



UK Government plans to reform Human Rights Act

February 2022

The UK Government has published a consultation, 'Human Rights Act Reform: a Modern Bill of Rights', that makes far-reaching proposals for new legislation which aims to strike a proper balance between individuals' rights, personal responsibility and the wider public interest. The consultation has been informed by an independent report by the Panel of the Independent Human Rights Act Review (IHRAR), led by Sir Peter Gross.

What is the Human Rights Act?

The Human Rights Act 1998 (HRA) sets out the fundamental rights and freedoms that everyone in the UK is entitled to. It incorporates the rights set out in the European Convention on Human Rights (ECHR) into domestic British law. In other words, the HRA aimed to 'bring rights home' by enabling people to bring claims on the ECHR in the UK courts.

The HRA sets out each different human right in a series of 'Articles', as taken from the ECHR - typically referred to as 'the Convention rights'. Those rights, or Articles, include the right to life; right to a fair trial; freedom of expression and right to marry and start a family.

Background to Human Rights Act reform

Since the Act came into force in the UK in October 2000, successive governments have been concerned about its impact on parliamentary sovereignty and UK case law. In particular, it has been a long-standing Conservative Party policy to repeal and replace the HRA, which was interrupted by the result of the 2016 Brexit referendum. The Conservatives confirmed they would consider the UK's human rights legal framework once Brexit had passed and an update to the HRA duly formed a manifesto commitment at the 2019 general election.

The government established the IHRAR in December 2020 in order to examine the framework of the HRA, how it is operating in practice and whether any change is required.

In January 2021, the Panel launched a Call for Evidence based on two key themes, as follows:

- The relationship between domestic courts and the ECHR.
- The impact of the HRA on the relationship between the judiciary, the executive and the legislature.

At the same time, parliament's Joint Committee on Human Rights launched its own inquiry into the government's review of the Act in January 2021. The Joint Committee published its report in July 2021, reaching the conclusion that based on the evidence heard, "there is no case for changing the Human Rights Act".

Nevertheless, the IHRAR Panel submitted its report to the Deputy Prime Minister who laid the document in Parliament in December 2021.

The executive summary report finds that though overall:

“The HRA has been a success, there is clear room for a coherent package of reforms carrying both domestic and international benefits.”

IHRAR Panel, December 2021

Government consultation

In line with its manifesto commitment to “update” the HRA, on 14 December 2021, the government launched its consultation proposing the replacement of the HRA with a Bill of Rights. The consultation closes on 8 March 2022.

Announcing the consultation, Justice Secretary Dominic Raab MP said that the government “will restore parliament’s role as the ultimate decision-maker on laws impacting the UK population, allowing more scope to decide how we interpret rulings from the European Court of Human Rights in Strasbourg. This will put an end to us gold plating any decisions made by Strasbourg when we incorporate them into UK law”.

The consultation announcement aims to “restore a common-sense approach” on matters like the deportation of “foreign criminals and others who present a serious threat...” by restricting the rights available to those subject to deportation orders, “strengthening” the existing legal framework, or limiting the grounds on which a deportation decision can be overturned.

The proposals include measures to:

- Empower domestic courts to apply human rights in the UK context, taking into account UK common law traditions and judicial practice amongst other common law nations, and strengthening the primacy of the UK Supreme Court in determining the proper interpretation of such rights.
- Provide greater clarity regarding the interpretation of certain rights, such as the right to respect for private and family life, by guiding the UK courts in interpreting the rights and balancing them with the interests of society as a whole.
- Restrain the ability of the UK courts to use human rights law to impose ‘positive obligations’ onto public authorities without proper democratic oversight.
- Provide more certainty for public authorities to discharge the functions Parliament has given them, without the fear that this will expose them to costly human rights litigation.
- Safeguard the right to life and the absolute prohibition on torture, confirming that people

should not be deported to face torture (or inhuman or degrading treatment or punishment) abroad, whilst ensuring that other rights in the Act cannot be used to frustrate the deportation of serious criminals and terrorists.

What next?

The consultation will close on 8 March 2022, after which the government will publish its report summarising the responses. Consultation responses should usually be published within 12 weeks of the consultation closing.

Should the government decide to proceed with its proposal for a new Bill of Rights, time will be needed

to draft the wording of the Bill. The Bill will then be introduced in either the House of Commons or House of Lords for examination, discussion and debate. When both Houses have agreed on the content of a Bill, it can be presented for Royal Assent and become law.

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