

## RNIB Scotland response on a Scottish Government consultation on a Human Rights Bill for Scotland

## Introduction

Across the UK one in five people will start to live with sight loss in their lifetime. The 2023 version of the RNIB Sight Loss Data Tool states that the number of people estimated to be living with sight loss in Scotland is 183,000 and reports the number of registered blind or partially sighted people to be 34,492, as stated in the last Scottish Government returns for 2010, published in 2011. The 2032 projection for sight loss population in Scotland is 214,000.[[1]](#footnote-1)

RNIB Scotland is the country’s leading charity working with blind and partially sighted people. We support visually impaired children and adults and help them to live full and independent lives, campaigning for their rights.

We welcome the opportunity to respond to the Scottish Government consultation on a Human Rights Bill for Scotland.

The Scottish Government consultation paper sets out the high-level objectives behind the Bill as to:

* “Build on existing human rights and equality protections, enshrined in the Scotland Act 1998, Human Rights Act 1998 and Equality Act 2010, within the limits of devolved competence;
* “Provide a clear, robust and accessible legal framework that ensures:
  + “All rights-holders in Scotland can understand and claim international human rights domestically; and that;
  + “All duty-bearers will better implement rights in practice, respond appropriately to rights issues as they arise, and be held to account when things go wrong.”

The Bill seeks to incorporate four international treaties (all ratified by the UK) into Scots law “within the limits of devolved competence” and to “recognise and include the right to a healthy environment”. A right for older people, a right to participation, restating civil and political rights in the Bill, and the potential incorporation of the UN Convention against Torture (UNCAT) may also be incorporated through the Bill. The treaties are:

* 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).

RNIB welcomes the intention of the Scottish Government to legislate to place the obligations of our international treaties on a statutory footing in Scotland. Whilst the scope of the proposed Bill must remain within devolved competence, incorporation of international treaties, with a duty to comply, could underpin the advancement of human rights for at least a generation. Such change is vital for blind and partially sighted people as they face many barriers to participation and inclusion in society.

## QUESTIONS

## 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?

**RNIB Scotland supports and welcomes the proposal.**

Article 1 of the Universal Declaration of Human Rights states: “All human beings are born free and equal in dignity and rights.” [[2]](#footnote-2)

Dignity stands as a fundamental and universal principle of human rights. It asserts that every individual possesses inherent worth and value, and as such, government actions and policies must uphold this principle by not treating any person as having lesser value.

The consultation document notes that the Scottish Government is “also considering the most appropriate mechanism by which to recognise other key international human rights principles – such as the universality, indivisibility, interdependence and interrelatedness of all rights – within the framework”. The government’s National Taskforce recommended using a purpose clause that would state “the intent of the legislation is to give maximum possible effect to human rights and recognise that human dignity is the value which underpins all human rights.”[[3]](#footnote-3)

RNIB Scotland, as a member of the Right to Rehab Coalition collective of health charities and professional bodies[[4]](#footnote-4), and alongside many other organisations including The ALLIANCE and the Human Rights Consortium Scotland (HRCS), supports the inclusion of a purpose clause that explicitly mentions dignity along with other key human rights principles such as universality, participation, and other relevant principles.

## Question 2: What are your views on our proposal to allow for dignity to be a key threshold for defining the content of MCOs?

RNIB Scotland agrees with the proposal to make dignity a key threshold for defining and delivering Minimum Core Obligations (MCOs) within the Bill.

Furthermore, as a member of the Right to Rehab coalition, RNIB Scotland supports calls for the right to access rehabilitation to be recognised within the MCOs of the right to health.

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

RNIB Scotland supports the Scottish Government's approach to include international law, materials, and mechanisms within the proposed interpretative provision of the Human Rights Bill. This aligns with the bill's aim of incorporating established international human rights standards rather than creating new Scottish rights. The existing international framework, including UN General Comments and recommendations, provides a strong foundation for interpreting and applying human rights in practice.

Including this provision will help the Bill to align with the United Nations Convention on the Rights of the Child (UNCRC) (Incorporation) (Scotland) Bill. The UNCRC Incorporation Bill[[5]](#footnote-5) sets out which treaty-based “things” should be considered, including – but not limited to – treaty preamble, General Comments, Concluding Observations, and recommendations following days of general discussion. For consistency, the Scottish Human Rights Bill should follow a similar route. We agree with the ALLIANCE[[6]](#footnote-6) that consideration should also be given to relevant materials from UN Special Procedures such as reports by UN Special Rapporteurs.

## Question 4: What are your views on the proposed model of incorporation?

RNIB Scotland welcomes the intention of the Scottish Government to legislate to place the obligations of our international treaties on a statutory footing in Scotland. This is a leading initiative which will undoubtedly impact on the rest of the UK perhaps especially in Wales which is currently considering taking similar steps towards incorporation.

We support the incorporation of ICESCR, CEDAW, CRPD, CERD into Scots law. Incorporation would mark a significant step forward in the advancement of human rights in Scotland. We also believe that the right to a healthy environment should be included in the Bill.

We agree that the text from the four treaties – ICESCR, CEDAW, CERD, and CRPD – should be reproduced in the Bill, removing any areas that are reserved to the UK Parliament.

We believe that public authorities – and as far as possible other bodies carrying out devolved public functions – should have both a procedural duty and a duty to comply in relation to the ICESCR rights and the right to a healthy environment. The procedural duty should also apply in relation to the rights in CEDAW, CERD, and CRPD.

The initial procedural duty should be a duty to have due regard, as with the Public Sector Equality Duty (PSED), and it is essential that as with the PSED in Scotland, public authorities are required to “show their workings”.

However, in our experience the due regard duty is insufficient to bring about change in and of itself.

The duty to have due regard should not be phased out and should continue to exist alongside the duty to comply. The Bill should contain clear and precise information about when the different duties apply. Otherwise, there may be confusion leading to a risk of non-compliance. The Bill should explicitly state that the duty to have due regard starts from the date of the Act receiving Royal Assent, and the duty to comply will start two years after the Act receives Royal Assent.

We agree that the duty to comply should include a requirement to deliver Minimum Core Obligations and progressive realisation. Progressive realisation means that the government must move forward and ensure that the rights are realised over time. It may do so through adopting a comprehensive and co-ordinated programme with timeframes, goals and targets, and must be able to monitor its own progress.

There should be an equality provision in the Bill to ensure equal access for everyone to the rights therein. LGBTI people and older people should be named on the face of the Bill.

However, the proposed model of incorporation creates enforcement rights only in relation to the provision of ICESCR.

Like many other consultation respondents, we do not support the proposal to apply only a due regard duty to CEDAW, CERD and CRPD.

We strongly believe that a duty to comply is required.

Otherwise, the Scottish Human Rights Bill will not deliver the significant change that is needed. We share the concern expressed by the ALLIANCE “about the prospect of a two-tiered and hierarchical approach to the rights and duties in the Bill”.

The CRPD contains significant, substantive rights for disabled people that are not found within ICESCR. These rights are of crucial importance to respect for the dignity of disabled people. If these standalone rights are to be fully realised for disabled people, public bodies must have the stronger duty to comply. We suggest that consideration needs to be given to the following CRPD rights, amongst others:

* Article 5 Equality and non-discrimination including the requirement to make “reasonable accommodation”.
* Article 7(3) Participation of disabled children.
* Article 9 The right to accessibility of the physical environment, transportation, information and communication, and services open to the public.
* Article 11 Situations of risk.
* Article 12 Equal recognition before the law.
* Article 13 Access to justice.
* Article 14 Liberty and security of the person.
* Article 16 Freedom from exploitation.
* Article 17 The right to respect for physical and mental integrity.
* Article 19 The right to live independently and be included in the community.
* Article 20 Personal mobility.
* Article 24 Inclusive education.
* Article 26 Habilitation and Rehabilitation.
* Article 29 Participation in political and public life.

We urge the Scottish Government to put in place a duty to comply with all CRPD substantive rights within devolved competence. We also recommend that the Bill takes a maximalist approach to include as many rights as possible within the Bill.

RNIB Scotland fully acknowledges the complexity of the process of incorporating international treaties within Scots law and the devolved context.

The Scottish Parliament unanimously passed the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill in March 2021. However, the Bill was referred to the Supreme Court by the Attorney General and the Advocate General for Scotland under section 33(1) of the Scotland Act 1998. In October 2021 the Supreme Court ruled that certain provisions would be outside the legislative competence of the Parliament.[[7]](#footnote-7)

Scottish Parliament reconsideration of the UNCRC Incorporation Bill has now begun, and amendments are required to ensure that this Bill is within devolved competence. The Cabinet Secretary for Social Justice has confirmed consideration of an audit of legislation to identify any that is outside the scope of the UNCRC Bill or is not compliant.

Given devolution limitations apply to the Human Rights Bill for Scotland, an audit of wider legislation that impacts rights in the Human Rights Bill for Scotland will also be required and should be planned for alongside wider Bill implementation. Early Scottish Government engagement with the UK Government around the Bill may minimise any risk of it being challenged in court.

## 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. The Scottish Government has classified CEDAW, CRPD and ICERD as “equality treaties”. RNIB Scotland prefers to refer to them as “special protection treaties” due to their unique focus and significance.

We agree with many other consultation respondents that incorporating all the rights within these treaties to the greatest extent possible within devolution is crucial. As the consultation itself acknowledges, the duty to

comply has the potential to be “transformative”, and it is this duty that can enable people to name and claim these rights. Any decision to limit incorporation of the special protection treaties to only a procedural duty is a significant departure from the detail and intent of the National Taskforce recommendations, and from full incorporation.

We recognise the complexity of decision-making around devolved competence and that this Bill must be careful to stay within those devolved limits. Therefore, it is essential that the Scottish Government is open and transparent in their decision-making around constitutional limits to assure all that the Bill goes as far as possible in placing a stronger compliance duty on the special protection treaties.

We urge the Scottish Government to put in place a duty to comply with all CRPD substantive rights within devolved competence. We also recommend that the Bill takes a maximalist approach to include as many rights as possible within the Bill.

## Question 6: Do you agree or disagree with our proposed basis for defining the environment?

RNIB Scotland agrees with the Human Rights Consortium Scotland (HRCS) that the Aarhus Convention, to which the UK is a signatory, provides a robust and comprehensive framework for environmental rights.

Its definition of the environment is well-established and widely recognised internationally. [[8]](#footnote-8)

## Question 7: If you disagree, please explain why.

N/A

## Question 13: How can we best embed participation in the framework of the Bill?

RNIB Scotland believes that recognising participation as a core human rights principle in the purpose clause would reinforce the Bill. We support and welcome the National Taskforce recommendation that:

“Further consideration be given to including an explicit right to participation, drawn from the principles of international human rights law, within the legislation.” [[9]](#footnote-9)

The bill, as proposed by the Scottish Government, will incorporate the ICESCR which inherently includes the right to participation as an integral element of its implementation. Moreover, participation is a key component of the implementation of the CEDAW, CRPD and ICERD treaties.

Article 9 of the CRPD relates to the right to accessibility of the physical environment, transportation, information and communication, and services open to the public.

Amongst other things this would require the Government to develop and monitor minimum access standards and guidelines for public services and facilities, ensure that the private sector makes services to members of the public accessible and promote inclusive design for new information and communication technologies so that these are designed to be accessible to disabled people from the outset.

If the Scottish Government were to implement minimum access standards across a range of areas this could be so much more effective than the approach of the Equality Act which relies on individual enforcement of rights. Similarly, setting standards in inclusive design means that services and products are designed with accessibility in mind without expensive retrofitting and the need for litigation thereby making services accessible from the start.

In the age of the information society, accessibility of information and relevant technologies is of critical importance for blind and partially sighted people. The CRPD addressed this issue in the publication: “Enhancing the accessibility of information and technology and inclusive development” (2016).[[10]](#footnote-10)

For blind and partially sighted people the provision of accessible information is crucial to enable their participation. For most people this is achieved through printed information, but for a person with sight loss, printed information is often inaccessible.

The harmful impact of not receiving information in a preferred and accessible reading format should not be underestimated. For instance, patient confidentiality can be compromised when health information is not provided in an accessible format and many people with sight loss feel they are unable to take control of their own health needs.[[11]](#footnote-11)

We saw bold action on social security reform in Scotland. Provisions for inclusive communication and accessible information are explicitly outlined in the Social Security (Scotland) Act 2018, PART 1 Promotion of take-up Section 4 (Inclusive Communication)[[12]](#footnote-12) and Section 5 (Accessible Information).[[13]](#footnote-13) We would like assurances that inclusive communication and accessible information will be enshrined as a statutory duty within the Human Rights Bill for Scotland, and not as an “add-on” at the end.

We agree with the observation made by the ALLIANCE that:

“There are many different forms of participation, ranging from consultation, through to engagement, and into co-production and co-design. To be effective, at a minimum, good participation should be accessible to everyone – including the most marginalised – take an inclusive communication approach, and include access to accurate, comprehensive and accessible information.” [[14]](#footnote-14)

We would add that meaningful participation in decisions that affect our rights and lives should extend to ensuring that voting is accessible for blind and partially sighted people.

Article 29 of the CRPD relates to “Participation in political and public life”. It states that “Governments must ensure that it is easy for disabled people to – among other requirements – “vote in secret or with whatever help they need from another person”.

The right to vote independently, and in secret, is a cornerstone of our democracy. Yet over 150 years after the 1872 Ballot Act - which guaranteed the right to vote in secret - people with sight loss still face unacceptable barriers to exercising their democratic right to vote. RNIB’s Turned Out 2022 report[[15]](#footnote-15) on the May 2022 elections around the UK found that only one in five blind and partially sighted people felt they could vote both independently and in secret.

RNIB Scotland is ready to assist the Scottish Government and Scottish election officials with user testing of any accessible options. We hope that this can bring blind and partially sighted people closer to an independent and secret vote in the near future.

## 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?

RNIB Scotland agrees that there should be an equality provision in the Bill to ensure equal access for everyone to the rights therein.

We recognise that the equality provision will have to operate within the limits of devolved competence.

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

The equality provision should explicitly recognise LGBTI people and older people, ensuring that these groups have visibility within the human rights framework.

We would add that most blind and partially sighted people are older. RNIB Scotland is keen to see the rights of older people effectively implemented by the Human Rights Bill. Older people’s organisations around the world have been campaigning for a convention on the rights of older people. Thinking in this area is quite advanced and a draft convention supported by the Committee on Economic, Social and Cultural Rights (CESCR) and CEDAW is already in place. It is likely to be the next human rights treaty agreed by the UN.

Ergo, we would urge the Scottish Government to take steps to adopt the draft convention not only to advance the rights of older people in Scotland but also to future proof the legislation.

## 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?

RNIB Scotland does not agree that “other status” in the equality provision would sufficiently protect the rights of LGBTI and older people.

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

Scotland’s second National Action Plan for Human Rights (SNAP 2) highlights that in Scotland older people and LGBTI people face many human rights problems. Regarding older people, it states that these include “but not limited to – ageism, poverty, barriers to education, decent work and participation in decision-making, violence, abuse and neglect, and social exclusion”.[[16]](#footnote-16)

RNIB Scotland supports the National Taskforce recommendation to, “Include an equality clause which aligns with the Equality Act 2010 and provides equal access to everyone to the rights contained within the Bill.” It also reflects both the National Taskforce recommendations that calls for “A right for older people to be included in the statutory framework”, and “An equality clause that protects and promotes the full and equal enjoyment of rights of LGBTI people.”[[17]](#footnote-17)

Although neither group is currently subject to a special protection treaty at the UN level, there is work underway to create a new UN Convention on the Rights of Older Persons.[[18]](#footnote-18) Therefore, naming older people in the Bill will help to future-proof it in line with international developments.

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

Yes - the Bill’s framework should do something additional for LGBTI and older people by specifically naming them within the equality provision.

## Question 19: What is your view on who the duties in the Bill should apply to?

The duties in the Bill should apply to as many public bodies as possible within devolved competence and as widely as possible to bodies carrying out devolved public functions (private and third sector). This should mirror the approach taken by the UNCRC Incorporation Bill.

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

RNIB Scotland agrees that there should be an initial procedural duty on duty bearers to embed rights in decision making as soon as the Act receives Royal Assent. We echo the recommendation by other respondents, including the ALLIANCE, HRCS and the Right to Rehab coalition that this procedural duty should be a duty to have due regard.

We note that this reflects the findings of the First Minister’s Advisory Group on Human Rights, and the report of the National Taskforce on Human Rights Leadership. The duty to have due regard is already an established principle in the Public Sector Equality Duty and the Fairer Scotland Duty. We note from guidance on the latter that this means there must be active consideration:

“To 'have due regard' means that, in making any strategic decision, a public authority subject to the Duty must actively consider, with an open mind, whether there are opportunities to reduce inequalities of outcome caused by socio-economic disadvantage. This is not a tick box exercise.

Serious consideration must be given – and as early in the decision-making process as possible.”[[19]](#footnote-19)

Due regard is well understood and has been clearly interpreted by courts regarding the Public Sector Equality Duty. For example, courts said:

“[T]he duty [to have due regard] must be exercised in substance, with rigour and with an open mind. The duty has to be integrated within the discharge of the public functions of the authority. It is not a question of ‘ticking boxes’.”[[20]](#footnote-20)

We consider that the duty to have due regard is the strongest, clearest, and well-understood procedural duty. Given the importance of legal certainty and clarity for all stakeholders, including rights-holders, we recommend that the Bill place a duty to have due regard on relevant public bodies and private actors.

However, we believe that the duty to have due regard should continue to exist alongside the duty to comply.

Furthermore, we believe that there would be confusion and a risk of non-compliance unless there is clear and precise information about when the duties apply.

Therefore, the Bill should explicitly state that the duty to have due regard starts from the date of the Act receiving Royal Assent, and the duty to comply starts two years after the Act receives Royal Assent.

The duty to have due regard should be clearly explained in the Bill and supporting guidance. This should be backed up with training, support, capacity building, and adequate resources so that duty bearers – and other bodies carrying out devolved public functions – understand their obligations and how to comply with them.

## Question 21: What is your view on the proposed duty to comply?

We agree with applying the proposed duty to comply with the rights on all public bodies, and relevant private entities. This duty to comply will ensure that government and government bodies can be held to account on meeting their human rights obligations. This duty is essential to make the legislation meaningful.

The duty to comply should comprise two critical components: the delivery of Minimum Core Obligations, which necessitates the immediate and consistent fulfilment of baseline rights for all individuals, all the time; secondly, the progressive realisation of rights, which compels public bodies to take deliberate steps towards realising these rights by utilising maximum available resources, while ensuring non-retrogression.

We also recommend that the duty to comply be implemented within a specified period of no more than two years from the Bill's commencement, and this should be stated in the Bill.

As we stated in responses to questions 4 and 5, the duty to comply should be extended to the substantive rights in CRPD, CEDAW and CERD, as well as ICESCR and the right to a healthy environment.

Only being able to enforce the general rights contained in ICESCR will effectively mean disabled people remain second class citizens in Scotland.

## 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?

Yes - there should be a public bodies’ reporting requirement with clear accountability mechanisms in place.

RNIB Scotland supports the HRCS proposal that the Scottish Human Rights Commission (SHRC) should have the power to monitor and scrutinise these public authority reports and give recommendations that must be complied with.

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

The proposed duty to report should be aligned with existing reporting obligations on public authorities to ensure consistency and efficiency and strengthen accountability while avoiding duplication.

The ALLIANCE has usefully highlighted provisions in the UNCRC Incorporation Bill as offering a model of reporting which could be included within this Bill.

“The UNCRC Incorporation Bill sets out that public bodies must publish a report every three years both on what they have done and plan to do to implement children’s rights and send this to Scottish Ministers. The reporting duty should specify a non-exhaustive list of topics that public bodies should report on. Public bodies must publish a child-friendly version of the report. Finally, Scottish Ministers must develop guidance for public bodies about this reporting duty, after consulting with children and young people, the Children and Young People’s Commissioner for Scotland (CYPCS), the Scottish Human Rights Commission (SHRC) and anyone else they think is appropriate. They need to then issue and publish this guidance, and review and revise this guidance from time to time.”[[21]](#footnote-21)

## 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 MCOs and progressive realisation?

RNIB Scotland supports a requirement to demonstrate compliance via Minimum Core Obligations and progressive realisation. These are essential elements in ensuring the Bill has “teeth” and will lead to the realisation of people’s human rights in practice.

We recommend that the MCOs are co-produced with rights holders, in particular, with people with lived experience whose rights are most at risk. We recommend this is done prior to secondary legislation.

Along with our partners in the Right to Rehab Coalition, RNIB Scotland believes the right to access rehab as part of ICESCR Article 12 should be explicit in the MCOs. The Right to Rehab is intrinsically linked to the right to health. It is not possible to obtain the highest attainable standard of health without access to rehab. This is recognised in existing interpretation of UN treaties – the right to health includes the provision of appropriate healthcare services, including rehab services (UN General Comment 14 on ICESCR Article 12).[[22]](#footnote-22) Services such as rehab should be available to all, accessible to all, acceptable and appropriate and of high quality.

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

RNIB Scotland agrees with the proposal that the right to a healthy environment should fall under the same duties as economic, social, and cultural rights. This alignment ensures that the duty to comply, which includes delivering Minimum Core Obligations (MCOs) and progressively realising rights, applies consistently to all these rights.

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

RNIB Scotland agrees with the proposed duty to publish a Human Rights Scheme. Scottish Ministers should have to consult with rights holders, in particularly people whose rights are most at risk, when developing the Scheme and reporting against it, and report against it annually. The concept of a Human Rights Scheme is in line with the Children's Rights Scheme outlined in the UNCRC Bill.

## 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?

RNIB Scotland urges the Scottish Government to ensure that the rights contained within the Bill are fully enforceable. The Equality Act has not been effective in addressing the widespread inequalities in society. At least part of the reason for this is that there is little incentive to comply with the requirements if public authorities and service providers know that they will never be challenged because disabled people cannot afford to take cases and to bear the costs if they lose. RNIB Scotland would support the introduction of qualified one-way costs shifting in this context. It has been shown to be a success in personal injury litigation and would provide those protected by the Bill with access to justice.

Independent advocacy is crucial in helping people navigating barriers to realising their rights and accessing justice. The role of independent advocacy should be strengthened through the Bill, with the independent advocacy sector adequately resourced and supported to enable them to fulfil this vital role.

Independent advice and other forms of independent support are also important, though are distinct from independent advocacy and should not be confused or conflated with the role of independent advocacy.

The Bill should guarantee access to independent advocacy for all rights holders particularly those whose rights are most at risk. This provision should be included in the Human Rights Scheme.

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

Complaint handling by public bodies needs to be significantly enhanced if they are to be effective in enabling individuals and groups to get remedy. It is crucial to ensure that the process of handling complaints aligns with the rights and duties outlined in the Bill.

Furthermore, improvements to complaints handling should be co-produced in collaboration with individuals and groups 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?

RNIB Scotland agrees that there is scope to increase the powers of the Scottish Public Services Ombudsman as part of the Bill. We agree with the ALLIANCE and HRCS that people should not have to raise a complaint with SPSO before taking a human rights case to court.

We note concerns raised by the HRCS around the proposed investigatory powers for the SPSO conflicting with the investigatory powers of the Scottish Human Rights Commission (SHRC) and Children and Young People’s Commissioner Scotland (CYPCS). Any changes to SPSO’s remit in this area should take care not to impede the functions of the specific human rights commissioners, who will be best placed to consider human rights issues.

## Question 30: What are your views on our proposals in relation to scrutiny bodies?

RNIB Scotland supports the proposal to extend the responsibilities of Scotland's scrutiny bodies to include human rights considerations.

## Question 31: What are your views on additional powers for the Scottish Human Rights Commission?

The HRCS and the ALLIANCE have underlined that the Scottish Human Rights Commission’s (SHRC) current powers and resources are not sufficient for it to play its full role in advancing human rights in Scotland. Its powers are more limited than other comparable National Human Rights Institutions (NHRIs), and its budget relatively smaller.[[23]](#footnote-23) This can create misunderstandings over what the SHRC is empowered to do, which has led to the SHRC being unable to fulfil certain roles due to lack of capacity or legal mandate.

RNIB Scotland believes that the SHRC should be given additional powers in the Bill. This should include powers to intervene in civil proceedings under the Bill, and an investigatory power, as proposed in the consultation document. It could also include being able to provide advice to individuals and a role to monitor and scrutinise public body reports on implementation of the rights in the Bill. The SHRC will have to be adequately and sustainably funded to carry out its additional powers.

## Question 32: What are your views on potentially mirroring these powers for the Children and Young People’s Commissioner Scotland where needed?

RNIB Scotland agrees that the Children and Young People’s Commissioner Scotland should be given the same powers as those extended to the SHRC under the Bill.

## Question 33: What are your views on our proposed approach to ‘standing’ under the Human Rights Bill? Please explain.

RNIB Scotland agrees that the rules on “standing” should be the same as for civil law cases in Scotland, so bodies with “sufficient interest” have the right to take a judicial review. The burden of clarifying the law, particularly around systemic rights infringements should not be placed on individuals.

This would enable organisations to bring collective and test cases in defence of people’s human rights.

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

RNIB Scotland disagrees that existing judicial remedies are sufficient in delivering effective remedy for rights-holders.

## 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?

In line with the recommendations of the Human Rights Taskforce[[24]](#footnote-24), RNIB Scotland welcomes consideration of extending the remedies available to bring justice for different people and on different rights.

## 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?

RNIB Scotland considers that courts should be able to make declarations of incompatibility or “strike down” legislation which is found to be incompatible with the rights in the Bill, as far as is possible to do so within the devolved powers of the Scottish Parliament.

## Question 38: What are your views on our proposals for bringing the legislation into force?

There needs to be clear and robust timelines for full implementation of this Bill. There should be an initial procedural duty (a duty to have due regard) on duty bearers as soon as the Act receives Royal Assent. These international human rights are already in place now, so public body implementation of these rights can and should begin now.

The Bill should state that the duty to have due regard will last for two years and the duty to comply starts two years after the Act receives Royal Assent.

Implementation must be backed up with training, support, capacity building and adequate and sustainable resources so that duty bearers can understand their obligations and how to comply with them.

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

RNIB Scotland agreesthat Minimum Core Obligations should be created through a participatory process. However, we believe these should be in primary legislation, not secondary or statutory.

As outlined by HRCS and the ALLIANCE, careful consideration should be given to whether this participatory process is led by the Scottish Government or the Scottish Human Rights Commission.

## Question 40: What are your views on our proposals for a Human Rights Scheme?

RNIB Scotland agree that there should be a Human Rights Scheme. There should be a duty to consult with rights holders, including people whose rights are most at risk, when developing the scheme, and reporting against it, and report against it annually.

## 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?

RNIB Scotland agrees with the Scottish Government's proposal to enhance the assessment and scrutiny of legislation introduced to the Scottish Parliament concerning the rights established in the Human Rights Bill through a required statement of compatibility.

We agree with the HRCS that statements of compatibility should include a requirement to demonstrate that consultation with rights holders, including people whose rights are at risk, has been undertaken to assess a Bill’s compatibility with human rights. Timely production of robust, comprehensive and accessible Human Rights Impact

Assessments should become a regularised part of the development of all legislation, and form part of the scrutiny process.

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

Providing effective information and raising awareness of the rights for rights holders is an essential element of the Bill’s implementation. More work is needed to build the public’s awareness and understanding of human rights. Accessible and inclusive communication is key to this.

We have already cited action taken on social security reform in Scotland. Provisions for inclusive communication and accessible information are explicitly outlined in the Social Security (Scotland) Act 2018, PART 1 Promotion of take-up Section 4 (Inclusive Communication)[[25]](#footnote-25) and Section 5 (Accessible Information).[[26]](#footnote-26) We would like to see inclusive communication and accessible information enshrined as a statutory duty within the Human Rights Bill for Scotland, and not as an “add-on” at the end.

We support the proposal that work on providing information and raising awareness on human rights will be done with stakeholders and recommend that it is co-produced with rights holders as well as human rights and communications experts.

## Question 44: What are your views on monitoring and reporting?

Monitoring and reporting are crucial aspects of transparency and accountability on rights in this Bill.

We note that the Human Rights Bill Lived Experience Boards had significant discussions around monitoring and reporting. One aspect emphasised was the importance of government and public bodies not being able to “mark their own homework” when it comes to rights. Board members said that it is key that the new duties have teeth, there must be a strong accountability mechanism and clear consequences for a failure to comply with rights.[[27]](#footnote-27)

An independent organisation could take on this monitoring role. The HRCS recommends that should fall within the remit of the Scottish Human Rights Commission while the ALLIANCE emphasises that this independent body must be adequately and sustainably funded and properly supported to fulfil this role.

1. See [RNIB Sight Loss Data Tool - statistics on sight loss | RNIB | RNIB](https://www.rnib.org.uk/professionals/health-social-care-education-professionals/knowledge-and-research-hub/sight-loss-data-tool/) and A National Statistics Publication for Scotland: Registered Blind and Partially Sighted Persons, Scotland 2010, Scottish Government, 2010 at https://www.gov.scot/publications/registered-blind-partially-sighted-persons-scotland-2010/. [↑](#footnote-ref-1)
2. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>. [↑](#footnote-ref-2)
3. Scottish Government, ‘National Taskforce for Human Rights Leadership Report’, 2023. Available at <https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/> [↑](#footnote-ref-3)
4. See https://www.chss.org.uk/news/coalition-demands-right-to-rehab-for-every-scot-2/#:~:text=The%20Right%20to%20Rehab%20Coalition,need%20to%20live%20full%20lives. [↑](#footnote-ref-4)
5. <https://www.parliament.scot/-/media/files/legislation/bills/current-bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/stage-3/bill-as-passed.pdf> [↑](#footnote-ref-5)
6. See <https://www.alliance-scotland.org.uk/blog/news/alliance-publishes-human-rights-bill-consultation-draft-response/> [↑](#footnote-ref-6)
7. The Supreme Court. (2021). REFERENCE by the Attorney General and the Advocate General for Scotland - United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill REFERENCE by the Attorney General and the Advocate General for Scotland - European Charter of Local Self-Government (Incorporation) (Scotland) Bill. See <https://www.supremecourt.uk/cases/uksc-2021-0079.html> [↑](#footnote-ref-7)
8. See https://hrcscotland.org/2023/10/09/consortium-publishes-scottish-human-rights-bill-consultation-responses/ [↑](#footnote-ref-8)
9. [National Taskforce for Human Rights: leadership report - gov.scot (www.gov.scot)](https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/) [↑](#footnote-ref-9)
10. “Enhancing the accessibility of information and technology and inclusive development” (2016); UN Convention on the Rights of Persons with Disabilities; see <https://www.un.org/disabilities/documents/COP/9/RT3/CRPD_CSP_2016_4-1603540E.pdf> [↑](#footnote-ref-10)
11. "Accessible health information is giving information in a way that is accessible to as many people as possible"; Accessible Health Policy, NHS Health Scotland, 2018 [http://www.healthscotland.scot/media/1606/accessible-information-policy-v30.pdf](https://eur03.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.healthscotland.scot%2Fmedia%2F1606%2Faccessible-information-policy-v30.pdf&data=05%7C01%7CKirstie.Henderson%40rnib.org.uk%7C8ab43c599db846f6276308dbb4397baa%7C5d45337cd19243fcaa5805557c9171bc%7C0%7C0%7C638301931196139412%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=l2pcMjR4BJZyr%2F3unPOY%2BX%2Bt%2FaMl%2F0jJmhRwTAxDEGc%3D&reserved=0) [↑](#footnote-ref-11)
12. Social Security (Scotland) Act 2018 (legislation.gov.uk) Section 4. available at: [https://www.legislation.gov.uk/asp/2018/9/section/4/enacted](https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.legislation.gov.uk%2Fasp%2F2018%2F9%2Fsection%2F4%2Fenacted&data=05%7C01%7CKirstie.Henderson%40rnib.org.uk%7C8ab43c599db846f6276308dbb4397baa%7C5d45337cd19243fcaa5805557c9171bc%7C0%7C0%7C638301931196139412%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=O3PT1axxLRB0SgQRa%2Bc9agjHv%2Fzmmk8PPxQ76xQ%2BeBA%3D&reserved=0) [↑](#footnote-ref-12)
13. Social Security (Scotland) Act 2018 Section 5. Recognition of importance of accessible information. Available at: [https://www.legislation.gov.uk/asp/2018/9/section/5/enacted](https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.legislation.gov.uk%2Fasp%2F2018%2F9%2Fsection%2F5%2Fenacted&data=05%7C01%7CKirstie.Henderson%40rnib.org.uk%7C8ab43c599db846f6276308dbb4397baa%7C5d45337cd19243fcaa5805557c9171bc%7C0%7C0%7C638301931196139412%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=L1x14SHvc2wxe7o09scwnwJLim%2BG1%2Bc69u8NfUENANs%3D&reserved=0) [↑](#footnote-ref-13)
14. See <https://www.alliance-scotland.org.uk/blog/news/alliance-publishes-human-rights-bill-consultation-draft-response/> [↑](#footnote-ref-14)
15. See https://www.rnib.org.uk/documents/1439/RNIB\_Turned\_Out\_2022.docx [↑](#footnote-ref-15)
16. Scotland’s second National Action Plan for Human Rights (SNAP 2). See <https://www.snaprights.info/wp-content/uploads/2023/03/SNAP-2-March-2023-FINAL-PDF.pdf> [↑](#footnote-ref-16)
17. Scottish Government, ‘National Taskforce for Human Rights Leadership Report’, 2023. Available at <https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/> (Accessed 13/09/23). [↑](#footnote-ref-17)
18. See, for example, the work of the Global Alliance for the Rights of Older Persons and the UN Open-ended Working Group on Ageing (OEWG): <https://rightsofolderpeople.org/un-open-ended-working-group-on-ageing-adopts-the-draft-decision-at-its-13th-session/>. The UN OHCHR notes that the OEWG was established by the General Assembly to “develop proposals for a legally binding instrument to strengthen the protection of the human rights of older persons” - <https://www.ohchr.org/en/older-persons> [↑](#footnote-ref-18)
19. Fairer Scotland Duty: Interim guidance for public bodies: <https://www.gov.scot/publications/fairer-scotland-duty-interim-guidance-public-bodies/pages/2/> [↑](#footnote-ref-19)
20. R (Brown) v Secretary of State for Work and Pensions [2008] EWCA 3158 (Admin), para 92. As quoted in [DueRegardJune2015.pdf (equallyours.org.uk)](https://www.equallyours.org.uk/wp-content/uploads/2015/06/DueRegardJune2015.pdf) [↑](#footnote-ref-20)
21. See <https://www.alliance-scotland.org.uk/blog/news/alliance-publishes-human-rights-bill-consultation-draft-response/> [↑](#footnote-ref-21)
22. General Comment no 14 (2000), The right to the highest attainable standard of healthy (article 12 of the International Covenant on Economic, Social and Cultural Rights). Available at: [General comment no. 14 (2000), The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights) (un.org)](https://digitallibrary.un.org/record/425041) [↑](#footnote-ref-22)
23. “At a Crossroads: What next for human rights protections in Scotland?”, Scottish Human Rights Commission, June 2023. Available at <https://www.scottishhumanrights.com/media/2456/crossroads_what-next-for-human-rights-protection-in-scotland-shrc-june-2023.pdf> [↑](#footnote-ref-23)
24. Scottish Government, ‘National Taskforce for Human Rights Leadership Report’, 2023. Available at <https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/> [↑](#footnote-ref-24)
25. Social Security (Scotland) Act 2018 (legislation.gov.uk) Section 4. available at: [https://www.legislation.gov.uk/asp/2018/9/section/4/enacted](https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.legislation.gov.uk%2Fasp%2F2018%2F9%2Fsection%2F4%2Fenacted&data=05%7C01%7CKirstie.Henderson%40rnib.org.uk%7C8ab43c599db846f6276308dbb4397baa%7C5d45337cd19243fcaa5805557c9171bc%7C0%7C0%7C638301931196139412%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=O3PT1axxLRB0SgQRa%2Bc9agjHv%2Fzmmk8PPxQ76xQ%2BeBA%3D&reserved=0) [↑](#footnote-ref-25)
26. Social Security (Scotland) Act 2018 Section 5. Recognition of importance of accessible information. Available at: [https://www.legislation.gov.uk/asp/2018/9/section/5/enacted](https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.legislation.gov.uk%2Fasp%2F2018%2F9%2Fsection%2F5%2Fenacted&data=05%7C01%7CKirstie.Henderson%40rnib.org.uk%7C8ab43c599db846f6276308dbb4397baa%7C5d45337cd19243fcaa5805557c9171bc%7C0%7C0%7C638301931196139412%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=L1x14SHvc2wxe7o09scwnwJLim%2BG1%2Bc69u8NfUENANs%3D&reserved=0) [↑](#footnote-ref-26)
27. SHRC; Human Rights Lived Experience Board Reports (2023). See https://hrcscotland.org/human-rights-bill-lived-experience-board-reports/ [↑](#footnote-ref-27)