



Human Rights Act Reform: A Modern Bill of Rights

March 2022

About Children in Scotland

We welcome the opportunity to respond to this consultation from the Ministry of Justice. The Human Rights Act 1998 (HRA) is a vital piece of legislation that sets out rights that everyone in the UK is entitled to and so any reform must be well-evidenced, transparent and ensure that human rights protection in the UK is not weakened in any way.

Giving all children in Scotland an equal chance to flourish is at the heart of everything Children in Scotland does. By bringing together a network of people working with and for children, alongside children and young people themselves, we offer a broad, balanced and independent voice. We create solutions, provide support and develop positive change across all areas affecting children in Scotland. We do this by listening, gathering evidence, and applying and sharing our learning, while always working to uphold children's rights. Our range of knowledge and expertise means we can provide trusted support on issues as diverse as the people we work with and the varied lives of children and families in Scotland.

We recognise that the proposals set out in this consultation are complex with widespread legal ramifications, as a result our response will draw on the expertise of Together (Scottish Alliance for Children's Rights),¹ and the British Institute of Human Rights² alongside other organisations that are leading child and human rights experts in Scotland and the rest of the UK. Additionally, to ensure that the voices of the children and young people we work with are directly included in our response, we held a dedicated session with members of our children and young people's advisory group, Changing our World, on this consultation.

I. Respecting our common law traditions and strengthening the role of the Supreme Court

¹ https://www.togetherscotland.org.uk/media/1727/crc_ehric_response_071020.pdf

² <https://www.bihhr.org.uk/the-human-rights-act>.

1. We believe that the domestic courts should be able to draw on a wide range of law when reaching decisions on human rights issues. We would welcome your thoughts on the illustrative draft clauses found after paragraph 4 of Appendix 2 of the consultation document, as a means of achieving this.

The draft clauses contained within appendix 2, paragraph 4 consider replacing s.2 of the HRA which requires courts in the UK to consider the jurisprudence of the European Court of Human Rights (ECtHR) when a case involves European Convention on Human Rights (ECHR) rights. We are unable to support either option 1 or 2 as both would cause narrowed interpretations of ECHR rights in UK case law and, therefore, could lead to gaps in human rights protections. In the case made for reforming this law, it is stated that "the government remains committed to the rights in the Convention". However, the Independent Human Rights Review itself expressed concern that repealing s.2 would result in there being no formal link between UK legislation and the ECHR.³

It is unclear why the Government wishes to change s.2 as UK courts are already able to draw upon a range of laws when making decisions and this poses no issue as far as we are aware, whilst ensuring that ECHR rights are protected and updated in the UK. Moreover, changing legislation to cause UK courts to give less consideration to ECtHR judgments may result in more cases being brought against the UK. At present the majority of cases brought against the UK in the ECtHR are struck out.⁴ This change is likely to lead to more successful applications against the UK in the ECtHR.

2. The Bill of Rights will make clear that the UK Supreme Court is the ultimate judicial arbiter of our laws in the implementation of human rights. How can the Bill of Rights best achieve this with greater certainty and authority than the current position?

It is unclear why the position of the Supreme Court has been identified as a problem to remedy through a Bill of Rights. The HRA did not alter the fact that the Supreme Court is the highest court in the UK and the system of precedence in the UK's legal system means that all courts in the UK are obliged to follow what the Supreme Court has said on a previous issue – including human rights. Therefore, if the ECtHR has decided on a particular issue differently to the Supreme Court, UK courts will follow the most recent precedent set by the Supreme Court itself.

³ The Independent Human Rights Act Review, accessed here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040525/ihrar-final-report.pdf.

⁴ Out of 280 cases brought against the UK in 2020, only 2 applications found a violation of human rights, see https://echr.coe.int/Documents/CP_United_Kingdom_ENG.pdf/.

Currently, when the Supreme Court looks at a human rights case it starts first with UK laws and common law before thinking about judgments from the ECtHR. The Supreme Court has shown that it is open to choosing a different approach to the ECtHR in some cases if there is a good reason for this.⁵ This was illustrated in the Independent Human Rights Act Review (IHRAR) report and so there is a lack of evidence justifying the Government's concern or its preferred solution to address this.

3. Should the qualified right to jury trial be recognised in the Bill of Rights?

☐ Yes ☒ No ☐ I have another answer ☐ Prefer not to answer

Please provide reasons:

This relates directly to the right to a fair trial, which is already protected by Article 6 of the HRA. The recognition of this qualified right would change very little in practice, and does not constitute the “far-reaching reform” of this right laid out in the forward to this consultation.

Moreover, this right is already protected and applied in the devolved context. The Government has not provided clarity on how any changes would operate in the devolved nations across the UK, for example Scotland has a very different jury trial system compared to England and Wales.⁶

4. How could the current position under section 12 of the Human Rights Act be amended to limit interference with the press and other publishers through injunctions or other relief?

As injunction orders against the press are not our area of expertise, we are unable to respond in detail to this question. This is not an issue that was looked at in IHRAR, and so it is unclear why this is being focused on as a problem to address through a new piece of legislation. In addition, s.12 of the HRA means that UK courts must consider Article 10 rights in any orders made, meaning that the right to freedom of expression is recognised when considering other rights. There is already guidance available on restriction of this right: specifically it must be lawful, legitimate, and proportionate.

This is a right that must be balanced against Article 8, the right to private and family life and the impact on this must be carefully considered when proposing changes to these rights.

⁵ *Keyu v Secretary of State for Foreign and Commonwealth Affairs* [2015] UKSC 69; [2016] AC 1355.

⁶ <https://www.sccjr.ac.uk/wp-content/uploads/2019/10/3-The-Scottish-Criminal-Justice-System.pdf>.

5. The government is considering how it might confine the scope for interference with Article 10 to limited and exceptional circumstances, taking into account the considerations in the consultation document. To this end, how could clearer guidance be given to the courts about the utmost importance attached to Article 10? What guidance could we derive from other international models for protecting freedom of speech?

Currently Article 10 (the right to freedom of expression) is protected in the HRA but is a non-absolute right that can be restricted with a set process to follow to ensure that any restriction is lawful. This means that there already limitations on how this right can be constrained.

Decisions about this right are often complex and involve careful balancing of other rights, such as rights to privacy or wellbeing. Therefore, we would not support any prescriptive guidance that prioritises one right at the expense of others.

Our children and young people's advisory group, Changing our World, questioned the rationale of focusing on this right above all others and were surprised to hear of the Government's proposals. The group asked why the government is not improving human rights by improving support for families and children (Article 8) as this is clearly important to citizens and decision-makers in Scotland with policies such as the Care Review and The Promise.⁷ Members also said that they would like to see the government focus on other rights such as: access to healthcare, better social security and improving the right to education by providing inclusive education in schools.⁸

In addition, the government appears only to focus on how Article 10 applies in certain situations, as it advocates for fewer restrictions but criticises "that in the light of articles 10 and 11 of the Convention, protestors can have a "lawful excuse" for deliberate physical obstructive conduct).⁹ The ability to protest peacefully is a legitimate exercise of this Article 10 right, and was set to be limited by the Police, Crime Sentencing and Courts Bill 2021. Therefore, the stance of the Government on improving this right is contradictory and confused.

6. What further steps could be taken in the Bill of Rights to provide stronger protection for journalists' sources?

N/A

⁷ <https://www.carereview.scot/about/>; <https://thepromise.scot/>.

⁸ <https://www.tie.scot/>.

⁹ Consultation document, page 39.

7. Are there any other steps that the Bill of Rights could take to strengthen the protection for freedom of expression?

Please refer to our response to question 5.

II. Restoring a sharper focus on protecting fundamental rights

8. Do you consider that a condition that individuals must have suffered a 'significant disadvantage' to bring a claim under the Bill of Rights, as part of a permission stage for such claims, would be an effective way of making sure that courts focus on genuine human rights matters?

☐ Yes ☒ No ☐ I have another answer ☐ Prefer not to answer

At present under the HRA, legal action can only be taken by an individual who is the "victim" of a human rights breach,¹⁰ meaning that they must show that they have been directly affected by an actual or threatened breach of their human rights. We are concerned that imposing an additional criterion would add a further and unfair burden on individuals making a claim, all while legal advice is becoming harder to access due to issues with legal aid.¹¹

The Government has not laid out adequate evidence or justification that action needs to be taken to ensure that courts do not spend time looking at cases that are not "genuine" human rights cases. The consultation ignores the reality that there are admissibility stages for all legal cases in the UK, which means that if a case does not have "legal merits", it will not progress to become a full case.¹²

We are concerned that this question has arisen from myths and misinformation about human rights cases that are not genuine¹³ and that have been debunked by human rights experts in the UK.¹⁴

If the Government makes it harder for claimants in the UK to bring cases regarding ECHR rights, it is likely that more cases will be brought against the

¹⁰ S. 7 HRA 1998.

¹¹ UK Parliament Justice Committee, *Legal aid needs urgent reform to secure fairness of the justice system* (27th July 2021) < <https://committees.parliament.uk/committee/102/justice-committee/news/156934/legal-aid-needs-urgent-reform-to-secure-fairness-of-the-justice-system/>>.

¹² Admissibility.

¹³ Daily Mail, "Human rights is a charter for criminals and parasites our anger is no longer enough" (*Daily Mail*, 15th July 2012) < <https://www.dailymail.co.uk/debate/article-2173666/Human-rights-charter-criminals-parasites-anger-longer-enough.html>>.

¹⁴ https://www2.amnesty.org.uk/files/human_rights_act_myths.pdf and <https://www.morton-fraser.com/insights/five-myths-about-human-rights-law>.

UK in the ECtHR due to the Article 13 right to an effective remedy.¹⁵ Article 13 means that when a person's rights have been breached, they should be able to take action to hold the state to account. Additions to the permission stage of human rights cases will make this more difficult.

9. Should the permission stage include an 'overriding public importance' second limb for exceptional cases that fail to meet the 'significant disadvantage' threshold, but where there is a highly compelling reason for the case to be heard nonetheless?

☒ Yes ☐ No ☐ I have another answer ☐ Prefer not to answer

As stated in our response to question 8, we do not support adding any more hurdles to the permission stage for making a human rights claim as this will create additional barriers for those needing to access justice.

10. How else could the government best ensure that the courts can focus on genuine human rights abuses?

We are alarmed by the language used in the executive summary of this consultation.

Firstly, it states that "human rights claims ...brought by claimants who have abused their rights or the rights of others" bring human rights into disrepute. This demonstrates a misunderstanding of what human rights are: universal, they apply to everyone equally. As one member of Changing our World pointed out, "If human rights are from birth, then it's the same for everyone. It's unconditional".

We find it highly concerning that the Government is seeking to further redefine what it considers to be "genuine" cases, especially when the point of human rights law is to hold the Government (and other public authorities) to account.¹⁶

As stated in our responses to earlier questions, the current permission stage is already an effective mechanism for ensuring cases that are heard have legal merits.

The government also states that "claimants should pursue other claims they may have first, either so that rights-based claims would not generally be available where other claims can be made, or in advance of any rights

¹⁵ Colm O'Cinneide, "Having its "Strasbourg" cake and eating it: the UK Government's proposals for a new "Bill of Rights" (Völkerrechtsblog, 26th January 2022) < <https://voelkerrechtsblog.org/having-its-strasbourg-cake-and-eating-it/>>.

¹⁶ BIHR.

argument being considered, to allow the courts to decide whether the private law claims already provide adequate redress". This is an unnecessary and unjustified barrier to claims. Damages under the HRA (which are different to compensation in negligence claims) are usually symbolic and rarely the main reason for someone bringing a case to court under human rights law, and so are unlikely to provide adequate redress.

11. How can the Bill of Rights address the imposition and expansion of positive obligations to prevent public service priorities from being impacted by costly human rights litigation? Please provide reasons.

We believe that it is right that there are positive obligations on the state to prevent human rights abuses by taking proactive actions to achieve this. This obligation on public authorities ensured that justice could be achieved in many cases where the citizen's rights had not been looked after by the state, such as:

- Two women, who were survivors of attacks committed by a serial rapist, won their legal fight to hold the police accountable for breaching their human rights because of failures to properly investigate reports of his crimes.¹⁷
- Four children were gravely mistreated by their parents and the local authorities were aware of this but failed to take action and the court found that the children's rights to freedom from inhuman and degrading treatment were breached.¹⁸

Therefore, we do not agree that this concern outlined by the government is something that should be acted upon in changes to human rights legislation.

III. Preventing the incremental expansion of rights without proper democratic oversight

12. We would welcome your views on the options for section 3.

Option 1: Repeal section 3 and do not replace it

Option 2: Repeal section 3 and replace it with a provision that where there is ambiguity, legislation should be construed compatibly with the rights in the Bill of Rights, but only where such interpretation can be done in a manner that is consistent with the wording and overriding purpose of the legislation.

We would welcome comments on the above options, and the illustrative clauses in Appendix 2 of the consultation document.

¹⁷ *Commissioner of Police of the Metropolis (Appellant) v DSD and another (Respondents)* [2018] UKSC 11.

¹⁸ *Z and others v the United Kingdom* (Application no. 29392/95) 10 May 2001.

Section 3 of the HRA means that any laws in the UK must be read in a way that is compatible with the ECHR. In the consultation, the Government states that this provision allows for rights to be expanded without “proper democratic oversight”. We disagree with this view and support neither option outlined. The HRA was already created in a way that ensures Parliament has the last say on changes to legislation. The UK courts are only able to make interpretations of law that still respect the meaning of the law, whilst ensuring as much as possible that the law does not breach ECHR rights.

Courts will not change the law to something that goes beyond what the law originally meant. They have other avenues such as a declaration of incompatibility, which asks Parliament to look at the specific legislation again and gives it the final say on whether to change this.¹⁹

We are concerned that the proposals suggested by the Government would separate the interpretation of ECHR rights by national courts from the ECtHR and bring about a highly restrictive approach in human rights cases.²⁰

This proposal is another example of inconsistency with the IHRAR,²¹ which recommended that there should be no significant changes to section 3 and that there is no evidence that the courts are not using this provision properly.²²

13. How could Parliament’s role in engaging with, and scrutinising, section 3 judgments be enhanced?

N/A

14. Should a new database be created to record all judgments that rely on section 3 in interpreting legislation?

☐ Yes ☒ No ☐ I have another answer ☐ Prefer not to answer

N/A

15. Should the courts be able to make a declaration of incompatibility for all secondary legislation, as they can currently do for Acts of Parliament?

☐ Yes ☒ No ☐ I have another answer ☐ Prefer not to answer

¹⁹ S.4 HRA 1998.

²⁰ Barbara Bolton, *Opinion: new Bill of Rights*, Law Society of Scotland, accessed here: <https://www.lawscot.org.uk/members/journal/issues/vol-67-issue-02/opinion-barbara-bolton/>.

²¹ IHRAR.

²² IHRAR

We would recommend no change to this. At present secondary legislation can be declared invalid by the courts if they breach HRA rights. Excluding secondary legislation from a new bill of rights would, therefore, decrease human rights protections.

Secondary legislation in the UK has a very wide reach, including numerous laws made in the devolved nations and the Covid rules brought in by UK Government Ministers amongst others, and so existing measures provide an important safeguard to ensure that this type of legislation does not breach human rights.

As indicated by the British Institute of Human Rights (BIHR),²³ the court's ability to overturn secondary legislation is very important and part of way HRA provides protections for everyone in the UK. For example, the Supreme Court decided in a case, brought by a man living with his disabled partner challenging the reduction of his housing benefit, that the local authority must disapply this secondary legislation as it breached human rights.²⁴

16. Should the proposals for suspended and prospective quashing orders put forward in the Judicial Review and Courts Bill be extended to all proceedings under the Bill of Rights where subordinate legislation is found to be incompatible with the Convention rights?

☐ Yes ☐ No ☐ I have another answer ☐ Prefer not to answer

Please provide reasons:

We do not have expertise to answer this question directly but would support the response of BIHR on this issue.²⁵

17. Should the Bill of Rights contain a remedial order power? In particular should it be:

☐ a) similar to that contained in section 10 of the Human Rights Act; ☐ b) similar to that in the Human Rights Act, but not able to be used to amend the Bill of Rights itself; ☐ c) limited only to remedial orders made under the 'urgent' procedure; or ☐ d) abolished altogether? ☒ Prefer not to answer ☐ I have another answer

²³ <https://www.bihhr.org.uk/>

²⁴ *RR (Appellant) v Secretary of State for Work and Pensions (Respondent)* [2019] UKSC 52.

²⁵ <https://www.bihhr.org.uk/>

This is an issue that is beyond our expertise and so we support the view of the BIHR views on the question.²⁶

18. We would welcome your views on how you consider section 19 is operating in practice, and whether there is a case for change.

Section 19 appears to be a small procedural requirement that the UK Government must think about the compatibility of any new law with the rights in the HRA. We believe this is beneficial and ensures government is transparent about any potential human rights concerns with proposed laws. We have no concerns about how it is operating in practice, and we can find no evidence of this not working well. Moreover, the IHRAR itself said:

*"section 19 plays an important role both in helping to ensure that Government and Parliament consider the application of [the rights in the Human Rights Act]..to new legislation ... there can be no doubt that it has had a major, transformational and beneficial effect on the practice of Government and Parliament in taking account of human rights issues when preparing and passing legislation."*²⁷

We, therefore, do not consider that any change is required.

19. How can the Bill of Rights best reflect the different interests, histories and legal traditions of all parts of the UK, while retaining the key principles that underlie a Bill of Rights for the whole UK?

The HRA has been working well in the devolved context and so any changes to this legislation must be carefully considered. The HRA has a particular focus for Northern Ireland, as this legislation underpins the Good Friday Agreement and provides a safeguard for the peace process.²⁸

It is hugely important that changes are carried out in collaboration with the devolved nations and take account of the differing legal systems of Scotland and Northern Ireland. Scotland²⁹ and Wales³⁰ have a culture of valuing human rights protection. We note that each of these governments has criticised and expressed concern about these proposed changes to the HRA.³¹ Scottish Deputy First Minister John Swinney has said that,

²⁶ BIHR

²⁷ IHRAR, page 244.

²⁸ The Belfast Agreement: An Agreement Reached at the Multi-Party Talks on Northern Ireland 1998

²⁹ <https://www.gov.scot/policies/human-rights/>.

³⁰ <https://gov.wales/strengthening-and-advancing-equality-and-human-rights-wales>.

³¹ See letter from Deputy First Minister to Lord Chancellor and Secretary of State (21st December 2021) < <https://www.gov.scot/publications/human-rights-act-letter-to-the-lord-chancellor/>> ;Welsh Government Cabinet, Written Statement: UK Government Proposal to Reform the Human Rights Act 1998 (12th January 2022) < <https://gov.wales/written-statement-uk-government-proposal-reform-human-rights-act-1998>> and Joint statement

*"The reality of course is that the UK does not need a new "Bill of Rights". That role is already very successfully performed by the Human Rights Act. For our part, the Scottish Government has consistently made clear that there must be no changes to the Human Rights Act that would undermine or weaken existing human rights safeguards in Scotland or indeed elsewhere in the UK."*³²

Jane Hutt MS, Minister for Social Justice, has stated that the Welsh Government rejects these proposals, that they are "directly at odds with our direction of travel" and the positive contribution of the HRA is downplayed in the consultation.³³ Naomi Long MLA, Minister for Justice for the Northern Irish Executive has stated that the devolved impacts should have been considered before the consultation launched and proposals come up with.³⁴

We call for all governments in the UK to work together to improve human rights protections across all parts of the UK.

20. Should the existing definition of public authorities be maintained, or can more certainty be provided as to which bodies or functions are covered? Please provide reasons.

Section 6 HRA states that it is unlawful for public authorities, courts and other bodies that perform public functions (such as businesses and charities) to act in a way which is incompatible with ECHR rights. We support the existing definition. We support the principle of a wide definition of public authorities, while recognising that this definition would apply to other pieces of legislation, due to the reality that private and third sector bodies play an important role in the delivery of children's services.

This definition must not be restricted or regressed. It is important to note that changing this definition would substantially affect other legislation such as the Equality Act 2010.

21. The government would like to give public authorities greater confidence to perform their functions within the bounds of human rights law. Which of the following replacement options for section 6(2) would you prefer?

Option 1: Provide that wherever public authorities are clearly giving effect to primary legislation, then they are not acting unlawfully; or

³² See letter from Deputy First Minister to Lord Chancellor and Secretary of State (21st December 2021) < <https://www.gov.scot/publications/human-rights-act-letter-to-the-lord-chancellor/>

³³ Joint event organised by the Human Rights Consortium Scotland, the Human Rights Consortium Northern Ireland and the Welsh Society Forum (online, 02/03/2022).

³⁴ Ibid.

Option 2: Retain the current exception, but in a way which mirrors the changes to how legislation can be interpreted discussed above for section 3.

Which of the following replacement options for section 6(2) would you prefer?

- ☐ Option 1 ☐ Option 2 ☐ None of these options ☐ Prefer not to answer
☒ Other

Please explain your reasons:

In brief, we believe that the duties on public bodies to uphold human rights should not be limited in any regard. The consultation has not laid out evidence to show that this is an issue in need of redress. If the government is concerned that public bodies are lacking confidence in performing their functions within human rights law, it is the responsibility of the government itself to support public bodies here through training, awareness-raising, guidance etc.

22. Given the above, we would welcome your views on the most appropriate approach for addressing the issue of extraterritorial jurisdiction, including the tension between the law of armed conflict and the Convention in relation to extraterritorial armed conflict.

N/A

23. To what extent has the application of the principle of 'proportionality' given rise to problems, in practice, under the Human Rights Act?

We wish to provide more guidance to the courts on how to balance qualified and limited rights. Which of the below options do you believe is the best way to achieve this?

Option 1: Clarify that when the courts are deciding whether an interference with a qualified right is 'necessary' in a 'democratic society', legislation enacted by Parliament should be given great weight, in determining what is deemed to be 'necessary'.

Option 2: Require the courts to give great weight to the expressed view of Parliament, when assessing the public interest, for the purposes of determining the compatibility of legislation, or actions by public authorities in discharging their statutory or other duties, with any right.

We would welcome your views on the above options, and the draft clauses after paragraph 10 of Appendix 2 of the consultation document.

We support the response provided by the BIHR to this question.³⁵

24. How can we make sure deportations that are in the public interest are not frustrated by human rights claims? Which of the options, below, do you believe would be the best way to achieve this objective? Please provide reasons.

Option 1: Provide that certain rights in the Bill of Rights cannot prevent the deportation of a certain category of individual, for example, based on a certain threshold such as length of imprisonment;

Option 2: Provide that certain rights can only prevent deportation where provided for in a legislative scheme expressly designed to balance the strong public interest in deportation against such rights; and/or

Option 3: Provide that a deportation decision cannot be overturned, unless it is obviously flawed, preventing the courts from substituting their view for that of the Secretary of State.

We are concerned by the framing of this question. This was not a problem that was identified in the IHRAR, yet the Government states that there is an issue and offers options of solutions. Furthermore, we are concerned that the Government appears to have decided to take action in this area before it's had the opportunity to consider the evidence that respondents will submit as part of this consultation.

In the consultation, the Government used an example from a decision in 2009 to justify this proposal,³⁶ but there was a significant change in the law in 2014, which meant that this situation would no longer occur.³⁷ The HRA in practice does not prevent these deportations, as they are still taking place.³⁸ Therefore, we are unable to support any of the stipulated options as adequate justification has not been provided.

We agree wholeheartedly with the statement by the BIHR that:

"Limiting the scope of any of our human rights (here Articles 5, 6 and 8) for a "certain category of individuals" goes against the very point of human rights (not just the HRA) i.e. that they are universal and for all people. Any new Bill of Rights, if it is to be a human rights law, must also ensure universal human rights for all people. Otherwise, it is not a

³⁵ BIHR.

³⁶ *RB (Algeria) (FC) and another v Secretary of State for the Home Department and OO (Jordan) v Secretary of State for the Home Department* [2009] UKHL 10.

³⁷ Immigration Act 2014.

³⁸ Home Office, *Returns, deportation and charter flights factsheet* (22nd July 2021), accessed on <https://homeofficemedia.blog.gov.uk/2021/07/22/returns-deportation-and-charter-flights-factsheet/>.

human rights law, and this is clearly a reduction in our current protections.”³⁹

25. While respecting our international obligations, how could we more effectively address, at both the domestic and international levels, the impediments arising from the Convention and the Human Rights Act to tackling the challenges posed by illegal and irregular migration?

This consideration involves the UK Government's responsibilities under international law, such as the Refugee Convention 1951.

A key component of human rights is that they belong to everyone and are universal, meaning that states cannot be selective of the rights they decide to uphold and for whom.

The right which applies frequently in migration issues (such as crossing the English Channel), is that of Article 2 ECHR: the right to life. All public bodies must respect, protect and fulfil the right to life for all people in the UK, this includes those who are in UK waters.⁴⁰ Under the HRA, this right is an absolute right, and any breach of this right is unlawful. This includes failing to protect someone's life when they are known to be at immediate risk,⁴¹ such as those in danger when crossing the channel.

We note with alarm the overall trend of how this government is treating immigrants. Along with many other third sector organisations in Scotland, we have publicly expressed our opposition to the Nationalities and Borders Bill.⁴²

We repeatedly call for the Scottish and UK Governments to work together to develop policies and practice which benefit all people seeking asylum and host communities.⁴³

26. We think the Bill of Rights could set out a number of factors in considering when damages are awarded and how much. Which of the below considerations do you think should be included?

- ☐ a) the impact on the provision of public services ☐ b) the extent to which the statutory obligation had been discharged ☐ c) the extent of the breach ☐ d) where the public authority was trying to give effect to the express

³⁹ BIHR.

⁴⁰ Joint Committee on Human Rights, *Legislative scrutiny: Nationality and Borders Bill (Part 3) – Immigration offences and enforcement*, HC 885 HL 112 (published 1st December 2021).

⁴¹ *Case of Centre for Legal Resources on behalf of Valentin Câmpeanu* (Application no. 47848/08) (17th July 2014).

⁴² <https://www.justrightscotland.org.uk/2022/02/a-joint-statement-on-the-borders-bill-not-in-our-name/>.

⁴³ CiS manifesto

provisions, or clear purpose, of legislation. ☐ Prefer not to answer ☒ I have another answer

Please provide reasons:

Section 8 of the HRA states that if the courts decide that someone's human rights have been breached, they can grant a "relief" or "remedy". There is no automatic right to damages, but claimants are entitled to effective remedies, which may include financial reimbursement. This decision is something that should remain flexible and be decided according to the facts of particular cases.

We reject all of the options put forward, as the consequences of being held to account are an important mechanism for ensuring public bodies make decisions that uphold human rights in accordance with the law and so we support the current legislation.⁴⁴

IV. Emphasising the role of responsibilities within the human rights framework

27. We believe that the Bill of Rights should include some mention of responsibilities and/or the conduct of claimants, and that the remedies system could be used in this respect. Which of the following options could best achieve this?

Option 1: Provide that damages may be reduced or removed on account of the applicant's conduct specifically confined to the circumstances of the claim; or

Option 2: Provide that damages may be reduced in part or in full on account of the applicant's wider conduct, and whether there should be any limits, temporal or otherwise, as to the conduct to be considered.

☐ Option 1 ☐ Option 2 ☐ None of these options ☐ Prefer not to answer
☒ Other

Please provide reasons:

We reject these proposals in entirety. Rights are universal and inherent; therefore, they apply to everyone equally. Many human rights organisations and representatives of the devolved governments⁴⁵ have rejected these proposals as it creates a dichotomy between those in society who are seen

⁴⁴ BIHR

⁴⁵ Joint event organised by the Human Rights Consortium Scotland, the Human Rights Consortium Northern Ireland and the Welsh Society Forum (online, 02/03/2022).

as deserving of human rights protections (and remedies when these are breached) and those who are less deserving.

One member of Changing our World pointed out how this approach is a fallacy and goes against the intention of human rights law.

28. We would welcome comments on the options for responding to adverse Strasbourg judgments, in light of the illustrative draft clause at paragraph 11 of Appendix 2 of the consultation document.

N/A.

29. We would like your views and any evidence or data you might hold on any potential impacts that could arise as a result of the proposed Bill of Rights. In particular:

Note, evidence can be uploaded at Question 30 below.

What do you consider to be the likely costs and benefits of the proposed Bill of Rights? (Please give reasons and supply evidence as appropriate)

Along with other children's organisations in Scotland,⁴⁶ we oppose any changes to the HRA that would diminish human rights protections in the UK.

The Government has proposed many substantive changes to the enduring human rights framework and so it is crucially important that any changes are well-evidenced and supported by human rights experts across the UK. We strongly assert that there are no benefits to the Government's proposals within this consultation. As detailed in our responses to earlier questions, the Ministry has listed problems within the HRA that it wishes to address with an entirely new Bill that have not been evidenced properly and this consultation does not ask for views on these issues, rather it gives the choice between a number of set options to address the alleged issues. Anecdote and opinion cannot be a substitute for evidence⁴⁷ and any changes to vitally important human rights protection cannot be made on this basis.

In the executive summary, lack of ownership of the British public was cited as one of the justifications for creating a British Bill of Rights. If the Government feels that there is a lack of ownership or understanding of human rights in the UK, there are ways that this can be addressed outside of legislation. It is the responsibility of the Government to make sure citizens understand and are aware of their rights. Changing our World made several suggestions on how to achieve this:

⁴⁶ https://www.togetherscotland.org.uk/media/1907/hra_020321_final.pdf.

⁴⁷ n 45.

- Embed human rights into school curriculums, so children and young people can learn about their rights. This is working well in various schools across Scotland.⁴⁸
- Awareness campaigns on human rights generally so more adults are aware of rights.
- Human rights issues in the UK to be reported more on the news, so the public is aware that human rights apply to everyone.

Rather than bringing about changes to human rights legislation, the government could instead be focused on more effective implementation of human rights. We would welcome greater commitment to the rights of children and the consideration of incorporating the UNCRC directly into UK law.⁴⁹

What do you consider to be the equalities impacts on individuals with particular protected characteristics of each of the proposed options for reform? (Please give reasons and supply evidence as appropriate)

We are very concerned about the impacts of these proposed changes on vulnerable sections of our society who have been targeted by some of the proposals, such as immigrants and those who have committed crimes. Changing our World shared their worries about the effects on “groups the government finds unpopular” and we agree with this.

How might any negative impacts be mitigated? (Please give reasons and supply evidence as appropriate)

The only way to mitigate negative impacts of these proposals is to rethink the approach entirely and consult with experts.

Some of those to be consulted with are:

- Amnesty International
- Liberty
- The British Institute of Human Rights
- The Scottish Human Rights Consortium
- The Northern Ireland Human Rights Consortium
- Together (Scottish Alliance for Children's Rights)

The issue of devolution also needs to be dealt with in a holistic and thorough way and form the basis of any proposal made, not confined to one question in a consultation document.

⁴⁸ UNICEF Rights Respecting Schools

⁴⁹ Together.

30. Please upload any evidence for Question 29 here:

N/A

**Response written by: Amy Woodhouse, Head of Policy,
Projects and Participation, Children in Scotland**

