

A bill of rights?

A summary of JUSTICE's minimum conditions for a bill of rights to supplement or replace the Human Rights Act



Proposals for a UK bill of rights have been made by all three political parties – albeit in different terms. In 2007, JUSTICE reviewed, without taking any position, the relevant considerations in *A British Bill of Rights: informing the debate*. In February 2010, we published a review of the law relating to the Human Rights Act and devolution. Both papers are available on our website (www.justice.org.uk), as is an extended version of this note.

The following were agreed by JUSTICE Council in January 2010 as minimum conditions to be met by a UK bill of rights that would be preferable to the existing Human Rights Act (HRA).

- Condition 1

Any bill of rights must be based on a broad consensus, not just of lawyers and politicians but also the public at large

The language of the Glorious Revolution of 1688 and the Bill of Rights 1689 cannot be appropriated by any one political party. The original Bill of Rights had a wide degree of political support. That support must be replicated in any later document that seeks to echo its language.

- Condition 2

The process of agreeing a UK bill of rights, and its content, must reflect the increasingly devolved nature of the United Kingdom

The HRA is built into the devolution settlements for Northern Ireland, Scotland and Wales. Any amendments to the HRA and any enactment of a bill of rights would almost certainly, from a legal perspective, require amendments to be made to the devolution statutes.

It would be possible for each jurisdiction to have its own bill, thereby transforming the proposal to four bills of rights – English, Scottish, Welsh and Northern Irish. This could, however, challenge the coherence of the project.

- Condition 3

A UK bill of rights must guarantee, and should extend beyond, the rights protected by the European Convention on Human Rights

All the main national political parties accept that the UK must remain subject to the European Convention on Human Rights (ECHR). Therefore, the content of any British bill must comply both with the provisions of the ECHR and subsequent relevant case law of the European Court of Human

Rights (ECtHR). The UK is bound by international law to implement decisions of ECtHR to which it is a party. No attempt can be made to fudge that commitment.

- Condition 4

Any domestic bill of rights should be compatible with the international obligations of the UK

- Condition 5

The key enforcement mechanisms of the HRA should be re-enacted

The core of the HRA imposes a duty on public authorities to comply with the ECHR; requires the courts to interpret legislation 'so far as it is possible' in accordance with the ECHR; obliges them to take account of ECtHR jurisprudence; and allows for the making of declarations of incompatibility. These are essential to ensure that the Convention is fully and predictably applied both by UK public authorities and courts.

- Condition 6

Any statement of responsibilities or duties must not detract from the protection of human rights

Most rights are qualified and, in practical terms, depend on the responsibility of everyone in society to respect one another's freedoms. Very few rights are unconditional – for example, the right against torture and inhuman treatment (Article 3 ECHR) and against slavery (Article 4 ECHR). These rights cannot be subjected to any all-encompassing limitation, such as that they are legally contingent on performance of set of duties and responsibilities. Many duties are already enshrined in statute and the legal value of restating a duty is unclear.

- Condition 7

The scope for reform should not be oversold

There is little point in a bill of rights which is sold to the public on the basis of limiting the ECHR, but which turns out to be ineffective.

There are a number of other issues that need to be addressed in the process of drafting a bill of rights.

They include:

- **Content** (normally the starting point of an exercise of this kind);
- **Enforcement and entrenchment;** and
- **The strengthening of Parliament.**