

Respondent Information and Answer Return Form

Please Note this form **must** be completed and returned with your response.

Please send your response to us by email or by post using the following details:

Our email address is: HumanRightsOffice@gov.scot

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

To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Nourish Scotland

Phone number

0131 226 1497

Address

1 Summerhall Place, EDINBURGH

Postcode

EH9 1PL

Email Address

info@nourishscotland.org.uk

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

- Publish response only (without name)
- Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

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:

We agree with this proposal – the Bill should include an interpretative clause that allows courts to consider dignity when adjudicating on the rights in the Bill.

For this to work, dignity must be treated as an evolving cultural norm as opposed to a static threshold. This will require robust participation throughout the entirety of the Bill's life, beginning with the MCOs. It is only via participatory processes, capable of engaging those whose dignity is most at risk, that we will be able to translate dignity into justiciable thresholds and therefore allow it to accurately and meaningfully be adjudicated on.

Nourish also welcomes the call from the Human Rights Consortium Scotland (HRCS) to include a purpose clause, as recommended by the National Taskforce. The purpose clause would indicate “the intent of the legislation is to give maximum possible effect to human rights and recognise that human dignity is the value which underpins all human rights.”¹ Naming dignity as the fundamental principle guiding the rights and their delivery would not only clarify a clear, shared understanding of the Bill but also raise public awareness about the human rights culture we are trying to build with this legislation.

¹ Human Rights Consortium Scotland, 'Human Rights Consortium Scotland's Guide to responding to the Human Rights Bill for Scotland Consultation August 2023'. Available at <https://hrcscotland.org/wp-content/uploads/2023/08/Final-HRCS-Guide-to-responding-to-Human-Rights-Bill-for-Scotland-consultation-August-2023-1.pdf>

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:

We believe that dignity represents the best available threshold for defining the content of MCOs.

A key reason to support this proposal is that dignity thresholds have a successful history, especially in the Scottish context. A good example of this is the ‘Dignity Principles’² that were developed to guide government responses to food insecurity. These principles included:

1. Involve in decision-making people with direct experience.
2. Recognise the social value of food.
3. Provide opportunities to contribute.
4. Leave people with the power to choose.

The Scottish Government’s formal acceptance of these principles created a platform from which to re-evaluate food policy and ensure it was delivered in a rights-based way (instead of, for example, simply ‘feeding people in need’). Importantly, these principles directly influenced key policy changes in relation to food – for example, on the basis that it was not fulfilling the Dignity Principles, direct funding of emergency food aid provisions was redirected to a Fair Food Transformation Fund.

This decision reflected the ‘Dignity Report’ recommendation that “Any organisation which secures Scottish Government funding and support to work on tackling food poverty must demonstrate how its approach promotes dignity and is helping to transition away from emergency food aid as the primary response.”³ Using these principles, dignity was not only capable of re-defining decision-making processes but also able to be embedded as an objective of food policy.

In other words, the principles were capable of defining an effective dignity-based bottom-line for food policy – something which the MCOs will need to do in order to fulfil the delivery of rights contained within the Bill. **For this, we recommend that there be an effort to define a clear set of processes dedicated to ensuring dignity guides and is the objective of all MCOs. These could be akin to ‘criteria’ much like the Dignity Principles, able to be used before, during and after the implementation of the MCOs.**

² Nourish Scotland and the Poverty Truth Commission, 2018, *Dignity in Practice: Learning, tools and guidance for community practitioners*, Available: <https://www.nourishscotland.org/wp-content/uploads/2018/03/Dignity-in-Practice-Full-Report-March-2018.pdf>

³ Scottish Independent Working Group on Food Poverty, *Dignity: Ending Hunger Together in Scotland*, June 2016, p. 14, Available [here](#).

Question 3

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

Answer:

We especially welcome the intention to include and operationalise UN General Comments, and other international mechanisms as reference materials for reading, applying and interpreting the rights in the Bill.

Full inclusion of these provisions will ensure our domestic framework is joined up to the interconnected, faster international context. This will allow our human rights agenda to keep pace with the international context and in doing so, place a crucial check on the risk of insulating the Scottish human rights framework.

Nourish joins other organisations such as ALLIANCE in recommending that this Bill align itself with the UNCRC (Incorporation)(Scotland) Bill by including a provision which sets out the treaty based “things”⁴ that should be considered – including – but not limited to – treaty preamble, General Comments, Concluding Observations, and recommendations following days of general discussion. We also recommend that consideration is given to relevant materials from UN Special Procedures.

⁴ <https://www.parliament.scot/-/media/files/legislation/bills/current-bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/stage-3/bill-as-passed.pdf>

Question 4

What are your views on the proposed model of incorporation?

Answer:

We agree with the proposal to take a direct treaty text approach. However, we disagree with specific elements of the proposed incorporation approach.

We agree that the text from the four treaties: ICESCR, CEDAW, CERD and CRPD should be included in full, direct translation. We strongly advise that where there are rights that involve both reserved and devolved elements, that a clear, maximalist approach be taken. That is, these elements should endeavour to be included and *resolved*, in terms of their devolved application, rather than removed.

We support the recommendation from Together (Alliance for Children’s Rights), ALLIANCE, HRCS and others for a legislative audit to take place in the early stages of the Bill. As recommended, this would follow a process that (1) systematically identifies which Acts of the Scottish and UK Parliaments – that fall within devolved competence – fall short of human rights standards; and (2) enables amendments to be passed before the Bill takes effect.⁵ This would be effective in overcoming the unexpected obstacles currently being experienced by the incorporation of the UNCRC Bill.

Like many others, we **disagree** with the proposal to only apply a due regard duty to CEDAW, CERD and CRPD and insist that a duty to comply also be enforced in relation to these substantive rights.⁶ Excluding compliance duties in relation to these treaties would not only be a significant departure from a direct incorporation approach but also undercut the ‘transformative effect’ this Human Rights Bill is seeking. We recommend experts who provided evidence to the National Taskforce on Human Rights Leadership be consulted on the incorporation of these compliance duties – not only to understand the risks of not including them but also to ensure their incorporation occurs in the maximalist style that the consultation proposes.

⁵ https://www.togetherscotland.org.uk/media/3448/hrb_member_resource_final.pdf, pp. 3-4.

⁶ See: HRCS, <https://hrscotland.org/wp-content/uploads/2023/08/Final-HRCS-Guide-to-responding-to-Human-Rights-Bill-for-Scotland-consultation-August-2023-1.pdf>, page 16. Also see: Together Scotland, https://www.togetherscotland.org.uk/media/3448/hrb_member_resource_final.pdf, page. 3. Also see: Scottish Commission for People with Learning Disabilities (SCLD), ‘Rights Here, Rights Now! The Human Rights Bill for Scotland SCLD Briefing’. Available at https://www.sclld.org.uk/wp-content/uploads/2023/08/4-Rights-here-rights-now-for-orgs-and-service-providers_updated-version.pdf. Accessed 01/09/23.

Questions 6 – 11 refer to Part 5: Recognising the 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 value of effectively incorporating the right to food into Scots Law should not be understated, nor should the challenge of doing so.

Nourish has long campaigned for an expedited incorporation of the right to food in domestic law based on the extreme and multifaceted way that food insecurity affects people and policy. Food and the food sector run through almost all aspects of Scottish daily life, such as health, education, social security and agriculture. Whilst this makes political decision-making more difficult, it also means there is significant transformative potential if we get this right *right*. Part of getting it right will be ensuring that incorporation reflects the truly cross-sectoral nature of the right to food – including and especially its relationship with the environment.

We therefore disagree with this proposed approach – the right to food should be included as a substantive aspect in both the right to a healthy environment and as part of the right to an adequate standard of living under the ICESCR.

The main rationale for including the right to healthy and sustainable food in the right to a healthy environment is the significant links and impacts of food production on the environment

The food system is currently responsible for a third of global greenhouse gas emissions⁷, 70% of freshwater withdrawals⁸ and is one of the principal drivers of biodiversity loss, with agriculture responsible for 80% of global deforestation⁹. Here in Scotland, food production is the largest single use of land, accounting for just over 70% of total land use.¹⁰

Excluding food from a general right to a healthy environment is therefore counterintuitive – it would limit the intended strength of including the right to a healthy environment in this Bill.

It is also important to recognise that people will be impacted by food production methods differently. From a practical perspective – that is, from the perspective of the real-time delivery of this right – this furthers the case for having the right to food in *more* places (especially the right to a healthy environment), rather than less (i.e. only in ICESCR).

⁷ FAO, *Food systems account for more than one third of global greenhouse gas emissions*, March 2021, <https://www.fao.org/news/story/en/item/1379373/icode/>

⁸ Planet Tracker, *Financial Markets Roadmap For Transforming The Global Food System*, March 2023, <https://planet-tracker.org/wp-content/uploads/2023/03/Financial-Markets-Roadmap-for-transforming-the-Global-Food-System.pdf>

⁹ UNCCD, *Global Land Outlook 2nd edition*, April 2022, https://www.unccd.int/sites/default/files/2022-04/UNCCD_GLO2_low-res_2.pdf

¹⁰ Centre for Ecology & Hydrology (CEH) Land Cover Mapping, 2020, <https://www.ceh.ac.uk/sites/default/files/2021-11/lcm2020ProductDocumentation.pdf>

Question 9 continued

To put this into perspective, consider an example of exercising your right to food:

As part of the right to food, you have the right to access food which helps you be healthy. You have the right for that food to be produced sustainably so your enjoyment of the right to food does not impact negatively on the right to food of future generations.

However, for most people in Scotland, the food you access is not in your immediate environment. Similarly, your right to a healthy environment may be compromised by the farmer (i.e. the food producer) next door using insecticide which reduces insect life in your garden, whether or not you ever eat any of the food grown in that field.

Likewise, soil erosion or nitrate and phosphate run-off from food producing fields will damage the quality of the rivers you use, even if you choose and can afford to eat sustainably produced food.

This interconnectedness will make it difficult to assert the right to food in different contexts. For example, it would be difficult to assert the right to food in relation to an intensive chicken farm which was impacting negatively on water quality if the right to food is only included under ICESCR and specifically excluded from the right to a healthy environment. It is therefore our view that there is only more to gain, in terms of fully delivering the right to food, by also incorporating it under the right to a healthy environment.

To exclude the right to food from the right to a healthy environment would not only limit the intended strength of incorporating the right to a healthy environment but also complicate and undercut the delivery of the right to food in general.

Incorporating the right to food is not just about alleviating food insecurity – it's about taking a whole-systems approach to tackling challenges such as poverty, diet-related illness, and climate change. It is in the interest of this Bill to join up policy making by recognising these connections and tackling them in progressive ways. **By including the right to food under both ICESCR and the right to a healthy environment, we not only give it the most opportunity to deliver improved outcomes for people, but also to drive the progressive realisation of other rights in the Bill.**

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

Question 13

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

Answer:

We believe that an effective plan needs to be created and adhered to that ensures participation runs through the entirety of the implementation and delivery of the Bill.

Nourish believes the best way to embed this participation would be to first, explicitly include participation as a human right in this Bill. We support the National Taskforce recommendation that “Further consideration be given to including an explicit right to participation, drawn from the principles of international human rights law, within the legislation.”¹¹ Making participation a legal obligation would reinforce all other rights contained within the Bill.

This kind of explicit referencing should take place at all stages of the Bill – wherever the rights are added to the remit of public bodies, scrutiny bodies and others, there should also be references to the obligation of participation. Importantly, it should also be an explicit and frequent criterion for reporting requirements.

In terms of designing participation, we believe an important bedrock for participation will be defining and reviewing the MCOs via participatory processes.

For this reason, we recommend that, in addition to defining MCOs via the proposed participatory process, **there needs to be participatory mechanisms for periodically reviewing these MCOs**. It is suggested that these be *deliberative* mechanisms which are: (1) *inclusive*, (2) *representative* and (3) *accountable*.

- (1) actively engage diverse, underrepresented groups and groups directly affected by the MCO,
- (2) follow good practice for sampling participants
- (3) take immediate and clear effect on decisions surrounding MCOs. To achieve this, we suggest there be a requirement for relevant public bodies/authorities to commit to honouring the judgements of the review.

While the core concept is thousands of years old, understanding what ‘dignity’ means in practice today can only be done through participation. Crucially, this participation must include, to the fullest possible extent, the people whose dignity is at risk and be practised at every decision.

¹¹ See more info on including participation as a right at: UN Office of the High Commissioner for Human Rights, ‘Right to participation matters more than ever: UN Secretary-General’, 25/09/20, <https://www.ohchr.org/en/stories/2020/09/right-participation-matters-more-ever-un-secretary-general>. Accessed 13/09/23.

Question 13 continued

One recent example illustrates this well. When the Scottish Government was designing the Best Start card they decided to ask potential users about the design, which they proposed to feature pictures of vegetables and healthy food. The feedback received was that this design was not wanted – the preference was for a plain design, like other standard cards in their wallet. The Government therefore removed the pictures and produced a plain card, honouring the preferences of its users.

MCOs are the natural starting point for practising this kind of participation, but it is something which the Bill must endeavour to action at all stages. There are approaches available to draw on – the closest to home and therefore perhaps the most effective is the ‘Scottish approach.’¹² This approach is characterised by the commitment to deliberately and actively involve the people that will be most affected by a given decision. This kind of commitment needs to be emboldened in the chosen participatory processes for the Bill. That is, it needs to be a participatory approach that seeks out and includes those whose dignity is most at risk in relation to these rights.

Resources need to be budgeted for ensuring this actually happens – that participation is a fully accessible endeavour (i.e. able to include the most and the most marginalised), is communicated in an inclusive way (i.e. available in different formats) and is able to be actioned by public bodies quickly (i.e. with effective feedback loops in place).

Nourish suggests that these processes should seek to involve bodies such as the Public Participation Committee who are capable of performing systematic checks on participation. A routine cycle should be developed where this committee can assess and provide recommendations on the delivery of participation in relation to the Bill. Including this kind of body would ensure there is a consistent and shared understanding of participation in relation to this Bill and further build Scotland’s human rights culture.

¹² See: Scottish Government, Participation Framework, <https://www.gov.scot/publications/participation-framework/#:~:text=The%20Scottish%20Approach&text=The%20drive%20to%20increase%20participation,lives%2C%20choices%20and%20life%20chances>

Questions 19 – 26 refer to Part 7: The Duties

Question 20

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

Answer:

We see the initial procedural phase of duties as requiring the most work and time in the implementation of the Bill.

These initial procedural duties will need to be in force as soon as the Act receives Royal Assent. We agree with other respondents that this duty should be a 'duty to have due regard' and that this duty should exist alongside the future compliance duties (as opposed to being replaced by these compliance duties).

The duty to have due regard will need to be capable of affecting immediate, significant change for the fullest possible spectrum of bodies delivering devolved public functions.

This means it will need to have clear guidelines that are:

- (1) **ambitious:** they need to call for specific, significant change;
- (2) **delivered in vested partnership** with, rather than simply enforced on, organisations. Organisations will need to see these duties as a pathway to improvement and not a threat against which they have to defend. This means there will need to be resources devoted to training, support and capacity building for those duty bearers; and, importantly,
- (3) **provide clear courses of action** for enacting this change, able to be adapted for different types of organisations. This will require the development of **metrics and data collection methods/plans** capable of capturing and measuring human-rights based outcomes.

The initial procedural phase needs to dedicate time to choosing and developing **metrics** capable of measuring the delivery of a given right. A key element of these metrics will be **human rights budgeting**. That is, there will need to be a human-rights based budgeting plan that sets out the distribution of resources towards the realisation of these rights.

Data collection methods/plans will also need to be put in place at this procedural stage. In other words, we will need to define **what** data is going to be collected in relation to the delivery of these rights, **how** that data will be collected and **why** that data is being collected (i.e. what will it be used for).

Approach to defining metrics and data collection plans: Nourish suggests that the SHRC be given the appropriate powers to lead a process of developing human-rights based metrics as the basis for consistent data gathering and reporting. To do this, we believe the Commission requires additional powers, including, but not limited to (1) require and compel information and (2) issue binding guidance (see response to question 31). These powers will give the Commission the additional scope it needs to create and monitor human-rights based metrics.

Question 21

What is your view on the proposed duty to comply?

Answer:

We agree with the proposed duty to comply. We wish to emphasise that the success of these compliance duties will rely on having workable, outcomes-based requirements for each right. This will require the development of **metrics** capable of measuring human-rights based outcomes, as referred to in Question 20. Nourish believes it should be an explicit requirement of the duty bearers to use the metrics that are set at the initial procedural stage, such as the human rights budgeting approach.

The duty to comply needs to include, not replace, the duty to have due regard as well as requirements set by the MCOs. Specific compliance duties and timeframes will also need to be set for progressive realisation– what are the duties required to go beyond the ‘floor’ that the MCOs set and how are these measured and enforced? Again, the process for defining these duties should employ the participatory principles elaborated on in Question 13.

Nourish also recommends that the duty to comply needs to extend to the substantive rights in CRPD, CEDAW and CERD, as well as ICESCR and the right to a healthy environment (see our response to Question 4). If these are excluded, we risk creating a hierarchy of duties and, by extension, a hierarchy of rights - which is contrary to the purpose of this Bill.

It is important to remember that in our Scottish experience of legislative duties, it is often poor compliance and monitoring that undercuts the effectiveness of that legislation. Accountability, via these compliance duties, will be crucial to the delivery of the rights contained within this Bill – therefore, these duties need to learn from previous compliance mistakes.

Question 23

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

Answer:

It is essential to map all current and upcoming reporting duties required of the duty bearers before imposing more. This should be done with the aim to streamline reporting obligations, making the output more consistent, transparent, and accountable.

For instance, it is our view that the best way to obtain reporting on the right to food will be through the upcoming Good Food Nation plans and their parallel reporting duties. It will also be crucial to take stock of:

Commissions. The landscape of existent and upcoming Commissioners and how they operate/talk to each other will be critical to ensuring that reporting is best delivered.

There needs to be an effort to design a mechanism through which commissions can share reporting and recommendations in relation to the rights contained in this Bill.

For example, the reviews of the upcoming Scottish Food Commission (SFC) and its eye on reporting should be integrated with the function of SHRC – to what extent reporting can be performed in a “shared” way should be considered.

We are conscious of the increasing number of proposed Commissioners on the horizon and acknowledge the real risk of duplicating functions. In response, we believe it would be helpful for the SHRC to set up specific roles and channels, capable of robust communication and knowledge sharing, with external commissions.

Regulatory bodies. It will also be crucial to select a reporting model which is best able to capture human rights-related outcomes and, importantly, be transferrable to the work of regulatory, inspection and scrutiny bodies, including but not limited to Audit Scotland. Nourish recommends that these scrutiny bodies be trained in methods of co-production to ensure the reports are read with regard for people’s lived experiences, especially those experiences of rights being denied or limited.

International reporting obligations. We suggest that the reporting cycles required for this Bill should be in synch with Scotland’s existent reporting duties to the UN and other international treaty bodies. Albeit via the UK’s state party report, Scotland provides evidence to the ICESCR Committee (CESCR) in relation to the delivery of these rights every 5 years. It is at this time that the SHRC should also perform a universal periodic review of the reporting collected and align it with the delivery of evidence to the UK Parliament, and by extension, to CESCR. Interestingly, CESCR has recently introduced an optional ‘Simplified Reporting Procedure’ whereby it first sends States a list of issues prior to reporting (LOIPR) to help focus the reporting around key priority areas.¹³ It would be beneficial for the SHRC to perform their universal periodic review with regard to this LOIPR.

¹³ Committee on Economic, Social and Cultural Rights, Reporting Guidelines, 2023, <https://www.ohchr.org/en/treaty-bodies/cescr/reporting-guidelines>

Question 23 continued

For all reporting, Nourish believes it is crucial to ensure there are active feedback loops with the duty-bearers and the SHRC. In other words, there should be scope for the SHRC to go back to the duty-bearer and provide feedback on reporting – this will ensure reporting is not just done for transparency, but also for active progress.

Nourish also believes that all reporting should have explicit regard for the participation right (as set out in the response to question 13). In practice, participation at this reporting stage should work to embed actual lived experiences, especially of those whose rights are most at risk, into the reports. The Human Rights Lived Experience Boards and their experience of involving such experiences into public body reporting should be utilised here. This would help to ensure the reports reflect where there are real implementation gaps and therefore help focus human-rights budgeting for later stages.

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

Question 31

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

Answer:

Nourish believes it is necessary to ensure the Scottish Human Rights Commission (SHRC) is given additional powers to match other comparable National Human Rights Institutions (NHRIs). This will mean including more than the 2 proposed powers to the Commission.

We support the proposal to give the SHRC (1) the power to raise proceedings; and (2) power to investigate. Nourish believes that the SHRC's power to investigate should be bestowed with the specific mandate to investigate the delivery of dignity in relation to these rights. This would involve actively seeking out those whose rights are most vulnerable. However, in order to ensure these investigations and rights holders are not hidden away, the SHRC needs a larger suite of powers. We therefore support an additional 6 powers being given to the SHRC as recommended by their research:

1. **Provide legal advice.** Not only to individuals but to frontline civil society organisations (CSOs). We also think the extent to which the SHRC can provide advice to other commissioners and scrutiny bodies should be considered.
2. **Raise proceedings.** (see response to Question 33)
3. **Require and compel information.** This would improve effective human rights monitoring. As the SHRC explained, without this power, "we can't tell where are we in terms of human rights because we don't have the power to attain that information."¹⁴
4. **Make unaccompanied and announced visits** to any human rights duty-bearer. We note that the Sub Committee on Accreditation has indicated to the Commission that it should have this power at least for places of detention, but there are certainly other places where this would also be effective in ensuring accountability.
5. **Hold public hearings and require duty-bearers to be present.**
6. **Issue binding guidance.** This would help to make rights-related guidance consistent with international law and comparative best practice.

Nourish wishes to highlight that an important element of accessing justice is that the appropriate bodies have the appropriate powers. At the current moment, the SHRC do not have the powers required to ensure rights-holders can effectively access justice in the Scottish context. Full inclusion of these essential powers would be necessary for the maximum delivery of rights in this Bill.

¹⁴ Commission Roundtable Discussion, 26 September 2023, Scottish Human Rights Commission (SHRC).

Question 33

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

Answer:

We support the wider interpretation of 'standing', using the 'sufficient interest test' rather than the 'victim test'. Using sufficient interest as the threshold for advancing issues with courts for judicial review, as opposed to having to prove oneself as the victim, will make the public interest litigation more accessible, open and reflective of the rights in the Bill.

We also support the attempt to mirror the provisions of the UNCRC Bill which provides new powers to both the Children and Young People's Commissioner for Scotland and the Scottish Human Rights Commission to bring or intervene in legal proceedings under this definition of standing – this will ensure that frontline, grassroots civil society organisations as well as other related commissions such as the Scottish Food Commission (SFC) will be able to bring proceedings forward for those issues in which they have a sufficient interest.

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

Question 39

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

Answer:

MCOs need to be co-produced with rights holders, especially those whose rights are most at risk.

For determining MCOs of this kind, especially for the right to food, there is no alternative to a participatory process.

To put this in perspective, it is helpful to compare the example of setting thresholds for, and measuring progress against, something like fuel poverty with the right to food. In the case of fuel poverty, there is an international standard for how warm a house should be and it's possible to model income, fuel price and housing data to generate a reasonably accurate measure of fuel poverty.

In the case of the right to food, determining dignified access to healthy and sustainable food is far more complex. Dietary preferences, household eating patterns, cultural heritage, geographical access, local food prices and more, are all part of the mix. It is therefore absolutely crucial for the definition of 'adequate' access to food to be done *by* people themselves. UN Special Rapporteur on the Right to Food, Michael Fakhri, explains that for food to be 'adequate':

...people must decide for themselves what is appropriate food based on their own ecosystems, based on their own culture based on their own daily life. So, the idea of adequacy is to empower people to choose what type of food is good food for themselves

By this definition, getting to an understanding of the 'adequate' access to food would be impossible without undertaking an approach that meaningfully engages the widest range of people in Scotland.

If we don't do this, the floor set by the MCOs will be far removed from people's everyday lives and, by extension, very weak. For example, if we look at The Eatwell Guide recommended by the Scottish Government for defining a healthy diet, it is estimated that only around 1 in 600 is meeting those requirements.¹⁵ If we do not have a participatory process capable of working with people to determine MCOs in relation to the right to food, we will fail to deliver that right altogether.

¹⁵ Food Standards Scotland, November 2022, <https://www.foodstandards.gov.scot/news-and-alerts/survey-reveals-worrying-lack-of-fibre-in-scottish-diets>

Question 39 continued

Nourish Scotland has been driven to create and test a range of participatory structures with these comprehensive capabilities – the most relevant being the ‘**Our Right to Food**’ campaign. This project practiced a bottom-up inclusive approach to co-define what the right to food looks like for families in Scotland. It engaged a network of community advisors to develop a shared account of weekly food practices for two different household types that were at higher risk of food insecurity than average. Over months of collaboration, the advisors worked together to co-create weekly shopping lists that reflected a balance of foods that were:

- Healthy ‘enough’
- A good fit for people’s lives
- Enjoyable for most people

Through this metric, in the form of shopping lists, the project was able to make sense of what the right to food means in different local contexts across Scotland. In other words, the lists provided a way to work *with* people on defining and measuring what a dignified ‘the right to food’ means in terms of the affordability of a healthy, suitable diet.¹⁶ Suggestively, it is this co-creation of metrics that will need to be replicated when determining the MCOs.

For this to work, the Scottish Government will need to publish guidance on the development of MCOs, picking good examples from Scottish and UN context. Nourish suggests that more thought be given to who will conduct the participatory processes, specifically considering the value of it being conducted independently.

¹⁶ Read the full report from the project [here](#).

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?

Answer:

Nourish agrees with the requirement for all public Bills to be accompanied by a statement of compatibility with rights in this Bill. It will be especially important to ensure that current legislation going through parliament is forward compatible.

For example, the Agricultural Bill, Circular Economy Bill and all Good Food Nation plans will need to be assessed in relation to the rights, especially the right to a healthy environment and the right to food. That is, these Bills and plans will need to show that they have had regard to the rights contained within this Human Rights Bill, given their impending implementation.

Nourish believes that this forward compatibility should form an explicit part of the policy memorandum. To ensure this is implemented effectively, we support the call from HRCS to make the production of 'Human Rights Impact Assessments' an explicit requirement for all developing and current legislation. This would become a regularised part of the development of all legislation and be a useful, mandatory resource in the scrutiny process.

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

Nourish Scotland is a Charity Registered in Scotland (SC048239)

Additional space for answers

(Please specify the question information relates to)