



A Human Rights Bill for Scotland

A Response from CTA

October 2023

www.ctauk.org

Summary

We welcome the Scottish Government's commitment to a new Scottish Human Rights Bill. We agree that we need to empower everyone to access and enforce their rights – and we need to ensure all public bodies have the expertise and resources they need to respect everyone's rights.

In our submission, CTA makes clear that we:

- Strongly support the incorporation of the four international human rights treaties, plus a new right to a healthy environment, into Scots law through the Bill
- Call for public bodies to have a duty to comply with all of the rights of disabled people to ensure they can be properly realised and legally enforced, such as the right to:
 - Accessibility in transportation
 - Live independently and be included in the community
 - Personal mobility
- Believe that the duties in the Bill should apply to all public bodies as far as possible and as soon as possible
- Urge the UK Government and the Scottish Government to work together to protect and expand human rights in Scotland in a comprehensive and consistent way
- Request greater clarity in the Bill on how the duties will apply to private and third sector organisations, such as Community Transport operators, providing 'public functions'
- Raise concerns about the speed of implementation and argues that the Bill should present a clear timetable for the enforcement of the duties and the publication of guidance for public bodies and others
- Join civil society in arguing for specific clauses which protect the rights of LGBTI people and older people, as there is no international treaty protecting their rights, to tackle homophobia, transphobia and ageism
- Call for the limited powers of the Scottish Human Rights Commission to be strengthened and extended to improve scrutiny of public bodies and public services – including the creation of new Commissioners for:
 - Women
 - Disabled people
 - Older people
 - Ethnic and religious minorities
 - LGBTI people

A HUMAN RIGHTS BILL FOR SCOTLAND: CONSULTATION

Part 4: 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?

The Community Transport Association (CTA) is a UK charity and membership organisation. We work with local charities, community groups and social enterprises to deliver community-led solutions to unmet transport needs and plug gaps in our transport network, from community-owned buses and car clubs to active travel and demand responsive transport. We promote best practice and excellence through training, resources, publications, advice, consultancy, events and project support. We are committed to leading a thriving Community Transport movement in the UK.

A raison d'être of the Community Transport movement is improving accessibility for older people and disabled people who cannot access other forms of private or public transport. Accessible transport services like dial-a-ride empower older people and disabled people to live more active, independent lives in their communities. Living with equal opportunities to travel and access amenities and public services is essential to protect and realise their fundamental rights. These freedoms are central to human dignity.

However, these rights are often denied, with amenities or public services inaccessible for older people and disabled people due to a lack of accessible transport, limited advice and support or a failure to make reasonable adjustments. Our transport network is not fully accessible, violating the rights of many people and communities across Scotland, who have to rely on Community Transport as a result.

We therefore agree with the proposal for dignity to be a key threshold for defining Minimum Core Obligations. However, we also believe that the Bill should go further than merely allowing the courts to consider dignity when interpreting the rights. It should be required to do so.

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

We agree that the Bill should incorporate the four treaties as proposed by the Scottish Government – The International Covenant on Economic, Social and Cultural Rights (ICESCR), The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), The Convention on the Elimination of Discrimination Against Women (CEDAW) and The Convention on the Rights of Persons with Disabilities (CRPD).

We disagree with the proposal for public bodies to only have a ‘duty to have due regard’ to the substantive rights in the CRPD, rather than a stronger ‘duty to comply’ with the CRPD, alongside clear timelines for enforcement and implementation. The Scottish Government has previously committed to incorporate the ICESCR, ICERD, CEDAW and CRPD ‘as far as possible within devolved competence’. A failure to include a duty to comply in the Bill for all of the treaty rights risks breaking this promise, as well as giving disabled people a kind of second-class rights ‘in name only’ without legal teeth. The Bill must result in improvements to the realisation of the rights of disabled people, who in Scotland experience widespread and systemic discrimination or disadvantage in, for example, education, employment, healthcare, housing and transport.

We agree that the right to a healthy environment should be recognised and included in the Bill, particularly given the Scottish Government’s commitment to a Just Transition to net zero which leaves no one and no community behind.

We agree that the Bill should include an equality clause to ensure equal access to their rights for everyone. We believe that the Bill should specify that these rights must be delivered and secured without discrimination. We believe that LGBTI people and older people should be specified within this part of the Bill to guarantee their equal status and protection, as well as to support the building of a human rights culture which includes these communities and contributes to tackling homophobia, transphobia and ageism.

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.

It is important that everyone in Scotland is empowered to ‘name and claim’ all of their rights, while engaging with public bodies and through legal avenues if necessary, including those incorporated into Scots law as a result of this Bill. There are significant interactions between, for example, the right to a healthy environment and the rights to accessibility in transportation, live independently and be included in the community and personal mobility. Therefore, the Bill should create a robust duty to comply for public bodies across all of these rights, including in relation to the CRPD.

Part 5: Recognising the Right to a Healthy Environment

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

We agree with the proposed definition drawing on the Aarhus Convention, which is widely used and internationally respected.

We strongly support the inclusion of the right to a healthy environment in the Bill. Everyone has a right to sustainable transport. Communities have massive potential to accelerate and deliver community-led climate action, including through Community Transport services which encourage modal shift, reduce car use and reduce carbon emissions. The Bill should require public bodies to act in support of communities to improve their local environment with cleaner air and water and more sustainable streets and neighbourhoods.

Part 6: Incorporating Further Rights and Embedding Equality

17. 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.

As there is no international treaty protecting the rights of LGBTI people and older people, despite the significant levels of discrimination and disadvantage which they can face, we believe that the use of 'other status' in the equality provision would not be sufficient.

We believe that LGBTI people and older people should be specified within this part of the Bill to explicitly guarantee their equal status and legal protection, as well as to support the building of a human rights culture across Scottish society which visibly includes these communities. This could make an important contribution to tackling homophobia, transphobia and ageism.

Part 7: The Duties

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

We believe that the duties in the Bill should apply to all public bodies as far as possible and as soon as possible.

We recognise that the Bill will not and cannot not apply to UK public bodies and reserved matters. However, we believe that achieving the objectives of the Bill, and fully realising the rights incorporated within it for everyone in Scotland, will require concerted and coordinated action across devolved and reserved policy areas. There are significant interactions between reserved and devolved policy areas which seriously impact on people's lives. People and communities may not also be clear as to whether a public body is a UK or Scottish public authority, especially where services are

directly provided by a private business or third sector organisation on behalf of or as directed by a government – clarity on this will be required for citizens and service users. We urge the UK Government and the Scottish Government to work together to protect and expand human rights in Scotland in a comprehensive and consistent way.

It is our understanding that the Bill will apply to private businesses or third sector organisations which ‘carry out public functions’ or which have a contractual relationship with the Scottish Government or local government. Greater clarity on this will be required, alongside efforts to raise awareness and increase understanding across the private and third sectors to ensure that leaders, trustees, employees and volunteers understand their obligations as duty-bearers. We believe the Bill should provide this clarity by setting out its parameters and providing a robust definition of public services and functions which is widely accepted and understood.

For example, we expect that a non-profit organisation running a scheduled, timetabled bus service under Section 22 of the 1985 Transport Act would be within scope of the duties created by the Bill. However, would it also apply to local charity running other, smaller transport services, such as shared bike or car schemes, which are open to all members of the general public or alternatively to specific groups only?

In attempting to apply duties to local charities and community groups, the Scottish Government must be mindful of their limited capacity and resources, especially in the midst of a running costs crisis, and of the urgent need to provide adequate levels of advice, funding and support to enable them to prepare for and ultimately meet any new or upcoming obligations.

Part 8: Ensuring Access to Justice for Rights-Holders

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

We agree that the currently limited powers of the Scottish Human Rights Commission (SHRC) should be strengthened and extended. It is a vital institution in Scotland’s human rights landscape to improve policy, strategy and legislation; provide scrutiny of the activities and decision-making of public bodies; and help build a national human rights culture. It requires greater powers and additional resources.

We believe that, as part of a wider mandate for the SHRC, it should have new powers to conduct a specific inquiry into one public body or one part of the country. It should be able to compel the submission of information and evidence to assist in its work. This will be especially important given the incorporation of the right to a healthy environment and the CRPD, which are often violated at a local level or by individual activities and decisions made by representatives of one public body. This will widen access to justice for rights-holders.

The consultation notes ‘a number of wider asks in relation to specific Commissioners focused on advancing rights for specific groups, or in specific areas’. We support the creation of Commissioners for women, disabled people, older people, ethnic minorities and LGBTI people.

Part 9: Implementing the New Scottish Human Rights Act

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

We recognise the rationale in the proposals for the duties to be commence ‘in a sequenced fashion in order to allow public bodies time to prepare for the Bill (once an Act) coming fully into force’. There are significant pressures on public bodies at present and a new infrastructure to support compliance and implementation will need to be constructed.

Ambitions and resources must be aligned. We need to invest in our public bodies and their ability to develop the capacity and expertise they need to make human rights real for people in the communities they serve. Preparations need to begin now.

Nevertheless, the rights in the Bill are fundamental human rights, which are already internationally codified and recognised. We agree with the Lived Experience Board, which ‘stressed the importance of moving forward with implementation quickly’. For far too long, far too many people in Scotland have had their human rights denied or violated. It is time these wrongs were addressed. Urgent action must be taken to do so. Human rights should be a priority, especially as current social and economic forces exacerbate existing injustices.

We therefore have concerns about the proposed timetable. The Bill should include a clear timetable for full implementation. We believe that compliance duties should be in force as soon as possible.

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

We recognise the importance of guidance for public bodies to ensure effective implementation of the Bill and welcome the Scottish Government’s commitment to bring this forward in collaboration with stakeholders. This should include guidance for private businesses and third sector organisations which deliver public functions with tailored advice, information and support.

However, we believe that the Bill should present a clear timetable for development and publication of this guidance, as well as enforcement of the duties.

In the interim, the Scottish Government should also communicate with public bodies to raise awareness of the likely scope and potential impact of the Bill and urge forward planning. Preparations need to begin now.

Further information

David Kelly, Director for Scotland: david.kelly@ctauk.org

The Community Transport Association (CTA) is the UK charity that champions, connects and supports the Community Transport sector. We have over 170 members in Scotland, which are local charities, community groups and social enterprises delivering transport projects services always for a social purpose and never for profit. We believe in accessible, inclusive and sustainable transport for all.