

Human Rights Act Reform: A Modern Bill Of Rights

A consultation to reform the Human Rights Act 1998

SOCIAL WORK SCOTLAND RESPONSE

8th MARCH 2022

Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services. We welcome the opportunity to provide comment on the UK Governments proposal to replace the Human Rights Act, 1998, with a UK Bill of Rights.

Social Work, as defined by the International Federation of Social Work is, “a practice-based profession and an academic discipline that promotes social change and development, social cohesion, and the empowerment and liberation of people. Principles of social justice, human rights, collective responsibility and respect for diversities are central to social work”¹. Social Workers are acutely aware of and work within systemic and institutional pressures that contribute to socio-economic challenges faced by the most vulnerable members of our communities and work to empower individuals using person-centred, rights-based practice every day. Social Work Scotland and the social work profession's very existence is to challenge structural inequality on behalf of those marginalised and most disadvantaged. The Human Rights Act, 1998, alongside a host of other legislation², provides the framework for the profession.

Respect for, and the upholding of, Human Rights are fundamental to a fair and just society. Human Rights apply to everyone, equally. Social Workers are at the forefront of protecting and promoting the Human Rights of the most vulnerable members of our society. As an

¹ <https://www.ifsw.org/what-is-social-work/global-definition-of-social-work/>

² <https://hub.careinspectorate.com/national-policy-and-legislation/government-legislation/>

organisation representing social work's leaders, Social Work Scotland are deeply concerned that the proposed contracting of the Human Rights Act 1998 weakens the legislative basis of safeguarding decisions.

It is with this lens that we have considered the consultation questions. We will therefore focus on those questions that are most pertinent to our profession. These are;

Question 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”.

In a right based society, a persons rights should not be defined by whether the infringement of those rights results in 'significant disadvantage', particularly where this relates to fundamental rights such as the right to safety, freedom from abuse and neglect. This would be particularly the case in relation to children and the UNCRC, and other vulnerable groups.

The consultation document refers to an upward trend of “frivolous or spurious human rights claims”, however no evidence base for this claim is provided. Without evidence, nor an exploration of how “significant disadvantage” would be assessed it is difficult to provide a response to this question other than to note our concern about the wording, and lack of evidence base for the proposal.

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 Scottish Government has made clear its position that it will not support a UK Bill of Rights³ and will take forward the recommendations made in the 2018 Report of the Advisory Group on Human Rights via the National Taskforce for Human Rights Leadership⁴. Devolution is acknowledged in document, but there is no concrete indication of what is being

³ <https://www.gov.scot/publications/uk-independent-human-rights-act-review-our-response---summary/>

⁴ <https://humanrightsleadership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf>

proposed, therefore, it is not clear how the UK Government anticipates the proposed Bill of Rights engaging with devolved Government's arrangements in respect of Human Rights, Equalities legislation or legislation pertaining to Children's Rights. This is deeply concerning.

Social Work Scotland understands that it is the UK Government's position that it will "safeguard our human rights protections in accordance with a common framework, whilst reflecting our diversity and devolved competences"⁵. However, we would respectfully note that a precedent has been set with regard to the UK Government opposing legislative proposals of devolved governments, not on the merit of the proposal, but on the basis of contravention of devolution arrangements⁶, therefore, the statement noted above provides little in the way of reassurance.

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 would query how the UK Government anticipates the proposed Bill of Rights will intersect with other Rights based legislation and policy? Thinking specifically about the UNCRC, but also in regards to the proposal regarding deportation; how does the UK Government anticipate this sitting in the context of Section 22 of the Children (Scotland) Act 1995, Children's Rights and the UNCRC based Getting it Right for Every Child policy and wellbeing approach as enshrined in the Children and Young People Act (Scotland) 2014?

⁵ <https://www.gov.uk/government/consultations/human-rights-act-reform-a-modern-bill-of-rights/human-rights-act-reform-a-modern-bill-of-rights-consultation>

⁶

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/973000/Letter.pdf

We would welcome clarification on how the UK Government sees public services upholding the duty to “safeguard and promote the welfare of children in their area who are in need; and so far as is consistent with that duty, promote the upbringing of such children by their families”, for example.

Additionally, we query how the UK Government anticipates the Bill of Rights intersecting with existing Equalities legislation, and particularly Protected Characteristics⁷?

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?

We would note our concern that the European Convention on Human Rights (ECHR) and Human Rights Act (HRA) are viewed as “impediments” in the context of immigration. As we have noted previously in this response, Human Rights are universal, and equal, applicable to all. This includes individuals who seek to leave their country of origin to live in the UK. We would also query how the UK Government anticipates this change in legislation to intersect with the Equalities Act, 2010, and the United Nations Convention on the Rights of the Child, (UNCRC), as well as domestic legislation such as Children (Scotland) Act 1995, Children and Young People (Scotland) Act 2014, and Social Work (Scotland) Act 1968.

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:

*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)*

We would anticipate that funding of legal challenges in relation to competing legislative duties, and to uphold children's rights, as well as the rights of people with Protected Characteristics would result in significant legal costs.

⁷ <https://www.legislation.gov.uk/ukpga/2010/15/section/4>

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).

As noted previously, we query how the UK Government anticipates this change in legislation to intersect with the Equalities Act, 2010, as well as domestic legislation such as Children (Scotland) Act 1995, Children and Young People (Scotland) Act 2014, and Social Work (Scotland) Act 1968.

The fact that this consultation has not, to date (23/02/2022) been published in an “easy read” format, despite the consultation having been live since 14 December 2021 exemplifies a lack of consideration of people with additional communication needs as well as those for whom written English is not a first language. This is a concerning omission which demonstrate a lack of understanding or consideration of equalities impacts.

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

We do not consider that there are actions that could be taken to mitigate the equalities impact of the proposals other than amending the Bill to focus to ensure it comes from a human rights basis.