



Human Rights Act Reform

March 2022

NOTES:

- [Consultation paper](#) (deadline: Tues 8th March 2022)
- By online form <https://consult.justice.gov.uk/human-rights/human-rights-act-reform/>
- By email to HRAreform@justice.gov.uk

Resources:

- [Together response March 2021](#)
- [Human Rights Consortium Scotland response.](#)
- Liberty (2022), [tips for responding to the consultation](#)
- BIHR (2022), [resources](#)
- Public Law Project (2021), [5 concerns with the UKG consultation](#)
- [Human Rights Consortium](#) - Human Rights Act Consultation guide to responding
- [ALLIANCE](#) - Have your say on the Human Rights Act Reform consultation
- [Amnesty](#) - Take part in the Human Rights Act Consultation
- 4 in 10 (2022), [impact of proposals on children living in poverty.](#)

About Together (Scottish Alliance for Children's Rights)

Together (Scottish Alliance for Children's Rights) is an alliance that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) and other international human rights treaties across Scotland. We have almost 500 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs and interested professionals. The views expressed in this submission are based on wide consultation with our members but may not necessarily reflect the specific views of every one of our member organisations.

Over the 21 years that it has been in force, the Human Rights Act (HRA) has proved a powerful and essential mechanism in upholding children's human rights. We join children's rights alliances across the UK to express our widespread concerns as to the significant impact of the proposals on children. We propose that the HRA does not get repealed or replaced.

The HRA has:¹

- Supported the realisation of children's human rights under the UN Convention on the Rights of the Child (UNCRC);
- Significantly improved the way children and families can challenge violations of their rights, providing vital protection for individuals, particularly those who are most marginalised;
- Led to better law and policy making by the Scottish Government and Scottish Parliament by embedding the HRA into the devolution agreement;
- Improved public services by encouraging rights-based approaches and challenging violations;
- Laid the foundations for the continued development of a progressive human rights culture in Scotland, including the incorporation of the UNCRC into Scots law.

¹ Mohd Ali, S. Z. B. (2021). *Human Rights Act 1998: A study on how the Human Rights Act 1998 has impacted children's rights in the United Kingdom in anticipation of Scotland's implementation of the UNCRC (Incorporation) (Scotland) Bill and future incorporation of international human rights treaties.* <https://bit.ly/3IUd5F1>.

The UK Government proposes to repeal the HRA and replace it with a new Bill of Rights. This is a retrogressive step and is at odds with the findings of the Independent Review which the UK Government itself commissioned. The report of the Independent Review, published in December 2021, concluded that the HRA had been a success and there was no case for radical overhaul.²

The UK Government has said it plans to retain all the substantive rights currently protected under the ECHR and HRA.³ However, by looking at the machinery through which these rights are protected, respected and fulfilled, the UK Government's proposals will negatively impact the realisation of children's human rights across the UK. A new 'permissions stage' will block children and families' access to the courts – access which is already limited.⁴ The UK Government seeks to make rights conditional upon fulfilling certain responsibilities – completely at odds with the fact that human rights are *universal* and *unconditional*. The UK Government has failed to properly consider the implications for devolution. Even seemingly minor amendments could disrupt the devolution frameworks into which the HRA is embedded and disturb the ongoing development of a human rights culture within Scotland. It is crucial that the HRA is protected from any attempts to diminish its effectiveness. This is something which is echoed by both Scottish and Welsh Government in a joint letter to the Deputy Prime Minister, Dominic Raab MP, in which the governments expressed their 'grave and deep-seated concerns in relation to both the current proposals and the UK Government's longer-term direction of travel.'⁵

The UN Committee on the Rights of the Child is closely scrutinising developments ahead of the UK's upcoming review in 2022-23. In February 2021, the UN Committee requested information from the UK Government as to how proposals to review the HRA were being assessed from a child rights perspective.⁶ UN Committee members have expressed concerns over plans to repeal the Human Rights Act and sought assurances that child rights impact assessments would be used to inform any proposed changes.⁷

We note the framing of the consultation questions is narrow and offers limited scope to rebut the presumptions on which they are based. The consultation is also narrowly focused on the HRA's application by the courts. Whilst important, court challenges are only one way in which the HRA protects people's rights, including the rights of children. The Act is also a powerful tool for advocacy, planning, developing rights-respecting services and calling for change. We are concerned that the consultation paper is an expression of the negative rhetoric against the HRA, rather than a meaningful opportunity to discuss the Act's many benefits.

Question 1: Interpretation of Convention rights: section 2 of the Human Rights Act

We refer to the response made by the Human Rights Consortium Scotland which we fully support.

We are concerned that these proposals to downplay, and thus risk divergence from, the European Court of Human Rights case law in the interpretation of ECHR rights in courts in the UK. Moving away from ECtHR case law will have very significant implications within Scottish devolution.

² Independent Human Rights Act Review Panel (2021). *The Independent Human Rights Act Review*. <https://bit.ly/3L3RgVh>.

³ Ministry of Justice (2021). *Human Rights Act Reform: A Modern Bill Of Rights - A consultation to reform the Human Rights Act 1998*. Para 9. <https://bit.ly/35oaCVm>.

⁴ Human Rights Consortium Scotland (2022). *Human Rights Act Reform: A Modern Bill of Rights– A consultation to reform the Human Rights Act 1998*. <https://bit.ly/3vExWsA>.

⁵ Scottish Government and Welsh Government (2022). *Correspondence: Joint letter on the Human Rights Act*. <https://bit.ly/3KbfETE>.

⁶ CRC/C/GBR/QPR/6-7: Para 5 (D).

⁷ CRC/C/GBR/QPR/6-7: Para 5 (C).

Questions 8-9: A permission stage for human rights claims

We refer to the response made by the Human Rights Consortium Scotland which we fully support.

The framing of this question around a preventing ‘spurious’ claims is problematic and harmful. A new ‘permissions stage’ will block vulnerable children and families’ access to the courts – access which is already limited.⁸ It would create a class of ‘acceptable human rights abuses’ – those deemed not serious enough to warrant legal intervention. This is seriously damaging messaging that risks a backslide in culture and decision making of public authorities as they recognise certain practices can be done with impunity. The UK Government’s proposals are a clear restriction of access to justice and show that the proposed ‘Bill of Rights’ aims to restrict, rather than enhance, people’s human rights.

Question 10: Judicial Remedies

We refer to the response made by the Human Rights Consortium Scotland which we fully support.

Question 11: Positive obligations

We refer to the response made by the Human Rights Consortium Scotland which we fully support.

Question 15: Declarations of incompatibility

We refer to the response made by the Human Rights Consortium Scotland which we fully support.

Question 19: Application to Wales, Scotland and Northern Ireland

We refer to the response made by the Human Rights Consortium Scotland which we fully support.

Questions 24-25: Migrants’ rights

We refer to the response made by the Human Rights Consortium Scotland which we fully support.

Human rights are universal – they are for everyone, regardless of status. The current proposals would mean some children and families have fewer protections, meaning the UK Government could violate their rights without consequence. No rights-respecting nation would enact these proposals.

Question 27: the role of responsibilities within the human rights framework

We refer to the response made by the Human Rights Consortium Scotland which we fully support.

Human rights are unconditional – they are not contingent upon fulfilling certain responsibilities in order to ‘get’ your rights. We entirely reject the proposals to make human rights protection conditional upon certain conduct. All this proposal seeks to do is create a category of ‘legitimate’ human rights abuses which public authorities can commit without consequence.

March 2022

For further information, please contact Maria Doyle, Legal & Policy Manager

Together (Scottish Alliance for Children's Rights)

Email: maria@togetherscotland.org.uk

Web: www.togetherscotland.org.uk Twitter: [@together_sacr](https://twitter.com/together_sacr)

The Melting Pot, 15 Calton Road, Edinburgh, EH8 9DL

⁸ *Clan Childlaw et al. (no date). Discussion Paper: Overcoming Barriers to Public Interest Litigation in Scotland.* <https://bit.ly/3IHJVco>.