

Response to the Scottish Government Consultation on a Human Rights Bill for Scotland

By email to: HumanRightsOffice@gov.scot

About Us

1. Consumer Scotland is the statutory body for consumers in Scotland. Established by the Consumer Scotland Act 2020, we are accountable to the Scottish Parliament. The Act provides a definition of consumers which includes individual consumers and small businesses that purchase, use or receive products or services.
2. Our purpose is to improve outcomes for current and future consumers and our strategic objectives are:
 - to enhance understanding and awareness of consumer issues by strengthening the evidence base
 - to serve the needs and aspirations of current and future consumers by inspiring and influencing the public, private and third sectors
 - to enable the active participation of consumers in a fairer economy by improving access to information and support.
3. Consumer Scotland welcomes the opportunity to participate in the consultation on the Human Rights Bill and would be happy to remain involved in other aspects of the consultation process, where relevant to the rights of consumers.

In advocating for the needs of consumers, Consumer Scotland uses the seven consumer principles of access, choice, safety, information, fairness, representation, and redress, in conjunction with the evidence base. This allows for comprehensive consideration of the provision of products and services from a consumer perspective, as well as consumer impact and consumer engagement.

Summary

4. Consumer Scotland broadly welcomes the proposals set out in the consultation on a Human Rights Bill for Scotland and the intention to create a legal framework to embed international human rights within domestic law and drive transformative, positive change for people - empowering them to claim their rights. We recognise the usefulness of incorporating human rights law directly into Scots law; and acknowledge that there is a balance to be struck between matters reserved to the UK Parliament and those devolved to the Scottish Parliament. We note that the proposals seek not to conflate these.
5. Human rights and consumer rights are interlinked and Consumer Scotland takes a particular interest in the consumer rights elements of the Bill. As Consumer Scotland is not a human rights organisation, our response is focussed around those areas that may impact on consumers in

Scotland, and on Consumer Scotland and other public bodies. Consumer Scotland welcomes the proposal to embed participation in decision-making, which aligns with our consumer principle of representation.

6. Consumer Scotland welcomes the inclusion of the right to a healthy environment in the proposals, building on the Good Food Nation (Scotland) Act 2022 to help protect the right to healthy and sustainable food. We particularly welcome the proposal to include access to “*safe and sufficient water*”. We note that, while Scottish Water has a duty to provide this to users of public water supplies, this excludes users of private water supplies.
7. Consumer Scotland acknowledges that these proposals may result in additional pressures on public sector duty bearers. In particular the reporting and monitoring duties can take up a significant amount of resources, especially for smaller bodies. As such, we would seek assurances that any new duties are designed to be implemented in a way which is consistent and coherent with other duties on public sector bodies, e.g. the Public Sector Equality Duty, Fairer Scotland Duty and the Consumer Duty. We also suggest ways in which the proposals can ensure a proportionate and meaningful approach is taken to implementation, reporting and monitoring.
8. Consumer Scotland welcomes the proposal to also apply the proposed duties in the Bill to private bodies acting under a contract or other arrangements with a public body, carrying out devolved public functions. We are mindful that this may lead to discrepancies in requirements between delivering devolved and reserved public services, as reserved public services will be outwith the scope of this Bill. We understand that consideration is currently being given to how private bodies can ensure compliance while navigating these complexities.

Background

9. The cost of living remains an ongoing issue affecting consumers in many ways. Recent research published by Which?ⁱ and the Centre for Progressive Policyⁱⁱ has shown that housing costs, food pricing and fuel poverty are the three key affordability issues facing consumers across Scotland, with the impact of these issues being particularly severe in rural, remote and island communities. These issues have not affected all households equally, with recent research by Consumer Scotland showing that that prices have risen more for lower income households than higher income households.ⁱⁱⁱ Consumer Scotland welcomes the proposal to ensure that duty bearers will have to actively consider the rights to housing and food in their delivery of services, and the accountability framework proposed.
10. Low financial resilience can be a key driver of consumer vulnerability, along with other factors such as adverse life events, health conditions and issues affecting capacity or capability.^{iv} Consumer vulnerability in turn, can create a risk of consumers experiencing detriment or harm. Such vulnerability can be temporary, sporadic or permanent and the circumstances encountered in everyday life can result in any person experiencing vulnerability.^v We therefore welcome the

Scottish Government's intention for human dignity to be integrated into the framework as a fundamental value which can be used in reading and interpreting the framework as a whole.

11. Following the pandemic, and subsequent financial pressures on consumers, we know that advice services are seeing increases in demand, are seeing more complex cases, and are receiving requests from a wider range of service users than before the cost of living crisis. Given the increased pressures on consumers and rising risks of vulnerability, we welcome the incorporation of human rights directly into Scots law. Measures such as those proposed should provide more robust protection for all consumers, including those in vulnerable circumstances.
12. We recognise that the proposed Bill will be introduced against a backdrop of wider public sector reform and an expansion of duties and requirements on public bodies to take human rights and consumer rights into account. This process of reform has been ongoing since the Christie Commission published its report on the future delivery of public services in 2011,^{vi} but also includes the Community Empowerment Act 2015, and duties including the Consumer Duty, for which Consumer Scotland is currently working to formulate guidance.

Right to a Healthy Environment

Legal Basis

13. Consumer Scotland generally welcomes the proposal to include the right to a healthy environment and agrees with the proposed basis for defining the environment, drawing on the definition used within the Aarhus Convention.^{vii}
14. Consumer Scotland notes that the Scottish Government understands the right to a healthy environment as having substantive as well as procedural aspects. Substantive aspects include clean air; safe and sufficient water; non-toxic environments (in which to live, work, study and play); healthy ecosystems and biodiversity; and safe climate. Procedural aspects include awareness-raising, promoting education and capacity building; access to information; public participation in decision-making; ensuring effective, affordable and timely remedies; and suitable policies, planning and action.
15. Assessing the consultation document against the requirements of the consumer principles, we recognise that the inclusion of procedural aspects will aid the necessary compliance with Article 9(4) of the Aarhus Convention to *"provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive"*. Such requirements will help ensure that duty bearers provide consumers with timely access to joined-up, meaningful, clear and accurate information on relevant topics such as health and sustainability. This should result in a framework that improves access to justice for all consumers, including those in vulnerable circumstances, and we welcome the specific requirement to take fairness and affordability issues into account.

Adequate Food

16. The right to food has been laid down in Article 25 of the Universal Declaration of Human Rights since its proclamation in 1948. In July 2022, the UN General Assembly passed a resolution “*recognising the right to a clean, healthy, sustainable environment as a human right*”,^{viii} providing a basis for the right to food that is adequate and the right to safe and sufficient water. However, both rights are also captured as social rights under the “*right to an adequate standard of living*” in Article 11 of the UN International Convention on Economic, Social and Cultural Rights (ICESCR).
17. The Scottish Government proposes to safeguard the right to water as a substantive aspect of the right to a healthy environment, as a means to better implement the rights to safe drinking water and water in terms of sanitation. The right to food is proposed to be implemented under the ICESCR rather than as a substantive aspect under the right to a healthy environment as the Scottish Government argues that “*the aspect of healthy and sustainable food can be better respected, protected and fulfilled*” by doing this.
18. We note that this is consistent with the policy decision include food as an ICESCR social right and with the Good Food Nation (Scotland) Act 2022, which commits the Scottish Government, local authorities and health boards to create strategies for sustainability of food supply and improvement of food quality.

Safe and Sufficient Drinking Water

19. We agree with the proposed approach but would note that there already exists in legislation, and regulations, statutory duties to provide safe and sufficient drinking water to people in Scotland served by the public water supply. Scotland has also committed to the Sustainable Development Goals, which includes a commitment to “ensure availability and sustainable management of water and sanitation for all (Goal 6)”.
20. Scotland has existing legislation and regulations, containing statutory duties to provide “*safe and sufficient*” drinking water to people in Scotland served by the public water supply. As per Section 6 of the Water (Scotland) Act 1980, Scottish Water has a statutory duty to supply “*wholesome*” water to all its domestic customers for a reasonable cost. The Public Water Supplies (S) Regulations 2014 define wholesome water. These regulations are enforced by the Drinking Water Quality Regulator (DWQR). As such, the creation of a substantive and procedural right in this Bill should complement these existing provisions.
21. However, and of note, a proportion of the Scottish population are serviced by private, rather than public, water supplies. Private water supply users are of specific concern in terms of the equal realisation of a right to “*safe and sufficient water*”, as there is currently no statutory duty on Scottish Water or any other body to provide safe and sufficient drinking water to those not on the mains network. As such, currently PWS users have sole responsibility for maintaining their

water supply at a level which is safe for consumption and of sufficient quantity. In the event that a right to 'safe and sufficient water' were to be recognised, there are questions regarding what actions are required to ensure that PWS users are not excluded from these protections.

22. There are an estimated 22,500 private water supplies (PWS) in Scotland. These drinking water supplies are not connected to the mains water network and can serve single households, tenanted properties, holiday lets, businesses or even small communities. It is estimated that over 180,000 people, 3% of the population, rely on PWS. They are more common in rural areas and in some regions will have 20-30% of the local population.
23. The Drinking Water Quality Regulator's (DWQR) 2021 annual report for PWSix, highlights that only 86%^x tested PWS, demonstrated compliance in terms of water quality compared to 99.92% compliance for public water supplies^{xi}. Of note is the fact that 16.2% of PWS samples taken for E.Coli failed. This is concerning. From a health perspective E.Coli shows evidence of faecal contamination which can be particularly harmful to human health. This data compares with a failure rate in the public water supply of 0.008% for E.Coli.
24. Many PWS are vulnerable to changing weather patterns (longer dry periods or more intense rainfall) which can quickly see small water supplies run dry or struggle to tackle pollutants being washed in from agriculture, industry or other sources. During water scarcity events that cause private supplies to run dry, users become wholly dependent upon emergency assistance from their local authority and Scottish Water. A potential solution such as connecting to the mains water network can be prohibitive due to distance from the mains or topography, which can make the option inaccessible due to cost.
25. Furthermore, Consumer Scotland's consumer-based research found that various types of land use in rural areas can negatively impact the quality of private water and the amount of water available for private water supplies. Land use can include forestry, wind turbines, agriculture and developments, all of which are capable of disrupting drinking water sources^{xii} and impacting those who rely upon them. This is partially because PWS in Scotland's rural communities are often small, surface water sources that are fragile and vulnerable to even small changes. If a PWS is a simple run-off from a burn it can be disrupted by, for example, building a new access road. Damage to, or the loss of water from a PWS, risks making these rural homes and businesses either uninhabitable or unviable.
26. Consumer Scotland has identified a further issue relating to concerns from tenants who are connected to a PWS. Tenants do not own their PWS and therefore have no control over its maintenance and ultimately the water quality. They can also have little awareness of their rights in relation to accessing safe and sufficient drinking water, and what to do if they have problems or concerns with the availability or quality of their water supply. It can be difficult for tenants to access water test results or risk assessments, and they can find requesting a water test difficult, thereby restricting their access to information relating to the quality of the water they are drinking.

27. Whilst Consumer Scotland welcomes the inclusion of access to “safe and sufficient water” in the Human Rights (Scotland) Bill for private water supply users, the procedural aspects outlined in this consultation will need to translate into tangible protection and remedies for PWS users in Scotland.

28. Consumer Scotland will shortly publish a report that explores PWS users’ needs in terms of accessing safe and sufficient water. For this right to become tangible for PWS users, we recommend that PWS users have greater access to:

- a centralised source of support and advice with access to accessible and affordable water supply management tools
- flexible funding sources
- affordable and timely remedies for PWS users wherever land use change disrupts a PWS.

29. As stated above, PWS are not covered by the statutory duty that applies to Scottish Water to ensure public customers have access to ‘wholesome’ water. There are Regulations that give Local Authorities the power to regulate PWS and maintain a register of PWS. However, there is no representative body with a statutory duty comparable to Scottish Water’s duty. As such, PWS users are wholly responsible for ensuring they have access to safe and sufficient drinking water.

Safe and sufficient Water in the Environment

30. This right in Scotland could be achieved through the River Basin Management Plan (RBMP). The Scottish Government with SEPA have established the RBMP framework to protect Scotland’s water environment. It contains the actions and objectives required including standards and targets. These are enforced by SEPA as part of its regulatory decision making.

31. Protecting Scotland’s raw water sources can help ensure abstractions for drinking water will require less treatment to remove contaminants. Consumer Scotland suggests that any right in the Bill, in relation to safe and sufficient water in the environment complements and enhances the policy and regulatory framework of the protection of Scotland’s water environment.

Duties and Implementation

Alignment of Proposed Duties with Other Existing Duties

32. Consumer Scotland notes that the Scottish Government will be subject to a Minimum Core Obligation for Economic, Social, and Cultural Rights and the Right to a Healthy Environment (MCO) to ensure the satisfaction of minimum essential levels of these rights. We support the proposal to recognise human dignity as a key threshold, allowing for clear interpretation by consumers as well as duty bearers, and which will assist in delivering these rights in practice.

33. We support the proposal to adopt a participatory approach for defining what falls within the minimum core of each right, which aligns with the consumer principle of participation. We

support continued work with the Lived Experience Board, to gain views from individuals and groups with lived experience of trying to access their human rights. Consumer Scotland would also be happy to participate in any stakeholder engagement, where this is useful.

34. It will be important to consider how the proposed new duties will fit with other existing duties on public bodies in Scotland. While the number and types of public bodies covered by specific duties vary according to the relevant legislation, many public bodies are already subject to other similar duties. These include the Fairer Scotland Duty, the Public Sector Equality Duty and the Islands Communities Duty. Most public bodies will also be subject to the forthcoming Consumer Duty under the Consumer Scotland Act 2020, which will require them to have regard, when making strategic decisions, to the impact of those decision on consumers in Scotland and the desirability of reducing harm to those consumers.
35. Some of these existing duties will require public bodies to consider issues which are closely related to human rights, and these may in fact overlap and intersect with the proposed new human rights duties. The new duties must therefore be viewed in the context of the existing framework of other duties on public authorities in Scotland, and the work which they are already required to do to comply with these.
36. Consumer Scotland has responsibility for issuing guidance to public authorities on how they can meet the Consumer Duty. Recent scoping research which we carried out into the duty identified a need to consider how best to integrate consideration of the duty with the other existing duties, together with any related impact assessments. In drafting the guidance, we will consider how these might be integrated more effectively, to save duplication of work for public bodies, particularly at a time when they are under considerable resource pressures.
37. While there may be practical limitations in terms of the extent to which impact assessments can effectively be integrated, this could help to ensure a more holistic assessment.^{xiii} We are aware, for example, that the Improvement Service has produced a Policy Development Framework,^{xiv} which provides guidance for local authorities. This aims to ensure that: 1) they take a clear and consistent approach to the development, implementation and management of policy, and 2) those developing policies are clear as to what they must take into consideration when developing or reviewing a policy. The framework refers to several of the current required impact assessments and sets out a suggested integrated assessment process. Some local authorities have also produced their own guidance on how to conduct an integrated impact assessment.^{xv}

Monitoring and Reporting

38. While a reporting duty will be a useful monitoring tool in ensuring that public bodies meet the duties, we agree that, as stated in the consultation paper, it will be important to align this with existing reporting duties. This should help to ensure that meeting this duty is less onerous for public bodies and allow them to take a proportionate and meaningful approach to reporting. This might include providing in legislation that public bodies can report on their compliance with

the duties as part of their annual report, as will be the case for the Consumer Duty. Providing a reporting template to public bodies, perhaps as part of any guidance on the duties, might assist them to comply with the reporting duty.

39. It is important that the new duties are focused on achieving meaningful outcomes, rather than on 'box-ticking' and reporting on actions and outputs. That said, some form of monitoring of compliance with the reporting duty will be important to ensure that both the new duties themselves, and the reporting duty, are being taken seriously. This could take the form of periodic checking of public bodies' annual reports, to check whether these include information which meets the duty.
40. A 2016 Scottish Government evaluation of the compliance and quality of biodiversity reports produced by public bodies might provide some useful pointers here.^{xvi} This evaluation found that fewer than half of bodies had produced a report, while most (56%) had not done so (or there was no evidence that they had done so). Reasons given for failing to produce a report included a lack of awareness of the need to report, a belief that the biodiversity duty was not relevant to them and general apathy towards reporting. This suggests that many public authorities were failing to comply with their statutory reporting duty, and also that there was low awareness of the reporting duty. The report recommended that the Scottish Government should: 1) issue reminders to public bodies before reports were due and 2) publish guidance on the reporting process, with examples of reports and activities from different types of public body.
41. Consumer Scotland recommends that further consideration is given to what any new proposed duties mean in practice and to what additional resource requirements this places on smaller organisations in particular.
42. Many of the existing duty reporting frameworks require organisations to attest in their annual report that they have met the requirements of the duty, without any specific measures. We would welcome careful consideration on how these requirements can be made proportionate but still robust enough to support organisations contributing to the development of an effective human rights framework that facilitates improved, human rights-based outcomes for consumers in Scotland.
43. This is part of a wider issue around multiple statutory requirements which are at risk of placing disproportionate administrative pressures on smaller duty bearers in particular. Careful consideration should be given to how public bodies can be enabled to work in partnership on this, and other statutory requirements, to simplify the process and ensure that the duties are implemented effectively and genuinely.
44. We welcome the proposal to apply an initial procedural duty as this will give duty bearers the opportunity to consider the duties and effective implementation. It can take a long time for strategic decisions to flow through into meaningful action and therefore, allowing duty bearers

time to get to grips with what this means in practice, would be welcome. We are aware that the Scottish Government is contemplating a pilot scheme and are supportive of this.

Access to Justice and Redress

45. Consumer Scotland generally welcomes the intent to improve access to justice by building on and strengthening the existing infrastructure of devolved public services, scrutiny bodies, independent complaints mechanisms, human rights bodies, and the courts, in line with the consumer principles of access and redress. Complaints processes can be difficult for consumers to navigate and we welcome the ability for the SPSO to be able to examine human rights aspects of complaints as part of their normal complaints handling function. We are of the view that adding a separate pathway for human rights complaints would unnecessarily overcomplicate the complaints system and work as a further deterrent to accessing rights, in particular for those in vulnerable circumstances.

46. We concur that remedies should be achieved in an accessible, affordable, timely, and effective manner. Strengthening the ability of public sector bodies to respond effectively to initial complaints, and ensuring easy access to advocacy and to the Scottish Public Services Ombudsman (SPSO) should be encouraged to help consumers resolve issues at the earliest possible opportunity and at the lowest possible financial cost. However, Consumer Scotland agrees that the interaction of these remedies with judicial review may require further thought and refinement as proposals are developed, to ensure that all available routes to access to justice can be accessed.

47. Consumer Scotland is aware that many consumers may be unaware of their options or underestimate their likelihood of obtaining redress. The UK Government commissioned Consumer Protection Study 2022^{xvii} analyses:

- the overall incidence, value, and impact on wellbeing of consumer detriment;
- the distribution of detriment across different sectors; different types of detriment;
- how the complaints/resolution process unfolds;
- which consumers are most 'vulnerable' to detriment;
- how detriment varies between the UK countries; and
- the impact of COVID-19 on detriment.

48. It identifies that common reasons for consumers not taking action when they experienced detriment were thinking the problem was not serious enough (22% of the unactioned incidents) or that they would be unsuccessful in resolving the problem (10%). While the provision of goods and services by public bodies is not covered by the study, we consider that consumers may have similar attitudes towards actioning detriment in relation to the provision of public services and goods.

49. In line with the principles of information, access, redress, and fairness, it is important to ensure all consumers are aware of what routes to redress are open to them. We support the proposals to increase this through a public awareness campaign and through other available channels. Improving consumer access to information and support is one of Consumer Scotland's key objectives. We would be happy to engage further with the Scottish Government and stakeholders to scope out what might be most helpful for consumers in this regard.
50. The consultation document recognises legal aid as an important tool to ensure that affordability is not a barrier to consumers accessing legal advice and representation. The Scottish Government intends to reform the legal aid system in Scotland in order to provide better access to justice and to place the user at the heart of the system. Consumer Scotland supports proposals to reform the legal aid regime and would welcome engagement in this issue as plans move forward.
51. Consumer Scotland also welcomes the proposals allowing the SPSO to initiate investigations, including on the basis of referrals by advocacy organisations. Improving the ability of organisations to share information will enable them to adopt a more cohesive approach, although such proposals will have to be drawn up with care to safeguard data protection rights. Investigating will allow the SPSO to look beyond individual cases, which can often be symptomatic of a wider issue. In addition, investigations can help lead to a much needed expansion of the evidence base in relation to exercising human rights in practice. In relation to the outcome of any such investigations, we would welcome clarification on whether the SPSO will be able to make non-binding recommendations, and/or what other options it will have in this regard.
52. Consumer Scotland supports the proposal that scrutiny bodies and the SPSO could assess relevant duty bearers' compliance with the Bill, and inform the Scottish Human Rights Commission and other relevant bodies of any concerning trends or other systemic human rights issues. Close contact and sharing of information will assist in allowing recognition of trends and symptoms and allow more proactive action to protect consumers from harm.
53. We welcome the proposal allowing the SPSO to receive oral complaints in a manner consistent with Ombudsmen across the UK, in line with the principles of access, fairness, and redress. Removing the limitations on how complaints are made is a way of increasing access to redress for consumers who are not confident putting complaints in writing, and of reducing digital exclusion of consumers who have no or limited internet access or skills. It may also help to alleviate pressure on consumer advocacy and advice bodies if those consumers who wish to complain orally can do so directly to the SPSO.
54. Consumer Scotland does not take a view on how advocacy services should operate in order to enhance the realisation of human rights. We consider that advocacy services should be appropriately engaged in any decision making regarding the design of services, and that note any

additional strategic or operational responsibilities may require to be matched with appropriate resources.

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- ⁱ [From Drained and Desperate to Affluent and Apathetic - Which? Policy and insight](#)
- ⁱⁱ [CPP | The cost of living crisis in Scotland, Wales and Northern... \(progressive-policy.net\)](#)
- ⁱⁱⁱ <https://consumer.scot/blogs/poorer-households-still-face-higher-inflation-but-the-gap-has-narrowed/>
- ^{iv} <https://www.fca.org.uk/data/financial-lives-2022-early-survey-insights-vulnerability-financial-resilience>
- ^v [literature-review-on-consumer-vulnerability.pdf](#)
- ^{vi} [Supporting documents - Christie Commission on the future delivery of public services - gov.scot \(www.gov.scot\)](#)
- ^{vii} [cep43e.pdf \(unece.org\)](#)
- ^{viii} [The human right to a clean, healthy and sustainable environment : \(un.org\)](#)
- ^{ix} [pws-annual-report-2021.pdf \(dwqr.scot\)](#)
- ^x [pws-annual-report-2021.pdf \(dwqr.scot\)](#)
- ^{xi} [annual-report-public-supplies-2021.pdf \(dwqr.scot\)](#)
- ^{xii} [CREW, Private Water Supplies and local economic impacts in Scotland; guidance-on-forestry-activities-near-pws-sept-2018.pdf \(confor.org.uk\)](#)
- ^{xiii} [Literature review of impact assessment in governments \(www.gov.scot\)](#)
- ^{xiv} <https://www.improvementservice.org.uk/products-and-services/consultancy-and-support/fairer-scotland-duty>
- ^{xv} See for example:
https://www.eastlothian.gov.uk/downloads/download/12542/integrated_impact_assessment_guidance;
<https://www.aberdeenshire.gov.uk/council-and-democracy/equalities/equality-impact-assessments/> Note: the assessments covered in this vary from one local authority to another
- ^{xvi} [Evaluation of the Compliance and Quality of Biodiversity Duty Reports 2015 \(www.gov.scot\)](#)
- ^{xvii} [Consumer protection study 2022: understanding the impacts and resolution of consumer problems \(publishing.service.gov.uk\)](#)