



Submission to the Independent Human Rights Act Review Call for Evidence

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About Us

deafscotland is Scotland's national specialist organisation promoting equality, access and citizenship for those affected by deafness. Established in 1927, we support the social model of disability and promote a right's based, person-centred approach. ¹

Introduction

There are 1 million people in Scotland who are affected by deafness. deafscotland works to promote understanding of the different needs of people with hearing loss and to promote the equal enjoyment of economic, social, cultural, civil, political and environmental rights. We believe fulfilment of the Sustainable Development Goals is part of the human rights ecosystem in our modern democracy.

The consequences of hearing loss are significant and evidence shows that it can cause poor mental health, is linked with dementia² and leads to social and financial poverty. For example 23% of disabled people say they are quite or very lonely on a typical day.³ A survey created by totaljobs in partnership with five deaf charities reveals that whilst 74% of deaf people feel confident they have the right skills to look for work, 72% have received no support in finding a job because of being deaf. Furthermore, only 13% believe there is enough support available to help deaf people to look for work, 25% of workers state there is no provision for deaf employees at their workplace and 47% said that they did not receive support and guidance from their employer for issues related to being deaf. These figures are fuelled by an absence of understanding across UK businesses with 34% of deaf people claiming lack of deaf awareness as the biggest challenge facing them in the workplace.⁴

COVID-19 and the government's management of the response amplified existing problems. The lockdown(s) increased the barriers people affected by deafness face daily and have increased fear and anxiety as few services offered them accessible information and inclusive communication and/or accessible support. ⁵

¹ [deafscotland – the lead organisation for deaf issues in Scotland](#)

² [Dementia – deafscotland](#)

³ 'Doing Digital Inclusion: disability handbook' pub by The Good Things Foundation https://www.goodthingsfoundation.org/sites/default/files/research-publications/disability_handbook-with_links-final.pdf

⁴ At <https://www.totaljobs.com/insidejob/1-4-deaf-people-quit-job-due-discrimination/>

⁵ 'COVID-19 The Communication Virus' at <https://deafscotland.org/dementia/>

This snapshot of the problems faced by people with hearing loss does not lead to people going to court to assert their human rights as it is not a realistic prospect.

The Review

The Human Rights Act 1998 (HRA) gives domestic effect to the European Convention on Human Rights (ECHR) although not all rights are listed such as Article 13 'the right to an effective remedy'. It is sensible to enable people to assert rights in domestic courts without having to pursue a case in the European Court of Human Rights in Strasbourg (ECtHR). It takes the pressure off the ECtHR too which faces many cases from countries such as Russia.

Deafscotland notes that the review of the HRA is narrow in scope:

- Theme One The first theme deals with the relationship between domestic courts and the European Court of Human Rights (ECtHR).
- Theme Two The second theme considers the impact of the HRA on the relationship between the judiciary, the executive and the legislature.⁶

Both themes only arise when a 'victim' complains about an abuse of/failure to comply with rights. However the review ignores the barriers to accessing justice for people and the absence of consequences for duty bearers who fail to comply, routinely. These are the substantial issues for the operation of the HRA. Therefore deafscotland believes this review is a wasted opportunity as our main concern about the HRA is about accessing and enforcing the human rights that the UK Parliament has already agreed.

Human Rights Law

deafscotland is working to mainstream 'Inclusive Communication' (IC) so that policy and law delivers equal impact/outcome for: 12,500 Deaf/Deaf Sign Language users, 355,000 Deafened people, 4,000 Deafblind people, and 700,000 Hard of Hearing people.

Human rights law expects communication to be accessible and inclusive as it is a right and a gateway to the equal enjoyment of all other rights. The HRA and the Scotland Act 1998 give domestic effect to the ECHR. Article 10 of the ECHR is the right to form an opinion by receiving and imparting information and that implicitly requires inclusive

⁶ [Call-for-Evidence.pdf \(publishing.service.gov.uk\)](#)

communication. Article 10 operates along with Article 14 the right to equally enjoy rights and with Article 17 which prohibits the destruction of and excessive limitation of ECHR rights and freedoms and applies to States, groups and individuals.⁷

The UK has ratified a number of international human rights treaties which means all our laws and policies should comply and that includes:

- Article 13 of the UN Convention on the Rights of the Child - the right to freedom of expression including freedom to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media of the child's choice. A bill to incorporate UNCRC in Scot's law is currently being examined at the Scottish Parliament.⁸
- Article 25 of the International Covenant on Civil and Political Rights – the right and the opportunity, without unreasonable restrictions, to take part in the conduct of public affairs and that necessitates the ability to convey and hear opinions and ideas.
- The UN Convention on the Rights of Persons with disabilities specifically provides for IC as a right and to equally enjoy other rights and that approach needs to be mainstreamed. Similarly, there needs to be greater awareness and acceptance that IC needs to be engineered and designed into how society operates rather than assumed to exist and function well.

Despite this rich seam of human rights standards, compliance remains an issue and a key barrier remains in accessing justice. If the opinions of people with hearing barriers are not sought, facilitated or heard in developing policy, services and funding, then their human rights are not being equally enjoyed collectively as a linguistic minority or as a disabled minority. In effect this culture and practice normalises indirect and/or institutional discrimination.

Communication is a Human Right

Communication is fundamental to being included and in reducing isolation. Despite provisions of the Equality Act 2010 and the HRA, MSPs have realised a gap between theory and practice so are increasingly approving legislation on inclusive communication including: Section 6 of the Coronavirus (Scotland) No 2 Act 2020; Section 9 of the Coronavirus (Scotland) Act 2020; Section 6 (7)(b) of the Consumer

⁷ At [European Convention on Human Rights - Official texts, Convention and Protocols \(coe.int\)](https://www.coe.int/t/kod/en/texts/convention.asp)

⁸ [United Nations Convention on the Rights of the Child Incorporation Scotland Bill – Bills \(proposed laws\) – Scottish Parliament | Scottish Parliament Beta Website](#)

(Scotland) Act 2020⁹ and Section 4(2) of the Social Security (Scotland) Act 2018¹⁰. Language legislation has also been passed by MSPs in the British Sign Language (Scotland) Act 2015¹¹ and the Gaelic Language (Scotland) Act 2005¹².

What is the point of MPs and MSPs passing legislation unless they expect it to be implemented, enforced and the rule of law respected?

The practice of realising rights, equally, falls at the first hurdle as so few human rights cases ever go to court. Whilst that is a positive, as a costly process is avoided, rights are not being realised. Enforcement is understood as a concept rather than a reality for too many people. A helpful review of the HRA would be how to ensure there are consequences for a failure to comply and how to enable people to secure a domestic remedy routinely without cases ever having to go to court. In our experience even a positive outcome from a case is difficult to turn into material gain for people affected by systematic barriers/institutional discrimination. Indeed it can make matters worse or at best create stasis.

Scotland Act 1998

deafscotland is disappointed that despite the HRA's inter-relationship with the Scotland Act 1998 in respect of Sections 29, 57 and 100, no mention is made of the repercussions from this review on the devolution settlement. This is a material omission which deserves informed and detailed consideration.

Conclusion

The closing date for submissions to the 'Independent Human Rights Act Review' coincides with World Hearing Day which is held on 3rd March each year to raise awareness on how to prevent deafness and hearing loss and promote ear and hearing care across the world.¹³ Each year, the WHO decides the theme and develops evidence-based advocacy materials. deafscotland has produced a report on the need for 'Inclusive Communication in Scotland', to mark the global focus on the consequences of hearing loss and the necessity of action by duty bearers. Consistently we value and learn from domestic, regional and

⁹ Available at <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/consumer-scotland-bill/stage-3/bill-as-passed-consumer-scotland-bill.pdf>

¹⁰ Available at <http://www.legislation.gov.uk/asp/2018/9/section/4/enacted>

¹¹ Available at <http://bslscotlandact2015.scot/>

¹² See <http://www.legislation.gov.uk/asp/2005/7/contents>

¹³ At [Celebrating World Hearing Day \(who.int\)](http://celebratingworldhearingday.who.int)

international collaborations to respect, protect and fulfil the human right to inclusive communication.

deafscotland regards this review as a missed opportunity to examine the daily, grinding issues that people are practically concerned about - to have an accessible infrastructure in place so they can equally enjoy the rights in the Human Rights Act 1998. deafscotland is also concerned about the consequences of this review on the devolution settlement.

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