

Submitted to A Human Rights Bill for Scotland: Consultation
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Part 5: Recognising the Right to a Healthy Environment

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

Agree

7. If you disagree, please explain why:

The phrase 'the environment' is commonly used without any singular definition so the task of defining it for the purposes of legislation is quite challenging but no less necessary. For the purposes of our response, we consider 'the environment' as including wild places. The environment is made up of many elements that function in relation to each other. Air, atmosphere, water, land (including soils, vegetation, habitats), species could all be considered components but equally, how they interact (and how well they are functioning) also has a bearing on the environment. The consultation paper proposes six substantive aspects as making up the right to a healthy environment – clean air, safe and sufficient water, non-toxic environments, healthy ecosystems and biodiversity and a safe climate. We support each of these substantive aspects for a healthy environment and recommend that the definition provided for environment incorporates each of these aspects. As the UK is a signatory to the Aarhus Convention there is logic in drawing on the definition of 'environment' that is provided by the Aarhus Convention. Whatever the definition provided, it is crucial that it is one that aids the enforcement of a human right to a healthy environment.

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

Please give us your views:

We welcome each of the substantive aspects of the right. We would like to see the substantive aspects defined to the highest possible standards but also in a way that means they are enforceable. The substantive elements are interdependent, but we would also like to see each of them given standalone protection, as recommended by the Environmental Rights Centre in their report 'The Substantive Right to a Healthy Environment: A review of definitions, standards and enforcement mechanisms', Advisory Report, June 2023. This report provides definitions and standards for each of the six substantive elements, demonstrating the detail required to realise each one in legislation. It recommends embedding five environmental principles 1) protecting the environment should be integrated into the making of policies, 2) precaution, 3) prevention, 4) rectification at source, and 5) the polluter should pay, into the definitions and standards. We support each of the procedural aspects of the right outlined in the consultation paper (awareness raising, promoting education and capacity building; access to information; public participation in decision-making; ensuring effective, affordable and timely remedies; and suitable policies, planning and action). However, we note that the procedural element is already enshrined in the Aarhus Convention and that Scotland, as well as the UK, are signatories to this Convention. Notwithstanding this, the UK and Scotland are failing to comply with the Convention with respect to facilitating access to information pertaining to the environment; public participation in decision-making and ensuring there are legal remedies available. We support the recommendations made by the Environmental Centre for Scotland in their paper 'An enforceable human right to a healthy environment' (Advocacy Manifesto, December 2021). Two key recommendations to ensuring the procedural right to a healthy environment can be realised are: 1) reform legal expenses so that access to legal advice and remedies through court action is affordable, 2) create a specialist environment court or tribunal for Scotland. These recommendations point to the utility of a procedural right resting on environmental governance, a court structure and legal aid reform.

9 Do you agree or disagree with our proposed approach to the protection of healthy and sustainable food as part of the incorporation of the right to adequate food in International Covenant on Economic, Social and Cultural Rights (ICESCR), rather than inclusion as a substantive aspect of the right to a healthy environment?

Disagree

Please provide your reasons why:

This is not our area of expertise and we have based our view on the expert opinion of the Environmental Rights Centre for Scotland. They disagree with the proposed approach because whilst the International Covenant on Economic, Social and Cultural Rights considers healthy food as a social right, it does not consider sustainable food production as a right. However, rights to healthy food rely on the sustainable production of food. Sustainable food production also relies on, and interacts with, the other substantive rights proposed. In other words, the sustainable management of our natural environment is necessary for sustainable food production, and is also part of protecting environmental and human health. These interdependencies mean we support the view that the right to healthy and sustainably produced food is a substantive feature of the right to a healthy environment.

10 Do you agree or disagree with our proposed approach to including safe and sufficient water as a substantive aspect of the right to a healthy environment?

Agree

Please give us your views:

It is essential that water is safe and sufficient for human consumption but also that it is safe and sufficient for all forms of life. As with the other substantive elements of a right to a healthy environment, environmental governance matters if the right is to mean anything in reality. Ensuring safe and sufficient water requires improvements in the rules and accountability surrounding wastewater management, water pollution and monitoring water quality.

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

Yes

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

The six substantive elements are interdependent whilst also requiring standalone protections. Impacts on any one of the six substantive elements can be expected to have an effect on the other elements. This could be recognised in how the rights are defined, how 'the environment' is defined for the purposes of the legislation and any future guidance produced to aid the interpretation and application of the legislation.

Rights must be enforceable in a court of law, with appropriate mechanisms in place to effectively hold public bodies and polluters to account. A dedicated environmental court would give people a formal route through which they could enforce rights to a healthy environment and request remedies. At present anyone seeking a remedy for environmental pollution or harm has to navigate a web of different public bodies and procedures to establish accountability. This is inefficient and a significant barrier for anyone who wants to act to protect the environment, human health and Scotland's wild places.

About you

What is your name?

Name:

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Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

John Muir Trust

Please tell us which of the following categories best describe you (select all that apply):

Other

If other, please specify:

Charity

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy.

I consent