

Human Rights Bill Consultation Response

1. INTRODUCTION

- 1.1 The purpose of this report is to present to the Board SEStran's response to the Human Rights Bill Consultation.
- 1.2 The draft response was considered by the Equalities and Access to Healthcare Forum at its meeting on 28th September 2023.

2. BACKGROUND

2.1 The purpose of the proposed Human Rights Bill is the incorporation of United Nations treaties into domestic law. The consultation sets out that views are being sought on plans to enshrine international human rights, including the right to health and an adequate standard of living, into Scottish law for the first time. As part of a forthcoming Human Rights Bill, the proposals look to reduce inequality and would place a broader range of human rights at the centre of how Scotland's frontline public services are delivered, as well as its policy and law-making processes. People would also be able to seek justice where their rights are not upheld.¹

2.2 The Human Rights Bill proposes to incorporate four UN human rights treaties into Scots law:

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

The Bill will also introduce and recognise a right to a healthy environment and ensure equal access to these rights for everyone.

2.3 It is important to note that Civil and political rights are already protected through the Human Rights Act 1998 and the European Convention on Human Rights.

2.4 The proposals follow on from the work and recommendations of the First Minister's Advisory Group on Human Rights Leadership (FMAG) and the National Taskforce for Human Rights Leadership (the Taskforce). The Taskforce reported in March 2021 and made a number of recommendations for the Scottish Government to establish a new human rights framework for Scotland. One of its key recommendations was to add the right to a healthy environment to the UN Charters.²

3. TRANSPORT PERSPECTIVE

- 3.1 Since the publication of the National Transport Strategy 2 in February 2020, the transport policy framework with respect to human rights and equalities is strong and robust.

*“Transport plays a key role in enabling people to realise their **human rights**. It is an essential requirement in enabling people to realise other human rights such as the right to education, the right to work, the right to take part in cultural and public life, the right to an adequate standard of living and the right to the highest attainable standard of physical and mental health.”*

- 3.2 The commitment within NTS2 pre-dates and aligns with the values and principles expounded in the proposed Human Rights Bill. The impact assessments undertaken for NTS2 also support one of the key recommendations of the National Taskforce for Human Rights Leadership Report, to add the right to a healthy environment to those rights contained in the exiting UN Treaties.
- 3.3 The commitment in NTS2 has guided the development of the recent adopted Regional Transport Strategy, SEStran 2035 in respect of human rights, equalities and access to a safe and healthy environment. Additionally, in support of the right of everyone to a healthy environment, specific actions have been identified to address this as part of the RTS Strategic Objectives.
- 3.4 One of the key issues raised in the consultation is that of monitoring and reporting. SEStran already complies with and is included in are included in the schedule of the Public Services Reform (Scotland) Act 2010. This requires annual publication of certain information and the addition of reporting under the proposed Human Right Bill would not prove unduly onerous. Accordingly, we support the recommendation that requires public bodies to report actions taken and proposed under the Bill.
- 3.5 The Human Rights Consortium Scotland has undertaken some excellent work in providing detailed advice on the proposed Human Rights Bill. It has provided draft responses to the 44 questions asked as part of the consultation. As a public body, SEStran unfortunately cannot become a member of the Consortium, however, it follows the work of the Consortium and would align itself with the draft responses, none of which we would disagree with.³
- 3.6 Given this context, the proposed SEStran draft response to the Human Rights Bill consultation is attached at Appendix 1. The response expands, in particular, on the right to a healthy environment, the adopted RTS Strategic Objectives that support this additional right and the actions proposed to enact and deliver against that. The Forum is invited to consider, review and comment with a view to endorsing the response.

4. RECOMMENDATIONS

4.1 The Board is asked to note the contents of this report.

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Appendix 1: SEStran: Human Rights Bill Consultation Response

References:

1. A Human Rights Bill for Scotland: Consultation, Scottish Government, June 2023. <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2023/06/human-rights-bill-scotland-consultation/documents/human-rights-bill-scotland-consultation-june/human-rights-bill-scotland-consultation-june/govscot%3Adocument/human-rights-bill-scotland-consultation-june.pdf>
2. National Taskforce for Human Rights Leadership Report, Scottish Government, March 2021. <https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/>
3. Human Rights Consortium Guide to responding to the Human Rights Bill for Scotland, HRCS, August 2023. <https://hrscotland.org/wp-content/uploads/2023/08/Final-HRCS-Guide-to-responding-to-Human-Rights-Bill-for-Scotland-consultation-August-2023-1.pdf>

Policy Implications	Policies have been incorporated into the adopted Regional Transport Strategy (RTS).
Financial Implications	Any required expenditure has been accounted for within approved budgets.
Equalities Implications	Compliance with the Public Sector Equality Duty and advancement in achieving our Equality Outcomes by progressing the actions outlined in the report.
Climate Change Implications	The proposed right to a healthy environment strengthens the policies contained in the RTS.

Human Rights Bill Consultation 2023

SEStran (South East Scotland Regional Transport Partnership) Response

The South East of Scotland Transport Partnership (SEStran) is the statutory Regional Transport Partnership for the South East of Scotland. SEStran encompasses eight local authorities: City of Edinburgh, Clackmannanshire, East Lothian, Falkirk, Fife, Midlothian, Scottish Borders and West Lothian.¹

SEStran Equalities and Access to Healthcare Forum was originally established in April 2009. Its role is to assist the Partnership Board exercise its duties under the Equality Act 2010 and the Equality Act 2012 (Scotland) Specific Duties. The Forum is designed to assist the Board to meet the priorities of health, wellbeing, and equalities, in line with SEStran's Regional Transport Strategy (RTS). The Forum has the delegated authority from the Partnership Board to discuss and consider any matters within its responsibility and duties, it has taken the lead in considering the response to the Human Rights Bill consultation.

Introduction

Thank you for the opportunity to respond to the Human Rights Bill consultation. As an organisation subject to and enthusiastic proponents of the Public Sector Equality Duty (PSED), SEStran would support the proposed legislation to incorporate international human rights into Scots law for the first time. As expressed in the United Nations economic, social and cultural rights and environmental standards, along with rights relating to women, disabled people and people who experience racism, the proposed legislation would enhance the work that the Partnership has been doing to support the aspirations of the National Transport Strategy, NTS2, and embed a rights-based approach into transport policy, outlined in the recently adopted Regional Transport Strategy (RTS).²

Policy Framework

Since the publication of the National Transport Strategy 2 in February 2020, the transport policy framework with respect to human rights and equalities is strong and robust.³

“Transport plays a key role in enabling people to realise their human rights. It is an essential requirement in enabling people to realise other human rights such as the right to education, the right to work, the right to take part in cultural and public life, the right to an adequate standard of living and the right to the highest attainable standard of physical and mental health.”

The Strategy will support a rights-based approach to transport. We will work to ensure that access to suitable transport facilitates fulfilment of other human rights, in line with the National Performance Framework and Scotland's international human rights obligations. The Strategy will use this underlying principle to deliver Scotland's transport system for the next 20 years. This approach is directly informed by progressive policies being and, in that regard, properly adopted and implemented across Scotland, including the Scottish Government's strategic commitment to incorporate internationally recognised human rights into domestic law.”

¹ <https://sestran.gov.uk/about-us/>

² <https://sestran.gov.uk/wp-content/uploads/2023/07/SEStran-2035-Regional-Transport-Strategy.pdf#page=35>

³ <https://www.transport.gov.scot/our-approach/national-transport-strategy/>

So, the commitment within NTS2 pre-dates and aligns with the values and principles expounded in the proposed Human Rights Bill.

The impact assessments undertaken for NTS2 also support one of the key recommendations of the National Taskforce for Human Rights Leadership Report, to add the right to a healthy environment to those rights contained in the exiting UN Treaties.⁴

*“Additionally, the Taskforce recognises that there are rights which do not yet have their own UN treaties, but which can nevertheless be drawn from existing UN treaties and would therefore benefit from being included within a new framework which demonstrates human rights leadership by securing adequate protection for all. **Such rights include the right of everyone to a healthy environment, the rights of older people and the rights of LGBTI people.**”*

Specifically, the Health Inequalities Impact Assessment undertaken for NTS2 recognises the importance of a human rights approach and access to a healthy environment particularly for vulnerable groups:

RI-6: Ensure that equality and a human rights approach is at the heart of all policy-making processes.

CA-1: Reduce emissions generated by the transport system to mitigate climate change and improve air quality.

The Regional Perspective

The commitment in NTS2 has guided the development of the recent adopted Regional Transport Strategy, SEStran 2035 in respect of human rights, equalities and access to a safe and healthy environment.⁵

*“In accordance with statutory requirements, **Equalities Impact Assessment (EqIA) and Strategic Environmental Assessment (SEA)** and processes are being undertaken to respectively assess likely significant environmental impacts and apply relevant equalities duties.”*

Additionally, in support of the right of everyone to a healthy environment, specific actions have been identified to address this:

Strategy Objective 1: Transitioning to a sustainable, post-carbon transport system.

- Reduce emissions and energy use
- Improve air quality

Strategy Objective 2: Facilitating healthier travel options.

- Improve health and well-being
- Reduce emissions

Strategy Objective 3: Widening public transport connectivity across the region.

- Reduce inequality of opportunity and encourage more inclusive growth
- Reduce car dependency and forced car ownership and encourage modal shift

⁴ <https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/>

⁵ <https://sestran.gov.uk/sestran-2035-regional-transport-strategy/>

As a follower of the Human Rights Consortium Scotland (HRCS), SEStran would like to align itself with the comprehensive response it has provided including those elements drafted by the Environmental Rights Centre for Scotland (ERCS) which relate to the duties and functions of SEStran, in particular with respect to the following questions:

Part 5 – Recognising the Right to a Healthy Environment

Question 6, page 22: Do you agree or disagree with our proposed basis for defining the environment?

We endorse use of the Aarhus definition of the environment, which makes specific reference to ecosystems and the biosphere. We draw attention to the Aarhus Convention's Preamble, and Article 1 and 2 and would want to see this reflected in the Bill.⁶

Question 8, page 22: What are your views on the proposed formulation of the substantive and procedural aspects of the right to a healthy environment?

We welcome the formulation of substantive aspects of the right to include clean air, safe climate, safe and sufficient water, non-toxic environments, and healthy biodiversity and ecosystems, and applaud efforts to adopt standards such as the UN Framework Principles on Human Rights and the Environment and the Aarhus Convention, as guiding frameworks for the development of this right within the Bill.

Question 11, page 22: Are there any other substantive or procedural elements you think should be understood as aspects of the right?

We need to see dedicated reforms with clear timelines to make the Right to a Healthy Environment fully enforceable.

Question 13, page 24: How can we best embed participation in the framework of the Bill?

Participation should be embedded throughout the Bill, including in its purpose, in reporting on implementation of the Bill, and in monitoring and accountability.

Question 14, page 26: What are your views on the proposed approach to including an equality provision to ensure everyone is able to access rights, in the Bill?

We agree that there should be an equality provision, and that LGBTI and older people should be specifically named. This is because there is significant benefit in these groups being visible in the Bill given the consideration needed to address barriers to their rights.

Question 19: What is your view on who the duties in the Bill should apply to?

People should be able to expect their human rights to be respected, protected and fulfilled by every public body, whether or not it is within devolved or reserved competence. This is particularly true because people do not always know whether the public body they are dealing with is Scotland-only or UK wide. We ask the Scottish Government to discuss this with the UK Government, as well as to urge them to incorporate all of our international human rights at a UK level.

⁶ <https://unece.org/DAM/env/pp/documents/cep43e.pdf>

Question 20, page 29: What is your view on the proposed initial procedural duty intended to embed rights in decision making?

We agree that it is necessary for public bodies to have an initial period where a procedural duty applies in order to give them time to embed human rights into their decision-making. This is because we firmly believe that this Bill needs to help to drive change in realisation of human rights, and that will require change in how public bodies work. We agree that public bodies will need some time to increase their capacity around human rights and shift the way in which they make decisions.

Question 21, page 29: What is your view on the proposed duty to comply?

We agree that all public bodies (& relevant private actors) should be given a duty to comply with rights in the Bill. We agree that this duty to comply should include delivering Minimum Core Obligations and demonstrating progressively realising rights. Guidance to public authorities should include detail on the definition of progressive realisation, including using maximum available resources.

Question 23, page 30: How could the proposed duty to report best align with existing reporting obligations on public authorities?

We agree that there should be a public bodies' reporting requirement - this should largely mirror the UNCRC and PSRA reporting requirements. Public bodies should have to consult with people whose rights are most at risk when developing these reports, including to ensure that the content is accessible.

Question 25, page 33: What are your views on the right to a healthy environment falling under the same duties as economic, social and cultural rights?

We agree that there should be the same duties for the right to a healthy environment as for economic, social and cultural rights (and special protection treaties).

Question 26, page 33: What is your view on the proposed duty to publish a Human Rights Scheme?

We agree with the proposal to give Scottish Ministers a duty to publish a Human Rights Scheme, and a related duty to report on actions taken on the requirements in the Scheme.

Question 28, page 41: What are your views on our proposals in relation to front-line complaints handling mechanisms of public bodies?

We agree that front-line complaints handling by public bodies needs to be changed to take into account rights and duties in this Bill. These changes should be co-produced with people whose rights are most at risk.

Question 38, page 48: What are your views on our proposals for bringing the legislation into force? - Every day, people are living with serious violations of rights in this Bill. This should be the primary driver behind setting the timescales for full implementation of this Bill.

Question 44, page 53: What are your views on monitoring and reporting?

The Human Rights Scheme and the reporting requirements on public bodies, such as the PSRA, need to bring accountability on fulfilling rights in the Bill.