

Respondent Information and Answer Return Form

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Please send your response to us by email or by post using the following details:

Our email address is: HumanRightsOffice@gov.scot

Our postal address is:
Human Rights Strategy & Legislation Unit
Directorate for Equality, Inclusion and Human Rights
Scottish Government
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Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Criminal Justice Voluntary Sector Forum (CJVSF). hosted by CCPS

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We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

Questionnaire

The questions in this document refer to information contained in '[A Human Rights Bill for Scotland: Consultation](#)'.

Questions 1 – 5 refer to Part 4: Incorporating the Treaty Rights

Question 1

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

- Allow
- Don't Allow

Please give us your views:

CJVSF agrees with the Human Rights Taskforce recommendation that there is a need to, *“Provide that courts and tribunals are clear on the intent of the legislation including the underpinning value of human dignity, in relation to international law and to comparative law. It is suggested this could be done through an interpretative clause.”* We understand that through an interpretative clause, it is intended that the core meaning of human rights is maintained over and above textual definitions. We therefore welcome the proposal in the consultation to allow for dignity to be considered by courts when interpreting the bill, although we agree with the Human Rights Consortium's view that this should be a requirement and not an option.

Clarity on the intent of the legislation will be important for duty bearers and rights holders to have as well. It is our understanding that, in a human rights context, the concept of dignity stems from Article 1 of the Universal Declaration of Human Rights, 'All human beings are born free and equal in dignity and rights'. There is a challenge in not working to a single, agreed operational definition of dignity. It will be important to have greater clarity about how Scottish courts and tribunals will be interpreting dignity and what the government are asking of duty-bearers. We would encourage the Scottish Government to engage with relevant stakeholders in understanding the principle as it will be used in the Bill. As part of any guidance that may be produced, members would also welcome some examples of how this can be interpreted in practice. Public education on this principle will also be important for Scotland to realise it.

We also recommend that other key human rights principles, such as participation and universality, should be considered within the Bill. Again, we would be keen to see any principles included in the Bill clarified.

Question 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 (MCOs)?

- Allow

Don't Allow

Please give us your views:

CJVSF Members agree that dignity is an important principle to be upheld and should be part of the government's and organisations' obligation to people. Within the criminal justice sphere, it is apparent among CJVSF members that dignity is not always upheld for rights holders.

Other key human rights principles should be minimum core obligations. Participation is a principle which has particular utility as a MCO because it is clearly actionable, measurable and focused on doing things alongside people and not 'to' them. Participation is something which may be more straightforward to operationalise and assess with regard to processes and practices within services. Participation creates a reorientation of power in relationships and so serves other human rights principles such as dignity. We think embedding participation could be a key driver of realising rights.

We would be keen to see more in-depth engagement with stakeholders in relation to the Minimum Core Obligations and associated definitions ahead of the Bill being developed. CJVSF members would welcome the opportunity to be involved in such discussions. Involving service providers and service users (as well as other stakeholders), at an early stage will provide insights into the potential implications of any guidelines and duties at an operational level and improve the likelihood of successful implementation of the Act once it goes live.

Question 3

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

Please give us your views:

Not answered

Question 4

What are your views on the proposed model of incorporation?

CJVSF members are supportive of a model of incorporation which progresses from *procedural duties* on public bodies and private actors, towards *duty to comply with the obligations* set out in the bill after a specified period of time. We also agree with the model of delivering on Minimum Core Obligations and progressive realisation of the rights.

CJVSF members agree with the need to realise the rights of people within the treaties which are proposed to be incorporated within the limits of devolved competence:

- The International Covenant on Economic, Social and Cultural Rights (ICESCR)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- The Convention on the Rights of Persons with Disabilities (CRPD) and
- The International Convention on the Elimination of all forms of Racial Discrimination (ICERD)

as well as the need to recognise and include the right to a healthy environment. We would be keen to understand more about how this Bill will interact with the UN Convention on The Rights of The Child (UNCRC) incorporation, and how both can be implemented in a cohesive way.

We would welcome more clarity and consideration of the role of private actors within the proposed model of incorporation. We understand from the consultation document that this would include third sector (as well as private sector) organisations “*carrying out functions of a public nature, including private bodies acting under contract or other arrangements with a public body*”. This model raises questions about where the responsibility lies in certain situations. Whilst the consultation paper makes it clear that the service provider acting under contract would have a duty to comply, we would suggest that a whole system approach needs to be taken to meeting people’s human rights as some aspects of upholding an individual’s human rights will be beyond the control of the individual service provider. As such, we would welcome further consultation and clarification about whether duties should also extend to the commissioning body that is contracting other organisations to carry out public functions and to public sector bodies that set the guidance and the legal and regulatory frameworks within which the service must be delivered. This could help to ensure that systemic factors that may have contributed to rights abuses occurring through, for example, unethical commissioning arrangements or inappropriate guidance, are also considered. If the state has no responsibility in these cases, how can rights holders get redress where there are systemic factors that have contributed to rights abuses? Similarly, the [Scottish Government’s Cleaner Air for Scotland 2 Strategy](#) notes that, “*Given the wide range of factors contributing to indoor air quality, no single body or organisation can realistically have sole responsibility for addressing it. Thus there is a need for policy integration and coherence to avoid the risks of unintended consequences.*”

Members were also keen to understand how governance and scrutiny bodies, such as the Care Inspectorate, would interact with private actors to create mechanisms for rights realisation, particularly in relation to implementation of existing standards such as, the MAT Standards and Health and Social Care Standards.

The third sector has an important role to play in incorporation as it is often the case that third sector organisations provide services to those whose rights are most at risk. It will, however, take more than just time for duty bearers to prepare for any new duties. To support the implementation of the Bill, there will need to be a period of capacity building, including, for example, awareness raising and training for staff and service users; redesigning processes and complaints handling mechanisms; and identifying legal representation and redress routes. At present, a lack of Fair Funding arrangements acts as a major barrier to third sector organisations being able to build in additional capacity building activities for new legislative developments such as these. As such, it is not clear where the resource for this ‘sunrise’ period will come from, to enable organisations to do the preparatory work required, and we would be keen to see this clarified in the financial memorandum accompanying the forthcoming Bill.

We are left with a number of key questions in relation to the delegation of duties to private actors in our field. Therefore, we urge the Scottish Government, in line with the calls of CCPS, that in advance of confirming that any Bill will extend accountabilities to third sector providers of justice services as duty bearers, there is further consultation with our sector about the consequences and practical details of how incorporation within our part of the wider sector could take place effectively. We are happy to support engagement with our members in this.

Question 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.

Yes

No

Please provide reasons for your answer:

Not answered

Questions 6 – 11 refer to Part 5: Recognising the Right to a Healthy Environment

Question 6

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

Agree

Disagree

Question 7

If you disagree please explain why:

Although we understand from questions answered at consultation events that the provision is intended to refer to indoor, as well as outdoor, environments where they relate to the substantive elements, this is not clear to us from the consultation documents and we would be keen to see this clarified within the Bill itself. In particular, CJVSF Members encourage the Scottish Government to consider how this provision could ensure that people in police custody suites, courts, prisons, residential settings and community spaces have the right to a healthy environment. We believe this is particularly important in light of findings such as those from the Scottish Government's recently published report into [Understanding the Health Needs of Scotland's Prison Population](#) which reported that, *"although prisons present a unique opportunity to address health needs, prison environments can heighten the impact of certain illnesses."*

If the purpose of realising this right is to ensure people have physical surroundings which support good health and wellbeing, the definition in the Bill may need to go beyond the scope of the substantive aspects mentioned in the consultation paper (clean air; safe and sufficient water; non-toxic environments (in which to live, work, study and play); healthy ecosystems and biodiversity; safe climate). We would be keen to see the definition also encompassing wider social and cultural factors which create a 'healthy' environment. This broader definition should build on the learning from previous and current policy and practice developments, such as:

- The [National Trauma Training Programme](#) and the [Trauma Informed Justice Knowledge and Skills Framework for Working with Victims and Witnesses](#). The Framework notes that, *"Many witnesses report that the physical environments they encounter, and the processes they are required to go through, can have as great an impact on their experience as their interactions with staff."*
- The introduction of [Scotland's smoke-free prisons policy](#)
- The recent [consultation on restricting alcohol advertising and promotion](#)
- The proposed [pilot for a Safer Drug Consumption room](#) and the [evidence review](#) previously undertaken on Safer Drug Consumption Facilities.

We would welcome more clarity around how both 'healthy' and 'environment' will be defined within the Bill and whether this particular right extends to ensuring people are cared for, or accommodated in, surroundings which meet their individual health needs. Members were also keen to understand whether this new proposed legislation could be used to enforce standards which already exist for prisons and residential settings and/or or implementation of policies and practice which relate to physical spaces, such implementation of the [toolkit for trauma-informed practice](#)?

Question 8

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

Please give us your views:

The consultation paper proposes the following substantive and procedural aspects:

- Substantive aspects:
 - clean air
 - safe and sufficient water
 - non-toxic environments (in which to live, work, study and play)
 - healthy ecosystems and biodiversity
 - safe climate.
- procedural aspects:
 - awareness-raising, promoting education and capacity building;
 - access to information;
 - public participation in decision-making;
 - ensuring effective, affordable and timely remedies
 - suitable policies, planning and action.

Some aspects, such as “suitable policies, planning and action”, are very open to interpretation and CJVSF would welcome clear definitions of what each of these substantive and procedural aspects would cover in practice, in order to be able to provide informed views on them.

As noted above, we would also be keen to see the aspects expanded to include social and cultural aspects which contribute towards a healthy environment.

Members noted the importance of independent advocacy in relation to some of the procedural aspects and were keen to understand if this will be built into the legislation.

CJVSF Members were keen to highlight that where there are existing mechanisms for complaint and redress, these are not always being used in practice. They identified examples relating to [The Additional Support Needs jurisdiction \(the ASN Tribunal\)](#), through which the Equality Act 2010 (the 2010 Act) provides the right to make a claim, and the [The Mental Health Tribunal for Scotland](#), which investigates appeals and complaints through section 21 of the Mental Health (Care and Treatment) (Scotland) Act 2003. Members would be keen for the bill team review any potential learning from this, to improve implementation of the new legislation, and to clarify what aspects of the proposed bill have bearing on these existing tribunals.

Question 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.

Agree

Disagree

Please provide your reasons why:

Not answered

Question 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.

- Agree
- Disagree

Please give us your views:

Not answered

Question 11

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

- Yes
- No

If yes, please specify what substantive or procedural elements and explain how this could be achieved:

Not answered

Questions 12 – 18 refer to Part 6: Incorporating Further Rights and Embedding Equality

Question 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?

Please give us your views:

Ensuring that the Scottish Government and public bodies lead the way on embedding the Human Rights Act within their own policy and practice will be a key signal that this is a core pillar of human rights law.

Question 13

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

Please give us your views:

CJVSF appreciates that the right to participation is intrinsic to the implementation of this bill. As noted in our response to question 2, we think that Participation should be included as a minimum core obligation. It is also important that participation is embedded in the development of this bill as well as being a requirement for duty bearers. Participation and engagement is something which is time and resource intensive, when done meaningfully and not in a tokenistic way. We are keen that for both the creation of the bill and implementation of the bill, any participation sought is carried out in accordance with the Scottish Government's [National Standards for Community Engagement and Participation](#). The third sector will also have an important role to play in supporting the engagement and participation of seldom heard groups and those whose rights are most at risk.

We welcome the [Scottish Human Rights Consortium's proposal](#) that, *"At every stage of monitoring and reporting, it should not be reporting on the activity itself. Instead, it should be reporting on activity or decisions that have led to the realisation of rights, as determined, and evidenced through participation of people whose rights are most at risk."*

Members noted that consideration of people's justice-specific experience of rights issues is important and would be keen to see steps taken to ensure people with experience of the justice system are also enabled to participate in the development and implementation of the Bill. Existing resources, such as the [Inclusive Justice: Co-producing Change](#) Guide published by CYCJ may provide some helpful practical examples of what this could look like in practice.

Members also raised broader concerns that this consultation has not been an inclusive process, with those they work with often unaware of the consultation. The language and accessibility of the consultation documents was also seen to be a

barrier, which may have reduced participation of people whose rights are most at risk. Members would be keen to see the engagement and participation of people with lived experience of the justice system strengthened at the next stage of the Bill development process.

These concerns reflect similar challenges that are faced at an operational level, whereby people in the justice system can find the language used confusing and unclear and the participation routes for those with lived experience are not always clear. A lack of access to language services can also be a barrier, particularly for people whose rights are most at risk, including refugees, asylum seekers and migrants. A bilingual member noted that translations relating to justice system processes are not always accurate and the language to help someone get a complaint through a system could be improved. Similarly, for this consultation, it was noted that only Gaelic and BSL translations of the consultation guide were provided on the Scottish Government's website, thereby creating barriers to participation for some groups.

Question 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?

Please give us your views:

Including provision for protected characteristics set out in the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) is important for recognising and addressing systemic barriers for people. This provision could support understanding of intersectionality; people with different racial identities or sexual orientations are likely to have different experiences of the justice system, for example.

For people who have experience of particular situations and circumstances (e.g. homelessness, mental health challenges, substance misuse, leaving care, involvement in the justice system, having a family member imprisoned), there will also be additional barriers to having their rights realised. The [Edinburgh Study of Youth Transitions and Crime](#) found that for those whose early years were disrupted by parental difficulties and social and economic inequalities, interaction with the justice system was associated with long-term issues with education, employability, health and interpersonal relationships. Care experience was strongly associated with later justice system contact and a range of other negative outcomes. We would agree with the priorities set out in the report by Who Cares? Scotland and the Human Rights Consortium on [The Protection of Care Experienced People's Rights in the Scottish Human Rights Bill](#). CJVSF recognises that discrimination in accessing rights has multiple angles; people are discriminated against because they have been in the justice system, but there are also a disproportionate number of people in the justice system due to social inequalities and a lack of rights being upheld earlier in the system.

Recognising protected characteristics and particular groups whose rights are most at risk and supporting their access to rights could be done through the text of the bill's equality provision. If an 'other status' category is included in the equality provision as considered in the consultation, we think that it would be helpful to have a requirement

within the Bill for Scottish Ministers to publish guidance around interpretation of 'other status'. Such a requirement would allow Ministers to highlight specific criteria that public bodies should apply in considering other groups whose rights are at risk. This requirement could see that groups whose rights are most at risk, that would fall within an 'other status' category (including people affected by the justice system) are specifically recognised in subsequent guidance. It is also important to recognise particular groups in the monitoring of their human rights outcomes under the Bill, including the Human Rights Scheme and the Scottish Government's National Performance Framework.

Participation may also be a key principle which could support a comprehensive approach to addressing inequalities and discrimination and ensuring equal access to rights.

Question 15

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

Please give us your views:

In addition to including an 'other status' category in the equality provision, it would be helpful to have a requirement within the Bill for Scottish Ministers to publish guidance around interpretation of 'other status'. Such a requirement would allow Ministers to highlight specific criteria that public bodies should apply in considering other groups whose rights are at risk. This requirement could see that groups whose rights are most at risk, that would fall within an 'other status' category, are specifically recognised in subsequent guidance.

Interpretation of 'other status' could draw on [SNAP 2 – Scotland's second National Human Rights Action Plan](#); the authors note that, "*People whose rights are most at risk can vary from issue to issue*". They suggest that "*delivery stakeholders will work together to identify and prioritise the people whose rights are most at risk in relation to each SNAP 2 action*". A similar approach could potentially be taken to the Human Rights Bill whereby duty holders are required to work together to identify and prioritise the people whose rights are most at risk in relation to the relevant activity, service, policy or implementation of piece of legislation.

SNAP 2 suggests that, "*A non-exhaustive list (because others can be identified) of people whose rights could be most at risk includes: Black and minority ethnic people; care experienced people; children and young people; families of accused persons and people in custody; disabled people, including people with learning disabilities and autistic people; LGBTQIA+ people; lone parents; migrants, refugees and people seeking asylum; older people; people on remand; people in poverty; people with lived experience of homelessness; people with lived experience of substance use; people with long term conditions; people with mental health conditions; people with religious belief/faith; people living in rural or remote areas; Scottish Gypsy/Travellers; unpaid carers; and women.*"

CJVSF members suggested that people with experience of the justice system (beyond people on remand) should also be included, given the additional barriers they can sometimes face. This would include people with convictions as well as people who have been harmed by crime.

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

- Agree
 Disagree

Question 17

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

Not answered

Question 18

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

- Yes
 No

Please give us your views:

Not answered

Questions 19 – 26 refer to Part 7: The Duties**Question 19**

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

Please give us your views:

We would welcome more clarity and consideration of the role of private actors within the proposed model of incorporation. We understand from the consultation document that this would include third sector (as well as private sector) organisations "*carrying out functions of a public nature, including private bodies acting under contract or other arrangements with a public body*". As stated in our response to question 4, we have concerns that this could result in all responsibility being placed on the provider

organisation in contractual arrangements, even when elements of the duty will be outwith their control. To reduce the risk of unethical commissioning practices, we suggest that a whole system approach needs to be taken to meeting people's human rights. As such, we welcome further consultation on how duties extend to the commissioning body that is contracting other organisations to carry out public functions and to public sector bodies that set the guidance and the legal and regulatory frameworks within which the service must be delivered.

Question 20

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

Please give us your views:

Not answered

Question 21

What is your view on the proposed duty to comply?

Please give us your views:

In principle, we agree that all public bodies and private actors should uphold the rights within the bill and that this can be achieved through a duty to comply. We agree that this duty to comply should include delivering Minimum Core Obligations and demonstrating progressively realising rights. As stated in our responses to questions 4 and 19, however, we would welcome further consultation about the duties to ensure that a whole systems approach is taken and to ensure that the third sector can deliver on this.

Question 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?

Please give us your views:

Any additional duties placed on organisations will increase their reporting burden (Members noted that this was the case when GDPR was brought into force). CJVSF were keen to find out whether resource will be allocated to support the implementation of human rights legislation, rather than putting organisations which are running at stretched capacity under further strain.

Question 23

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

Please give us your views:

As part of the [Community Justice \(Scotland\) Act 2016](#), in preparing their reports on performance in relation to community justice outcomes, public authorities are required to consult:

- each third sector body involved in community justice in relation to the area,
- such community bodies in relation to the area as they consider appropriate, and
- such other persons as they consider appropriate.

We would be keen to see a similar requirement for public authorities to engage with relevant third sector and community bodies as part of the reporting on delivery of their duties in relation to the Human Rights Bill. CJVSF members also support the view of the Human Rights Consortium Scotland (HRCS) that there should also be a requirement to consult with people whose rights are most at risk when developing these reports (and the associated guidance on these reports). We also welcome the [Scottish Human Rights Consortium's proposal](#) that, *“At every stage of monitoring and reporting, it should not be reporting on the activity itself. Instead, it should be reporting on activity or decisions that have led to the realisation of rights, as determined, and evidenced through participation of people whose rights are most at risk.”*

Members are keen to understand how other legislation and policy will inform these obligations and realisation and, similarly, whether the proposed human rights legislation could be used to enforce obligations which have been set out in other legislation. For example, could the Human Rights bill help to enforce the provisions set out in the Bail and Release bill or any forthcoming obligations which are being identified through the development of the National Care Service?

Question 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 minimum core obligations (MCOs) and progressive realisation?

Please give us your views:

Not answered

Question 25

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

Please give us your views:

Not answered

Question 26

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

Please give us your views:

We agree that Scottish Ministers should be given a duty to publish a Human Rights Scheme, and a related duty to report on actions taken on the requirements in the Scheme. As per our previous comments in relation to monitoring and reporting, we would suggest that it should not be reporting on the activity itself. Instead, it should be reporting on activity or decisions that have led to the realisation of rights, as determined, and evidenced through participation of people whose rights are most at risk.

Questions 27 – 37 refer to Part 8: Ensuring Access to Justice for Rights Holders

Question 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?

Please give us your views:

There is a spectrum around the definition of advocacy. Members suggested that independent advocacy is the most effective way of supporting people to be able to realise their rights. Independent advocacy is underpinned by three principles. These are set out in the [Independent Advocacy: Principles, Standards and Code of Best Practice](#) published by the Scottish Independent Advocacy Alliance:

- *“Principle 1: Independent advocacy is loyal to the people it supports and stands by their views and wishes.
Principle 2: Independent advocacy ensures people’s voices are listened to and their views taken into account.
Principle 3: Independent advocacy stands up to injustice, discrimination and disempowerment.”*

Members noted that there is valuable learning to be gained from the implementation of other recent pieces of legislation. For example, section 122 in the Children’s Hearing (Scotland) Act 2011 places a duty on the Chair of every children’s hearing to inform the child about the availability of children’s advocacy services. Members observed that challenges have been encountered during the implementation phase, however, due to the levels of funding available to support the provision of children’s advocacy

services. Similarly, a recently published [review of advocacy planning across Scotland by the Mental Welfare Commission for Scotland](#) found that even though the Mental Health Act in 2015 created new duties for local authorities and health boards to tell the Commission how they have ensured access to advocacy services up to now, and how they plan to do so in the future, it is challenging for independent advocacy organisations to meet the current demand for independent advocacy when this is outstripping current resource. Without sufficient resource attached to any future Human Rights Act to enable the successful implementation of the legislation, it is unlikely that that proposals to ensure access to justice for rights holders will be as effective as intended.

Members also noted the important role for legal aid services, again highlighting the need for this to be adequately resourced to ensure that people can be supported in practice.

Question 28

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

Please give us your views:

Creating local, accessible complaints handling mechanisms will be key to ensuring rights are upheld. These should include clear structures and processes for:

- Raising peoples awareness of their rights and supporting people through the process
- Addressing failures as early as possible in the system
- Escalating challenges
- Building in continual improvement to systems and processes to avoid similar complaints being raised in future.

Members noted concerns that existing mechanisms for participation and complaint handling in other areas do not always work effectively in practice and that people in vulnerable circumstances are not always able to access their rights. In practice, there can be unequal access to the complaints system due to barriers such as language (including a lack of access to translation services) and ASN needs not being met.

They suggested that there may be lessons that can be learned by reviewing existing front-line complaints handling mechanisms of public bodies to better understand better where the barriers exist. Any review of existing mechanisms should involve people whose rights are most at risk.

Question 29

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

Please give us your views:

Not answered

Question 30

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

Please give us your views:

Members highlighted that a part of monitoring and scrutiny will be understanding what happens to complaints that are not listened to and acted on. What accountability structures and processes will be put in place to support implementation?

Question 31

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

Please give us your views:

Not answered

Question 32

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

Please give us your views:

Not answered

Question 33

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

Please give us your views:

Not answered

Question 34

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

Please give us your views:

Not answered

Question 35

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

- Agree
- Disagree

Question 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?

The consultation identifies the following judicial remedies that could be used:

- Restitution
- Compensation
- Rehabilitation, where a violation of a right has caused medical or psychological harm
- Satisfaction including public apology, sanctions/ amendment to educational materials
- Guarantees of non-repetition – can include reviewing and reforming laws.

The consultation states that the Scottish Government is considering whether these remedies could also allow aspects of the 'structural interdict' approach to be used as a form of remedy. CJVSF would support the remedies being extended to include structural interdicts in order to address structural or systemic issues and prevent breaches being repeated for other people across the whole system.

Question 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?

Please let us know your views:

Not answered

Questions 38 – 44 refer to Part 9: Implementing the New Scottish Human Rights Act

Question 38

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

Please give us your views:

Members suggested that the legislation itself will not be sufficient for ensuring the intended changes occur in practice. A clear action plan, setting out both short and long term actions, will also be required, along with appropriate resourcing to support implementation of the identified actions at both a national and a local level. Members also raised concerns that the removal of ring-fencing within the Verity House Agreement means that any allocated resource intended to support implementation at a local level may not feed through the system to support this particular legislative development in practice and is unlikely to reach partners beyond the local authority. They would be keen to see these barriers created by the introduction of the Verity House Agreement urgently addressed as this also has wider implications for local public services delivery, beyond the implementation of any future Human Rights Bill.

Question 39

What are your views on our proposals to establish minimum core obligations (MCOs) through a participatory process?

Please give us your views:

We agree that it is essential that the MCOs are developed through a participatory process involving both potential duty bearers and rights holders. Members would, however, find it helpful to have clarity around the definitions of the Minimum Core Obligations (MCOs) ahead of the Bill being published as this is likely to inform future planning for the implementation stage. We agree with the HRCS's view that *"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."*

We would welcome the opportunity for further engagement on the content and definitions of Minimum Core Obligations ahead of any Bill being published.

Question 40

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

Please give us your views:

Not answered

Question 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?

Please give us your views:

Not answered

Question 42

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

Please give us your views:

It is important to note that it is not only capacity across the public sector that will need to be built to ensure the rights in the Bill are delivered. Given that the duties will also apply to private actors (including, within the current proposals, the third sector), it is important that capacity is built more broadly. This is likely to include a multi-faceted approach, including the provision of clear guidance; a structured programme of events and activities to improve awareness and understanding of the legislation and the duties within it amongst both duty holders and rights holders; resourcing to support any additional staffing or infrastructure requirements that may be needed at an organisational, partnership or systems level.

Question 43

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

Please give us your views:

Effective information and awareness raising for rights holders will be vital and this is likely to require both time and resource to ensure it is done effectively. We anticipate that it would be likely to include:

- Engaging rights-holders in co-designing the Bill and any accompanying guidance and information resources
- Making the Bill itself as accessible as possible
- Producing clear guidance about the legislation and how it should be implemented in practice
- Co-designing and delivering with rights-holders an initial public awareness raising and education campaign. This should include information provision and engagement activities through multiple media and engagement routes.
- Working collaboratively with rights holders to identify and/or develop clear routes for ongoing information provision and awareness raising (This should include provision of independent advocacy for rights holders)

Question 44

What are your views on monitoring and reporting?

Please give us your views:

As per previous responses, we are keen that monitoring and reporting draws on lessons learned from other policy areas to ensure effective practice and, in line with the HRCS suggestion, *“At every stage of monitoring and reporting, it should not be reporting on activity itself. Instead, it should be reporting on activity or decisions that have led to the realisation of rights, as determined, and evidenced through participation of people whose rights are most at risk.”*

Members are also keen that accountability is built in to the cycle of monitoring and reporting.

About you

Please tell us which of the following categories best describe you (select all that apply):

- Legal profession
- Organisation - Private
- Organisation – Public
- Rights holder
- Other – please specify

Other – please specify

Organisation – Third sector intermediary body.

Additional space for answers

(Please specify the question information relates to)