House of Commons
House of Lords

Joint Committee on Human Rights

Human Rights Act Reform: Government Response to the Committee's Thirteenth Report of Session 2021–22

First Special Report of Session 2022–23

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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House of Commons

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Joanna Cherry QC MP (*Scottish National Party, Edinburgh South West*)

Florence Eshalomi MP (*Labour, Vauxhall*)

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Publication

Committee reports are published on the Committee's website by Order of the two Houses.

Committee staff

The current staff of the Committee are Andrea Dowsett (Lords Clerk), Busayo Esan (Inquiry Manager), Liam Evans (Committee Specialist), Alexander Gask (Deputy Counsel), Samantha Granger (Deputy Counsel), Eleanor Hourigan (Counsel), Natalia Janiec-Janicki (Committee Operations Manager), Lucinda Maer (Commons Clerk), Aimal Nadeem (Committee Operations Officer), George Perry (Media Officer), and Thiago Simoes Froio (Committee Specialist)

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First Special Report

The Joint Committee on Human Rights published its Thirteenth Report of Session 2021–22, *Human Rights Act Reform* (HC 1033 / HL Paper 191) on 13 April 2022. A letter from the Deputy Prime Minister, Lord Chancellor and Secretary of State for Justice and the Government response were received on 6 July 2022 and are appended below.

Appendix 1: Letter from the Deputy Prime Minister, Lord Chancellor and Secretary of State for Justice

I am grateful to the Committee for its report on the Government's consultation, *Human Rights Act Reform: A Modern Bill of Rights*.

The Government has carefully considered the Committee's recommendations, and our response is attached (Annex A).

I look forward to the opportunity to address the Government's proposals during my appearance before the Committee on 20 July.

RT HON DOMINIC RAAB MP

Appendix 2: Government Response

This is the Government's formal response to the recommendations made by the Joint Committee on Human Rights (JCHR) in its report: 'Thirteenth Report–The Human Rights Act Reform' published on 13 April 2022.

The Government is grateful for the Committee's detailed consideration of its proposals as outlined in the consultation document, 'Human Rights Act Reform: A Modern Bill of Rights', published on 14 December 2021.

The following response outlines the Government's considerations of the recommendations made in the Committee's report. The response has been structured to the subheadings in the Committee's list of conclusions and recommendations.

Responses to the Committee's Recommendations

Background to Human Rights Act reform

JCHR Conclusions and Recommendations

2	Given the constitutional importance of the Human Rights Act (HRA), any eventual legislation reforming or repealing it should be laid as a draft bill to enable pre-legislative scrutiny. (Paragraph 9)

1. The Government introduced the Bill of Rights Bill and published its consultation response on 22 June 2022.

2. The Government recognises the constitutional importance of its proposals, and we look forward to thorough scrutiny of the Bill during its passage through both Houses. The Government has already engaged extensively on its proposals, including through a lengthy consultation which received 12,873 responses from members of the public, academics, think-tanks, legal professionals and law firms, non-governmental organisations and charities. The Deputy Prime Minister appeared before the JCHR just before the consultation launched, and Lord Wolfson undertook a detailed and extensive evidence session with the JCHR during the consultation.

3. These responses have been considered and analysed in detail by policy officials, providing valuable input into the development of the proposals as detailed in the Government's consultation response (available as Annex A).

4. Our proposals also build on the Independent Human Rights Act Review (IHRAR) Panel's report, which was carefully considered throughout, including during preparation of the consultation document.

5. Additionally, the Ministry of Justice hosted ten consultation events during the consultation period, with hundreds of stakeholders from across the United Kingdom invited to participate.

6. Ministers also hosted three meetings with stakeholders, and the Deputy Prime Minister visited Scotland, Wales and Northern Ireland to discuss the proposals with members of the devolved governments, legislatures, main political parties and judiciaries

7. Following the publication of the Bill, the Deputy Prime Minister will be appearing before the JCHR again, and before the Lords Constitution Committee.

Successes of the Human Rights Act and the case for a Bill of Rights

JCHR Conclusions and Recommendations

4	The Government must look at ways to spread best practice in human rights compliance across the public sector including through training and information programmes. (Paragraph 19)
5	We support IHRAR's conclusion that the Government should develop an effective programme of civic and constitutional education. (Paragraph 22)
6	This should be implemented without delay by the Department of Education, with support from the Ministry of Justice if necessary. (Paragraph 22)
7	A Bill of Rights should be designed to strengthen, not weaken human rights protection. We see no real case for changing the HRA and little benefit of a rebranding exercise. What might be preferable is more political leadership in championing respect for human rights as a core part of our constitution and values. The Government should consider very carefully whether there is a compelling case for substantial reform, given the upheaval, legal uncertainty and cost that a new Bill of Rights would involve. (Paragraph 26)

8. The Government will continue to champion human rights at home and abroad. The Bill of Rights respects the UK's international obligations as a party to the European Convention on Human Rights (ECHR), and will retain all the substantive rights currently protected under the Convention and the Human Rights Act. We will strengthen human rights protections in a number of areas, including the right to freedom of speech specifically. We will also recognise trial by jury, which the Convention recognises only to the extent that the Strasbourg Court found that jury trials are capable of being consistent with the right to a fair trial (Article 6 ECHR).

9. The Government will continue to promote best practice consistent with its human rights obligations by ensuring that all appropriate training and information is available to public authorities. In addition, the Equality and Human Rights Commission (EHRC), Scottish Human Rights Commission (SHRC) and Northern Ireland Human Rights Commission (NIHRC) will continue to perform their role of promoting awareness, understanding and protection of human rights, and encouraging public authorities to comply with human rights law.

10. The Committee will note that citizenship is a compulsory subject in maintained secondary schools at key stages 3 and 4. At key stage 3, pupils are taught about the nature of rules and laws and the justice system, including the role of the police and the operation of courts and tribunals. At key stage 4, pupils are taught about human rights and international law and the legal system in the UK, different sources of law, and how the law helps society deal with complex problems.

11. The Government disagrees with the Committee's conclusion that there is no case for replacing the Human Rights Act. A reformed human rights framework for the UK will protect people's fundamental rights, whilst safeguarding the broader public interest and respecting the will of our elected representatives in Parliament. The Human Rights Act has been in force for over 20 years now, and it is right that we should seek to update it, to ensure that our human rights framework continues to meet the needs of the society it serves.

Section 2 Human Rights Act and the Courts

JCHR Conclusions and Recommendations

8	Section 2 HRA plays a crucial role in ensuring that UK judges have regard to matters that are relevant to cases before them, without unduly constraining them in their deliberations. It thus plays a vital role in ensuring that UK reasoning is fully understood by the European Court of Human Rights (ECtHR) and, therefore, that the UK is accorded the full margin of appreciation available. It also facilitates a very healthy state of judicial dialogue, thus enabling UK judicial reasoning to have a significant impact on ECtHR reasoning. It also means that our courts take the action necessary to ensure that UK cases do not need to end up in Strasbourg. As such, section 2 HRA should be retained and we do not see any need to amend it. (Paragraph 33)

9	The approach to applying human rights principles needs to be sufficiently flexible to stand the test of time. Human rights law must be able to evolve and adapt to changing circumstances. Disconnecting the application of human rights from the way they have been applied to modern societal circumstances by the relevant Human Rights Act Reform caselaw of the UK Courts and the ECtHR will not benefit people in the UK. There is no place in a modern Bill of Rights for an approach which would give effect to rights as they would have been understood and applied to a 1950s society. Such a premise is not consistent with the UK's human rights obligations, the nature of fundamental human rights, or the nature of the common law. (Paragraph 43)
10	If, following engagement with stakeholders and relevant national and local institutions, the UK Government considers that the way that specific rights are applied merits further reflection, it should engage with international partners in discussions about those issues rather than seeking a unilateral approach when it comes to the protection of basic, fundamental human rights. (Paragraph 45)
11	The Courts in the UK are not, and should not, be constrained in their ability to rely on relevant or useful sources for interpreting human rights obligations, including international sources. To the extent that the options proposed by the Government seem to be encouraging or enabling the courts to look at such sources, they would seem to be unnecessary. To the extent that they seem to be unduly prescriptive in setting out the methodological approaches to be applied by the judiciary, they risk interfering unnecessarily with the judicial function and should be avoided. (Paragraph 47)
12	More might be done to improve the visibility, accessibility and enforceability of common law fundamental rights. However, any proposal to prioritise consideration of non-Convention rights and consider human rights protected under the HRA as a secondary matter raises a number of practical difficulties, increasing litigation costs and unduly hampering the normal functioning of the courts, and therefore should be avoided. (Paragraph 51)
13	We do not support either of the proposed options to amend section 2 HRA. There are significant disadvantages and no real advantages in pursuing either option. Both options would appear likely to increase legal uncertainty, with resultant impacts of increasing the cost and time of litigation to resolve such uncertainty. The options increase the likelihood of individuals needing to pursue their claims in Strasbourg. There are also risks that any such amendments would reduce the likelihood that UK judgements can be readily understood in terms of ECtHR analysis and thus risk more adverse ECtHR judgments against the UK. (Paragraph 55)

12. With regards to section 2 of the Human Rights Act, the Government wants to adjust the reliance placed on the Strasbourg jurisprudence by UK courts, while leaving the dialogue between Strasbourg and the UK courts open. The Bill of Rights will require courts to have particular regard to the text of the Convention rights. Additionally, the Government is encouraging courts to examine other case law as well as the record of the negotiation and drafting history of the Convention (the preparatory work).

13. The Bill of Rights will instruct the courts, when determining a question in relation to a Convention right, not to adopt an interpretation which expands the protection conferred by the right unless the court has no reasonable doubt that the Strasbourg Court would adopt that interpretation. Subject to this limitation, the courts may diverge from Strasbourg jurisprudence. Therefore, our approach allows the courts ample opportunity to engage with Strasbourg jurisprudence.

14. Judicial dialogue occurs where national courts rule differently from the Strasbourg Court, for example based on a greater understanding of the domestic legal context. The Bill of Rights will provide that, among other things, courts may have regard to the development under the common law of any right that is similar to the Convention right. The Government believes that encouraging the courts to look at the UK context of human rights, rather than following Strasbourg jurisprudence as a matter of course, will put the courts in a better position to conduct this dialogue.

15. The Government disagrees with the analysis that these reforms would remove 70 years of development of human rights law. The Convention rights will still be contained in the Bill of Rights, and courts will continue to examine the Strasbourg position when interpreting the law. They may also interpret rights in accordance with the development of the common law, which continues to evolve and adapt.

16. The Government will continue to work with international partners on the working of the Convention and the Strasbourg Court, as it has done through its involvement in the Council of Europe, including its leadership in moving to adopt the Brighton Declaration. Our approach in the Bill of Rights is about setting the right approach for the UK while upholding to our international obligations as a party to the Convention.

17. Regarding the so-called prioritisation of rights (recommendation 12), the Committee's assessment of the proposal is not correct. Within the Bill of Rights, non-Convention rights are not being prioritised over Convention rights; the Bill does not impose an order of priority on the courts.

18. Our approach will adjust the reliance placed on the Strasbourg case law and highlight a wider range of sources the courts may look to. The Government sees this as a real advantage.

Compatibility of legislation with human rights: Sections 3 and 19 of the Human Rights Act

JCHR Conclusions and Recommendations

15	Section 19 HRA statements of compatibility are a vital tool in understanding the Government's intention and in assisting Parliament's scrutiny of Bills for human rights compatibility, as well as in improving transparency. The section 19(1) obligation Human Rights Act Reform 79 should be retained. However, it would improve parliamentary scrutiny if the obligation in section 19(1) were to bite upon introduction, rather than second reading of a Bill. (Paragraph 69)
16	A revision of section 19 HRA to place the requirement to provide Parliament with an ECHR memorandum on a statutory footing could help to improve the timely provision of these explanations. Such a Memorandum should be provided upon introduction of a Bill, showing the Government's analysis of the human rights compatibility of the provisions of the Bill. It would also help to have clearer indications within this analysis as to whether the Government is proposing that the UK benefit from a wide margin of appreciation. (Paragraph 70)
17	The Government should reflect and engage with both Houses of Parliament on how business is managed to enable effective and timely scrutiny of a Bill for human rights compatibility. (Paragraph 72)

21	Section 19(1) statements and their accompanying explanations should be extended to cover compatibility with all applicable human rights standards, including the common law and international obligations binding the UK that affect human rights and that are relevant to the subject matter of the Bill. (Paragraph 80)
22	Adequate explanations setting out human rights compatibility analysis should be routinely provided in the Explanatory Memoranda accompanying statutory instruments, alongside the compatibility statements in those Memoranda. (Paragraph 82)
23	We agree with the IHRAR Report's conclusion that there is no real evidence to suggest that the UK courts are misusing section 3. By only adopting interpretations that are consistent with the scheme of the legislation, the courts are balancing respect for Parliamentary sovereignty with effective protection for human rights. Repealing section 3 would create uncertainty in the law and substantially weaken the protection of human rights in the UK, both in the courts and through the wider culture of rights. Replacing section 3 with lesser interpretive obligations would have the advantage of greater certainty, but otherwise would be likely to result in similar damage to the protection of human rights in the UK. (Paragraph 98)

Section 19 of the Human Rights Act

19. We note the Committee's recommendation to retain section 19 of the Human Rights Act, with some revisions.

20. However, the Government will not replicate the section 19 obligation, in order to facilitate innovative policy-making, and to move away from the simplistic binary offered by section 19. The stigma attached to the making of a section 19(1)(b) statement risks effectively operating as a deterrent to innovative policy-making, even in cases where legislation may be successfully defended in court. This change will allow and encourage novel and creative policy making which better achieves Government aims, without preventing human rights impacts from being considered during the passing of a bill.

21. The Committee has raised in particular their analysis that section 19 helps both with understanding the Government's intention and assisting Parliament with scrutinising new legislation. We do not consider that the removal of section 19 will limit either of these functions. Removal of the section 19 obligation will not prevent Parliament, including the Joint Committee on Human Rights (JCHR), from considering and debating human rights implications of proposed legislation. Furthermore, this will not restrict new proposed legislation from being accompanied by analysis of human rights implications in the ECHR memorandum. Similarly, there will be no change to the ability to provide relevant explanatory material alongside Statutory Instruments.

22. Instead, the removal of a binary statement on compatibility recognises the complexity of determining Convention compatibility. The removal of section 19 also provides a more suitable way to approach analysis of human rights impacts, and provides sufficient space for scrutiny and discussion.

Section 3 of the Human Rights Act

23. The Government notes the Committee's comments on section 3. However, the Government believes that section 3 of the Human Rights Act has required the courts, at times, to stray too far into decision-making that is better suited for Parliament or the Government.

24. The Bill of Rights proposes to address this by repealing section 3 so that in future there will be a return to orthodox interpretations of legislation. The Government believes this will lead to greater certainty in the long term.

25. The repeal of section 3 will be accompanied by a power to make secondary legislation to preserve the continuing effect of interpretations made under that section. This is to ensure legal certainty where an interpretation made under section 3 is no longer capable of being made once section 3 is repealed but is, for example, an established part of the legislative scheme.

Remedying incompatibility: Sections 4 and 10 of the Human Rights Act

JCHR Conclusions and Recommendations

24	We support the proposal from the IHRAR report that a system be introduced for ex gratia payments where declarations of incompatibility are made, as this would mitigate some of the disadvantages of the declaration for the immediate claimant by providing them with some relief. (Paragraph 99)
25	We disagree with the Government's proposal that the courts should be able to make declarations of incompatibility in respect of secondary legislation (beyond the limited circumstances already provided for in section 4(3) and (4) HRA). (Paragraph 108)
26	Human rights provide protection against abuse of power by the State and should have a special place within the domestic legal order. The Human Rights Act gives human rights a central place in the UK constitution, whilst nonetheless respecting parliamentary sovereignty. It is important that any reforms do not upset this delicate balance. (Paragraph 110)
27	We see no reason why suspended and prospective only quashing orders, if introduced, would not apply to judicial reviews concerning human rights. We reiterate our view that the use of these orders should be a matter of judicial discretion and that they must not be used in such a way that would deprive of an effective remedy a victim of a human rights violation. (Paragraph 111)
28	Remedial Orders can be a useful tool for remedying human rights breaches. As such, the Committee supports the option put forward by the Government of retaining the remedial power to assist in addressing human rights violations. (Paragraph 115)

29	It could be useful to consider shortening the timeframes for remedial Orders to make the remedial process more expeditious. The first timeframe could perhaps be shortened from 60 days to 50 days for the first report in respect of a proposed draft remedial order; and the second one from 60 days to 30 days. Similarly, that would mean that the overall time for the urgent process could be 80 days. That should still be achievable for this Committee to report, provided resources are allocated appropriately. However, we would note that the most significant delay with remedial orders tends to be waiting for the Government to decide on how to address an incompatibility, which can take many years. It may therefore be more useful to consider how to expedite Governmental decision-making, perhaps through a more formal process of engagement with Parliament in setting a deadline for remedying incompatibilities. (Paragraph 117)
30	A more structured system should be established to ensure strong collaboration between Government and Parliament in taking timely action to resolve human rights violations. Following a declaration of incompatibility, the responsible Minister should write to the Committee setting out his proposed timetable and method for addressing that incompatibility. The Committee can then consider and agree that timetable with the Government, and can then help to hold both Government and other actors to account in taking timely action to address such violations. (Paragraph 121)
31	The Committee is concerned that option (d) of removing the remedial power (and probably option (c) of removing the non-urgent procedure) would, without separate measures to enable legislation to be brought swiftly, lead to persistent human rights violations and incompatibilities in the UK being unresolved or taking too long to resolve. (Paragraph 125)
32	Were either option (c) or (d) to be contemplated, the Government and Parliament need to work together to devise a way of ensuring a timely response to addressing human rights breached in the UK. (Paragraph 127)
33	A more structured system should be established to ensure strong collaboration between Government and Parliament in taking timely action to resolve human rights violations. Following an adverse ECtHR judgment, the responsible Minister should write to this Committee setting out his proposed timetable and method for resolving a judgment. We can then consider and agree that timetable with the Government, and can help to hold both Government and other actors to account in taking timely action to address such violations. (Paragraph 131)
34	The inclusion of a reference in statute to a discretionary, seemingly pre-existing power to table a motion is legally unnecessary and would risk opening its use, or lack of use, to debate and possibly challenge before the courts. Whilst we encourage more time to be given to considered debates in Parliament in relation to respect for human rights, we cannot see that this provision is necessary or particularly constructive in that regard. (Paragraph 134)

Declarations of Incompatibility

26. We have noted the Committee's view on declarations of incompatibility in relation to subordinate legislation. The Government is nonetheless of the view that reform is needed to give courts a wider ability to declare subordinate legislation incompatible. Existing remedial powers will be retained alongside this new option.

27. By potentially opening subordinate legislation to more declarations of incompatibility, courts will have the option of using this power rather than setting aside legislation passed by Parliament. This will allow courts to consider this as an alternative to quashing or declaring invalid a provision where it is appropriate to do so: for instance, if quashing or invalidating would have an undue impact on the operation of the legal scheme overall.

28. The Government will not pursue the option of introducing ex gratia payments where declarations of incompatibility are made.

Quashing orders

29. We note the Committee's comments on suspended and prospective-only quashing orders. The Government agrees that it is right that suspended and prospective quashing orders should apply to human rights cases, and is satisfied that this is appropriately provided for in the Judicial Review and Courts Act. Therefore, there is no need for further legislation on this matter in the Bill of Rights.

Remedial regulations

30. We welcome the Committee's support for retaining the remedial power to assist in addressing human rights violations. We have carefully considered the conclusions and recommendations of the Committee, as well as those of the IHRAR Panel and respondents to our consultation, and have concluded that remedial secondary legislation remains an appropriate measure when there are compelling reasons to use it in certain specified circumstances.

31. We note the Committee's proposals for shortening the timeframes for remedial orders, and this is something the Government will consider further. We also note the Committee's suggestions for the Government to engage more formally with Parliament on proposed timetables and methods for addressing incompatibilities.

32. The power to make remedial regulations under the Bill of Rights will broadly replicate the power to make a remedial order under the Human Rights Act, including both the urgent and non-urgent Parliamentary procedures. This will ensure that legislation can be amended, quickly where necessary, if it is found to be incompatible with a Convention right. It will also provide sufficient time for Parliamentary scrutiny of the remedial regulations and for representations to be made to the person making, or proposing to make, the regulations. These representations include the Committee's scrutiny reports, but they may also be made by other Parliamentary committees and interested parties.

33. For example, remedial regulations will be subject to a super-affirmative procedure. Under the non-urgent procedure, the draft regulations must be laid before Parliament for two periods of 60 days for scrutiny and then approved by both Houses of Parliament before they can be made. When the matter is urgent, the regulations can be made before laying, but they cease to have effect after 120 days unless they have been approved by both Houses of Parliament. Both procedures also allow for the regulations to be redrafted in response to any representations which have been made in the first 60 days.

34. We are also adding certainty about the scope of the power by making clear that remedial regulations cannot be used to amend the Bill of Rights, as the IHRAR Panel recommended. This will safeguard the constitutional status of the Bill.

Duty to notify Parliament of failure to comply with the Convention

35. We agree with the Committee that there should be collaboration between government and Parliament in responding to adverse Strasbourg judgments. The Government

believes that the Bill of Rights should reflect the important role Parliament holds in our constitutional arrangements. The Bill of Rights will require the Secretary of State to lay before Parliament notice of any adverse Strasbourg judgments against the UK, as well as unilateral declarations made by the UK acknowledging a failure to comply with the Convention.

36. In the consultation, we proposed the inclusion of a provision in the Bill regarding Ministers using their existing powers to table a motion for debate following an adverse Strasbourg judgment. We will not be legislating for this option. This is because, as noted by the Committee, Ministers are able to do so without an explicit provision in the Bill.

Qualified rights and limited rights and proportionality

JCHR Conclusions and Recommendations

35	We do not agree that the application of the principle of proportionality has given rise to significant problems in practice. It is a valuable tool that is necessary to the understanding and enforcement of qualified rights under the ECHR. The proposed changes to the court's assessment of proportionality are neither necessary nor beneficial. If too much emphasis is placed on the assessment of proportionality or public interest by the legislature, the court may be inhibited in its ability to carry out the proportionality assessment itself. This risks Parliament and the executive trespassing on the Court's constitutional function, thereby damaging the separation of powers. It also risks victims being denied their rights without justification. (Paragraph 144)

37. We want decisions regarding human rights to be taken in a fair and balanced way, which consider the needs of the individual who has claimed that their rights have been infringed but also ensures due consideration of the rights of others and the diverse interests of society as a whole. The Bill of Rights will provide guidance to courts, stating that in determining whether an Act of Parliament, or an act of a public authority in accordance with it, is compatible with a Convention right, courts must attach the greatest possible weight to the principle that decisions about how to balance different policy aims, different Convention rights, and the Convention rights of different people are properly made by Parliament. This recognises the function of Parliament in our democratic system, and the respect that should be accorded to its view in striking those balances. The provision expressly requires courts to infer Parliament's view from its decision to pass the relevant Act, and will therefore not encroach on the principle of Parliamentary privilege (as set out in Article 9 of the Bill of Rights 1689).

38. The Bill of Rights will protect the function of Parliament, ensuring respect for the role of democratically elected lawmakers to exercise their judgment in balancing complex and diverse socio-economic policies, and the wider interests of society.

Duties on Public authorities

JCHR Conclusions and Recommendations

36	The relevant factors to be applied in order to determine when functions are of a public nature is now a settled matter set out clearly by the case law. As there is no universally agreed test to determine whether a function is of a public nature, the weighing of relevant factors is a matter best left to be determined by the courts. It is therefore unlikely that seeking to redefine "public authorities" in legislation will assist with clarity. If anything, it may risk introducing more ambiguity, as the courts will have to start again with interpreting a new provision. (Paragraph 151)
37	We would not support any redraft or clarification of the definition of public authorities in statute that would seek to narrow the existing definition of the state so as to erode human rights protections. The State should not evade its responsibility to safeguard Convention rights by delegation to private bodies or individuals. (Paragraph 152)
38	Section 6 HRA respects parliamentary sovereignty by allowing public authorities a defence when they are acting in accordance with legislation that allows for no discretion or where legislation cannot be interpreted compatibly with Convention rights. It is not clear, therefore, why the Government is concerned that this provision requires amendment. (Paragraph 159)
39	The proposed options would reduce rights protections for individuals. Section 6 HRA places human rights front and centre of public authorities' approach to providing services, helping to create a human rights culture. Any weakening of this duty is likely to undermine human rights culture within public authorities and would leave individuals with no choice but to pursue their claims in court. (Paragraph 160)
40	The wider the ambit of the defence in section 6(2), the more likely that there will be an increase in cases where the UK is failing to provide an effective domestic remedy for any breach of Convention rights as required by Article 13 of the Convention. (Paragraph 161)
41	Positive obligations are a central principle of the Convention. Positive obligations go beyond a duty not to interfere with Convention rights, and require that, in some circumstances, the state must take active steps to protect people's rights against interference by others. In addition to the express wording in the Convention, the courts have implied various positive obligations in order to secure effective rights protection. If individuals are not able to enforce their rights against public bodies as a result of any narrowing interpretation of positive obligations in domestic courts, individuals will be forced to seek a remedy before the ECtHR. (Paragraph 170)

39. We consider that the Bill of Rights can provide greater clarity as to the obligations of public authorities. The Bill of Rights will make clear that when public authorities are clearly giving effect to the will of Parliament, as reflected in primary legislation, they are acting lawfully. It will achieve this by removing the requirement to interpret legislation, so far as possible, to achieve compatibility with the Convention rights. This ensures that laws will be interpreted in the ordinary way, respecting the intent of Parliament. The aim is that this will deliver greater certainty for public services to do the jobs entrusted to them.

40. The Government is committed to protecting the rights of individuals, whilst reducing burdens on public authorities and enabling operational experts to exercise greater discretion over the allocation of resources. The Bill does not remove any existing

interpretations of Convention rights that give rise to positive obligations but prohibits the creation of new ones and prevents the scope of existing obligations from being expanded. Our aim is to ensure that public authorities are not exposed to unnecessary litigation.

41. The Bill of Rights, therefore, will ensure that courts do not adopt new interpretations of Convention rights that impose positive obligations on public authorities. When considering the application of existing obligations, it will also instruct courts to take into account a range of factors when considering whether the positive obligation applies. For example, the public interest in enabling operational experts to exercise discretion in competing priorities and the need to avoid obligations that would be unduly burdensome.

Litigation and remedies

JCHR Conclusions and Recommendations

42	The proposed permission stage is unnecessary and likely to be inconsistent with the UK's obligations under the Convention. (Paragraph 179)
43	The precise nature of the proposal in respect of section 8 HRA, requiring prioritisation of claims that are not based on human rights, is unclear, but on any reading it appears that the disadvantages clearly outweigh any advantages it might provide. (Paragraph 186)
44	The courts already have sufficient flexibility when considering damages in human rights claims, allowing them to take into account the wider context. The Government's proposal could unbalance the 'equitable' exercise of judgment by the courts, and put at risk the UK's compliance with the right to an effective remedy, and should be rejected. (Paragraph 191)
45	Human rights by their nature are universal—they are inherent in the human condition. Any efforts to categorise certain groups of people as being less deserving of human rights protection is contrary to the very concept of human rights and should form no part of our laws. (Paragraph 198)
46	The proposal that a Bill of Rights should provide for damages to be reduced or removed on account of the claimant's conduct, specifically confined to the circumstances of the claim, is unnecessary, and risks unbalancing the equitable approach to damages currently taken by the courts. To extend that proposal to wider conduct outside the circumstances of the case would constitute an indirect but dangerous attack on the fundamental universality of human rights and should be rejected. (Paragraph 200)

42. The Government believes that introducing a permission stage is necessary to ensure that trivial claims do not undermine public confidence in human rights more broadly. Following further policy development and analysis, we have modelled the permission stage on the Strasbourg Court's own admissibility criterion, in particular by adopting the concept of 'significant disadvantage' in Article 35 of the Convention.

43. The permission stage will apply where Convention rights are relied on to bring proceedings against a public authority under the Bill of Rights, for example in civil proceedings where a Convention argument is raised. It will not apply where a person relies on Convention rights in any legal proceedings brought against them or in establishing a cause of action arising other than under the Bill of Rights. The permission stage will also only apply to judicial review claims issued in England and Wales. The judicial review procedure in Scotland and Northern Ireland will remain unchanged.

44. This permission stage will be consistent with our obligations under the Convention. Convention rights will continue to be enforceable in domestic courts, and a claim will still proceed to a substantive hearing if a person can demonstrate that they have suffered a 'significant disadvantage' or, if they cannot, that there is a wholly exceptional public interest in their claim proceeding.

45. Turning to the Committee's recommendation regarding the prioritisation of claims that are not based on human rights, we can confirm that we are not proposing to strengthen the existing rule in section 8(3) of the Human Rights Act under the Bill of Rights.

46. We have noted the Committee's concerns relating to the proposals to reduce damages based on account of claimants' conduct. Our provisions align with the position under the ECHR, and reiterate that a just and appropriate remedy for a breach of a Convention right is to be determined with regard to the particular features of each case, and, importantly, that a just and appropriate remedy does not always necessitate financial compensation.

47. The Committee observed that providing for damages to be reduced or removed on account of the claimant's conduct may risk unbalancing the equitable approach currently taken to damages. However, in describing its own equitable approach to compensation, the Strasbourg Court has acknowledged that it may find reasons of equity to award less than the value of the damage sustained or even not to make an award of damages. Accordingly, the conduct of claimants, including their character and criminal history, is already a factor that may be taken into account by the Strasbourg Court and domestic courts when they are considering whether to make an award of damages.

48. Our provisions will strengthen the principles surrounding the awarding of damages by expressing them explicitly and consistently in statute. These will be built on, but be independent of, the Strasbourg Court's own principles. The Bill of Rights will therefore enable our domestic courts to consider damages in a UK context. This will be a fair system, and courts will have wide discretion when considering these factors. Significantly, it is for the court to consider whether any particular conduct on the part of the claimant is relevant to the case. For example, with regard to any conduct which stems from a person's status as a victim of abuse or exploitation, it will be for the court to consider whether such conduct is in fact relevant.

49. Our provisions will also empower courts actively to take the public interest into account when considering an award of damages, adopting a balanced approach in considering the impact on the individual of a violation of their human rights, as well as considering the impact of a compensatory award on a public authority's ability to provide services to society as a whole, in determining a just and appropriate remedy.

Strengthening rights

JCHR Conclusions and Recommendations

48	The Government seeks to reorder Convention rights by elevating one above the others. This undermines the philosophy of the Convention which is premised on the fact that all rights contained therein are fundamental (albeit some are absolute, some limited, others qualified). Giving undue priority to freedom of expression in primary legislation could undermine the ability of individuals to enforce their rights to privacy, a fair trial and freedom of assembly and upset the balancing exercise the courts currently undertake when competing rights are engaged. (Paragraph 210)
49	The Government's proposals to amend section 12(3) would limit the ability of individuals seeking to enforce their rights, for example, to private and family life, or to a fair trial, where an imminent publication of material could constitute a breach of those rights. The purpose of interim injunctions is to prevent injustice before a trial of the issues can take place. The higher the threshold introduced by the Government, the more likely that injustice and breaches of privacy and fair trial rights will result from the publication of material. (Paragraph 212)
50	If the Government creates a strong presumption in favour of freedom of expression in primary legislation, this may undermine the balancing exercise which the courts currently undertake when there are competing rights engaged. If the UK falls short in the balancing exercise between two rights which enjoy equal protection under the Convention, the methodology applied by the court may lead it to find a procedural violation. (Paragraph 215)
51	It is not clear why the Government believes the current legal framework for the protection of journalists' sources is inadequate. The Government ought to publish its reasoning and put forward clear proposals to allow for detailed analysis. (Paragraph 217)
52	The inclusion of the right to trial by jury in the Bill of Rights would have no obvious legal significance. Its proposed inclusion appears to be symbolic. During the pandemic, the Government suspended jury trials before the Crown Court on the grounds of a public health emergency, which led to inevitable delays to justice. If the British Bill of Rights contained specific protections for the right to trial by jury, the Government may be open to challenge if they seek to reduce the scope of jury trials, or suspend jury trials, in the future. (Paragraph 221)
53	The Government states it is their intention to "create a Bill of Rights for the whole of the United Kingdom, founded on principles common to us all." However, the right to jury trial does not exist in Scottish procedure. The Bill of Rights would therefore diverge from universality, as not all rights would be given effect in all four jurisdictions. It will be a matter for the Scottish Parliament to determine whether to make any amendments to their criminal justice system. (Paragraph 222)
54	We urge the Government to ensure that it publishes detailed and disaggregated statistics in order to ensure transparency and enable stakeholders to analyse the evidence base for proposals. (Paragraph 234)
55	In order to comply with Convention rights, the courts must be able to undertake a balancing exercise and proportionality assessment when considering FNO deportations. Each of the proposed options for reform would tip the balance even further away from individual rights and strengthen the existing presumption in favour of deportation. If it becomes virtually impossible to displace this presumption, the balancing exercise is rendered null and void. (Paragraph 239)

56	These proposals would (i) deny FNOs their full Convention rights, thereby undermining the principle of universality of rights; (ii) remove the safeguard of meaningful judicial oversight; and (iii) place important human rights considerations in the hands of the Home Secretary, who is not an independent decision-maker. They are therefore likely to lead to increased litigation and potentially adverse judgments before Strasbourg. (Paragraph 240)
57	The principle of non-refoulement guarantees that no one should be returned to a country where they would face the risk of irreparable harm. Changes to the law which undermine the principle of non-refoulement would violate the UK's international obligations. It is concerning that the Government perceives legal obligations arising from the Convention and the Human Rights Act as "impediments". The courts must not be prevented from carrying out an effective assessment of whether removal amounts to a justified interference with rights. We reiterate our concerns with the Nationality and Borders Bill, as set out in our reports on the Bill. (Paragraph 242)
58	The case law of the ECtHR recognises that where a state is exercising effective control over individuals or territory then Convention rights should apply irrespective of location. If states wish to disapply certain provisions of the Convention due to a "war or other emergency" then Article 15 ECHR is available to them. The extraterritorial application of the Convention has been crucial in holding the Government to account for human rights violations of civilians and British soldiers whilst operating overseas. Whilst there may be no harm in undertaking dialogue at the Committee of Ministers to clarify the scope of extraterritorial jurisdiction, any reduction in scope may result in the removal of remedies for human rights violations committed overseas. Rights protections should not be reduced when the state is exercising effective control over individuals or territory just because the state is operating overseas. (Paragraph 245)

Freedom of speech and protecting journalists' sources

50. Freedom of speech underpins our democracy, ensures greater transparency and accountability, and preserves the space for wide and vigorous public debate. The Bill of Rights will therefore strengthen protections for freedom of speech specifically, rather than other aspects of Article 10 and freedom of expression more widely. This reflects the importance of free speech in our society and will ensure that individuals feel empowered to partake in wide-ranging public debate.

51. Courts will be required to give great weight to the importance of protecting freedom of speech–the Convention right to freedom of expression insofar as it relates to the right to impart ideas, opinions and information–when balancing the freedom against competing rights and protections. Courts will continue to undertake a balancing exercise between competing rights, and the proposal does not require courts to always find in favour of freedom of speech (regardless of the merits of any competing claim to a right). Freedom of speech will continue to be a qualified right and will be subject to the protection of other rights and limitations that are prescribed by law and are necessary in a democratic society.

52. The Bill of Rights will also outline circumstances in which the right to freedom of speech should not be strengthened. The Bill will not require great weight to be given to freedom of speech when the issue concerns: criminal offences; information received in confidence pursuant to a contractual or professional relationship; immigration or citizenship decisions; and matters concerning national security.

53. In addition, the Bill of Rights will replicate sections 12(1)-(3) and (5) of the HRA. This ensures that, where necessary, courts can grant interim injunctions to prevent injustice before a trial has taken place.

54. We believe that journalists have an important role in our society, providing scrutiny and holding those in positions of power to account. There is longstanding public interest in journalism and journalists' role in our society. Therefore, the Bill of Rights will include specific provision to protect journalistic sources. This also reflects the Government's longstanding commitment to protecting freedom of the press, recognising that a vibrant and free press plays an invaluable role in our cultural and democratic life. We want to make sure that this continues, with high journalistic standards working in the public interest.

55. Journalists' sources are currently protected under the general protection for sources of information under section 10 of the Contempt of Court Act 1981. The new provision, specific to journalistic sources, will help safeguard freedom of the press and will provide clarity on the appropriate protections for both journalists and their potential sources. The provision will introduce a higher test to be met before the court can order a journalist to disclose their source. The Bill will require there to be exceptional and compelling reasons in the public interest for the court to order the disclosure of a journalist's source, and the reasons must outweigh the great weight to be given to the public interest in protecting journalistic sources.

Trial by jury

56. The Bill of Rights will recognise trial by jury within the framework set out in legislation, a proposal which received significant support in the consultation. Recognising trial by jury in the Bill of Rights reflects the importance of jury trials and their significance in UK traditions. By recognising jury trials in the Bill, we will demonstrate the UK's commitment to trial by jury as one mode of trial capable of providing a fair trial under Article 6 of the Convention.

57. Our proposals will recognise the different arrangements for trial by jury in each jurisdiction of the UK. The provision will only apply insofar as arrangements for jury trials are determined in, and continued to be determined by each jurisdiction, i.e., under the control of the UK Parliament for England and Wales, the Scottish Parliament, and Northern Ireland Assembly.

58. The Bill of Rights will not create a new right to jury trial Instead, it will recognise jury trials as one mode of trial capable of providing a fair trial under Article 6 of the Convention. Under the Bill of Rights, the UK Parliament and the devolved administrations will continue to be able to suspend jury trials where necessary, and the ability to elect trial by jury in England and Wales will not extend any further. The Bill of Rights will explicitly account for circumstances in which individuals can be tried before a judge alone, including where 'otherwise prescribed by law'. Should jury trials be suspended again in future, this would continue to be lawful as is the case currently.

Foreign national offenders and extraterritorial jurisdiction.

59. The Government remains convinced that reform is needed to secure the deportation of foreign national offenders (FNOs) who have shown little or no regard for the rights of others by committing crimes in the UK. We respect the universality of rights, as noted by the Committee in its response. The Bill of Rights will continue to safeguard the vital protection for the right to life and the absolute prohibition on torture, so that people should not be deported to face torture (or inhuman or degrading treatment or punishment) abroad.

60. We recognise, however, the significant public interest in the deportation of foreign offenders and we will therefore strengthen the framework around appeals made in relation to certain qualified rights, such as the right to respect for private and family life (Article 8), and the right to a fair trial (Article 6). We are of the view that confidence in our human rights framework is eroded when foreign criminals can frustrate deportation, because their human rights are given greater weight than the safety and security of the public.

61. We will establish a high-level framework that will apply when a court is considering whether deportation laws in relation to foreign national offenders are compatible with Article 8 of the Convention. This provision will guide the courts so that they must find such laws compatible unless they consider that doing so would require a public authority to act in a way that would cause extreme harm to the offender's child or other family member, such that it would outweigh the public interest in deportation. Accordingly, the Bill does not impinge upon the ability of the courts to determine appeals under existing legislation, but rather creates a framework to guide courts as to future legislation in this area. The Bill of Rights will also introduce in law a test for Article 6 appeals so that they must be dismissed unless a high threshold is met. This approach essentially codifies the existing case law in respect of this Article and the court retains discretion to undertake the necessary balancing exercise to determine the appeal.

62. Importantly, therefore–noting the Committee's concerns–neither provision prevents the courts from fulfilling the important balancing exercise that is required of them under the Convention.

63. On the extraterritorial application of the Convention, the Government recognises that there is not a unilateral domestic solution to this issue and will continue to work with partners in the Council of Europe to address the issue of the extraterritorial application of the Convention at the international level, as the Committee has noted.

64. However, the Government is of the view that as we undertake wider domestic human rights reform, it is the right time to signal at domestic level our commitment to the principle that claims relating to overseas military operations should not be brought under human rights legislation, as the Convention was not originally intended to apply extraterritorially and was never designed to regulate conflict situations.

65. The Government remains committed to upholding the rule of law in relation to the armed forces, which will continue to abide by their duty to act lawfully and uphold the highest standards. Our armed forces will continue to discharge their obligations under international law, including international humanitarian law, in any armed conflict situation.

66. As the consultation set out, if the extraterritorial scope of the Bill of Rights were to be restricted, other legislative changes would be required in order for the UK to continue to meet its obligations under the Convention. We will introduce the necessary alternative remedies through later legislation, with a provision within the Bill of Rights setting out that the exclusion for overseas military operations cannot be brought into force unless and until the Secretary of State is satisfied that doing so is consistent with the UK's obligations under the Convention. This will also ensure that service personnel and veterans will continue to have a route to make claims against the Ministry of Defence.

Human rights and the devolution framework

JCHR Conclusions and Recommendations

59	Various proposals in the consultation would weaken the current protections in the HRA, including access to the courts and remedies available for breach of the Convention. The Committee shares IHRAR's concern that weakening the HRA would have a significant impact on the Belfast/Good Friday Agreement, which in turn risks upsetting the peace settlement in Northern Ireland. (Paragraph 252)
60	The Government must provide more transparent and detailed reasoning regarding how and why it has concluded that the proposals in the consultation are compatible with the Belfast/Good Friday Agreement. (Paragraph 253)
61	Any proposals to amend the HRA must take account of its unique role in the constitutional arrangements of the devolved nations, the implications for the future of the union and the impact of any differing standards of human rights protection across the devolved nations. (Paragraph 263)
62	The Government must engage closely with Northern Irish, Scottish and Welsh stakeholders before putting forward proposals to reform the Human Rights Act. (Paragraph 264).

67. By legislating for a UK-wide Bill of Rights, we are ensuring that we deliver for all individuals across every part of the UK. It is right that we continue to have a single human rights framework across the UK that guarantees rights for all people. Having a single regime of human rights protections that applies across the whole of the UK is absolutely necessary–this will maintain the fabric that holds us together as a constitutional unit.

68. The Bill of Rights is compatible with our obligations under the European Convention on Human Rights (ECHR) and our other international human rights obligations.

69. In the Belfast (Good Friday) Agreement, the UK Government committed to incorporate the ECHR into Northern Ireland law, with direct access to the courts and remedies available in domestic law, including the ability of the courts to overrule Assembly legislation. We understand the importance of human rights protections within the Agreement. Through the Bill of Rights, we have continued to meet our commitment under the Agreement.

70. The values that underpin the Bill of Rights are not the sole preserve of any one part of the UK. Rather, the Government believes that everyone in the UK should benefit from improvements to our human rights framework.

71. While some matters are devolved to the Scottish Government, Welsh Government and Northern Ireland Executive, it is a fundamental duty of UK Government to act at

all times to protect the Union and serve the interests of all our citizens. That is why we are legislating for a Bill of Rights that applies to, and delivers for, the whole of the United Kingdom. Working collaboratively, as one United Kingdom, means we are safer, stronger and more prosperous. Together, we are better able to tackle the challenges that we share, for example in defending our borders and ensuring that the importance of public protection is given due regard in the interpretation of rights.

72. These issues affect the whole of the UK and it is right, as for the HRA itself, that changes are made on a UK-wide basis. This will ensure that the framework applies equally, whilst also allowing for difference in how it is implemented across the UK. The Bill of Rights respects the UK's diverse legal traditions, and the particular circumstances of Northern Ireland. As is the case now, the devolved legislatures will remain able to legislate on human rights matters within their devolved competence. It should be recognised that the existing human rights framework already has some differences in how it is applied in Scotland, Wales and Northern Ireland.

73. Our primary objective is always to legislate with consent from the devolved legislatures. This legislation is designed to work for the whole United Kingdom.

74. The Government has and will continue to engage with stakeholders in Northern Ireland, Wales and Scotland. We undertook a significant programme of engagement during the consultation period and indeed, consulted on the application of the Bill of Rights to the four nations of the UK. The engagement included visits by the Deputy Prime Minister to Cardiff, Edinburgh and Belfast to discuss the proposals for reform with the devolved Governments, members of the devolved parliaments and judiciaries and, in the case of Northern Ireland, the leaders of the main political parties.

75. Additionally, Lord Wolfson hosted a number of regional stakeholder roundtables– one for Northern Ireland, one for Scotland and one for England and Wales. These complemented a much broader series of official-led events involving stakeholders from all four nations in the UK. These were attended by a wide range of organisations and individuals including academics, charities, NGOs, religious groups and the legal services sector