

Equalities, Human Rights and Civil Justice Committee
Tuesday 1 October 2024
20th Meeting, 2024 (Session 6)

Human Rights (Scotland) Bill

Introduction

1. Following the Scottish Government's decision not to introduce a Scottish Human Rights Bill in the current parliamentary session, the Committee agreed to hold two evidence sessions to hear views from stakeholders and academics on the decision, what impact it may have and any suggested ways forward.

Background

2. Proposals to incorporate economic social and cultural rights (ESC rights) into Scots law have been under consideration for at least ten years (for details see the SPICe briefing '[Economic, social and cultural rights – some frequently asked questions](#)').
3. The broad aim is to make ESC rights in UN treaties such as the right to an adequate standard of living, right to housing etc. enforceable in Scotland by individuals (including in the courts).
4. The method proposed broadly follows the approach in the Human Rights Act 1998 (Human Rights Act) which was introduced one year after the Labour party came into power in 1997 and which incorporated civil and political rights from the European Convention of Human Rights (ECHR) into UK law.
5. The approach proposed in the Human Rights Bill was also taken in [the United Nations Convention of the Rights of the Child Bill](#) (UNCRC Bill) which directly incorporated the United Nations Convention of the Rights of the Child into domestic law in Scotland. The Bill was successfully challenged in the Supreme Court by the UK Government on the grounds that the Scottish Parliament does not have the power to require UK Acts of Parliament to comply with international obligations (even when UK Acts of Parliament relate to devolved areas).

The First Minister's Advisory Group on Human Rights Leadership

6. An advisory group, "[the First Minister's Advisory Group on Human Rights Leadership](#)" was set up by the then First Minister Nicola Sturgeon. It comprised human rights academics and lawyers and the then Chair of the Scottish Human Rights Commission (SHRC), Judith Robertson. The Chair of the group was Professor Alan Millar, a human rights lawyer and academic and previous Chair of the SHRC.
7. The group [reported in December 2018](#) and made a number of recommendations, the principal one being the introduction of an Act of the Scottish Parliament which, in addition to restating the existing rights in the Human Rights Act, would incorporate ESC rights in UN human rights treaties as well as environmental

rights and “specific rights for women, children, persons with disability, older persons, LGBTI and on race.”

The National Taskforce for Human Rights Leadership

8. [The National Taskforce for Human Rights Leadership](#) was established in early 2019 to take forward the recommendations of the First Minister's Advisory Group on Human Rights Leadership.
9. It was co-chaired by Shirley-Anne Somerville MSP, the then Cabinet Secretary for Social Security and Older People, and Professor Alan Miller. It included members from the public sector and civil society, as well as an academic advisory panel.
10. After taking evidence from a range of stakeholders, the Taskforce published its [report](#) on 12 March 2021. The report followed the recommendations of the First Minister's Advisory Group. It proposed a Bill incorporating ESC rights into Scots law. For more details see the SPICe briefing “[Economic, social and cultural rights and the proposed Human Rights Bill](#)”.

2023-24 Programme for Government

11. The Human Rights Bill was part of [the 2023-24 Programme for Government “Equality, Opportunity, Community”](#) presented by the then First Minister, Humza Yousaf. However, Humza Yousaf resigned in May 2024 and the Bill was not introduced ahead of summer recess 2024.

A Human Rights Bill for Scotland: Consultation

12. The Scottish Government ran a [consultation](#) on proposals for a Human Rights Bill between 5 October and 15 June 2023. A total of 397 responses were received. Respondents included individuals, councils, civil society organisations, public bodies, academic institutions, legal professionals, private bodies and third sector.

2024-25 Programme for Government

13. The Human Rights Bill was not included as one of the Bills which would be introduced in [the 2024-25 Programme for Government “Serving Scotland”](#). Instead, the programme for government states that, “work will also continue to develop proposals for Human Rights”.
14. [A letter from the Cabinet Secretary for Social Justice to the Convener of the Equalities, Human Rights and Civil Justice Committee](#) explains the Scottish Government's reasoning for the decision not to legislate.
15. In response to a question from the Convener during [the Conveners Group meeting on 18 September 2024](#) the First Minister, John Swinney, argued that there was a need to “tread with care” due to the impact of the Supreme Court UNCRC judgment. The Scottish Government's decision not to introduce the Human Rights Bill led to widespread comment from stakeholders and academics.

Evidence session

16. At today's meeting, the Committee will take evidence from two panels. Firstly, it will hear from stakeholders:

- Neil Cowan, Scotland Programme Director, Amnesty International UK;
- Emma Hutton, Chief Executive Officer, JustRight Scotland;
- Lucy Miller, Policy and Communications Lead, Human Rights Consortium Scotland;
- Professor Angela O'Hagan, Chair, Scottish Human Rights Commission;
- John Wilkes, Head of Scotland, Equality and Human Rights Commission Scotland

and secondly from academics —

- Professor Katie Boyle, Chair of Human Rights Law and Social Justice, University of Strathclyde;
- Nicole Busby, Professor of Human Rights, Equality and Justice, University of Glasgow;
- Professor Aileen McHarg, Professor of Public Law and Human Rights, Durham University;
- Alan Miller, Professor of Practice in Human Rights Law, University of Strathclyde;
- Dr Andrew Tickell, Senior Lecturer in Law, Glasgow Caledonian University.

Format

17. The evidence session will be a hybrid session and broadcast on [SPTV](#).

Topics

18. This session will provide an opportunity to explore topics such as:

- Stakeholders' involvement in the development of the Human Rights Bill.
- Views on the Scottish Government's decision and reasoning.
- Issues arising following the Supreme Court judgement on UNCRC and whether these are able to be resolved.
- Whether compliance duties that could be applied to race (CERD), disability (CRPD) and women (CEDAW) might be viewed as modifying the Equality Act.
- The impact of non-introduction of the Bill and how this has been communicated to stakeholders.
- What work, if any, is ongoing between the stakeholders and the Scottish Government on the development of the Bill.
- Suggestions for a possible way forward and what that may entail.

Next steps

19. The Committee will consider the evidence it has heard at today's session in private and agree on next steps.

Clerks to the Committee
September 2024