

Scotland's Human Rights Bill: an opportunity to strengthen human rights and access to justice in Scotland

A blog series by Barbara Bolton, Legal Director and Partner

Introduction

As the Scottish Government consults on proposals to bring a number of international human rights into Scots law, this blog series will discuss particular areas where the Scottish Government and Scottish Parliament can and should go further. With reference to more detailed sources on these topics, the series will consider:

- access to justice and the right to an effective remedy for breach of rights;
- why a 'duty to comply' is so important;
- incorporation of particular rights for disabled people and other groups;
- the limits of devolved competence;
- other elements.

Economic, Social, Cultural and Environmental Rights

I could not be more supportive of the Scottish Government's decision to incorporate economic, social, cultural and environmental (ESCE) rights into national law. Human Rights are interdependent and indivisible, and ESCE rights are as important as the civil and political rights already incorporated into UK law from the European Convention on Human Rights, through the Human Rights Act 1998.

The rights to adequate housing, health, food, social security, education and a healthy environment are as important as the rights to life, liberty, freedom of religion and belief, private and family life and a fair trial. You cannot achieve fulfilment of one set of rights without fulfilment of the other. This is as true today as it was when it was recognised in the drafting of the Universal Declaration on Human Rights 1948.

The Scottish Government's decision to incorporate ESCE rights into Scots law stands in stark contrast to the current UK Government's perspective on these rights,¹ and its repeated refusal to incorporate them into UK law.² The UK formally signed up to the International Convention on Economic, Social and Cultural Rights in 1976, almost 50 years ago, and has been legally bound to comply with the rights ever since. However, unless and until the rights are incorporated into national law the UK government and public authorities cannot be held to account for breach of those

¹ Recently set out in its consultation on regressive proposals to reform the Human Rights Act, which were thankfully recently abandoned, where the UK Government ESCE rights described as being rooted in Marxism, aspirational only and non-justiciable:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040409/human-rights-reform-consultation.pdf page 10.

² The UK Government has repeatedly resisted calls from the UN Committee on ESCR to incorporate these rights into national law.

rights and, importantly, they cannot be enforced in national courts.³ The Scottish Government's intended Bill should change that for people in Scotland, in relation to devolved areas including health, housing, education and significant aspects of food, social security, land and environmental policy. This progressive approach is to be welcomed, commended and encouraged.

That said, it is important to hold the Scottish Government to its commitment to go as far with this Bill as devolution will allow. While navigating the parameters of devolved competence is undeniably challenging, it is incumbent on the Scottish Government to take this Bill to the absolute outer limits of the Scottish Parliament's competence. That would be to live up to its promise of taking a "maximalist approach".

"The Scottish Government has accepted all 30 of the progressive, bold and ambitious recommendations from the National Taskforce for Human Rights Leadership for a new human rights framework for Scotland..."

As part of taking forward the recommendations from the Taskforce, a new Human Rights Bill will be introduced to the Scottish Parliament during this parliamentary session. This will represent a significant and historic milestone in Scotland's human rights journey. The Bill will give effect to a wide range of internationally-recognised human rights, belonging to everyone in Scotland, as far as possible within devolved competence, and will strengthen domestic legal protections by making them enforceable in Scots law."

Scottish Government Position Statement, Universal Periodic Review 2022⁴

With that approach in mind, this blog series will look at particular aspects of the proposed Bill that require greater consideration by the Scottish Government before a Bill is introduced. As the Bill was included in the Programme for Government 2023-24, it appears the Scottish Government to bring a Bill to the Scottish Parliament by no later than June 2024. A draft Bill would have to be ready quite some time prior to that, to allow for Ministerial sign off and the steps that require to be completed before a Bill can be introduced.⁵ It seems likely that a Bill will have to be prepared by April 2024, only 7 months after the consultation closes.

JustRight Scotland will also be responding to the Scottish Government's Consultation on a Human Rights Bill, which closes on 5th October 2023.⁶

*** This blog will be updated periodically during the consultation period and thereafter during the legislative process for the Scottish Human Rights Bill.**

³ They can be put under pressure internationally including by UN Committees and other UN entities, but repeated reports highlighting the UK's failure to adequately fulfil ESCR has not yet persuaded the UK Government to make necessary changes to improve the situation.

⁴ [1. Human Rights Legal Framework and Participation - Universal Periodic Review 2022: Scottish Government Position Statement - gov.scot \(www.gov.scot\)](https://www.gov.scot/news/human-rights-bill-consultation/#:~:text=The%20Human%20Rights%20Bill%20consultation,Social%20and%20Cultural%20Rights%20(ICESCR))

⁵ <https://archive2021.parliament.scot/parliamentarybusiness/bills/25685.aspx>

⁶ [https://www.gov.scot/news/human-rights-bill-consultation/#:~:text=The%20Human%20Rights%20Bill%20consultation,Social%20and%20Cultural%20Rights%20\(ICESCR\)](https://www.gov.scot/news/human-rights-bill-consultation/#:~:text=The%20Human%20Rights%20Bill%20consultation,Social%20and%20Cultural%20Rights%20(ICESCR))