



A Human Rights Bill for Scotland

Consultation Response

October 2023

Introduction to Scottish Environment LINK

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 40 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

Its member bodies represent a wide community of environmental interest, sharing the common goal of contributing to a more sustainable society. LINK provides a forum for these organisations, enabling informed debate, assisting co-operation within the voluntary sector, and acting as a strong voice for the environment. Acting at local, national and international levels, LINK aims to ensure that the environmental community participates in the development of policy and legislation affecting Scotland.

LINK works mainly through groups of members working together on topics of mutual interest, exploring the issues and developing advocacy to promote sustainable development, respecting environmental limits. This consultation response was written by LINK's Governance Group.

Response

Part 5: Recognising the Right to a Healthy Environment

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

Agree.

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

Scottish Environment LINK supports the use of the UN Framework Principles on Human Rights and the Environment and the Aarhus Convention as frameworks for the Bill. We welcome the formulation of substantive aspects of the right to include clean air, safe climate, safe and sufficient water, non-toxic environments, and healthy biodiversity and ecosystems. LINK and our member ERCS have published a report outlining our views on the definitions, standards and enforcement mechanisms: <https://www.ercs.scot/wp-content/uploads/2023/07/The-Substantive-Right-to-a-Healthy-Environment-June-23-online.pdf>

The six substantive features should be both interdependent and in need of standalone protections, as recommended by the UN Special Rapporteur on Human Rights and the Environment.



The procedural element of the right should meet Aarhus requirements, including access to environmental information, public participation in environmental decision-making, access to justice and effective remedies. We welcome the Scottish Government's acknowledgment that they are currently in breach of Article 9(4) of the Aarhus Convention, and that Scotland requires a 'clear, transparent and consistent framework' to meet recommendations of the Aarhus Convention Compliance Committee (ACCC) by the deadline of 1 October 2024.

In September 2021, the governing institutions of the Aarhus Convention made their tenth consecutive finding that the UK is in breach of Article 9(4) of the Convention, which states that access to justice should be 'fair, equitable, timely, and not prohibitively expensive.' In October 2021, the Convention's Meeting of the Parties (MoP) adopted Decision VII/8s6 – requiring the UK government to submit an action plan to the ACCC, detailing how it will, 'as a matter of urgency' address the findings and recommendations of the Decision.

The Scottish Government must now demonstrate how it will implement the MoP's recommendations to achieve compliance with Article 9(4) by the deadline of 1 October 2024. Proposed reforms currently fall short on this ambition – see our Evaluation of Scotland's Action Plan (July 2022). The Government must now present a clear timetable and route map to implement necessary reforms, including an overhaul of court costs regime (replacing Protective Expenses Orders with Qualified One-way Cost Shifting), the removal of court fees from Sheriff courts, amendments to Regulation 15 of the Civil Legal Aid (Scotland) Regulations 2002, a review of retrospective planning permission, and the reform of procedures in Sheriff courts relating to litter.

LINK recognises that the Sustainable Development Goals (SDGs) should be incorporated into Scots Law by the Human Rights Bill. Human rights and the 2030 Agenda for Sustainable Development are inextricably linked. The 2030 Agenda is explicitly grounded in international human rights. The 17 SDGs "seek to realise the human rights of all". SDGs should be achieved across all three pillars: economic, social, and environmental.

In relation to the procedural rights, to be introduced by the Human Rights Bill, it should be noted that the issue of access to justice (as discussed above) is also addressed by the parallel Scottish Government [consultation](#) on environmental governance. LINK will be responding in detail to this consultation. Our response will highlight the lack of any clear timetable and route map to implement necessary reforms to ensure compliance with the Aarhus Convention (in relation to costs, but also in relation to substantive review). It will highlight that addressing both these matters would be considerably easier were serious consideration given to the establishment of an Environmental Court or Tribunal.

Our responses to this consultation and that on environmental governance should be read together - and thus it is clear that the weaknesses in the proposals for environmental governance risk seriously undermining the positive proposals in relation to a Human Right to a Healthy Environment by failing to deliver on the procedural aspects.

We would like to note for information that Wildlife and Countryside Link (WCL), Scottish Environment LINK's sister organisation representing eNGOs in England, has welcomed the Scottish



Government's commitment to implement the Right to a Healthy Environment in Scots Law. WCL has worked with Matrix Chambers, Client Earth, RSPB and Friends of the Earth to develop the Environmental Rights Bill, a draft piece of legislation which would implement the Right to a Healthy Environment in England and Wales. The draft Bill can be read in full [here](#), associated polling showing strong public support for implementing the Right to a Healthy Environment (including 72% of Scottish respondents) can be found [here](#).

WCL would be happy to share reflections on the drafting of the Bill with the Scottish Government and commend them for the leadership they have shown on implementing the Right to a Healthy Environment. Moreover, while the proposed Scottish Bill will impact only devolved matters and decision-making, a Bill to introduce this right via the UK Parliament could also extend it (or allow the Scottish Bill to apply) to reserved matters in Scotland. LINK has no preference but supports the introduction of an effective and enforceable Human Right to a Healthy Environment in both jurisdictions - but also in relation to reserved matters in Scotland.

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 International Covenant on Economic, Social and Cultural Rights (ICESCR), rather than inclusion as a substantive aspect of the right to a healthy environment?

Disagree

Please provide your reasons why:

We strongly disagree with the Scottish Government's proposed approach. While the ICESCR definition (and subsequent elaborations including through General Comment 12) includes consideration of both health and sustainability there has been a tendency – given the severe, persistent and widespread household food insecurity still affecting so many people across the world - to foreground the dimensions of availability and access.

Over the last five decades the damage caused by the global food system to nature, climate and health has become more acute, widespread and visible. Adverse environmental impacts across the food supply chain include biodiversity loss/land use change from intensive farming, impacts of overfishing and use of damaging fishing gear, impacts on water supplies, use of harmful pesticides and fertilisers, emissions from transportation, waste from packaging, and wasted food. There is therefore value in restating as part of the right to a healthy environment the right to healthy sustainable food. The right to food was previously excluded from the Good Food Nation Act, on the grounds that it would be incorporated in the Human Rights Bill. It now needs to be comprehensive.

The reason to incorporate the right to food as a standalone feature is similar to water – while it is recognised under ICESCR, it is also a substantive part of the right to a healthy environment, since sustainable food production is essential for the health of the wider environment. We believe it is important to provide a distinction between the economic/social right to food as it relates to nutrition, access/affordability, adequacy, and culture, and the right to healthy and sustainably produced food as a constituent part of broader environmental health.



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?

Agree

Please give us your views:

We agree with the need to include safe and sufficient water but believe this feature should also refer to the right to adequate sanitation given the widespread and persistent issues of sewage pollution in Scotland.

Spills of diluted but untreated sewage increase nutrient, organic matter, microplastic and chemical contaminant concentrations in water bodies. Sewage can also act as a source of persistent chemicals, which do not break down in the environment. As they continue to accumulate, they will eventually reach a threshold of harm. These inputs disturb natural ecosystem functions and reduce water quality. The breakdown of sewage organic matter will reduce dissolved oxygen levels, and this will severely impact aquatic plant and animal species biodiversity. Sanitary items flushed down toilets also litter riverbanks and beds and end up in coastal waters where they litter beaches. All these impacts affect the wildlife living in the water and can cause illness in water users such as anglers, kayakers and wild swimmers.

It is vital that the Scottish Government tackle sewage pollution in our freshwater habitats and coastal waters with better monitoring, reporting and progressive spill reduction targets. This is also to ensure people have the right to access safely managed drinking water services and to facilities permitting the safe disposal of human waste and maintaining hygienic conditions.

‘Safe and sufficient’ must be conceived of in broad terms, with the aim of restoring the ecosystem health of Scotland’s inland waterways, rivers and lochs, which also have downstream environmental impacts on coastal waters. It must address wastewater and pollution from sewage, agricultural discharge, and other sources, the impacts of climate change on water availability, and measures for enhanced water monitoring, testing, and enforcement against polluters.

We agree with the reasons provided for including the right to safe and sufficient water as distinct from its conception as a social right under ICESCR and believe there are similar reasons for including the right to healthy and sustainably produced food.

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

Yes

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



We need to see dedicated reforms with clear timelines to make the Right to a Healthy Environment fully enforceable. We welcome the proposal to incorporate the right to a healthy environment with a duty to comply for public bodies and private bodies delivering public functions, as outlined in Part 4 of the consultation.

LINK believes that the five environmental principles must be embedded when establishing the definitions and highest standards of the substantive features, to ensure policy coherence and coordination across all sectors. The principles are provided for by the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 and recommend that protecting the environment should be integrated into the making of policies, precaution, prevention, rectification at source, and the polluter should pay. For the procedural element to be fulfilled, rights must be enforceable in a court of law, with appropriate mechanisms in place to effectively hold public bodies and polluters to account. With regards to the procedural element, that this must ensure full compliance with Aarhus Conventions access to justice requirements, which include reform of legal aid (Regulation 15), reform of legal expenses and the court costs regime (replacement of Protective Expenses Orders with Qualified One-way Cost Shifting), and the establishment of a dedicated Scottish Environment Court with a comprehensive jurisdiction to increase access to justice, address the current fragmentation in routes to remedy, and develop judicial expertise to improve effectiveness and efficiency.

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