Human Rights Act reform: A proposal for a Modern Bill of Rights

Response by Just for Kids Law and the Children's Rights Alliance for England

Supported by

About us

Just for Kids Law (JfKL) works with and for children and young people to hold those with power to account and fight for wider reform by providing legal representation and advice, direct advocacy and support, and campaigning to ensure children and young people have their legal rights and entitlements respected and promoted and their voices heard and valued. We help children and young people navigate their way through challenging times through our unique model of working with individual children and young people which combines direct advocacy and development opportunities with legal advice and representation. JfKL has gained a reputation for taking the evidence from our direct work with individual children and young people to fight for wider reform through strategic litigation and empowering children and young people to campaign

Just for Kids Law hosts the **Children's Rights Alliance for England (CRAE**), which works with over 100 members to promote children's rights and monitor Government implementation of the UN Convention on the Rights of the Child. As part of this work, we Co-Chair the UNCRC Action Group with the Department for Education. We believe that human rights are a powerful tool in making life better for children. We fight for children's rights by listening to what they say, carrying out research to understand what children are going through and using the law to challenge those who violate children's rights. We campaign for the people in power to change things for children. And we empower children and those who care about children to push for the changes that they want to see.

The importance of the Human Rights Act for Children

Just for Kids Law, the Children's Rights Alliance for England, and supporting organisations, are extremely concerned about the proposals set out in this consultation. We believe they will significantly weaken respect for children's human rights and the ability of children to hold the UK Government and public bodies to account where rights have been infringed. We work with some of the most vulnerable children in society and it is crucial that their rights in the Human Rights Act (HRA) are not diluted in any way. Given the impact the proposals will have on children, we urge the Government to carry out a child rights impact assessment (CRIA). [1]

The HRA is the primary law which protects everyone's fundamental human rights in the UK, including children, by enshrining the rights contained in the European Convention on Human Rights (which the UK ratified in 1951) into domestic law. As the UN Convention on the Rights on the Child (CRC) - which the UK ratified in 1991 - has not been incorporated into UK domestic law, the HRA also plays a crucial role in the protection and promotion of the rights of children, enabling them to claim and enforce some of the rights contained in the CRC. These include children's right to life, to be free of slavery and forced labour and not to be treated in inhuman or degrading ways, their right to freedom of expression, to private and family life and their right to education. Case law has also made clear that when a case under the HRA involves a child, the rights in the HRA must be interpreted through the lens of the CRC[2].

Since the HRA came into force, it has provided important protections for some of our most vulnerable children such as children in care, child witnesses, children in custody, and refugee children as the following examples illustrate:

[1] The Department for Education published a template for civil servants to facilitate policy makers to carry out a CRIA in November 2018. For more information on CRIAs see Children's Rights Alliance for England (2021) *Using Children's Rights Impact Assessments to improve policy making for children*

[2] R (P & Q) v The Secretary of State for the Home Department, 2001, EWCA Civ 1151

- Ensuring that 17-year-olds were given the right to an appropriate adult at the police station, and to have their parents' notified of their whereabouts where previously they were treated the same as adults. [3]

- Confirming equal financial support for family and non-family members who foster children, when the High Court ruled that payments by a local authority should not discriminate against foster families on the grounds of family status[4].

- Ensured that children in prison were entitled to the same protection and care as all other children. This landmark case found that the Children Act 1989 applies to children in custody and led to a raft of child protection policies and procedures being introduced to prisons.[5]

- Curtailed police powers to remove children under 16 years old from designated areas, when a court ruled that the power in the Anti-Social Behaviour Act 2003 to disperse children under 16 from certain areas after 9pm should only be used in cases where children are involved in, or at risk of, anti-social behaviour[6].

- Preventing a woman living in poverty, who had to leave her partner after discovering he had been abusing their children, from being separated from her children. The woman and her children were placed in temporary bed and breakfast accommodation and were housed in three different places in a 6-month period. Social workers claimed she was not a 'fit' parent as she was unable to provide stability for her children and was having problems getting them to school. With assistance from a local group, the woman invoked her children's right to respect for private and family life and their right to education under the HRA, and challenged their decision. The local authority then decided not to remove the children, but to keep them on the 'children at risk' register, and within three weeks the family was able to be placed in stable accommodation[7].

- Preventing a mother and her new-born baby from being made homeless. A single mother who had been refused asylum was threatened with eviction by the National Asylum Support Service (NASS), while having her second child. NASS issued a 'termination of support' notice to her while she was giving birth in hospital. The voluntary organisation supporting the woman suggested to NASS that evicting the family in these circumstances could amount to inhuman and degrading treatment under Art. 3 of the HRA and suggested the NASS reconsider the decision. The notice was amended and the woman and her children were able to receive support and alternative accommodation under the Immigration and Asylum Act 1999[8].

Importantly for children, who depend heavily on public services, Section 6 of the HRA also places a duty on public bodies to comply with the human rights protections contained within it, including the police and the youth secure estate, care institutions, courts, publicly funded schools and local authorities - to act in ways that are compatible with the HRA. This also requires all public officials to think about human rights in their day-to-day decisions and policy making so that all laws, policies

[3] R(HC) v The Secretary of State for the Home Department, and the Commissioner of the Police of the Metropolis [2013] EWHC 982 (Admin)
[4] R (L and others) v Manchester City Council, High Court, 26 September 2001
[5] R (on the application of Howard League) v Secretary of State for the Home Department and the Department of Health 2002
[6] R (W) v Commissioner of Police for the Metropolis and others, 2006, EWCA Civ 458
[7] *The Human Rights Act Changing Lives*, 2nd edition, British Institute of Human Rights, https://www.bihr.org.uk/Handlers/Download.ashx?IDMF=3c184cd7-847f-41b0-b1d1-aac57d1eacc4
[8] British Institute of Human Rights (2008) *The Human Rights Act Changing Lives,* 2nd edition

and guidance are compatible with the rights in the HRA. Section 6, when fully implemented, helps to ensure that public authorities comply with the ECHR and that there are positive changes to children's rights protection without the need to go to court. As the Parliamentary Joint Committee on Human Rights concluded, Section 6 means *"there is more respect for rights and less need for litigation"*[9] but where public bodies fail to respect and protect rights, children and their families can take action in the courts, if necessary.

The HRA already works well with the necessary checks and balances in place to prevent spurious claims. We believe the proposals will only weaken rights for children and make enforcing them more difficult. We would, however, support additional rights protections, including strengthened child rights guarantees, in domestic law and policy, by means of *additional* legislation and other measures.

I. Respecting our common law traditions and strengthening the role of the UK Supreme Court

Question 1: We believe that the domestic courts should be able to draw on a wide range of law when reaching decisions on human rights issues. We would welcome your thoughts on the illustrative draft clauses found after paragraph 4 appendix 2, as a means to achieving this.

We do not believe that these changes are necessary, could lead to confusion, and will mean that more children need to appeal to Strasbourg to protect their rights. This is because the link between the Human Rights Act and the ECHR will be severed which could lead to a divergence on interpretation of those rights. This concern was also echoed by The Independent Human Rights Act Review, that warned that any broad changes to section 2 could mean more cases being taken against the UK at the European Court of Human Rights (ECtHR).[10]

This will be a particularly unsuitable route for children given the time it takes for cases to be heard and the costs likely to be involved. As courts already consider domestic and common law before considering judgements from the ECtHR, we do not believe this change is necessary and would have the opposite effect on what the Human Rights Act intended to do - bring rights home.

Question 2: The Bill of Rights will make clear that the UK Supreme Court is the ultimate judicial arbiter of our laws in the implementation of human rights. How can the Bill of Rights best achieve this with greater certainty and authority than the current position?

We do not think that the case has been made for changing the current position, as we do not accept that the ECtHR has undermined the Supreme Court. This is because where relevant judgements from Strasbourg are taken into account, the Supreme Court already applies them to the UK context, and also frequently departs from the ECtHR where there is good reason to do so.

We are also concerned with the consultation asking whether it should legislate to make particular policy-making areas not touchable on human rights grounds by the courts. Again, we do not think this is necessary as the courts already regularly don't make rulings on matters they consider as beyond their competence. We are concerned that any steps taken in this direction will reduce Government accountability for its human rights obligations in relation to children.

[9] House of Commons House of Lords Joint Committee on Human Rights (2021) *The Government's Independent Review of the Human Rights Act. Third Report of Session 2021–22* HC 89 HL Paper 31

[10] The Independent Human Rights Act Review (2020) *The Independent Human Rights Act Review Final Report* p78.

Question 4: How could the current position under section 12 of the Human Rights Act be amended to limit interference with the press and other publishers through injunctions or other relief?

Question 5: the government is considering how it might confine the scope for interference with Article 10 to limited and exceptional circumstances, taking into account the considerations above. To this end, how could clearer guidance be given to the courts about the utmost importance attached to Article 10? What guidance could we derive from other international models protecting freedom of speech?

Question 7: are there any other steps that the Bill of Rights could take to strengthen the protection for freedom of expression?

While we recognise that freedom of expression is an important right in any democracy, we have serious concerns about proposals to introduce a presumption in favour of upholding Article 10 rights, and thus tipping the balance in its favour, against privacy rights set out in Article 8. These plans have the potential to be extremely damaging to the children we work with. Children in contact with the criminal justice system are some of the most vulnerable in society.[11] It is crucial, therefore, that their identities are not revealed in the media, which can be extremely damaging, detrimental to their mental health, and also hinders rehabilitation and the ability for them to move on with their lives and to contribute positively to society.[12] We are concerned that any reforms to Article 10 could make case law, which sets out the balance which must be struck between Article 8 and 10, redundant and therefore reduce protection for this group of children. The right of a child to have his or her privacy fully respected during all stages of criminal proceedings is set out in article 40(2) of the CRC and in its General Comment Number 24[13], the UN Committee on the Rights of the Child States that:

> *In the Committee's view, there should be lifelong protection from publication regarding crimes committed by children. The rationale for the non-publication rule, and for its continuation after the child reaches the age of 18, is that publication causes ongoing stigmatization, which is likely to have a negative impact on access to education, work, housing or safety. This impedes the child's reintegration and assumption of a constructive role in society. States parties should thus ensure that the general rule is lifelong privacy protection pertaining to all types of media, including social media.*

Due to this, and the significant case law which already strikes the balance between Articles 8 and 10 we do not support this proposal.

II. Restoring a sharper focus on protecting fundamental rights

Question 8: Do you consider that a condition that individuals must have suffered a 'significant disadvantage' to bring a claim under the Bill of Rights, as part of a permission stage for such claims, would be an effective way of making sure the courts focus on genuine human rights matters? Please provide reasons

[11] National Association for Youth Justice (2020) *The state of youth justice 2020: An overview of trends and developments*

[12] Standing committee for Youth Justice (2014) *What's in a name? The identification of children in trouble with the law*

[13] UN Committee on the Rights of the Child (2019) *General comment No. 24 on children's rights in the child justice system*

Question 9: Should the permission stage include an 'overarching public importance' second limb for exceptional cases that fail to meet the 'significant disadvantage' threshold, but where there is a highly compelling reason for the case to be heard nonetheless? Please provide reasons

We are extremely concerned about the effect introducing a conditionality would have on a child's right to bring a claim under the HRA and we do not believe that these new measures are needed. There are already the necessary checks in place to ensure that spurious claims cannot proceed. Section 7 of the HRA already requires a child, or anyone else, who wants to bring a claim under the HRA to show that they are a victim of a human rights breach and there are admissibility stages for all legal cases in the UK which prevent frivolous, academic or unmeritorious cases from proceedings.

This proposal would make it much harder for children to access justice if they also had to prove that they had experienced 'significant disadvantage', an extra test that is likely to complicate, delay and add cost to proceedings We know from our work, that children already struggle to access justice in a number of areas, are already disadvantaged by the lengthy time taken in court proceedings, and can be far less willing to litigate breaches of their Human Rights as they are more reliant on their parents or carers to assist them in making such decisions. This proposal would have a chilling effect which will be particularly detrimental to children who already struggle to access expert legal advice and representation.

Again, these proposals could also make it more likely that children would need to go to the ECtHR under Article 13 (the right to an effective remedy) which, as we noted above, is not a suitable route for children.

Question 10: How else could the government best ensure that the courts focus on genuine human rights abuses?

The consultation implies that some people may make a claim under the HRA in order to receive financial damages. In our experience of working with children, being awarded damages is not the priority motivation for taking a case. In the cases that Just for Kids Law have taken representing children who allege breaches of the rights under the HRA, they have rarely sought damages as a remedy. Instead, the cases were taken in order to rectify their rights being infringed. For example, in the case involving the disclosure of childhood records[14], the Supreme Court gave an order that declared current legislation to be in breach of our client's rights under Article 8. This led to a change in the legislation, and allowed our client to apply for work in this country and gain meaningful employment and pay taxes. He was not awarded, nor did he seek damages. This is typical of the cases we have seen.

Children, like adults, want to see justice being done and any infringements of their rights to be recognised as such. What type of remedy is awarded, depends on the facts of each case and a decision on what is 'just and appropriate' so a child would not necessarily be awarded damages in every case. As we noted in our answer to the previous question above, there are already processes in place to ensure that issues which are clearly about human rights can progress to a case in the courts. We believe that these further proposals will again act as another barrier to children being able to access justice.

Question11: How can the Bill of Rights address the imposition and expansion of positive obligations to prevent public service priorities from being impacted by costly human rights litigation?

[14] R(P,G,W) v Secretary of State for the Home Department, Secretary of State for Justice [2019] UKSC 3

Courts are already incredibly reluctant to put positive obligations on public bodies as they recognise that the bodies themselves will have competing priorities. The courts exercise institutional deference by quashing an unlawful policy or declaring a situation to be in breach of the HRA. It is rare for a court to impose a positive obligation on a public authority as a remedy.

However, there are rare cases where it is necessary for the court to impose positive obligations, and these powers are extremely important for children who frequently access and use such services, particularly those from the most vulnerable groups, as we have illustrated above. We would be very concerned if any steps were taken to dilute positive human rights obligations on public bodies, which provide the foundation for safeguarding children and protecting them from abuse and neglect. This safety net is particularly important for children in institutions, for example, mental health units, children's homes, Secure Training Centres or Young Offender Institutions. Positive obligations ensure that public bodies take proactive steps to safeguard children's rights and enable redress when a public body has not fulfilled its human rights obligations towards children. This is demonstrated by the Deep Cut Barracks case[15] where the families used the HRA to get justice for their children who had died at the barracks. Using Article 2 and Article 6 of the European Convention they successfully argued that the court should quash the findings of the previous coroners and ordered fresh inquests. It was clearly necessary for the High Court to have this power. It is therefore imperative that these obligations are not weakened in any way.

III. Preventing the incremental expansion of rights without proper democratic oversight

Question 12: We would welcome your views on the options for section 3:
Option 1: Repeal section 3 and do not replace it. Option 2: Repeal section 3 and replace it with a provision that where there is ambiguity, legislation should be construed compatibly with the rights in the Bill of Rights, but only where such interpretation can be done in a manner that is consistent with the wording and overriding purpose of the legislation.

Question 13: How could Parliament's role in engaging with, and scrutinising, section 3 judgments be enhanced?

The Independent Human Rights Act Review concluded *that "there is no substantive case for its repeal or amendment* [of section 3] *…that any damaging perceptions as to the operation of section 3 are best dispelled by increased data as to its usage…".* [16] We agree.

Section 3 is a necessary tool to allow courts to interpret legislation in a manner that is compatible with the European Convention. We consider that this is a proportionate and useful remedy for the courts to be able to use.

Courts have a long-established role in interpreting legislation, so this is not a new nor a controversial power. In interpreting legislation, a court seeks to give effect to the will and intention of parliament; the courts rightly assume that parliament intends its legislation to be compliant with the HRA, and therefore section 3 does not radically alter the usual principles of statutory interpretation. It does, however, enhance the importance of compliance with the Convention when applying those principles. We welcome this as complying with the important principles of the Convention must be of paramount importance with interpreting legislation.

[15] https://centreformilitaryjustice.org.uk/human-rights-stories-no-4-deepcut-how-the-families-used-the-human-rights-act-to-get-access-to-the-states-evidence-about-their-children-and-to-get-fresh-inquests-exposing-abuse-ill-treat/

[16] The Independent Human Rights Act Review (2020) *The Independent Human Rights Act Review Final Report* p181

Repealing or weakening section 3 would simply cause the courts to make a greater number of declarations of incompatibility. This is time-consuming for both the litigants and for Parliament and would therefore waste valuable parliamentary time whilst also leaving breaches of Convention rights unresolved for longer, causing unnecessary delay and therefore hardship to the children affected.

For example, in the criminal records case mentioned above, the Supreme Court ruled that the regime (which affected tens if not hundreds of thousands of people) was unlawful in January 2019. The necessary change to the law was not enacted until November 2020, nearly two years later. This was despite campaigning undertaken by Just for Kids Law, Unlock, Liberty and the Alliance for Youth Justice during that period, and despite the fact that there appeared to be no opposition to the change from the Government. During that time our client, and the thousands of others affected continued to suffer the detriment that had been found to breach their Human Rights, this delay was in addition to the four years it had taken to bring the case to the Supreme Court. Our experience is that declarations of incompatibility take a great deal of parliamentary time. We are concerned that delay in proceedings is particularly detrimental where children are concerned. Whilst declarations may be necessary in some circumstances, we would argue against an increase in their use.

The consultation further asks how parliamentary scrutiny over the section 3 procedure can be enhanced. Parliament already has as much scrutiny as it desires. Once a judgement is passed it is always open to parliament to pass fresh legislation should it consider it necessary and expedient to do so.

Question 14: Should a new database be created to record all judgments that rely on section 3 in interpreting legislation?

We believe that a database to record all judgements which rely on section 3 would be helpful if it recorded all such judgements, not just particular cases, and it was maintained by an independent body. It would also be helpful if such a database was set up so it was easy to find information about cases relating to children specifically.

Question 15: Should the courts be able to make a declaration of incompatibility for all secondary legislation, as they can currently do for Acts of Parliament?

Numerous pieces of secondary legislation have a wide-ranging impact on children and their rights, from education to health to the youth justice system, for example. We therefore strongly disagree with the proposal to enable courts to make a declaration of incompatibility rather than overturn secondary legislation. Such a change will weaken Government accountability and an important protection for ensuring that secondary legislation respects children's human rights given that it only has very limited parliamentary scrutiny. We also refer to our answer to question 13 above to the significant disadvantages caused by declarations of incompatibility.

We are also concerned that a change to the status quo will mean long delays before a breach of children's rights is rectified, meaning that children could continue to have their rights breached for long periods of time. Currently, if a court rules that a piece of secondary legislation is unlawful the Government is still able to redraft it so that policy aims are met while also safeguarding human rights - we believe this is the right balance.

Question 16: Should the proposals for suspended and prospective quashing orders put forward in the Judicial Review and Courts Bill be extended to all proceedings under the Bill of Rights where secondary legislation is found to be incompatible with the Convention rights?

Quashing Orders are an important tool when it comes to the protection of children's human rights. We therefore disagree with this proposal because we think it could undermine or delay access to justice for children.

We have no objection to allowong the courts the power to use suspended quashing orders in the appropriate circumstances, but disagree with the suggestion that there should be a presumption that quashing orders should be prospective or suspended.

There is nothing currently to prevent a court granting a suspended or prospective quashing order as the nature of the quashing order is within the court's gift and the remedy will be drafted by the court depending on the facts of the case.

Question 17: Should the Bill of Rights contain a remedial order power? In particular, should it be:

- **a) similar to that contained in Section 10 of the Human Rights Act (HRA)**
- **b) similar to that in the HRA, but not able to be used to amend the Bill of Rights itself**
- **c) limited only to remedial orders made under the 'urgent' procedure**
- **d) abolished altogether?"**

We believe that the current procedure under Section 10 of the HRA should remain so as to allow the law to be changed quickly where this is needed. This is particularly important where a case concerns a serious breach of a child's human rights given that children typically have a different concept of time to adults and a long time period could be a significant period of their childhood. We believe the current process of scrutiny by the Parliamentary Joint Committee on Human Rights works well, and given there are so few remedial orders made, the case for removing this important option for Ministers hasn't been made.

Further the current regime does not oblige the Government to use their remedial order power. In our criminal record case, quoted above, we have explained the prejudice and harm caused by the delay. In that case the government chose not to use section 10, despite being invited to do so, and instead published statutory instruments. This demonstrates that section 10 is a power that the Government can choose to use when appropriate but is not bound to do so. It is an appropriate power as it can allow the government to act quickly when necessary.

Question 18 We would welcome your views on how you consider section 19 is operating in practice, and whether there is a case for change.

Given that a wealth of legislation has an impact on children and their human rights, section 19 has an important role to play in ensuring that it has been considered by both Government and Parliament in the development and scrutiny of new legislation. This view was supported by the Independent Human Rights Act Review that concluded: *"There can be no doubt that it* [section 19] *has had a major, transformational and beneficial effect on the practice of Government and Parliament in taking account of human rights.*" [17] Section 19 is particularly important given that there is no statutory requirement to carry out a CRIA by the Westminster Government, although we recognise that there have been some positive developments in this area.

Question 20: Should the existing definition of public authorities be maintained, or can more certainty be provided as to which bodies or functions are covered? Please provide reasons.

Question 21: The government would like to give public authorities greater confidence to perform their functions within the bounds of human rights law. Which of the following replacement

[17] The Independent Human Rights Act Review (2020) *The Independent Human Rights Act Review Final Report* p244

options for section 6(2) would you prefer? Please explain your reasons. Option 1: If public authorities are clearly applying a law passed by Parliament, then they are not acting unlawfully. Option 2: Keep the current criteria that is in the Human Rights Act (HRA), but this must reflect other proposed changes to human rights law, which mean that courts would not have to look at laws in a way that is compatible to the rights in the European Convention of Human Rights.

We would be very concerned if there were any changes to the definition of public authorities. It is extremely important that even if public functions are contracted out to a charity or company the HRA applies to them. This is particularly crucial for the protection and safeguarding of the many children who live in institutions which are ran by private providers or charities, for example, Secure Training Centres, children's homes or secure schools . The Howard League for Penal Reform, for example, successfully challenged the privately run prison of Ashfield, in the High Court, who unlawfully punished children, and acted in breach of their rights under Article 6[18]. It would be unthinkable if such establishments would escape such scrutiny.

Any changes to the definition of public authorities could put children at risk. The Parliamentary Joint Committee on Human Rights previously concluded that it was important not to have a too proscriptive approach as this could result in limiting a person's ability to seek redress from human rights breaches.[19] Similarly, we would be concerned if changes to section 6(2) also weakened human rights obligations to public authorities. We believe the HRA is working effectively in this regard and no change is necessary.

Question 23: To what extent has the application of the principle of 'proportionality' given rise to problems, in practice, under the Human Rights Act? We wish to provide more guidance to the courts on how to balance qualified and limited rights. Which of the below options do you believe is the best way to achieve this? Please provide reasons.

The consultation document suggests that the current position leads to uncertainty and that change is necessary to clarify that weight should be given to Parliament's opinion when deciding whether the infringement of the right is justified.

In our experience the courts give great weight to Parliament in regard to these matters, as set out in the Independent Human Rights Act Review[20], and recognised in the consultation document itself. The consultation document goes on to say that the extent of the court's discretion in these matters may vary from case to case depending on the law involved and the knowledge of the courts. That is correct, and follows long-established principles of deference, where courts will be slower to interfere with decisions involving matters that they are less competent to deal with, such as matters involving the spending of public money.

We do not support the suggested proposals, and believe that they will cause greater confusion, as they tend to suggest that primary legislation should not be found to be incompatible with the Convention rights. Clearly, as examples above demonstrate, the ability of the courts to declare certain pieces of legislation as incompatible is an important and necessary part of the Human Rights Act, should not be weakened, and is already used sparingly.

[18] https://howardleague.org/news/ashfield-prison-punished-children-unlawfully-high-court-rules-after-howard-league-legal-challenge/

[19] House of Lords House of Commons Joint Committee on Human Rights (2004) *The Meaning of Public Authority under the Human Rights Act Seventh Report of Session 2003–04* HL Paper 39 HC 38

[20] Independent Human Rights Act Review (2021) *Independent Human Rights Act Review Final Report*

Question 24: The Consultation question says: How can we make sure deportations that are in the public interest are not frustrated by human rights claims? Which of the options, below, do you believe would be the best way to achieve this objective? Please provide reasons
Option 1: Provide that certain rights in the Bill of Rights cannot prevent the deportation of a certain category of individual, for example, based on a certain threshold such as length of imprisonment
Option 2: Provide that certain rights can only prevent deportation where provided for in a legislative scheme expressly designed to balance the strong public interest in deportation against such rights
Option 3: Provide that a deportation decision cannot be overturned, unless it is obviously flawed, preventing the courts from substituting their view for that of the Secretary of State.

We are very concerned about cases we have seen where the Secretary of State has attempted to deport young adults who have lived in this country most of their lives, based on crimes they have committed when they were children.

We are currently assisting one young person subject to deportation who has lived here since he was 12 and another young person who has lived here since he was two years old. We are also aware of cases where the Home Office has attempted to deport young adults who were born in this country.

We believe that where deportations are based on crimes that were committed as children, that the courts have a vital role in ensuring all relevant information is taken into account in deciding whether or not deportation is necessary. We believe that the time spent in this country as a child and growing up here will always be relevant in deciding whether to deport someone, and therefore allowing such people to bring Article 8 claims is necessary.

We are particularly alarmed at the suggestion that any individual would be barred from arguing that their rights had been breached. Such a suggestion runs entirely contrary to the nature and purpose of Human Rights.

Question 25: While respecting our international obligations, how could we more effectively address, at both the domestic and international levels, the impediments arising from the Convention and the Human Rights Act to tackling the challenges posed by illegal and irregular migration.

We are extremely concerned that this question implies that some people, including some children, could be excluded from the full protection of human rights laws. Such a proposal undermines the fundamental principle behind human rights, which is that they are universal and must be applied to everyone equally and would be inherently discriminatory if this exclusion was based on their immigration status.

Question 26: We think the Bill of Rights could set out a number of factors in considering when damages are awarded and how much. These include:

a) the impact on the provision of public services
b) the extent to which the statutory obligation had been discharged
c) the extent of the breach
d) where the public authority was trying to give effect to the express provisions, or clear purpose, of legislation.

We believe that any changes to section 8 could undermine how seriously public bodies take its Human Rights Act obligations towards children. As noted above, courts currently decide on whether

damages are necessary looking at the facts of the individual case – in reality this results in very few children being awarded damages. None the less, knowing that this possibility exists is an important driver to ensure that public bodies respect human rights and it is also important that children receive compensation where it is deemed necessary, which will generally only be where significant harm and distress has been caused. Given this, we do not think a problem exists which needs addressing.

IV. Emphasising the role of responsibilities within the human rights framework

Question 27: We believe that the Bill of Rights should include some mention of responsibilities and/or the conduct of claimants, and that the remedies system could be used in this respect. Which of the following options could best achieve this:
Option 1: Provide that damages may be reduced or removed on account of the applicant's conduct specifically confined to the circumstances of the claim
Option 2: Provide that damages may be reduced in part or in full on account of the applicant's wider conduct, and whether there should be any limits, temporal or otherwise, as to the conduct to be considered.

We strongly disagree with this proposal. All children should be entitled to the same human rights, and any corresponding remedies, regardless of any previous conduct. As we have said above, such a proposal undermines the fundamental principle behind human rights which is that they are universal and must be applied to everyone equally. It is particularly troubling that something which someone did as a child could be taken into account as part of the remedies system.

V. Facilitating consideration of and dialogue with Strasbourg, while guaranteeing Parliament its proper role

Question 28: We would welcome comments on the options, above, for responding to adverse Strasbourg judgments, in light of the illustrative draft clause at paragraph 11 of Appendix 2

We do not think this proposal is necessary. Parliament can already respond to any negative judgements by the ECtHR against the UK if it wants to. We would be very concerned if this proposal meant that the UK would seek to ignore adverse ECtHR judgements. Taking a case to Strasbourg is an important legal mechanism for holding the Government to account on its human rights obligations to children and it's imperative that the UK takes action to comply with judgements when it loses a case. It is also worth highlighting that since the HRA came into force, there has been a sharp reduction in cases going to the ECtHR because it has achieved its aim to bring rights back home and ensure that most cases relating to rights in the Convention can be dealt with in the UK courts.

Impacts

Question 29:
Part 1. What do you consider to be the likely costs and benefits of the proposed Bill of Rights?
Part 2. What do you consider to be the equalities impacts on individuals with particular protected characteristics of each of the proposed options for reform?
Part 3. How might any negative impacts be mitigated?

As we set out in our introduction, we do not believe that the case has been made for the HRA to be scrapped and replaced with a Bill of Rights. If these proposals go ahead they will have a detrimental impact on children both in terms of diluting the proactive action that is taken to ensure that children

have their human rights respected and creating barriers for children to access justice where their rights are breached. We strongly recommend that a CRIA is carried out on any proposals going forward and we would be happy to give advice on how a CRIA could be carried out.

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