

# Policy and Sustainability Committee

10.00am, Tuesday, 24 October 2023

## Human Rights Bill Consultation response

Executive/routine  
Wards

### 1. Recommendations

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1.1 It is recommended that Committee:

- 1.1.1 Note the Council's response to the Scottish Government's consultation on the Human Rights Bill.
- 1.1.2 Note that, in order to meet Scottish Government consultation deadline, submission of this response was approved by the Executive Director, Corporate Services in consultation with the Group Leaders under urgency provisions set out in A4.1 of the Committee Terms of Reference and Delegated Functions.

**Dr Deborah Smart**

Executive Director of Corporate Services

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## A Human Rights Bill for Scotland - Consultation response

### 2. Executive Summary

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- 2.1 This report provides the Council's response to the Scottish Government's 'A Human Rights Bill: Consultation'. The consultation ran from 15 June to 5 October. Given the deadline, the response has been approved under urgency provisions set out in A4.1 of the Committee Terms of Reference and Delegated Functions.

### 3. Background

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- 3.1 Protecting and building on human rights is already embedded in Council business with responsibilities under The Human Rights Act 1998, The Equality Act 2010 and other legislation. The response to the consultation set out in the appendix should help the Scottish Government to shape the new proposals, give further consideration to resource requirements and ensure the proposals are aligned to current legal obligations and approaches.
- 3.2 The consultation closed on 5th October 2023. To allow for appropriate engagement with services and elected members, accommodating the summer recess, it was not possible to prepare a draft Council response for the last meeting of this Committee. As such, this response has been prepared by officers and submitted to the Scottish Government with the approval of the Executive Director, Corporate Services in consultation with the Council Group Leaders under urgency provisions set out in A4.1 of the Committee Terms of Reference and Delegated Functions.

### 4. Main report

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- 4.1 The Scottish Government's public consultation on a [Human Rights Bill for Scotland](#) took place between 15 June and 5 October. By building on existing human rights and equality protections some of the Bill's aims, within the limits of devolved competence, include to:

- 4.1.1 Provide a clear, robust and accessible legal framework that ensures rights-holders can claim international human rights domestically and duty-bearers will better implement rights in practice and be held to account
  - 4.1.2 Bring four United Nations international human rights treaties into Scots law
  - 4.1.3 Recognise and include the right to a healthy environment.
  - 4.1.4 Make sure the rights are available to everyone equally, via an equality provision
  - 4.1.5 Provide a set of duties for public bodies that helps to contribute to the advancement of international human rights standards
  - 4.1.6 Create a multi-institutional approach towards embedding a human rights culture.
  - 4.1.7 Ensure there are accessible, affordable, timely and effective routes to remedy for infringement of human rights
- 4.2** The Council response, included as an appendix, provides feedback on these issues and specifically that:
- 4.2.1 CEC is committed to protecting and building on human rights and equality protections.
  - 4.2.2 CEC is supportive of the principle of strengthening human rights in Scotland.
  - 4.2.3 We are mindful of the ongoing budgetary and resource pressures within local authorities.
  - 4.2.4 For the protections in the Bill to be implemented effectively by duty-bearers, CEC considers that appropriate support (including detailed guidance and other resources) will be required from the Scottish Government.
- 4.3 The response was formed after a period of engagement involving both services and elected members, with the latter including views being sought from Group Leaders and the members of the Member Equalities Working Group.

## **5. Next Steps**

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- 5.1 The consultation response has been submitted. Officers will continue to engage with Scottish Government colleagues and will report back to Committee in due course on the progress of the Bill.

## **6. Financial impact**

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- 6.1 There is no financial impact from submitting this response. There may be financial impact on any subsequent duty imposed as a result of the consultation, and any subsequent legislation changes.

## **7. Equality and Poverty Impact**

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- 7.1 An Integrated Impact Assessment will be carried out on any changes the Council needs to make as a result of the Human Rights Bill once enacted
- 7.2 The duties once enacted will have relevance to the Council's existing public sector equality duty, specific equality duties, the Equality and Diversity Framework, the End Poverty Edinburgh Plan, and the Council's broader intention to shift the culture of the organisation to better embed equality.

## **8. Climate and Nature Emergency Implications**

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- 8.1 As a public body, the Council has statutory duties relating to climate emissions and biodiversity.
- 8.2 The Bill proposes to introduce a right to a healthy environment. This includes both substantive aspects (including clear air; safe and sufficient water; non-toxic environments; healthy ecosystems and biodiversity; and safe climate) and procedural aspects (such as raising awareness, promoting education and capacity building).
- 8.3 Whilst the response requests more information on the interplay between this and the existing environmental protections in place, the Council is supportive of this proposal and recognises it will have a positive impact on our citizens and the environment.

## **9. Risk, policy, compliance, governance and community impact**

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- 9.1 The proposals are welcomed by the Council and are regarded as having a positive impact on the community. However, the response:
  - 9.1.1 requests that resource implications are fully understood and addressed before procedural duties are placed on duty bearers.
  - 9.1.2 notes capacity building and steps to relieve budgetary and resource pressures will be essential to ensure effective implementation.
  - 9.1.3 requests more guidance on how these proposals interplay with existing duties on Local Authorities.

## **10. Background reading/external references**

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- 10.1 [Scottish Government, 'A Human Rights Bill for Scotland: Consultation'](#)

## 11. Appendices

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- 11.1 The City of Edinburgh Council's response to 'A Human Rights Bill for Scotland: Consultation'

Date 05 October 2023

**Human Rights Strategy & Legislation Unit**  
Directorate for Equality, Inclusion and Human Rights  
Scottish Government  
Area 3H North  
Victoria Quay  
Edinburgh  
EH6 6QQ

Dear Sir/Madam,

**A Human Rights Bill for Scotland (the Bill) - Consultation Response**  
**City of Edinburgh Council (CEC)**

The purpose of this letter is to respond to the public consultation on the Bill which was launched on 15 June 2023.

This letter explains CEC's existing commitments within this area and provides comments on the parts of the consultation that were most relevant to us as a local authority.

**CEC's Existing Commitments**

CEC is committed to protecting and building on human rights and equality protections.

We were pleased to note that many of the themes that are highlighted in the Bill are already priorities for CEC.

CEC seeks to achieve these priorities through a strategic framework which includes:

1. **An Equality and Diversity Framework for 2021-25:** which outlines how we meet our legal duties under the Equality Act 2010 (EQA 2010) and the Public Sector Equality Duty (PSED);
2. **Edinburgh 2050 City Vision:** a vision for the City of Edinburgh which local organisations can sign up to, to pledge their commitment to principles contained within the charter;
3. **CEC's Business Plan 2021-25:** structured around three themes: poverty, sustainability, and wellbeing and equality; and
4. **Edinburgh Partnership's Local Outcome Improvement Plan:** which prioritises citizens of Edinburgh having enough money to live on, access to work, training and learning opportunities and a good place to live.

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## **CEC's response to the proposals set out in the Bill**

CEC is generally supportive of the principles set out in the Bill and strengthening human rights in Scotland. We have collated views from various service areas within CEC and with reference to relevant parts of the consultation, we have pulled together key themes including areas of concern and/or where more information is required. It should be noted that it has not been possible at this stage to complete a full impact assessment of introduction of the bill for Council services, including potential resource implications.

### **Incorporating the Treaty Rights (Part 4)**

CEC is supportive of the inclusion of a provision in the Bill which allows for human dignity (as in the inherent worth of a human person) to be considered by the courts when interpreting rights under the Bill.

It is agreed that recognising human dignity as a key threshold for defining minimum core obligations (e.g. the minimum essential levels of a right) is likely to help duty-bearers prevent a person's inherent human dignity from being violated.

We note the intention to incorporate various existing human rights treaties into the Bill including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

It requested that the SG explores whether the CEDAW adequately covers policies around elimination of violence against women and girls (and gender-based violence), including protection from forced marriages and female genital mutilation.

### **Recognising the Right to a Healthy Environment (Part 5)**

CEC is supportive of recognising and including the right to a healthy environment within the Bill and notes that the proposed definition will include reference to ecosystems and biosphere.

We agree with the proposed formulation of the right to a healthy environment which includes both substantive aspects (including clear air; safe and sufficient water; non-toxic environments; healthy ecosystems and biodiversity; and safe climate) and procedural aspects (such as raising awareness, promoting education and capacity building). In addition, it is suggested that the right to healthy and sustainable food could be considered as an additional substantive aspect.

We would welcome more information regarding the interplay between this right and the legal protections and policy initiatives for environmental protections that are already in place.

We would also welcome guidance regarding how this right is likely to impact on the work that is undertaken by local authorities in practice.

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## **Incorporating Further Rights & Embedding Equality (Part 6)**

We note that the Scottish Government (SG) is considering introducing stronger duties in relation to participation, to ensure that people are more involved in meaningful decisions about services that affect them. CEC is fully committed to encouraging participation and has seen the positive benefits of using effective consultation and engagement with the local community.

We suggest that any additional duties in relation to participation are considered within the context of existing participation duties and requirements within other legislation such as the EqA 2010.

CEC is supportive of the proposed inclusion of an equality provision within the Bill to ensure that everyone can access the rights under the Bill without discrimination.

For consistency, it is suggested that the Bill defines the groups to be protected by the equality provision with reference to the protected characteristics as defined in section 4 of the EqA 2010. It is further suggested that, in addition to the existing protected characteristics, the equality provision also includes group with 'other status' (effectively mirroring the wording of the European Convention on Human Rights and the International Covenant on Economic, Social and Cultural Rights treaties. However, it was not possible to consider this response through the committee process. Therefore, we would like to note here that feedback from some political groups at CEC is divergent from this approach and requests specifically that sensory loss and people with neurodiversity be included.

## **The Duties (Part 7)**

We support the Bill's fundamental aim to deliver a framework under which duty-bearers (such as local authorities) are better prepared and able to respect, protect and fulfil the rights of the people of Scotland. We understand that the intention is to include two types of duties: (1) those that lead to improvements to people's outcome in practice (substantive duties) and (2) those that set out a course of action (procedural duties).

We note that an initial procedural duty, which would take effect before other duties, has been proposed.

We understand that this duty would focus on ensuring that the rights in the Bill are: considered by duty-bearers, built into the fabric of decision-making processes, and adequately taken into account in the delivery of services (the Initial Duty). We understand that the intention is that this duty would apply as soon as is practicable after the Bill becomes an Act.

CEC seeks clarity on the timescales that are being proposed for the introduction of the Initial Duty. We consider that appropriate guidance, training, case studies and toolkits should be made available as a central resource well in advance of the Initial Duty coming into effect. This would enable CEC to take appropriate action to prepare for and implement this change.

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Local authorities already have a wide range of legal obligations in relation to equality, socio-economic disadvantage, climate change, sustainability, the environment, and human rights. CEC uses Integrated Impact Assessments (IIAs) to assess impacts within these areas when developing policies, strategies and making service decisions. It is noted that the starting point for implementing the Initial Duty could be considering how it would be built into IIAs.

We are supportive of the proposed reporting duty on duty-bearers to demonstrate what actions are being taken to ensure that the rights in the Bill are being advanced. We welcome the recognition of the need to ensure that reporting duties complement and do not duplicate existing duties.

We consider that the reporting duty should be incorporated into existing Scottish specific reporting duties under section 149 of the EqA 2010 and Regulation 4 of The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (the Regulations).

CEC would welcome more information as to the nature of the reporting that would be required by local authorities and requests that appropriate guidance is established before any reporting duty comes into effect.

### **Ensuring Access to Justice for Right-Holders (Part 8)**

We agree that it is important that rights holders are supported to enforce their rights under the Bill.

We suggest that advocacy advice services are provided centrally by the Scottish Government or additional funding is provided to public bodies to deliver these services.

CEC's preferred approach would be to receive investment which would allow it to strengthen existing services which support people to exercise their human rights.

We welcome the proposal to help public authorities develop their front-line complaints-processes in relation to the rights in the Bill.

We understand that the Scottish Public Services Ombudsman (SPSO) are looking to update the model complaints handling procedures which local authorities would be expected to comply with when dealing with a complaint. We look forward to receiving more information on these updated procedures in due course.

### **Implementing The New Scottish Human Rights Act (Part 9)**

CEC will need adequate time to become familiar with the new standards and ensure that it has the right infrastructure in place to support implementation and compliance.

We note the intention for guidance to be prepared to assist duty-bearers to discharge their obligations (the Guidance) and we welcome the SG's proposal to work closely with stakeholders to prepare this guidance. We would like to see specific sections of the guidance that are tailored to local authorities. We consider that there should not be any procedural duties placed on duty bearers until the guidance has been finalised and made available and any resource implications fully understood and addressed.

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We welcome the SG's recognition that capacity building within public authorities will be essential to ensure effective implementation. Budgetary and resource pressures within local authorities already present significant challenge and taking steps to relieve these pressures by making implementation of new duties as straightforward as possible will be fundamental to its success.

In addition to the Guidance, we would like the SG to provide appropriate training for CEC Councillors and Officers as well as any other relevant resources. We note that a plan is being developed and would welcome more detail on this once available.

We seek more detail on the proposed monitoring and reporting obligations on local authorities and how we would be supported with delivering those duties.

To summarise the points outlined above:

- CEC is committed to protecting and building on human rights and equality protections.
- CEC is supportive of the principle of strengthening human rights in Scotland.
- We are mindful of the ongoing budgetary and resource pressures within local authorities.
- For the protections in the Bill to be implemented effectively by duty-bearers, CEC considers that appropriate support (including detailed guidance and other resources) will be required from the SG.

We hope that the above consultation response is of assistance.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'D Smart', with a horizontal line drawn through it.

Dr Deborah Smart

Executive Director of Corporate Services

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