

Proposed Human Rights Bill (Scotland)

A statement
from the SHRC

SHRC

Scottish
Human Rights
Commission



Statement from the Scottish Human Rights Commission on the Scottish Government's proposed Human Rights Bill

In the fifteen years of the Commission's existence, it has promoted an increasing appreciation for the importance of human rights in the day to day lives of the people of Scotland. Today, in Scotland, we witness more frequent consideration of human rights in policy making and legal debates.

However, it has also become clear that, in order to deliver on the promise of human rights, there has to be a strong legal framework which protects all our interconnecting human rights – from health, to food, to housing, to independent living for disabled people.

Human rights become real when government bodies and public services uphold and are accountable for violations of human rights. Greater legal protection can help by providing a clear baseline for human rights enjoyment by people in Scotland – and access to remedies when rights are violated.

The Commission is concerned that people in Scotland continue to experience human rights denials, as evidenced in our own research and reports to international bodies, as well as by regulators in health, education, criminal justice, social care, and housing, civil society, and media investigations.

The ambition of the Scottish Government's proposed Human Rights Bill is therefore welcome. The opportunity to strengthen human rights obligations in Scots Law presents a moment to reflect on the whole system – legislation, policy and resources – required to make human rights real.

Now, as the Bill develops, is the time to ensure it will deliver real change for real people. This will mean addressing barriers in accessing justice such as access to specialist human rights legal advice and simple, rights-based, complaints processes. It will mean strengthening the bodies that regulate and scrutinise human rights issues in Scotland and providing them with adequate resources and mandates. The Commission's own role, as Scotland's National Human Rights Institution, is an essential part of that picture. To effectively fulfil our role in protecting human rights we need sufficient powers to uphold human rights and challenge violations.

Having advocated for a new legal framework for over a decade, the Commission welcomes the Scottish Government's proposals for a Human Rights Bill. We believe these provide a significant milestone towards strong human rights protection in Scotland.

However, the context in which this legislation is proposed is significantly different than it was ten years ago when the concept of incorporation was first considered.

The devolved legislative context for human rights incorporation in the UK is technically complex. Inevitably, the UK government's legal challenge to the UNCRC (Incorporation)

(Scotland) Bill and subsequent Supreme Court judgement will influence the approach to be taken to this Bill. Careful consideration must be given therefore to the model of incorporating international human rights treaties into Scots Law to achieve the greatest possible protection and promotion of human rights.

To support such consideration, the Commission sought an Opinion from Senior Legal Counsel. This Opinion highlights that there are a number of alternative models for incorporating international human rights treaties into domestic legal systems, besides the 'direct' approach to incorporation as proposed by the Scottish Government's Human Rights Bill. The 'adaptation' approach, for instance, would amend the wording of specific rights from international treaties, seeking to adapt them to the domestic Scottish context and ensure they fall within devolved competence.

In our view, further analysis is required to identify the respective strengths and challenges associated with different incorporation models, in light of recent litigation concerning respect for rights in the devolved context.

For example, it is crucial to avoid that incorporation should trigger any weakening of international treaty protections for persons with disabilities, women, older people, LGBT+ people, and people from ethnic minority backgrounds in Scotland. These groups have specific protections in human rights law that must be given the same weight as the economic, social and cultural rights of the population at large.

Likewise, incorporation should not create excessive complexity the human rights system in Scotland. Arguably, this could happen if some incorporated treaties (such as those that protect women or disabled people) have a different protections and obligations than those related to economic, social, and cultural rights. This could prove confusing for both rights-holders and duty-bearers.

A fundamental requirement in any rights-respecting state is that both rights and duties are clear and readily knowable in advance by all actors. Public bodies must be able to understand what they need to do to make rights real, and rights holders need to be able to identify and assert their rights with confidence.

The Commission is concerned that access to justice for human rights in Scotland is already too difficult to navigate for many people. Incorporating additional human rights into our law should simplify and strengthen access to justice and avoid creating complexity that can obscure the meaning of rights and block effective access to justice.

Further consideration of alternative approaches, and analysis of their respective merits and feasibility, in the context of the complex challenges of the devolved settlement, is therefore strongly recommended by the Commission.

Regardless which approach is ultimately pursued, the Scottish and UK governments must deliver greater transparency and more effective communication and collaboration in their mutual engagement regarding incorporation and related matters so that the progressive development of human rights protection in Scotland is not unnecessarily undermined or delayed.

Uncertainty over the scope for stronger legal protection for human rights in the devolved context must be brought to a close.

In terms of our own role in Scotland's human rights system, significant evidence supports extending new powers to the Scottish Human Rights Commission. Whilst the Scottish Government's Human Rights Bill could serve as one important catalyst for this development, new powers for the Commission must not be limited in scope to the rights – economic, social and cultural - addressed by the proposed Bill.

As the incorporation agenda advances, the Commission will continue to fulfil our role in this process by providing analysis and guidance on compliance with international human rights standards in order to assist the development of legislation which can make a real positive impact to making human rights real for the people of Scotland.

Further reading:

The Commission has published a series of papers in 2023 which have informed its position on the proposed Human Rights Bill :

- At a Crossroads: What Next for the Human Rights System in Scotland?
- Access to Justice for Everyone: A Discussion Paper
- Legal Opinion on the proposed incorporation approach in the proposed Human Rights (Scotland) Bill
- A Stronger Human Rights Commission for Scotland
- Consultation Response to the proposed Human Rights Bill

All are available at www.scottishhumanrights.com

About the Commission:

The Scottish Human Rights Commission exists to serve the people of Scotland. It is Scotland's National Human Rights Institution, accredited as an independent body at the highest level within the United Nations human rights systemⁱ. Established by the [Scottish Commission for Human Rights Act 2006](#), it fulfils a broad statutory mandate to protect people's rights and hold government and public bodies to account for their human rights obligations.

For more information:

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ⁱ [Third UN "A Status" award for Commission \(scottishhumanrights.com\)](#)