



## A Human Rights Bill for Scotland: our response

### **About SALC**

The Scottish Association of Law Centres (SALC) is the national body for the not-for-profit legal sector in Scotland, the community legal sector, and in particular community-based law centres across Scotland.

We are an independent association, established to support the not-for-profit law sector to ensure the provision of free and accessible legal and related services to people, and communities including people experiencing discrimination and disadvantage.

### **Our Response**

We submit a response to the Scottish Government's consultation on a Human Rights Bill for Scotland.

## **Our response**

As social justice lawyers based at law centres and legal charities across Scotland, SALC welcomes the Scottish Government's consultation proposals for a Human Rights Bill as an important step towards realising rights in Scotland.

The incorporation of economic, social, cultural, and environmental rights directly into Scots law, means this Bill will protect a range of rights including the rights to food, housing, social security, health, and a healthy environment.

However, the Scottish Government committed to going as far as devolution would allow, and we do not believe these proposals do so.

Individual members, such as JustRight Scotland and the Environmental Rights Centre for Scotland, are submitting their own responses to the consultation, but as a coalition of law centres, we have the following common points to raise.

### Access to Justice

We are disappointed by the lack of progress on access to justice and by the weak proposals presented in the consultation.

For people experiencing breaches of their human rights, it is essential that they can effectively challenge that breach and secure an effective remedy, holding those in breach to account.

The Scottish Government accepted all 30 of the recommendations of the National Taskforce on Human Rights Leadership. The recommendations included a number related to access to justice, which asked the Scottish Government to give further, detailed consideration to various reforms to improve Scotland's administrative and civil justice system and bring it closer to providing accessible, affordable, timely and effective remedies international human rights law requires.

There are many well-known barriers to accessing justice in Scotland – including lack of information on rights and remedies, prohibitive cost, complexity, unfair deadlines, and lack of legal advice and representation – which are compounded where economic, social, and cultural rights are being breached.

The consultation offers limited proposals that are extremely narrow and do not address those considerable barriers to accessing justice.

We call for the right to an effective remedy – one that is accessible, affordable, timely and effective – to be included in the Bill as a substantive right, with a duty to comply. Inclusion of this right in the Bill will ensure it is part of national law and can be used to drive positive change, in the same way as the other substantive rights.

## Right to an effective remedy

The right to an effective remedy for breaches of human rights is a general principle of international human rights law and is expressly set out in most international human rights treaties.

The Committee on Economic, Social and Cultural Rights (CESCR) has highlighted that people who experience breaches of economic, social, and cultural rights must have accessible, affordable, timely and effective (AATE) remedies.

The AATE requirements cover:

- *Accessible* – there must be simple, uncomplicated routes to securing a remedy; widely available and actively promoted information about the existence of the remedy and how to obtain it; avoidance of unduly restrictive time limits; legal advice available for those who need it; flexible rules allowing representative organisations to bring public interest litigation.
- *Affordable* – remedies should be available without any cost, and where costs are unavoidable, they should be affordable, with free provision for those who need it. Legal aid should be available for those who need it, to meet costs related to litigation and to cover fees for legal representation.
- *Timely* – remedies should be prompt, without undue delay. Accessible and affordable routes to securing urgent remedies must be available, including interim measures preventing further harm and ensuring basic needs are met pending a final determination.
- *Effective* – there must be both administrative and judicial routes to remedy; appeal of administrative decisions to courts or tribunals; a range of effective remedies, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition; structural remedies, such as structural interdicts; the possibility of collective or group litigation; effective enforcement of remedies.

The Consultation states that they want to ensure there are routes to remedy available when there has been an individual or systemic infringement of people's human rights and that the remedies are accessible, affordable, timely and effective. Nonetheless, the very limited proposals on access to justice would not achieve that. Including the right to an Accessible, Affordable, Timely and Effective remedy in this Bill will enable the Scottish Parliament to thereafter introduce a more detailed Bill or Bills on specific aspects of access to justice.

## Judicial remedies

The Consultation does not cover in detail judicial remedies, focusing instead on administrative routes to remedy. While it is very important that people have free, highly accessible routes to securing an effective remedy, it is equally as important that they can pursue a judicial remedy.

With significant improvement in administrative routes to remedy, the need to pursue a remedy in court would be reduced in many cases. However, we cannot assume that we will have accessible, affordable, timely and effective administrative remedies. Significant reform is required to achieve that.

Lastly, we are disappointed by the lack of commitment in addressing the need to reform the legal aid system.

The lack of legal aid reform is a significant barrier to justice and something we experience constantly across our law centres.

The current system of legal aid – based on a market-led approach to meeting user needs, primarily through the judicare system – has failed to provide equal access to justice for service users who face specific barriers in access, for those requiring legal assistance in specialist areas of law, and across key geographies.

This gap has disproportionately restricted access to legal advice for marginalised and vulnerable groups including survivors of gender-based violence, migrants, individuals with disabilities, children, and the elderly. The current system arguably perpetuates and amplifies, the current inequality in access to justice for some of these groups.

We welcome the long-awaited consultation on this Bill, and we are committed to engaging with the Scottish Government on next steps after the consultation closes. We recognise the limits of devolution, nonetheless, we believe that further work is needed to ensure the Bill goes as far as possible to protect all our rights.

For further information, please contact JustRight Scotland or SALC at:  
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05.10.2023