Amnesty International UK

BRIEFING

Human Rights Act 1998 briefing

Introduction

Ordinary people across the world are still fighting for the rights we all enjoy in the UK. If we want to protect our rights, we have to protect the law which gives them life and force – our Human Rights Act. The Act ensures dignity and respect for all of us as human beings, and particularly the most vulnerable in our society. It was carefully designed to fit with our parliamentary democracy and preserve parliamentary sovereignty.

The current proposals to repeal the Human Rights Act and replace it with what appears to be a significantly different 'British Bill of Rights' are not merely cosmetic, nor a more 'common sense' way of protecting rights at home. Instead, they threaten to slice through those protections and carve out the core elements - those parts that make the Act work for ordinary people every day and ensure people in the UK have at least the same minimum standards of rights as the rest of Europe. More than that, they could threaten to leave those living in England not only with less rights protection than the rest of the continent, but also with less protection than those living in the devolved regions of the UK, fragmenting rights standards across the union.

On top of this, the suggestion that the UK should treat the tiny number of judgements made against it by the European Court of Human Rights as only 'advisory', rather than abiding by them, would breach the UK's international obligations and could likely end up either (i) destabilising and undermining the European Convention on Human Rights from within, or (ii) in the UK withdrawing altogether. Either of those steps would fundamentally damage the UK's international standing and risk unravelling the entire post-World War Two universal human rights consensus.

Key recommendations to the UK government

- To retain the Human Rights Act
- To commit to promoting better understanding of the Act, and championing the cause of universal human rights at home and abroad.
- To abide by the UK's international obligations under the European Convention of Human Rights (ECHR)

Background

- The Human Rights Act builds on a strong tradition of human rights protections in UK law and brings rights home, by allowing people in the UK to exercise their European Convention rights under UK law
- The Human Rights Act is simple, effective and brings human rights into every day decision making of public authorities, ensuring less inadvertent rights abuses and less need for litigation
- The Human Rights Act works for ordinary people, offering protection and/or justice for rape survivors, elderly couples wishing to stay together, disable people being treated with indignity, mothers fleeing domestic violence to name but a few

The Human Rights Act builds on a strong tradition of human rights protections in UK law - going back all the way to the Magna Carta in 1215 - and was constructed to bring the ECHR into UK law and government decision making. The ECHR is not a foreign document or a piece of EU legislation. As with the Universal Declaration of Human Rights at the international level, it was inspired by the desire of a group of European nations to say 'never again': to protect individuals from the horrors and abuses suffered during World War Two.

The ECHR drew on a lot of British ideas: British experts drafted most of it, and the UK was the first state to sign up in 1951. Indeed, it was Winston Churchill in 1948 who called for "a Charter of Human Rights, guarded by freedom and sustained by law". It was intended to be a simple and therefore dynamic, flexible encapsulation of universal rights whose meaning could grow and adapt to society's changing needs over time. Not only were ordinary people to be protected from abuse by the state, but duties were to be placed on those states also to protect individuals.

Having directly experienced the dangers of how even a democratically elected government could strip those it disliked or deemed less human of their fundamental rights without proper safeguards, the drafters sought to enshrine universality and basic minimum standards.
Article 46 of the ECHR obliges the government to "abide by" any judgments of the special European Court of Human Rights in Strasbourg Court against it, as the guarantor of its minimum standards. From 1966 onwards, individuals were able to challenge the UK government in that Court if they felt the state had violated their rights and they had tried and failed to get a remedy domestically. However, that was a slow and frustrating process.

In 1998, the Human Rights Act then incorporated the ECHR into British law, bringing human rights back home to the UK Courts and opening the path to creating a British understanding of how they work for ordinary people every day. The Act is simple, but effective. It works in two primary ways. First it affects the way laws are made. Second, it affects the way decisions are taken by public authorities.

The law making function is carefully designed to preserve parliamentary sovereignty, while striving to ensure UK law is compatible with the sixteen fundamental ECHR rights. Before new primary legislation is passed, the Minister is required to make a statement explaining how it is compatible with those rights, which informs parliamentary debate.

The public authority decision making function is also straightforward. All those authorities carrying out public functions, from the government to the police, hospitals and schools, are placed under a duty not to violate the protected rights of individuals. That duty encourages a 'human rights' based decision making culture, influencing both decisions about one person's situation and general policies affecting thousands. The aim is to ensure that there are less inadvertent rights abuses, and thus less need for litigation, creating a process of progressive improvement in human rights standards in all areas of UK life. However, the Act also makes sure individuals have a way to challenge the public authority if something goes wrong in that process and they feel they have been the victim of a rights violation - or are about to be. In the majority of cases lawyers and courts do not need to be involved and a solution is worked out between the individual and the authority.

The Human Rights Act at work

Keeping couples together: A husband and wife had lived together for over 65 years. He was unable to walk unaided and relied on his wife to help him move around. She was blind and used her husband as her eyes. They were separated after he fell ill and was moved into a residential care home. She asked to come with him but was told by the local authority that she did not fit the criteria. After relying on their family rights, the authority agreed to reverse its decision and offered the wife a subsidised place so that she could join her husband in the care home.

Keeping families together: A woman left her partner after discovering that he had been abusing their children. She and the children were placed in temporary bed and breakfast accommodation but were regularly moved. Eventually, the woman was informed by social workers that the children would be removed from her because she was unable to provide stability and was having difficulty getting them to school. The woman challenged the decision citing her and the children's right to respect for private and family life, and the children's right to education; the department decided not to remove the children.

Criticisms and complications of repealing the Human Rights Act

- Human rights are universal, constant and cannot be in the gift of the state to give, take away or change
- Curtailing the role of the European Court of Human Rights could result in the UK having to leave the ECHR altogether, which would be an unprecedented regressive step for a western democracy and would likely result in lesser protections here; could lead to an unravelling of rights protections across Europe; and would damage the UK's reputation and international standing
- Scrapping the Human Rights Act could have serious implications for the union of the UK, given it is embedded in and critical to the devolution process, and could result in people in England having lesser protections than elsewhere in the union

The proposals set out to date by the Conservative Party would rip the critical protections discussed above out of

UK law. Amnesty considers that if pursued in accordance with the plan so far seen from the Conservative Party in October 2014, this would be disastrous for human rights standards in the UK. The plans appear - through a replacement 'British Bill of Rights' – to seek to change who gets human rights, what the protected rights mean, and when they are engaged and can be relied upon. That undercuts the fundamental idea that human rights are **universal**, **constant**, and that there are **common minimum standards** which can be relied on by ordinary people and applied by the Courts flexibly, according to the circumstances of the case. Rights are not, and should not be, in the gift of the state. To change that is to change the entire conceptual foundations of a system which has raised standards across the UK and the world.

Implications of a withdrawal from the ECHR

The Conservative Party 2015 manifesto contained a commitment to "curtail the role of the European Court of Human Rights". The steps that would need to be taken in order to realise this could result in the UK having to leave the European Convention on Human Rights altogether. Amnesty does not see a legitimate reason for wanting to change the UK's relationship with the European Court. It is simply not true to say that UK Courts are 'bound' to follow the European Court of Human Rights, and are thus dictated to. Section 2 of the Act simply requires the UK Courts to 'take into account' relevant judgments of the European Court when considering how to interpret and apply ECHR rights. That makes perfect sense, since the ECHR was intended to create common minimum standards across member states. There is a large amount of flexibility, but there must be a basic floor of protection the UK cannot drop below, any more than can Russia.

There is also a process of dialogue between UK Courts and that in Strasbourg, and the UK often influences the way standards are developed there and thus across the continent.

Remaining a signatory to the ECHR is critical, not only to ordinary people in the UK, but to the reputation and international standing of the UK. To leave the ECHR would mean the UK being the first European democracy to pull back from its international human rights commitments; to Amnesty's knowledge North Korea and Venezuela are the only other countries to have done similar. How could the UK promote human rights abroad, or hold itself out as a champion of the rule of law, if it abandoned the universal human rights project that has achieved so much? Amnesty also has serious concerns that this would send a signal to other states – particularly those that frequently violate the ECHR – that they can do the same, that it is acceptable to pursue a narrow, local concept of 'human' rights favoured by the government of the day.

It is no exaggeration to suggest that the unravelling of the international human rights structures could follow. A similar risk attaches to the proposal that a new British Bill of Rights would state Strasbourg Court judgements against the UK should be simply treated as advisory, rather than abide by them. That is unlawful as it would leave the UK in breach of its obligations under Article 46 ECHR. The UK is unlikely in the extreme to be granted some kind of special exemption from that key duty, or to have it removed from the ECHR itself. To achieve either of those things, however, or simply to go ahead and ignore the obligation, is highly likely to have a similar domino effect as would withdrawal, and thus to undermine the critical enforcement mechanism from within the ECHR.

Were the UK to leave the ECHR, or be forced to leave because of its unlawful approach to Article 46, there would be very serious consequences for the UK within the European Union (EU). It is difficult to see how the UK could remain in the Council of Europe, and in the EU, given that being a signatory to the ECHR is a pre-requisite of becoming a member of the EU; and the EU itself is in the process of becoming a signatory to the ECHR. Moreover, the UK would remain bound by the EU Charter of Fundamental Rights, which contains broadly similar protections and applies in the sphere of EU law. This is not a simple question.

The devolved angle

There is also not a simple answer to what will happen to the standards of rights across the UK itself if the Act is repealed, since it is embedded in and critical to the devolution process. The way in which the Scotland Act is drafted makes it likely impossible to repeal the Act without fundamentally altering the settlement in a way that will require the consent of the Scottish government. That has already been ruled out. As such, it would have to be forced upon Scotland, breaking the Sewell Convention. The situation in Northern Ireland is even more complex, since the Human Rights Act is a critical part of the Good Friday agreement, and thus an international treaty would be violated if it is not replaced with an essentially identical Bill of Rights. It is difficult to see how the Act can thus be repealed as planned without it leading to a situation of fragmented rights across the UK, with people in England perhaps left with a lower standard of protection than that elsewhere in the union.