



Rights of the Child UK

Working together to bring children's rights into UK law

Rights of the Child UK Response to Commission on a Bill of Rights: Second Consultation

Introduction

The Rights of the Child UK (ROCK) is a coalition of voluntary organisations and individuals from across the UK seeking the full incorporation of the United Nations Convention on the Rights of the Child (UNCRC) into UK law. Our vision is of a society in which children's rights under the UN Convention on the Rights of the Child are fully realised, regardless of their background or circumstances.

We welcome the opportunity this second consultation presents and will focus our answers on those questions most relevant to children's rights. We understand that the Commission has already taken note of our earlier response, and simply summarise and refer back to this response where relevant.

Question 1: What do you think would be the advantages or disadvantages of a UK Bill of Rights? Do you think that there are alternatives to either our existing arrangements or to a UK Bill of Rights that would achieve the same benefits? If you think that there are disadvantages to a UK Bill of Rights, do you think that the benefits outweigh them? Whether or not you favour a UK Bill of Rights, do you think that the Human Rights Act ought to be retained or repealed?

We will address this question in 4 parts, a) to d), as suggested naturally above.

Q1a) The advantages and disadvantages of a Bill of Rights depend on what it is proposed that a Bill of Rights should do. Rather than address the relative advantages and disadvantages of any particular Bill of Rights in the abstract, ROCK sees this as an opportunity for the UK to advance protection and implementation of its existing international treaty obligations under the UN Convention on the Rights of the Child, the European Union Charter of Fundamental Rights and other human rights instruments by which it is bound. ROCK's member organisations support a Bill of Rights which would provide

much needed additional protection to children, spanning their civil, political, economic, social and cultural rights. If a Bill of Rights were to provide less protection than that contained in the Human Rights Act, or to weaken the Human Rights Act in terms of either the rights it protects or the mechanisms via which they are protected, this would be a very serious disadvantage.

Q1b) Given the lack of concrete proposals as to the form that the UK Bill of Rights might ultimately take, we do not feel in a position to evaluate alternatives.

Q1c) We do not see any serious disadvantages to a UK Bill of Rights if it builds upon the Human Rights Act and achieves greater benefits in terms of according fuller human rights protection. If a Bill of Rights weakened the protection afforded by the Human Rights Act, either in terms of the rights protected, or the mechanisms through which they are protected, this disadvantage would outweigh any potential advantages of a Bill of Rights. It is important that any UK Bill of Rights should similarly complement, and preferably advance, the UK's obligations under the UN Convention on the Rights of the Child.

Q1d) The Human Rights Act 1998 should be retained. In our earlier response, we provided evidence of the many ways in which the Human Rights Act has been used to provide critical rights protection for children. ROCK would not be in favour of any change which undermined the scope or effective implementation of the provisions of the Human Rights Act.

Question 2: In considering the arguments for and against a UK Bill of Rights, to what extent do you believe that the European Convention on Human Rights should or should not remain incorporated into our domestic law?

As indicated in our response to Question 1, we believe that the European Convention on Human Rights should remain incorporated in our domestic law via the Human Rights Act.

While we consider that a Bill of Rights should incorporate the rights in the UN Convention on the Rights of the Child, this does not justify repealing provisions which incorporate the European Convention on Human Rights in our domestic law. We take this opportunity to remind the Commission that our regional obligations under the European Convention of Human Rights and UN Human Rights Treaties such as the UN Convention on the Rights of the Child complement each other. The best method of ensuring the implementation and domestic effectiveness of such obligations is through domestic incorporation. As the UN Committee on the Rights of the Child has recommended to State parties concerning the Convention on the Rights of the Child:

“The Committee welcomes the incorporation of the Convention into domestic law, which is the traditional approach to the implementation of international human rights instruments in some but not all States. Incorporation should

mean that the provisions of the Convention can be directly invoked before the courts and applied by national authorities and that the Convention will prevail where there is a conflict with domestic legislation or common practice.”¹

Q 6: Do you think any UK Bill of Rights should include additional rights and, if so, which? Do you have views on the possible wording of such additional rights as you believe should be included in any UK Bill of Rights.

Qu. 7 What in your view would be the advantages, disadvantages or challenges of the inclusion of such additional rights?

We believe that, if there is to be a Bill of Rights to provide additional protections to those found in the Human Rights Act (in terms of the rights protected and the mechanisms through which they are protected), it should incorporate all the rights contained in the UN Convention on the Rights of the Child.

We have set out in our response to the first consultation why we feel children require greater protection of their rights. The UN Convention on the Rights of the Child is the governing legal framework for children’s rights - it has been adopted by nearly every country in the world, and has brought real change for children globally. In our initial response, we argued that the provisions in the UN Convention on the Rights of the Child which were specifically developed for children, and do not appear in any other international treaty, must be included in the UK Bill of Rights. This includes, for example

- a. The four general principles of the Convention: the right to enjoy all rights without discrimination on the basis of the child’s or parents’ or other family members’ status or actions (Article 2); the best interests of the child (Article 3); the right to life and maximum development; (Article 6); and the right to be heard and taken seriously (Article 12)
- b. The positive role of parents, parental responsibilities and the child’s evolving capacities (Articles 5, 18(1) and 14(2))
- c. The right to family support and to maintain regular contact with both parents when separated from them (Article 18(2) and (3))
- d. The right to protection from all forms of violence and to positive rehabilitation (Articles 19 and 39)
- e. The aims of education (Article 29)
- f. The right to information (Article 17) and education about children’s rights (Article 42)
- g. The right to play, rest and leisure (Article 31)
- h. The right to an adequate standard of living (Article 27)
- i. The right to health and health care (Article 24)
- j. The right to special care and protection when separated from parents (Article 20)
- k. The right to protection from contact with the criminal justice system, including institutionalisation (Article 37(b))

¹ General Comment No. 5 (2003), paragraph 20

- l. The right of children in conflict with the law to be treated in a way which promotes dignity and self worth, and consistent with the child's age (Article 40(1))
- m. The right to privacy throughout all stages of criminal proceedings (Article 40(2) (vii))
- n. The right to be separated from adults in detention (Article 37(c)).

In terms of how children's rights in a Bill of Rights should be drafted, the starting point for ROCK will always be the source material for children's rights, namely the UN Convention on the Rights of the Child. These were the product of many years' careful negotiation, are widely accepted and applied, and have been subject to authoritative interpretation by the UN Committee on the Rights of the Child and domestic courts in ways which could guide UK public authorities in applying children's rights found in a Bill of Rights.

There a number of ways in which a UK Bill of Rights could incorporate children's rights.

First, the UK Bill of Rights could simply incorporate the UN Convention on the Rights of the Child and other international children's rights protections as a whole. For instance, by including a statement such as 'Children shall enjoy all rights that are enshrined in international conventions ratified by the State' or 'All children shall enjoy the rights that are enshrined in the UN Convention on the Rights of the Child'.

Alternatively, the Bill of Rights could contain a child rights-specific section or provision. This should reflect the rights set out in the Convention on the Rights of the Child as closely as possible, and at the very least the Convention's four general principles: the right to enjoy all rights without discrimination on the basis of the child's or parents' or other family members' status or actions (Article 2); the best interests of the child (Article 3); the right to life and maximum development; (Article 6); and the right to be heard and taken seriously (Article 12).

Alternatively, given the overlap between rights contained in the UN Convention on the Rights of the Child, other UN human rights treaties, the ECHR and the EU Charter, a UK Bill of Rights may delineate the general civil, political, economic, social and cultural rights that adhere to 'everyone' (including children). This list of 'general' (i.e., non-child-specific rights) would be accompanied by a provision to require regard to be given to the UN Convention on the Rights of the Child and other international human rights instruments when courts and other decision-makers are interpreting and applying the Bill of Rights. In addition, clear provision would be needed for rights which are specific to children: including the right for the best interests of the child to be a primary consideration (Article 3) and the right to express a view and have that view taken into account (Article 12).

Crucially, any Bill of Rights must apply to all children without distinction and be able to be directly invoked before the courts by children themselves. Any 'general' Bill of Rights wording must ensure that the rights of 'everyone'

apply to children fully. Furthermore, any Bill of Rights wording must ensure that specific provisions concerning the needs of children are provided for where necessary.

ROCK's response to the first consultation sets out our support for enforceable socio-economic rights as a part of a legally binding UK Bill of Rights. The UN Committee on the Rights of the Child emphasises that the full range of children's rights must be justiceable. Poverty and inequality undermine children's enjoyment of their civil and political rights. A number of states now include socio-economic rights in their constitutions, and this should not be seen as over-ambitious for a wealthy country like the UK.

Q9: Presuming any UK Bill of Rights contained a duty on public authorities similar to that in section 6 of the HRA 1998, is there a need to amend the definition of 'public authority'? If so how?

The obligation to respect, promote and fulfil children's rights should apply not only to 'public authorities', as currently narrowly defined in the Human Rights Act. According to the UN Convention on the Rights of the Child, it is the State's obligation to ensure for all children within its jurisdiction the full recognition and realisation of all rights in the Convention (arts. 2(1) and 3(2)). Article 3(1) establishes that the best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private bodies. Article 3(3) requires the establishment of appropriate standards by competent bodies (bodies with the appropriate legal competence). Decentralisation of power, including through privatisation, should not in any way compromise children's access to justice when their rights are breached. The definition of public authority should be amended to ensure that the rights contained in a Bill of Rights applies to the full range of bodies envisaged by international law as being subject to human rights obligations.

Question 10: Should there be a role for responsibilities in any UK Bill of Rights? If so, in which of the ways set out above might it be included?

ROCK has argued that a focus on responsibilities is linked to negative political and media debate on human rights. We support a preamble to the UK Bill of Rights describing the purpose and principles of human rights – for everyone.

Much of the negative political and media debate focuses on the relationship between human rights and responsibilities, claiming that human rights have undermined responsibility or that they should be tied to responsibilities and must somehow be earned or bestowed only on the "deserving". There are whole range of laws which cover our rights and responsibilities to each other, and under these laws some of our legal rights can be made dependent on certain factors. However, human rights law is different because it is about a small but fundamental group of rights that we all have simply because we are human.

Though rarely acknowledged in current debates, the notion of responsibilities is deeply embedded in the Human Rights Act. The Act requires public authority decision-makers (including the courts) to consider the rights and freedoms of others and the interests of the wider community when applying a wide range of rights. The way 'responsibilities' are being framed in the current Bill of Rights debates has the potential to further embed misunderstanding about the relationship between human rights and responsibilities by presenting human rights enjoyment as contingent on the satisfaction of responsibilities by rights-bearers. This is particularly inappropriate in respect of children. It is notable that such an approach would be contrary to that adopted under international and regional human rights law dealing with duties/responsibilities imposed on non-state actors².

Northern Ireland, Scotland and Wales

Question 13: To what extent should current constitutional and political circumstances in Northern Ireland, Scotland, Wales and/or the UK as a whole be a factor in deciding whether (i) to maintain existing arrangements on the protection of human rights in the UK in the UK, or (ii) to introduce a UK bill of Rights in some form?

Question 14: What are your views on the possible models outlined in paragraphs 80 - 81 above for a UK Bill of Rights?

Question 15: Do you have any other views on whether, and if so, how any UK Bill of Rights should be formulated to take account of the position in Northern Ireland, Scotland or Wales?

Article 2 of the UN Convention on the Rights of the Child is clear that children's rights protect all children and are not tied to citizenship. The Human Rights Act applies to any person within the UK's jurisdiction, irrespective of their status. This must continue to be the case with any Bill of Rights.

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² See, e.g., Articles 18(1) and 27(2) of the Convention on the Rights of the Child. See also Article 24(1) of the International Covenant on Civil and Political Rights. In terms of regional human rights instruments, see, e.g., Chapter II of the African Charter on Human and Peoples' Rights and Articles XXXV, XXXI and XXX of American Declaration of the Rights and Duties of Man. The duties in these instruments cannot be the subject of a complaint before either the relevant treaty-monitoring body or regional human rights body.



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The Rights of the Child UK (ROCK) coalition is a group of voluntary organisations and individuals from across the UK pushing for the full incorporation of the United Nations Convention on the Rights of the Child (UNCRC) into domestic law.

This submission may not reflect the views of every member of ROCK.

The organisational members of the ROCK coalition are as follows (a list of individual members is available on request).

- Article 12 in Scotland
- British Humanist Association
- Centre for Studies on Inclusive Education
- Children are Unbeatable
- Children in Wales
- Children's Rights Alliance for England
- The Children's Society
- Coram Children's Legal Centre
- CRIN (Child Rights Information Network)
- ECPAT UK
- Fatherhood Institute
- Howard League for Penal Reform
- National Children's Bureau
- National Youth Agency
- NSPCC
- NYAS
- Just Fair
- Royal College of Paediatrics and Child Health
- Save the Children
- Save the Children UK
- Scope
- Sefton CVS
- Shelter
- Together – Scottish Alliance for Children's Rights
- UNICEF UK
- Voice
- Who Cares? Scotland
- Young Minds