

Aberlour Response to the Scottish Government's A Human Rights Bill for Scotland: Consultation

October 2023

About Aberlour

Aberlour is Scotland's largest, solely Scottish children's charity. Delivering more than fifty services across Scotland, we work with disadvantaged, marginalised and discriminated against children, young people and families, providing services and support in communities around the country. We help to overcome significant challenges families face, such the impact of drugs and alcohol on family life, growing up in and leaving care, poor mental health, living with a disability, or the impact of poverty and disadvantage. We aim to provide help and support at the earliest opportunity to prevent problems becoming intractable or spiralling out of control. We are committed to **#KeepThePromise** and to the incorporation of the UNCRC.

Our Vision is '**to give every child the chance to flourish and, through this, contribute to building a fairer and more equal society**'. Our Mission is to deliver that vision by supporting children and families affected by poverty, discrimination, adversity, addiction, disability and trauma within residential and community settings. We understand that not all children are born with an equal chance and are committed to beating poverty and discrimination.

Introduction

At Aberlour we are committed to championing children and young people's human rights. Through our work every day we aim to make those rights real for the children, young people and families we support. Underpinning everything we do is our ambition to ensure the children we work with have an equal chance regardless of their start in life. We have worked relentlessly to ensure that the United Nations Convention on the Rights of the Child (UNCRC) is fully embedded in law and is visible across our organisation and obvious in what we do and how we work with children, young people and their families.

Working with disadvantaged, marginalised and discriminated against children, young people and families across Scotland we see first-hand how too often their rights fail to be met. Whether it is through our work with children and young people growing up in poverty, families living with a disability, children and young people in care, families affected by domestic abuse or unaccompanied asylum seeking and trafficked children and young people, we see the ways in which rights are not upheld. Despite the progress made towards UNCRC incorporation it is clear there is still much work to be done to embed children and young people's rights, and the human rights of all our citizens, in culture and practice across Scotland.

Therefore, we welcome this Bill and the continuing commitment of Scottish Government to making rights real for all Scotland's citizens. As a rights respecting organisation we fully support the intention of this Bill to incorporate the four international equalities treaties and the right to a healthy environment in law and the aim of respecting, protecting and fulfilling the rights of all people in Scotland.

Aberlour is a member of Together (Scottish Alliance for Children's Rights) and has been a partner organisation supporting the work of the Rights Detectives¹, with the views of children and young people at Aberlour represented through that work. We have also reflected the voices and views of children, young people and families at Aberlour more widely to help inform and shape our response to this consultation.

We have chosen not to respond to this consultation in full but to provide answers to those questions where we are able to provide insight from our work directly or in partnership with others.

Part 4: Incorporating the Treaty Rights

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

QU2. What are your views on our proposal to allow for dignity to be a key threshold for defining the content of MCOs?

As a values-led organisation, Aberlour welcomes Scottish Government's intention for human dignity to be integrated into the proposed legal human rights framework as "*a fundamental value which can be used in reading and interpreting the framework as a whole*"². We share the view of both the Human Rights Consortium Scotland³ and Together (Scottish Alliance for Children's Rights)⁴ that 'human dignity' is a valuable principle when interpreting rights.

We believe the introduction of this legislation should not be done in isolation and must be seen as one part of a wider strategy of promoting awareness and educating all people in Scotland about their human rights. We see the potential benefits and power of using this concept and dignity language to engage not only children but all people in human rights discussions, to increase understanding of human rights and to further advance the development of a culture of human rights in Scotland.

Aberlour also supports Scottish Government's proposal to establish the content of minimum core obligations (MCOs) through a participatory process. In defining the content of MCOs, a first step in the process should be asking people (particularly those most at risk of not having their rights respected) what dignity means to them and what being treated with dignity looks and feels like. Through this participatory process we can best capture and articulate what a minimum core

¹ <https://www.togetherscotland.org.uk/about-us/our-work-with-children/rights-detectives/>

² <https://www.gov.scot/publications/human-rights-bill-scotland-consultation/>

³ <https://hrcscotland.org/2023/10/09/consortium-publishes-scottish-human-rights-bill-consultation-responses/>

⁴ https://www.togetherscotland.org.uk/media/3488/hrb_draftresponse_final.pdf

obligation that stops people falling below a level where their inherent dignity is violated should look like.

In order to support such participation effectively, Scottish Government must work collaboratively with those organisations and others – particularly across the third sector – with knowledge and experience of supporting meaningful participation of people with lived experience and/or who are most at risk of discrimination, including children and young people, in policy making and development.

QU3. What are your views on the types of international law, materials and mechanisms to be included within the proposed interpretative provision?

We agree that existing international human rights law, materials and mechanisms should be included within the proposed interpretative provision within the Bill. The development and application of human rights law here in Scotland should be informed and influenced by the standards applied both in law and practice in those countries where human rights protections are already well established. We echo the view of Together (Scottish Alliance for Children’s Rights) that the Bill “*should not seek to define an exhaustive list of interpretative materials*”⁵, but instead should apply a broad and flexible understanding of what materials and mechanisms can be used within the interpretative provision that enables new and additional sources to be used as they develop in the future.

QU4. What are your views on the proposed model of incorporation?

We support a model of incorporation which will strengthen and bind in law human rights protections for all as far as possible within the devolved context, and which will improve equality of access to justice and redress for disadvantaged, marginalised and discriminated against children, young people and families throughout Scotland. As with UNCRC incorporation, Aberlour supports a maximalist approach to incorporation of all rights under the four international ‘equalities treaties’ and the right to a healthy environment which will be included within this Bill. We agree with both the Human Rights Consortium Scotland⁶ and Together (Scottish Alliance for Children’s Rights)⁷ that a ‘copy and paste’ approach should be applied insofar as possible within devolved competence.

We also share concerns regarding the unequal application of a duty to comply across each of the treaties. By containing a duty to comply with substantive rights only within the International Covenant on Economic, Social and Cultural Rights (ICESCR), and not within the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Rights of Persons with Disabilities (CRPD), we believe the Bill will fall short of its aspirational approach and Scottish Government’s stated commitment to become a leader in human rights. Children and young people across Scotland have been clear, both during the passage of the UNCRC bill and through other work focused on the development of human rights policy in Scotland, such as the Rights Detectives⁸, that a

⁵ https://www.togetherscotland.org.uk/media/3488/hrb_draftresponse_final.pdf

⁶ <https://hrcscotland.org/2023/10/09/consortium-publishes-scottish-human-rights-bill-consultation-responses/>

⁷ https://www.togetherscotland.org.uk/media/3488/hrb_draftresponse_final.pdf

⁸ <https://www.togetherscotland.org.uk/media/3368/detect-1.pdf>

duty to comply is essential in order that duty bearers meet their obligations towards all rights holders.

Furthermore, we agree the Bill should strengthen protections even further through the inclusion of an equalities provision. However, we also support Who Cares? Scotland's call for Care Experienced people and the status of care experience to be explicitly included within the equalities provision⁹, and believe that Scottish Government should consider in what ways through this Bill it can better secure and protect the rights of all those with Care Experience across their lifetime.

QU5. 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 question 4.

Part 5: Recognising the right to a Healthy Environment

QU6. Do you agree or disagree with our proposed basis for defining the environment?

Aberlour echoes Together (Scottish Alliance for Children's Rights) support for the Scottish Government's proposal to use the Aarhus Convention's definition of the environment, and also their concerns regarding the exclusion of the right to food¹⁰ (see question 9).

QU9. 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.

We disagree with the proposal that the right to food need not be included as a substantive aspect of the right to a healthy environment. We share both the Human Rights Consortium Scotland and Together (Scottish Alliance for Children's Rights) concern that not including healthy and sustainable food as a substantive right to a healthy environment could result in insufficient attention to the environmental impact of unsustainable food production¹¹. There are clear and ongoing calls from children and young people across Scotland to ensure stronger protection for the right to food at the same time as respecting the environment. Children and young people at Aberlour have expressed their view that a healthy environment must mean we "*stop food waste*". The Rights Detectives called for more sustainable food practices and access to healthy food, particularly in light of the cost-of-living crisis¹².

⁹ <https://www.whocaresscotland.org/wp-content/uploads/2023/09/WCS-Scottish-Human-Rights-Bill-consultation-response-Oct-2023-Final.pdf>

¹⁰ https://www.togetherscotland.org.uk/media/3488/hrb_draftresponse_final.pdf

¹¹ <https://hrcscotland.org/wp-content/uploads/2023/08/Final-HRCS-Guide-to-responding-to-Human-Rights-Bill-for-Scotland-consultation-August-2023-1.pdf>

¹² <https://www.togetherscotland.org.uk/media/3368/detect-1.pdf>

The negative effects of climate change globally, including issues linked with food insecurity (e.g. access and increasing prices), will disproportionately impact the most vulnerable in our societies. Through our work in communities across Scotland, we know that one of the greatest issues facing children, young people and families living in poverty in Scotland is food insecurity. More than half of applications to Aberlour’s Urgent Assistance Fund are from families who cannot afford to buy food¹³, as they struggle with the rising cost of living and additional financial pressures. Often, we find parents who go without or miss meals in order to make sure their children don’t go hungry. They also encounter additional barriers to being able to provide food for their children beyond the cost of food itself. Many families don’t have the facilities to store fresh food for longer than a couple of days. Others don’t have the basic utensils or facilities to cook fresh meals. Many more families simply don’t know how to cook.

Unaccompanied asylum seeking and trafficked children and young people supported by our [Guardianship Scotland: National Child Trafficking Support Service](#) arrive in Scotland alone and often from countries most affected by the impact of climate change. Sustainable, accessible and affordable food is a key issue for many of them. One asylum seeking young person told us, *“I have the right to good quality health care, to clean water and good food”*; and another said, *“African food and Halal butchers are more expensive, so our diet costs more money.”*

The impact of climate change is disproportionately affecting the poorest in our society, whether that is in the Global South or here in Scotland. Without clear and targeted action, the climate crisis is set to further entrench poverty and inequality. Therefore, if used to its full effect by strengthening protections through the ICESCR related duties to ‘adequate food’ and including the right to food as a substantive aspect of the right to a healthy environment, this Bill could be a powerful vehicle for addressing the multifaceted issue of food insecurity in the face of cost of living and climate crisis.

QU10. 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 this approach and refer to our answer to question 9.

QU11. Are there any other substantive or procedural elements you think should be understood as aspects of the right?

We agree with Together (Scottish Alliance for Children’s Rights) position on the importance of sustainable travel as a vital aspect of a right to a healthy environment. This is also the view of children and young people we support. As public transport becomes greener and more sustainable as a way to travel through increased use of electric vehicles, our young people have told us this should be cheaper or free to increase accessibility for all as a way to reduce travel by other less sustainable means. Free bus travel and the associated infrastructure to make this possible, has already been extended to under 22’s in Scotland. Although this has been widely welcomed by children and young people, we have heard that for some this doesn’t go far enough: *“Some people*

¹³ <https://www.aberlour.org.uk/publications/prof-morag-treanor-evaluation-of-the-aberlour-urgent-assistance-fund>

need to get a bus, then a train, then a bus to school. It should be free transport in general" (Young Person, 15). We believe Scottish Government should consider how it can further secure the right to a healthy environment through the development and accessibility of sustainable public transport for all.

Part 6: Incorporating Further Rights and Embedding Equality

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

Aberlour supports explicit reference to participation within and throughout the Human Rights Bill. Meaningful participation is the mechanism by which people can most directly exercise agency over realising their rights. Fundamentally, we believe participation should not be seen as an ‘add on’ but embedded throughout the Bill. We agree with Together (Scottish Alliance for Children’s Rights) that the UNCRC Bill provides a framework that can be followed in order to effectively embed participation of rights holders to shape, inform and influence the implementation of the Bill and how it is applied in practice¹⁴.

At Aberlour, participation is the means by which we can best elevate and amplify the voices and views of children, young people and families we work with in order to influence and inform everything we do and say. This is a fundamental element of how we respect, protect and fulfil their rights. Through meaningful participation we are able to best evidence and reflect the challenges and issues in their lives and the ways in which their rights are often not being met, as we see daily for many of our most disadvantaged, marginalised and discriminated against children, young people and families. This too often includes failures by duty bearers to fulfil the rights of children growing up in poverty, families living with a disability, asylum seeking and trafficked children and young people and care experienced children and young people. It is through effective participation and advocacy that we can give voice to those who are most often unheard and therefore can act to better secure their rights where they are not being upheld.

Again, we agree with the proposals by Together (Scottish Alliance for Children’s Rights) and the Rights Detectives on how best participation can be embedded within the framework of the Bill¹⁵, by: having dedicated capacity to coordinate and collate participation activity and children and young people’s views; acting on what children and young people have already told us about their rights; creating a range of appropriate and accessible ways for children and young people to meaningfully participate; engaging with all children and young people across the widest range of settings; and raising awareness across the whole of society about what the Human Rights Bill means for them.

QU14 What are your views on the proposed approach to including an equality provision to ensure everyone is able to access rights, in the Bill?

See question 17.

¹⁴ https://www.togetherscotland.org.uk/media/3488/hrb_draftresponse_final.pdf

¹⁵ https://www.togetherscotland.org.uk/media/3488/hrb_draftresponse_final.pdf

QU15. How do you think we should define the groups to be protected by the equality provision?

See question 17.

QU16. 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. See question 17.

QU17. If you disagree, please provide comments to support your answer

We support inclusion of an equality provision in the Bill and echo the comments of Who Cares? Scotland that when we ensure everyone in our community has access to the support they need when they need it, everyone in our society benefits¹⁶. Further to this, we strongly support explicit protection of LGBTI people through the Bill. Both they and older people should be specifically named within the provision rather than being protected under the catch-all of 'other status' given the particular considerations needed to address barriers to their rights.

Similarly, we share Who Cares? Scotland's view that Care Experienced people should be specifically named within the Bill¹⁷. We recognise through our own work the additional barriers that Care Experienced children and young people face in realising their rights and believe those barriers can to some degree be addressed through this group being explicitly referenced and visible in the Bill.

We support Together (Scottish Alliance for Children's Rights) call for a non-exhaustive listing approach¹⁸, whereby LGBTI people, older people and Care Experienced people are specifically named in the equality provision to ensure that they can legally challenge discriminatory protection of their rights under this provision in the Bill. However, we also agree that the inclusion of 'other status' alongside this would help to ensure protection for particular groups of children and young people, such as young carers or those affected by parental imprisonment, who may experience barriers to having their rights realised.

Part 7: The duties

QU19. What is your view on who the duties in the Bill should apply to?

We agree with Together (Scottish Alliance for Children's Rights) position that to achieve maximum rights protection the duties in the Bill should apply as widely as possible within the devolved context and extend to private bodies and third sector organisations that are delivering public services¹⁹. We also echo concerns regarding creation of a two-tier system and believe that further consideration

¹⁶ <https://www.whocaresscotland.org/wp-content/uploads/2023/09/WCS-Scottish-Human-Rights-Bill-consultation-response-Oct-2023-Final.pdf>

¹⁷ <https://www.whocaresscotland.org/wp-content/uploads/2023/09/WCS-Scottish-Human-Rights-Bill-consultation-response-Oct-2023-Final.pdf>

¹⁸ https://www.togetherscotland.org.uk/media/3488/hrb_draftresponse_final.pdf

¹⁹ https://www.togetherscotland.org.uk/media/3488/hrb_draftresponse_final.pdf

must be given as to how certain agencies and bodies that provide key services for children, young people and families that are neither contracted nor funded by Scottish Government or public authorities are within scope of the Bill.

QU20. What is your view on the proposed initial procedural duty intended to embed rights in decision making?

As stated in our response to question 4, Aberlour supports a maximalist approach to implementation within the powers of devolution. We believe a procedural duty should apply across each of the four treaties and the right to a healthy environment that the Bill will incorporate. Further to this, we agree with Together (Scottish Alliance for Children’s Rights) position that this should follow a ‘due regard’ model²⁰, as this would mean that where public bodies do not think about rights when making decisions, they could be subject to judicial review.

The initial period where a procedural duty applies is essential for giving public bodies, and those providing services on their behalf, time to prepare for the duty to comply. Change is a process and one that must be robustly supported by Scottish Government through both legislative and non-legislative activities, particularly in this initial period. We repeat our position that introduction of this legislation should not be done in isolation and should only be seen as one part of a wider strategy of promoting awareness and educating all people in Scotland about their human rights. Public authorities and duty bearers will need time to build capacity and understanding around human rights and work together to advance further development of human rights culture in Scotland.

We know from our own experience of working to recognise and realise children’s and young people’s human rights and embed a rights-based approach across our organisation that to be successful our whole community (from the children, young people, and families we support, to our workers, managers, and senior leadership team) needs to be involved and adequately supported to improve their knowledge and develop an understanding of children’s rights and the UNCRC. The same principle will apply to the rights within this Bill. Scottish Government should consider how they can best support essential non-legislative activities alongside implementation such as: public awareness raising; the provision of information, advice, and advocacy to everyone in Scotland, but particularly those who are most at risk of having their rights breached; and human rights training for professionals and policy makers at all levels.

QU21. What is your view on the proposed duty to comply?

See question 4.

QU22. 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?

We believe it is essential that rights-holders, particularly those whose rights are most at risk of not being met, are given the space and platform to help shape what is reported on and how. Learning

²⁰ https://www.togetherscotland.org.uk/media/3488/hrb_draftresponse_final.pdf

from consultation around the UNCRC Bill reporting duties, particularly the benefits of specifying topics upon which listed authorities must report, should be built-upon. Reports should be written in a way that rights-holders can understand and therefore use them to hold duty-bearers and public bodies to account. Reports should be published alongside child and young person friendly and easy-read versions as well as appearing in other formats essential to inclusivity and promoting meaningful participation. The Bill should require that reports reflect on past actions but are also ‘forward-looking’ to help protect against rights regression and support proactive culture shift.

At Aberlour we are committed to elevating and amplifying the voices and views of children, young people and families to influence and inform everything we do and say. Scottish Government should aim to recognise through reporting requirements in the Bill that we can only ensure change is meaningful and sustainable by listening and responding to those affected. Scottish Government and public authorities should be open to direct communications from rights-holders, particularly from children and young people whose channels of influence are most limited, through a variety of formats. We strongly support Together (Scottish Alliance for Children’s Rights) call for Scottish Government to consider a duty to consult with children and young people in the preparation of reports²¹.

QU24. 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?

We agree with this. Specifically, we advocate the need to demonstrate compliance via MCOs, use of maximum available resources and ensuring non-retrogression of rights.

QU25. What are your views on the right to a healthy environment falling under the same duties as economic, social and cultural rights?

We agree that there should be the same duties for the right to a healthy environment as for ICESCR.

QU26. What is your view on the proposed duty to publish a Human Rights Scheme?

We agree with the proposed duty to publish a Human Rights Scheme and believe this should follow the approach of the UNCRC Bill in developing a Children’s Rights Scheme.

Part 8: Ensuring Access to Justice for Rights-Holders

QU27. 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 Bill should strengthen access to independent advocacy services for all which are designed to protect and promote children’s and young people’s human rights; and this right to access should be placed both on the face of the Bill and included within the Human Rights Scheme. From the work of our own [Guardianship Scotland: National Child Trafficking Support Service](#) supporting

²¹ https://www.togetherscotland.org.uk/media/3488/hrb_draftresponse_final.pdf

unaccompanied asylum seeking and trafficked children and young people, we see first-hand the importance and need for effective independent advocacy for those at greatest risk of having their rights breached. Therefore, we support Together (Scottish Alliance for Children's Rights) position that there is a need for distinct advocacy services for children and young people specifically, whose rights are most at risk²². We also support Who Cares? Scotland call for Care Experienced people to be explicitly mentioned as a group whose rights are most at risk and to whom special attention should be paid in implementing the provision²³.

We reiterate our view on the importance of nurturing basic public awareness and understanding of human rights, as well as building the capacity of our workforce to recognise and realise children's and young people's human rights. This extends to knowing how to support someone to escalate or report a rights breach. Alongside specialist advocacy services we believe it is important to recognise the value of nurturing 'soft-advocacy', which is a term that most accurately reflects the kind of holistic support which our teams and services offer. We would therefore repeat our call on Scottish Government to consider how they can best support essential non-legislative activities alongside implementation such as nurturing capacity for a range of people, not limited to advocates, to help if rights are breached.

Part 9: Implementing The New Scottish Human Rights Act

QU38. What are your views on our proposals for bringing the legislation into force?

We agree with the Human Rights Consortium Scotland's recommendation to bring the legislation into force within a 6-month period following Royal Assent, with the additional duty to comply coming into force no more than two years later²⁴.

However, we see through our work with disadvantaged, marginalised and discriminated against children, young people and families, and through working in some of Scotland's poorest communities, the ways in which the rights of those we support fail to be met on a daily basis. This is particularly true in relation to: families living in poverty with inadequate income and standards of living; lack of access to food; debt to public bodies trapping families in poverty; families living with disability unable to access services or support; families living in poor quality housing; and exposure of children, young people and families to pollution. Therefore, implementation of the Bill should not be slow, and work must begin on implementing non-legislative approaches that support the aims of the Bill as soon as possible once it is passed by the Scottish Parliament.

QU39. What are your views on our proposals to establish Minimum Core Obligations through a participatory process?

²² https://www.togetherscotland.org.uk/media/3488/hrb_draftresponse_final.pdf

²³ <https://www.whocaresscotland.org/wp-content/uploads/2023/09/WCS-Scottish-Human-Rights-Bill-consultation-response-Oct-2023-Final.pdf>

²⁴ <https://hrcscotland.org/2023/10/09/consortium-publishes-scottish-human-rights-bill-consultation-responses/>

See questions 2 & 13.

QU40. What are your views on our proposals for a Human Rights Scheme?

See questions 26 & 27.

QU42. How can the Scottish Government and partners effectively build capacity across the public sector to ensure the rights in the Bill are delivered?

See questions 20 & 27.

QU43. How can the Scottish Government and partners provide effective information and raise awareness of the rights for rights-holders?

Further to our answer to question 20 and 27, we believe Scottish Government should further consider development of a planned and robust approach to development and sharing of human rights information, education, legal services and advice. This should as far as possible learn from and build on the work undertaken as part of the UNCRC Bill and wider work on incorporation and other existing rights-based training and development and approaches.

For further information contact Martin Canavan (Head of Policy & Participation)
Martin.Canavan@aberlour.org.uk