ERCS
JUSTICE FOR PEOPLE AND THE ENVIRONMENT

The human right to a healthy environment and why it needs to be in Scotland's Human Rights Bill

Explainer briefing, October 2026

Summary

- This briefing provides an overview of the right to a healthy environment and its importance in a Scottish human rights framework. It argues that the right should be incorporated with the same strength and scope as economic, social and cultural rights, that is with a duty to comply within the limits of devolved competence.
- 166 out of 193 UN Member States now recognise a clean, healthy and sustainable environment as a universal human right, essential for the effective enjoyment of all human rights for present and future generations.
- In 2021, the National Taskforce on Human Rights Leadership recommended incorporating the right to a healthy environment with substantive and procedural elements, and in 2023 the right was included in the Scottish Government's consultation on a Human Rights Bill for Scotland.
- In 2025, the Scottish Government raised questions about the strength, scope and coverage of duty attached to the right and there are now concerns it will be dropped from a future Bill.

Introduction

The Environmental Rights Centre for Scotland (ERCS) is an environmental law charity. We advocate for policy and law reform to improve environmental rights and compliance with the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention).[1]

This explainer briefing provides an international overview of the right to a healthy environment (RtHE) and why it should be incorporated into Scotland's human rights framework.

International recognition of the right to a healthy environment

In July 2022, the United Nations (UN) General Assembly recognised a clean, healthy and sustainable environment as a universal human right, and that environmental damage has negative implications for the effective enjoyment of all human rights for present and future generations.[2] In September 2025, the UN Committee on Economic, Social and Cultural Rights issued General Comment No. 27, which affirms that a clean, healthy, and sustainable environment is an essential precondition for the enjoyment of economic, social and cultural rights.[3]

166 out of 193 UN Member States now recognise the right, which the UN sees as a critical tool for holding public bodies and polluters to account to protect and restore the natural world.[4] In July 2025, the International Court of Justice, the world's highest court, issued an advisory opinion on the climate crisis that endorsed the right as a binding norm of international law.[5]

The European Convention on Human Rights is the only regional human rights system that has not formally integrated this right.[6] The Council of Europe is under growing pressure to adopt a legally binding instrument that recognises the right, with 28 out of its 48 States expressly recognising the right in their constitutions or national legislation, and the UN Special Rapporteurs describing this as 'a necessary and timely step'.[7]

The right to a healthy environment in a Scottish Human Rights Bill

The Scottish Government first scoped better protection for human rights in Scotland in 2018.[8] In 2021, the National Taskforce for Human Rights Leadership, acknowledging the interdependence of human rights obligations and international environmental law obligations, recommended that a Scottish Human Rights Bill should include the right to a healthy environment with substantive and procedural elements.[9]

In 2023, the Scottish Government held a public consultation on a Bill, including the right to a healthy environment, which received strong public endorsement.[10] To the disappointment of civil society, the Bill was dropped from the 2024-5 Programme for Government.

Despite this, civil society continued to work with the government to develop the Bill, with ERCS advocating for the right to a healthy environment in various advisory groups. In July 2025, the Government published their Discussion Paper which acknowledged, 'the right as indivisible from other fundamental human rights which depend on it', but also raised questions about its strength, scope and coverage.[11]

The 2026-7 Programme for Government states that a Bill will be introduced next year. While ERCS welcomes this, and the intention that economic social and cultural rights will be incorporated with a compliance duty, there is growing concern that the right to a healthy environment will be dropped from a Bill.

The right to a healthy environment: substantive and procedural elements

The substantive element

The substantive element of the right has six interdependent environmental features which would have standalone protection for the first time: clean air; safe, sufficient water and adequate sanitation; healthy and sustainable food; non-toxic environments in which people can live, work, learn and play; healthy ecosystems and biodiversity; and a safe climate.[12] ERCS, together with expert input from members of Scottish Environment LINK, has previously outlined the most appropriate definitions, standards and enforcement mechanism for each feature.[13]

The right to a healthy environment would enable us to protect the highest standards for the six features of our substantive right – this would be new for Scotland. Examples could be challenging the rapid growth of resource intensive hyperscale data centres or sewage pollution.

The procedural element

The procedural element refers to the processes and mechanisms for people to exercise their rights and ensure environmental laws are enforced: access to information, public participation and access to justice. These rights are already protected under the Aarhus Convention, but Scotland remains non-compliant with the Convention's access to justice requirements.[14]

The right to a healthy environment would enable us to uphold our procedural rights and promote environmental democracy. Examples could be improving public bodies' publication of information or ensuring the costs of taking legal action are affordable.

Why the right to a healthy environment matters

The triple planetary crisis

Without a healthy environment we cannot survive or thrive. Globally we are facing a triple planetary crisis of climate breakdown, biodiversity loss, pollution and waste.[15]

Scotland is not immune. Severe weather events,[16] air and water pollution,[17] proximity to contaminated land,[18] and poor access to nature-rich greenspace[19] are examples of substantive environmental problems that contribute to inequalities in health and wellbeing.[20] Unsound management of chemicals and waste, intensive agriculture, industrial fishing, and monocultural forestry plantations are devasting our land and marine ecosystems, contributing to a rapid decline in flora and fauna.[21]

People living in areas of high disadvantage, children, older people, disabled people, and people with health conditions are often disproportionately affected by environmental problems and are often least responsible for causing environmental damage. They also often have fewer resources to challenge these environmental burdens. This contributes to systemic discrimination.

Incorporating the right to a healthy environment in a human rights legal framework would encourage a holistic approach to tackle the root causes of environmental, social and climate injustice in Scotland and abroad.

Strengthening accountability between rights holders and duty bearers

ERCS's free law service has received over 750 enquiries with a fifth coming from the most deprived areas in Scotland. .[22] The 200 enquiries in the past year have included concerns about hyperscale data centres, litter, electricity infrastructure, water pollution, sewage sludge, tree protection orders, forestry developments, marine licencing, land contamination, environmental

impact assessment screening opinions and reports. An enforceable right to a healthy environment would provide a credible threat of legal action and act as a deterrent to polluters acting with impunity.

Former UN Special Rapporteur Professor David Boyd gives international examples of how the right has improved the implementation and enforcement of environmental laws and policies, and how the right can act as a 'shield' to protect governments from industry lawsuits against environmentally progressive legislation including plastic bag regulations (Kenya, Mexico and Uganda), regulations governing the cement industry (Nepal), a law protecting glaciers (Argentina) and restrictions on the import of heavily polluting used vehicles (Peru).[23]

Scottish Government's four priorities

In July 2024, when the right to a healthy environment was previously at risk of being dropped from a Human Rights Bill, ERCS coordinated an open letter outlining its important contribution to the First Minister's four priorities. These are revisited below.[24]

- **Eradicating child poverty**: the UN Committee on the Rights of the Child General Comment No. 26 [25] sets out the wide-ranging interconnections between children's rights and environmental protection. Working alongside the UNCRC (Incorporation) (Scotland) Act 2024, the RtHE provides a framework to ensure that children experiencing poverty, place-based deprivation and intergenerational injustice will be prioritised in decision-making, with due regard for their environmental rights.

- **Growing the economy**: the RtHE provides clarity and certainty to duty bearers and businesses by setting clear legal parameters for fossil free growth and investment and supporting Scotland's shift towards a circular economy, encouraging business to operate responsibly towards a just transition and long-term, sustainable development.

- **Tackling the climate emergency:** the RtHE increases accountability from public bodies to ensure that mitigation and adaptation policies are implemented in a just and fair way that respects and promotes human rights. It would restore public confidence in ambitious climate policy and demonstrate Scotland's leadership role on international climate justice.

- **Delivering a stronger NHS and public services:** the RtHE mutually reinforces the incorporation of the International Covenant on Economic, Social and Cultural Rights and UNCRC to tackle environmental and health inequalities. The right could alleviate pressure on public services by promoting preventative action to reduce the negative impacts of pollution and environmental degradation on the rights to adequate housing, food, water and physical and mental health. These benefits are particularly important for those who are most at risk from environmental harm including children, young people, people living in poverty, disabled people and other vulnerable and marginalised groups.

Response to the Scottish Government's concerns

ERCS fully supports the Government's intention to incorporate the International Covenant on Economic, Social and Cultural Rights with a compliance duty. This should extend to the RtHE, but the Government's Discussion Paper raises questions about the strength, scope and coverage of duty attached to the right. These are addressed below.[26]

- In terms of strength and how the right interacts with planning and consenting regimes, at its best environmental regulation does not stand in the way of economic progress but supports it and challenges businesses who seek to profit from environmental harm. The Scottish Government's self-described 'cautious, evidence-led approach' to considering unconventional oil and gas in 2019[27] is a good example of preventing environmentally risky activity while encouraging safer activities.
- Similarly, the decision to pause the rapid growth of resource-intensive hyperscale data centres until new planning guidance is in place and to require environmental impact assessments for projects using more than 50MW of energy, shows how government can respond effectively to communities' concerns and promote environmental democracy. The RtHE does not threaten but strengthens this approach.[28]
- In terms of scope and coverage, the limits of devolved competence apply equally to every right in the Bill, and the UNCRC (Incorporation) (Scotland) Act 2024 shows that incorporation within those limits still has impact. Although it will be limiting, this should not be used as an excuse to omit the RtHE.

Recommendations

The Scottish Government has acknowledged that the right to a clean, healthy and sustainable right is 'indivisible from other fundamental human rights which depend on it'.[29]

ERCS calls on the government to:

- Incorporate the human right to a clean, healthy and sustainable environment in a Scottish Human Rights Bill.
- Include the right with both substantive and procedural elements.
- Ensure the right has the same strength and scope as economic, social and cultural rights incorporation, that is with a duty to comply within the limits of devolved competence.
- Ensure that access to justice is fair, equitable, timely and not prohibitively expensive to comply with the Aarhus Convention.

For more information contact

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[3] UN Committee on Economic, Social and Cultural Rights (2025) E/C.12/GC/27: General comment No. 27 on economic, social and cultural rights and the environmental dimension of sustainable development
[4] Office of the High Commissioner for Human Rights, United Nations Environment Programme & United Nations Development Programme (Jan 2023) What is the right to a healthy environment?
[5] International Court of Justice (23 July 2025a) Obligations of States in Respect of Climate Change: Advisory Opinion, para 393; International Court of Justice (23 July 2025b) Press Release on Obligations of States in respect of Climate Change: Advisory Opinion; Boyd, Verfassungsblog (30 July 2025) A Right Foundational to Humanity's Existence.
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[7] UN Special Rapporteurs (Oct 2026) Letter to Ministers of the Council of Europe from UN Special Rapporteurs p.4
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[9] Scottish Government (March 2021) National Taskforce for Human Rights: Leadership Report, recommendation 2.
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[20] United Nations Environment Programme & International Science Council (July 2024) Navigating New Horizons: A global foresight report on planetary health and human wellbeing
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[25] UN Committee on the Rights of the Child (August 2023) CRC/C/GC/26: General comment No.26 (2023) on children's rights and the environment with a specific focus on climate change
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