

Right to Food (Scotland) Bill

Introduction

A proposal for a Bill to incorporate the right to food into Scots law.

The consultation runs from 25 November 2021 to 16 February 2022.

All those wishing to respond to the consultation are strongly encouraged to enter their responses electronically through this survey. This makes collation of responses much simpler and quicker. However, the option also exists of sending in a separate response (in hard copy or by other electronic means such as e-mail), and details of how to do so are included in the member's consultation document.

Questions marked with an asterisk (*) require an answer.

All responses must include a name and contact details. Names will only be published if you give us permission, and contact details are never published – but we may use them to contact you if there is a query about your response. If you do not include a name and/or contact details, we may have to disregard your response.

Please note that you must complete the survey in order for your response to be accepted. If you don't wish to complete the survey in a single session, you can choose "Save and Continue later" at any point. Whilst you have the option to skip particular questions, you must continue to the end of the survey and press "Submit" to have your response fully recorded.

Please ensure you have read the consultation document before responding to any of the questions that follow. In particular, you should read the information contained in the document about how your response will be handled. The consultation document is available here:

[Consultation Document](#)

[Privacy Notice](#)

I confirm that I have read and understood the Privacy Notice which explains how my personal data will be used.

On the previous page we asked you if you are UNDER 12 YEARS old, and you responded Yes to this question.

If this is the case, we will have to contact your parent or guardian for consent.

If you are under 12 years of age, please put your contact details into the textbox. This can be your email address or phone number. We will then contact you and your parents to receive consent.

Otherwise please confirm that you are or are not under 12 years old.

No Response

About you

Please choose whether you are responding as an individual or on behalf of an organisation.
Note: If you choose "individual" and consent to have the response published, it will appear under your own name. If you choose "on behalf of an organisation" and consent to have the response published, it will be published under the organisation's name.

on behalf of an organisation

Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose "Member of the public".)

No Response

Please select the category which best describes your organisation

Representative organisation (trade union, professional association)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

Scottish Care is a membership organisation and the representative body for independent sector social care services in Scotland, covering private, charitable, not for profit and employee-owned social care organisations delivering residential care, nursing care, day care, care at home and housing support services. Our membership includes organisations of varying types and sizes, amongst them single providers, small and medium sized groups, national providers, and family run services. Our members deliver a wide range of registered services for older people as well as those with long term conditions, learning disabilities, physical disabilities, dementia, or mental health problems.

In Scotland, the independent adult social care sector contributes to:

- The employment of over 100,000 people
- The provision of 87% of care home places for adults
- The delivery of over 55% of home care hours for older people

Please choose one of the following:

I am content for this response to be published and attributed to me or my organisation

Please provide your Full Name or the name of your organisation. (Note: the name will not be published if you have asked for the response to be anonymous or "not for publication". Otherwise this is the name that will be published with your response).

Scottish Care

Please provide details of a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number.

We will not publish these details.

Aim and Approach - Note: All answers to the questions in this section may be published (unless your response is "not for publication").

Q1. Which of the following best expresses your view of the proposal to incorporate the right to food into Scots law?

Fully supportive

Please explain the reasons for your response.

Scottish Care strongly endorses the proposal to incorporate the right to food into Scots law.

Viewed internationally there are four main elements to the right to food. They are availability of food; accessible food, both economic and physical accessibility, which is significant in a nation such as Scotland; the adequate nature of food, so that food properly meets the dietary and nutritional needs of a community and a population, and is safe and culturally sensitive; and, lastly, that food and its production, delivery, use and control of waste is sustainable.

In Scotland, in no small part through legislation introduced by the Scottish Government—for instance, the Community Empowerment Act—we have seen the growth of various projects at local level through increased use of public land for allotments and priority being given to community projects, and the funding by the Scottish Government of a new approach to nutrition and well-being for the under-fives. There are clear exemplars of a policy in practice being influenced by the four key components of the right to food.

The role of food and nutrition in the support of those who are older or who use social care services is well documented but certainly much less well supported in practice. Sadly, from data from groups like Eat Well Age Well we know that for too many older Scots the daily experience is one of having to make choices around the food they eat, and currently in particular whether or not they eat at all with rising costs both for food and also for other essential commodities such as heating and lighting. Frontline social care staff frequently recount instances where they have had to encourage the individuals they support to continue to eat.

Eat Well Age Well argue that whilst 1 in 10 older people in Scotland today are at risk of, or living with malnutrition, they believe that this may be an underestimate, with between 20% and 30% of older people living in Scotland suffering or at risk of malnourishment. Those of us who work in social care are also very aware – especially in the community – of the impact that the Covid-19 pandemic has had on increasing food-illness and malnutrition amongst the isolated and lonely old.

Ultimately, however, the right to food enables good governance. It enables a system of oversight to be established that holds to a higher standard than that which may exist in national policy, or indeed national legislation in its disparate parts. It joins together the elements that constitute citizens' experience, or lack of experience, of good food.

There is a very real need for legislative protection to ensure that public authorities and governmental bodies both at national and local levels take fiscal and budgetary decisions in a way that enables individuals, regardless of circumstance or need, to be able to eat and remain healthy.

Q2. Do you think legislation is required, or are there other ways in which the proposed Bill's aims could be achieved more effectively? Please explain the reasons for your response.

We believe legislation is required.

Scottish Care along with many other bodies anticipates that through the creation of a Scottish Human Rights Act that we will see the gradual incorporation of the International Covenant on Economic, Social and Cultural Rights (ICESCR). We acknowledge that the right to food stands central to the human rights enshrined in that Covenant. However, we believe that it is fundamental that in areas of devolved

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competence that national and domestic legislation is explicit now about what specific rights entail for specific areas of policy and practice. To that end we strongly support the view that the human right to food should be primary and explicit within the forthcoming Good Food Bill.

We believe that there should be "complementary and supportive" legislation in the national legislation of a country to underpin and make explicit the rights enshrined in ICESCR. We see the Good Food Bill as a prime opportunity for Scotland to incorporate the right to food in areas that are devolved to the Scottish Parliament, recognising that it does not include all areas, and we would argue that that provides consistency of application. It would enable read across to, for instance, the right to social security, which is being embedded in the new social security practice in Scotland, and the right to health that, through our national frameworks and standards, is embedding itself in health and social care.

Food and the right to food is an inalienable human rights issue and should not be peripheral to a new Good Food Nation Act in any form and there should be clear and explicit obligations upon both national and local governments, and upon organisations delivering public services, to ensure that the right to food is upheld. This means not simply giving a nod – a 'regard' to the right to food but to ensure that public bodies are required to 'act in accordance' to the human right to food.

In the social care sector that not only means duties upon those who commission care and support for those in the community, but it also means an adequate allocation of resource and finance to enable real nutritional and health-beneficial sustainable and environmental food, is allocated to those cared for and supported in care home and hospital alike. For too long many of us have felt that what we spend on the food and nutrition of those who are supported by the State is woefully inadequate especially for an older population.

Q3. Which of the following best expresses your view on an independent statutory body being given responsibility for overseeing and reporting on progress towards realising the right to food?

Fully supportive

Please explain the reasons for your response.

Scottish Care believes that it is essential that an independent statutory body, created and enshrined with real powers of enforceability is created, to oversee and report on progress towards realising the human right to food. We support the aims of the Scottish Food Coalition in its ask for an independent Food Commission, with the power and resources to commission research, and oversee policy coherence and progress towards food system goals.

An independent body would serve to address the inevitable tendency of governmental departments to operate in siloes. Whilst we recognise that the Scottish Government have significantly progressed the area of trying to join up policy across different elements: agriculture, fisheries, sustainability, energy, health and care, we have a concern that there is still a lack of whole-system thinking in relation not just to policy but to the articulation of that policy in practice, and the impact on the lived experience of many of the individuals with whom our members have direct and daily contact.

Further an independent body would serve to bring all stakeholders, from all sectors, together, and would hold government in its various departments and policy areas to account for the progressive realisation of the right to food.

Q4. Should an independent body be given responsibility for overseeing and reporting on the right to food, do you think it should be:

A newly created body

Please explain the reasons for your response.

Scottish Care believes that the aims and objectives of the right to food would be best achieved by means of a newly created body. There are existing models of practice such as the creation of the Scottish Land Commission on which to base the creation of a new distinct and autonomous body.

Q5. Which of the following best expresses your view of enshrining a right to food into Scots law as a priority in advance of, and in a manner which is compatible with, any further Scottish Government legislation on wider human rights?

Fully supportive

Please explain the reasons for your response.

As we have stated above, we believe that domestic legislation should enshrine and embed human rights articulated in overarching human rights legislation. This adds both weight and articulation to those rights but serves to make explicit the policy and practice implications involved in the realisation of human rights in distinct areas of practice.

In this regard we believe the arguments made by the UN Special Rapporteur on the Right to Food, Michael Fakhri and others show why it is important that the right to food should be incorporated into national law. See <https://youtu.be/iaBMwzGdzzc>

Q6. Which of the following best expresses your view of placing responsibility for guaranteeing the right to food on the Scottish Government?

Fully supportive

Please explain the reasons for your response.

Scottish Care believes that it is not sufficient to simply have enshrined in legislation the right to food or indeed any other human rights, but that those who are duties bearers in relation to distinct rights should have not only a clear understanding of what those rights mean in practice, but that there should be a robust system to hold those duty bearers to account. The role of central and local Government and other public authorities is critical for the progressive realisation of the right to food.

One of the risks of the progressive realisation of any right is that it takes time and that things may change not for the better but the worse over a period. One of the things that the right to food enables us to do is to prevent regressive behaviour or regressive action. The benefit of a right to food at the front of a piece of legislation is that the state, in the Scottish context, would not be able to act in a manner deemed to be regressive from that which is already internationally articulated and accepted.

The right to food places a clear set of duties upon the Scottish Government from ensure that they and other duty bearers do not prevent people from accessing nutritious food or allow for anyone else to prevent them from accessing food, through the duty to promote access to food by addressing barriers to such access; to develop clear targets for the food system to ensuring adequacy of resource for instance through existing systems such as the annual Local Government Social Care Budget Settlement.

We concur with Nourish Scotland who state:

'Realising the right to food will take time and these problems will not be solved in one step but, by putting the right to food into Scots law, this places a duty on the government to do all that it can to make sure the food system is properly managed. It makes it clear that it is the government's responsibility when the food system is failing and their job to make it work better for everyone.'

The Right to Food Campaign - Nourish Scotland

The way in which any nation and those who have the privilege to govern within a society should be judged is by the degree and manner that they enable and embed equal treatment, equality and non-discrimination in the realisation of basic human rights.

Covid-19 Pandemic

Q7. What impact do you consider the effects of, and response to, the Covid-19 pandemic has had on the need for a right to food to be incorporated into Scots law?

Increased the need for the Bill

Q7. What impact do you consider the effects of, and response to, the Covid-19 pandemic has had on the need for a right to food to be incorporated into Scots law?

Please explain the reasons for your response.

The pandemic has had a negative impact on many populations but none more so than those who receive social care support and perhaps especially those who are older who have been disproportionately affected and at risk during the pandemic.

Many frontline social care services and staff have reported a significant level of decline within the population because of measures such as lockdown and social isolation, which whilst there to protect have had a negative impact upon so many. Many older people have become more sedentary and frailer, losing mobility and socialisation, and as a result even more isolated and cut off than they were before. Regrettably many services which have previously addressed isolation and acted as early support to prevent decline and deterioration, even now have still not re-commenced delivery. Health and social care services together with voluntary sector providers have continued to be stretched throughout the pandemic with significant issues of staffing and capacity and this has only been worsened because of the Omicron strain. Many essential services have had to be suspended or withdrawn to the very real detriment of some of our most vulnerable citizens. Older people living on their own have been especially affected and previous concerns over issues of poverty, access to food at a local level, challenges in the preparation of food and its nutritional benefit have deepened.

For those working in social care we recognise and acknowledge that nutrition and healthy eating are essential ingredients for good effective care and support. We know that physical nutrition is often the first thing to diminish as we get older. But of course, the benefits of eating are not just to do with our physiology, they impact upon our psychological health and well-being also. We all know that eating and drinking with others isn't just a physical need but addresses a deeply felt desire to be with, to socialise, to communicate and commune. Sadly, for many older Scots that social dimension has been lost to them and removed from them perhaps especially during the pandemic.

We have also seen an unacceptable rise in the number of social care packages being procured and contracted in a manner has led to a growth in fifteen-minute care visits. Frontline social care staff have a critical role in enabling individuals to remain independent and well in their own homes. This cannot be achieved by an emphasis on social care practice which strips out the ability to have flexibility and to build relationships with those being supported. This lack of priority around the relational dimension of social care is perhaps especially evident in its impact on the right of individuals to exercise their human right to food, which we believe struggles to be delivered when a carer is forced to heat up a microwaveable food package and because of time constraints cannot then sit and be with the supported person as they eat that meal of sometimes questionable nutritional benefit. The right to food is daily being diminished by current social care practice and has undoubtedly become worsened by the pandemic.

Financial Implications

Q8. Taking into account all those likely to be affected (including public sector bodies, businesses and individuals etc), is the proposed Bill likely to lead to:

some increase in costs

Please indicate where you would expect the impact identified to fall (including public sector bodies, businesses and individuals etc). You may also wish to suggest ways in which the aims of the Bill could be delivered more cost-effectively.

One of the urgent tasks of an independent Food Commission would be to undertake a through cost analysis of the fiscal cost of the progressive realisation of the right to food. From a social care context Scottish Care has long argued that the monies allocated to the carer and support of older people in terms of their food and nutrition are woefully inadequate by any standard. There is a serious need for significant investment in the 'care food system' from the overall sum allocated per person per meal, through to improving the reward and remuneration, terms and conditions of catering staff in care homes, to the need for enhanced training and specialist skills development amongst a range of care staff so that all can better understand the critical relationship between food and the realisation of good health and wellbeing.

Equalities

Q9. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation?

Positive

Please explain the reasons for your response. Where any negative impacts are identified, you may also wish to suggest ways in which these could be minimised or avoided.

As an organisation focussed on improving the wellbeing of older people and all those with physical and learning disabilities, mental health needs etc, who are supported by frontline social care organisations and staff we believe that the Bill and most importantly the robust incorporation and development of a human right to food, offers very real positive benefit to those who are the victims of discrimination under any protected characteristic and to addressing some of the inequalities in current practice.

Sustainability

Q10. In terms of assessing the proposed Bill's potential impact on sustainable development, you may wish to consider how it relates to the following principles:

- living within environmental limits
- ensuring a strong, healthy and just society
- achieving a sustainable economy
- promoting effective, participative systems of governance
- ensuring policy is developed on the basis of strong scientific evidence.

With these principles in mind, do you consider that the Bill can be delivered sustainably?

Yes

Please explain the reasons for your response.

The World Food Day theme for 2021, was "Safe food now for a healthy tomorrow". The relationship between food sustainability, the right to food and environmental sustainability has never been stronger. The relationship between environmental sustainability and responsibility alongside ethical and safe food production should be intimate and inextricable. The way we grow and produce our food, the food which we choose and the way we consume it perhaps especially in social care services and supports affects our health and that of our planet.

Social care is the fourth largest economic sector in the Scottish economy and the need for sustainable delivery of services and supports, both economic and environmental, has never been more acute and necessary. A whole system approach underpinned by the human right to food and overseen by an independent Food Commission will significantly address the challenges of whole system sustainability, which includes the social care sector and those who are supported.

General

Q11. Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?

Food is fundamental to our well-being and our health as a nation and as individuals. It deserves a holistic, overarching prioritisation that counters sectoral interests wherever they may be. It is not sufficient to have good legislation, it is always necessary to have rights embedded in that legislation which can be protected by all for all.