

Scottish Council on Human Bioethics

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Inquiry into the Public Health etc. (Scotland) Bill

The **Scottish Council on Human Bioethics** (SCHB) is an independent, non-partisan, non-religious registered Scottish charity comprising doctors, lawyers, psychologists, ethicists and other professionals from disciplines associated with medical ethics.

The SCHB subscribes to the principles set out in the **United Nations Universal Declaration of Human Rights** which was adopted and proclaimed by the UN General Assembly by resolution 217A (III) on 10 December 1948. The SCHB is grateful to the Scottish Parliament for this opportunity to respond to the consultation entitled ***Inquiry into the Public Health etc. (Scotland) Bill***. It welcomes the Committee's intent to promote public consultation, understanding and discussion on public health.

In addressing the consultation, the SCHB has formulated the following responses, which can be made publicly available by the Committee:

Consultation response on behalf of the Scottish Council on Human Bioethics:

The Scottish Council on Human Bioethics, generally, supports the provisions presented in the ***Public Health etc. (Scotland) Bill***.

However, in drafting new legislation relating to public health, the **Scottish Council on Human Bioethics (SCHB)** is of the view that the Scottish government should ensure that it respects the following Council of Europe Conventions:

- Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No.: 5)¹

More specifically, this states in:

Article 5¹ – Right to liberty and security

- 4 *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*

The Scottish Council on Human Bioethics also supports the right of a detained person to appeal at each stage of his or her detention, quarantine or medical examination. However, this appeal should be able to take place at regular intervals of time if a risk of infection is long-lasting. For example, this would be the case if a new zoonosis arose after xenotransplantation.

- Convention on Human Rights and Biomedicine (CETS No.: 164)² :

More specifically, this states in:

Article 2 – Primacy of the human being

The interests and welfare of the human being shall prevail over the sole interest of society or science.

¹ Convention for the Protection of Human Rights and Fundamental Freedoms <http://conventions.coe.int/Treaty/en/Treaties/Word/005.doc>

² Convention on Human Rights and Biomedicine, <http://conventions.coe.int/Treaty/en/Treaties/Word/164.doc>

In the Explanatory Report of this Convention it is indicated under article 2 that³:

21. This article affirms the primacy of the human being over the sole interest of science or society. Priority is given to the former, which must in principle take precedence over the latter in the event of a conflict between them. One of the important fields of application of this principle concerns research, as covered by the provisions of Chapter V of this Convention.

22. The whole Convention, the aim of which is to protect human rights and dignity, is inspired by the principle of the primacy of the human being, and all its articles must be interpreted in this light.

Article 26 – Restrictions on the exercise of the rights

- 1 No restrictions shall be placed on the exercise of the rights and protective provisions contained in this Convention other than such as are prescribed by law and are necessary in a democratic society in the interest of public safety, for the prevention of crime, for the protection of public health or for the protection of the rights and freedoms of others.*

In the Explanatory Report of this Convention it is indicated under article 26 that⁴:

150. Compulsory isolation of a patient with a serious infectious disease, where necessary, is a typical example of an exception for reason of the protection of public health.

159. The reasons mentioned in Article 26.1 should not be regarded as justifying an absolute exception to the rights secured by the Convention. To be admissible, restrictions must be prescribed by law and be necessary in a democratic society for the protection of the collective interest in question or for the protection of individual interests, that is the rights and freedom of others. These conditions must be interpreted in the light of the criteria established with regard to the same concepts by the case-law of the European Court of Human Rights. In particular, the restrictions must meet the criteria of necessity, proportionality and subsidiarity, taking into account the social and cultural conditions proper to each State. The term "prescribed by law" should be interpreted in accordance with the meaning usually given to it by the European Court of Human Rights, that is a formal law is not required and each State may adopt the form of domestic law it considers most appropriate.

Note: Though the UK has not signed nor ratified this Convention on Human Rights and Biomedicine, the Scottish Council on Human Bioethics believes that it should do so as soon as possible. Indeed, it has already been ratified by 21 European states, with a further 13 signing their intention to ratify.

³ Explanatory Report to the Convention on Human Rights and Biomedicine, <http://conventions.coe.int/Treaty/en/Reports/Html/164.htm>

⁴ Explanatory Report to the Convention on Human Rights and Biomedicine, <http://conventions.coe.int/Treaty/en/Reports/Html/164.htm>