



Devolution impacts of the Human Rights Act proposals

The Government's proposals to replace the Human Rights Act (HRA) are profoundly Westminster-centric. Amnesty International UK (AIUK) is deeply concerned about the government's proposals. They seek to upend the UK's existing model of rights, and in doing so:

- Dramatically weaken people's ability to access their rights under the European Convention on Human Rights (ECHR) and protect themselves from violations by the State
- Set up conflict with the European Court of Human Rights (ECtHR) including through defining rights differently to the ECtHR, likely leading to an increased number of UK cases heard in Strasbourg and even risking non-compliance with the ECHR.
- Be at significant odds with the human rights protections enjoyed within Scotland, Wales and Northern Ireland and risk breaching the Belfast/Good Friday Agreement.

AIUK's general concerns, as to how the proposals would undermine rights protections for people in all parts of the UK, are outlined in the [AIUK Parliamentary Briefing on the Human Rights Act proposals](#). What follows are specific concerns with respect to how the government's proposals would affect human rights in Scotland, Wales and Northern Ireland.

Undermining human rights in the devolution settlements

The devolution settlements in the UK are complex and varied, but common to all is the European Convention of Human Rights which is an embedded pillar of our constitutional law framework. For proposals with such constitutional significance, there is little to no consideration of this constitutional framework. Much of the narrative and framing of the proposals is entirely based on the English legal system, with scant regard for the separate legal jurisdictions in Scotland and Northern Ireland. An approach to UK-wide law-making, which treats devolution as a second thought, creates practical, legal and political problems. As the proposals stand, there is no prospect that a 'Bill of Rights' will work cohesively across the UK.

The requirement that legislation passed by the Welsh Senedd, Scottish Parliament and Northern Ireland Assembly must be compatible with the Human Rights Act means that the Act is fundamental to all the devolution settlements. As such, it would be a matter of serious concern if the UK Government was to act without the agreement of all of the UK's national legislatures. However there has already been clear and unambiguous opposition from the Scottish and Welsh governments in their [joint response](#) to the proposals.

The government is proposing to weaken the power of the courts to interpret legislation compatibly with Convention rights and to remove the power to strike down rights-abusive secondary legislation. The ECHR is embedded in the devolved settlements in Northern Ireland, Scotland and Wales in such a way that legislation passed by these legislatures must comply with ECHR rights, including secondary legislation and executive acts by Ministers. If the strike down power is removed for secondary legislation at Westminster an anomaly would arise in which devolved legislation is the only legislation left in the UK that is subject to human rights strike-down powers. When the courts find that secondary legislation contravenes protected rights, they must retain the power to disregard it or to strike it down.

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The analysis and priorities represented in the proposals are clearly not reflective of those of the devolved nations. The devolved administrations and jurisdictions have not been considered in their design. There is no support from the devolved administrations for any regressive reform of the HRA or reduction in the rights protection it offers citizens in Northern Ireland, Scotland, and Wales.

Belfast / Good Friday Agreement (B/GFA), rights protections and post-conflict institutions

The incorporation of the European Convention on Human Rights into Northern Ireland law is an explicit commitment of the B/GFA. These commitments were given effect through the HRA and Northern Ireland Act 1998. This incorporation has proved vital to peace-building efforts, in terms of building post-conflict institutions and as a mechanism to help address human rights violations over thirty years of the conflict.

AIUK is concerned that through, among other changes, defining rights differently to the ECHR, reducing access to certain rights for whole categories of people and setting up inevitable conflict with the Strasbourg Court, the government's proposals undermine and potentially breach the B/GFA and pose a real risk of destabilising Northern Ireland's delicately balanced peace settlement.

The HRA has also been central to the progress in building public confidence in policing in Northern Ireland. One of the key functions of the Northern Ireland Policing Board – a key oversight body consisting of members from all the main NI political parties and independent representatives, is to monitor compliance with the Human Rights Act 1998. The PSNI Code of Ethics is also designed around the framework of the ECHR as provided for by the HRA. The full impact of this legislation involves both the letter of the Convention and its jurisprudence.

In 2016, George Hamilton, Chief Constable of the PSNI, reflecting on the then threat to repeal the HRA, said: *"...the practical consequences if the Act is repealed would be I think hugely detrimental to both the confidence in policing and the confidence of the police to make difficult decisions."*

In addition, the HRA is central to attempts to deal with the legacy of human rights violations in Northern Ireland. The positive obligations on public authorities that have emerged from ECtHR interpretations of Article 2 and 3 have been essential in seeking progress on legacy issues, enabled new investigations and coroners' inquests into conflict-related deaths. Any reduction in the scope of positive obligations is likely to lead to undermining access to the above convention rights for victims of the conflict and bereaved family members in Northern Ireland.

The B/GFA also committed the Irish Government to incorporate the ECHR under the 'equivalence' provisions, resulting in Ireland's European Convention of Human Rights Act 2003. Any amendment of the HRA necessitates a process of review between the UK and Irish Governments in consultation with the NI Assembly parties. There is little prospect of international and local agreement for such changes. The Irish government has previously gone on the record to express its [strong opposition](#) to earlier UK plans to repeal the Human Rights Act, saying: *"The shared emphasis on human rights is part of what makes the peace process credible."*

Reducing access to rights would undermine and potentially breach a carefully crafted domestic and international peace agreement.

Ireland-Northern Ireland Protocol, Article 2

The UK Government and the EU recognised the centrality of human rights and equality protections to the peace process in the negotiations leading to the UK's withdrawal from the EU and that the Belfast / Good Friday Agreement required protection.

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Article 2 of the Protocol requires the UK Government and the NI Executive to ensure that no diminution of rights, safeguards and equality of opportunity contained in B/GFA ensues as a result of the UK's withdrawal from the EU. We hold that the non-diminution commitment in Protocol Article 2 encompasses the full range of rights set out in the ECHR and its 'living instrument' jurisprudence. However, the government is proposing explicitly to provide that the rights in the new Bill of Rights will not be determined by the meaning of rights in the ECHR, and that the link between domestic interpretation and that of Strasbourg be broken, allowing the UK to provide less protection.

We are concerned by how little consideration is given to Protocol Article 2 in the consultation.

Human Rights direction in the Devolved Nations

Changes or a replacement of the HRA will not only negatively impact devolution but directly interfere with the established plans in each devolved administration to better protect human rights for people in Scotland, Wales and Northern Ireland.

Scotland has recently sought to bring the UN Convention of the Rights of the Child into Scots law, via a Bill passed unanimously in the Scottish parliament which was predicated on the continued operation of the HRA and the human rights provisions of the Scotland Act. There is further work in progress to incorporate the Convention on the Elimination of Discrimination Against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD), and the Convention on the Elimination of All Forms of Racial Discrimination (CERD).

In Wales, the Children and Young Person's Rights Measure 2011 places a duty on Welsh Ministers to have due regard to the UN Convention on the Rights of the Child in their decision-making, while the Social Services and Well-being Act requires Welsh Ministers to have due regard to the UN Principles for Older Persons. Consideration is being given as to how social and economic human rights might be better protected in Wales to build on the Human Rights Acts and other existing protections.

In Northern Ireland, as the consultation acknowledges, there is a long-standing commitment in the B/GFA to introduce a ECHR-plus Bill of Rights specific to its particular circumstances:

"...rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland... These additional rights ... – taken together with the ECHR – to constitute a Bill of Rights for Northern Ireland."

The key term is 'supplementary'. The consultation says that the proposals 'will have no adverse impact on any future developments towards a Northern Ireland Bill of Rights', but this cannot be the case if, as is required by the B/GFA, the NI Bill of Rights is to be a 'Convention rights-plus' document. The proposals undermine how Convention rights would apply in NI and therefore undermine the foundation for the proposed NI Bill of Rights.

Changes or a replacement of the HRA will not only disturb the devolution settlements, but directly interfere with ongoing and future work to improve rights protections in each devolved nation.

Conclusion

These proposals are unnecessary, regressive and divisive. Responses from across devolved government and civil society in Scotland, Wales and Northern Ireland have shown that the Human Rights Act is valued, and considered fundamental to devolution across the devolved nations and to building peace and public confidence in post-conflict political and policing structures in Northern Ireland.

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