

Consultation Response

Human Rights Act Reform: A Modern Bill of Rights

Ministry of Justice

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About this consultation

The Ministry of Justice (MoJ) is consulting on proposals to replace the Human Rights Act with a 'Bill of Rights'. Proposals include significant changes to the current human rights framework in the UK, including changes to the definition of public authorities, limits on positive obligations, the creation of a permissions stage and a focus on a claimant's conduct when considering available remedies for human rights breaches.

About Age UK

Age UK is a national charity that works with a network of partners, including Age Scotland, Age Cymru, Age NI and local Age UKs across England, to help everyone make the most of later life, whatever their circumstances. In the UK, the Charity helps more than seven million older people each year by providing advice and support. It also researches and campaigns on the issues that matter most to older people. Its work focuses on ensuring that older people: have enough money; enjoy life and feel well; receive high quality health and care; are comfortable, safe and secure at home; and feel valued and able to participate.

Key points and recommendations

- The Human Rights Act has benefited older people in the UK. It has expanded legal protection for the rights of older people and helps to protect their dignity and safety at times when they are at their most vulnerable. It has also provided powers to investigate and remedy any breaches of these rights.
- We are concerned that proposals to replace the Human Rights Act with a Bill of Rights will significantly weaken the framework which protects the rights of ordinary people, including older people, as well as key mechanisms to investigate and remedy those breaches.
- In particular, proposals to limit positive obligations will have a considerable impact on the human rights protections available to older people in their interactions with public authorities, and their ability to challenge any human rights breaches that take place in these settings.
- The introduction of a 'permission stage' will have a disproportionate impact on older people and their families who already face significant barriers to accessing justice.
- Proposals to take into account the conduct of claimants will undermine the principle of universality and are likely to have particular impacts on older migrants, older people with race as a protected characteristic, older prisoners, and older people with specific health conditions such as dementia.
- Older people have faced serious breaches of their human rights during the Covid-19 pandemic. Any Bill of Rights must ensure that older people's rights are protected and that older people are not excluded from plans for pandemic recovery.
- A full impact assessment should be undertaken to identify the impact of any changes to the Human Rights Act on those with protected characteristics.

Introduction

The Human Rights Act (1998) provides a strong framework for the protection of human rights across the United Kingdom. Since coming into force in October 2000, the Act has placed a duty on all public authorities to respect human rights in everything they do – a change which has helped to protect all of our rights, including the rights of the most vulnerable in society. The Act has also made it easier for members of the public to speak up and challenge poor treatment and breaches of their human rights without needing to take a case to the European Court of Human Rights in Strasbourg.

Age UK believes that the Human Rights Act has a key role to play in protecting the dignity and safety of older people at a time when they may be at their most vulnerable and are more likely to have interactions with public authorities, such as health and social care services. For example, the terms of the Human Rights Act require care homes and staff in hospitals to embed human rights in policy, service delivery and decision-making to ensure that older people's human rights are protected while under their care. The Act also provides a mechanism for older people to challenge poor or harmful treatment and to hold public bodies to account.

Effective implementation of the Human Rights Act to protect older people is currently patchy, largely due to lack of awareness. There is more to do to ensure that older people understand their rights and are able to action them, and that staff in organisations that interface with older people are clear about their responsibilities and know how they apply in practice. However, importantly, from an older persons' perspective we see no evidence to support a move away from the Human Rights Act. We are also seriously concerned that proposals to replace it with a Bill of Rights will weaken the current protective framework and make it even harder for older people to access justice than it is already. If so, this would no doubt be an unintended consequence but it would cause real detriment to older people, and in our view it is crucial that we prevent this.

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

No.

This proposal would make it harder for older people to hold public authorities and the Government to account. It is well-documented¹ that older people face barriers to accessing justice due to mental or physical ill health, cost, and difficulties in navigating a complex system at a time when they may be at their most vulnerable. Introducing a requirement to prove 'significant disadvantage' would create a further barrier for older people to bring a claim under a Bill of Rights and may prevent genuine human rights matters from being heard.

Question 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.

We disagree with the focus of this question as we have not seen any evidence of an expansion of positive obligations.

Positive obligations play a central role in protecting and upholding the rights of ordinary people. They place a duty on public authorities to prevent breaches of human rights, take effective measures to deter conduct that would breach human rights, respond to serious human rights breaches (e.g., by investigating the breach), and provide information to explain the risk of human rights breaches.

As people age, they are more likely to develop a disability or health problem which means that they need to rely on others to care for them, and therefore are more likely to have contact with public authorities like health and social care services. Because older people in receipt of social care often live with reduced mental capacity or frailty, they are more vulnerable to abuse, neglect and ill treatment from those around them. Positive obligations provide an important framework (through service commissioning, policies and service delivery) to protect people's human rights when they are at their most vulnerable. For example, older people accessing care home services that have been funded or arranged by a local authority must be provided within enough to eat and drink (Article 2) and should

¹ [Brown, K. J. & Gordon, F. \(2020\) 'Exploring and overcoming barriers to justice for older victims of crime' In: Criminal Law Review 12: 1127-1136.](#)

be supported to do so where necessary; they should not be deprived of their liberty without the Deprivation of Liberty Safeguards (DoLs) procedure being followed (Article 5); and steps must be taken to ensure they are not discriminated against because of their protected characteristics (Article 14). During the pandemic it became crystal clear how important these rights are for the half a million plus older people living in care homes in the UK.

Public authorities also have a duty to investigate breaches of human rights. This duty provides an important means through which older people and their families can challenge human rights abuses. If this was removed, older people and their families would be less likely to have an effective form of recourse where human rights abuses have occurred.

It is unclear from the consultation how the Government intends to limit positive obligations. However, we are concerned that any proposal to limit positive obligations would impact both on the rights of older people and the means through which older people can challenge a breach of their human rights.

Question 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?

Little consideration appears to have been given to potential incompatibility between a Bill of Rights and legislation in Northern Ireland, Scotland and Wales. For example, in Scotland the European Convention on Human Rights is given effect through the 1998 Scotland Act as well as the existing Human Rights Act. In Wales, the requirement that legislation passed by the Senedd must be compatible with the Human Rights Act means that the Act is fundamental to the Welsh devolution settlement. It is unclear from the consultation how the proposed UK Bill of Rights will interact with law at the local level and how it will fit with plans in Scotland and Wales to strengthen and advance human rights, or ongoing plans to develop a Northern Ireland Bill of Rights. In other words, we think this is big potential problem and it is not clear to us how it can be resolved.

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

Yes – the existing definition of public authorities should be maintained. A broad definition of public authorities is necessary to ensure that older people can also access their rights

and remedies to right breaches where a non-governmental organisation, charity or private company carries out a public function, e.g., a housing association.

Section 6 of the Human Rights Act places a duty on all public authorities to act in a way that is compatible with the rights in the Act. This function is key to ensuring that public bodies embed human rights in their work and in our interactions with them. As a charity working for older people, we know this is particularly important to protect the rights of older people in health and social care settings, among others.

We are concerned that attempts to change the definition of public authorities would result in a reduced number of public bodies with a duty to uphold human rights. If changes are made, they should only be to broaden the definition of public authorities, rather than limit it.

Question 27: We believe that the Bill of Rights should include some mention of responsibilities and/or the conduct of claimants, and that the remedies system could be used in this respect. Which of the following options could best achieve this? 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 disagree that the Bill of Rights should include some mention of responsibilities and/or the conduct of claimants. The essence of human rights is that they are universal, so they should not be dependent on previous conduct. Limiting recourse to remedies for human rights abuses is likely to have a disproportionate impact on older prisoners, older migrants, and older people from communities with high levels of police intervention, including those from Black and Minority Ethnic backgrounds. It may also impact on older people affected by medical conditions, such as dementia, or conditions linked to a loss of mental capacity – for example, there may be instances where an individual's behaviour doesn't meet a perception of 'standard conduct' due to medical reasons and this could affect the damages to which they are entitled.