



**Consultation Response**

# **A Human Rights Bill for Scotland**

The Scottish Commission for  
People with Learning Disabilities  
September 2023



# Scottish Commission for People with Learning Disabilities

## A Human Rights Bill for Scotland: Consultation Response

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#### Introduction

Scotland is changing, and for people with learning disabilities, these changes could be significant in empowering and enabling them to live the lives they want and are entitled to. However, whilst Scotland no longer has a universal approach to confining people with learning disabilities in institutions, many people with learning disabilities still face significant barriers to realising their human rights<sup>1</sup>.

SCLD believes this situation remains largely unchallenged because of the invisibility of people with learning disabilities, the systematic dehumanisation they face and the failure of current equalities and human rights legislation to deliver real and lasting change for them. Furthermore, whilst the human rights infringements faced by people with learning disabilities existed long before the COVID 19 pandemic, they were exacerbated and heightened during the pandemic<sup>2</sup> and continue to be experienced at these heightened levels.

The inclusion of people with learning disabilities in the legal definition of *'mental disorder'* in the Mental Health (Care and Treatment) (Scotland) Act 2003 is central to their experience of dehumanisation<sup>3</sup>. It allows for people with learning disabilities to be detained within health settings purely on the basis of their disability. This practice is a legacy of anachronistic ideas of *'deviance'*. It has been allowed to continue in Scotland despite being incompatible with the Equality Act 2010 and Article 12 of the CRPD (Convention on the Rights of People with Disabilities).

Unjustly denying the liberty of people with learning disabilities has set the standard for the consistently poor treatment and experiences of people with learning disabilities in Scotland today. This includes violations of their right to life, barriers

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<sup>1</sup> [The State of Our Rights \(sclid.org.uk\)](https://www.sclid.org.uk)

<sup>2</sup> [The State of Our Rights \(sclid.org.uk\)](https://www.sclid.org.uk), page 28 - 31

<sup>3</sup> [SCLD-Response-to-SMHLR-FINAL-May-23.pdf](#)

to accessing justice, and the use of restrictive practices, as well as being denied the opportunity to make decisions for themselves. As a regressive approach to human rights at Westminster continues, Scotland can and must do things differently for people with learning disabilities who face some of the most severe human rights infringements of all our citizens<sup>4</sup>.

SCLD believes the Scottish Government's commitment to meaningfully incorporate the CRPD into Scottish law is the best opportunity to advance the human rights of people with learning disabilities. We therefore welcome the Scottish Government's commitment to develop this Bill and acknowledge the complex context this work is being undertaken in. However, SCLD believes that the CRPD must be viewed as the minimum core standards required by people with learning disabilities and other disabled people, to enjoy a full, safe, equal and loving life. The CRPD provides a base line not a gold standard.

SCLD believes only a maximalist approach to CRPD incorporation which deals with the CRPD on an equal footing to ICESCR, within the confines of the devolution settlement, will set these much-needed minimum standards into Scots law and meaningfully address the decades of systemic discrimination faced by people with learning disabilities and other disabled people. This approach must include a right to legal remedy.

Such an approach would be world leading and in line with the Scottish Government's intention to change the culture of Scotland to be a human rights respecting nation above all else. It would also allow for a robust Learning Disability, Autism and Neurodiversity Bill for Scotland to be developed, which should place new duties on public bodies<sup>5</sup>, the Scottish Government and national human rights institutions as well as existing and developing commissions. SCLD believes all of this is required if we are to truly respect, protect and fulfil the human rights of people with learning disabilities.

Given SCLD's focus on ensuring the CRPD is incorporated into domestic law, this submission response has been primarily limited to outlining why a maximalist

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<sup>4</sup> [International Principles and Guidelines on Access to Justice for Persons with Disabilities | OHCHR](#)

<sup>5</sup> [The State of Our Rights \(sclد.org.uk\), p 43 - 45](#)

approach to CRPD incorporation is necessary and how it is achievable within devolution.

To ensure SCLD's concerns around existing proposals for the new Human Rights Bill for Scotland are fully understood by the Scottish Government, the questions in the consultation have been grouped into themes relating to SCLD's key concerns. SCLD has then outlined a series of recommendations on how the Scottish Government can address the concerns outlined.

## **Concern 1: Substantive Rights of the UNCRPD not being realised by an Equalities Clause**

*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?*

*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?*

*Question 15: How do you think we should define the groups to be protected by the equality provision?*

- While SCLD is supportive of the rights under the International Covenant on Economic Social and Cultural Rights being incorporated into Scot's law and those being applied equally across all groups in line with the Equality Act (2010), we do not believe this delivers the commitment made by the Scottish Government to incorporate the CRPD into domestic law.
- SCLD is clear the Equality Act (2010) and related Public Sector Equality Duty have not appropriately served the needs of people with learning disabilities in Scotland. For example, a failure to acknowledge people with learning disabilities' unique experience and identity has led to a society-wide lack of disaggregated data to inform legislative and policy developments.
- SCLD is very concerned by the Scottish Government's position on re-classification of the CRPD as an 'equalities treaty' and its contention that its unique and substantive duties can be covered by incorporating ICESCR with an additional equality duty.

- SCLD believes that there are rights under the CRPD that can be incorporated into domestic law for people with learning disabilities without amending either the Human Rights Act 1998 or the Equality Act 2010, whilst also ensuring compliance with the Scotland Act 1998. Most significantly this includes the right to independent living (Article 19) - see next section.

## **Concern 2: The Scottish Government failing to meet its previous commitments to incorporate the CRPD**

*Question 4: What are your views on the proposed model of incorporation*

*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.*

*Question 20: What is your view on the proposed initial procedural duty intended to embed rights in decision-making?*

*Question 21: What is your view on the proposed duty to comply?*

- SCLD is not supportive of the proposed model of incorporation as it fails to meet the Scottish Government's previous commitments to fully incorporate the CRPD (and CEDAW and CERD) as stated in the previous programmes for Government, and as recommended by the National Task Force on Human Rights<sup>6</sup> and the final report 'If Not Now, When?'<sup>7</sup> of the Social Renewal Board and noted in the Scottish National Action Plan for Human Rights<sup>8</sup> (SNAP2).
- SCLD views the proposed model of incorporation as a significant backwards step from previous commitments to a Human Rights Bill for Scotland which took a maximalist approach to incorporation. SCLD's position is also supported by and supportive of many individual civic society organisations including Scotland's network of Disabled People's Organisations and Together Scotland<sup>9</sup>. SCLD does not believe the 'procedural duty' as outlined in relation to the incorporation of the CRPD will deliver with regard to compliance, accountability for the implementation of the Bill or result in the necessary changes to address the

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<sup>6</sup> [National Taskforce for Human Rights: leadership report - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/national-task-force-on-human-rights/leadership-report/pages/12.aspx)

<sup>7</sup> [If not now, when? - Social Renewal Advisory Board report: January 2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/if-not-now-when/report/pages/1.aspx)

<sup>8</sup> <https://www.snaprights.info/snap-2>

<sup>9</sup> [https://www.togetherscotland.org.uk/media/3448/hrb\\_member\\_resource\\_final.pdf](https://www.togetherscotland.org.uk/media/3448/hrb_member_resource_final.pdf)

many human rights infringements currently experienced by people with learning disabilities.

- SCLD fears that, without a clear duty to comply with substantive rights within the CRPD, the inclusion of people with learning disabilities and autism under the Mental Health Care and Treatment (Scotland) Act 2003 will remain unchallenged and this will allow for the continued detention of people with learning disabilities based solely on their disability<sup>10/11</sup>.
- SCLD believes that if the new Human Rights Bill does not establish a framework which addresses this issue it will have failed to make rights real for people with learning disabilities in Scotland.
- Throughout its involvement and engagement with the Human Rights Bill team, SCLD has been clear that rights included under the CRPD, which can be incorporated into Scottish law within the confines of devolution, should and must be, without the obfuscation of 'duty to consider'.
- SCLD believe this should include, but not be limited to, the rights to Independent Living and being Included in the Community, Equal Recognition before the Law, and Access to Justice.
- Furthermore, SCLD believes a maximalist approach to incorporation should also include the following CRPD rights: Liberty and Security of Person, Freedom from Torture or Cruel Inhuman or Degrading Treatment or Punishment and Freedom from Exploitation, Violence and Abuse as detailed in Article 8, Article 9, Article 14, Article 15, Article 16, Article 19, Article 21, Article 24, Article 25, Article 26, Article 28, Article 30 and Article 31<sup>12</sup>.
- Given the failure of the UK Government to engage with the findings of the joint National Human Rights Commission's recent report<sup>13</sup>, following the 2016 investigation into austerity, and the Scottish Commission for Human Rights' preceding statement<sup>14</sup> to the UNCRPD 29th Session regarding the follow-up review of the UN Committee's inquiry into the UK, it is now more important than ever that the Scottish Government actively demonstrates its commitment to realising the rights of all disabled people including people with learning disabilities.

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<sup>10</sup> <https://www.sclد.org.uk/smhlr-position-statement/>

<sup>11</sup> [CRPD/C/5: Guidelines on deinstitutionalization, including in emergencies \(2022\) | OHCHR](#)

<sup>12</sup> [Convention on the Rights of Persons with Disabilities | OHCHR](#)

<sup>13</sup> [ukim-submission-to-uncrpd.pdf \(scottishhumanrights.com\)](#)

<sup>14</sup> <https://www.scottishhumanrights.com/media/2478/shrc-statement-uncrpd-29th-session-280823-final.pdf>

- Further evidence of the urgent need for this proactive and inclusive approach is provided by the recent letter from Scotland's seven Disabled People's Organisations to the First Minister<sup>15</sup>.
- SCLD understands having a duty to comply with ICESCR is a positive step, but believes this needs to extend to the substantive and unique rights included within the CRPD and both treaties need to be treated on an equal basis. A duty to consider will not deliver the accountability and compliance required by people with learning disabilities.

SCLD facilitated three engagement sessions during the consultation period and engaged with over 70 people (people with learning disabilities, family and paid carers and representatives from supporter organisations). The above points were all supported by the people who attended these sessions.

### **Concern 3: Human rights issues facing marginalised groups being lost in a broad concept of dignity**

*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?*

*Question 2: What are your views on our proposal to allow for dignity to be a key threshold for defining the content of MCOs?*

- SCLD does not think the Scottish Government has made its proposals clear regarding dignity being considered by courts in interpreting the rights in the Bill.
- SCLD agrees that dignity is a core principle in ensuring the realisation of human rights and has long been aware of and committed to working in line with the principles of Freedom, Respect, Equality, Dignity and Autonomy. However, it remains unsure how this would be applied in practice within Scottish Courts.
- SCLD's understanding is that Minimum Core Obligations (MCOs) will only apply to ICESCR within the Scottish Government's current proposals. This is a significant concern. Furthermore, for SCLD, minimum core obligations may look different for different people and only to have them apply to ICESCR would create further

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<sup>15</sup> [DPO-collective-letter-FM-socials.pdf \(inclusionScotland.org\)](#)

potential inequities between the treaties within the scope of the Human Rights Bill.

- For example, a person with a learning disability detained in long stay hospital will need their CRPD rights incorporated before they would be able to realise what is considered the minimum core in relation to ICESCR.
- For SCLD there can be no measurable ‘dignity’ for disabled people in Scotland, including people with learning disabilities, until the CRPD is incorporated into domestic law.
- As stated in the introduction, SCLD believes that the CRPD must be viewed as the minimum core standards required by people with learning disabilities and other disabled people, to enjoy a full, safe, equal and loving life. The CRPD provides a base line, not a gold standard.
- Central to ensuring human dignity is listening to rights holders when they share their views and experiences. Furthermore, it is critical we act on what they tell us. People with learning disabilities and their supporters do not believe this has been their experience when engaging in the development of the Human Rights Bill. This is expanded on in more detail under Concern 4.

#### **Concern 4: Participation of people with learning disabilities not being given equitable consideration**

*Question 13: How can we best embed participation in the framework of the Bill?*

*Question 39: What are your views on our proposals to establish MCOs through a participatory process?*

- SCLD has been facilitating participation in the development of the Human Rights Bill since April 2022 through the facilitation of the Learning Disability Lived Experience Board<sup>16</sup>. SCLD has welcomed the opportunity to support people with learning disabilities to make their voices heard and have found this work deeply rewarding and encouraging. However, SCLD would question whether the views of SCLD’s Human Rights Lived Experience Board (or indeed the other two Lived Experience Boards commissioned by the Scottish Government and delivered by Together Scotland and the Scottish Human Rights Consortium) have been given equitable weight to other stakeholders throughout this process.

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<sup>16</sup> [Learning Disability Lived Experience Board - SCLD](#)



- SCLD’s Human Rights Lived Experience Board had clear expectations on what the Bill might be able to do for people with learning disabilities<sup>17</sup> and submitted two reports to the Scottish Government. Both reports were clear that the expectation was that the UNCRPD should be incorporated within devolved competence<sup>18/19</sup>
- The Members of the SCLD Lived Experience Board had ambitious goals regarding what the Bill might achieve for them. They were clear that a new Human Rights Bill for Scotland must:
  - Promote access to independent living and inclusion,
  - Recognise the rights of people with learning disabilities as an invisible minority within a minority,
  - Ensure strong legal powers to support people with learning disabilities to access justice when their human rights are not realised,
  - Monitor progress on rights issues,
  - Include empowering language, and,
  - Help to separate learning disability from mental health legislation.

## **Opportunity 1: Building human rights respecting and accountable services in Scotland**

*Question 19: What is your view on who the duties in the Bill should apply to?*

*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?*

*Question 26: What is your view on the proposed duty to publish a Human Rights Scheme?*

*Question 40: What are your views on our proposals for a Human Rights Scheme?*

*Question 44: What are your views on monitoring and reporting?*

- SCLD is clear all duties under the Human Rights Bill must apply to all public bodies and private companies contracted to carry out public functions. SCLD believes several duties in the Bill, particularly those around data collection, will need to apply uniformly to the service/function rather than the provider.
- . A less comprehensive approach could easily lead to a ‘postcode lottery’ approach to human rights fulfilment in Scotland.

<sup>17</sup> [How can the New Human Rights Bill for Scotland help people with Learning Disabilities? \(sclid.org.uk\)](https://www.sclid.org.uk/how-can-the-new-human-rights-bill-for-scotland-help-people-with-learning-disabilities/)

<sup>18</sup> [Human-Rights-Lived-Experience-Board-Report-1.pdf \(sclid.org.uk\)](https://www.sclid.org.uk/human-rights-lived-experience-board-report-1.pdf)

<sup>19</sup> [06813-Solving-the-Human-Rights-Puzzle-report\\_WEB.pdf \(sclid.org.uk\)](https://www.sclid.org.uk/06813-Solving-the-Human-Rights-Puzzle-report_WEB.pdf)

- SCLD is supportive of a Human Rights Scheme. As part of this, we would expect to see a duty on public bodies and those providing services to capture disaggregated data in line with Article 31 of the CRPD.
- SCLD suggests working with people with learning disabilities, other disabled people and other communities intended to be impacted positively by the new legislation to help design the Human Rights Scheme.
- The Scottish Government will need to be specific about the unique elements of the Human Rights Scheme as compared to SNAP2 to ensure there is no duplication. Progress on delivering the recommendations of SNAP 2 (published in March 2023) has been worryingly slow and SCLD is concerned that the significant work done to review and refresh SNAP2 will be lost in favour of the development of a Human Rights Scheme.
- SCLD believes that new duties and responsibilities will also need to be given to the SHRC and Children's Commissioner to ensure accountability, robust monitoring and routes to justice. In addition, consideration may be needed for focused Commissions or Commissioners for specialist minority population issues, which could include Learning Disability.
- One other related issue would be the inclusion of a 'Sunset Clause' in the proposals for this Bill. SCLD believes such a clause is required as it is critical that we assess the impact the Bill has over time (say for the first five years), review progress made and any emerging gaps, then legislate to update and amend the Bill. This approach is also essential for any Human Rights based legislation and it clearly reflects the United Nations underpinning requirement for the progressive realisation of human rights.

## **Opportunity 2: Embedding a right to justice and an accessible right to remedy for all in Scotland**

*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?*

*Question 28: What are your views on our proposals in relation to front-line complaints handling mechanisms of public bodies?*

*Question 29: What are your views in relation to our proposed changes to the Scottish Public Services Ombudsman's remit?*

- This Bill should include access for all to independent advocacy and access to these services should be included in the Human Rights Scheme. This must include increased levels of specially trained advocates who are able to provide support and advice to individuals.
- This should include focused advocacy provision to support the decision-making of people with learning disabilities<sup>20</sup> (which could be legislated for under the developing Learning Disability Autism and Neurodiversity).
- Specialist advocacy provision for people with learning disabilities should be regulated with national standards in place to reduce local area variations in both the scale and quality of provision.
- There should be a step-change in the provision of human rights advice in Scotland, including co-production and resourcing of a National Hub for Human Rights Education, Information and Advice.
- In compliance with Article 9 of CRPD, the Bill should provide for accessible information and communications so that advice and information services are designed to be equally available.
- Advice and advocacy services must be accessible to people with learning disabilities and consideration should be given to how this can be achieved. To help do this people with learning disabilities should be involved in the design of services.

SCLD also supports the Human Rights Consortium Scotland's<sup>21</sup> advice that the following points require further consideration:

### **Right to Remedy**

The Bill should include a 'right to remedy' that is effective, affordable, accessible to all, timely and person-centred. The Human Rights Scheme should include reporting on improvements to make justice accessible, affordable, timely, effective, and person-centred.

### **Justice on Systemic Issues**

The consultation gives scant consideration to how the system will drive change on systemic issues. This includes considering the place of public interest litigation in

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<sup>20</sup> [Supported decision-making \(peoplefirstscotland.org\)](http://peoplefirstscotland.org)

<sup>21</sup> [Layout 1 \(hrcscotland.org\)](http://hrcscotland.org)

the framework and addressing barriers to this. This is largely missing from the table showing routes to justice on page 36 of the consultation. An individual should not have to complain to Scottish Public Services Ombudsman before going to court.

### **Accessible Justice**

As outlined above, a National hub of Human Rights Education, Advice and Information should be resourced and co-produced. This should provide information about rights where and when you need it, both at national and community-based levels. Inclusive and accessible communications should be built in across the justice system.

The Scottish Government need to examine and consider improvements to people's experience of going to court, both for individuals and groups, and both taking a case and intervening. Court rules should be revised to ensure that the system works clearly and effectively for rightsholders. This should include, for example, consideration of appropriately skilled and trained independent advocates providing support in court.

### **Affordable Justice**

Under international human rights law, any remedy must be affordable, and under the Aarhus Convention<sup>22</sup>, environmental justice must 'not be prohibitively expensive'. The current consultation briefly mentions Legal Aid but does not include affordability in any of the questions.

The Human Rights Bill must include measures to make justice affordable. This should include removing court fees for all equality and human rights cases. In addition, it should introduce Qualified One-Way Cost Shifting (QOCS). Under QOCS, if an individual or group lose a case, they are not required to pay the defendant's legal costs, except in specific circumstances (for example if the claim is found to be fraudulent).

### **Timely Justice**

Currently in Scotland there is a 3-month time limit to take judicial review (unless exceptional circumstances). The statute of limitations of cases under the Human Rights Act 1998 is one year, but this also allows for this time period to be extended

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<sup>22</sup> [Introduction | UNECE](#)

if the court considers it to be 'equitable having regard to all the circumstances'. The UNCRC Bill allows cases to be taken up to one year after a child's 18th birthday, particularly out of recognition of the difficulty that children can face in accessing justice before then.

This Bill should take a similar approach of allowing cases to be taken up to one year but also allow the courts to extend this time period if they consider this to be equitable.

### **Opportunity 3: Supporting existing Human Rights Defenders and developing new Rights Defenders**

*Question 30: What are your views on our proposals in relation to scrutiny bodies?*

*Question 31: What are your views on additional powers for the Scottish Human Rights Commission?*

*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?*

*Question 43: How can the Scottish Government and partners provide effective information and raise awareness of the rights for rights-holders?*

- In principle, SCLD agrees with scrutiny bodies having human rights added to their remit. Indeed, SCLD would argue that this is essential and urgent. However, further consideration is required to ensure the capacity of these bodies to deliver their functions in line with human rights requirements and especially with regard to the rights of people with learning disabilities.
- SCLD believes that Scotland's National Human Rights Institutions (NHRIs) currently do not have the powers or resources that are needed to hold all public bodies to account with regard to human rights. This will be a significant undertaking and will require potentially significant additional resource.<sup>23</sup>

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<sup>23</sup> The Paris Principles set out the responsibilities and competence of NHRIs. [Principles relating to the Status of National Institutions \(The Paris Principles\) | OHCHR](#)

- The Scottish Human Rights Commission (SHRC)'s General Mandate should be expanded and should include the participation of people whose rights are most at risk.
- The SHRC should be given a range of new powers.
- The SHRC's new powers must be matched by increased and sufficient resources to use these powers fully.
- SCLD agrees that the Children and Young People's Commissioner for Scotland (CYPCS) should be given the same or similar powers under this Bill as the SHRC.
- As part of the development of the Learning Disability, Autism and Neurodiversity (LDAN) Bill, ongoing consideration must be given to establishing a commission/er with a focus on the human rights of people with learning disabilities as a new independent body or within an existing Commission, for example the SHRC.
- Critical to ensuring the new Human Rights Bill for Scotland works for people with learning disabilities is ensuring that existing Scottish legislation, which is not compliant with the UNCRPD, is amended to ensure compliance. Therefore, if the Scottish Government incorporate elements of the CRPD with a duty to comply, SCLD would agree with the Scottish Government's proposal about enhancing the assessment and scrutiny of legislation to ensure compliance.
- Furthermore, statements of compatibility should include a requirement to demonstrate that consultation with people whose rights are at most at risk, including people with learning disabilities and other disabled people, has been undertaken to assess a Bill's compatibility with human rights (including the CRPD).
- As a priority, this approach should involve amending the Mental Health Care and Treatment (Scotland) Act 2003 to ensure compliance with the CRPD.
- The approach to scrutiny of wider Scottish legislation should mirror the requirements outlined in the UNCRC Bill; Ministers should be required to carry out Human Rights Impact Assessments which take into account the substantive rights of the CRPD for any Bill introduced to the Scottish Parliament.
- SCLD believes the Scottish Parliament should also engage with people whose rights are at most at risk, including people with learning disabilities, in determining any enhancements to their legislative scrutiny around human rights compliance.

- SCLD believes developing the capacity of human rights defenders<sup>24</sup> in line with the United Nations' Declaration on Human Rights Defenders is of the utmost importance to ensure the effective implementation of the Bill and effective information sharing and awareness raising with rights holders. This is a little-known concept and role in Scotland, and far more must be done to ensure that information on both is shared with individuals.
- To achieve this the Scottish Government and other third-sector funders need to value organisations developing the capacity of human rights defenders across Scotland and invest in them appropriately. SCLD has worked on this issue for the last four years and has developed considerable expertise and understanding of the requirements for people with learning disabilities. This work is resource intensive and requires significant investment of time and money, but incredible resources are possible, for example the Human Rights Town App<sup>25</sup>.
- SCLD understands that the Human Rights Town App is the only one of its kind in the world, was co-designed by people with learning disabilities and has been downloaded over twenty-six thousand times since its launch in August 2023.
- As previously mentioned, the Human Rights Learning Disability Lived Experience Board is another excellent example of what is possible – through this work SCLD has recruited and developed twenty-five individual human rights defenders who have gone on to contribute to the work of the organisation and the human rights agenda in Scotland in many other ways.
- SCLD would also recommend investment in the SHRC and its partners to develop a national network of human rights defenders, who in turn are empowered to raise concerns, share information and promote awareness.
- Consideration should also be given to co-producing and funding a National Network for Human Rights Information, Education, Legal Services and Advice. Critical to these developments will be developing a sustainable independent funding body to enable the third sector to develop this work.

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<sup>24</sup> <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/declaration-human-rights-defenders>

<sup>25</sup> <https://www.sclد.org.uk/human-rights-town-app/>

## Conclusions

In conclusion, SCLD would like to restate and highlight the following points:

- SCLD welcomes a new Human Rights Bill for Scotland and believes it has the potential to make Scotland world leading in its approach to realising the human rights of its citizens.
- Everyone must have equal access to their rights. For this reason, SCLD is fully supportive of a general equalities clause.
- SCLD believes that CRPD compliance is of the utmost importance and that the proposed Bill must fully incorporate the substantive CRPD rights, which we believe must be possible within devolved competence.
- SCLD is clear that the CRPD has substantive rights for disabled people, including people with learning disabilities which go over and above the rights contained in ICESCR
- These substantive rights must be incorporated in the new Bill.
- SCLD notes that the Equality Act 2010 has not served people with learning disabilities in Scotland well. Indeed, there is a lack of data to show that the Act has had any positive effect on the lives of people with learning disabilities in Scotland.
- Meanwhile, people with learning disabilities in Scotland are clear that they are not having their human rights respected, protected or fulfilled.
- If the Human Rights Bill is to deliver the much-needed different futures for people with learning disabilities, there must be a duty to comply with the substantive rights detailed in the CRPD.
- This duty to comply must be applied to all public bodies and private companies delivering public functions, where this is achievable within the confines of the devolution agreement.
- To ensure the protection of human rights for everyone in Scotland, different pieces of legislation must be cohesive and complement each other. To this end, the new Human Rights Bill must incorporate the CRPD to set a minimum core standard in Scotland where all legislation supports the realisation of the human rights of disabled people, including people with learning disabilities.



- This must include, among other things, removing learning disability from the definition of ‘mental disorder’ in the Mental Health (care and Treatment) (Scotland) Act 2003.
- The Human Rights Framework set out in the proposed Bill should allow for new legislation which provides additional support for people with learning disabilities to ensure their rights are upheld under the CRPD.

The proposed Human Rights Bill for Scotland provides an incredible opportunity to change both the culture and legislative framework for the country in ways which could provide a much needed different future for people with learning disabilities and other disabled people. As outlined in the introduction, SCLD believes such a change is long overdue and urgently required. Unfortunately, SCLD does not believe that the current model of incorporation as proposed will deliver this better future, and would therefore ask that the Scottish Government reconsider its proposals and seek advice on how the substantive rights detailed in the CRPD could be incorporated into Scot’s law in line with the devolution settlement.



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