Response to MoJ Consultation: Human Rights Act Reform

Children's Law Centre
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Introduction

The Children's Law Centre (CLC) is an independent charitable organisation which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and where every child can achieve their full potential.

We offer training and research on children's rights, we make submissions on law, policy and practice affecting children and young people and we run a free legal advice, information and representation service. We have a dedicated free phone legal advice line for children and young people and their parents and carers called CHALKY as well as a Live Chat service for young people through an on line Chatbot, REE Rights Responder and a youth advisory group called Youth@clc. Within our policy, legal, advice and representation services we deal with a range of issues in relation to children and the law, including the law with regard to some of our most vulnerable children and young people, such as looked after children, children who come into conflict with the law, children with special educational needs, children living in poverty, children with disabilities, children with mental health needs and complex physical health needs and children and young people from ethnic minority backgrounds. In vindicating the rights of vulnerable children, we draw on and cite the Human Rights Act 1998.

Our organisation is founded on the principles enshrined in the United Nations Convention on the Rights of the Child (UNCRC), in particular:

- Children shall not be discriminated against and shall have equal access to protection.
- All decisions taken which affect children's lives should be taken in the child's best interests.
- Children have the right to have their voices heard in all matters concerning them.

Summary of Children's Law Centre Response

1. **Children's Law Centre rejects in their entirety the proposals to reform the Human Rights Act.** No meaningful case for change is presented by government in the consultation documentation. Many of the proposals are vague and unclear, more again are framed in the language of division and diminution of existing rights. As such, we do not believe they would constitute 'human rights law'.

2. **Children's Law Centre supports retention and strengthening of the Human Rights Act**. Further, we reiterate the need for the UK government to fulfil its commitments to ensuring that both duty bearers and rights holders alike are aware of and supported to understand and claim their Convention rights as realised domestically through the HRA.

3. **Children's Law Centre is deeply concerned at the potential impact of reform of the HRA on children** and on their ability to hold Government and public bodies to account where rights have been infringed. 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 due to reliance on parents or carers to assist them in making such decisions. These proposals will provide a chilling effect which will be particularly detrimental to children who already struggle to access expert legal advice and representation.

4. **Children's Law Centre is deeply concerned at the potential impact of reform of the HRA on the Northern Ireland Peace Process and functioning of the democratic institutions established under the Good Friday Agreement.** Children's Law Centre believes the proposals threaten the human rights protections which underpin the GFA including the equivalency of rights protections on the island of Ireland. Further, Children's Law Centre believes the proposals to reform the Human Rights Act are in breach of Art 2 (1) on the NI Protocol.

5. **Children's Law Centre contends that this consultation has been conducted in a manner which fails to respect, protect and fulfil the rights of those most marginalised and impacted upon by proposed change, including children.** Easy read documentation was not provided until 12 days before the end of the consultation period; audio version was provided on the final day of the consultation period; and no child-friendly materials were provided at all. Conditional extension of the deadline, due to these failures, is:

    a. Untimely, being announced only on the 'original' closing date;

b. Unnecessarily restricted by the requirement for ‘eligible’ groups to apply for extension to MoJ;
c. Disrespectful of the workload and capacity of organisations who work with and advocate for the most vulnerable and marginalised people in our society, including children and people with disabilities. To expect that a programme of meaningful engagement and reporting could be conducted in 6 weeks without prior notice or resource is to underestimate the existing demands on our underfunded services and the life-challenging circumstances of those we work with and for.

The government has thus have failed to conduct an inclusive consultation exercise, which would meet the standards set out in Section 75 of the Northern Ireland Act (1998). While the MoJ is not a designated body under the S75, its actions are demonstrative of the government’s failure to understand or respect the manner in which ECHR rights are embedded in the devolved arrangements.

The importance of the Human Rights Act for Children

Children's Law Centre is 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 Government and public bodies to account where rights have been infringed. We work with and advocate on behalf of 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 (UN CRC) - which the UK ratified in 1991 - has not been incorporated into domestic law in Northern Ireland, the HRA also plays a crucial role in the protection and promotion of the rights of children in this jurisdiction, enabling them to claim and enforce some of the rights contained in the UN 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 UN CRC[2].

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

- 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]

- Improving the systems & procedures on provision of education for vulnerable disabled children who have been denied access to the education system, when placement for a disabled young person broke down placement broke down and the Education Authority failed for a substantial period of time to comply with

[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

[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)

domestic legislation requiring alternative suitable arrangements for education to be made.[4]

- Ensuring 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[5].

- 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.[6]

- Preventing unlawful discrimination in access to education on the basis of national origin, when school criteria that a pupil's father had attended the school was challenged on behalf of a Lithuanian boy whose father had not attended school in the jurisdiction.[7]

- 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[8].

- 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 department 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[9].

- Preventing a mother and her newborn 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.

[4] JR 143 [2021] NIQB 72 JR143 (A minor) acting by his mother and next friend for JR and in the matter of decisions of the Education Authority.pdf (judiciaryni.uk)
[5] R (L and others) v Manchester City Council, High Court, 26 September 2001
[6] R (on the application of Howard League) v Secretary of State for the Home Department and the Department of Health 2002
[7] OV – v- Abbey Christian Brothers Grammar School [2021] NIQB 78 and [2021] NIQB 103
[8] R (W) v Commissioner of Police for the Metropolis and others, 2006, EWCA Civ 458
[9] *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

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[10].

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 in 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 and guidance are compatible with the rights in the HRA. Our work over many years in representing young people in Mental Health Review Tribunals is illustrative of this point through the engagement and consideration of Articles 5 and Articles 8 when a tribunal is determining if a young person’s detention should continue or if they should be regraded to voluntary status.

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 Joint Committee on Human Rights concluded, Section 6 means *"there is more respect for rights and less need for litigation”*[11] but where public bodies fail to respect and protect rights, children and their families can take action in the courts, if necessary.

The Human Rights Act 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 especially the most vulnerable children, and make enforcing them more difficult. We support additional rights protections, including strengthened child rights guarantees, in domestic law and policy, by means of *additional* legislation and other measures.

Response to Consultation Questions

[10] British Institute of Human Rights (2008) *The Human Rights Act Changing Lives,* 2nd edition

[11] 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

We acknowledge and are indebted to the work of a number of agencies across the community and voluntary sectors in providing a wealth of supporting documentation - in the form of consultation tip sheets, response templates and guidance - designed to enhance access to and engagement with this consultation. They did so in response to the highly technical nature of the MoJ consultation document and government failure to issue accompanying, accessible documentation in a timely way. We record our thanks, in particular, to the Northern Ireland Human Rights Consortium, Amnesty International, Liberty and the British Institute of Human Rights, whose contributions have helped inform this response.

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 of Appendix 2, as a means of achieving this.**

There should be no changes to how Section 2 of the Human Rights Act currently operates. The question is misleadingly framed, as it is already the case that domestic courts can and do draw on a wide range of relevant case law when reaching decisions on human rights issues. Section 2 of the HRA requires the UK Courts to take account of, but not be bound by, European Court of Human Rights (ECtHR) case law. Taking those rulings into account enables the courts to ensure that children in the UK enjoy the highest standards of rights protections.

The Government proposals would substantively and negatively change the existing access and enjoyment of Convention rights. Indeed, both options for replacing Section 2 appear specifically designed to sever the connection between the rights in any new Bill of Rights and our rights under the European Convention on Human Rights. Thus, both options are likely to result in a lower standard of rights protection, and more violations. Further, they would lead to a divergence in rights protection and leave the UK out of step with other members of the Council of Europe.

As long as the UK remains signatory to the European Convention, people will be able to turn to the Strasbourg court to claim their rights, but few will have the resources for this lengthy and costly process. 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.

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?**

The Supreme Court is already the highest court in the UK and ultimate judicial arbiter of laws in the UK. The HRA does not create uncertainty on this point and indeed the Supreme Court has the ability to take a different view on the interpretation of Convention rights than the ECtHR.

It is simply not the case that Section 2, or any other part, of the Human Rights Act, has resulted in the Strasbourg court undermining the supremacy of the UK Supreme Court. The UK courts are well-used to taking relevant judgments from Strasbourg into account and applying them in a way that is appropriate to the domestic context. Currently, when the Supreme Court looks at a human rights case it starts first with UK laws and common law before thinking about judgments from the ECtHR. Where there is good reason not to follow Strasbourg rulings, the Supreme Court says so. This is as it should be. There is no lack of clarity on this point and current position works well. Therefore, no change is required.

We recognise that freedom of expression is an important right in any democracy. However, 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 children in contact with the criminal justice system. These are some of the most vulnerable children in society[12] and because of this, it is crucial that their identities are not revealed in the media, which can 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. 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 UNCRC and its it 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*

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

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

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.

3. **Should the qualified right to jury trial be recognised in the Bill of Rights? Please provide reasons**

Article 6 of the Human Rights Act already protects the right to a fair trial and this can be utilised where appropriate to provide for jury trials.

No substantive case is made or exists for this change and it serves only as a distraction from the substantial weakening of our existing human-rights structures through HRA reform. Therefore, no change is required.

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 that courts focus on genuine human rights matters? Please provide reasons.**
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**

Questions 8 & 9 are answered in the single response below.

Victims of human rights abuses should not be required to prove 'significant disadvantage' before they can seek justice. This would make access to justice for human rights violations harder to obtain than for any other kind of abuse or unlawfulness. It would undermine the concept of fundamental rights protection. Genuine and proven cases of human rights abuses would be left unremedied, and the culture of rights protection damaged.

There is no justification for reducing the accountability of the state for its actions in this way. There is simply no evidence to suggest, as the government does in these proposals, that large numbers of 'spurious' claims are being brought which 'devalue' the concept of rights. Defendants can already apply to 'strike out' a claim if the claimant has failed to show reasonable grounds for bringing it. Judicial review cases (a common type of human rights case) already have to pass a permission test, whether they are human rights challenges or not.

We are extremely concerned about the effect introducing a conditionality would have on a child's right to bring a claim under the Human Rights Act 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 had to also 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. These proposals will provide a chilling effect which will be particularly detrimental to children who already struggle to access expert legal advice and representation.

There is no other area of law where it is necessary to reach a threshold as high as 'significant disadvantage' in order to bring a claim. Adding a further permissions stage, on top of the current criteria, is also likely to mean more cases having to go to the European Court of Human Rights (ECtHR). This would impact significantly on access to effective remedy for children who lack the resources to take a case to Strasbourg. No such permission stage should be introduced.

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

There are already very clear admissibility criteria that claimants have to meet in order to take a case under the HRA. There is no evidence to suggest that these are not working, and the Government proposals seem like a clear exercise in limiting access to the HRA protections.

The courts do not focus on 'non-genuine' human rights cases. The consultation document suggests that somehow non-genuine and 'frivolous' human rights claims are being made (and won) in significant numbers. There is no evidence that is the case, and none is put forward here.

The consultation further implies that some people may make a claim under the Human Rights Act in order to receive financial damages. In our experience of using the HRA to assist the most vulnerable children realise their rights access to critical services to which they are entitled, not damages, is the primary motivation for taking a case. Children, like adults, want to see justice being done and any infringements of their

rights to be recognised and rectified. What type of remedy 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.

We note with concern the Government's desire to "reduce the number of human rights-based claims being made overall",[14] including through making it more difficult for claimants to access judicial remedies; this should not be a goal in and of itself. It is wholly inappropriate to try to exclude human rights claims entirely or stop people from challenging public authorities on human rights grounds. Protecting public authorities from human rights claims in this way and blocking otherwise valid claims against them would seriously damage children's rights protections in the UK. The goal should be to work towards eliminating the conditions that create violations of human rights by improving governance and public service delivery and enhancing, rather than stripping away, access to justice and avenues of accountability.

No changes are required to the HRA in this regard.

11. 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? Please provide reasons.

Positive obligations are an essential and inherent part of every human rights protection framework around the world, including the ECHR to which the UK has been a signatory since 1951. Positive obligations require the state to take proactive steps to protect people's human rights. Failure to meet them must be open to challenge, as with any other human rights violation. Excluding positive obligations in the UK would undermine the entire architecture of rights protection that has been built up in international law. We would therefore 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 hospitals, children's homes, Secure Accomodation or Juvenile Justice Centres.

When imposing positive obligations, both Strasbourg and UK courts already carefully consider the needs of public authorities. Judges have stressed that serious failures are required before a breach is established (Osman)[15] and the courts recognise that public authorities face competing objectives when meeting their positive obligations. It

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[14] Human Rights Act Reform: A Modern Bill of Rights, [227]

[15] For the court, and bearing in mind the difficulties of policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. Another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in articles 5 and 8 of the Convention." Osman v United Kingdom - 23452/94 [1998] ECHR 101 [116].

is therefore already the existing standard in human rights law that positive obligations must not be interpreted in a way which puts 'an impossible or disproportionate burden' on public authorities.

Human rights should not, however, be considered only from the perspective of litigation. Positive obligations are instrumental to the provision of public services. Every day, the HRA is used by public bodies and frontline workers to provide essential services and support. In practice, positive obligations have been important in a wide range of cases[16], including:

- Ensuring that detained children are treated with humanity and dignity: Articles 3 and 8 have been read to impose on the Prison Service positive obligations to take reasonable and appropriate measures to ensure that children detained in Young Offender Institutions are treated by Prison Staff and fellow inmates in a way that respects their inherent dignity and personal integrity and are not subject to torture or to inhuman or degrading treatment.[17]
- Ensuring the provision of lawful mechanisms by which to make decisions about deprivation of liberty of the most vulnerable children and young people in education settings[18]
- Protecting children from neglect and abuse[19]
- Protecting children from degrading physical violence[20]
- Challenging school exclusion due to disability and unlawful COVID emergency measures
- Protecting victims of modern slavery and human trafficking[21]
- Fighting for legal recognition of gender identity[22]
- Requiring the State to facilitate Gypsies' and Travellers' way of life.[23]

In respect of Article 2 of the ECHR, the right to life, the state is required to refrain from taking life, except in certain limited circumstances (the negative duty), and further, is required to investigate deaths it might have been responsible for (a positive obligation). The positive obligation includes not only a duty to have in place a legislative and administrative framework to provide an effective deterrent against risks to life, but also that where the relevant authority knows of a real and immediate risk to someone's life, it must take reasonable measures within the scope of its powers to avoid that risk.

[16] Human Rights Futures Project, Protection of children's rights under the Human Rights Act - some examples, LSE, May 2011, https://www.lse.ac.uk/sociology/assets/documents/human-rights/HRF16-KlugHRAChildren.pdf.

[17] The Queen (On the Application of the Howard League for Penal Reform) v The Secretary of State for the Home Department v Department of Health [2002] EWHC 2497 (Admin)

[18] ML -v- SENDIST & EA [2021] NI Fam 15

[19] Z UK European Court of Human Rights, 10/5/2001 https://www.judiciaryni.uk/judicial-decisions/2021-nifam-15

[20] A v UK European Court of Human Rights (1999) 27 EHRR 611

[21] See: "The Human Rights Act – Patience Asuquo", Youtube, 18 Dec 2012, available at: https://www.youtube.com/watch?v=zGIaUDh_BJ4. Under Article 4 of the HRA, Liberty forced the police to investigate a report of threats and violence against an employee, whose passport and wages had been withheld in breach of the prohibition on slavery and forced labour. Also See: Siliadin v France; VCL and AN v. UK (Applications nos. 77587/12 and 74603/12).

[22] Goodwin v UK (Application no.28957/95), X v The former Yugoslav Republic of Macedonia, (Application no.29683/16).

[23] Connors v UK (Application no. 66746/01).

Article 2 also imposes on a state an “investigative duty” to investigate the circumstances of any death that occurs at the hands of the state, in state custody, or with a nexus to state involvement, via a Coroner’s inquest.

Finally, we do not agree with the claim that positive obligations are legally uncertain; if they are unclear, what is needed is greater training of frontline service providers as to how human rights can support their work. No change is required to the Human Rights Act in this regard.

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.**
    We would welcome comments on the above options, and the illustrative clauses in Appendix 2.

Section 3 should not be repealed. It should remain as is and the UK courts should continue to interpret legislation as far as is possible in a way that accords with the rights protected by the European Convention. Deleting Section 3 entirely would seriously damage children’s rights protection in the UK, greatly reducing the powers of the courts to remedy rights-abusive laws. It would also drastically reduce judicial oversight and checks and balances between the different branches of government. Amending Section 3 to restrict the power of the courts to protect rights would protect outdated laws and government policy, not parliament. Further, it would 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.

The consultation suggestions that the HRA takes power away from Parliament and gives it the courts. This is not the case. The HRA protects the role of Parliament in making and changing laws; it was deliberately designed to be compatible with the UK’s constitutional framework and ensure Parliament is sovereign. It is also important to remember that, whilst Section 3 is usually about courts making decisions in legal cases, it is an important tool for public officials to use to make rights respecting decisions. The application of wider laws in a way that respects human rights, improves decision making and lessens the need for legal challenges on decisions and practices which do not respect human rights.

13. **How could Parliament’s role in engaging with, and scrutinising, section 3 judgments be enhanced?**

Parliament is already set up with a special body to look at human rights issues: the Joint Committee on Human Rights (JCHR). The JCHR plays an important role in analysing proposed new laws to check whether they are rights respecting and also keeps track of issues related to important human rights legal cases and judgments. We would welcome an enhanced role, with the necessary resources, for the JCHR to continue its important work. This can be achieved via a parliamentary process, with amendment to the standing orders. No change to the HRA is necessitated or warranted in this regard.

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

A database of domestic judgments in the UK that have relied on the HRA/Convention rights would generally be helpful in understanding the use and interpretation of the Convention rights, including Section 3, in the protection and fulfilment of children's rights. It is astounding that such does not already exist. The Westminster government could introduce this measure independently of this consultation. No changes to the HRA are required to achieve this.

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. The power of higher courts to strike down secondary legislation which is incompatible with Convention rights is an important protection and means of giving effect to the ECHR protections. To remove or alter these powers would represent a diminishment in how children's rights are currently protected and therefore no change should be made. 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.

The HRA is primary legislation, and so secondary legislation is required to be compatible with it. Any secondary legislation that breaches primary legislation is unlawful and of no effect. Even when secondary legislation is quashed, it remains open to the Government to respond by introducing new legislation to achieve the same policy goal without violating human rights.

According the decisions of individual ministers more deference than legislation passed by the devolved legislatures, including the NI Assembly, would be one untenable outworking of the government's proposal. The European Convention on Human Rights is embedded in the devolved settlements for Northern Ireland so that legislation passed by the NI Assembly must comply with Convention rights. Unlike Westminster, where parliamentary sovereignty is given ultimate weight, legislation from Stormont

can be struck down by a court. Replacing strike-down or amendment powers with only declarations of incompatibility for Westminster secondary legislation will create an anomaly in the UK, where only legislation passed by the devolved parliaments/assemblies can be struck down by the courts. When experts at an oral evidence session of the Human Rights Joint Committee were asked about this issue on 26 January 2022, there was broad consensus.[24] Professor Alison Young said that this would be “very concerning”, a view that was endorsed by ex-Justice of the UKSC, Lord Mance. He added that it would be “strange, unexpected and inappropriate” if courts could strike down legislation passed by the devolved administrations but not that issued by ministers, and “a real backwards step”.

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? Please provide reasons.

The impact of this proposal is that it would restrict or undermine an existing ‘quashing order’ power under the HRA and in this regard reduce, limit or delay remedies available to children for violation of their Convention rights. Delaying a quashing order could, for example, mean that a child might not benefit from the verdict of the court because decisions made by a public authority, before the order, would still be lawful. This compromises access to justice for anyone seeking to ensure that a child has been treated fairly by a public body. Limiting quashing orders reduces the ability of people to hold public bodies to account. We therefore disagree with these suggested changes and recommend no change to the HRA in this regard.

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; b. similar to that in the Human Rights Act, but not able to be used to amend the Bill of Rights itself; c. limited only to remedial orders made under the ‘urgent’ procedure; or d. abolished altogether? Please provide reasons.

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 any lengthy delays in the administration of justice could impact on them for a significant period of their childhood.

Section 10 powers are currently working effectively and there are no changes required to how it operates. There have been less than 50 declarations of incompatibility in

[24] Joint Committee on Human Rights, Human Rights Act Reform, 26 January 2022, [Parliamentlive.tv - Human Rights (Joint Committee)]

over 20 years of the HRA's operation, and the current system allows for a range of resolutions by Parliament. The proposal in this question is unnecessary.

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

Compatibility statements are a minor procedural requirement designed to ensure Government is transparent about any potential human rights concerns with their proposed laws. In practice, this operates as a "human rights assessment" when Government is considering new law. The Section 19 statement helps Parliament review the law and is an important transparency and accountability tool. In the absence of a statutory duty to carry out a child rights impact assessment, Section 19 is of particular importance. The current system under the HRA is working effectively and there is no case for change.

19. How can the Bill of Rights best reflect the different interests, histories and legal traditions of all parts of the UK, while retaining the key principles that underlie a Bill of Rights for the whole UK?

To reduce the huge issues of how changing our human rights laws would impact three separate devolved nations to one single question is astonishing. This suggests a significant lack of knowledge and understanding of how the HRA works in devolved nations, and how each of the other questions in the Consultation also have various implications for devolution. The proposals in the consultation, if enacted in the devolved regions, will detrimentally alter the way in which these protections are experienced by children in these regions. The cumulative impact of the proposals will be to limit access to the Convention rights as currently experienced. Unless the UK Government fully respects the devolved system of governance by seeking a legislative consent motion in each jurisdiction it will have failed to ignore the views and concerns of each of these regions. Even if this takes place these changes may introduce a two-tier system of human rights in the UK if the proposals do not apply to devolved responsibilities but are applied to reserved powers.

The proposals in the government's consultation document are incompatible with the devolution settlement in Northern Ireland and out of step with political and public opinion. Taken together, these proposals represent a material threat to the ongoing peace process, of which the HRA is a crucial and constituent part. The Northern Irish Human Rights Commission said: "The Human Rights Act has long protected the rights of all people in Northern Ireland and it has done so in a way that is reasonable and balanced."[25] Many of the implications around the re-centering of power and diminishing of accountability that apply in the other devolved nations apply also to NI.

[25] Alyson Kilpatrick, NI Human Rights Chief Commissioner responds to proposed replacement of the Human Rights Act, Northern Ireland Human Rights Commission, 14 December 2021, NI Human Rights Chief Commissioner Responds to Proposed Replacement of the Human Rights Act | Northern Ireland Human Rights Commission (nihrc.org)

But there are specific and additional considerations, as key institutions and human rights protections in Northern Ireland post-GFA are founded upon the HRA:

- **ECHR incorporation required by Good Friday Agreement (GFA): The** incorporation of the ECHR into NI law, as well as direct access to the courts and remedies for breach of the Convention, are commitments in the Good Friday Agreement. This was achieved by the HRA and the Northern Ireland Act 1998. The HRA therefore has an enhanced constitutional role in NI. If two parallel but increasingly divergent sets of rights (British BoR rights and actual ECHR rights) develop, Northern Ireland may be deprived of the direct access to the courts and remedies for breach of the Convention to which they are entitled and which was provided for in an international peace agreement.

- **ECHR at core of Good Friday Agreement (GFA) safeguards**: The proposed changes to or scrapping of the HRA would represent a fundamental regressive change to how Convention rights are experienced in Northern Ireland and would therefore be a direct violation of the Belfast/Good Friday Agreement. Two of the five safeguards in the GFA "to ensure that all sections of the community […] are protected" are also directly contingent on the ECHR (public bodies cannot infringe it and key decisions and legislation are proofed for ECHR compliance). Again, if parallel and divergent rights develop, this could lead to a fracturing of human rights protections in the UK into a two-tier system, where all NIA matters are held to the higher standard of the ECHR but acts of the UK Government generally are only held to Bill of Rights standards.

- **Status of GFA as an international treaty**: The proposals risk undermining the peace agreement and the political and policing structures that flow from it. The GFA is not only a peace agreement, but an international treaty, lodged with the UN.[26] The implications of these proposals will therefore play out not just on the national, but international, stage, undermining not only the peace in NI but also the UK's stated desire to be a world eader in the arena of human rights protections.

- **Article 2 (1) of the NI Protocol:** Article 2 of the NI Protocol provides for 'no diminution' of certain GFA rights, including the incorporation of the ECHR, as a result of Brexit. Any diminution of the HRA, in its application of Convention Rights to NI, would be unlawful under the domestic incorporation of Article 2(1) of the Protocol.

- **Reversing NI Bill of Rights (BoR) process**: The GFA anticipates a Bill of Rights for Northern Ireland, "supplementing" the ECHR's complete

[26] UK Treaty Series no. 50 Cm 4705.

incorporation in domestic law, not replacing and diminishing it. The NI Bill of Rights process is currently underway. 'New Decade, New Approach', the agreement which restored democratic government at Stormont in January 2020, set up a committee to consider a NI Bill of Rights, "that is faithful to the stated intention of the 1998 Agreement [the GFA] in that it contains rights supplementary to those contained in the European Convention on Human Rights (which are currently applicable)". The Committee reported in February 2022. This British Bill of Rights proposal does not just cut across that Northern Irish process, but reverses its direction. The consultation fundamentally undermines how the Convention rights would apply in NI, making fewer rights accessible to fewer people in fewer circumstances, and therefore the basis of the NI Bill of Rights is undermined if these changes proceed again breaching the GFA

- **Ignoring political and public opinion in Northern Ireland**: The discourse and direction of debate around human rights in Northern Ireland in NI is how to build on the HRA platform, rather than how to weaken it. The Chief Commissioner of the Northern Ireland Human Rights Commission commented that "In all our engagement with the public, we learned that what people want is greater and more effective protection, not less. That is increasingly so in the midst of a pandemic."

- **Consent and Consultation with Northern Ireland Assembly (NIA):** These changes could engage the Sewel Convention, that the Government will not usually legislate on devolved matters (such as the implementation of human rights), without consent from the devolved legislature. Given the prevailing attitude towards human rights in general and the HRA in particular in Northern Ireland, it is unlikely to be given. Even if the Government determined it did not technically need to seek consent from the NIA, to ram through these changes without consulting one of the regions on which they are likely to have the biggest impact, would be not just callous and cavalier, but extremely irresponsible especially given the inextricable link with the GFA and the peace settlement.

- **Concerns raised by civil society and the IHRAR**: The Government been warned by civil society groups across the island of Ireland that these proposals threaten the peace process. But it has also been warned, repeatedly, by the IHRAR report, on which this consultation paper is supposedly based. On Q12 (repealing/replacing s.3 HRA), IHRAR repeatedly warned of the risk of an adverse impact on the GFA of repealing s.3 or dramatically limiting it, yet the

Government included as their two 'options' for reform, two approaches which IHRAR rejected, citing concerns over the GFA.

- **Impact on policing**: Convention rights run through the Good Friday (Belfast) Agreement and set the framework for post-conflict policing. These proposals would be detrimental to confidence in and practice of policing and the oversight framework that has been set up around the PSNI. One of the key functions of the Northern Ireland Policing Board, as set out in s3(3)(b)(ii) of the Policing (Northern Ireland) Act 1998, is to monitor compliance with the Human Rights Act 1998. The PSNI Code of Ethics, provided for under s52 of the same Act is also designed around the framework of the ECHR as provided for by the HRA 1998.

- **Positive obligations:** The nature of the McKerr group of cases also makes the Government's proposals around Question 11 particularly galling in a NI context. The McKerr cases were decisions of the ECtHR handed down between 2001-2003, in which findings were made that the UK government had not complied with its obligations under Article 2 to properly investigate a series of killings which may have been linked to the actions of state agents.

Any amendment of the Human Rights Act necessitates a process of review between the UK and Irish governments in consultation with the Northern Ireland parties, as required by the Good Friday (Belfast) Agreement. Rather than pursuing the current programme of reform as set out in this consultation, the Westminster government should:

- Consult with the governments, legislatures and civil society organisations of Northern Ireland, Scotland, England and Wales and work with them to improve human rights protections, in line with international standards, in all parts of the UK.
- Engage with the Irish government as co-guarantor of the Good Friday (Belfast) Agreement
- Deliver the long awaited Northern Ireland Bill of Rights, ensuring that these rights are supplementary to the European Convention, as provided for in the Good Friday (Belfast) Agreement
- Give effect to its obligations under Article 2 (1) of the NI Protocol and ensure there is no diminution of rights protections in NI

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.**

We reject strongly any attempt to change the definition of a public authority.

The Government's own consultation document says that the definition is appropriate. It does not provide a coherent argument for why it should be changed. The current language which binds different organisations or bodies who are performing a public function to act compatibly with Convention rights is appropriate. This is particularly crucial for the protection and safeguarding of children who live in institutions including those run by charities or private providers, for example, children's homes. Attempts to bring more 'certainty' may narrow the definition of a public authority so as to free private companies from responsibilities to children under the Human Rights Act when they operate government contracts and consequently put these children at risk. This concern is aggravated by the specification in the preamble that any new definition should 'not add new burdens for private sector bodies and charities'.

We recommend no change to the HRA in this regard.

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 options for section 6(2) would you prefer? Please explain your reasons. Option 1: Provide that wherever public authorities are clearly giving effect to primary legislation, then they are not acting unlawfully; or Option 2: Retain the current exception, but in a way which mirrors the changes to how legislation can be interpreted discussed above for section 3.**

There is no evidence to suggest that there is a problem with this aspect of the HRA and we therefore recommend no change to the HRA in this regard.

Both options contained in the proposals would give public bodies more freedom to act incompatibly with rights. In some situations they would also make it harder to challenge decisions by public bodies, and would require challenge to primary legislation instead.

22. **Given the above, we would welcome your views on the most appropriate approach for addressing the issue of extraterritorial jurisdiction, including the tension between the law of armed conflict and the Convention in relation to extraterritorial armed conflict.**

The UK has signed international treaties which protect rights, including under the ECHR and the HRA. The legal obligations under these laws include ensuring that any person or body exercising the power of the British Government abroad also have responsibilities to meet human rights standards. There should be no limit to application of human rights from the Act or the Convention overseas, including during armed conflict.

Any attempt to water down the UK's responsibility for the safeguarding of children outside their territorial boundaries must also be seen alongside proposals in the Nationality and Borders Bill, currently going through Parliament, to provide for offshore processing of asylum claims.

The Nationality and Borders Bill will have far reaching implications for the children of refugees and asylum seekers, as well as unaccompanied asylum-seeking children (UASCs). The Bill creates a two-tier immigration system that will put vulnerable and traumatised children in harm's way by sending a horse and cart through children's rights and legal protections. It runs contrary to important obligations under international law, tramples on domestic laws and encroaches on devolved issues in Northern Ireland. Vulnerable children and young people will be placed at particular risk of trafficking and re-trafficking. The Bill will undermine hard fought legislative progress around tackling trafficking in recent years.[27]

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. Option 1: Clarify that when the courts are deciding whether an interference with a qualified right is 'necessary' in a 'democratic society', legislation enacted by Parliament should be given great weight, in determining what is deemed to be 'necessary'. Option 2: Require the courts to give great weight to the expressed view of Parliament, when assessing the public interest, for the purposes of determining the compatibility of legislation, or actions by public authorities in discharging their statutory or other duties, with any right.**

There is no evidence provided as to why this change to such an important element of the HRA might be needed. We therefore oppose both options and recommend no change to the HRA in this regard.

Proportionality is a vital part of the way the HRA works to protect children, both inside and outside the courtrooms. It means that when looking at whether a restriction to a child's non-absolute right is allowed, it must be the least restrictive option possible. This is an important balance, enabling public bodies to make restrictions that may be needed, but ensuring they do not go too far and that some element of the child's right remains. Without the careful consideration that proportionality currently allows, which looks at the facts of each situation rather than trying to apply an unfair blanket

[27] See Children's Law Centre Briefing Note: The Nationality and Borders Bill: Implications for Children, AntiTrafficking Measures and Devolution at https://childrenslawcentre.org.uk/?mdocs-file=5110

approach, there is a real risk that children's rights will be restricted far more than necessary. The Government's proposals are seeking to restrict the ability of courts to make this important balancing exercise, by setting rules to direct how courts make that decision. This will place a limit on what should be an independent court system to make decisions based on the facts of each case.

The Government has also given little consideration to how the proposed change will impact children's everyday lives outside of the courts. The proportionality principle is particularly important in supporting constructive discussions with public bodies about how decisions can be made differently to ensure the least restrictive approach to any limits on non-absolute rights.

We reject the fundamentally divisive nature of these proposals, which essentially amount to a statement that some people deserve rights, and others do not. We are particularly concerned that these proposals would seriously undermine children's rights protection for 'unpopular or marginalised' groups, and others who lack sufficient influence with the majority party in parliament at any given time. It is a core function of human rights to protect people who lack power and influence from the oppressive tendencies of governments seeking popularity by demonising or otherwise targeting minorities.

24. **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 reject all three options, which contravene the fundamental principles of universal human rights law and the rule of law. These proposals are clearly contrary to the UK's duties under the European Convention on Human Rights, particularly Article 13 which creates a right to an effective remedy for a breach of human rights. They would directly remove rights that children have under the Convention and leave them with no option but to go to the Strasbourg court to secure the protections they are entitled to.

The proposal to provide that 'certain rights cannot prevent deportation of a certain category of individual' is a proposal to exclude whole classes of (politically unpopular)

people from the protection of human rights laws. This would create a situation where the law does not apply to everyone on an equal basis. Rights are universal – which means everyone has them all the time. They cannot and should not be removed from particular people or in particular situations.

In each individual case and decision, it must be established if the deportation is 'necessary in a democratic society'. For assessing this, the Court applies a proportionality test and tries to strike a fair balance between the rights of the individual on the one hand (including the Article 8 right to respect for his or her 'family life') and the interests of the state on the other. The proportionality test is based on the Boultif criteria[28] :

> "In assessing the relevant criteria in such a case, the Court will consider the nature and seriousness of the offence committed by the applicant; the duration of the applicant's stay in the country from which he is going to be expelled; the time which has elapsed since the commission of the offence and the applicant's conduct during that period; the nationalities of the various persons concerned; the applicant's family situation, such as the length of the marriage; other factors revealing whether the couple lead a real and genuine family life; whether the spouse knew about the offence at the time when he or she entered into a family relationship; and whether there are children in the marriage and, if so, their age. Not least, the Court will also consider the seriousness of the difficulties which the spouse would be likely to encounter in the applicant's country of origin, although the mere fact that a person might face certain difficulties in accompanying her or his spouse cannot in itself preclude expulsion."

The Boultif criteria were later enriched with two more principles[29]: 'the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and the solidity of social, cultural and family ties with the host country and with the country of destination'. These proposals drive a horse and cart through Boultif criteria and we reject them in their entirety.

Further, all three proposals would undermine or even remove the role of independent judges in determining human rights and other questions of law. Instead, politically unpopular groups would have their rights determined by government ministers and officials. Criminal sentencing and deportation powers are already disproportionately used against black and Asian people. These proposals, which would further reduce or even remove the human rights protections in such circumstances, would therefore inevitably be racially discriminatory.

[28] See Boultif v. Switzerland, no. 54273/00, ECHR 2001-IX
[29] See Nunez v. Norway, no. 55597/09, 28 June 2011

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 reject the very premise of this question: the framing of the European Convention on Human Rights and the Human Rights Act as "impediments" and the demonisation of migrants that recurs throughout the HRA consultation, and concurrently in the Nationality and Borders Bill and the Judicial Review and Courts Bill. Rights are universal – which means everyone has them all the time. They cannot and should not be removed from particular people or in particular situations within the UK, including its waters. Excluding people, including children, from human rights protections on the grounds of their immigration status, by heavily curtailing independent judges' powers to adjudicate on them, is inherently discriminatory.

The consultation paper suggests applying options 2 and 3 from Q24 to asylum removals. Our concerns and objections as noted above apply also to this 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; and d. where the public authority was trying to give effect to the express provisions, or clear purpose, of legislation. Which of the above considerations do you think should be included? Please provide reasons.**

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 and make decisions which uphold children's rights. This is a positive practice and a very effective way of encouraging public bodies to embed human rights within everything that they do every day.

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. This is the approach the Courts already take.

The HRA is working effectively in this regard. We therefore recommend no change.

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? Please provide reasons. 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; or 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 reject both options outright. These proposals are particularly alarming because they suggest human rights in any new Bill of Rights would no longer be universal. and would create a system in which people deemed as "underserving claimants" would not be able to access remedies if their human rights have been breached. All children should be entitled to the same human rights, and any corresponding remedies, regardless of any previous conduct. It is particularly troubling that something which someone did as a child could be taken into account as part of any new remedies system.

We all have human rights because they are universal. This is not specific to the HRA - this underpins all human rights law. If a new Bill of Rights seeks to change this, then it is simply not a human rights law, and serves only to weakens all of our protections.

Further, there is no evidence for the claim in the consultation document that rights litigation is a vehicle for compensation. Compensation payments in human rights civil cases are considerably smaller than in ordinary civil litigation. Often, rights cases result in no compensation payment at all. By repeating this myth at length, the government is contributing to the misinformation that surrounds the Human Rights Act and promoting confusion about the role of legal human rights protections.

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.**

The UK government should not put itself above international law. The government is proposing that when a Strasbourg judgment goes against the UK, parliament may debate and even vote on the judgment. If that would mean a vote in parliament on either (a) whether the government should abide by the ruling, or (b) how far it should do so, this would be deeply troubling. It suggests that the UK is willing to ignore its human rights violations and put itself above international law and send a signal to other states that this is acceptable. It should be remembered that in 2015, shortly after pledges on part of the Conservative Government to scrap the Human Rights Act,[30]

[30] Owen Bowcott, Cameron's pledge to scrap Human Rights Act angers civil rights groups, The Guardian, 1 October 2014, [Cameron's pledge to scrap Human Rights Act angers civil rights groups | David Cameron | The Guardian]

Russia passed a law which enables the Duma (Russia's lower house of parliament) to overrule judgements from the ECtHR.[31]

It is also worth noting that the UK Government in fact loses very few cases at the European Court of Human Rights. There are, in fact, only a small number of cases involving the UK and the Government wins most of them. For example, in 2020 there were 284 applications to the ECtHR concerning the UK. The vast majority of these cases were struck out (280) and only two of these applications found a violation of human rights. Since the introduction and implementation of the HRA, there has been a clear reduction in the number of cases going to the ECtHR. This is because people, including children, could resolve their issues here at home, either through everyday discussions with public bodies or through legal cases in our courts.

29. **We would like your views and any evidence or data you might hold on any potential impacts that could arise as a result of the proposed Bill of Rights. In particular:**
    a. What do you consider to be the likely costs and benefits of the proposed Bill of Rights? Please give reasons and supply evidence as appropriate.
    b. What do you consider to be the equalities impacts on individuals with particular protected characteristics of each of the proposed options for reform? Please give reasons and supply evidence as appropriate.
    c. How might any negative impacts be mitigated? Please give reasons and supply evidence as appropriate.

29a. We reject the entire premise of this consultation into reform of the HRA. It is unnecessary, highly divisive, and seeks to restrict people's rights and access to justice on the basis of flawed evidence, and in some cases, no evidence. We therefore do not consider it appropriate to provide a cost benefit analysis of the proposed BoR.

The cumulative impacts of the proposed reforms would be fundamental transformation of the way in which we currently access and experience the Convention rights. Everything from how the ECtHR jurisprudence is interpreted, the power to strike down violating legislation, the duties on public authorities and the broader interpretation by courts will become confused and diluted. In short, the practical enforcement of our convention rights will be significantly undermined. This will have significant and far reaching impacts for children in Northern Ireland and for those who care for and support them.

29b. The undermining of the protections in the HRA - which the proposals in this consultation seek to do - will affect everyone but will have a disproportionate effect on

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[31] BBC News, Russia passes law to overrule European human rights court, 4 December 2015, [Russia passes law to overrule European human rights court - BBC News]

children, who already encounter difficulties accessing their rights and justice. The below is a non-exhaustive list, but for example:

- **Q4/5: Privacy** - the undermining of privacy rights stands to negatively affect child defendants in criminal trials
- **Q8-10: Permission stage and 'genuine human rights' abuses** – children already experience barriers to and delays in accessing justice. Creating new barriers will entrench these problems, with disproportionate effects on children whose family circumstances are such that they do not have financial means or sufficient social/legal standing to pursue legal action on their behalf.
- **Q11: Positive obligations** - these proposals could have a potentially catastrophic effect on children, including but not limited to children in detention, children with disabilities and children at risk of abuse or neglect
- **Q23: Qualified and limited rights** - the undermining of Article 8 in particular could deprive children of necessary protections, for example relating to gender reassignment, sexual orientation, and disability.
- **Q24/25: Deportations and asylum** - these proposals will have a disproportionate impact on children. Not only do these proposals explicitly target people with protected characteristics, for example, children of colour; they will also have secondary effects, such as the further entrenchment of the hostile environment. This will have knock-on effects, for example negative health impacts on children, their families and wider communities.
- **Q27: Claimants' conduct** - linking rights to responsibilities and limiting remedies for claimants on the basis of their conduct will disproportionately impact children in contact with the police and juvenile justice system, particularly children from BAME communities.[32] Many of these children come into contact with the criminal justice system as a result of their mental ill health or other medical conditions.

29c. The only way to mitigate the wide ranging and devastating impacts of the proposals within this consultation is to withdraw them and stop them from becoming law.

[32] PSNI stop and search powers 'used disproportionately' against BAME people and children | Irish Legal News