

Independent Human Right Act Review (IHRAR) Call for Evidence

3 March 2021

Introduction

The Health and Social Care Alliance Scotland (the ALLIANCE) welcomes the opportunity to respond to this Call for Evidence for the Independent Human Rights Act Review.¹ Since our inception in 2006, the ALLIANCE has championed human rights and a human rights based approach, and our aim is to mainstream equalities and human rights throughout our work. This response reflects on the distinctive Scottish position on human rights and provides practical examples of how the Human Rights Act 1998 (HRA) and the European Convention on Human Rights (ECHR) has informed the work of the ALLIANCE and generated positive developments in legislation, policy, and practice relating to health and social care. The ALLIANCE is also a co-signatory of the response submitted by the Human Rights Consortium Scotland (HRCS), of which we are an active member.

The ALLIANCE welcomes the UK Government's commitment not to withdraw from the ECHR. However, it is important to ensure adherence and positive action in relation to ECHR rights. Since its enactment, the HRA has had a powerful and dynamic impact on the lives of everyday people, extending beyond the courtroom.

The distinctive Scottish position

The Scotland Act 1998 explicitly embeds the HRA and the ECHR into the devolution settlement.² In short, all Scottish Parliament laws must comply with the ECHR. This means that an Act of the Scottish Parliament which is incompatible with the ECHR would have no legal effect.³ The same constraints apply to Scottish Ministers who cannot exercise their powers in a way which would breach human rights.⁴

A key consequence of the Scotland Act is that human rights enjoy a more enhanced status in Scotland than the rest of the UK.⁵ There is a growing focus on human rights in Scotland, and a marked commitment to embedding social, cultural, and environmental rights alongside the civil and political rights contained in the ECHR, as well as rights afforded to particular population groups like disabled people. Indeed,

¹ [Call for evidence: The Government's Independent Human Rights Act Review - 21 January 2021](#)

² [Scotland Act 1998](#)

³ [Scotland Act 1998, s.29\(2\)\(d\)](#)

⁴ [Scotland Act 1998, s.57\(2\)](#)

⁵ <https://www.alliance-scotland.org.uk/blog/opinion/the-human-rights-act-a-test-of-commitment/#expanded>

the value of the HRA has been felt by many people whose voice is often the least heard.⁶ Video case studies produced by the Health and Social Care Action Group of Scotland's first National Action Plan on Human Rights (SNAP) evidence the impact of a human rights based approach being used as a practical tool to support people accessing health and social care services.⁷ Examples of how the HRA has positively impacted the ALLIANCE's work to support and promote the rights of disabled people, people living with long term conditions, and unpaid carers, are illustrated below.

Legislation

The operation of the Scottish Parliament is increasingly working towards embedding human rights directly into legislation. The ALLIANCE has played an active role in influencing much of this work through engagement with our members and partners.

- The Social Care (Self-directed Support) (Scotland) Act 2013 was designed to enable greater choice and control for people accessing social care services.⁸ It advances a human rights based approach, underpinned by the PANEL principles and 'FAIR' decision making.⁹ The ALLIANCE continues to be involved in work around how Self-directed Support (SDS) and social care is working in practice.¹⁰ We are working to monitor and increase the implementation of Self-directed Support across Scotland, and are involved in a joint project – 'My Support My Choice' - with Self Directed Support Scotland, which is funded by the Scottish Government.¹¹ In 2020 we published the national research report and a series of thematic reports focused on different population groups and their experiences of SDS.¹²
- Activity is underway to cement international human rights into Scots law. The National Taskforce for Human Rights Leadership is a welcome and significant development in Scotland,¹³ which the ALLIANCE has actively engaged with.¹⁴ The Taskforce is working to establish a statutory framework to bring internationally recognised human rights into domestic law. It seeks to build upon and reaffirm the HRA and the rights provided by the ECHR and go further to bring international rights treaties into our domestic law.

⁶ For example, disabled people, people with long term conditions, unpaid carers, older people, members of the Black and Minority Ethnic community, members of the Gypsy/Traveller and Roma communities, people who identify as LGBTQ+ and care experienced (young) people, amongst others.

⁷ <http://www.healthandsocialcare-snap.com/case-studies/>

⁸ [The Social Care \(Self-Directed Support\) \(Scotland\) Act 2013](#)

⁹ [Social Care \(Self-directed Support\) \(Scotland\) Act 2013: statutory guidance, April 2014](#)

¹⁰ [My Support My Choice: People's Experiences of Self-directed Support and Social Care in Scotland, October 2020](#)

¹¹ <https://www.alliance-scotland.org.uk/health-and-social-care-integration/self-directed-support/msmc/>

¹² [My Support My Choice – People's Experiences of Self-directed Support and Social Care in Scotland - Reports, December 2020](#)

¹³ <https://www.gov.scot/groups/national-taskforce-for-human-rights-leadership/>

¹⁴ <https://www.alliance-scotland.org.uk/blog/news/event-report-all-our-rights-in-law/>

- A recent report from the ALLIANCE and Inclusion Scotland highlights the possibilities for incorporating the UN Convention on the Rights of Disabled People (UNCRPD) into Scots law.¹⁵ While the HRA largely embeds civil and political rights in UK law, practice has shown that existing law is not sufficient to allow disabled people to fully engage and take ownership of their rights. Through the Scotland Act 1998, the Scottish Government and Parliament can implement law and policy to give meaningful effect to CRPD rights.¹⁶
- The ALLIANCE has also been extensively involved in policy activity relating to incorporation of the United Nations Convention on the Rights of the Child.¹⁷ At the time of writing, the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill is at Stage 3 in the legislative process.¹⁸

Policy and practice

Similarly, the impact of the HRA, the ECHR and the Scotland Act can be seen throughout wider policy and practice in Scotland. The ALLIANCE works to support human rights to be embedded into health and social care policy and practice through engagement with our members and partners.

- We are actively involved in both the first and second phases of Scotland's National Action Plan for Human Rights (SNAP).¹⁹ This is a key national initiative to support Scotland's shift towards a human rights based approach. We co-convene the SNAP Health and Social Care Action Group,²⁰ and since 2017 have helped to develop Scotland's second National Action Plan (SNAP2),²¹ as active members of the Development Working Group.
- From September to November 2020, the ALLIANCE facilitated stakeholder events for the Independent Review of Adult Social Care in Scotland.²² The report made 10 recommendations for establishing a human rights and equality approach to social care services and support, which are rooted in incorporation of international treaties into domestic legislation.

¹⁵ [Incorporating the United Nations Convention on the Rights of Disabled People \(CRPD\) in Scotland report – Inclusion Scotland and the ALLIANCE, November 2020](#)

¹⁶ [Scotland Act 1998](#)

¹⁷ [ALLIANCE response: Children's rights: Consultation on incorporating the UNCRC into our domestic law in Scotland, August 2019](#)

¹⁸ <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/115977.aspx>

¹⁹ <http://www.snaprights.info/>

²⁰ <https://www.healthandsocialcare-snap.com/>

²¹ <http://www.snaprights.info/snap-2>

²² [Independent Review of Adult Social Care in Scotland, February 2021](#)

- Led by the Scottish Human Rights Commission, the ALLIANCE has been closely involved in aspects of Human Rights Budget Work developments in Scotland, including supporting the Scottish Human Rights Commission to develop a series of briefing papers.^{23, 24} Human Rights Budget Work is a different approach to financial decision making which embeds fairness, transparency, and people's participation in resource allocation, financial decision making, monitoring and accountability.²⁵
- The ALLIANCE has recently published its manifesto for the 2021 Scottish Parliament Election, of which human rights is a key priority.²⁶ Our manifesto is founded on much of the work outlined above, and we are asking for all political parties to: firmly root Scots law and people's experiences in human rights through implementing the statutory framework of the National Taskforce for Human Rights Leadership; legislate for full and direct incorporation of the UNCRPD; reform mental health law and policy to align with international human rights standards; and adopting a human rights budget work approach to Scotland's national budget.²⁷ We firmly believe that these asks will lead to a fairer Scotland for disabled people, people living with long term conditions, unpaid carers, and the third sector.

Conclusion and recommendations

The examples outlined above illustrate - in real terms - the value of the HRA and its principles in the context of health and social care and to the work of the ALLIANCE. Changes to human rights legislation at a UK level would have a direct impact on the lives of people in Scotland.²⁸ From a Scottish perspective, there is substantial concern about the extent to which a review of the HRA could impact upon the Scotland Act 1998 and the ongoing human rights work and commitments to international conventions across the Scottish policy landscape. Our fear is that, rather than enabling human rights to be realised, any legislative change would be regressive and risk undermining the rights of those already being marginalised. As we progress towards a new human rights culture in Scotland, it is imperative that the current operation of the HRA is not diluted.

However, we also know that there is much more work to be done in advancing human rights, particularly for groups at risk in society who remain in need of the protections offered by the HRA. For example, we know from our widespread engagement with members that problems occur in upholding human rights at the

²³ <https://www.alliance-scotland.org.uk/policy-into-practice/human-rights/human-rights-budget-work/>

²⁴ <https://www.scottishhumanrights.com/projects-and-programmes/human-rights-budget-work/>

²⁵ [Equally Valued – A manifesto for forward-thinking, far-reaching action in health and social care, February 2021](#)

²⁶ Ibid.

²⁷ Ibid.

²⁸ <https://www.alliance-scotland.org.uk/blog/opinion/the-human-rights-act-a-test-of-commitment/>

implementation stage, and gaps remain between policy and practice.^{29, 30} To protect, uphold and fulfil the rights of disabled people, people living with long term conditions and unpaid carers, it is vital that the journey towards embedding human rights is not disturbed, or the progress that has already been made become undone.

The ALLIANCE calls for the operation of the HRA to be strengthened to ensure it links in the best way possible to the work that we are currently undertaking in Scotland. We believe that the HRA, in its current form, should not be diluted. Any changes to the HRA must be progressive and enhance the protections that are currently offered, not regressive. We urge the UK Government to prioritise meaningful human rights leadership to ensure that the rights that we currently have are respected, protected, and fulfilled.

In practice, this means:

- **Empowering rights holders to know, understand and claim their rights**
- **Supporting duty bearers to fulfil their human rights obligations**
- **Having robust mechanisms to ensure accountability and routes to remedy and redress**
- **Ensuring human rights are integrated into policy and practice at international, national and local levels.**

About the ALLIANCE

The Health and Social Care Alliance Scotland (the ALLIANCE) is the national third sector intermediary for a range of health and social care organisations. We have a growing membership of around 3,000 national and local third sector organisations, associates in the statutory and private sectors, disabled people, people living with long term conditions and unpaid carers. Many NHS Boards, Health and Social Care Partnerships, Medical Practices, Third Sector Interfaces, Libraries and Access Panels are also members.

The ALLIANCE is a strategic partner of the Scottish Government and has close working relationships, several of which are underpinned by Memorandum of Understanding, with many national NHS Boards, academic institutions and key organisations spanning health, social care, housing and digital technology.

Our vision is for a Scotland where people of all ages who are disabled or living with long term conditions, and unpaid carers, have a strong voice and enjoy their right to live well, as equal and active citizens, free from discrimination, with support and services that put them at the centre.

²⁹ [My Support My Choice – People's Experiences of Self-directed Support and Social Care in Scotland - Reports, December 2020](#)

³⁰ [Independent Review of Adult Social Care in Scotland, February 2021](#)

The ALLIANCE has three core aims; we seek to:

- Ensure people are at the centre, that their voices, expertise and rights drive policy and sit at the heart of design, delivery and improvement of support and services.
- Support transformational change, towards approaches that work with individual and community assets, helping people to stay well, supporting human rights, self management, co-production and independent living.
- Champion and support the third sector as a vital strategic and delivery partner and foster better cross-sector understanding and partnership.

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