The national intermediary and network for voluntary health organisations in Scotland

Consultation Response

voluntary health scotland

A Human Rights Bill for Scotland: Consultation Response
October 2023

Voluntary Health Scotland (VHS) is the national intermediary and network for voluntary health organisations across Scotland. VHS exists to create a healthier, fairer Scotland served by a thriving voluntary health sector. We work to improve people's health and wellbeing by providing an effective national network for health charities and other third sector organisations actively supporting people's health and wellbeing. Our members and network include a range of medium and large condition specific organisations, smaller community organisations, as well as social enterprises.

The WHO Constitution (1946) envisages "…the highest attainable standard of health as a fundamental right of every human being." This is something VHS and our network strongly supports and actively works towards creating. The WHO states that a rights-based approach to health requires that health policy and programmes prioritise the needs of those furthest behind first towards greater equity.[1] The right to health must be enjoyed without discrimination on the grounds of race, age, ethnicity or any other factor. Non-discrimination and equality requires states to take steps to redress any discriminatory law, practice or policy. The focus on disadvantaged populations first in working towards reducing inequalities is an approach VHS actively advocates for in our policy work. We have long been making the case for targeted interventions to address health inequalities in communities and removing barriers for people accessing healthcare.

Our response is focused primarily on the incorporation of rights within the International Covenant on Economic, Social and Cultural Rights (ICESCR) and how this legislation could be used to tackle the persistence of health inequalities. The rights included in ICESCR are foundational to the underlying socio-economic determinants of health, be it housing, social security, access to food or healthcare. These socio-economic determinants are key to whether someone enjoys good health and good life expectancy or the opposite. Upholding people's rights in all aspects of their lives is therefore a key plank in strengthening the nation's health and addressing health inequalities. We have highlighted throughout our response how these rights interact and must be viewed together. The principles of universality, indivisibility, interdependence and interrelatedness are central to how we must view our rights, but so is equity.

We have also advocated for inclusion health principles to be included in at least the associated guidance for this legislation. Inclusion health is a service, research and policy agenda that aims to prevent and redress health and social inequities among the most vulnerable and excluded populations by taking a human rights-based approach. This includes the protection of the fundamental right to health, which is the right of everyone to the highest attainable standard of physical and mental health. This approach often includes

[1] https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health

homeless individuals, prisoners, sex workers, and people with substance use disorders. These groups often fall outside protected characteristics and impact assessments when services are designed, which worsens the health inequalities they face.

It is welcome that the consultation document states that "by giving domestic legal effect to these standards, Scotland can ensure that focused attention on fundamental rights like health, housing and an adequate standard of living is not a political choice." This legislation presents an incredible opportunity to reduce the number of people being missed by services or not being able to access their rights. It could represent a significant change in our public service delivery towards embedding a human rights-based approach across services. However, this will all depend on the strength of the legislation and its implementation. There are elements of the current proposals which need to be strengthened or they risk creating a two-tiered system of our rights. We would encourage the Scottish Government to be as ambitious as possible in taking a maximalist approach to incorporation while working within the limits of devolution.

We held two events in the run up to the consultation to gather the views of our members about the reality on the ground for people accessing their right to health and wider human rights. One of these events was in partnership with the Human Rights Consortium Scotland and the Health and Social Care ALLIANCE to inform our wider networks of the importance of this legislation to our work.

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

As a key concept in human rights, we would support the courts being able to consider dignity in interpreting the rights in the Bill. Our response to question 2 outlines our views about dignity in more detail.

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

Dignity
We agree with the proposals for dignity to be a key threshold for defining Minimum Core Obligations. Dignity is an essential element of health and social care delivery and a key human rights principle. It is a useful concept for framing human rights in a way that is understandable and relatable for both duty bearers and rights holders. It will require a clear definition and examples for duty bearers.

There will need to be further consultation with rights holders about what dignity means to them. It is essential that people on low incomes and experiencing poverty are part of this conversation. People are being failed by services and are not routinely experiencing dignity when it comes to accessing healthcare services, social security, social care or other support. Stigma and prejudice often reinforce this lack of dignity for some people accessing services. For example, people without a permanent address, such as asylum seekers, frequently find registering with a GP difficult. Additionally, people with drug or alcohol addictions, who have mental health problems or are HIV positive, are all examples of people who routinely face stigma and discrimination in public services which undermine their dignity. Inserting dignity into the design and decision-making process will be game changing for many rights holders.

If dignity is a key threshold in the MCOs this will be a step in the right direction, but it will require a significant rethink in how we design and deliver our services. For example, ensuring social care appointments are long enough to provide personal care and healthy food to an individual in a dignified way.

There will also be a mountain to climb in terms of action to tackle poverty, because living a decent and dignified life requires you to have enough money to participate in society, house and feed yourself. Statutory targets have been very successful in driving action to reduce child poverty in Scotland, having targets the government can be held accountable to as part of progressive realisation will be vital in ensuring progress on achieving an adequate standard of living for everyone.

Universality
There are other key human rights concepts which the government has mentioned in its consultation but not explicitly asked about which we will use this opportunity to discuss. Universality is a fundamental concept in human rights, everyone should have their rights respected and upheld. These are rights that belong to every person from birth until death regardless of who they are. However, it is important to recognise that in practice these rights are not enjoyed equally by everyone. Some people face significant barriers accessing their rights and this creates inequalities in opportunities and outcomes. For example, the Inverse Care Law teaches us that the availability of good medical or social care tends to vary inversely with the need of the population served.[2] Put simply, those most in need of care are the least likely to receive it. For this reason, universalism in terms of service provision can actually entrench inequalities if it is not coupled with targeted support for those most likely to be missed by services. Tackling inequality should be a central component of this legislation and it needs to be more explicit. There needs to be clarity in what we mean by universality and recognition of the limitations of universality without first targeting those most in need of support. The concept of inequality and the tools for tackling it need to be clear in the associated guidance for this legislation. For example, outlining the importance of 'proportionate universalism' as an approach, which is the concept of resourcing and delivering universal services at a scale and intensity proportionate to the degree of need.[3] Without this clarity and approach existing inequalities will be intrenched.

Indivisibility, interdependence and interrelatedness
Indivisibility, interdependence and interrelatedness are also essential in understanding how our rights interact with each other. There is no right to the highest attainable standard of physical and mental health without the rights associated with the underlying determinants of health such as housing and social security. Therefore, these three concepts need to be considered as part of the MCOs to ensure our rights are holistically.

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

We agree with the proposed approach to the interpretative provision. In particular the inclusion of General Comments provided by UN Committees which are especially helpful for fully understanding the right to health. Without this additional context the treaty itself is very limited. For example, the General Comments provide specific information about how progressive realisation and the concept of non-discrimination interact with the right to health.[4] These are also important for considering other rights within the right to health such as rehabilitation.

[2] https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(71)92410-X/fulltext
[3] https://www.healthscotland.com/documents/24296.aspx#:~:text=Proportionate%20universalism%20is%20the%20resourcing,the%20level%20of%20presenting%20need.
[4] https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf

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

The Duties
We agree with the Scottish Human Rights Consortium view that the model of incorporation should be stronger. Public bodies should have a duty to have due regard and a duty to comply with the right to health. Voluntary Health Scotland understands that the "equalities treaties" will only be subject to a procedural duty due to the limits of devolution, which means duty bearers will only have to 'consider' these rights in their decision making. The Bill must operate within the limits of the devolved settlement and any treaty text that is reserved to the UK Parliament must be removed. However, we must acknowledge that this proposal will create a two-tiered and hierarchical approach to the rights and duties in the Bill. There should be careful consideration of how to adopt a maximalist approach and having as many of the rights which fall under devolved competence incorporated into the Bill. There needs to be an assessment of the rights which fall within these equalities treaties and how many of them could realistically be incorporated under a duty to comply within devolved competence. Put simply, the government should assess whether it can incorporate the substantive rights in these treaties if the whole treaty cannot be incorporated. For example, there are substantive rights within the CRPD which would require a duty to comply if this legislation truly hopes to uphold the rights of persons with disabilities, specifically the right to live independently and be included in the community and the right to respect for physical and mental integrity.

Equalities Provision
We agree there should be an equality provision to ensure equal access for everyone to the rights. Additionally, we agree the provisions of the equalities treaties should inform the interpretation of the core ICESCR rights and the rights to a healthy environment for those protected groups.

Interpretive Provision
We agree with proposals to include an interpretive provision that ensures all rights can be interpreted in light of international human rights standards and the concept of human dignity, as previously outlined in response to question 2.

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.**

VHS believes calling CEDAW, CERD and CRPD "equalities treaties" is unhelpful and we support alternative terms like "special protection treaties" instead. We agree with the Health and Social Care ALLIANCE that the starting point should be an assumption that all rights being incorporated come with a duty to comply, and the question should be which rights in CERD, CEDAW and CRPD should not have this duty. This is a legal question about devolution which should be handled by lawyers, but this analysis must be transparent to allow public scrutiny and buy in from stakeholders. There are substantive rights in the CRPD which should have a duty to comply and a duty to have due regard.

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

7. **If you disagree please explain why.**

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

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.**

The right to food
We strongly support the proposal to include the right to food as part of the ICESCR rights given the interconnection and indivisibility between it and the right to health. The social and economic elements of the right to food are intrinsic to so many of our ICESCR rights. Without access to healthy, sustainable and culturally appropriate food people will not achieve the highest attainable standard of health and wellbeing. Food insecurity and availability is a significant challenge in Scotland. Fully incorporating the right to food could be a transformative change in reducing the health inequalities some people face due to their lack of access to healthy and appropriate food.

There have been substantial steps in recent years to create a Good Food Nation but the right to food has not yet been included in this work. This is a significant opportunity to ensure duty bearers have a duty to comply with the right to food as part of their decision making. This could make a significant difference in upholding people's dignity and right to food in the delivery of health and social care in Scotland. For example, at a recent meeting of the Cross Party Group on health inequalities the inadequacy of food in Scottish prisons was discussed. It was noted that food in prisons often isn't nutritious enough nor appropriate for people with certain dietary requirements be that based on faith, health condition or belief system. Incorporating the right to food would mean duty bearers would have to address these issues. However, there will need to be an important conversation in the development of the MCOs about what is considered to be "adequate" in this context. Without access to healthy, nutritious and appropriate food health inequalities will worsen for the Scottish prison population.

We are not in the position to comment on the right to food being a substantive part of the right to a healthy environment as this is not our area of expertise. However, we would support anything which strengthens the right to food provision in the bill and supports a resilient and sustainable food system in Scotland.

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.**

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

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?**

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

Unheard voices
Meaningful participation needs to be central to this legislation and duty bearers should be held accountable for this through the monitoring and reporting aspects of the legislation. For participation to be meaningful it needs to be accessible and lead to tangible change. Most importantly it cannot be tokenistic, which must be emphasised in any guidance produced for duty bearers.

Participation in developing the MCOs must also go beyond the 'usual suspects' and those already well informed about human rights. Significant work is needed to ensure the less heard voices in communities are supported to participate in the development of the MCOs. There is a wealth of knowledge in the third sector from patient and peer groups with lived experience of accessing health services. This knowledge needs to be harnessed in the development of the MCOs.

Accessibility
Importantly, opportunities to participate in the development of this Bill and the MCOs must be accessible. Human rights legislation is an incredibly complicated landscape and the language used is not always easy to understand. It's essential that people are supported to contribute to the development of the MCOs and that this process involves people with lived experience of potential breaches to the rights in question.

This consultation
As an aside, it is worth noting that because this consultation was carried out over the summer months by the Scottish Government, many organisations will have struggled to respond due to the school holidays. The engagement events the government undertook were welcome, along with the resources for those undertaking their own engagement events. However, the questions in the consultation paper are not designed to be accessible for people without a background in human rights or policy development. While it's understandable that some of legislative questions require a more technical understanding of human rights, there should be the opportunity for people to comment on the general principles of incorporating these rights. The government will need to make sure that it has gathered the voices of marginalised groups as part of this consultation period, including people on low incomes, those experiencing poverty, homelessness, asylum seekers and refugees, disabled people, LGBTI groups and others often missed from the policy making process. If those voices have not been heard this must be remedied before the Bill is drafted.

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?**

The equalities provision is welcome, as is the requirement for duty bearers to use the equalities treaties to interpret the ICESCR rights and right to a healthy environment. This will strengthen the protection of the rights of disabled people, women and ethnic minorities.

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

LGBTI and Older People
We understand that the equality provision is designed to ensure equal access to the rights in the bill for everyone. This would mean rights are secured without discrimination on grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, property, birth or "other status". We would support adding LGBTI and older people to this list to ensure their rights are explicitly upheld in the same way as these other groups. We agree that this provides clarity about who the provision is intended to protect.

In terms of older people's access to the right to health, VHS undertook work on mental health in later life which found older people were less likely to be referred to a specialist service than young people. This work also identified poor transitions between adult services and older people's services which left people feeling like their care was "falling off a cliff"

when they turned 65. These were key examples of age-based discrimination and flouting of human rights, which we still see in some services and support. [5]

Additionally, it is important to consider the intersectionality of these groups. For example, LBGT Health and Wellbeing has highlighted the concerns of older LGBT people about choice, control and how they might be treated when receiving social care. This group has had to deal with stigma and discrimination and have huge concerns about having to "return to the closet" later in life due to prejudices when receiving care.[6] This highlights the need to protect the rights of older people, the LGBTI community and take an intersectional approach in the equalities provision.

Other Status
Further clarification is needed about who will fall under the "other status" in the provision. A guide on article 14 of the European Convention on Human Rights includes some other important groups, notably 'health and disability', parental and marital status, immigration status, employment and imprisonment.[7] However, these are not mentioned in the consultation paper. Some of these groups face significant barriers in accessing their rights. More information is needed about where these groups would be mentioned, whether it be in the Bill, associated guidance or elsewhere. It would also be helpful to know whether these other groups were considered as part of the Taskforce recommendations, and if not, they should be considered when drafting the bill. This is a really important element of the consultation as some of the most marginalised people in society who face the worst health inequalities fall outside the protected characteristics listed. Statutory guidance and the "other status" are going to be really important for the people who don't fall into the protected characteristics but often face stigma, discrimination and barriers when trying to access their rights. We would recommend looking at the Inclusion Health Principles to inform the "other status", especially with regards to ICESCR.

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?**

No, we would support explicitly listing LGBTI and older people for the reasons outlined in response to question 15. Additionally, given this was a taskforce recommendation it is important this is given due consideration, especially if lived experience and meaningful participation are to be core principles in this legislation.

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

Elaborating on our points raised in response to question 15 and 16, including LGBTI and older people explicitly in the bill would strengthen the protection of their rights. The people listed under "other groups" will be reliant on duty bearers understanding who falls under this category. They may have to look through various pieces of guidance to understand who exactly is covered by "other groups". Explicitly naming LGBTI and older people in the bill will begin to address a significant gap in the rights realisation for these groups. It would be a missed opportunity if this taskforce recommendation was not implemented.

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

[5] https://vhscotland.org.uk/falling-off-a-cliff-at-65-discussion-paper-and-evidence/
[6] https://www.lgbthealth.org.uk/blog/return-to-the-closet/
[7]https://www.echr.coe.int/documents/d/echr/Guide_Art_14_Art_1_Protocol_12_ENG#:~:text=%E2%80%9CThe%20enjoyment%20of%20the%20rights,%2C%20birth%20or%20other%20status.%E2%80%9D

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

The Third Sector as Duty Bearers
The duties should apply to as many public bodies as possible within the limits of devolution. In theory we also believe the duties should apply to private bodies carrying out public functions**.** However, there would need to be further consultation with third sector service providers who would fall under this legislation once the details of the duties have been established. This would require frank conversations about resource challenges and human rights awareness in the sector.

Many third sector organisations in health and social care already use a human rights-based approach in their work. People are at the centre of what they do, and dignity is at the heart of their service delivery. However, for those unfamiliar with the concepts and terminology being used in this legislation there would need to be sufficient support to bring them up to speed. Furthermore, additional resources may be required to enable third sector organisations to report on the duty to comply and remain competitive when tendering for services. Crucially, it is important that the public bodies tendering services remain ultimately responsible for the duty to comply. This will be especially important in terms of ensuring progressive realisation and non-regression, which could be hindered if there is ever a change in service delivery.

In Scotland, the majority of charities are smaller, those with an income under £100k, who make up 80% of charities in Scotland. These organisations may only have a handful of staff. The SCVO's latest workforce statistics show 72% of charities do not have any paid employees (including new charities).[8] Without a robust funding model to support new duties, organisations will have to divert resources away from service delivery. This will be a significant challenge for small organisations with a limited number of staff. It could have an impact on the delivery of health and social care services by third sector partners, which are already under crippling pressure to deliver care. Third sector organisations provide a broad range of support in health and social care, from preventative and pro-active care to end of life care and support. For example, Community Link Workers (CLWs) are largely commissioned by GP practices from third sector organisations. These resource challenges should be considered as part of the scrutiny of this legislation and an impact assessment carried out.

Third sector organisation by their very nature have people and communities at their heart and are likely already taking a human rights-based approach to their work. This will be an important moment for the sector to ensure human rights are at the forefront of what we do, but the resource challenges facing the sector at this time cannot be overlooked during this conversation.

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

We agree there should be an initial procedural duty placed on public bodies and support the Human Rights Consortium Scotland call for this to be a duty to have due regard. The duty to have due regard is already well understood and better complements the duty to comply by ensuring human rights are embedded in a holistic way in decision making.

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

The duty to comply should include delivering on the Minimum Core Obligations and demonstrating progressive realisation of rights. There needs to be sufficient guidance and

[8] https://app.powerbi.com/view?r=eyJrIjoiMDUzY2ViYTctMzZmYS00NzBhLTkyZWItNzUwNWVkNzkzZTVlIiwidCI6ImMyOTQ5NGY5LTNhY2EtNGE3MS05NWUyLWM4ODBjNWE1ZThmOSIsImMiOjh9

support in place to enable meaningful reporting on the Minimum Core Obligations and the progressive realisation of all the rights in the bill. For example, there should be specific guidance for duty bearers about what progressive realisation means in the context of the right to health.

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?**

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

Aligning with existing reporting obligations would be beneficial in ensuring the reporting duties are not overly burdensome. There could be a case for better aligning the National Performance Framework with this legislation or at least having a stronger human rights focus in the National Performance Framework. It is currently under review by government so this could be the opportunity to imbed human rights across our national goals.

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?**

MCOs must be specific to Scotland
We support the proposals for a participatory approach to defining what falls within the Minimum Core Obligations of each right. We also welcome the case study provided in the consultation document on the right to health. It is encouraging that the case study includes many of the underlying determinants of health and the inclusion of a national public health strategy. It is essential the MCOs developed are as relevant as they can be to the Scottish population. For example, MCOs on the right to health must consider the current state of health in Scotland, bearing in mind issues like worsening health inequalities, the differences with rural healthcare delivery, the persistence of drug and alcohol harms and other challenges which can be quite specific to the Scottish context.

Progressive Realisation and Dignity
We agree, it is essential that the MCOs are coupled with demonstrating progressive realisation to ensure they are a floor not a ceiling of rights. Furthermore, we support using dignity as a guide to what MCOs should look like, but this must be well defined and discussed as part of the participatory process. Dignity should be central to health and social care delivery, but unfortunately that is not always the reality. There needs to be a further discussion about what dignity means in the context of the right to health and progressive realisation.

We would support the participatory process to establish the MCOs being repeated at appropriate intervals as this will allow for the legislation to keep up with the shifting landscape and potential progress towards achieving these rights.

Inclusion Health Principles and the right to health
We would also take this opportunity to advocate for inclusion health principles to be included in at least the associated guidance for the legislation. Inclusion health is a service, research and policy agenda that aims to prevent and redress health and social inequities among the most vulnerable and excluded populations by taking a human rights-based approach[9]. This includes the protection of the fundamental right to health, which is the right of everyone to

[9] https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(17)31959-1/fulltext

the highest attainable standard of physical and mental health. This approach often includes homeless individuals, prisoners, sex workers, and people with substance use disorders.[10]

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

We support as many rights within the Bill as possible falling under the same duties as economic, social and cultural rights. For the incorporation of these rights to truly be meaningful there needs to be a maximalist approach to incorporation within the limits of devolution.

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

We support the proposed duty to publish a Human Rights Scheme.

27. **What are your views on the most effective ways of supporting advocacy and/or advice services to help rightsholders realise their rights under the Bill?**

It is important to note the role of third sector advocacy and advice services in helping rightsholders realise their rights. For example, the Citizen's Advice Bureaux, Third Sector Interfaces, disability advocacy charities like Inclusion Scotland and Glasgow Disability Alliance, carers' organisations, the Scottish Consortium on Learning Disabilities and the Scottish Independent Advocacy Alliance. There's a huge number of third sector organisations that advocate for and offer advice to individuals. However, the current operating environment is important to consider. Many third sector organisations are already struggling under extreme financial pressures and increasing demand for services. Any increased expectation of providing advocacy or advice would require significant additional and sustainable resources and recognition of the third sector's role. The third sector's role in advocating and empowering people to access their right to health is invaluable. Community Link Workers and welfare advisors based in primary care are just two examples of advocates in healthcare who are facing extreme demand for services and a lack of sustainable funding. The impact they make in helping people realise their right to health is essential and must be recognised.

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

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

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

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

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

33. **What are your views on our proposed approach to 'standing' under the Human Rights Bill? Please explain.**

[10] https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(17)32848-9/fulltext

34. **What should the approach be to assessing 'reasonableness' under the Human Rights Bill?**

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

36. **If you do not agree that existing judicial remedies are sufficient in delivering effective remedy for rightsholders, what additional remedies would help to do this?**

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?**

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

Timescales need to be specified in the bill. There needs to be sufficient time for duty bearers to put in place the infrastructure needed to comply with the legislation and for sufficient guidance to be prepared on the duties, rights and reporting requirements. This needs to be balanced with the current context of people already living with serious violations of their rights, and the urgent remedy this requires.

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

As mentioned in question 24, we support the proposals for a participatory approach to defining what falls within the Minimum Core Obligations of each right. This is the best way to ensure participation is at the core of the government's approach. However, the participatory process must reach beyond the 'usual suspects' and those already engaged in developing policy. It must reach those most marginalised and likely to be missing from the conversation. The MCOs on the right to health must be developed with people who experience health inequalities. The Health Foundation 2023 review of health inequalities in Scotland highlights the people who are furthest from achieving good health and those right on the margins. Much of their findings on the prevalence of health inequalities were linked to socio-economic disadvantage and poverty. These are the groups the process must reach. The Minimum Core Obligations must include ambitions to reduce inequalities and ensure that the current trend of worsening health inequalities for the most marginalised in society does not continue.

Secondary Legislation
Additionally, we would have significant concerns about the short consultation timescales if MCOs are left to secondary legislation. Secondary legislation can be incredibly challenging to engage with and the timescales often exclude organisations who rely on consulting with the people they support. This can lead to the voice of lived experience being excluded from the legislative process. The development of MCOs needs to be accessible, especially to those who may require additional time and resource to engage with the process, such as organisations representing disabled people.

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

We support the proposed duty to publish a Human Rights Scheme. This will be the part of the legislation which MSPs, organisations and individuals can hold government to account on.

Monitoring and evaluation and impact assessments
The human rights monitoring and evaluation and impact assessments are absolutely essential to this legislation. There is not a lot of detail in this section of the consultation on what Scottish Ministers will be required to publish and report. We would advocate that monitoring and evaluation are fully transparent so that civil society can hold government to account on progress. There needs to be significant work undertaken to ensure that any impact assessments are implemented in a meaningful way. At present many impact assessments in policy making are carried out too late in the process as a tick box exercise and without input from lived experience. Human rights impact assessments must be carried out meaningfully with people whose rights are most at risk.

Human rights budgeting
We think there is a missed opportunity in terms of embedding human rights budgeting in the government's activities. We note that the scheme would "embed human rights in budget processes" but it is not clear whether this means human rights budgeting would be taken forward by government in all policy areas. We would support imbedding human rights budgeting across government, based on tackling inequalities and ensuring resources are directed where they are needed most to uphold people's human rights. Human rights budgeting involves being transparent, taking a participatory approach and ensuring accountability. It also means the content of a budget must by assessed against the concepts of progressive realisation, minimum core obligations, non-retrogression, maximum available resources and importantly non-discrimination. All forms of discrimination must be prohibited, prevented and eliminated. This principle implies that budgets should be allocated in a way that reduces systemic inequalities.[11]

Our response to question 2 outlined the importance of proportionate universalism as a concept when trying to tackle inequalities. In terms of budgets, proportionate universalism is about assigning resources based on need, but also taking a universal approach. It's not about having more money in the system it's about prioritising where the money is spent based on tackling inequalities. Guidance on all these concepts will be essential if human rights budgeting is to be taken forward effectively.

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?**

Ministers should be required to carry out Human Rights Impact Assessments for any new Bill of statutory instrument introduced to the Scottish Parliament. This should be carried out with those whose rights are most at risk.

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

[11] https://digitalpublications.parliament.scot/ResearchBriefings/Report/2022/10/20/862a68a0-a6a9-46cd-9fdb-87cc7a877406

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

Public Awareness Campaign
We agree there will be a significant need for a large-scale public awareness campaign to promote awareness of the human rights framework. This will be essential in ensuring there isn't an implementation gap and people feel empowered to name and claim their rights.

As previously mentioned in question 27 the third sector plays a central role in empowering people to take up their rights, especially the right to health. Organisations like the Poverty Alliance and Scottish Families Affected by Alcohol and Drugs advocate on people's behalf but also provide individual projects which empower people to access their rights. This work must be recognised as part of any public awareness campaign.

44. **What are your views on monitoring and reporting?**

For further information please contact VHS Policy and Engagement Lead:
Kimberley.somerside@vhscotland.org.uk

voluntary health scotland
18 York Place, Edinburgh, EH1 3EP
0131 474 6189 mail@vhscotland.org.uk www.vhscotland.org.uk @VHSComms