

## 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](mailto:HumanRightsOffice@gov.scot)

Our postal address is:  
Human Rights Strategy & Legislation Unit  
Directorate for Equality, Inclusion and Human Rights  
Scottish Government  
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Victoria Quay  
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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

Phone number

Address

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If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

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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:

Shelter Scotland support the proposal for dignity to be used as a fundamental value when reading and interpreting the human rights framework. However, we would question the use of the interpretative clause which will 'allow' courts to consider dignity – and consider this should be strengthened so that they are required to consider dignity.

We would also want to see dignity used in decision making/policy making and in the human rights scheme, not limited to courts interpretation of rights.

We are also minded to support HRCS' proposal for a purpose clause that includes not only dignity but also universality, participation and other key human rights principles.

A specific example of the power of dignity for disabled people's access to housing is provided as follows:

*"The benefit of using the concept of dignity is that it empowers disabled people to utilise their rights and challenge decisions of public bodies, including local authorities where they have previously felt compelled to accept often inappropriate accommodation initially allocated."* [George, J. (2022) [An analysis of the added value of the human right to adequate housing in Scots law](#) (Shelter Scotland)]

## 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:

Shelter Scotland strongly support the proposal to allow for dignity to be used as a key threshold for defining the content of the MCOs – though as per question 1, we would argue that this should or must be used rather than ‘allowing’ it to be used.

Within the current housing system, there are lots of examples at present of a lack of dignity in people’s housing situations. People approaching statutory homelessness services have been told there’s no temporary accommodation available, and provided with a sleeping bag to sleep on the streets. People are placed in bed and breakfast and hostel accommodation with a curfew and a ‘no guest’ policy, preventing their freedom of movement and impacting on their ability to work certain hours or have their children to stay. Clients have been forced to live in homes in a poor state of repair or living with bed bugs or rodents because support has not been available to address it or to find alternative accommodation. And many people are stuck in unsuitable housing for years because of a lack of available social housing, meaning they’re forced to choose between heating and eating, or in overcrowded conditions, or unable to access parts of their house because it is not suitable for their physical disability. Some of this is because of a gap in rights, which the proposal to use dignity to define MCOs would help, but in other cases it is because of other issues with the rights framework: a lack of rights awareness, support, advice and advocacy, or legal representation. As such, dignity should be used throughout the human rights scheme as a golden thread to lead and direct action.

Case study: A Shelter Scotland client was moved into temporary accommodation by their social landlord so that major repair works could be carried out on their permanent home. When they approached Shelter Scotland, they had so far had to stay in this accommodation for four months despite originally being told it would be for eight weeks. During this time the client had to share a bedroom with their teenage child of the opposite gender, and the accommodation provided is not adequate for the client’s disabilities, meaning that they are struggling to access both the bathroom and the kitchen.

## Question 3

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

Answer:

Shelter Scotland agree with this proposal.

## Question 4

What are your views on the proposed model of incorporation?

Answer:

Shelter Scotland strongly agree that ICESCR should be reproduced, i.e. copied and pasted, into the Bill. This would ensure that the right to adequate housing, as contained in article 11 on the right to an adequate standard of living, would be incorporated into Scots law.

We understand and accept the reasons for the initial procedural duty on ICESCR to give time for duty bearers to prepare for a duty to comply. We believe the duty to comply should be brought in no later than two years from the introduction of the Bill. We agree that the duty to comply should cover the delivery of minimum core obligations and progressive realisation. In line with HRCS' response, Shelter Scotland believe that the initial procedural duty, to have due regard, should continue alongside the duty to comply to strengthen the package of duties and ensure no gaps in relation to decision making.

We are concerned about the proposal of a procedural duty in relation to the equality duties rather than a stronger duty to comply. Our housing system is broken and biased and we know that specific groups are further disadvantaged including disabled people and some minoritized ethnic groups. By limiting duties to a procedural duty, rather than a duty to comply, we are concerned that a key opportunity to tackle this bias and act in a non-discriminatory way as per a human rights-based approach is being missed.

Our advice services often hear from people being housed in accommodation that is not adequate for their needs and we are not clear whether a procedural duty will help address this. For example, one Shelter Scotland client is currently living in temporary accommodation in Argyll and Bute. The client's young daughter is unable to live with them or even stay over as the accommodation is inaccessible to her because of her disability. This is in turn negatively impacting the client's mental health and their relationship with their daughter. Another client who is a wheelchair user had to set up a caravan outside her block of flats, because the lift regularly broke down leaving her unable to access her home.

We also support CEMVO's concerns around the limitations of a procedural duty on CERD and that this is not in line with the Scottish Government's commitment to a maximalist approach. Shelter Scotland have just published research on minoritized ethnic communities access to social housing in collaboration with CEMVO and Heriot Watt University which provides further evidence of the institutionalised and systemic racism in Scotland today, and the need for further action [Menezes, D., Netto, G., Hasan, S. (2023) [Minoritised ethnic access to social housing in Scotland at key transition points](#) (Shelter Scotland)]. More information about whether all options have been explored in looking at the limitations of devolution would be welcome. In addition, the Bill should consider what opportunities there are to embed CERD rights within the context of the model of incorporation proposed. For example, when defining the MCOs for the right to adequate housing, one element to be considered is 'cultural adequacy'. This provides an opportunity which should be made clear within any guidance for policy makers to look at how CERD can be brought into a duty to comply. The determination of the MCOs should be established via an

inclusive participatory procedure encompassing the perspectives of minoritised ethnic communities to ensure that housing policies are culturally sensitive, responsive to community needs, and developed in consultation with those directly affected. [Ahmad, S. (expected publication end of 2023) Realising the Right to Adequate Housing for Minority Ethnic Communities Experiencing Homelessness (Shelter Scotland)].

## 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:

Shelter Scotland agree with the Human Rights Consortium Scotland and others that the current proposals set out by the Scottish Government are not sufficient for certain rights under the CRPD. Under proposals, the CRPD (like CERD and CEDAW) will be subject to a duty to have due regard. However, CRPD contains certain substantive rights within it which are not covered under ICESCR and therefore will not be subject to a duty to comply. These include the following:

- *Article 5 Equality and non-discrimination including the requirement to make “reasonable accommodation”.*
- *Article 9 The right to accessibility of the physical environment, transportation, information and communication, and services open to the public.*
- *Article 19 The right to live independently and be included in the community.*
- *Article 17 The right to respect for physical and mental integrity.*
- *Article 11 Situations of risk.*
- *Article 12 Equal recognition before the law.*
- *Article 26 Habilitation and Rehabilitation.*
- *Article 20 Personal mobility.*
- *Article 13 Access to justice.*
- *Article 14 Liberty and security of the person.*
- *Article 16 Freedom from exploitation.*
- *Article 7(3) Participation of disabled children.*
- *Article 24 Inclusive education.*

Within housing and homelessness, we know that having a disability can lead to worse housing outcomes and that disabled people are at greater risk of not having their right to adequate housing realised. For example 51% of homeless households have at least one identified support need, with the number and proportion of homeless households with a mental health problem, learning disability, physical disability or other medical condition all rising steeply in the last year [Source: Scottish Government homeless statistics]. In addition, *“In 2016, CESCR flagged concerns about the “persistent critical situation in terms of the availability, affordability and accessibility of adequate housing” , particularly for the “most disadvantaged and marginalized individuals including... persons with disabilities” . CESCR also highlighted in 2009, the chronic shortage of housing for disabled people in Scotland and recommended an intensification of efforts to ensure that everyone has access to housing.”* [George, J. (2022) [An analysis of the added value of the human right to adequate housing in Scots law](#) (Shelter Scotland)] This highlights the need for the importance of appropriate action to be taken to strengthen the rights framework for disabled people.

Case study: A Shelter Scotland client was living in social rented accommodation in the central belt, and suffering with severe physical and mental health issues. Their accommodation was becoming increasingly unsuitable for them as their health deteriorates, and it was negatively impacting their quality of life. The client has been trying to move to more suitable accommodation for several years but has so far been unsuccessful. The distress caused by this situation has led to a decline in the client's mental health.

Therefore Shelter Scotland believe that the substantive rights in the CRPD as listed above should be subject not only to a duty to have due regard but also a duty to comply, as per the ICESCR rights. We agree with the HRCS that without this enhancement of the Scottish Government's proposals, the Scottish Government will not be carrying out its commitment to implement the Taskforce's recommendations, nor will it deliver human rights for disabled people.



**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:

[no answer provided]

**Question 7**

If you disagree please explain why.

Answer:

[no answer provided]

**Question 8**

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

Answer:

[no answer provided]

**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:

[no answer provided]

**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:

[no answer provided]

**Question 11**

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

Answer:

[no answer provided]

**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:

[no answer provided]

**Question 13**

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

Answer:

[no answer provided]

**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:

[no answer provided]

**Question 15**

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

Answer:

[no answer provided]

**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:

[no answer provided]

**Question 17**

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

Answer:

[no answer provided]

**Question 18**

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

Answer:

[no answer provided]

## 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:

Shelter Scotland believe that the duties should apply to public bodies carrying out devolved public functions, and any private bodies carrying out functions of a public nature including private bodies acting under a contract or other arrangements with a public body to deliver those functions.

In Scotland, homeless applicants are entitled to temporary and in many instances permanent accommodation. This temporary accommodation is often provided by the local authority through contracting a private housing provider such as a B&B, hostel or private sector leased accommodation. This accommodation, particularly that of B&Bs and hostels, can be of poor quality with individuals experiencing poor service and management standards as well as the physical state of the room which falls well below accepted minimum standards. We would expect that the government's proposal in this instance would extend the duty to a private accommodation provider thereby increasing standards in line with any minimum core obligations. This would be welcome.

We have the example of *Ali v Serco* in Scotland where the Inner House determined that a body carrying out a statutory function under exclusive contract to the State was not accountable for human rights breaches carried out as the public body retains the public law and human rights responsibility whereas the private body operates according to its private law obligations and responsibilities. We understand that the government's proposal would address this to some extent by clarifying that duties would be passed over to private bodies carrying out and delivering functions of a public nature which is welcome. However this case related to Serco providing services under contract from the Home Office and therefore would not fall under the protections of the proposed bill. Whilst we understand the limitations of devolution and the government's need to pass laws relating to their devolved powers, we wish to flag serious concerns about those with no recourse to public funds and the gap in protection available for them. We would therefore agree with HRCS' position that people should be able to expect their human rights to be respected, protected and fulfilled by every public body, whether or not it is within devolved or reserved competence. This is particularly true because people do not always know whether the public body they are dealing with is Scotland-only or UK wide. We ask the Scottish Government to discuss this with the UK Government, as well as to urge them to incorporate all of our international human rights at a UK level.

In addition, while we acknowledge that the bill is developed and implemented within the constraints of the devolution settlement, this limits (i) the potential for people with no recourse to public funds/other restricted eligibility to be able to challenge infringements of their rights on human rights grounds and (ii) the ability of Scottish public bodies to act to meet those rights. There are a series of ways in which all public bodies can maximise the use of their powers and their contribution to

preventing homelessness and destitution among this group and the Bill should commit to acting on that to improve the lives of people experiencing and at risk of the most extreme infringements of human rights in Scotland.

### **Question 20**

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

#### Answer:

For the absence of doubt, we believe that the ‘initial procedural duty’ mentioned here should be a duty to have due regard, as set out for question 4. This duty would focus on ensuring that the rights in the Bill are ‘taken into account’ by duty-bearers. We believe this is an area that strong guidance would be required to ensure that this duty is embedded in all aspects of decision making, policy making and service delivery; and is enforceable and leads to real change for rights holders. This is particularly important given the current resource pressures on local authorities where duty bearers are already struggling with very clear statutory obligations in relation to housing with regular breaches. In the recent X vs GCC case, the Inner House ruled that ‘taking into account needs’ does not mean meeting those needs. Therefore if the intent of the proposal for the procedural duty is to make duty bearers act in a certain way to help people realise their rights, which Shelter Scotland would support, then consideration on how to strengthen this duty and ensure it results in real change is required.

Shelter Scotland believe that the timescale for a duty to have due regard should be clearly defined – the consultation document at present refers to it being implemented ‘as soon as practicable’. We would expect it to come into play no later than 6 months after Royal Assent in line with HRCS’ position.

The initial procedural duty, to have due regard, should continue alongside the duty to comply to strengthen the package of duties and ensure no gaps in relation to decision making.

## Question 21

What is your view on the proposed duty to comply?

Answer:

The proposals lay out that the duty to comply would involve compliance with minimum core obligations and to show progressive realisation. Our experience as an organisation that works to protect and enhance people's housing rights is that clear rights are crucial for both duty bearers and rights holders. For rights holders, it allows them to name and claim their rights including being able to seek protection through judicial routes where necessary. A duty to comply is therefore crucial for the bill to have 'teeth' and to make real change to people's everyday experiences of housing and interactions with duty bearers. For duty bearers, it also should feed into planning and resource allocation, enabling them to prioritise their activities to ensure they meet their statutory obligations.

In reality however, a duty to comply is not sufficient. Scotland is in the grip of a devastating housing emergency that is already seeing large-scale breaching of people's housing rights. There is a persistent implementation gap: we've had years of progress with housing and homeless rights on paper bringing them closer to the right to adequate housing – but the lived experience of that is very different. The Scottish Housing Regulator recently described the homeless system as at 'risk of systemic failure', we have local authorities publicly declaring their intention to break the law because of a lack of resources, and we have households spending multiple years in temporary accommodation, and regular mass breaches of people's rights. Recent homelessness statistics show the pressure on the homelessness and temporary accommodation systems is getting worse, not better. As such, it is crucial that the framework nature of this Bill delivers the other elements necessary to ensure that a duty to comply will result in real change – including elements around access to justice, and human rights budgeting which enable duty bearers to deliver on rights, and rights holders recourse to justice if things do go wrong.

The proposals in the bill around the development of MCOs are quite vague and we believe much more detail is needed on this aspect at Bill stage. This should include what a participatory process for defining MCOs looks like, what should be taken into consideration when defining MCOs (which should include the driving principle of dignity, and aligning with General Comments and Committee information on ESCR rights, specifically the right to adequate housing). The consultation outlines that international examples can provide useful guidance for MCOs but 'do not provide the full picture and should be viewed as foundations from which to build a minimum core that best reflects the evolving basic needs, diversity, culture and overall resource capacity of Scotland'. The latter resource element requires significant guidance – MCOs are meant to be 'immediately realisable' and yet we have routine breaching of our current housing laws. This is not because they are unachievable per se, but because resource decisions have been made at a national level, and sometimes a local level, which prioritise different policies and services to the detriment of people's realisation of housing rights. We cannot have a situation where MCOs are set lower than people's current housing rights, this would represent an unacceptable regression of rights, and yet until we have human rights budgeting in place and an honest discussion of resources available we would not be in a position to assess what is or is not 'immediately realisable' by duty bearers.

As in question 5 we would want to ensure that a duty to comply was extended to cover not only the ICESCR rights (including the right to adequate housing) and right to a healthy environment as proposed but also the substantive rights in the CRPD.

The Bill should lay out timescales for when a duty to comply would be introduced which should be set no more than two years after the Bill's commencement. This will also allow a reasonable period for development of minimum core obligations.

On progressive realisation, the consultation outlines that state action in compliance is understood as including requirements to take targeted, concrete and deliberate steps; gather and deploy maximum available resources, and ensure non-retrogression of rights. It is crucial that these terms are clearly defined and therefore monitorable, particularly in the context of 'maximum available resources'. The non-retrogression is relatively straightforward, as is the expectation of targeted concrete and deliberate steps – though more guidance would enable some form of consistent accountability and scrutiny.

The main gap here is that at present, it would be almost impossible to monitor whether Scotland is 'gathering and deploying maximum available resources'. We have a long way to go to get to human rights based budgeting; there is a real lack of transparency around what money has been put to what budget and what is it available to be spent on. We need to see a switch from a mentality of what rights can we deliver with the resources we have, to what resources do we need to deliver on rights?

Progressive realisation should have two elements to it, again which should be clearly defined within the legislation: progressive realisation of the right itself, i.e. no regression of housing rights and gradual improvement of people's rights on paper – an example of this is the Unsuitable Accommodation Order which was extended from protecting families with children and pregnant for 14 days to, through a series of amendments, protecting all households with a limit to use of unsuitable accommodation to 7 days. However the second element should be progressive realisation of people's lived experience of the right – i.e. you should be aiming to increase the amount of people with access to their housing rights (beyond the MCO which should be achieved right away), and reduce breaches of a right. So for example less people in poverty because of housing costs, over time, and less people in overcrowded accommodation or in homes with damp and mould. In this instance we are experiencing a very clear regression in rights in homelessness at present, with a 10% year-on-year increase in households assessed as homeless, and a 130% increase in the number of children in temporary accommodation since 2014 to a record high of 9,595 children [Scottish Government homeless statistics].

For this to be measured, a clear monitoring and reporting process would be required for accountability purposes including guidance on development of indicators enabling tracking of progress towards progressive realisation, including how to gather and build in lived experience of housing. ALACHO has looked in detailed at potential

indicators on the right to adequate housing [Young, G. (2021) '[The Right To Adequate Housing: Are We Focusing On What Matters?](#)', (ALACHO, CaCHE)]. They found that “even using the most stringent indicator definitions, the living conditions of 41% of households and 37% of Scotland’s population would appear to be at risk of falling short of adequate housing standards.” The analysis is based on calculation of various objective indicators chosen by the researchers, and a similar exercise would require to be undertaken by government to properly assess progressive realisation of the right to adequate housing. Again, guidance would be required on this to ensure it was developed in line with human rights principles.

ALACHO outline that the availability of subjective indicators on the right to adequate housing is scarce, and work would have to be undertaken to develop this. Shelter Scotland recently published a report providing some subjective analysis through professional interviews and a panel of 25 people with lived experience. Whilst any qualitative data is limited in scope, this report provides a snapshot analysis of how Scotland is doing in relation to the seven elements of the right to adequate housing, providing a traffic light rating, as well as highlighting specific groups who are most at risk of having their rights not realised [Shelter Scotland (2023) [The Right to Adequate Housing: Report by the Diffley Partnership](#)]. A similar exercise repeated on an annual basis could generate some further evidence to help assess progressive realisation of the right to adequate housing in Scotland, when the new duty is introduced.

This exercise is likely to also highlight gaps in some indicators and measurements – specifically around the experiences of certain protected characteristic groups. In line with a human rights based approach on non-discrimination, and with the incorporation of CERD, CEDAW and CRPD as part of the Bill, this would require further action. For example, “*to accurately gauge progress among ME [minoritized ethnic] communities, data should be collected and analysed in a disaggregated manner. This involves categorising information based on ethnicity, among other relevant variables which will offer insights into disparities and challenges faced by different ethnic groups, enabling targeted interventions. Further, meaningful engagement with ME communities is crucial to aid in a more holistic evaluation of housing rights progress.*” [Ahmad, S. (expected publication end of 2023) Realising the Right to Adequate Housing for Minority Ethnic Communities Experiencing Homelessness (Shelter Scotland)].



**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:

To determine whether duties of progressive obligation have been met, reporting from public authorities who have this duty will be an essential part of transparency and accountability, in line with a human rights based approach. Importantly, reports shouldn't just include the activities public authorities have done or will do, but should report on the lived experience of rights and where there are gaps. It should take a holistic approach highlighting the impact of different policies and where a lack of progress in one area may result in further action required elsewhere.

The UNCRC reporting requirements outline that public bodies should have to report every three years. However, there is certainly a balance to be taken in terms of reporting requirements to avoid it being unnecessarily onerous and we would suggest that as long as the above requirements are met that public bodies are likely to have their own views on how to build this additional requirement into their existing reporting duties. The reporting requirements should be supported by guidance developed by Scottish Government to support public authorities in taking a human rights based approach to such reporting.

**Question 23**

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

Answer:

See answer to question 22.

**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:

See answer to question 21.

**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:

[no answer provided]

**Question 26**

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

Answer:

The human rights scheme is a key tool for embedding a human rights approach in that it will enable monitoring and accountability and we agree that ministers should have a duty to publish a Human Rights Scheme.

Report should not only be on activities undertaken and policy, but on people's experiences of rights being realised, or where progress is still required. As in question 21, qualitative and quantitative data will be crucial here to understand the experience of particular groups most at risk of having their rights not realised, including women, some minoritised ethnic groups and disabled people. Where there are gaps, specific actions should be identified to target these including any required resources to be made available to enable duty bearers to deliver on their duties and therefore for rights holders rights to be realised. Our answer to Question 40 contains more information on this.

**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:

Implementation of this Bill must deliver a significant programme of rights awareness for both duty bearers and rights holders. Without at least some knowledge of rights, rights holders may not realise their rights have been breached, are unlikely to be aware of where they can go for help, or even that advice and support is available or might be able to assist them in their situation.

To further empower rights holders to realise their rights, the Human Rights Bill should include access for all to independent advocacy and provision of funding of both advocacy and advice services relating to all the ICESCR rights. These services should be included in the Human Rights Scheme. With respect to the right to adequate housing, this would help resolve a particular gap relating to support for tenants at the First-tier Tribunal (Housing and Property Chamber) whereby tenants are currently underrepresented.

**Question 28**

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

Answer:

[no answer required]

**Question 29**

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

Answer:

[no answer provided]

**Question 30**

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

Answer:

Shelter Scotland support the proposals in relation to scrutiny bodies.

With respect to housing, the Scottish Housing Regulator can and should play a crucial role in ensuring housing providers help realise people's rights.

The proposal to require the regulator to inform the SHRC on any systemic human rights issues would be welcome.

Earlier in 2023, the Scottish Housing Regulator published a report on the findings from their thematic review on homelessness [Scottish Housing Regulator (2023), [Homelessness services in Scotland: A thematic review - February 2023](#)]. In it, they described that there is “evidence of increasing, and more widespread, breaches of statutory duties around the provision of temporary accommodation, and that some households with particular equality characteristics do not always receive a service that meets their specific needs.” They went on to state “there is an emerging risk of systemic failure” for homeless services in Scotland. However, very little change or progress has occurred since despite this damning statement from the regulator. The proposed requirement for the regulator to inform the SHRC of systemic human rights issues, coupled with the proposals for the SHRC powers to be extended to include the ability to investigate and take on human rights test cases, would be a welcome and necessary development in shaping the next steps for such regulatory insight.

### **Question 31**

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

Answer:

We believe the SHRC’s powers should be extended to help them hold public authorities to account on human rights. As per question 30, we particularly support the proposal for the SHRC to have powers to bring or intervene in civil proceedings under the Bill, as well as an investigatory power which allows for accountability for systemic issues relating to the rights in the Bill.

### **Question 32**

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

Answer

[no answer provided]

### Question 33

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

Answer:

Shelter Scotland agree with the proposal to keep to the normal rules on 'standing' so that anyone with 'sufficient interest' can raise a judicial review on rights in the Bill rather than applying the narrower rules around 'victim test' under the Human Rights Act. This would mean that Shelter Scotland for example would be able to bring proceedings if courts deem it appropriate.

Importantly, public interest litigation should be allowed to proceed even where an individual's case is resolved.

To enable the proposed approach to 'standing' to be effective, consideration of modified expenses regimes and court fee exemptions is also required – for example so an NGO does not have the risk associated with expenses in seeking to enforce rights.

**Question 34**

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

Answer:

[no answer provided]

**Question 35**

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

Shelter Scotland strongly disagree that existing judicial remedies are sufficient in delivering effective remedy for rights-holders. For example, there are a large number of instances of 'gatekeeping', where a homeless household is not provided with the temporary accommodation they are entitled to. Likewise, the number of Unsuitable Accommodation Order breaches has increased rapidly in recent years. Despite local authorities not enforcing these legal duties, they face very little in the way of consequences for doing so.

In urgent homelessness cases, the primary legal remedy is judicial review. However, this is costly and requires input of both solicitor and advocates. In addition, in our experience when judicial review proceedings are raised, local authorities often resolve the case which is a positive outcome for the individual concerned but often means that the underlying system issues/practices are never challenged.

### 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:

Shelter Scotland would support the addition of a 'structural interdict' to be made available by the court. Our understanding is that this would involve a remedy aimed at justice for violations that are systemic and affect many people, which may help avoid future rights violations.

With respect to the right to adequate housing, this might involve a court ruling on the impact of a local authority having a lack of appropriate permanent accommodation suitable for homeless households which include a disabled person, resulting in long periods spent in temporary accommodation. If the court were able to ask a local authority to act and then report back to the court, for example on how they were going to address this in a structural way by adapting their policy on new social housing supply in their area, this may help prevent further households experiencing homelessness going through the same situation, rather than the court just ruling on a remedy which addresses the particular household's accommodation issue.

### 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:

We agree with the HRCS's position that if legislation is found to be incompatible with the rights in the Bill, the court should have "the authority to "strike down" the offending legislation or issue a declarator of incompatibility."

*As the HRCS state, "This remedy ensures that all legislation passed by the Scottish Parliament must comply with human rights, and any provision found to be incompatible can be nullified or amended to align with the rights in the Bill. This approach upholds the non-negotiable foundation of human rights in law and reinforces the principle that no legislation should ignore or violate these fundamental rights."*

**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:

Shelter Scotland agree with the HRCS that timescales need to be specified in the Bill and given due priority. This should be commencement of no more than 6 months after Royal Assent; and the additional duty to comply no more than 2 years later. These are reasonable timescales that allow for development of guidance, public sector capacity, and Minimum Core Obligations, as well as ensuring the momentum for change continues – and that, most importantly, progress is made to realise people’s right to adequate housing as well as the other rights contained in the Bill.



### Question 39

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

Answer:

In short, we agree that MCOs should be established through a participatory process. As is stated in the consultation, this participatory process would need to take place in advance of the duty to comply on the MCOs coming into force. Given the scale of the task ahead in terms of developing MCOs for the ICESCR rights, it is paramount that a clear timescale is put in place for this process and their wider development, which we think should be that MCOs are determined within two years of the Bill being given royal assent.

Significant guidance will be needed on what a participatory process for defining MCOs looks like. Guidance should also include what should be taken into consideration when defining MCOs, including the driving principle of dignity, and aligning with General Comments and Committee information on ESCR rights, specifically the right to adequate housing.

Guidance should cover what is meant by rights being ‘immediately realisable’, given we have routine breaching of our current housing laws in both the private and public sector. This is not because they are unachievable per se, but because resource decisions have been made at a national level, and sometimes a local level, which prioritise different policies and services to the detriment of people’s realisation of housing rights. Despite this, we cannot have a situation where MCOs are set lower than people’s current housing rights, this would represent an unacceptable regression of rights. Yet until we have human rights budgeting in place and an honest discussion of resources available we would not be in a position to assess what is or is not ‘immediately realisable’ by duty bearers.

The participatory process itself should particularly include those at most risk of not having their rights realised. For example, it should encompass the perspectives of minoritised ethnic communities to ensure that housing policies are culturally sensitive, responsive to community needs, and developed in consultation with those directly affected. [Ahmad, S. (expected publication end of 2023) Realising the Right to Adequate Housing for Minority Ethnic Communities Experiencing Homelessness (Shelter Scotland)].

Given MCOs should set the ‘floor’ – and assuming progressive realisation is effective - MCOs should be subject to review through a participatory process every 10 years.

And finally, the participatory process should not be limited to rights holders but also to stakeholders including organisations like Shelter Scotland who can engage with knowledge of the current legal framework and where gaps are impacting on inherent dignity of a person or population.

## Question 40

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

The human rights scheme is a key tool for embedding a human rights approach in that it will enable monitoring and accountability and we agree that ministers should have a duty to publish a Human Rights Scheme.

Report should not only be on activities undertaken and policy, but on people's experiences of rights being realised, or where progress is still required. As in question 21, qualitative and quantitative data will be crucial here to understand the experience of particular groups most at risk of having their rights not realised, including women, some minoritised ethnic groups and disabled people. These groups are just some of those that should be included in the 'named groups' on the Parliamentary procedure outlining who should be consulted as part of this process. Where there are gaps, specific actions should be identified to target these including any required resources to be made available to enable duty bearers to deliver on their duties and therefore for rights holders rights to be realised.

Aside from the areas proposed, it would also be important for the Human Rights Scheme to report on plans to develop and review MCOs, and provision of rights advice and access to independent advocacy – including the funding of both advocacy and advice services relating to all the ICESCR rights.

This will also be an area where reporting on adoption of human rights budgeting will be important. Human rights budgeting is key to the success of this Bill. Incorporating the human right to adequate housing into Scots law must be matched with the resource required to make that a reality for everyone – by delivering social homes and ensuring local authorities have the resources to uphold that right. You cannot guarantee people's rights without funding the policies, institutions and systems that are required to make them a reality.

As Mukushi said in a paper looking at the RTAH under the Bill, *“an essential part of the monitoring of outcomes would be enabling human rights budget analysis to assess the government's progress under the commitment to use maximum available resources.”* [Mukushi, T. (2021) [Housing as a human right: realising the right to adequate housing in Scotland](#) (Shelter Scotland)]

The same paper goes on to outline what a human rights based approach to budgeting might look like:

*“The point of human rights budgeting is for the state, at the outset, to take human rights standards into account when allocating resources and to support transparent monitoring and accountability. Both budget design and scrutiny are crucial to enabling us to determine how human rights have been addressed in relation to resources. Beginning the process with human rights principles is necessary to achieve any outcome that makes human rights effective. Taking a human rights-based approach to budgeting can be described using the PANEL tool as follows:*

***Participation:*** *the public being meaningfully consulted on how the government's financial priorities should be organised. This brings forward the views of participants in public life who are often excluded from consideration such as parents in caring roles.*

**Accountability:** *constructing and displaying budgets in a transparent and accessible manner so that the public are able to interpret how the government has met its human rights obligations.*

**Non-discrimination:** *conducting assessments on the impact of policies on vulnerable groups (i.e. those identified as requiring particular legal protection such as children and bearers of protected characteristics) which should make reference to additional resources required to neutralise any negative impact on the groups.*

**Empowerment:** *clear information, proactively given to rights-holders which enables them to monitor, challenge and affirm the impact of government policies and the level to which the state is meeting its obligations to the maximum extent that its resources allow. Consistent data sharing allows stakeholders to track the progress being made to realise human rights goals. Monitoring at local, state and international level is made effective through the production of this data at a reasonable cost.*

**Legality:** *in order that the effects of rights are tangible and not illusory, human rights obligations must be complied with in a context where states are required by law to demonstrate this. Financial information is already required of government departments, local governments and contracted third parties. A human rights-based standard for producing financial information should be codified and enshrined in law.”*

Particularly important for this Bill is that a human rights-based standard for producing financial information should be codified and enshrined in law and the Bill should include this.

#### **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:

We agree with the proposals around the assessment and scrutiny of legislation introduced to the Scottish Parliament. In addition, we would add that as per the UNCRC Bill, Ministers should be required to carry out Human Rights Impact Assessments for any Bill or SI introduced to the Scottish Parliament.

## 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:

As referenced throughout our consultation response, clear and timely guidance is paramount to help with implementation and to build capacity across the public sector to ensure the rights in the Bill are delivered. As per previous government commitments, there should be statutory and non-statutory guidance, and it should be developed through consultation including consultation with rights holders.

The public sector will need to be appropriately resourced for capacity to be built.

## Question 43

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

Answer:

One of the biggest barriers we see in people being able to access advice, access their rights and receive the support they are entitled to is know that they possess these rights in the first place. *“Rights holders should have the information that they need about their rights and should know where to go to get further advice and that advice should be freely and accessibly available.”* [Mukushi, T. (2021) [Housing as a human right: realising the right to adequate housing in Scotland](#) (Shelter Scotland)]

Information and rights awareness cannot be taken on lightly and must be appropriately resourced. As well as government action, working with partners to reach particular groups will be essential, particularly groups whose rights are most at risk. *“Steps such as reduced funding to law centres and citizens advice bureaux are regressive measures in this regard. A study from Bath University found that for every £1 spent on Citizens Advice Bureaux, and other advice agencies, over £50 was retained over a five-year period.”* [Mukushi, T. (2021) [Housing as a human right: realising the right to adequate housing in Scotland](#) (Shelter Scotland)]

Rights awareness should be viewed in the broader lens of creating a human rights culture. *“the greatest benefit that an incorporated right to adequate housing could have in Scotland is the creation of a greater culture of human rights. Scotland already has relatively progressive housing rights but despite this, there are still frequent breaches of the law by public bodies. It is hoped that incorporation will generate more awareness for both the general public and for public bodies, of every person that presents as homeless as a rights holder and the public body, a duty bearer. With a greater culture of human rights we may see people being more willing to hold authorities to account, stand up for their rights and be more empowered.”* [George, J. (2022) [An analysis of the added value of the human right to adequate housing in Scots law](#) (Shelter Scotland)]

**Question 44**

What are your views on monitoring and reporting?

Answer:

See answers to question 22 and 40.

Importantly, reports shouldn't just include the activities public authorities have done or will do, but should report on the lived experience of rights and where there are gaps. It should take a holistic approach highlighting the impact of different policies and where a lack of progress in one area may result in further action required elsewhere. These reports should always be developed with consultation of rights holders, in particular those whose rights are most at risk.

## 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

Other - charitable organisation