



**Glasgow Disability Alliance**  
Confident Connected Contributing

# **Response to the Scottish Government's 'A Human Rights Bill for Scotland' Consultation**

**October 2023**



## **Glasgow Disability Alliance**

### **Response to the Scottish Government's "A Human Rights Bill for Scotland: Consultation"**

**October 2023**

#### **About our organisation**

Glasgow Disability Alliance is a disabled people's organisation (DPO) controlled by our 5500+ disabled members. GDA is the largest groundswell of disabled members in Europe and a leading and celebrated example of a grassroots community of identity driving improvements to disabled people lives and social change. Our work is built on foundations of individual and collective community empowerment and is based on peer support, and developing and drawing on disabled people's own strengths by:

- Building individual capacity through holistic programmes including learning & development, wellbeing, digital coaching and connections, support to navigate Social Care and welfare rights information, advice and representation.
- Amplifying diverse voices & perspectives of disabled people, supporting them to articulate and shared lived experience and to participate in dialogue, deliberation and collective advocacy which challenges inequality and exclusion.
- Collaborating for change with local and national government, communities and third sector, sharing insights and evidence to shape policy and co-design more accessible services and solutions to poverty, inequality & exclusion.

Over the last 3 and a half years, GDA has transformed our delivery model to respond to the urgent and pressing needs of disabled people, including delivering vital food and prescriptions to over 2800+ disabled people at the height of the pandemic. Programmes and supports were moved online and by phone including learning and development, collective voice activities, Rights Now and our Future Visions for Social

Care project. New responses were simultaneously designed alongside disabled people in response to emergent needs and priorities including our Wellbeing, Digital and Peer Support learning and activities. We have adapted to the challenging and changing environment and are now delivering all Programmes and supports by telephone, online, in person and/ or hybrid.

Our Vision is a world where disabled people can participate and have our voices heard, on a full and equal basis, in all aspects of our lives, communities and wider society, with our human rights upheld and with choices equal to others.

Our Mission is to promote and support Equality, Human Rights and Social Justice for disabled people by building the confidence and connections of disabled people, to enable their vital contributions and active participation in their own lives, in decisions which affect them and in creating a fairer more equal society.

## **General comments**

GDA supports the response and comments of the HRCS in their response and provides further and specific commentary and suggestions concerning disabled people.

We strongly support the incorporation of all of our international human rights treaties, in particular the UNCRPD, into Scots Law. Building a framework of strong rights, duties and accountability, with adequate and meaningful access to justice, is a vital step to stop the decimation of disabled people's human rights that has been called a "human catastrophe" by the UN itself.

We welcome the long-awaited consultation on the Bill as a step towards human rights law in Scotland and following through on the commitment to enshrine UNCRPD into Scots Law, made in the last parliamentary session.

As outlined below, while we welcome many of the proposals within the bill, we have concerns about the limits within the current proposals to protect disabled people's human rights. In particular, **the model of incorporation needs to place a stronger duty to comply on as many rights of possible within the UNCRPD**. At present, the lack of regard or legal duty placed on articles within special treaties such as the

UNCRPD, UNCERD or UNCEDAW is incredibly disappointing for GDA members and disabled people in Scotland.

The model of incorporation must place a stronger duty to comply on as many rights as possible, within devolution limits. GDA members have emphasised that the duty to comply must be applied to standalone rights within the UNCRPD, where it is within devolution limits. In particular, Article 19, The Right to Independent Living, must be included within the new legislation with a legal duty to comply. This is vital to prevent further disabled people having their human rights consistently broken and violated.

This response is the result of a large GDA members' hybrid event, held in September 2023, bringing together 120+ disabled people online and in person, aged 20 to 90, as well as our intersectional LGBTQ+ and BAME networks, to discuss the proposals for a Human Rights Bill in Scotland. In total, 150+ disabled people were involved.

This response also draws on GDA's significant experience of dialogue with disabled people over two decades, including members representing the views and experiences of younger disabled people, BAME disabled people and LGBTQ+ disabled people.

## **GDA response to each formal consultation 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?**

While GDA members welcome the proposal to allow for dignity to be considered by courts in interpreting the rights in the Human Rights Bill, in principle, we have serious practical concerns about how the definition of 'dignity' is decided and the extent to which this will be used or could be misinterpreted, potentially harmfully, on a case by case basis.

Indeed, GDA members have concerns that without the involvement of collective voice organisations that represent communities that have had suffered continual human rights breaches, historically and currently, like Disabled People's Organisations, in creating a legal definition of dignity, it risks losing its intended meaning and impact.



*“We need disabled people’s voices at the table to decide what dignity is. It’s too subjective – dignity for one person will not mean the same thing for another.”*

*“Dignity is the right to choice. It is inherently personal. It’s the right to choose how you want to live your life and want to be treated – and to be able to challenge that, with recourse to justice”.*

*“Disabled people often do not have dignity. We are not treated with dignity, and we are not supported to live dignified lives – poor social care, being left without showers and going to the toilet. How can we trust another public body to judge fairly what dignity is when this is where we are treated?”*

Taking into consideration the continual disregard and decimation of disabled people’s rights in Scotland, and the lack of consequences or justice in response to these, GDA are concerned that leaving “dignity” open to interpretation purely by legal courts, leaves too much leeway to escape recourse to justice.

Moreover, GDA members were clear that judges should not just have the *option* of using dignity but should be *required* to use dignity as a threshold to measure human rights breaches.

*“Judges have different life experiences and perspectives, and more often than not may not be disabled people themselves. How can we trust them to “interpret” OUR dignity without a robust legal definition, which disabled people are involved in creating, holding them to account?”*

*“Ultimately, dignity is a person deciding for themselves. It has to be more than the bare minimum – it has to be the treatment we are entitled to – the respect and freedom of choice that non-disabled people for granted.”*

*“Dignity is about having a sense of self-worth. It’s about feeling valued by others – including those providing support to you. It’s about having personal choices over how that support is delivered – so it also involves a sense of control.”*

**In order for dignity to be a robust and meaningful measure to prevent the further decimation of disabled people’s rights in Scotland, it must be defined in law and co-designed with communities that are denied dignity and human rights on a daily basis.** This must include disabled people, including those with additional protected characteristics.



## **2. What are your views on our proposal to allow for dignity to be a key threshold for defining the content of minimum core obligation (MCOs)?**

GDA members welcome the proposal to allow for dignity to be a key threshold for defining the content of MCOs – if dignity is legally defined in law and co-designed with communities that are denied dignity and human rights on a daily basis, as discussed above including disabled people who disproportionately use services).

Moreover, GDA members welcome the introduction of MCOs to mitigate the overwhelming disregard of disabled people's human rights and proposals to prevent people's "inherent dignity being violated". In the context of austerity, the aftermath of Covid-19 and cuts to vital services, such as social care, leaving many disabled people without support to eat, wash and go to the toilet, it is clear that our basic needs are not being met.

*"Dignity has become a buzzword, the latest thing for everyone to tick the box and then ignore. How can we have trust in a legal definition of something that most of us simply can't access every day in relation to our most basic needs?"*

*"In the context of austerity, cuts, Covid-19 and now cost of living, the budget constraints are used as an excuse to dehumanise and deprioritise disabled people and we feel invisible. MCOs are welcome in offering a floor beneath which no-one should fall but enforceable rights around dignity and clarity are needed."*

GDA members, were clear that without adequate further funding and resources, particularly in public services like social care, there is a danger that even MCOs will not be able to be realised.

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

GDA fully supports the Scottish Government's approach to include international law, materials and mechanisms within the proposed interpretative provision of the Human Rights Bills.

*"The UNCRPD being incorporated into Scots Law would be transformational for disabled people. Anything that supports this to become a reality is a good thing. But all rights in the Treaty must be included and that is possible as so many of these are devolved."*

### **4. What are your views on the proposed model of incorporation?**

We support the incorporation of ICESCR, CEDAW, CRPD and the right to healthy environment into Scots Law, and the proposal for all four treaties to be reproduced in the Bill, eliminating any text related to areas reserved for the UK Parliament.

However, GDA members were extremely concerned to see the lack of legal duty and accountability attached to special treaties, such as the UNCRPD. Whilst we know that the Scottish Government cannot legislate on anything that would conflict with the Equality Act (2010) or fall under reserved responsibility, several items of the UNCRPD are devolved matters and are not related to "discrimination" but failures of a devolved administration to provide services that uphold human rights. For example, the right to education, the right to accessible healthcare and the right to accessible housing, are articles within the UNCRPD which fall under devolved responsibility of the Scottish Parliament.

*"There simply isn't enough accessible housing in Scotland and the way accessible social housing is allocated fails to meet our needs. House-builders seem to do the minimum they can get away with too. If we don't have somewhere to live that meets*

*our needs, how can we get a job, contribute to our communities or take part in family life?"*

*"GDA's Mental Health research showed how badly we are treated in relation to mental health services and how inaccessible much of healthcare is for disabled people. Where are our human rights there? The majority of GPs/Health centres don't have hoists or accessible*

*examination tables, and many don't even have accessible toilets or parking."*

Indeed, the model of incorporation must place a stronger duty to comply on as many rights as possible, within devolution limits. GDA members have emphasised that a strict duty to comply must be applied to standalone rights within the UNCRPD, where it is within devolution limits, for example Article 19, The Right to Independent Living. This vital to prevent further disabled people from having their human rights consistently denied and violated.

In the context of disabled people's human rights being completely breached, by local authorities, public services and the Scottish Government itself, there needs to be an inclusion of as many rights as possible within the bill, in the UNCRPD and other special treaties, with a duty to comply.

For example, cuts to Glasgow City Council's social care budget of over £21m has left hundreds of disabled people in the city without vital support to eat, wash or go to the toilet. Even before these cuts, we know that in Glasgow alone, at least 1884 social care packages were cut at the outset of lockdown, with some not fully reinstated and some not at all. The basic human rights of disabled people to have an education, to have an accessible home, to live independently are being vehemently denied in Glasgow with no consequence. Any new Human Rights Bill in Scotland must bring significant improvements to the protection and realisation of disabled people's rights, namely by putting a duty to comply on all substantive rights within the UNCRPD, within devolution limits.

We support the HRCS call for the Scottish Government to publish a paper outlining which rights fall within devolved or reserved competence for their approach. Transparency, accountability and openness is required in this process to instil confidence and assurance that this Bill will be effective in protecting disabled people's rights, within devolved limits.

*"We need the Scottish Government to be upfront and clear where their responsibilities lie, so they can be held to account, and stop hiding behind Westminster when things go wrong that that Scotland has control over."*

Ultimately the new Human Rights Act should lead to:



- Rights-based decision-making by public bodies
- No one left behind or ignored
- Remedy and justice, and holding government to account
- Building a human rights culture

## 5. Are there any rights in the equality treaties which you think should be treated differently?

The proposed model of incorporation's treatment of all special treaties as the same "equality treaties" is reductive and neglects the unique rights in the UNCRPD. Indeed, the UNCRPD contains significant and substantive rights for disabled people that are not contained in other human rights treaties like ICESCR or within the Equality Act- because they are concerned with human rights, as yet unprotected.

GDA members were shocked and deeply concerned to see the blanket policy to not apply a duty to comply across special treaties – when disabled peoples' rights in particular are not realised or upheld in Scotland and there are abundant examples of frequent breaches.

*"Our lives are not dignified. Our right to independent living is dependent on budgets, taken away at a moment's notice by cutting social care, day services, mental health services. I pay and get in debt for social care that barely gets me showered in their 15-minute slots".*

*"I'm stuck in my bed all day because I'm waiting on an accessible house and a better social care package. I can't get down the stairs or get outside, my whole life is in bed. This is it."*

*"Twice I've had to give up my college course due to lack of support to attend and participate. In this day and age that is shocking. No-one will take responsibility to help me access my right to education."*

*"So the UK Government says disabled people need x to be above the poverty line and award me DLA – now PIP. But then the Local Authority take the care component away for social care charges and my mobility goes towards my car. Surely this take me beneath the poverty line and now I can't afford to put my heating on or put petrol in my car"*

Whilst we fully understand and acknowledge the complexity of legislative decision-making around devolved competencies, there needs to be a commitment to go as far as possible within devolution limits to advance

the rights of disabled people and put a legal duty to comply on as many articles of the UNCRPD as possible. Anything less is not a serious effort to deliver and uphold disabled people's human rights and falls short of initial ambitions and Taskforce recommendations.

*“Housing, social care and education are all devolved responsibilities that are failing on upholding disabled people's rights in Scotland. More protections in Scots Law are needed to stop this continual erosion of rights.”*

Ultimately the Bill must incorporate all the rights in the UNCRPD to the fullest extent possible within devolution, and as strongly as possible, including placing a 'duty to comply' on the special protection treaties is a significant departure from full incorporation of these treaties. We accept that there are complex interactions with the equal opportunities reservation but consider that the consultation does not give sufficient assurance that the approach suggested is maximalist within devolution. Rights which are included in UNCRPD and which must be named with duty to comply include:

- Equality and non-discrimination including the requirement to make “reasonable accommodation (Article 5)
- Right to Accessibility (Article 9)
- Participation of disabled children (Article 7(3))
- Right to Life (Article 10)
- Rights in ‘Situations of risk and humanitarian emergencies’ (Article 11)
- Right to equal recognition before the law (Article 12)
- Right to Access to Justice (Article 13)
- Liberty and security of the person. (Article 14)
- Freedom from torture or cruel, inhuman or degrading treatment or punishment (Article 15)
- Freedom from exploitation (Article 16)
- The right to respect for physical and mental integrity (Article 17).
- Right to live independently and being included in the community (Article 19)
- Right to personal mobility (Article 20)
- Right to education (Article 24)
- Right to health (Article 25)



- Right to habilitation and rehabilitation e.g. health, education, employment and social services (Article 26)
- Right to work and employment (Article 27)
- Right to adequate standard of living and social protection (Article 28)
- Right to participate in political and public life (Article 29)
- Right to Participation in cultural life, recreation, leisure and sport (Article 30)

It is critical that these must be named for disabled people to be able to claim them because disabled people's rights are violated every day in every way across the Board with no redress and no apology. It is a matter of fact, "The money is just not there" seems to be a reasonable excuse in the minds of service providers and this is just not accepted or legally robust. However disabled people and our organisations have no real way to challenge these violations. It is therefore essential that the Bill includes a duty to **comply** on these missing CRPD rights, in the same way as this applies to ICESCR and the right to a healthy environment. Otherwise, the Scottish Government will not be carrying out its commitment to implement the Human Rights Taskforce's recommendations, nor will it deliver human rights for disabled people.

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

GDA supports the Human Rights Consortium Scotland's response on the proposals for the right to a healthy environment.

## **7. If you disagree, please explain why.**

N/A

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

GDA supports the Human Rights Consortium Scotland's response to this question.

We welcome both the substantive and procedural elements of the proposal. However, GDA members feel strongly that unintended consequences of some of the policies around the enactment of these elements have to be considered as we already experience negative impacts of environmental policies.

*“I totally support the intention behind measures in place to reduce traffic and improve air quality in the city. However, the removal of all parking, pedestrianisation and cycling infrastructure has made getting around virtually impossible. There has been little consideration of our needs, we are not involved and consultation processes are inaccessible to us.”*

*“How are we supposed to get to work, to socialise or get to the shops when whole areas of the city are closed to us? They can’t even consider us when the work is being done – this morning, every dropped kerb was blocked by ‘diversion’ signs when I was trying to get to my work meeting.”*

*“Some disabled people rely on plastic straws, and many of us need medication and medical products that are full of single use plastics – it's not our fault that we can't play our part and we shouldn't be demonised for this.”*

**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?**

GDA supports the Human Rights Consortium Scotland’s response to this question. We saw no better demonstration of disabled people’s right to food being violated as when the pandemic hit. Some disabled people were in receipt of support due to being officially deemed as “shielding” but others were not and had no access to food. Because they were not “shielders” they could not get delivery slots with supermarkets. And those who were “shielders” were not always able to access food which they could use or manage because their social care and other informal supports had been cut. During this period, GDA delivered food to 2800+ disabled people who had no access to supplies. This included tins and

packets of food but also fresh supplies of fruit and veg which were hard to come by at that time.

Disabled people continue to have problems in terms of affordability and access to food at this time and often this is directly connected to lack of social care as well as food poverty.

*“When you don’t get social care support to shop for groceries and assist you to make dinners from scratch, you rely on ready meals. It’s not what I want, and I know that it’s bad for the environment, and not healthy but I don’t have a choice.”*

**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?**

GDA supports the Human Rights Consortium Scotland’s response to this question that supports a need to include safe and sufficient water including the right to adequate sanitation.

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

GDA supports the Human Rights Consortium Scotland’s response to this 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?**

GDA supports the Human Rights Consortium Scotland’s response on the proposals on how the Scottish Government can best signal that the Human Rights Act forms a core pillar of human rights law in Scotland. This includes embedding Taskforce recommendations that these rights should be restated in this new bill so that it includes all of our human rights in one place. The Human Rights Act 1998 duties and rights should be fully included in implementation of this Bill, including being part of guidance, public body training and capacity building, and information and awareness raising.

Furthermore, resourcing inclusive and accessible public information and capacity building would underline the Government's commitment to ensuring all citizens of Scotland are able to understand and access their rights and remedies when rights are violated.

### **13. How can we best embed participation in the framework of the Bill?**

GDA supports the Human Rights Consortium Scotland's response about embedding participation in the framework of the Bill and has some additional comments to add.

Incorporating participation into the framework of the proposed Human Rights Bill for Scotland is vital to ensure accountability and safeguarding of the rights of individuals and groups who are most at risk, including disabled people.

Indeed, participation is a key component of the implementation of special protection treaties, such as the UNCRPD, and should be a core requirement at every part of a Scottish human rights framework. This includes:

Participation should be explicitly defined and designated as a core principle within the purpose clause of the bill.

In Glasgow's Disability Workstream's [Transforming Participation report](#)\* 'participation' is defined as "the active and direct involvement by disabled people in the planning, delivery and evaluation of services and interventions". This means empowerment of disabled people on the one hand, and the benefit/obligation for services of gaining access to disabled peoples' expertise on the other. These are compatible with long-established Independent Living, community empowerment and citizenship principles.

There are three layers of participation: 'micro-level' (participation at the individual level), 'macro-level' (participation in systems, services, and policymaking) and 'meso-level' (the collective empowerment of disabled people, notably through DPOs, alongside the empowerment of the public service workforce).

The meso-level is the superglue that enables disabled people to equally participate at the micro-level and macro-levels. The



findings highlight that equal participation means disabled people always being included from the start of any given activity or process.”

In addition to this, participation is something which has benefits, in and of itself- an intrinsic worth: it is also about the sense of satisfaction, personal growth and contribution which people experience as a result of the activity. It is not just about being “mined” for lived experience data to shape policies and co-design services- it is much more than this for those participating. This can also, at times apply to officials who often report a sense of personal growth and fulfilment from collaborating with people and communities. So, ideally, participation should be a core principle within the purpose clause.

The Human Rights Scheme should include a requirement for Scottish Ministers to consult with individuals and groups whose rights are most at risk – particularly representative groups whose rights are protected by special treaties (such as disabled people and our organisations (DPOs), BAME led organisations, etc).

Individuals and groups whose rights are most at risk should be engaged in defining Minimum Core Obligations - particularly representative groups whose rights are protected by special treaties (such as disabled people, disabled people’s organisations, (DPOs), BAME led organisations, etc).

Mirroring the UNCRC Bill, courts should be mandated to consider the views and perspectives of complainants when determining remedies.

Capacity building for public bodies should include effective approaches to participation of people whose rights are most at risk to build disability understanding, insights and competence. This should include utilising The National Standards for Community Engagement, rolling out mandatory Disability Equality Training and broader Human Rights Training to support equalities groups.

#### **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?**

GDA members agree with the proposed approach to including an equality provision in the bill. Disabled people face considerable



discrimination and exclusion across all areas of life and as described above, this includes in relation to fundamental human rights. A specific disability equality provision would be vital in levelling the playing field and ensuring systems, structures and processes are in place to deliver human rights for disabled people in Scotland.

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

GDA members believe that disabled people will be protected by incorporation of UNCRPD and related duty to comply as already set out. GDA members are marginalised in various ways and therefore experience intersectional barriers and related oppressions and this applies to disabled BAME people, disabled LGBTQIA people and disabled people of colour. We are ambitious that the Bill should offer sufficient protection for the rights of these people which are not fully protected in the equality provision as proposed.

We urge the Scottish Government to offer more meaningful protection of rights to people of colour, LGBTQ+ people and older people – including disabled people who also have these protected characteristics- are named within the non-discrimination aspect of the equality provision, to ensure adequate and explicit recognition in a Scottish Human Rights framework of the specific barriers and breaches of human rights they face. We appreciate the complex interaction of this part of the Bill with the reserved area of equal opportunities, but urge the Scottish Government to go as far as possible to protect rights within devolution limits.

**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?**

Disagree.



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

As stated above, GDA members felt that specific recognition of people of colour, LGBTQ+ and older people, named within the non-discrimination aspect of the equality provision, would have a greater impact of cementing these groups in the Scottish Human Rights framework.

GDA supports the HRCS call for a requirement for Scottish Ministers to public guidance regarding the interpretation of “other status” – specifying the criteria and evidence public bodies must apply when considering other groups that may be at risk of human rights violations.

*“I hate when we’re described as ‘other’ - to be described as ‘other’ means to not exist, to be different and excluded from mainstream society. If we’re not named, then we’re not considered and easily forgotten and ignored.”*

**18. Do you think the Bill Framework needs to do anything additionally for LGBTI or older people?**

See above.

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

GDA members were clear that the duties outlined in the Bill should apply to as many public bodies as possible within devolved competence – in particular local authorities, NHS, HSCPs, schools, universities and colleges.

*“All these services that are under the Scottish Government’s authority – they need to start taking our rights seriously and take their public duties seriously.”*

*“There needs to be a duty to comply on all of our rights in the UNCRPD, on Glasgow City Council including private companies delivering public services. Right now, our rights are not being enforced or upheld – everyone needs to be held accountable to make this happen”.*

*“There should be duties on businesses and private companies too as many are involved in delivering care and support and services to disabled people so they need duty to comply too”.*

GDA members were clear that more stringent duties, with enforceable rights, must be applied to local authorities to stop Glasgow City Council’s decimation of disabled people’s human rights in Glasgow. This disregard for disabled people’s rights and local authorities’ duties can be exemplified by the recent budget cuts to social care in Glasgow of over £21m. These cuts to vital services were passed in March of 2023, agreed to by councillors, with an amendment acknowledging that passing these cuts would result in a failure of social work to meet their public duties. Decision making at local and national levels too often lacks an accountability around human rights, where disabled people are able to challenge decisions that will have a direct and devastating impact on their right to live independently.

We acknowledge that duties in the Bill are limited in that they can only be applied to public or private bodies, within devolved competence. As such, GDA members were clear that there needs to be a simultaneous incorporation of international human rights at a UK level to prevent inconsistencies or any conflict.

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

GDA members strongly supported and agreed with proposals to include an initial procedural duty in the bill to embed human rights considerations into decision making processes. As the HRCS response highlights, “public bodies require time to adapt and enhance their capacity on human rights, and this duty facilitates this transition effectively”.

Particularly in the case of Glasgow City Council, GDA members are aware of the extent to which there is a lack of human rights or disability competence, resulting in decisions and processes actively harming disabled people and their rights. A duty requiring them to think about human rights when they are making decisions, setting their priorities and delivering their services would be so helpful because without this- they will simply not do this due to pressures and competing demands and

compliances. GDA members were clear that a great deal of work, in addition to adequate resources and legal duties, is required to create the culture and conditions that will make the required change possible for disabled people in Glasgow and Scotland.

*“How much human rights I get is decided by Glasgow’s financial envelope”.*

*“There is no sense of humanity about decisions about how resources are allocated- “take it or leave it” is the attitude along with “you should be grateful”. They are in the trenches and can’t think about human rights”*

*“A Health and Social Care Partnership rep told me ‘We’d love to deliver human rights for disabled people but that’s just not possible’. If that’s their starting point, what chance have we got?”*

Even the latest cuts to budgets- highlighted by the IJB itself as endangering human rights and affecting ability to deliver statutory duties- as passed and is being implemented and this was evidenced in their own papers at March 2023,

*“The IJB has a statutory duty to deliver a balanced budget within the funding allocations provided by Partner Bodies. To achieve this, decisions are required which will result in a number of services being reduced. It is recognised that this comes with a risk in relation to Partner Bodies being able to meet their statutory obligations. There are no other options available to the IJB given the funding available and the pressures being faced.”*

GDA supports the HRCS proposal that the procedural duty should be the duty to have duty regard, particularly given that the duty to have due regard is already an established principle in the Public Sector Equality Duty and the Fairer Scotland Duty. As HRCS state, “...the duty to have due regard is the strongest, clearest and well-understood procedural duty”.

It is vital that this new Human Rights Bill for Scotland is fully understood by stakeholders and right-holders, in order for it to be enforced in any meaningful way that creates the change that is so overdue for disabled people’s rights in Scotland.

Moreover, GDA members were concerned that the procedural duty, in its proposed form, would just be a ‘tick box’ exercise or would leave too much ‘wiggle room’ to avoid the action required to uphold rights.

As such, the duty to have due regard must be placed on the appropriate public bodies and private actors and we agree with the HRCS's proposals on timescales.

## **21. What is your view on the proposed duty to comply?**

While we are in agreement with the proposals to apply a duty to comply with the rights on all public bodies and relevant private entities, GDA members were extremely concerned about the proposal to not apply this duty to standalone, substantive rights within the UNCRPD. Disabled people do not have access to these rights and we therefore must see these fully embedded with enforcement and accountability where this does not happen.

As outlined above in our response to the model of incorporation of the Bill, GDA members know the extent to which disabled people's rights are denied and decimated daily in Scotland. As such, GDA supports a maximalist approach to placing a duty to comply on all rights, particularly within the UNCRPD, within devolved competence. This is required to even begin to tackle what has been described as a "human catastrophe" for disabled people in Scotland, with many trapped in their bedrooms due to a lack of accessible housing, left in their own waste without adequate social care or going without food in order to afford charging vital equipment.

Many of the standalone rights within the UNCRPD fall within devolved competence, such as the right to education, right to accessible healthcare and the right to housing. In particular, the right to independent living is a vital right that is being vehemently denied for disabled people across Scotland, the UK and the world that must be protected with a duty to comply.

*"Too often, lack of resources is used as an excuse to deny us our dignity. To deny us our basic independence – we need something to hold them to account to stop them from getting away with it again and again".*

*"Thoughtlessness is the enemy of independent living – no one ever thinks about us or our rights".*

*“If my rights meant something, if I had a right to independent living, I wouldn’t have a carer getting me up at 11 and putting me back to bed at 4pm”.*

*“If the UNCRPD had a proper duty comply, if I knew I could challenge breaches to my rights, I wouldn’t be a constant battle”.*

GDA agrees with HRCS that the duty to comply should also accompany the duty to have due regard, rather than replace it.

**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?**

Yes. GDA members were clear that public authorities should be required to regularly report on the progress of implementing and meeting the duties set out in the Human Rights Bill – including actions taken, expected timescales and what actions they are planning to take.

Furthermore, they should be required to report on where they are not meeting the duties as set out in the Bill, and any resultant mitigations and/or action plans.

These should be made publicly available and rigorously monitored by an independent group or collective such as the HRCS, with the involvement of interest groups such as DPOs, BAME organisations and LGBTQ+ organisations.

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

The proposed duty to report must be aligned with existing public authorities’ reporting obligations to ensure consistency and reflect the extent to which human rights are implemented across departments. Instead of duplicating a reporting process, the proposed duty to report should strengthen existing accountability and ensure human rights are adequately considered in reporting processes.

We support the HRCS call for the Scottish Government to consult with individuals and groups whose rights are at most risk, including disabled people and our representative organisations, when developing guidance

on reporting requirements. Resources to make this inclusive and accessible should be made available and ringfenced for this purpose.

Public bodies should report on both the activities they have done or will do and also the lived experience of rights and where there are gaps. Disabled people who routinely have rights violated should shape what is reported on and contribute to deciding what is measured.

**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 minimum core obligations (MCOs) and progressive realisation?**

GDA supports the HRCS response to this question.

**25. What are your views on the right to a healthy environment falling under the same duties as economic, social and cultural rights?**

GDA supports the HRCS response to this question.

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

GDA members support the proposed duty for Scottish Ministers to publish a Human rights scheme regularly to report on their actions and progress concerning the requirements outlined in relation to rights outlined in the Bill. In particular, GDA supports the encouragement of cross-cabinet competence and accountability for the protection of human rights in Scotland – too often this is restricted to an ‘equalities’ brief or is treated as an afterthought, when the impact is interrelated and intersectional.

GDA supports the Human Rights scheme as a framework for tracking and reporting on the Scottish Government’s efforts to fulfil its obligations under the bill. However, timescales must be agreed within legislation to make this meaningful. GDA support an annual publication of a Human Rights scheme by Scottish Ministers to hold them to account.

## **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?**

GDA supports HRCS response to this question.

GDA members added that for disabled people, disabled people's organisations (DPOs) offer a safe, accessible, peer-support and disabled people led space to access advocacy, advice or information. Advocacy is not something which stands alone- people need to build knowledge and capacity to learn about rights and to understand them – this involves finding out about the in the first place!

*“Knowing your rights is fundamental before you can claim them and I have found out so much at GDA about my rights”*

*“People don't understand what we face every day – they can't understand. At GDA, we all know and understand the barriers disabled people face and we know how to try and tackle them”.*

*“How can someone tell us [disabled people] we have rights and how to access them? They have no idea how far our basic rights are from reality at this point”.*

Many GDA members called for a process similar to the Hate Crime third-party reporting process, where individuals can go to an independent third-party like GDA and get specialist advice, support and information about a potential human rights breach. This needs to be an organisation they trust and identify with and which can meet their access and support needs. For GDA members, this would be GDA rather than a 'mainstream' organisation. GDA - as a community of identity- creates a space for collective advocacy whereby people come together, sharing experience of barriers and also solutions. Mutual support, reciprocity and empowerment are key features at GDA and other organisations taking the same kind of community development, grassroots led approaches which seeks to advocate for and influence change and decisions which affect people.

*“Local availability is not the same as accessibility. We need information, support and advocacy to be delivered in ways that meet our needs. Many local organisations just don't have the knowledge, expertise or resources to do this.”*

Information, advice and advocacy supports/ services would require dedicated resources to ensure delivery of appropriate and inclusive services to support rights holders realise their rights under the Bill.

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

GDA supports the HRCS response to this question.

In order to ensure complaints handling around human rights is fit for purpose and has real impact, a significant review and overhaul of existing complaint handling structures by public bodies must take place. Disabled people who are subject to rights violations should be involved in coproducing new models of complaints handling.

*“In Glasgow City Council, I don’t even see the point in complaining when I’m treated badly anymore. If I’m left without a shower or washing myself for days or people don’t turn up on time – you know no one’s going to listen. It never goes anywhere”.*

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

GDA supports the HRCS response to this question.

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

GDA supports the HRCS response to this question.

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

GDA supports the HRCS response to this question as currently powers are too limited and our national human rights institutions currently do not have the powers or resources that are needed to hold public authorities to account on human rights. GDA believes the SHRC has potential to do so much more e.g. (from HRCS response):

- Giving advice to individuals.



- Taking an investigation into particular rights issues.
- Holding an inquiry into only one public body.
- Monitoring and scrutinise public body reports on implementation of rights in the Bill (see Q23 for more on public body reporting).
- Compelling information from public bodies.

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

GDA supports the HRCS response to this question.

**33. What are your views on our proposed approach to ‘standing’ under the Human Rights Bill?**

GDA supports the HRCS response to this question.

**34. What should the approach be to assessing ‘reasonableness’ under the Human Rights Bill?**

GDA supports the HRCS response to this question and has particular concerns about the loophole of “reasonableness” after both the DDA and the Equality Act. Our experience of the ‘Wednesbury test’ when applied, has resulted in us having no confidence in the application of this concept as decisions that no rights violation had occurred even where this seems grotesquely unreasonable – have been upheld.

Routinely disabled people report having no choices, no sense worth, being treated ‘like a farmyard animal’, having dignity and rights eroded and experiencing inhumane treatment in relation to how support is delivered.

Similarly, the ‘proportionality test’ – the test applied in the Human Rights Act that restrictions of a right by a public body must be a ‘proportionate means of achieving a legitimate aim,’ have led to extremely problematic – and we would argue rights violating decisions and impacts.

The Government should therefore consider a much higher threshold and people who experience violations of rights in the Bill must be able to

access better rights protecting justice and accountability through the courts.

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

GDA members were clear that existing judicial remedies are insufficient in delivering effective remedies for rights-holders. There is a need for more comprehensive and flexible remedies, tailored to suit each individuals' circumstances and wishes, to ensure justice for all rights-holders.

*“Justice means different things to different people. We should be able to define what justice means to us when our rights are taken away”.*

**36. If you do not agree that existing judicial remedies are sufficient in delivering effective remedy for rightsholders, what additional remedies would help to do this?**

GDA supports the HRCS response to this question and welcomes extending the remedies available to bring justice for different people and on different rights, including structural interdicts. As with HRCS we urge the Scot Gov to mirror the UNCRC Bill, with courts being required to give the person taking the rights case, an opportunity to have a say in what remedies are granted.

Consideration should also be given to the level of compensation that is available as a rights remedy, ensuring that this is commensurate with the seriousness of rights violations.

**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?**

We agree with HRCS response in that there should be no legislation which incompatible with rights in the Bill.

Courts should be able to 'strike down' laws or issue declarators of incompatibility for any part of Scottish Parliament law that is not compatible with rights in the Bill.

**38. What are your views on our proposals for bringing the legislation into force?**

In the context of the consistent decimation and disregard for disabled people's basic human rights, which should already be being enforced as international human rights that are already established, the implementation of these rights by public bodies must be enforced immediately.

In order to assist with the swift implementation of rights, GDA members were clear that timescales must be specified within the bill to bring legislation into force.

GDA supports calls for a legislative commitment to commencing the rights in the bill within six months of receiving Royal Assent and the additional duty to comply no more than two years later.

As HRCS state, "these timeframes allow for the development of guidance, the building of public sector capacity, and the establishment of Minimum Core Obligations, ensuring a smooth and effective transition to full implementation of the Bill".

**39. What are your views on our proposals to establish minimum core obligations (MCOs) through a participatory process?**

GDA strongly support proposals to establish minimum core obligations through a participatory process, working with groups whose rights are most at risk.

The involvement of disabled people and their representative organisations (DPO) in this process is crucial to ensure the change needed to stop the catastrophic disregard for our rights.

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

See above question 26.

**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?**

GDA support the HRCS response to this 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?**

GDA support the HRCS response to this question.

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

GDA members raised consistently throughout discussions that information around our rights are not accessible – information on what human rights we all have is difficult to find, understand, and navigate. Furthermore, discussions around human rights law can often be complex and academic in language. Specifically, for disabled people, there is a real lack of information and everyday examples of what human rights mean to us – for example the Right to Independent Living.

Moreover, for many disabled people human rights are not tangible and have not been enforced for decades – particularly in the context of knock on effects of austerity, Brexit, Covid-19 and now the cost of living crisis during which disabled people have felt their very rights to life have been undermined with pressure to comply with DNRs and the Assisted Dying Bill once more back on the table.

There is a massive knowledge gap about rights and a sense that human rights are high-level, vague, legal concepts without grounding in day to day life. Disabled people simply see no evidence of these being upheld and there is a lack of sufficient care law due to barriers to accessing justice.

As such, GDA members were clear that ‘awareness’ without stronger judicial processes, enforceable remedies and strong duties to comply on the UNCRPD, will just enable the conditions for further decimation and disregard for disabled people’s rights. And this is where we currently are

and have been for some time with increasing violations being justified by the public purse.

In addition to information about the rights themselves, there is a lack of accessible information about the justice system more widely. When discussing proposed remedies to justice, many members were not clear what a judicial review was or how it worked, how law shapes justice in practice and the role of courts in the process. GDA members were clear that simple information about human rights and the justice system, without jargon, acronyms or academic language is key to strengthen rights-holders knowledge.

*“Talk to us, listen to us, use simple language, tell us straight. Don’t sugar coat, tell us the truth about how far our rights can actually protect us and what more needs to be done”.*

*“Resource organisations like GDA who know our needs and understand participation for disabled people to tell us and support us around our rights”.*

GDA supports the HRCS call to work with groups of people whose rights are most at risk, including disabled people, to co-produce the development of a National Network for Human Rights Information, Education, Legal Services and Advice.

As the HRCS state, “This Network should provide information that is accessible, in a wide range of different mediums and formats, with an inclusive communications approach. It should be available nationally but importantly should also operate at a community level. Not limited to this, it should include digital information and aim to ensure that information, education, and advice are available when and where people need it, including the point at which migrants first arrive in Scotland”.

#### **44. What are your views on monitoring and reporting?**

Monitoring and reporting are vital to ensure transparency and accountability when enforcing the actions within the bill. This accountability must extend to and include groups of people whose rights are most at risk, including disabled people and their organisations, to ensure our rights are not further deprioritised.



Many GDA members spoke about feeling invisible in our discussions, that their voice is often ignored or not heard when standing up for their rights, with no justice to be had or consequences seen.

As such, the involvement of disabled people's organisations in the monitoring of the implementation of the Bill is vital.

GDA further support the HRCS response to this question, particularly highlighting that the monitoring of the implementation of this Bill is closely tied to, if not dependent on, the monitoring of budgets.

Indeed, GDA members consistently raised in discussions around rights that their human rights, particularly in social care and housing, are contingent upon the budgets set by local authorities and national government. As such, human rights budgeting, as well as an intersectional disability budgeting, must be a core part of the implementation and monitoring of this bill – to ensure budget decisions are taken in a way that upholds the legal responsibilities laid out in the Bill of all public bodies.