



ALBA | CHRUTHACHAIL

Scottish Government Consultation: [A Human Rights Bill for Scotland](#)

Submitted: October 2023

Consultation Questions as answered

Part 4: Incorporating the Treaty Rights

2. What are your views on our proposal to allow for dignity to be a key threshold for defining the content of minimum core obligation (MCOs)?

Creative Scotland believes in upholding the dignity of those participating and engaging with the arts, screen and creative industries and we would welcome the inclusion of dignity as a key threshold for the Minimum Core Objectives (MCOs). We are therefore supportive of the proposal. Including dignity in this way has the potential to give a clear lens through which public bodies can understand how to discharge their duties in relation to the MCOs and help with the definition of MCOs. This can most effectively be achieved if there is a clear definition of dignity and clear examples of what is meant by dignity, along with a comprehensive set of measures around whether it has been achieved or not.

4. What are your views on the proposed model of incorporation?

Creative Scotland is generally supportive of the model of incorporation as set out in the consultation paper. We particularly welcome the effort to consider existing frameworks, legislation and duties and how the duties and reporting in the Bill would align. We also welcome the proposal to include a sunrise clause, to allow public sector bodies to develop procedures in advance of assuming the duty to comply.

We would emphasise that this should be fully resourced, to enable bodies to develop the necessary skills and capacity to fully implement the duties in the act. This legislation represents a significant change in how public bodies go about their business and the resourcing, capacity building and time allowed for this to happen should be adequate to ensure success.

Key to understanding if access to cultural rights is being achieved is to have a definition of culture. An understanding of cultural rights can be wide ranging, and we are aware that no formal definition exists within the proposed treaties for adoption. Key points to refer to would be those contained within the Fribourg Declaration on Cultural Rights and definitions used by the UN Special Rapporteur on Cultural Rights, Alexandra Xanthapi. There are also definitions of the creative industries as used by the Scottish Government in their Growth Sector statistics and various definitions as used by Creative Scotland and other arts councils, both across the UK and internationally. Creative Scotland

would welcome the opportunity to be part of a discussion which seeks to develop a definition for this Bill, along with any metrics, including MCOs, to measure successful delivery.

Creative Scotland would also find it helpful to have clarity around where responsibility will lie around duties, including what is to be implemented, how and by whom. We would also welcome clarity around the duties for those public bodies which do not have a regulatory function, but allocate funding – would the duties extend to those being funded and those commissioned through procurement to carry out work as well, and how would that be monitored?

In addition, Creative Scotland is responsible for some areas which are reserved, in particular broadcasting, and we distribute funding from the National Lottery, which is administered through the Department for Culture, Media and Sport at Westminster, situations which are not unique to us. How can these best be negotiated, whilst still fulfilling our duty to the legislation?

We would urge that there is further consultation around the content of the duties and MCOs, and that proportionality is considered both for the functions of the public bodies and the sectors that they represent. Finally, we would recommend that any duties are checked against legislation establishing public bodies to ensure that the discharge of duties does not clash with any core functions, as established by legislation.

As the consultation is light on details of what is to be expected from public sector bodies with regard to the duties under the proposed Bill, we hope that this is the beginning of a consultative period, that will continue as the content and detail of the Bill is developed.

Part 5: Recognising the Right to a Healthy Environment

6. Do you agree or disagree with our proposed basis for defining the environment?

Disagree

7. If you disagree, please explain why:

While we agree with the use of the Aarhus Convention definition as the basis for defining the environment as it is an established definition, we are aware that this definition, which focuses on ecosystems and the biosphere, the interaction of living things, the biological communities and their environments, omits the intangible contribution of the arts, screen, and creative industries to a healthy environment.

The cultural and creative activities which are provided by the arts, screen and creative industries contribute to the health and wellbeing of our citizens, which we believe are part of our country's fundamental economic, social, cultural, and environmental rights. We note that healthy and sustainable food and safe and sufficient water have been proposed as additions. We would request the inclusion of our culture and its role within a healthy environment is also considered for inclusion.

In addition, the definition of 'environment' may also include the range of habitations that exist across Scotland. An approach to the environment on our islands, rural, semi urban and urban contexts differs considerably, which is reflected in the recent amendment to our planning system and the recent focus of the adoption of the 20 minute neighbourhood to plan communities to ensure they have access to basic amenities within walking distance (approx. 800m) of their homes such as shopping, leisure activities, access to schools, local services such as a GP practice and ideally access to work.

A consideration of the findings of the recent phase of consultation of the Just Transitions Plans (Land Use and Agricultural, Buildings and Construction and Transport) may also be beneficial when confirming the definition of 'environment'. Public Health Scotland in collaboration with Adaptation Scotland and the Improvement Service have recently published an introductory briefing on 'Working together to build climate-resilient, healthy and equitable places.'<https://www.publichealthscotland.scot/media/21005/working-together-to-build-climate-resilient-healthy-and-equitable-places-a-briefing-for-local-government-and-partners-english-july2023.pdf>).

The briefing for local government and partners includes the 'Buildings blocks of good health' which include local economy, transport, access to employment and education, income, social and community connections, built environment, the quality of housing, streets, civic buildings and spaces, access to goods and services such as health and care, parks and gardens, social opportunities and leisure, and the natural environment, the quality of air, water, and land.

This framing of a healthy environment reaches beyond ecosystems and a biosphere, and the substantive aspects of the current definition. It responds to the risks and opportunities for health and wellbeing within the third UK Climate Change Risk Assessment and the climate and health inequalities that exist in Scotland. This alternative definition may be beneficial when confirming the definition of 'environment'.

Our National Outcomes, which include Human Rights, also include Culture. The outcome and its vision are linked to the UN Sustainable Development Goals 5 (Gender Equality), 10 (Reduced Inequalities) and 11 (Sustainable Cities and Communities), all of which are linked to Human Rights and our environment.

8. What are your views on the proposed formulation of the substantive and procedural aspects of the right to a healthy environment?

Whilst we do not have any comment on the specifics of the substantive and procedural aspects as they stand, we would refer to our previous answer, which questions the definition of a healthy environment as one which is focussed on the biosphere. We would ask that consideration be given to including cultural and creative aspects, as they contribute to an environment to support health and wellbeing.

11. Are there any other substantive or procedural elements you think should be understood as aspects of the right?

Yes

If yes, please specify what substantive or procedural elements and explain how this could be achieved:

We agree with the inclusion of clean air, safe and sufficient water, non-toxic environment, healthy ecosystems, biodiversity, safe climate as substantive aspects. However, as per our answer above, we believe that the arts, screen, and creative industries also contributes to the health and wellbeing of Scotland. These are part of our country's fundamental economic, social, cultural, and environmental rights and are currently omitted from the substantive aspects of the right to a healthy environment. Considering the inclusion of culture within the substantive and procedural aspects would be welcomed.

Reports from the following have investigate the role of the arts in improving health and wellbeing:

- World Health Organisation – What is the evidence on the role of the arts in improving health and wellbeing?
- UCL Department of Behavioural Science and Health report to DCMS - Evidence Summary for Policy The role of arts in improving health & wellbeing
- Arts Council England – The power of art visual arts: evidence of impact regeneration health education and learning
- Creative Scotland – Mapping of Arts and Health Provision
- All Party Parliamentary Group on Arts, Health and Wellbeing - Creative Health: the Arts for Health and Wellbeing

Part 6: Incorporating Further Rights and Embedding Equality

13. How can we best embed participation in the framework of the Bill?

Creative Scotland would welcome the continuation of a Lived Experience Board and opportunities for wider consultation or co-design with as diverse a range of people as possible, potentially widening participants and organisations. We would also encourage the continued participation of public bodies as each of the elements of the Bill are developed and throughout its delivery.

The development of a clear framework for participation would be helpful. This should highlight where participation is needed, how it would be carried out and with whom. We would welcome clarity on how the Lived Experience board and participants' input will be considered and valued, and what processes it goes through to be implemented. We would also like to know how the impact of this board will be understood and communicated back to participants.

In addition, it would be useful to understand how feedback from the board will be communicated with other public sector bodies. Organisations such as Creative Scotland can help to support in reaching participants through our existing networks and connections, including those with strong participatory practice, such as Culture Collective.

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

Creative Scotland would welcome this provision as strengthening the duty to ensure access for everyone without discrimination. It will provide clarity in determining development of procedures and back up existing legislation contained in the Equality Act 2010.

15. How do you think we should define the groups to be protected by the equality provision?

Creative Scotland would agree that there are a number of approaches to consider. A full coverage of protected groups in alignment with the Equality Act and beyond, could be achieved including all the protected characteristics within the Equality Act 2010, plus the inclusion of the other categories listed in the ICESCR Article 2, along with the characteristics included in the equalities treaties, that is, women, race and disability. There is also an argument to be made to protect the rights of refugees and asylum seekers, especially given the links between migration and climate crisis, along with socio-economic status. As below, we would support the explicit inclusion of LGBTI and older people, to ensure a full coverage. As we have stated elsewhere, alignment with existing legislation would be welcome to reduce the monitoring and reporting burden on organisations.

Creative Scotland would agree with the suggestion that care experienced people be included in these groups. It provides a clear opportunity to include care experience as a protected characteristic in Scotland and would also help to embed rights for adults who have had experience of care as

children. Their ages generally puts them outside of the scope of the duties that public bodies have through The Promise and Corporate Parenting, which tends to be focussed around those aged 26 and under. Many care experienced adults would also benefit from being able to continue to access some kind of support or recognition of the ongoing impact that their experience of care can have on their lives.

Taking this together, Creative Scotland feels that there is further discussion to be had around this element of the Bill and we would welcome the opportunity to be part of this, both to consider access to cultural rights and around how to provide clarity and alignment with international practice and with other legislation.

16. Do you agree or disagree that the use of 'other status' in the equality provision would sufficiently protect the rights of LGBTI and older people?

Disagree

17. If you disagree, please provide comments to support your answer.

We believe that all equalities characteristics under the Equalities Act 2010 should be made explicit in this legislation.

There is significant evidence to show that LGBTI and older people face discrimination across society. Reports such as LGBT in Britain: Hate Crime and Discrimination (Stonewall, 2017, <https://www.stonewall.org.uk/lgbt-britain-hate-crime-and-discrimination>) and LGBT in Britain: Trans Report (Stonewall, 2017, <https://www.stonewall.org.uk/lgbt-britain-trans-report>) highlight some of the specific issues which face LGBTI people face.

With regards to older people, the Global Report on Ageism (WHO, 2021) brings together evidence on the nature and magnitude of ageism, its determinants and its impact, as well as outlining a framework for action to reduce ageism (<https://www.who.int/teams/social-determinants-of-health/demographic-change-and-healthy-ageing/combating-ageism/global-report-on-ageism>).

It is clear that both of these groups face distinct challenges in accessing culture. While the use of 'other status' would technically protect LGBTI and older people, specific reference within the equality provision would make their protection within the Bill explicit.

Part 7: The Duties

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

We agree that the duties should apply to all public bodies carrying out devolved functions. We would ask that clarity be provided for those public bodies which carry out both devolved and reserved functions. For example, Creative Scotland works with the film and TV sectors. Film is devolved, but Broadcasting, including TV, is reserved. Guidance on how this might be negotiated would be welcomed.

In addition, there should be clarity around public bodies which receive funding other than Scottish Government funding. Creative Scotland administers funding from the National Lottery which is distributed by the Department for Culture, Media and Sport – would this affect areas where the duties would be expected to be discharged? For example, would the legislation also apply to organisations which are funded through streams which only distribute Lottery funding?

20. What is your view on the proposed initial procedural duty intended to embed rights in decision making?

Creative Scotland welcomes the initial procedural duty. We acknowledge that the duties contained within the legislation will have a significant impact on our procedures and understanding the changes that are needed and how to implement them will take time.

We would welcome further clarification on what would be expected at this stage and what would be expected to be in place before moving to the duty to comply. It would be helpful to know expected changes to procedures, policies, structures and responsibilities. We would welcome support and resources being made available to enable the skills to be developed and the capacity to be built to ensure that this duty is fulfilled.

In addition, the opportunity to take an overview about how public bodies can better work together and learn from each other would be welcomed.

21. What is your view on the proposed duty to comply?

Creative Scotland is broadly supportive of the duty to comply, but we feel that it is lacking in detail in certain areas. We would reiterate that this should be fully resourced, to enable bodies to develop the necessary skills and capacity to fully implement the duties in the act. This legislation represents a significant change in how public bodies undertake their work and the resourcing, capacity building and time allowed for this to happen should be sufficient to ensure success.

We would also welcome clarity around how duties can be discharged when responsibility for a sector lies across many bodies. For example, whilst Creative Scotland is the national body for the arts, screen and creative industries, funding is also provided by local authorities, but also a number of other funders and private sponsorship. Where would the responsibility for ensuring that rights are met lie, bearing in mind Creative Scotland is not a regulatory body.

More detail on around how this would work with funding decisions, which are taken based on funding criteria. If an application is not successful, could this be open to a legal challenge based on denial of these right to access culture? As mentioned above, a definition on what is meant by culture and cultural rights will be crucial to being able to understand if access to those rights are being protected or not.

22. Do you think certain public authorities should be required to report on what actions they are planning to take, and what actions they have taken, to meet the duties set out in the Bill?

Yes, Creative Scotland would support the requirement to report. We would encourage that this be aligned with other reporting duties which are already required, therefore creating as efficient a system as possible. We would also encourage that the reporting cycle be considered to produce realistic timeframes where progress can be given time to develop and be demonstrated. We would welcome clarity around the structure of the reporting requirement as soon as possible, to enable preparation.

As mentioned in the consultation, public bodies are being asked to work progressively towards delivering their duties and the dual aspect of reporting on actions taken and actions plan will allow public bodies to demonstrate the progress being made. It will also allow a clear picture of where a body sits in their journey, helping identify areas for development and further support.

23. How could the proposed duty to report best align with existing reporting obligations on public authorities?

It would be useful for reporting duties to be aligned with existing requirements associated with the Equality Act 2010 Scottish Specific Duties under the Public Sector Equality Duty. This would help to

simplify organisations' reporting schedules, and to help align the two areas of work which have significant crossover.

In addition, consideration should be given to the reporting requirements for UNCRC, including those contained in the upcoming legislation, and for Corporate Parenting. Again, these are areas where it is anticipated that there will be crossover, so alignment would help to co-ordinate the reporting duties across these areas.

As a public body, Creative Scotland has a statutory duty under the Climate Change (Scotland) Act 2009 to act in the way best calculated to contribute to delivery of the Act's emissions reduction targets and in a way that it considers most sustainable. It is required to address climate change through mitigation, adaptation and acting sustainably and to report on its progress annually.

In November 2019, the Scottish Government's commitment to emissions reductions were increased considerably through the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019, on which we are also required to report. Ensuring alignment with these reporting duties would also be welcomed.

Reporting could also be aligned with public bodies' reporting to the Scottish Parliament and within our own annual reporting cycle.

24. What are your views on the need to demonstrate compliance with economic, social and cultural rights, as well as the right to a healthy environment, via minimum core obligations (MCOs) and progressive realisation?

Creative Scotland strongly supports this approach. Allowing public bodies to progress within the delivery of duties will ensure that public bodies' practice can continually grow. In addition, establishing MCOs will give a clear expectation of the baseline which should be met and allow public bodies to establish a baseline to build on.

We would ask for clear metrics around the MCOs and around what would be expected for public bodies to demonstrate progress.

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

Creative Scotland welcomes the inclusion of the right to a healthy environment being given par with economic, social and cultural rights. With the impact of climate change, the provisions contained within this right are not necessarily a given and we support the protection of them. It would be beneficial if this element were cross referenced with the work going on around adaptation and the Just Transition. Once again, these are areas where there is crossover with reporting duties for public bodies and any alignment would be most welcome.

Part 8: Ensuring Access to Justice for Rights-Holders

28. What are your views on our proposals in relation to front-line complaints handling mechanisms of public bodies?

For frontline complaints, Creative Scotland agrees with the approach of building on existing structures, rather than developing separate additional processes for human rights complaints. We also agree that human rights should be at the heart of our systems, however the implementation of this should be done effectively, ensuring that the processes are uniform across the sector.

For this to be done, it is crucial that all public bodies are provided with centralised guidance and support to develop frontline processes. We therefore strongly support the SPSO's model complaints handling procedure being updated to reflect the obligations of the Bill.

Alongside having an updated MCHP, we would welcome additional guidance and resources from the SPSO on the Bill and handling frontline complaints in relation to human rights.

29. What are your views in relation to our proposed changes to the Scottish Public Services Ombudsman's remit?

Creative Scotland agree that due to human rights often being a key part of complaints escalated to the SPSO, the proposed changes are appropriate. We particularly welcome the improved accessibility measures and the investigative powers.

As many public bodies, including Creative Scotland, adopt the SPSO's model and subsequent guidance on complaints handling, it is key that any changes to the SPSO's remit, functions and processes are made transparently and that we understand the changes this may have on the SPSO's advice for public bodies.

30. What are your views on our proposals in relation to scrutiny bodies?

Creative Scotland are supportive of the proposals and welcome the requirement for scrutiny bodies to inform the SHRC and any other relevant organisations of any systemic human rights issues they come across. We also agree that scrutiny bodies working together more closely will have positive outcomes for human rights matters.

If the SPSO will assess public bodies in relation to human rights obligations, it would be beneficial for there to be robust reporting to the public body following. This will support the public body in mainstreaming human rights and improving their processes.

31. What are your views on additional powers for the Scottish Human Rights Commission?

The proposed changes seem appropriate in line with the function of the Scottish Human Rights Commission, however, we would like to see more detail around what this would mean in practice. Would these powers only apply to public bodies, or could they extend to those in receipt of public funding more generally? How would withdrawals and sanctions be leveraged in the coming years? Would SHRC be able to intervene in any case of bad practice, regardless of how an organization is funded? How would the SHRC liaise with relevant public bodies which represent the relevant sectors, even if that public body does not have a regulatory role?

32. What are your views on potentially mirroring these powers for the Children and Young People's Commissioner Scotland where needed?

We recognise the importance of encouraging best practice in relation to upholding the human rights of children and young people and would therefore support the mirroring of any new powers for SHRC in the remit of the Children and Young People's Commissioner. We would urge that the legislation refers to and does not cross over with any proposed changes being made within the UNCRC (Scotland) (Incorporation) Bill.

Part 9: Implementing the New Scottish Human Rights Act

38. What are your views on our proposals for bringing the legislation into force?

As per our previous answers, we welcome the staged approach to implementation. Whilst we acknowledge that the Bill should be implemented as quickly as possible, it is also important that public bodies are given the time, resources and ability to build the capacity needed to get it right. In addition, time to meet the basic requirements and then to build on that foundation in recognition that public bodies are at different stages and will need more or less time to develop practice and procedures.

39. What are your views on our proposals to establish minimum core obligations (MCOs) through a participatory process?

Creative Scotland would welcome this approach. There are a great number of public bodies, each with very different functions and representing sectors with organisations of varying sizes. Establishing MCOs through a participatory process will enable as many voices to be heard as possible and lead to the creation of MCOs which work for every public body, those that they fund, as well as rights holders.

40. What are your views on our proposals for a Human Rights Scheme?

Creative Scotland would welcome the creation of a Human Rights Scheme. We especially welcome the intent that it will provide an overarching framework for the delivery of Human Rights and inform about the direction and work that the Scottish Government is planning, and the provision of a mechanism for Ministers to be held accountable. It will also be useful to understand the current position on Human Rights and how ministers intend on addressing any gaps or to focus on areas for development. We would welcome clarity around how success would be measured, especially around embedding human rights in the budget process and how Ministers would be held accountable if judged to not be meeting their obligations.

It would be useful to have clarity around whether this duty is being borne by all ministers or if specific ministers will be named.

42. How can the Scottish Government and partners effectively build capacity across the public sector to ensure the rights in the Bill are delivered?

Creative Scotland would suggest that training and expert help are available intensively in the early days of implementing the Bill. It is crucial that resources and time are made available to ensure that staff across public bodies are able to develop their skills and knowledge and the capacity to be able to deliver duties. It may be that it would be appropriate to employ additional staff who hold responsibility for incorporating a human rights approach, in a similar way to which Equalities, Diversity and Inclusion and other policy areas do. Support to achieve this would be critical to the success of fulfilling the duty to comply.

We would welcome a platform that enables learning and information to be shared, especially around structural and process change, both within and outwith the Scottish Government.

43. How can the Scottish Government and partners provide effective information and raise awareness of the rights for rights-holders?

We would request that any method chosen for this would be available in as many formats as possible. For example, including audiovisual, text, plain language or easy to read and shared where people are, including social media and TV campaigns. In addition, there should be clear steps that are easy to follow and clear signposting to additional support.

44. What are your views on monitoring and reporting?

The Human Rights Bill presents a significant opportunity to look at current data and set specific targets for diversity of people accessing their cultural rights. A first step would be to set out a definition of cultural rights, along with detail about the procedural and substantial content of the duties to be discharged in the Bill.

As ever with monitoring and reporting, Creative Scotland would encourage the development of a clear framework. This should have clear metrics and measurement methods. In addition, it should be clear what each metric is measuring and whether it is meaningful in demonstrating that the duties in the Bill are being delivered. As mentioned previously, it is crucial that these should dovetail as far as possible with current reporting duties as required by public bodies, to ensure that the burden of monitoring and reporting is kept as proportionate as possible. We would encourage a participatory approach to developing a monitoring and reporting framework, in the same fashion as the MCOs development.

It is also important that there is a mechanism in place through which learning from reporting and best practice can be shared between organisations, to better help all organisations comply with the duties of the Bill.