



Human Rights Act 1998 Promoting A Sharper Focus On Protecting Fundamental Rights

Introduction

The Campaign for Freedom of Information in Scotland (CFoIS) submits this response to the UK Government's "Consultation to reform the Human Rights Act 1998". Article 10 of the European Convention on Human Rights (ECHR) is the right to form an opinion by receiving and imparting information. Receiving and sharing accurate information is key to forming an opinion, and explains why access to information is understood as a practical gateway to the equal enjoyment of human rights.

CFoIS has adopted the approach of Article 10 in formulating its opinion to this consultation on establishing a UK Bill of Rights. Having read the Government's consultation [document](#) and the [report](#) of the Independent Human Rights Act Review (IHRAR), CFoIS has concluded that minimal technical amendments to the Human Rights Act (HRA) may be appropriate, as set out in the IHRAR report, but seeks further information on the specific detail. The IHRAR did not recommend replacing the HRA with a Bill of Rights. The UK Government's effort to justify replacing the HRA with a modern Bill of Rights is unconvincing.

CFoIS notes that the IHRAR was set up by the Government to consider how the Human Rights Act (HRA) is working in practice and whether any change is needed. The independent Panel submitted their report to the Deputy Prime Minister in October 2021.

CFoIS, established in 1984 at the initiative of the Scottish Consumer Council, believes in the right of people to find out about how they are governed and how their services are delivered. CFoIS convenes the Scottish Public Information Forum (SPIF) for civil society, the public and private sectors to boost collaborative working and share best practice. More information at [CFoIS – The Campaign for Freedom of Information in Scotland](#)

The IHRAR

'Openness and transparency' were the 'hallmarks of IHRAR'ⁱ as:

- It was independent of Government, Parliament and the Judiciary.
- The selected Panel is also independent and membership was based on: '...their wealth of experience, coming from senior legal and academic backgrounds. They have the breadth and depth of expertise required to consider the issues highlighted within the Terms of Reference effectively.'
- The Terms of Reference were expressed in neutral terms as there were no 'preconceived or predetermined answers'.ⁱⁱ

Therefore, it is surprising that the UK Government has chosen to deviate from the inquiry's conclusions and pursue substantial legislative change which has significant devolution consequences. It fails to make a convincing case for this legislative choice.

Context

CFoIS notes that less than three months has been offered for consultation on the UK Government proposals, launched on 14th December 2022, which coincided with seasonal holidays and the continued management of the pandemic. A longer response time would have been better, especially for small, independent civil society organisations (NGOs) with few resources, like CFoIS, that have practical experience on monitoring the implementation of rights and duties.

The invasion of Ukraine by Russia and the targeting and killing of civilians by Russia provides context to the discussion about the purpose and impact of the ECHR across the UK. As of 7th March 2022, CFoIS notes the huge human rights violations that are being widely reported by UK and international media:

- Food, water, medicine and almost all other supplies are in desperately short supply in Mariupol, from where an estimated 200,000 people are trying to flee.
- More than 2 million Ukrainians have fled to Poland and other parts of Europe.
- 5,000 people were detained for demonstrating in Russia on Sunday 6th March.ⁱⁱⁱ
- The International Court of Justice, the United Nations' top court, has opened two days of hearings in a legal bid to halt the devastating war.

Unity behind the minimum standards contained in the ECHR and maintaining full domestic application, is critically important at this time. The UK should set a good example by strengthening compliance with all the Articles in the ECHR and continue to give them uninterrupted and equal domestic effect through the HRA.

The IHRAR report set out the context and the history of the ECHR which resonates most precisely with current invasion of Ukraine: "As the UK and the states of Western Europe emerged from the horrors of World War II, the Convention formed a part of the post-war architecture.' At the time of the ECHR's genesis, the thinking of democratic governments was dominated by preventative measures including stopping 'the rise of another Hitler'. The UK Government should show leadership and progressively work to further embed the ECHR into domestic law and follow the example of Sir Winston Churchill who played a key role in promoting its development.

Importance of Human Rights Law and Wider Impact

'From 14 January 1966, the UK accepted both the right of individual petition and the jurisdiction of the ECtHR. The UK's accession to the Convention in 1951 meant that, as a matter of public international law, from that date it was, like all other Council of Europe states, bound to comply with its provisions. This obligation has remained in place since 1951 and does so now in respect of judgments of the ECtHR through article 46.1 of the Convention.'^{iv}

CFoIS agrees that the HRA did not 'invent' or 'create' rights, but it did make their protection a lot easier by complainants being able to enforce their human rights in

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domestic courts. This legislative approach by the House of Commons was, and remains, a very good idea.

Importance of Article 10 of the ECHR

Transparency enables scrutiny and accountability which increases public trust in decision making. The public's right to know has proven to be effective on everyday issues such as public safety, hygiene in restaurants, housing provision and helps prevent fraud, corruption and maladministration.

Article 10 of the European Convention on Human Rights (ECHR) and Article 19 of the International Covenant on Civil and Political Rights provide for the right and the freedom to form an opinion by seeking, receiving and imparting information and ideas ...^v. These human rights are given effect via the Freedom of Information (Scotland) Act 2002 (FoISA). Domestic law and minimum ECHR standards operate effectively alongside each other for the common good. For example in Magyar Helsinki Bizottsag v Hungary, the Grand Chamber of the European Court of Human Rights (ECtHRs), the public interest of the requesting non-government organisation (NGO) was key. The ECtHR was 'satisfied that the applicant NGO intended to contribute to a debate on a matter of public interest' and the 'refusal to grant the request effectively impaired the applicant NGO's contribution to a public debate on a matter of general interest' so there was a breach of Article 10 of the ECHR. It further stated that acting on and for the public interest is a purpose of an NGO.^{vi}

The ECtHRs quoted from the case of Claude Reyes et al. v. Chile (judgment of 19 September 2006) at the Inter-American Court which found that:

"...The delivery of information to an individual can, in turn, permit it to circulate in society, so that the latter can become acquainted with it, have access to it, and assess it. In this way, the right to freedom of thought and expression includes the protection of the right of access to State-held information, which also clearly includes the two dimensions, individual and social, of the right to freedom of thought and expression that must be guaranteed simultaneously by the State."^{vii}

Therefore, human rights are global and local and we have a shared interest in ensuring they operate equally. Being able to share the information disclosed is part of the process of ensuring public accountability and organisational transparency. However people need to know about their rights and duty bearers need to be aware of their obligations for the system to be effective and agile.

It is useful to note that under Section 12 of the HRA, a court "must have particular regard to the importance of" the ECHR right to freedom of expression and, to journalistic, literary or artistic material which is in the public interest to be published. The right is balanced with the right to privacy which can vary how the information is released rather than censoring it.^{viii}

Response to Consultation Questions

CFoIS agrees with the IHRAR that "increased emphasis on the common law is not in any way inconsistent with the practice of other Convention states and is readily intelligible and acceptable to the ECtHR in terms of the doctrine of subsidiarity."^{ix}

The IHRAR set out the intended consequences and impact of the HRA which included:

- accessible domestic remedy using existing court structure.
- would 'change the relationship between the state and the citizen, and ...redress the dilution of individual rights by an over centralising Government that [had] taken place over the [previous] two decades.
- the creation, and then further development of, a 'rights culture' within the UK (and particularly the Executive); one which was explicitly based on the introduction of positive rights that went beyond the traditional negative rights/civil liberties.
- it would enable the courts to 'develop human rights throughout society'. It was not, however, intended to affect the constitutional principle of Parliamentary Sovereignty.
- it would enable the UK Courts to contribute directly through their judgments on human rights issues under the Convention to the development of the jurisprudence of the ECtHR.
- it would enable the UK Courts, as recognised by the ECtHR, to play their proper and 'primary role in protecting individuals' rights'.^x

As these ambitions have not yet been realised, the focus of UK Government action henceforth should be directed at their delivery.

Conclusion – Reject Proposal for a Bill of Rights

The focus of the UK Government consultation is misguided and should be refocused on the technical areas identified by the IHRAR as needing attention as well as the practical delivery of the HRA. Replacing the HRA with a Bill of Rights, as set out in the consultation, will result in unequal access to human rights and will negatively impact people who are most at risk of rights infringements. The consultation's focus and the questions posed avoid the conclusions of the IHRAR and the practical experience of CFoIS.

The Government should increase the sense of public ownership of the HRA, so serving to reduce what was described in evidence to the IHRAR as a sense of 'disempowerment' compounded by a sense of unequal enjoyment of human rights. This human rights deficit needs to be remedied by clear messaging from Government that human rights issues concern, apply to and protect everyone in society. CFoIS agrees with the IHRAR report that 'Serious consideration should be given by Government to developing an effective programme of civic and constitutional education in schools, universities and adult education.' The messaging and programme should also promote accessible remedies to human rights breaches. CFoIS also agrees with the IHRAR recommendation that Government and Parliament should consider the implementation of mandatory human rights training for public officials.^{xi}

Given that no substantial changes to the HRA have been established as necessary, CFoIS remains convinced that maintaining the HRA is the best approach to respecting, protecting and fulfilling human rights across the UK. By agreeing this sensible and proportionate approach, any devolution considerations of amending the Scotland Act 1998 are unlikely to be controversial.

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ⁱ The Independent Human Rights Act Review Pg. 3

ⁱⁱ The Independent Human Rights Act Review pg. 1.

ⁱⁱⁱ OVD-Info @OvdInfo

^{iv} The Independent Human Rights Act Review Pg.6

^v Treaty available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

^{vi} Judgement at paras 164-165 and at 197 at European Court of Human Rights at <http://hudoc.echr.coe.int/eng?i=001-167828>

^{vii} [The Independent Human Rights Act Review](#), para 61

^{viii} [Human Rights Act 1998 \(legislation.gov.uk\)](#)

^{ix} The Independent Human Rights Act Review Pg.19

^x Ibid. Pgs. 8-10

^{xi} Ibid Pgs. 19-20