Independent Review of the Human Rights Act

Response to Call for Evidence

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1. Our response to the Call for Evidence (CfE) focuses on answering the following questions in relation to theme two of the review:

> *a) Should any change be made to the framework established by sections 3 and 4 of the HRA? In particular:*
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> > *i. Are there instances where, as a consequence of domestic courts and tribunals seeking to read and give effect to legislation compatibly with the Convention rights (as required by section 3), legislation has been interpreted in a manner inconsistent with the intention of the UK Parliament in enacting it? If yes, should section 3 be amended (or repealed)?*
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> > *ii. If section 3 should be amended or repealed, should that change be applied to interpretation of legislation enacted before the amendment/repeal takes effect? If yes, what should be done about previous section 3 interpretations adopted by the courts?*
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> > *iii. Should declarations of incompatibility (under section 4) be considered as part of the initial process of interpretation rather than as a matter of last resort, so as to enhance the role of Parliament in determining how any incompatibility should be addressed?*

2. In this written evidence we argue that the HRA has improved the protection of human rights in the UK. We start by highlighting the apparent success of the HRA in reducing the number of cases lost by the UK before the European Court of Human Rights (ECtHR) and note that this reduction correlates directly with the introduction of the HRA. Next, in response to the questions noted above, we argue that the approach taken by the courts in England and Wales under s 3 of the HRA has been consistent with that envisaged by Parliament when the HRA was introduced: the courts have sought to read legislation in a rights-compliant manner wherever possible. For that reason, we suggest that s 3 does not need to be amended or

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repealed. Finally, we argue that the process of declarations of incompatibility (under s 4) works best when envisaged as a measure of last resort, as it has been used by the courts.

The Human Rights Act 1998

3. The CfE notes that the Review 'would welcome any general views on how the roles of the courts, Government and Parliament are balanced in the operation of the HRA, including whether courts have been drawn unduly into matters of policy. We would particularly welcome views on any strengths and weakness of the current approach and any recommendations for change.'[3] With that in mind, we want to note at the outset the apparent success of the HRA in protecting individual rights.

4. As we asserted in written evidence to the UK Parliament's Joint Committee on Human Rights,[4] prior to the HRA there was a rising trend of judgments against the UK by the European Court of Human Rights (ECtHR). Examining the case law, it is clear that the UK lost an increasing number of cases between the first lost case in 1975[5] and the adoption of the HRA in 1998.[6] The growth in lost cases highlights that the UK was failing to enforce individual rights in domestic law.

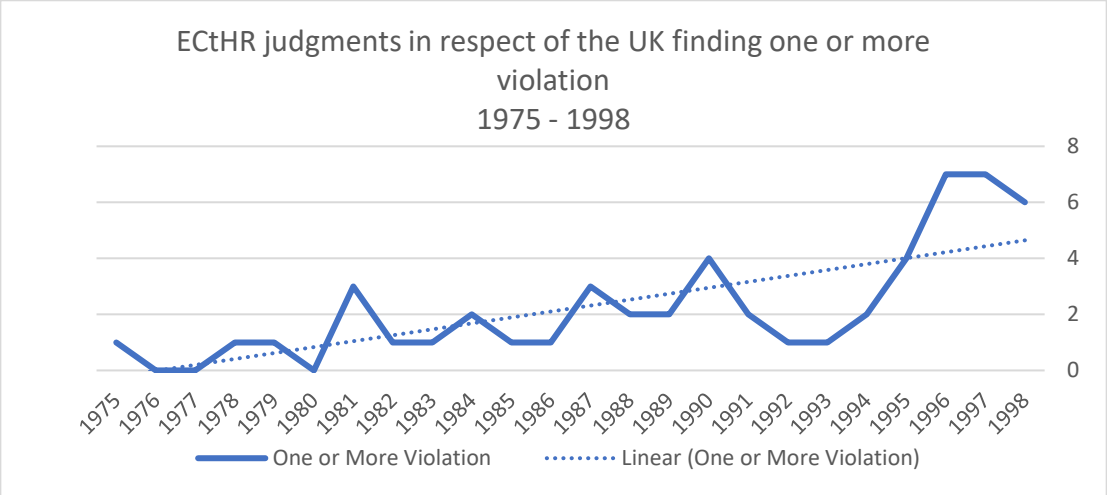

Chart 1 showing increasing findings of violation against the UK by ECtHR before the HRA.

5. Before the HRA, UK courts made use of the ECHR in order to inform their decision-making. Lord Bingham highlighted this when he noted that '…the Convention exerted a persuasive and pervasive influence on judicial decision-making in this country, affecting the interpretation of ambiguous statutory provisions, guiding the exercise of discretions, bearing on the

[3] IHRAR, Call for Evidence, 5.
[4] HRA0016, is available here: <https://committees.parliament.uk/writtenevidence/22953/html/> accessed 25 February 2021.
[5] *Golder v UK* (1975) 1 EHRR 524.
[6] Figures taken from the ECtHR's statistics (<https://www.echr.coe.int/Pages/home.aspx ?p=reports&c=> accessed 25 February 2021) and Alice Donald, Jane Gordon and Philip Leach, *Research Report 83: The UK and the European Court of Human Rights* (Equality and Human Rights Commission 2012).

development of the common law.'[7] Nonetheless, such use was inconsistent and relied on individual judges' discretion, rather than a clear duty.

6. Despite its increasing influence, breaches of the ECHR were not directly actionable in UK courts. Moreover, at the time of the introduction of the Human Rights Bill, the then Government noted that 'The effect of non-incorporation on the British people is a very practical one… enforcing [rights] takes too long and costs too much'.[8] Taken together with the rise in cases lost, these statements highlight that the 'pervasive influence' of the ECHR alone was insufficient to secure proper enforcement of individual rights in domestic law.

7. The HRA, for the first time, allowed individuals to bring direct legal challenges before domestic courts for breaches of the ECHR, which represented a significant shift in human rights protection in the UK.[9] That the HRA has led to individuals being more able to enforce their human rights in the UK is also borne out by an analysis of the UK's track record before the ECtHR since the HRA received royal assent in 1998. The chart below shows the number of judgments against the UK before the ECtHR from the first full calendar year after the HRA received royal assent to 2018.[10]

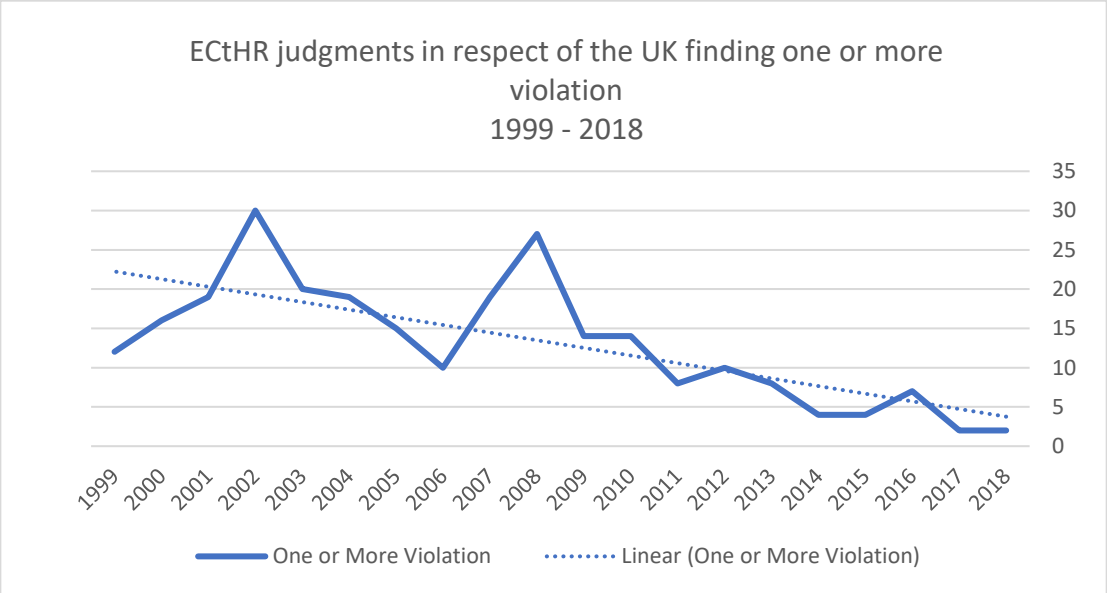

Chart 2 showing decreasing findings of violation against the UK by ECtHR after the HRA.

[7] *R v Lyons* [2003] 1 AC 976 [13].

[8] Home Department, *Rights Brought Home: The Human Rights Bill* (1997) para 1.14. The report suggests that in 1997 it took on average five years and £30,000 to bring a case before the ECtHR. This would be a prohibitive hurdle to many would-be applicants.

[9] The protected ECHR rights are contained in a schedule to the HRA. The HRA does not incorporate Art 13 (the right to an effective remedy), this was justified on the basis that the HRA itself provided an effective remedy, see e.g. David Feldman, *Civil Liberties and Human Rights in England and Wales* (2nd edn, Oxford University Press 2002) 82–83.

[10] Figures taken from the ECtHR's statistics (<https://www.echr.coe.int/Pages/home.aspx?p=reports&c=> accessed 25 February 2021) and Donald, Gordon and Leach (n 6). The HRA did not have full legal effect until it entered into force on 2 October 2000.

8. Whilst data based on ECtHR judgments is, to some extent, a blunt instrument for understanding the impact of the HRA, it appears to illustrate that the UK's track record has improved after the HRA entered into force. This in turn suggests that the HRA, and the tools it provides the courts, has empowered domestic courts to deal more effectively with applicants who allege that their human rights have been infringed, ensuring individuals are more able to enforce their rights in the UK.

9. We now turn to address two of the tools provided by the HRA to the courts to assist in the protection of individual rights.

Section 3

10. The first question to be addressed asks:

> *i. Are there instances where, as a consequence of domestic courts and tribunals seeking to read and give effect to legislation compatibly with the Convention rights (as required by section 3), legislation has been interpreted in a manner inconsistent with the intention of the UK Parliament in enacting it? If yes, should section 3 be amended (or repealed)?*

In answering this question, it useful to start with a brief history of s 3.

11. Section 3 creates a rule of interpretation. It reads: 'So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.' This rule of interpretation represents a departure from the initial proposals in respect of the Act where a strike-down power for the judiciary had been envisaged,[11] which would have allowed the courts to declare that legislation which was incompatible with the rights protected by the ECHR was of no force or effect.[12]

12. That there might be a need to balance the power of the courts under s 3 and the will of Parliament was acknowledged from the outset. During the debates on the Human Rights Bill in the House of Lords, the Lord Chancellor, Lord Irving of Lairg, explained the government's view on how s 3 would operate. He indicated that 'if it is possible to interpret a statute in two ways - one compatible with the Convention and one not - the courts will choose the

[11] Based on the Canadian Charter of Rights and Freedoms. Richard Clayton and Hugh Tomlinson (eds), *The Law of Human Rights* (2nd edn, Oxford University Press 2009) para 4.01. Such an approach would have been wholly incompatible with the doctrine of parliamentary sovereignty as it is traditionally understood.

[12] This is the language of the Canadian Charter of Rights and Freedoms, on which the proposal was modelled, see ibid p 175, (n 1). The difference in approach between the ECHR and European Union law is interesting here. The House of Lords had held in *R v Secretary of State for Transport, ex p Factortame Ltd (No 2)* [1991] 1 AC 603 that where there was an incompatibility between EU (then EEC) law and UK law, the former must prevail. Thus, the court 'disapplied' the Merchant Shipping Act 1988. This outcome has been described as 'revolutionary' see HWR Wade, 'Sovereignty - Revolution or Evolution' (1996) 112 Law Quarterly Review 568. Nonetheless the different nature of the relationship between the UK and the ECHR means that there has been no equivalent in UK human rights decisions.

interpretation which is compatible… however, the Bill does not allow the courts to set aside or ignore Acts of Parliament'.[13]

13. In the Commons, the then Home Secretary, Jack Straw, had said that the government wanted:

> …the courts to strive to find an interpretation of legislation that is consistent with Convention rights, so far as the plain words of the legislation allow… it is not our intention that the courts in applying section 3 should contort the meaning of words to produce implausible or incredible meanings.[14]

14. In the same spirit, writing after the HRA has received royal assent, Lord Lester noted that the experience in other Commonwealth jurisdictions with similar approaches to protecting rights indicated that courts possessed:

> …a willingness to do as the Government and Parliament plainly intend; namely, to be sympathetic, imaginative, and inventive in interpreting the Human Rights Act and the law of the Convention. This means that the courts will need, where possible, to read provisions into ambiguous or incomplete legislation and to give a restrictive interpretation to provisions that are clear but sweep too broadly. The judicial interpretation of legislation under the Human Rights Act, like the politics that gave shape to the Act, will involve the art of the possible.[15]

15. From the outset, the courts demonstrated a willingness to show deference to Parliament's intentions. Reviewing the HRA's first year, Klug and Starmer identified four 'leading cases' on the use of s 3:[16] *R v Offen and others*,[17] *Poplar Housing and Regeneration Community Association Limited v Donoghue*,[18] *R v A*,[19] and *R v Lambert*.[20] In *Poplar Housing*, Lord Woolf made it clear that interpretation, not legislation, was the court's function, but noted that 'Quite where the line is to be drawn between legislating and interpreting is not clear.'[21]

16. Lord Woolf indicated that in his view the line was crossed where the courts were required to 'radically alter' the legislation.[22] In *R v A*, Lord Steyn suggested that 'in accordance with the will of Parliament as reflected in s 3 [HRA] it will sometimes be necessary to adopt an interpretation which may appear linguistically strained.'[23] Again, this comment indicates the

[13] HL Deb 3 November 1997, vol 582, col 1230.
[14] HC Deb 3 June 1998, vol 313, cols 421-422.
[15] Anthony Lester, 'Interpreting Statutes under the Human Rights Act' (1999) 20 Statute Law Review 218, 225.
[16] Francesca Klug and Keir Starmer, 'Incorporation through the "Front Door": The First Year of the Human Rights Act' [2001] Public Law 654, 656. Whilst no strict criteria are given for the use of these four cases as the leading authorities, the article is based on a survey of "all the reported cases in the higher courts since the [Human Rights Act] came into force in which the [Act] has been substantively considered" ibid 654. The authors are, thus, well placed to comment.
[17] [2001] 2 All ER 154.
[18] [2001] EWCA Civ 595, [2002] QB 48.
[19] [2001] 3 All ER 1.
[20] [2001] UKHL 37, [2002] 2 AC 545.
[21] Klug and Starmer (n 16) 657.
[22] *Poplar Housing* (n 17) para 76.
[23] *R v A* (n 18) 17.

willingness of the courts to construe the powers afforded to them by s 3 broadly when reading legislation into compliance with the ECHR.

17. In *Lambert*, Lord Hope noted that, whilst the power in s 3 was broadly worded, it did have some limitations:

> Resort to it will not be possible if the legislation contains provisions, either in the words or phrases which are under scrutiny or elsewhere, which expressly contradict the meaning which the enactment would have to be given to make it compatible. The same consequences will follow if legislation contains provisions which have this effect by necessary implication… Section 3(1) preserves the sovereignty of Parliament. It does not give power to the judges to overturn decisions which the language of the statute shows have been taken on the very point at issue by the legislator.[24]

18. Perhaps the most important case which has emerged in relation to s 3 is that of *Ghaidan v Godin Mendoza*.[25] Young has described this case as marking 'a turning point in the interpretation of s 3… Their Lordships appear to adopt a midway point between the broad view of Lord Steyn and the narrow view of Lord Hope in *R v A*'.[26] The case concerned the surviving partner of a gay couple who had been in a long-term relationship and raised the question of whether or not in those circumstances the surviving partner was entitled to retain the rent of the flat under the Rent Act 1977. The House of Lords held that the requirement that a couple live together 'as his or her husband or wife', in the 1977 Act, ought to be read to mean 'as *if they were* his husband and wife' to ensure that the Act was compatible with the claimants' rights under the Human Rights Act.[27]

19. Young notes that the judgment illustrates that the courts would work to 'continue to protect Convention rights whilst respecting the boundary between interpretation and legislation.'[28] However, it is true that not all commentators have had such positive views of the impact of s 3 and the courts' response to it. Writing in 2011, Sales and Ekins note that:

> Thus far the courts have said that there is a distinction to be drawn in the application of s 3(1) of the [HRA] between interpretation (which involves a legitimate application of s 3(1) in construing a statute) and amendment or legislation by a court when giving meaning to a statute (which goes beyond what is permissible under s 3(1)).

[24] *Lambert* (n 20) para 79.
[25] [2004] UKHL 30, [2004] 2 AC 557.
[26] Alison L Young, 'Ghaidan v Godin-Mendoza: Avoiding the Deference Trap' [2005] Public Law 23, 23. It remains a key case on the interpretation of s 3, being regularly cited even in 2020. See, e.g., *R (Z and another) v Hackney London Borough Council* [2020] UKSC 40, [2020] 1 WLR 4327.
[27] *Ghaidan v Godin-Mendoza* (n 25) para 51. Emphasis in original.
[28] Young (n 26) 34.

20. They argue that this distinction has not been clearly articulated and that 'Section 3 of the [HRA] creates new and substantial uncertainty regarding the interpretation of legislation.'[29] Yet, given that the supposed uncertainty relates to the exercise of clearly defined rights,[30] and that there is a corpus of law explaining how the courts seek to apply s 3, it is hard to reconcile the criticism with the practice which has developed.

21. Moreover, whilst the power of interpretation created by s 3 is clearly broad, it does have limits. The courts cannot act as a legislature and 'where reading words into legislation, the courts have stressed that the words must be consistent with the scheme and existing principle of the legislation.'[31] In *Re S*,[32] the House of Lords provided a clearer articulation of the limits of s 3, saying: 'a meaning which departs substantially from a fundamental feature of an Act of Parliament is likely to have crossed a boundary between interpretation and amendment.'[33]

22. In response to early criticism of the way in which s 3 would embolden judges to interpret the law too broadly, the then Lord Chief Justice, Lord Woolf, noted that:

> By upholding the HRA the courts are not interfering with the will of Parliament. On the contrary, when they interfere, the judges are protecting the public by ensuring that the Government complies with the laws made by Parliament. *The courts are therefore acting in support of Parliament and not otherwise*.[34]

As comments such as these serve to illustrate, the courts are highly aware of their place in the UK's constitutional set-up and alive to the need to respect the will of Parliament in their decision-making.

23. Thus, to answer the question posed, it is hard to point to many instances where the courts have acted inconsistently with Parliament's wishes. Indeed, it can be argued, rightly we believe, that in interpreting legislation in compliance with the ECHR the courts are clearly adhering to the will of Parliament. In all instances, it remains possible for Parliament to alter existing legislation to reflect a change in legislative intention. For this reason, we do not believe that s 3 of the HRA ought to be amended or repealed.

24. Given this conclusion, we do not address the second question posed.

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[29] Sir Philip Sales and Richard Ekins, 'Rights-Consistent Interpretation and the Human Rights Act 1998' (2011) 127 Law Quarterly Review 217, 238.
[30] Found in the Human Rights Act itself.
[31] John Wadham and others, *Blackstone's Guide to the Human Rights Act 1998* (7th edn, Oxford University Press 2015) para 3.41.
[32] *Re S* [2002] UKHL 46, [2002] 2 AC 291.
[33] ibid [40].
[34] Lord Woolf, 'The Impact of Human Rights' (Speech to the Oxford Lyceum, 6 March 2003), quoted in Wadham and others (n 31) para 1.32. Emphasis added.

Section 4

25. In respect of s 4, the CfE asks:

> *iii. Should declarations of incompatibility (under section 4) be considered as part of the initial process of interpretation rather than as a matter of last resort, so as to enhance the role of Parliament in determining how any incompatibility should be addressed?*

We start by looking broadly at s 4 and the way in which it operates.

26. Section 4(2) provides that 'If the court is satisfied that the provision is incompatible with a Convention right, it may make a declaration of that incompatibility.' A declaration to this effect can only be made by the High Court and above.[35] Such 'A declaration… does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given; and… is not binding on the parties to the proceedings in which it is made.'[36] In other words, it has no legal effect on the operation of the provision which breaches the rights of the individual before the court.

27. Kavanagh suggests that despite the appearance to the contrary, s 4 declarations are a powerful tool.[37] First, for example, she notes that if a s 4 declaration is not remedied, a claimant would be able to apply to the ECtHR and could 'argue that his or her Convention rights have been violated (as confirmed by the highest domestic courts) and that the UK government has nonetheless failed to remedy the violation.'[38] Such an application is likely to lead to the UK losing its case before the ECtHR. Kavanagh frames a s 4 declaration as 'a means by which the courts can alert Parliament to a binding obligation in international law.'[39]

28. Kavanagh's second argument is that a s 4 declaration translates into political pressure on the government to rectify the breach of human rights by providing a range of actors, from the press to opposition politicians, with the chance to challenge the government.[40] Taken together, she argues that:

> All told, the political repercussions of resisting a judicial finding of a rights violation, combined with the legal repercussions in the (highly likely) event of an adverse finding from Strasbourg, set against the backdrop of the traditional comity between Parliament and the courts and the general respect for court decisions, means that a

[35] That is the High Court, Court of Appeal and Supreme Court.
[36] Section 4(6). Kavanagh notes that for this reason 'most litigants will prefer a [section] 3 interpretation', Aileen Kavanagh, 'What's so Weak about "Weakform Review"? The Case of the UK Human Rights Act 1998' (2015) 13 International Journal of Constitutional Law 1008, 1024.
[37] ibid.
[38] ibid.
[39] ibid. One such example of this is *A and Others v Secretary of State for the Home Department* [2004] UKHL 56, [2005] 2 AC 68, where the House of Lords issued a s 4 declaration, see para 73. The case was then heard at the ECtHR as *A and Others v UK* (2009) 49 EHRR 29. The UK lost the case.
[40] ibid 1025.

> declaration of incompatibility can have a much stronger practical force than its legally non-binding status might suggest.[41]

29. Further supporting the idea that s 4 is a powerful tool which ought to remain a measure of last resort is s 19 of the HRA. It relates to statements of compatibility. This provision changed Parliamentary process by requiring that:

> A Minister of the Crown in charge of a Bill in either House of Parliament must, before Second Reading of the Bill… make a statement to the effect that in his view the provisions of the Bill are compatible with the Convention rights ('a statement of compatibility'); or… make a statement to the effect that although he is unable to make a statement of compatibility the government nevertheless wishes the House to proceed with the Bill.

30. Wadham *et al* assert that this requirement was designed 'to encourage the executive to address the issue of whether proposed legislation is compatible with the Convention at the formative stage.'[42] They further argue that it helps push the courts toward using their powers under s 3 rather than s 4 as the statement of compatibility 'is also intended to act as evidence that a Convention-compliant interpretation is intended by Parliament'.[43] Thus to issue a s 4 declaration would be to suggest that Parliament was incorrect in the belief that a provision was compliant. We suggest that this further supports the view that s 4 declarations ought to operate as a measure of last resort.

31. That s 4 declarations are powerful is suggested by the way in which they have been responded to, thus far. It remains the case that Parliament is under no *obligation* to act subsequent to a s 4 declaration. However, the sense that the government of the day will respect the finding of the courts echoes the comments of the Lord Chancellor during the debate on the Act in Parliament. There he said that it was expected 'that the government and Parliament will in all cases almost certainly be prompted to change the law following a declaration of incompatibility.'[44] This clearly indicates that it was the intention of the Government that s 4 declarations were intended to be a driver for Parliament to redress any breaches of human rights in legislation.

32. This expectation has been borne out. A recent report on the UK government's response to human rights judgments notes that 'Since the Human Rights Act 1998 (HRA) came into force on 2 October 2000 until the end of July 2019, 42 declarations of incompatibility have been made.'[45] At the time of that report it was noted that of these 42 declarations: '10 have been overturned on appeal (and there is no scope for further appeal) [and] 2 are currently subject to appeal.'[46] This serves to highlight how few s 4 declarations have been made since the Act

[41] ibid.
[42] Wadham and others (n 31) para 3.45.
[43] ibid.
[44] HL Deb 3 November 1997, vol 582, col 1227-1228.
[45] Ministry of Justice, 'Responding to Human Rights Judgments: Report to the Joint Committee on Human Rights on the Government's Response to Human Rights Judgments 2018–2019' (2019) CP 182 37.
[46] ibid.

entered into force. Of the 30 declarations which had not been appealed, '5 related to provisions that had already been changed by primary legislation at the time of the declaration… 11 have been addressed by later primary or secondary legislation… 6 have been addressed by Remedial Order… 1 has been addressed by various measures… 2 the Government has notified Parliament that it is proposing to address by Remedial Order… and 5 are under consideration.'[47]

33. The courts themselves have noted that they believe a declaration under s 4 should operate as 'a measure of last resort'.[48] Given the power of such a declaration, coupled with the clear idea that the process under s 19 steers the courts towards s 3 in the first instance, it seems appropriate in our view for s 4 declarations to remain a last resort for the courts when determining how any incompatibility should be addressed.[49]

Conclusion

34. The HRA has proved an effective way of balancing the need for the protection of individual rights with the constitutional doctrine of parliamentary sovereignty. The model has been referred to as the 'new commonwealth model of constitutionalism' by Gardbaum.[50] Looking back on the first decade of this approach Gardbaum's assessment of the HRA was that 'the courts have treated the section 3 interpretive duty as a very strong one and as the primary remedy for rights violations under the HRA. As a result, courts have… not relied on section 4 declarations… as much as some expected'.[51]

35. Although the courts have used their s 3 powers widely and interpreted their duty under that section broadly, it is clear that the courts remain aware that this power is not limitless and that they must steer clear of acting as legislator. The idea that s 3 should operate in the way it currently does is supported and legitimised by s 19, which requires confirmation as part of the legislative process that law is either intended to be ECHR complaint or a clear indication to the contrary. This too leads to the conclusion that it is appropriate for s 4 to operate as a measure of last resort.

36. For these reasons we argue that no changes ought to be proposed in relation to ss 3 and 4 of the HRA, in answer to the questions above.

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[47] ibid.

[48] *R v A* (No 2) [2001] UKHL 25, [2002] 1 AC 45, para [44] per Lord Steyn.

[49] Some have commented that the judicial approach to s 4 has been 'unsatisfactory and unduly deferential to the executive' see Shona Wilson Stark, 'Facing Facts: Judicial Approaches to Section 4 of the Human Rights Act 1998' (2017) 133 Law Quarterly Review 631, 631.

[50] Stephen Gardbaum, *The New Commonwealth Model of Constitutionalism* (Cambridge University Press 2013); Stephen Gardbaum, 'The New Commonwealth Model of Constitutionalism' (2001) 49 American Journal of Comparative Law 707.

[51] Stephen Gardbaum, 'How Successful and Distinctive Is the Human Rights Act?' (2011) 74 The Modern Law Review 195, 201.

37. Separately, we agree entirely with Sir Peter Gross' comment that 'The HRA has now been in force for 20 years and it is timely to review its operation and framework.'[52] We believe that this review presents an opportunity not only to highlight the success of the HRA,[53] but also to highlight what we do not currently know about the HRA.

38. Thus, it appears that the current human rights framework in the UK enjoys public support.[54] Despite this, the existing data is not up to date, and we have written about the need for further research on this issue given the repeated claims from commentators and politicians that human rights lack popular support.[55] We urge the Review to consider further the extent of public support for the HRA when making its recommendations.

39. Similarly, we have noted that although a great deal has been written about the HRA, much of that is now out of date or relies solely on doctrinal work.[56] Thus we suggest that more quantitative research is needed about how the HRA has operated over the past two decades in order better to understand the changes the HRA has brought about and to corroborate the positive findings we outlined above.

[52] IHRAR, Call for Evidence, 4.
[53] As evidenced, *inter alia*, by the statistics in paras 5 – 11 above.
[54] See e.g. Kelly Kaur-Ballagan and others, 'Public Perceptions of Human Rights' (Equality and Human Rights Commission 2009); 'Building a Human Rights Culture in Scotland' (Scottish Human Rights Commission 2018).
[55] Jacques Hartmann and Samuel White, 'The Alleged Backlash against Human Rights: Evidence from Denmark and the UK' in Kasey McCall Smith, Andrea Birdsall and Elisenda Casanas Adam (eds), *Human Rights in Times of Transition: Liberal Democracy and Challenges of National Security* (Edward Elgar 2020).
[56] See Samuel White 'Does incorporation of international human rights instruments secure significantly better enforcement of individual rights in UK courts?' (PhD thesis, University of Dundee, 2021), particularly chapter 2.