

## Questionnaire

The questions in this document refer to information contained in '[A Human Rights Bill for Scotland: Consultation](#)'.

### Questions 1 – 5 refer to Part 4: Incorporating the Treaty Rights

#### Question 1

What are your views on our proposal to allow for dignity to be considered by courts in interpreting the rights in the Bill?

Answer:

The National Carer Organisations in Scotland agree with the proposal to allow for dignity to be considered by courts in interpreting the rights in the Bill. But we believe this should go a step further and courts should be “required” to consider dignity when interpreting the rights.

Dignity is a fundamental principle of human rights. Every person has inherent value, and therefore no individual should be treated as having any lesser value. Everyone, including unpaid carers of all ages, deserve to be treated with dignity and Scottish Government must ensure they have they have the basic essentials that they need to live.

However, it is our understanding that ‘dignity’ is currently not codified in law and that the resultant ambiguity can create challenges both in its interpretation and implementation. We would strongly suggest that additional work is undertaken with acknowledged experts and other stakeholders to develop a definition of ‘dignity’. We believe that this is particularly relevant in any cross-cultural application of ‘dignity’.

We also agree with the Human Rights Consortium Scotland that the Bill should include a purpose clause that includes dignity, universality, participation and other key human rights principles. This will ensure a shared and consistent understanding and interpretation of rights in the Bill. It will be helpful for public awareness and will help build a culture of human rights, guarding against narrow duty compliance.

#### Question 2

What are your views on our proposal to allow for dignity to be a key threshold for defining the content of MCOs?

Answer:

The National Carer Organisations agree with the proposal to allow for dignity to be a key threshold for defining the content of Minimum Core Obligations.

We agree with the ALLIANCE that public bodies should be required to demonstrate how they have both considered (the procedural duty) and complied with the human rights principle of dignity. We echo the ALLIANCE and recommend that Scottish Government works with rights holders and others to develop guidance on what dignity looks like in practice, so that public bodies and those carrying out devolved public functions are well informed about how to carry out their duties.

#### Question 3

What are your views on the types of international law, materials and mechanisms to be included within the proposed interpretative provision?

Answer:

The National Carer Organisations agree with Scottish Government's proposed approach.

As an incorporation Bill, it is vital to take learning from other nations who have already incorporated international human rights and to take note of their consideration, development and interpretation of rights.

We support the Human Rights Consortium Scotland's position that provisions of the new Bill should be interpreted in light of the rich and valuable guidance provided through UN General Comments, Concluding Observations, decisions and other resources. It is vital that duty bearers refer to guidance from across the range of treaty bodies, as this will help clarify the content of rights and ensure recognition of the interrelated and indivisible nature of human rights.

**Question 4**

What are your views on the proposed model of incorporation?

Answer:

The National Carer Organisations supports the response of the Human Rights Consortium Scotland for a copy and paste model. This also provides clarity and consistency with the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill.

Procedural duty: Scottish Government does not give details about what the procedural duty would look like. We believe this should follow a "due regard" model as this would enable the possibility of judicial review if decision makers fall short of what is expected of them. While Scottish Government has proposed an 'initial' procedural duty for International Covenant on Economic, Social and Cultural Rights and the right to a healthy environment, we believe this duty should continue so that it exists alongside the later duty to comply.

Duty to comply: Scottish Government only proposes a duty to comply for International Covenant on Economic, Social and Cultural Rights and the right to a healthy environment. By contrast, rights under Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of Persons with Disabilities and International Convention on the Elimination of All Forms of Racial Discrimination will be subject to a procedural duty alone. We have concerns that this differential approach could result in weaker protection for certain rights. There needs to be further consideration and transparency around whether it is possible to put a duty to comply on all of the special protection treaties. We are very concerned that there needs to be a duty to comply with the substantive rights in the Convention on the Rights of Persons with Disabilities – to not do so is to not live up to the commitment to incorporate the Convention on the Rights of Persons with Disabilities as far as possible within devolved competence. We believe in human rights incorporation to the maximum extent permitted by devolution.

Ultimately, the National Carer Organisations want to improve equality of outcomes for unpaid carers of all ages. We agree with some of the core elements of the Scottish Government's approach. However, the model of incorporation needs to be made much better and stronger if it is to realise the rights for more people in Scotland and to have the transformational change that we need.

**Question 5**

Are there any rights in the equality treaties which you think should be treated differently? If so, please identify these, explain why and how this could be achieved.

Answer:

The National Carer Organisations agree with other respondents that “equalities treaties” is not a helpful term to refer to Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of Persons with Disabilities and International Convention on the Elimination of All Forms of Racial Discrimination. The term “special protection treaties” should be adopted instead.

For Scotland to become a ‘leader’ in human rights then the starting point should be a presumption in favour of maximum protection. It is crucial that this Bill incorporates all the rights in these treaties to the greatest extent possible within devolution, and as strongly as possible. We ask the Scottish Government to ensure, and demonstrate transparently, that its proposed approach – of only placing a procedural duty, and not duty to comply, on the special protection treaties – goes as far as possible within devolution limits. As noted previously, we believe the Bill should include a duty to comply on these missing Convention on the Rights of Persons with Disabilities rights. For unpaid carers and the people they care for this is vitally important, if a duty to comply on these missing Convention on the Rights of Persons with Disabilities rights is not introduced, then the Bill will not deliver human rights fully for disabled people.

The decision to not place a ‘duty to comply’ on the special protection treaties is a significant departure from full incorporation of these treaties.

## **Questions 6 – 11 refer to Part 5: Recognising the Right to a Healthy Environment**

### **Question 6**

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

Answer:

The National Carer Organisations would endorse using the Aarhus definition of the environment.

### **Question 7**

If you disagree please explain why.

Answer:

Not applicable.

### **Question 8**

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

Answer:

The National Carer Organisations 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.

However, we believe exclusion of the right to healthy and sustainably produced food is an error and this must be rectified. Access to food is a core feature of the substantive right to a healthy environment.

**Question 9**

Do you agree or disagree with our proposed approach to the protection of healthy and sustainable food as part of the incorporation of the right to adequate food in ICESCR, rather than inclusion as a substantive aspect of the right to a healthy environment? Please give reasons for your answer.

Answer:

The National Carer Organisations strongly disagree with the Scottish Government's proposed approach. There is a clear link between access to good food and ensuring that older and disabled people can access their economic, cultural and social rights.

Data from the Malnutrition Task Force - published by Eat Well, Age Well - estimates that one in ten people living in the UK today are malnourished, or at risk of being malnourished. This equates to an estimated 103,000 older people living in Scotland who have malnutrition, or who are affected by malnutrition. Eat Well, Age Well believes that this is an underestimate. In its Poverty in the UK 2023, Joseph Rowntree Foundation data from the Family Resources Survey (2020/2021). It showed that 2.4 million people in poverty in the UK had a low or very low food security status, meaning they are unable to access enough, varied and/or nutritious quality food. Therefore, almost one in five (18%) people living in poverty were food insecure.

The National Carer Organisations therefore agree with the Environmental Rights Centre for Scotland's response that while the International Covenant on Economic, Social and Cultural Rights definition considers both health and sustainability, there has been a tendency, given the current trends in food insecurity, to look only at availability and access when thinking about Article 11. We recommend that incorporating the right to food as a standalone feature as part of the right to a healthy environment, in agreement with the Environmental Rights Centre for Scotland response. While the right to food is recognised under the International Covenant on Economic, Social and Cultural Rights, it is also a substantive part of the right to a healthy environment. Furthermore, we believe it is important to provide a distinction between the economic/social right to food, and the right to healthy and sustainably produced food as a part of our broader right to a healthy environment.

By incorporating the right to food as part of the right to a healthy environment, the discrepancies between these two aspects of the right to food will not be furthered. Furthermore, the right to food was previously excluded from the Good Food Nation Act, on the grounds that it would be incorporated in the Human Rights Bill. It now needs to be comprehensively included in this Bill.

### Question 10

Do you agree or disagree with our proposed approach to including safe and sufficient water as a substantive aspect of the right to a healthy environment? Please give reasons for your answer.

Answer:

The National Carer Organisations agree that there should be a right to safe and sufficient water within this Bill. We also agree with the Environmental Right Centre for Scotland response that this must include the right to adequate sanitation. 'Safe and sufficient' should be interpreted broadly and include restoring the ecosystem health of Scotland's inland waterways, rivers, and lochs.

The National Carer Organisations also agrees with the justification proposed by the Scottish Government for including the right to safe and sufficient water as distinct from its conception as a social right under International Covenant on Economic, Social and Cultural Rights. We believe that there are similar reasons for including the right to healthy and sustainably produced food as part of the right to a healthy environment.

### Question 11

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

Answer:

The National Carer Organisations agree with the Environmental Right Centre for Scotland response to this question, outlining that there should be dedicated reforms with clear timelines to make the right to a healthy environment full enforceable. We agree that the substantive elements including the six features, which are interdependent require standalone protections. These substantive elements should be defined according to expert guidance and international best practice, and adhere to the highest standards, with appropriate enforcement mechanisms to ensure compliance. The Environmental Right Centre for Scotland advocate for embedding the five environmental principles when establishing the definition and highest standards of the substantive rights, to ensure policy coherence and coordination across all sectors. These principles can be found in the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

## Questions 12 – 18 refer to Part 6: Incorporating Further Rights and Embedding Equality

### Question 12

Given that the Human Rights Act 1998 is protected from modification under the Scotland Act 1998, how do you think we can best signal that the Human Rights Act (and civil and political rights) form a core pillar of human rights law in Scotland?

Answer:

The National Carer Organisations agree with the recommendation from the ALLIANCE that a purpose clause should be included in the Bill that explicitly names and explains fundamental human rights principles like indivisibility, interrelatedness and interdependence and that the duties in the Human Rights Act 1998 should be reflected in guidance.

It is important that the Human Rights Bill achieves its goal of embedding human rights and principles in all aspects of public life, particularly in policy and legislation. There is a lack of awareness and compliance by some public bodies in relation to current human rights legislation, including the Human Rights Act 1998 and convention against torture, resulting in some practice which infringes on people's human rights. For example, the deprivation of liberty in relation to older people in care homes and the use of physical restraint in the care of people with a learning disability.

We do not believe that this will be resolved by re-stating current legislation in the Human Rights Bill and we accept the Scottish Government's concerns that to do so would have the potential consequence of Bill being challenged in court.

Instead, there should be clearer regulation and guidance and an extensive programme of training for public bodies on their duties in relation to human rights, alongside greater regulation and accountability. We also believe that additional guidance is required for public bodies on how their duties in relation to human rights interact and support existing rights under equalities legislation.

In our experience, health and social care are two of the areas where human rights are often compromised. It is our view that the Scottish Government, all public bodies and as far as possible independent organisations should support the PANEL approach in the development of legislation, guidance and policy.

In order to signal the Scottish Government's commitment to embedding human rights in all aspects of public life, those most at risk, such as people with protected characteristics, should be supported to participate in the development, regulation and scrutiny of the human rights framework in Scotland.

In addition, those who experience barriers to being able to access their human rights should have a clear route to redress. It is our view that the consultation paper is not clear enough about how people can access justice when their rights are violated, or who is ultimately accountable for enforcing the human rights framework.

### Question 13

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

Answer:

The right to participation is an essential principle of human rights and the National Carer Organisations are pleased that the Scottish Government recognises this and is seeking to embed participation in the framework of the Bill.

The Bill should place specific duties on public bodies to ensure participation in the development, implementation and monitoring of the human rights framework. Participation should include all citizens, but additional support and resource should be invested to ensure those who are most affected, such as those with protected characteristics and those from harder to reach communities, have the means and ability to participate.

We agree with the position of the Human Rights Consortium Scotland that:

- Participation should be a core principle within the purpose clause
- The Human Rights Scheme should include a requirement on Scottish Ministers to consult people whose rights are at risk.
- There should be a programme of participation of people whose rights are most at risk in determining Minimum Core Obligations.
- The Scottish Human Rights Commission should have a duty to embed the participation of people whose rights are most at risk in all that they do, and particularly with regard to their monitoring role.
- Courts should be required to consider the complainants' views in determining remedy.

Much of Scotland's legislation already includes participation, or involvement, as a duty on public bodies. For example, the Carers (Scotland) Act 2016 places a duty on local authorities to involve unpaid carers in the development of local carer services and the Scottish Government is also taking a more collaborative approach to the development of the National Care Service. This move towards greater participation by citizens in the development of legislation and policy is welcomed.

In developing this aspect of the Human Rights Bill the Scottish Government will also need to consider the structures and resources which will need to be in place to enable meaningful, accessible and equitable participation of all citizens. Different methodologies and approaches need to be considered to ensure full participation. Public bodies need to listen and take account of people's views at all levels of decision making. Both by including people whose rights are most at risk as full members on decision making bodies, as well as ensuring people have the opportunity to give their views in more accessible ways. For example, through third sector partners or via social media platforms.

The Coalition of Carers in Scotland produces an annual scoping report, looking at the experience of unpaid carer representatives on Integrated Joint Boards. The latest report [can be found here](#). This sets out the circumstances and resources required to enable people to participate. For example, in the case of unpaid carers, providing access to replacement care to enable participation.

### Question 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?

Answer:

The National Carer Organisations agree with this proposal. We know that certain groups in society face additional challenges, including discrimination and it is important that they have equal access to their human rights.

We would include unpaid carers in this category, as they face additional risk and disadvantage through their caring role, as well as discrimination by association. It is essential that they have equal access to their rights and the Scottish Government should consider the inclusion of specific evidence and criteria relating to unpaid carers in guidance.

### **Question 15**

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

Answer:

The National Carer Organisations support the National Taskforce recommendation that equality provision should include those with protected characteristics in the Equality Act 2010. We also ask that consideration be given to 'intersectionality' under the equality provision.

There are other groups whose rights are more at risk, who are not included within the Equalities Act and we would include unpaid carers amongst them.

We agree with the proposal within the consultation to specifically include LGBTI people within the Bill. This expands the protected categories of gender reassignment and sexual orientation within the Equalities Act to include all people within the much broader umbrella of LGBTI, which we welcome.

We believe there is a strong argument to include unpaid carers as a specific group within the equality provision, because of intersectionality with other protected characteristics. In particular, unpaid carers face discrimination by association because of their role in caring for disabled people. The interconnected nature of their relationship means that where disabled people are unable to access their human rights, due to the barriers placed on them by services and their environment, this often impacts on the ability of their unpaid carer/s to access their human rights. For example, many unpaid carers who are unable to access support have their basic human rights compromised, such as access to rest and leisure. Carers UK are campaigning to make caring the 10<sup>th</sup> protected characteristic, [more information can be found here](#)

We agree with the ALLIANCE that Scottish Ministers should be required to publish guidance on the interpretation of "other status." We also believe that as part of this, guidance needs to include specific evidence and criteria relating to unpaid carers.

### **Question 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? If you disagree, please provide comments to support your answer.

Answer:



It is our view that specific protection is required for LGBTI and older people.

### **Question 17**

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

Answer:

Not applicable.

### **Question 18**

Do you think the Bill framework needs to do anything additionally for LGBTI or older people?

Answer:

The National Carer Organisations believe both groups should be specifically mentioned in the Bill, in order to recognise and address the particular barriers they face to accessing their rights.

In terms of older people, one of the key risks to their human rights is their ability to access health and social care services, to enable them to lead independent and fulfilling lives. While health and social care legislation has increasingly had a human rights focus, this has not translated from policy into provision which upholds people's human rights, particularly those of older people and by association, their unpaid carers. We cite as an example, the challenges experienced by the domiciliary care sector to ensure the human rights of an individual are upheld and supported whilst at the same time having to deliver care within an extremely challenging economic environment.

## **Questions 19 – 26 refer to Part 7: The Duties**

### **Question 19**

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

Answer:

The National Carer Organisations agree that the duties should be applied as widely as possible and include both third sector and private organisations who are delivering devolved functions on their behalf.

We agree with the position of the ALLIANCE that in order to support the third sector in doing this, adequate funding and training will be required as well as consideration given to the necessary capacity building.

Furthermore we would echo the points made by the ALLIANCE regarding the potential for a two-tier system to develop based on those who are delivering devolved functions and therefore covered by the duties, and those delivering similar services who are not covered and consideration would be necessary on how to avoid a two-tier system developing.

We would endorse the view of the Human Rights Consortium Scotland that the duties should apply to all private bodies carrying out public functions.

**Question 20**

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

Answer:

The National Carer Organisations agree with the proposed initial procedural duty intended to embed rights in decision making and agree with other organisations that this should be a duty to have due regard. We also agree that this procedural duty should be time-limited and that timescales for compliance should be clearly stated.

**Question 21**

What is your view on the proposed duty to comply?

Answer:

The National Carer Organisations agree with the proposed duty to comply and that this should apply to public bodies, and commissioned by them.

We would also agree that the duty should be to deliver the Minimum Core Obligation *and* demonstrate the progressive realisation of rights. We echo the position taken by other organisations that the Minimum Core Obligation should 'be the floor and not the ceiling'.

We also emphasise that in line with our answer to Question 20, the duty to comply should not be an open-ended timescale but come at a fixed point following a specific timeframe when the initial procedural duty will apply.

We also believe that clearly communicating both the timeframes for these stages, and detail of what both comprise is essential in order that rights holders may better understand what to expect and that duty bearers have clarity on delivery.

### **Question 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?

Answer:

Yes. The National Carer Organisations agree that all public bodies should be required to report on the actions they have taken, are planning to take and how they will meet the duties. This reporting mechanism is essential in increasing accountability. We recognise that there are a number of areas where unpaid carers have felt let down when there has been a lack of compliance with duties set out in legislation – in the Carers (Scotland) Act 2016 for example – and that there is little evidence of accountability.

In particular, we would like to highlight the response of the Human Rights Consortium who have stated “That public bodies should not just report on the activities they have done or will do, but about the lived experience of rights and where there are gaps. People whose rights are at risk should shape what is reported on and the content of each report.”

This is vital for unpaid carers and in particular for those groups of unpaid carers with protected characteristics and / or those who are underserved by current provision.

### **Question 23**

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

Answer:

In extension to our answer to Question 22, we would emphasise the need for comprehensive, clear and consistent reporting and in a way which is both inclusive and accessible. This means that reporting should be able to be understood by all rights holders and not just in the language of duty bearers but also available and visible in a range of formats, mediums and using inclusive communications tools.

### **Question 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 MCOs and progressive realisation?

Answer:

We refer to our answer to Question 21 in that public bodies should demonstrate compliance with the Minimum Core Obligations but also demonstrate the progressive realisation of rights. Furthermore, clarity is needed on the detail of what this means and the timescales for doing so.

We also endorse the view of the Human Rights Consortium that ‘they need to show that they are taking targeted, concrete steps to keep improving on how they realise people’s rights’.

### Question 25

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

Answer:

The National Carer Organisations agree that there should be the same duties for the right to a healthy environment as for economic, social and cultural rights.

### Question 26

What is your view on the proposed duty to publish a Human Rights Scheme?

Answer:

The National Carer Organisations agree with the proposed duty to publish a Human Rights Scheme and the role that it will have in transparency, accountability and the progressive realisation of people's rights.

## Questions 27 – 37 refer to Part 8: Ensuring Access to Justice for Rights Holders

### Question 27

What are your views on the most effective ways of supporting advocacy and/or advice services to help rights-holders realise their rights under the Bill?

Answer:

Independent advocacy is crucial in helping disabled and older people and unpaid carers overcome barriers to realising their rights and accessing justice. The role of independent advocacy should be strengthened throughout the Bill, with the independent advocacy sector suitably resourced and supported to enable them to fulfil this role.

Independent advice and other forms of independent support including effective advice about rights are also important, though are distinct from independent advocacy. It is also important that independent advice is also adequately resourced. Independent advocacy, advice and other forms of support should be fully accessible to individuals with additional support needs.

The National Carer Organisations draw attention to part of the ALLIANCE response which highlights their research with Self-Directed Support Scotland on people's experiences of Self-Directed Support where individuals highlighted the value of independent advocacy. When good relationships – and good conversations - were established, collaboration led to effective support planning and implementation of Self-Directed Support: *“One interviewee described the positive outcome of a meeting between their social worker, the interviewee, and an independent advocate, despite initial apprehension from the social worker.”*

### Question 28

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

Answer:

The National Carer Organisations agree that updated model complaints handling processes would be useful, we believe that more substantial changes are needed to improve complaints handling by public bodies. We have highlighted over many years, most recently in discussions around the National Care Service that for rights to be real, they need to be enforceable and effective remedy delivered promptly. Current processes, particularly in handling of social care complaints, have been barriers to the realisation of human rights of people who access social care and their unpaid carers.

### **Question 29**

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

Answer:

The National Carer Organisations agrees with the ALLIANCE response that there is scope to increase the powers of the Scottish Public Services Ombudsman (SPSO) as part of the Bill. However, given the significant issues with complaints and feedback, they should not be seen as the only solution. In addition, we do have some reservations around the specific proposals in the consultation document.

We agree that the SPSO should be allowed to consider the duties in the Bill as part of any complaint without an applicant having to make specific reference to them. We also agree that SPSO should be able to take oral complaints.

However, we note concerns raised by the Human Rights Consortium Scotland around the proposed investigatory powers for the SPSO conflicting with the investigatory powers of the Scottish Human Rights Commission and Children and Young People's Commissioner Scotland. Any changes to the SPSO's remit in this area should take care not to impede the functions of the specific human rights commissioners, who will be best placed to consider human rights issues.

Whilst we note the rationale in the consultation document for keeping the SPSO's recommendations non-binding, however in some cases it may be appropriate for a public body to be required to comply with them. Consideration should be given to allowing the SPSO to make binding recommendations, in addition to non-binding recommendations. This is an area we feel the Scottish Government should take more evidence from people with lived experience, particularly as part of the development of the National Care Service.

We echo the recommendation of the Human Rights Consortium Scotland that people should not have to raise a complaint with the SPSO before taking a human rights case to court.

### Question 30

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

Answer:

The National Carer Organisations broadly welcomes the proposals in relation to scrutiny bodies. We agree that scrutiny bodies can play an important role in holding devolved public services to account in relation to human rights and helping to drive culture change in service delivery.

We agree with the ALLIANCE and others that *“the proposals [should] require scrutiny bodies to assess public bodies through a human rights lens; to enable closer joint working and information sharing on human rights matters; and require them to report any systemic human rights issues they come across have the potential to contribute to a human rights culture, and embedding human rights in public services.”*

We recommend that the proposals in the Bill are taken forward in a joined-up way with other ongoing work including the Independent Review of Inspection, Scrutiny and Regulation, the Independent Review of Adult Social Care, the Scottish Mental Health Law Review and the development of the National Care Service. Together these offer an opportunity to embed citizen involvement, human rights and co-production in designing and improving services for people in Scotland.

We agree with a range of organisations that Scotland’s system of inspection, scrutiny and regulation should include a commitment to co-produce systems with people with lived experience, where people accessing health and social care services are part of planning and decision-making at all levels.

Co-production activity should be fully accessible, with appropriate support provided to ensure people can participate in the process. Similarly, strategic evaluation of the process of inspection, scrutiny and regulation should explicitly draw on data collection and intersectional analysis of people’s experiences of health and social care, to ensure evidence-based responses that target groups of people who do not have equitable access to care.

### Question 31

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

Answer:

The National Carer Organisations believe that the Scottish Human Rights Commission should be given additional powers in the Bill. This should include powers to intervene in civil proceedings under the Bill, and an investigatory power, as proposed in the consultation document. It could also include being able to provide advice to individuals and a role to monitor and scrutinise public body reports on implementation of the rights in the Bill. In order to carry out its additional powers, the Scottish Human Rights Commission will have to be adequately and sustainably funded.

### Question 32

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

Answer

The National Carer Organisations agree that the Children and Young People's Commissioner Scotland should be given the same powers as those extended to the Scottish Human Rights Commission under the Bill.

### Question 33

What are your views on our proposed approach to 'standing' under the Human Rights Bill? Please explain.

Answer:

The National Carer Organisations agree that the rules on 'standing' should be the same as for civil law cases in Scotland, so bodies with 'sufficient interest' have the right to take a judicial review. This would enable organisations to bring collective and test cases in defence of people's human rights.

### Question 34

What should the approach be to assessing 'reasonableness' under the Human Rights Bill?

Answer:

No response.

### Question 35

Do you agree or disagree that existing judicial remedies are sufficient in delivering effective remedy for rights-holders?

Answer:

Disagree.

### Question 36

If you do not agree that existing judicial remedies are sufficient in delivering effective remedy for rights-holders, what additional remedies would help to do this?

Answer:

The National Carer Organisations believe that, in line with the recommendations of the Human Rights Taskforce to consider how the full range of appropriate remedies under international law could be provided, the range of remedies in Scots Law should be extended.

**Question 37**

What are your views on the most appropriate remedy in the event a court finds legislation is incompatible with the rights in the Bill?

Answer:

In common with others, the National Carer Organisations recommend that courts should be able to make declarations of incompatibility or 'strike down' legislation which is found to be incompatible with the rights in the Bill, as far as is possible to do so within the devolved powers of the Scottish Parliament.

**Questions 38 – 44 refer to Part 9: Implementing the New Scottish Human Rights Act**

**Question 38**

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

Answer:

The National Carer Organisations believe that implementation should be prioritised and timescales should be clear and set out in the Bill. All of these international human rights are in place now, so public body implementation of these rights can and should begin at pace now.

We agree with other organisations that Commencement should take place no more than six months after Royal Assent; and the additional duty to comply should be no longer than two years later. This should provide reasonable timescales that allow for development of guidance, public sector capacity and Minimum Core Obligations.

We agree with the ALLIANCE that implementation must be backed up with training, support, capacity building and adequate and sustainable resources so that duty bearers can understand their obligations and how to comply with them.

We would also advocate that a robust 'public education/awareness-raising' campaign be delivered alongside the above to ensure that citizens are aware of new Duties and obligations placed on duty bearers and are not solely reliant on duty bearers themselves to identify potential breaches of human rights.



### **Question 39**

What are your views on our proposals to establish MCOs through a participatory process?

#### Answer:

The National Carer Organisations agree with the Human Rights Consortium that it is vital that Minimum Core Obligations are developed through a participatory process, and this should be particularly with groups whose rights are most at risk, including unpaid carers and people with additional care needs. These should also be subject to review through a participatory process at least every ten years.

Consideration should be given to whether this process is led by Scottish Government or the potential value of the process being conducted independently.

### **Question 40**

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

#### Answer:

The National Carer Organisations agree with the proposal for a Human Rights Scheme.

However, Scottish Ministers should have to consult with people whose rights are most at risk when developing the Scheme and reporting against it, and report against it annually – including unpaid carers and people with additional care needs.

### **Question 41**

What are your views on enhancing the assessment and scrutiny of legislation introduced to the Scottish Parliament in relation to the rights in the Human Rights Bill?

The National Carer Organisations broadly agree with the Scottish Government's proposal and supports the position of the Human Rights Consortium Scotland.

Statements of compatibility should include a requirement to demonstrate that consultation with people whose rights are at risk – including unpaid carers and people with additional care needs - has been undertaken in order to assess a Bill's compatibility with human rights.

Minister should also be required to carry out a Human Rights Impact Assessment for any Bill or Statutory Instrument introduced to Scottish Parliament.

We recommend for the Scottish Parliament to engage with people whose rights are at risk in determining any enhancements to their legislative scrutiny around human rights compliance.

Answer:

**Question 42**

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

Answer:

The National Carers Organisations agrees that statutory and non-statutory guidance is vital. This should be developed with participation of people whose rights are most at risk and written and published in a way that it is accessible to rights-holders as well as duty-bearers.

We also welcome the development of a plan around human rights capacity building for Scottish Government and public bodies. But this does not need to wait for the Bill to be passed for this to be progressed.

We echo Together that Scottish Government should draw learning from preparations for implementation of the UNCRC Incorporation Bill, including engagement with stakeholders on draft statutory and non-statutory guidance, and work led by the Improvement Service to raise awareness and understanding of rights across the public sector.

We agree with the ALLIANCE recommendation that concrete measures are taken to ensure that third sector organisations are adequately and sustainably resourced to carry out additional tasks required by the Bill.

**Question 43**

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

Answer:

The National Carer Organisations see this as a key priority for implementation of the Bill – we believe that the lack of current development in this area is disappointing.

We agree with the Human Rights Consortium Scotland that there should be a co-produced fund for a National Network for Human Rights Information, Education, Legal Services and Advice. And believe that unpaid carers and people with additional care needs should be involved in the development.

**Question 44**

What are your views on monitoring and reporting?

Answer:

The National Carer Organisations believe that there must be robust monitoring and reporting of duties set out by an independent body.

We agree with the ALLIANCE that there are many options in which an independent organisation could take on this monitoring role. This could fall within the remit of the Scottish Human Rights Commission, or within other scrutiny bodies like the Care Inspectorate and Health Improvement Scotland.

## About you

Please tell us which of the following categories best describe you (select all that apply):

- Legal profession
- Organisation - Private
- Organisation – Public
- Rights holder
- Other – please specify

**Additional space for answers**

*(Please specify the question information relates to)*