

Looking forward: Scotland's Human Rights (Incorporation) Bill

ALLIANCE Annual Conference 2022: Event Report

Context

The Scottish Government has made a commitment to introduce a new Human Rights Bill, which will incorporate four United Nations Human Rights treaties into Scots law.¹ This new Bill will include specific rights from:

- the International Covenant on Economic, Social and Cultural Rights (ICESCR)²
- the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)³
- the Convention on the Elimination of All Forms of Racial Discrimination (CERD)⁴
- the Convention on the Rights of Persons with Disabilities (CRPD).⁵

The Human Rights (Incorporation) Bill will be underpinned by the recommendations of the National Taskforce for Human Rights Leadership.⁶ The National Taskforce for Human Rights Leadership was set up in December 2018, and published their final report in March 2021.⁷ The final report makes 30 recommendations, which have been accepted by the Scottish Government. These include measures which will advance environmental, economic, social and cultural rights.

Introduction

On Wednesday 8 June 2022, the ALLIANCE held an online event during our 2022 Annual Conference to reflect on the recommendations of the National Taskforce and to update on progress towards incorporating human rights into Scots law. This report is a summary of the discussions held at the event and will be used to inform the ALLIANCE's policy work on the Bill.

The event was attended by 48 people, including rights holders and third sector health and social care organisations. Using the feedback gathered during the event we have been able to draw out key principles and standards that attendees would like to see underpinning the Human Rights (Incorporation) Bill.

Presentations

The event was chaired by Lucy Mulvagh, Secretariat Lead for Scotland's National Action Plan for Human Rights (on secondment from the Health and Social Care Alliance Scotland).

Mhairi Snowden, Director of the Human Rights Consortium Scotland, provided a summary of the plans to incorporate human rights into Scots law, including a reflection of the National Taskforce's recommendations. She highlighted the importance of incorporating human rights into our law:

“Human rights are not just nice words, good principles, or best practice. If we want to make human rights real for more people in Scotland, we have to have a good underpinning human rights law which is as strong and effective as possible.”

Alex Thorburn, Member of the Human Rights Incorporation Bill Lived Experience Board, updated on the work of the Lived Experience Board:

“In recent meetings we have looked at how we can influence design of the Bill, what it would contain, and how we can make sure it has engagement with the widest members of society in Scotland – including those who are hard to reach or don't get their voices heard as frequently as others do.”

“The reality of having a board of people with lived experience cannot be underestimated. We bring our experiences and those experiences of others with us, and hopefully that is reflected in the content of the Bill.”

Louise Halpin, Human Rights Bill Team Leader for the Scottish Government, provided an update from the Scottish Government's perspective and hopes for what impact the Bill may have:

“The overall aim is not about taking the rights and putting them on paper. The aim is to give best effect to the rights as we can. The Bill should improve decision making and make sure human rights matters are actively considered when decisions and policy are made. While some human rights decision making is happening already, the Bill can make it a consistent approach with clear and consistent processes that will help deliver improved outcomes for individuals.”

Workshop session: developing principles and standards to underpin the Human Rights (Incorporation) Bill

Attendees were invited to participate in a workshop session to identify principles and standards that they would like to see underpinning the Human Rights (Incorporation) Bill. Participants split into two breakout groups. The following themes were identified as key priorities:

Equality

Participants noted that when we talk about equality, it needs to be substantive equality focused on outcomes. It is also important to think about equity and to recognise that people's experiences are different. It was noted that the Equality Act 2010 falls short in this area, and the new Human Rights (Incorporation) Bill has the potential to provide that safety net in law.

It is important that the Human Rights (Incorporation) Bill includes people whose rights are most at risk and whose rights are most likely to be infringed upon. This must include (but should not be limited to) people with learning/intellectual disabilities, care experienced people, LGBTQI+ communities, people experiencing poverty. It was noted that the equality clause within the Bill could include a non-exhaustive list of characteristics, expanding on those outlined in the Equality Act 2010.

Human rights education

Understanding of human rights, rights education and promoting rights were identified as key priorities for the Bill to have effect. People need to know their full range of human rights, including economic, social, and cultural rights. It is important that civil society organisations can gauge levels of understanding and secure support for people to 'name and claim' their rights.

Currently, definition of human rights exists, but we should be presenting them in more easily understood ways; human rights should not be a niche area. In this context, it is important to be mindful of assumptions that people cannot or will not understand human rights language. As a sector, civil society have a responsibility to explain things properly to people. This is not about changing the words necessarily, but about using creative techniques to explain things properly.

Joining up of legislative priorities

Consideration is needed as to how the Human Rights (Incorporation) Bill can be set up in a way that support the legislation that will follow it including the Human Rights Bill, the National Care Service Bill, and the Autism and Neurodiversity Bill. While the

Human Rights (Incorporation) Bill will outline the legal framework to set out human rights, other specific pieces of legislation will make them real in practice.

Strengthening accountability

There was agreement that accountability needs to be strengthened to make rights real. Processes are needed to make human rights practical and meaningful on a day to day basis. Human rights can often be perceived as polarising or abstract; strengthened accountability and positive duties on public bodies will help to make them real at ground level.

There is also learning to take from the implementation of the Equality Act 2010 to consider how the Human Rights (Incorporation) Bill is implemented in practice. Equality Impact Assessments, for example, are often regarded as a tick-box exercise and not carried out meaningfully. Further thought is needed to implement robust accountability measures and to mitigate the perception that equality and human rights obligations are 'administrative burdens' on public bodies. This will require investment, training and resources in human rights awareness. It was noted that the review of the Public Sector Equality Duty should complement the Human Rights (Incorporation) Bill.

Culture change

At a broad level, it was noted that it is not possible to legislate to change culture and attitudes. When it comes to operationalising legislation there is learning to take from the children and young people's sector and the education sector, including the work being carried out on 'Rights Respecting Schools'. The notion of Rights Respecting Schools is helpful and gives license to embed human rights across organisations. Similar frameworks could be used to enable a rights based agenda across private, public and third sector organisations.

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 over 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.

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.

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.

APPENDIX: Event Agenda

10.30am	Welcome and housekeeping
10.40am	<p>Presentations from speakers (~ 10 mins each)</p> <ul style="list-style-type: none"> • Mhairi Snowden: Overview of Taskforce recommendations • Scottish Government: Update from Human Rights Bill team • Alex Thorburn: Update from member of Lived Experience Board
11.10am	Q&A from audience
11.30am	Comfort break
11.40am	<p>Workshop session: developing principles and standards – what matters to you?</p> <p>Attendees will work together, with facilitator input, to identify core principles and standards that they think should underpin the Human Rights Bill. These principles will be used to inform the ALLIANCE’s policy work on the Bill.</p> <p>Objectives:</p> <ul style="list-style-type: none"> - Establishing core principles to underpin the legislation - Identifying what these principles look like in practice
12.10pm	Feedback from groups
12.20pm	Thanks and close

¹ Scottish Government, ‘New Human Rights Bill’ (12 March 2021). Available at: <https://www.gov.scot/news/new-human-rights-bill/>

² OHCHR, ‘International Covenant on Economic, Social and Cultural Rights’. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

³ OHCHR, ‘Convention on the Elimination of All Forms of Discrimination against Women’. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women#:~:text=On%2018%20December%201979%2C%20the,twentieth%20country%20had%20ratified%20it.>

⁴ OHCHR, ‘Convention on the Elimination of All Forms of Racial Discrimination’. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>

⁵ OHCHR, ‘Convention on the Rights of Persons with Disabilities’. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>

⁶ Scottish Government, ‘National Taskforce for Human Rights Leadership’. Available at: <https://www.gov.scot/groups/national-taskforce-for-human-rights-leadership/>

⁷ Scottish Government, ‘National Taskforce for Human Rights Leadership: leadership report’. Available at: <https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/>