO)?

Social Work Scotland agrees with the proposal for dignity to be a key threshold for defining Minimum Core Obligations however, there is a need for a shared and consistent understanding and interpretation of rights in the Bill.

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

No comment

⁷ <https://www.legislation.gov.uk/ukpga/1995/36/contents>

⁸ <https://www.legislation.gov.uk/asp/2014/8/contents/enacted>

⁹ <https://www.iriss.org.uk/resources/insights/relationship-based-practice-emergent-themes-social-work-literature>

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

Having a single Bill of Human Rights seems sensible. However, the area of 'duties' need consideration, how this affects the role of social workers? Local authorities are 'Duty Bearers' and in the realisation of those duties they employ social workers, who are uniquely trained and skilled to undertake this work. Current workforce issues and pressures need to be addressed to allow social workers to deliver on this fundamental and core value of their work.

Our 'Setting the Bar' research describes Social Work as an ageing workforce, 19% are reaching retirement age and are a staff group who are struggling with administrative burdens, fearful of making mistakes and living with the moral distress of having to work in a way which doesn't align with their professional values. One in four social workers does not remain in the job six years following qualification.¹⁰

Social workers are at the forefront of protecting and promoting the human rights of the most vulnerable members of our society. Social work support people to understand their rights. Supporting people to understand their rights often requires building a relationship with the person. This may overlap with the statutory social work role where social workers must balance rights and risks.

The right to respect for private and family life is one that most commonly arises in social work. It protects a person's dignity and autonomy. Practitioners must respect this right and only interfere with it when it is lawful, for a legitimate reason (e.g., public safety, protection of health) and where it is proportionate.

Practitioners are often called upon to balance the interests and views of different individuals and the wider community and this process consists of deciding whether the action is necessary and proportionate. That decision must be fully informed with the input of the affected individual.

This individual assessment of the situation is taken in the context of legislation and agency policies and practices. Human rights should be embedded in policy and procedures and become part of the 'wallpaper' of practice, but many social workers would argue that austerity and system pressures has undermined these rights¹¹.

Learning from the UNCRC Bill

The UNCRC Bill that took the approach of directly incorporating text from the United Nations Convention on the Rights of the Child into Scots law. The value of

¹⁰ <https://socialworkscotland.org/reports/settingthebar/>

¹¹ <https://www.basw.co.uk/resources/social-work-and-human-rights-international-context>

incorporation to children, young people and families in Scotland is that children's rights will be built into policy, law, and practice so all children can benefit from and exercise these rights in their daily lives. Incorporating the UNCRC in Scotland will also enable people to defend their rights in Scottish courts. It is important that the Scottish Government develop a model of incorporation that will deliver the best outcomes for children, young people, and families in Scotland and that this model fits the needs of local authorities.

However, the UK Government has challenged specific areas of the UNCRC (incorporation) (Scotland) Bill in the UK Supreme Court. On October 6th, 2021, the Supreme Court published their judgement that four sections of the Bill went beyond the powers of the Scottish Parliament and until changes are made to those sections, the Bill cannot become law. This judgement has brought the limitations of incorporation into sharp focus with concern for children and their ability to have their rights fully realised within Scotland.

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.

See response to question 12.

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

The proposal by Scottish Government to use the Aarhus definition of the environment, with specific reference to ecosystems and the biosphere is supported. The Aarhus Convention protects every person's right to live in a healthy environment¹².

A Human Rights Bill for Scotland will incorporate the right to a healthy environment into Scots law for the first time. The Bill calls for Scotland to ensure focused attention on the fundamental rights around health, housing, and adequate standard of living. The tackling of poverty and inequality to aid delivery of a better environment¹³.

This ambition aligns with the social policy that social work seeks to implement in practice. However, the reliance on public services which include social work as a key player in supporting this change need careful consideration. For example, a person may have a right to housing. This right is more likely to be delivered via a housing policy that has a collective input and relies on parties coming together to deliver on this and realise this right.

¹² <https://environment.ec.europa.eu/law>

¹³ <https://hrcscotland.org/2023/08/14/consortium-launches-human-rights-bill-consultation-guide/>

7. If you disagree, please explain why.

Not applicable.

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

Social Work Scotland welcomes 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.

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.

It is important that all people have access to adequate, culturally appropriate, accessible, and available food. Consideration is needed around how to provide clarity to duty bearers, rights holders, and legal authorities in exercising the right. Food poverty is defined as the 'inability to acquire or consume an adequate or sufficient quantity of food in socially acceptable ways, or the uncertainty that one will be able to do so' ¹⁴.

Recent research undertaken by the Trussell Trust surrounding emergency food parcel distribution in Scotland, from April 2022 to March 2023 found that: 62,000 people used a food bank in the Trussell Trust network in Scotland for the first time in the last 12 months ¹⁵.

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.

We agree with the need to include safe and sufficient water but believe this feature should also refer to the right to adequate sanitation given the widespread and persistent issues of sewage pollution in Scotland.

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

No comment

¹⁴ <https://www.healthscotland.scot/health-inequalities/fundamental-causes/poverty/food-poverty>

¹⁵ <https://www.trusselltrust.org/wp-content/uploads/sites/2/2023/04/EYS-Scotland-Factsheet-2022-23.pdf>

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?

The Scottish Government is proposing not to restate the rights from the Human Rights Act in this Bill and not to include the Convention Against Torture in this Bill. Scottish Government has decided that it is not possible to restate the Human Rights Act 1998 because it is reserved to the UK Parliament. The Government states that if the Bill was to restate the Human Rights Act, this might risk the whole Bill being challenged in court.

Public bodies have a duty to comply with the Human Rights Act in all that they are doing. The Convention Against Torture relates to protections for people who have experienced abuse or violence by any public authority. It includes for example, where people have experienced abuse in children's homes, in care homes, or in prisons. This may impact issues around adequate compensation for those who suffered from abuse in state care in Scotland ¹⁶.

Social Work Scotland has concerns about the routes to remedy and Redress Scheme that should be considered here, and what they mean for Social Work acting on behalf of public bodies?

Access and Inclusion-how will people be supported in relation to routes to remedy? Will affordable and effective legal advice be available? Will this be accessible, and solution focussed. Will advocacy support be made available? Consideration of the Panel principles and their application in practice is required.

The Scottish Mental Health Law Review (2019) proposes the need to consider a National Advocacy Service and the delivery of training in equality and human rights. The availability of advocacy services across Scotland varies and this presents issues around equal access.

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

We believe that the right approach to embedding participation in the framework of the Bill will take capacity, resource and engagement. This includes committed resources to support education, training, and ongoing support. It includes support to Feedback and review.

¹⁶ <https://hrcscotland.org/2023/08/14/consortium-launches-human-rights-bill-consultation-guide/>

Social Workers understand the core pillars of human rights and rights-based approaches. They are strong advocates for human rights.

We believe the profession will require clear guidance on the role of local authorities as 'Duty Bearers' and what this might mean for Social Workers discharging duties on behalf of public bodies. Specific human Rights based assessment tools and training should be considered.

It is understood that proposals to meet these recommendations are supported by three distinct boards. The Lived Experience Board, Advisory Board and Executive Board. Representation from leadership in Social Work on the Executive Board requires consideration.

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?

The inclusion of an equality clause which aligns with the Equality Act 2010 and provides equal access to everyone to the rights contained within the Bill is supported.

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

Defining groups on the face of a Bill can cause issues as time passes and the way people identify themselves evolves. Therefore, it is vital that the legislation will protect all people's rights, appreciating intersectionality and taking particular care for those more vulnerable to discrimination as a result. The Bill must be able to remain a force for equality and not through unintended consequences entrench stigma and discrimination.

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?

Not including LGBTQI+ and older people could run a risk of them being left out or not being supported to a greater extent. However, including them could also pose issues around identifying phrases and stigma and discrimination as our understanding of equalities evolves.

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

Whether other is used or not, lists of those defined as other could be published and reviewed by Parliament on a periodic basis. If other is not used provision for named equalities to be updated should be made.

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

No comment

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

The duties of the Bill should apply to all bodies, authorities and institutions of power and influence over people's lives that the Scottish Parliament can competently legislate for.

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

It is vital that any new Bill is properly implemented with a realistic and defined timetable that supports its safe and resourced introduction. It is vital the Scottish government carefully considers the resource implications and budgetary needs for Social Work, and other front-line services.

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

Social Work Scotland believes a greater understanding of the role of 'Duty Bearers' is required and what the procedural duties in relation to equality treaties will entail specifically.

The consultation paper notes that 'Duty Bearers' will be better able to implement rights into practice, respond appropriately to rights issues as they arise and will be held to account when things go wrong.

Local authorities are 'Duty Bearers' and in the realisation of those duties they employ social workers, who are uniquely trained and skilled to undertake relevant work. Current workforce issues and pressures need to be addressed to allow Social Workers to deliver on this fundamental and core value of their work.

Social Work operates within complex systems. Social workers discharging duties of behalf of local government can be subject to pressure from other areas/larger bodies around the interpretation of legislation and how this should be implemented in practice. Winter pressures on health and social care systems often demand expediated discharge processes that may challenge a rights-based approach.

We also believe that there are intrinsic links here with delivering The Promise. On February 5, 2020, a promise was made to Scotland's infants, children and young

people, adults, and families. There is a commitment within this policy that social work along with others will uphold safe and loving relationships that are important to children and young people. Children are supported to stay with their families and active support is provided accommodate this. The social work profession, and our professionals, are committed to delivering on this promise despite the resource implications that often present challenges. For example, The Children (Scotland) Act 2020 has placed a duty on local authorities to place siblings together and the profession are committed to delivering on this promise, however, a lack of available resources and support can compromise the realisation of this promise.

Considerations from a Social Work perspective include the possible impact of the application of eligibility criteria and resources available. What are the implications around the social work assessment process and enhanced scrutiny?

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?

Accountability is critically important but from a social work perspective resourcing needs careful consideration. We remain committed to providing input and clarification around what resourcing will be needed to fully meet the duties set out in the Bill.

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

Social Work departments operating within local government often have poorly resourced complaints managing systems. The management of complaints and forming responses often pulls operational social workers from the frontline. Compiling responses is time intensive and there is often little or no administrative support.

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?

Minimum Core Obligations (MCOs) are those obligations related to economic, social, and cultural rights, which a country needs to always comply with and in all circumstances, regardless of their resource or the overall conditions of the country ¹⁷.

Minimum Core Obligations would appear to be a sensible way to set a standard of what is minimally achieving a right. Scotland and the UK already has a strong rights

¹⁷ <https://www.scottishhumanrights.com/media/2404/mimimum-core-obligations-pdf.pdf>

foundation, where we lack is the fulfilment of these rights, whether enshrined in law or perceived as existing by societal norm.

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

The consultation document advises that: *State action is understood as including requirements to take targeted, concrete, and deliberate steps; gather and deploy maximum available resources; and ensure non-retrogression of the rights.*

We support this, as we know that the impact of an unhealthy environment is most likely to be felt hardest by members of our society who are living in the most precarious and challenging economic and environmental circumstances. Actionable rights based in legislation may provide social workers with better tools to do their job, for instance where an unhealthy environment is causing harms to families in a community.

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

We support this duty, although we believe it must be proportionate; reporting should not be a tick box exercise or a drain on valuable resources intended to be used to protect rights. This balance is vital.

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?

This is a complex and multifaceted question but most simply advocacy must be supported, those most likely to have their rights breached are likely to be less able to defend their rights. Conversely, those who are most likely to be able to defend their rights are likely to be less vulnerable members of society, who are better positioned to know their rights, understand when they have been breached and to be able to lodge complaints to have their rights upheld.

Therefore, the resourcing advocacy support is vital. Upholding of legal rights is the business of the courts, and therefore lawyers.

The SPSO (Scottish Public Services Ombudsman) is already over stretched and adding complex complaints will result in delayed resource outcomes/resolutions. This process is unlikely to result in rights being upheld.

Without sufficient resource of advocacy and external bodies researching rights breaches, this Bill runs the risk of creating a two-tier system in relation to rights access. Any focus on rights will require a concerted effort driven by policy focussed on removing the barriers people face accessing their rights. Poverty plays a

significant role people being unable to access their existing rights and will continue to do so for any new rights Act. In short, we do not believe this Bill alone will deliver the large-scale change to public service resource, governance and structure that would be required to guarantee the rights of all of Scotland's people.

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

Social Work departments operating within local government have limited to no resource complaints around handling systems. The management of complaints and forming responses to them often relies on front line operational social workers to investigate. This results in front line managers and social workers being pulled away from the front-line. Responses are time intensive and there is often little or no administrative support provided.

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

The capacity to resolve stage 1 complaints is comprised for social workers due to lack of appropriate complaints managing system and support.

We have no issues with these changes but do have concerns about existing capacity of the SPSO (Scottish Public Services Ombudsman) as it stands.

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

We support the roles outlined and agree that scrutiny bodies must report to expert bodies on rights. However, it seems that these bodies already have a role in upholding rights and consideration should be given to how this will practically improve their powers and ability to enact change on the ground.

Enhanced scrutiny for social work without adequate resourcing and support is a concern.

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

Without being experts in this field it seems that this would be a worthwhile and sensible step that would allow for the SHRC (Scottish Human Rights Consortium) to better support those most vulnerable. However, we would be clear that any opposing views from legal experts should be considered fully.

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

It is our view that the SCYPC should have the same powers as the SHRC, and these should also be aligned with the Commissioners for older people and disabled people if they are brought into being.

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

We would support any move that will make the justice system more accessible and make it easier for civil society groups, advocates, and anyone else to challenge rights breaches.

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

'When courts decide about whether a public body has acted unlawfully or not, they apply certain legal 'tests' to help them decide. The consultation discusses two main tests:

- the 'Wednesbury test' which is where a decision must be 'so unreasonable that no reasonable decision maker could have reached it.' If this test applied, then there may be very few situations where a court would find that a rights violation had occurred.
- the 'proportionality test' – this is the test applied in the Human Rights Act and suggests that restrictions of a right by a public body must be a 'proportionate means of achieving a legitimate aim'¹⁸.

The proportionality test seems to offer a greater chance for those who have experienced rights breaches to have the court be able to uphold them. Making the bar inaccessibly high for decisions on breaches of rights would seem to counter the overall aims of the Bill.

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

Cannot comment.

¹⁸ <https://hrcscotland.org/2023/08/14/consortium-launches-human-rights-bill-consultation-guide/>

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?

Cannot 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?

Cannot comment.

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

There is clearly a balance to be struck – on one hand if the Bill is to make any substantial difference on the ground there will need to be large scale structural reform of public services and resources. This is bound to take time.

On the other hand, there must be a clear timetable of implementation and the Act cannot be allowed to sit enforced.

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

We would support the introduction of Minimum Core Obligations through a participatory process. There would need to be minimum standards for rights breaches to be challenged.

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

It is appropriate that Scottish Ministers and therefore the Scottish Government have accountability for human rights through the legislation. We hope that this would mean there was less discrepancy on the implementation of human rights in Scotland as governments change.

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?

Without overly increasing administrative burden we strongly support increased scrutiny of legislation in the Scottish Parliament. Any focus that could make future legislation more compatible with the rights in this Bill would be beneficial.

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

No comment

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

There will need to be a comprehensive and long running, resourced and targeted work to raise awareness as well as ensuring that those responsible for upholding rights have a responsibility to explain rights to rights-holders. This must be accessible to anyone in our society, and provide a less technical approach. Advocacy must be sufficiently funded and backed up with education and training.

44. What are your views on monitoring and reporting?

Monitoring and reporting will be important to ensuring that progress is being made and issues identified, a balance needs to be struck between being overly burdensome and tick box exercise that does not reflect the reality. Resources and capacity need to be considered. Social work is already under intense pressure. Resource is required to meet this demand.