Ministry
of Justice

Human Rights Act Reform: A Modern Bill of Rights

Consultation Response

June 2022

CP 704

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Consultation Response

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

June 2022

CP 704

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Introduction and contact details

This document is the post-consultation report for the consultation paper, Human Rights Act Reform: A Modern Bill Of Rights.

It will cover:

- An executive summary, covering the background to the report
- a summary of the responses to the report
- a detailed response to the specific questions raised in the report
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting **the Human Rights team** at the address below:

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This report is also available at https://consult.justice.gov.uk/

Alternative format versions of this publication can be requested from HRAreform@justice.gov.uk.

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Foreword

I want to thank everyone who responded to the Government's *Human Rights Act Reform: A Modern Bill of Rights* consultation. Your input has informed our approach on introducing a UK-wide Bill of Rights to replace the Human Rights Act.

The UK has a long and proud history of liberty and individual rights. It stretches back to the seminal Magna Carta, signed by King John in 1215 and the Bill of Rights and Claim of Right in 1689, which set out many of the basic civil liberties we enjoy today. That history continues right through to more modern laws designed to protect individual rights, such as the Disability Discrimination Act 1995.

The Human Rights Act was introduced in 1998. Despite its serious flaws, it has played its own part in the development of rights in our country over almost a quarter of a century. In fact, one of the great strengths of the UK's constitution is its ability to evolve to meet the needs of our society. Now is the time to take a fresh look at our human rights framework.

This consultation was very much about tackling the flaws we identified with how the Human Rights Act was working in practice. It dealt with the broad relationship between UK courts and Parliament as well as the European Court of Human Rights, alongside specific problems like the deportation of foreign national offenders.

As I set out when I launched the consultation, we intend to remain a state party to the European Convention on Human Rights. Our proposals for the Bill of Rights focus on creating a domestic framework that strikes the proper balance of rights and responsibilities, individual liberty and the public interest, judicial interpretation, and respect for the authority of elected lawmakers.

The Bill of Rights will emphasise quintessentially UK rights such as freedom of speech, which underpins robust debate in a mature and modern democracy like ours, it will reflect trial by jury as a particular common law element of the right to a fair trial. We'll also provide a much clearer demarcation of the separation of powers between the courts and Parliament.

Equally, we want to make sure that our human rights laws are better protected from abuse. We will therefore put public protection at the heart of human rights laws and establish a framework to enable our immigrations laws to prevent serious foreign national offenders from using certain rights, particularly the right to family life, to frustrate the public interest in their removal. Finally, we will introduce a permission stage, so that judges can sift out the most trivial claims before they waste more court time and taxpayers' money.

People from all four nations of the UK have responded to the consultation. I look forward to working with colleagues across the country and the political spectrum to create a Bill of Rights that not only works for each of the four nations of our Union, but also reflects and respects our diverse legal traditions.

This consultation has been an important step in nurturing the UK's proud tradition of liberty and rights. It will allow us to introduce a Bill that reinforces our quintessentially UK tradition of liberty, curtail abuses of the system to make our streets safer, restore public confidence in human rights, reinforce the independence of our world-class judiciary, and strengthen the separation of powers to safeguard the prerogatives of elected lawmakers in Parliament.

Rt Hon Dominic Raab MP

Deputy Prime Minister, Lord Chancellor and Justice Secretary

Executive Summary

1. The consultation paper '*Human Rights Act Reform: A Modern Bill of Rights*' was published on 14 December 2021. It invited comments on proposals to revise and replace the Human Rights Act 1998 with a UK Bill of Rights. There were 29 questions in the consultation, covering the following topics which could be addressed in the Bill of Rights:

The interpretation of Convention rights: Section 2 of the Human Rights Act	Devolved Administrations
The position of the UK Supreme Court	Public Authorities – Section 6
Trial by Jury	Extraterritorial Jurisdiction
Freedom of Expression	Qualified and limited rights
A permission stage for human rights claims	Deportations in the public interest
Judicial remedies	Illegal and irregular migration
Positive obligations	Remedies and the wider public interest
The will of Parliament – Section 3	Emphasising the role of responsibilities within the human rights framework
Declarations of Incompatibility	Facilitating consideration of and dialogue with Strasbourg, while guaranteeing Parliament its proper role
Remedial Orders	Impacts
Statement of Compatibility – Section 19	

2. The consultation period closed on 8 March 2022, with extensions granted until 19 April 2022 to allow for those who would be assisted by an Easy Read or audio version of the consultation. This report summarises the responses received, including how the consultation process influenced the final policy proposals contained within the Bill of Rights.

3. The Ministry of Justice hosted ten consultation events during the consultation period with hundreds of stakeholders from across the United Kingdom invited to participate. The purpose of these sessions was to hear initial views on the proposals, and to answer any clarificatory questions. Ministers also hosted three meetings with stakeholders to discuss the proposals, and the Deputy Prime Minister visited

Scotland, Wales, and Northern Ireland to discuss the proposals with members of the devolved governments, legislatures, main political parties and judiciaries.

4. The overview of impacts which accompanied the consultation was updated to take account of evidence provided by stakeholders during the consultation period and formed part of the Impact Assessment for the Bill of Rights, which is published alongside this document.

5. A Welsh language response paper can be found on gov.uk.

6. A total of 12,873 responses to the consultation paper were received. Responses were received from members of the public, academics, think-tanks, legal professionals and law firms, non-governmental organisations and charities, among others.

7. We carefully considered each response for the overall sentiment espoused towards the reforms, including whether respondents supported or opposed specific proposals, evidence of impacts of the proposals, and any alternative ways of tackling the issues raised in the consultation.

8. The responses received can broadly be split into two types: those which did not address the consultation questions in detail but expressed a general opinion on the consultation ("**sentiment analysis**"); and those which answered some or all of the questions specifically ("**thematic analysis**"). Most of the detailed comments and percentages in the Government's response, therefore, come from thematic analysis.

9. Following consideration of the responses and further policy development, the Government has produced proposals which are set out below in the following sections:
   - Respecting our common law traditions and strengthening the role of the UK Supreme Court;
   - Restoring a sharper focus on protecting fundamental rights;
   - Preventing the incremental expansion of rights without proper democratic oversight;
   - Emphasising the role of responsibilities within the human rights framework;
   - Facilitating consideration and dialogue with Strasbourg, while guaranteeing Parliament its proper role; and
   - Impacts.

10. An executive summary of the Government's proposals follows.

Respecting our common law traditions and strengthening the role of the UK Supreme Court

11. This section of the consultation document focused on the interpretation of Convention rights (section 2 of the Human Rights Act), the position of the Supreme Court, trial by jury and freedom of expression. As set out in the document, the Bill of Rights will continue to respect the UK's international obligations as a party to the Convention, and will retain all the substantive rights currently protected under the Convention and the Human Rights Act. The document outlines that the Government's proposals will help strengthen our common law tradition, reduce our reliance on Strasbourg case law and reinforce the supremacy of the UK Supreme Court in the interpretation of human rights. The Bill of Rights will:
    - Replace section 2 with a provision to direct courts to have particular regard to the text of the Convention rights themselves, and provide that they may have regard to the preparatory work of the Convention, the common law and the civil law of Scotland, in order to encourage courts not to focus exclusively on Strasbourg case law;
    - Provide that domestic courts must not extend the protection of the Convention rights further than the European Court of Human Rights in Strasbourg would go, and affirm explicitly that they are not required to follow or apply Strasbourg case law (but may continue to have regard to it);
    - Affirm explicitly that the UK Supreme Court is the ultimate judicial arbiter in interpreting our domestic rights;
    - Provide that the right to a fair trial is capable of being secured by jury trial, insofar as this is prescribed by law in each jurisdiction;
    - Strengthen protection for freedom of speech by introducing a provision that is stronger than section 12 of the Human Rights Act, to give additional weight to the right. We will ensure that the responsibility for attaching this greater weight is borne by all public authorities while recognising that freedom of speech must also be balanced against the need to protect national security, keep people safe and take steps to protect against harm to individuals; and
    - Make specific provision for the protection of journalists' sources, to ensure that they are better protected.

Restoring a sharper focus on protecting fundamental rights

12. This section of the consultation document focused on the introduction of a permission stage for human rights claims, judicial remedies (section 8 of the Human Rights Act) and positive obligations. The Government's proposals will restore a sharper focus on fundamental rights, including by ensuring trivial cases are filtered earlier and giving

the UK courts greater clarity regarding the interpretation of rights and imposition by implication of positive obligations. The Bill of Rights will:

- Introduce a permission stage modelled on the Strasbourg Court's admissibility criteria, in Article 35 of the Convention. In particular, it will apply where Convention rights are relied on in judicial review and other civil claims, such as in private law proceedings. The permission stage will include a requirement that a claimant must have suffered a significant disadvantage in order to bring a human rights claim (subject to exceptional public interest);
- Enshrine a set of principles for awarding damages to allow UK courts to consider such awards in a UK context, and ensure that the UK courts do not award higher damages than they consider the Strasbourg Court would award. We will also introduce a provision for courts to take account of all the circumstances of the case when making an award, including the wider public interest, and to consider expressly certain factors such as the relevant conduct of the individual seeking damages, any other remedy they have been granted, and the impact on a public authority's ability to continue to provide services to society as a whole, including future awards of damages in similar cases; and
- Prevent new interpretations of rights that create or expand positive obligations, in order to mitigate burdens on public authorities and enable operational experts to exercise greater discretion in the allocation of resources.

Preventing the incremental expansion of rights without proper democratic oversight

13. This section of the consultation document focused on respecting the will of Parliament, when legislation is incompatible with the Convention rights, statements of compatibility (section 19 of the Human Rights Act), application to the devolved administrations, public authorities, extraterritorial jurisdiction, qualified and limited rights, deportations, illegal and irregular migration and remedies. The Government's proposals will prevent the incremental expansion of rights without proper democratic oversight, including by limiting the duty on UK courts to interpret legislation enacted by Parliament compatibly with Convention rights, and by limiting on the court's powers when considering deportation and certain rights, but also touching on other aspects of the rights framework. The Bill of Rights will:
    - Remove the courts' power to interpret legislation in ways that are not in line with the ordinary meaning of the words and the overall purpose of the statute, which will ensure that laws will be interpreted in a manner that is consistent with the will of Parliament;
    - Give courts a wider ability to declare secondary legislation incompatible, as an additional available remedy;
    - Make clear that the Bill of Rights itself cannot be amended by a remedial order;

- Not replicate the section 19 obligation to make a statement of compatibility, in order to move away from the simplistic binary options which it offers. This will encourage innovative and creative policy making which better achieves Government aims, without preventing human rights impacts from being considered during the passing of a Bill;
- Implement a single human rights framework for the UK that respects its diverse legal traditions, but which is also founded on principles common to all;
- Replace section 6 with a similar provision but with an amended scope to make clear that when public authorities are giving effect to the will of Parliament, they will not be acting unlawfully under the Bill of Rights. This will deliver greater certainty for public services to do the jobs entrusted to them, without the constant threat of having to defend against human rights claims;
- Prevent claims from being brought under the Bill of Rights in relation to military operations overseas in line with the intentions of the Convention's drafters. This will signal our commitment at domestic level to the principle that the Bill of Rights should not apply in the context of military operations overseas;
- Provide guidance to courts, stating that where Parliament has expressed its view on the public interest through primary legislation, courts should give deference to that view;
- Introduce a framework to guide the courts in how they consider deportation laws in respect of Article 8 (right to respect family and private life) appeals by foreign national offenders. We will also establish limits on the courts' power when they are considering appeals against deportation made on Article 6 grounds (right to a fair trial).
- Ensure the courts are able to consider all the circumstances of the case when determining whether to award damages, and their quantum, with reference to a number of factors. These include the relevant wider conduct of claimants, and the potential impact of any award of damages on the ability of the public authority to perform its functions.

Emphasising the role of responsibilities within the human rights framework

14. This section of the consultation document focused on the Government's view that our new human rights framework should reflect the importance of responsibilities. The Bill of Rights will introduce provisions to ensure that courts expressly consider a claimant's relevant wider conduct when considering whether to make an award of damages. This will affirm the connection which exists between rights and responsibilities, and put on a statutory footing the courts' ability to take into account all the circumstances of the case in making that determination.

Facilitating consideration and dialogue with Strasbourg, while guaranteeing Parliament its proper role

15. This section of the consultation document focused on how the democratic responsibility for legislation, and the power to legislate, lies ultimately with Parliament, and the Government's belief that this should be reflected in our arrangements for responding to Strasbourg judgments. The Bill of Rights will:
    - introduce provisions to require that the Secretary of State lays any adverse Strasbourg judgments against the UK before Parliament; and
    - affirm Parliament's supremacy in the exercise of the legislative function, by clarifying the status in UK law of Strasbourg judgments and decisions.

Further measures not included in the consultation

16. In addition to the measures raised in the consultation document, the Bill of Rights will contain the following additional measures:
    - A provision that obliges all those who interpret Convention rights to have regard to the importance of reducing risk to the public from those who have been convicted of a criminal offence during the term of a custodial sentence. This is intended to support the Government's proposed parole reforms and strengthen the Government's hand in fighting Article 8 claims from prisoners opposing their placement in separation centres. It may also strengthen the Government's ability to defend human rights claims brought regarding the deportation of foreign national offenders;
    - A provision to confirm that interim measures issued by the Strasbourg Court pursuant to Rule 39 of its Rules of Court are not part of domestic UK law; and
    - Finally, the Government also wishes to implement the Strasbourg judgment in *SW v United Kingdom*, which became final in September 2021. This case related to restrictions on the availability of damages for judicial acts done in good faith under the Human Rights Act (section 9). The Strasbourg Court found a violation of the right to private and family life (Article 8). We will therefore restate section 9 of the Human Rights Act, but include a further amendment allowing for damages to be available where an individual's rights under Article 8 are violated as a result of a judge following an unfair procedure.

Chapter 1 – Respecting our common law traditions and strengthening the role of the Supreme Court

17. This chapter focuses on the responses to the Government's proposals to help strengthen our common law tradition, reduce our reliance on case law which comes from the European Court of Human Rights, and help to reinforce the supremacy of the UK Supreme Court in the interpretation of human rights. This chapter will cover the following proposals:
    - The interpretation of Convention rights: section 2 of the Human Rights Act;
    - The position of the UK Supreme Court;
    - Trial by jury; and
    - Freedom of expression.

The interpretation of Convention rights: section 2 of the Human Rights Act

18. Under section 2 of the Human Rights Act, courts in the UK must 'take into account' any relevant Strasbourg jurisprudence. In the early years of the HRA, the Government contends that the courts went too far in following virtually every Strasbourg decision. Whilst there has been a little retreat from this maximalist position, the ambiguity of the instruction to 'take into account' Strasbourg case laws remains a source of uncertainty. In the consultation, we proposed correcting this by promoting a home-grown approach tailored to the UK's traditions of liberty and rights.

19. In Question 1 of the consultation, we asked for views on illustrative draft clauses (which can be found in appendix 2 of the consultation document), as a means of achieving this. Of the 1,870 respondents who addressed this question directly**,** 1,052 (56%) preferred no change from the current framework**.** 416 respondents (22%) preferred Option 2, 378 (20%) preferred neither option; and 24 (2%) preferred Option 1.

20. 1,270 respondents also mentioned that the Strasbourg Court ensures that the UK Government is kept in check, while 943 respondents highlighted that the courts already draw on a wide range of laws when making their decisions, therefore there was no case for change. 63 respondents noted that we should be governed by common law.

21. We have carefully read the responses provided to this question and have considered the arguments. This included those responses which commented on the approach of the Independent Human Rights Act Review (IHRAR) Panel to this issue. The IHRAR Panel recommended that section 2 should be amended to give greater prominence to the common law.

22. The Government wants to emphasise the importance of the development of rights under the common law. This would contribute to placing less emphasis on the role that decisions of the Strasbourg Court play in influencing UK courts.

23. When considering rights, courts will also be directed to pay particular regard to the text of the right itself, and in construing that text may have regard to the preparatory work of the European Convention on Human Rights *(the travaux préparatoires*).

24. Through these new provisions, we will encourage domestic courts to interpret rights with more autonomy from Strasbourg, helping to ensure the UK's distinct context and traditions are recognised and reflected.

25. The consultation document also noted the risk that domestic courts might take a more expansive interpretation of rights than would be taken by the Strasbourg Court, observing that since public authorities, unlike applicants, cannot take their case from the domestic courts to the Strasbourg Court, there would be no way to correct this. In recent cases, the Supreme Court has held that domestic courts should not take such interpretations, unless they are fully confident that the Strasbourg Court would do so in the same circumstances.[1] The Government will reflect this approach in legislation in the Bill of Rights.

26. The illustrative clauses in the consultation document also included provisions stating that courts may consider case law from other jurisdictions. Following the consideration of these responses and having conducted further policy development, we have decided not to proceed with this aspect of the proposal.

The position of the UK Supreme Court

27. The principle that our Parliament and devolved legislatures should make law and that our courts should interpret it is a key element of our democratic system, and recognising the sovereignty of Parliament and the autonomy of our domestic courts is fundamental to the Government's proposed reforms. Under the Human Rights Act, the domestic courts have generally treated Strasbourg case law as having

[1] AB, R (on the application of) v Secretary of State for Justice [2021] UKSC 28 (9 July 2021) (bailii.org) and R (on the application of Elan-Cane) (Appellant) v Secretary of State for the Home Department (Respondent) - The Supreme Court.

presumptive authority, which should be followed unless there are special circumstances. This approach has indirectly resulted in the supremacy of the UK Supreme Court being undermined by Strasbourg.

28. In Question 2 of the consultation, we asked how the Bill of Rights could make clear that the UK Supreme Court is the ultimate judicial arbiter of our laws.

29. 1,763 respondents mentioned that they would prefer no change from the existing arrangement. 714 respondents mentioned that section 2 already makes it clear that the UK Supreme Court does not have to follow Strasbourg Court judgments.

30. 213 respondents mentioned that there needs to be a separation of power between the courts and Parliament. 44 respondents mentioned that we should 'enshrine' the Supreme Court's status in law.

31. We have carefully read the responses provided to this question. The Government is clear that there must be no confusion about the role of the UK Supreme Court in relation to the Strasbourg Court and wishes to make that role explicit within the Bill of Rights.

32. The Bill of Rights will, therefore, make clear in a provision that the UK Supreme Court is the ultimate judicial authority on questions concerning the meaning of the rights in the Bill of Rights. The Government believes that the Bill of Rights will make sure that this is properly understood in all contexts.

Trial by jury

33. Many of the principles of a fair trial are contained in the common law and our constitutional heritage. Magna Carta provided that 'to no one will we [the monarch] sell, to no one deny or delay right or justice'. The Bill of Rights in 1689 set out further provisions including prohibitions on excessive fines, bail and protecting jury trial. The Convention recognises trial by jury, but only to the extent that the Strasbourg Court found that jury trials are capable of being consistent with the right to a fair trial which is protected by Article 6. The Government believes that there is scope to recognise trial by jury in the Bill of Rights, given its significant historical place in our legal traditions, and the role jury trials can play in securing the fairness of certain trials.

34. In Question 3 of the consultation, we asked if the qualified right to jury trial should be recognised in the Bill of Rights. Of the 2096 respondents, 1,696 (81%) agreed that the qualified right to jury trial should be recognised in the Bill of Rights.

35. 524 respondents mentioned that the right to jury trial is already recognised and no change is needed, while 453 respondents mentioned that jury trials are less likely to

be biased. 151 respondents also noted that an individual should have the right to be judged by their peers.

36. In line with the great majority of responses received, we want the Bill of Rights to recognise the importance of trial by jury within the framework set out in legislation. This would give greater prominence to a homegrown UK tradition which enjoys strong and widespread support. By enshrining the trial by jury in the Bill of Rights, we will demonstrate the UK’s commitment to trial by jury as being capable of providing a fair trial under Article 6 ECHR.

37. A small number of respondents raised concerns regarding how enshrining such a right may interfere with the settled position in other nations in relation to jury trial, particularly Scotland. We have listened carefully to these concerns. Our proposals recognise the devolved nature of and different arrangements for trial by jury in different parts of the UK. The provision will only apply insofar as arrangements for trial by jury are determined in and continued to be determined by each jurisdiction, as is under the control of the UK Parliament for England and Wales, and of the Scottish Parliament and Northern Ireland Assembly respectively.

Freedom of expression

38. Freedom of expression is a unique and precious liberty on which the UK has historically placed great emphasis in our traditions of Parliamentary privilege, freedom of the press and free speech. The Government believes that the public interest is overwhelmingly assisted by the protection of freedom of expression and a free and vibrant media. Such freedoms underpin our democracy, ensures greater transparency and accountability, helps to prevent corruption, and preserves the space for wide and vigorous public debate.

39. In the consultation, the Government set out proposals which sought to attach greater weight to freedom of expression, providing clearer guidance to courts on how to balance the right with competing rights. The consultation document also expressed the intention to strengthen the protections for journalists’ sources.

40. We asked how these proposals could best be incorporated into the Bill of Rights. Responses relating to the issue of freedom of expression (Questions 4–7) have been summarised below. Many of the responses were submitted as general responses to Questions 4–7 and have all been taken into account.

41. In Question 4 of the consultation, we asked how the current position under section 12 of the Human Rights Act could be amended to limit interference with the press and other publications through injunctions or other relief. 630 respondents mentioned that no change was required to the current framework. 108 respondents noted that a

privacy balance must be considered whilst 60 respondents mentioned that only the most exceptional circumstances justify an injunction. 59 respondents mentioned that there should be no limits on freedom of expression and therefore no injunctions.

42. In Question 5 of the consultation, we asked how clearer guidance could be given to the courts about the utmost importance attached to Article 10 and what guidance could be derived from other international models. 684 respondents mentioned that no change is required to the current framework whilst 115 respondents mentioned that only the most exceptional circumstances justify interference. On international models, 31 respondents suggested the model of the United States of America is useful to examine when giving the upmost importance to freedom of expression.

43. In Question 6 of the consultation, we asked what further steps could be taken in the Bill of Rights to provide stronger protection for journalists' sources. 543 respondents mentioned that additional steps are required to protect journalists' sources while 339 respondents mentioned that no change is required as protections are currently set at the right level. However, 67 respondents mentioned that protections are already too strong.

44. In Question 7 of the consultation, we asked if there are any other steps that the Bill of Rights could take to strengthen the protection for freedom of expression. 878 respondents mentioned that no change is required whilst 227 respondents argued that absolutely no limits should be made on freedom of expression. 51 respondents noted that limits should be imposed on social media companies and their ability to censor content.

45. We have carefully considered the consultation responses provided. The Government considers that freedom of speech – meaning the ECHR right to freedom of expression so far as it consists of a right to impart ideas, opinions, or information by means of speech, writing or images (including in electronic form) – is of particular importance. Freedom of speech within the law underpins our democracy, ensures greater transparency and accountability, and preserves the space for wide and vigorous public debate. Therefore, the Bill of Rights will strengthen the right to freedom of speech specifically, rather than other aspects of Article 10 and freedom of expression more widely. This reflects the importance of free speech in our society and will ensure that individuals feel empowered to partake in wide-ranging public debate.

46. We will provide that great weight should be placed on the importance of protecting freedom of speech whenever courts or other public authorities are considering an issue involving freedom of speech, and when balancing the right with other rights and protections.

47. Although our proposals will give greater weight to freedom of speech, it remains a qualified right which, as with Article 10 overall, can be restricted where it is reasonable and appropriate to do so. The Government also recognises that there are certain circumstances in which the right to freedom of speech should not be strengthened. The Bill of Rights will outline specific exceptions, for example national security interests.

48. We believe that journalists have an important role in our society, providing scrutiny and holding those in positions of power to account. Therefore, we have made specific provision for journalists' sources in the Bill of Rights, to make sure that they are properly protected. The provision will introduce a higher test for courts to consider before they can order a journalist to disclose their source. The Bill will require there to be a compelling reason in the public interest to allow in the disclosure of a journalist's source, and great weight will be given to the public interest in protecting journalists' sources.

Chapter 2 – Restoring a sharper focus on protecting fundamental rights

49. This chapter focuses on proposals to restore a sharper focus on protecting fundamental rights. This includes ensuring that focus remains on genuine human rights claims, protecting the balance between rights and responsibilities, and reducing burdens on public authorities. The chapter will cover:
    - A permission stage for human rights claims;
    - Judicial remedies: section 8 of the Human Rights Act; and
    - Positive obligations.

A permission stage for human rights claims

50. The Government believes that human rights provide fundamental individual guarantees in society, but that trust in that system is lost when trivial cases come before the courts. The Government contends that courts should focus on cases where there has been serious harm or loss.

51. In Question 8 of the consultation, we asked if a condition that a claimant has suffered a 'significant disadvantage' in order to bring a claim under the Bill of Rights, as part of a permission stage for such claims, would be an effective way to ensure courts focus on genuine human rights matters. Of the 2,867 respondents who directly responded to this question, 2,568 (90%) responded no, and 299 (10%) responded yes. 816 respondents mentioned that the term 'significant disadvantage' is subjective and needs defining. 803 respondents mentioned that all human rights cases have the right to be heard and 703 respondents mentioned that there is no evidence that the current system is being abused or that spurious claims are being brought. 611 respondents noted that there was already a permission stage for judicial review cases.

52. In Question 9 of the consultation, we asked whether a permission stage should also include an 'overriding public importance' limb for exceptional cases that fail to meet the 'significant disadvantage' threshold, but where there is a highly compelling reason to be heard. Of the 1,913 who responded, 1,459 (76%) responded no, and 454 (24%) responded yes. 530 respondents preferred existing arrangements.

53. The Government remains convinced that introducing a permission stage is necessary to ensure that trivial claims do not undermine public confidence in human rights more broadly but has amended the proposal based on further policy development and

analysis. The permission stage will be partly modelled on, and expressly linked to the jurisprudence under, the Strasbourg Court's admissibility criterion on 'significant disadvantage' in Article 35 of the Convention.

54. The permission stage will apply where Convention rights are relied on to bring certain proceedings against a public authority under the Bill of Rights.

55. The permission stage will not apply where a person relies on Convention rights in any legal proceedings brought against them or in establishing a cause of action arising other than under the Bill of Rights, for example, to develop a cause of action under the common law. Convention rights will continue to be enforceable in domestic courts across the UK.

56. This proposal will place responsibility on the claimant to demonstrate that they have suffered a significant disadvantage before a human rights claim can be heard in court. If a claimant cannot demonstrate that they have suffered a significant disadvantage, a claim could still proceed if a court considers there is a highly compelling reason to do so on the grounds of exceptional public interest. The permission stage for judicial review will only apply in England and Wales.

Judicial remedies: section 8 of the Human Rights Act

57. The Government wants the Bill of Rights to refocus rights-based claims on serious cases where a genuine injustice needs to be addressed, and not as a fall-back route to compensation on top of private law remedies. One proposal we consulted on involved strengthening the rule in section 8(3) of the Human Rights Act, requiring other claims to be considered when awarding damages. This would have required that applicants pursue any other claims they may have first, to allow the courts to decide whether private law claims already provide adequate redress.

58. In Question 10 of the consultation, we asked how else Government could best ensure that the courts can focus on genuine human rights abuses. 1,570 respondents mentioned that no change was required, whilst 672 respondents mentioned that the procedural restraints which currently exist are sufficient.

59. We have carefully considered responses to this question. The Government believes that changes are necessary to ensure focus is placed on serious cases of genuine injustice. However, we are not proposing to strengthen the existing rule in section 8(3) of the Human Rights Act.

60. Instead, the Bill of Rights will enshrine a set of principles in statute for awarding damages independent of that of the Strasbourg Court, and allowing UK courts to consider such awards in a UK context. We will also introduce a provision for courts to

take account of the public interest when making an award, by expressly considering certain factors such as the impact on a public authority's ability to continue provide services to society as a whole – this proposal aligns with the Government's policy in relation to remedies (Question 26).

61. The Bill will also implement the Strasbourg judgment in *SW v United Kingdom*, which became final in September 2021. This case related to restrictions on the availability of damages for judicial acts done in good faith under the Human Rights Act. The Strasbourg Court found a violation of the right to private and family life under Article 8. We will include provision to allow for damages to be available where an individual's rights under Article 8 are violated as a result of the judge following an unfair process.

Positive obligations

62. The ECHR Convention rights have been interpreted and incrementally expanded by the courts to require the state to discharge various 'positive obligations' – duties for public authorities to take proactive action to ensure the protection of someone's rights. Such obligations can skew operational priorities, and require public services to allocate scarce resources to contest and mitigate legal liability. An example of this is the preventive duties that have arisen around Article 2, and managing Threat to Life operations, as a result of the *Osman*[2] judgment. Such operations can take up a substantial amount of police time and deprive the police of the ability to take their own decisions about where to allocate time and resources. The Government was interested in looking at ways to restrict the circumstances in which these obligations are imposed by what can amount to judicial legislation.

63. In Question 11 of the consultation, we asked how the Bill of Rights can address the imposition and expansion of positive obligations to prevent public service priorities from being impacted by costly human rights litigation. 1,596 respondents noted that no change is required to the current framework. 1,265 respondents mentioned that they believe positive obligations provide protection for vulnerable people and 874 respondents considered that this is not a genuine issue.

64. We have examined the sentiment given in responses to this question, and the Government is committed to reducing burdens on public authorities and enabling operational experts to exercise greater discretion over the allocation of resources.

65. The Bill of Rights will ensure that courts are unable to adopt new interpretations that impose positive obligations on public authorities. It will also restrict the application of existing obligations, by instructing courts to take into account a range of factors when

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[2] Osman v United Kingdom [1999] 29 EHRR 245 - see: OSMAN v. THE UNITED KINGDOM (coe.int)

considering whether the positive obligation applies, such as the public interest in enabling operational experts to exercise discretion in competing priorities, and the conduct of the person whose right has allegedly been breached.

Chapter 3 – Preventing the incremental expansion of rights without proper democratic oversight

66. This chapter focuses on the Government's proposals to prevent the incremental expansion of rights without proper democratic oversight, including by limiting the duty on UK courts to reinterpret legislation enacted by Parliament, and by clarifying restrictions on deportation, but also touching on other aspects of the rights framework. It covers:
    - The will of Parliament: section 3 of the Human Rights Act;
    - Declarations of incompatibility: section 4 of the Human Rights Act;
    - Remedial orders: section 10 of the Human Rights Act;
    - Statement of compatibility – section 19 of the Human Rights Act;
    - Devolved Administrations;
    - Public authorities: section 6 of the Human Rights Act;
    - Extraterritorial jurisdiction;
    - Qualified and limited rights;
    - Deportations in the public interest;
    - Illegal and irregular migration; and
    - Remedies and the wider public interest.

Respecting the will of Parliament: section 3 of the Human Rights Act

67. As set out in the consultation, the Government believes that section 3 of the Human Rights Act has resulted in an expansive approach with courts adapting legislation, rather than merely interpreting it. We think that a less expansive interpretive approach would provide greater legal certainty, a clearer separation of powers, and a more balanced approach to the proper constitutional relationship between Parliament and the courts on human rights issues. We therefore believe that section 3 should be repealed, allowing the ordinary, common law principles of statutory interpretation to apply.

68. The Government notes the IHRAR Panel's recommendation to improve Parliament's role, particularly that of the Joint Committee on Human Rights (JCHR), in scrutinising section 3 judgments. The IHRAR Panel recommended that consideration be given as to how parliamentary consideration of section 3 judgments could be improved.

Finally, the IHRAR Panel recommended the creation of a judgments database to increase transparency in the application of section 3.

69. In Question 12 of the consultation, we invited views on the options for amending section 3, with reference to the illustrative clauses for Option 2 (which can be found in appendix 2 of the consultation document). Of the 2,256 who responded directly to this question, 1,773 (79%) preferred 'neither – prefer no change', 249 (11%) preferred 'neither', 86 (4%) preferred 'Option 1', and 88 (4%) preferred 'Option 2'.

70. The Government remains convinced that reform of section 3 is needed to provide a clearer separation of powers between the courts and Parliament. We therefore intend to repeal section 3. This will rebalance the approach to solving human rights issues in favour of Parliament. The courts will no longer have additional interpretative powers to change the interpretation of legislation to make it compatible with the Convention rights. Instead it will be for Parliament to legislate following a declaration of incompatibility.

71. The repeal of section 3 will be accompanied by a power to make secondary legislation to preserve the effect of interpretations made under that section. This is to aid legal certainty in situations where an interpretation made under section 3 is an established part of the legislative scheme.

72. Provisions to replace section 3 will not be applied to law made under the devolution acts. Devolved legislation that is not compliant with Convention rights is beyond the competence of the devolved authorities. The devolution acts have procedures in place to deal with such issues, and these reforms are not attempting to disrupt those.

73. In Question 13 of the consultation, we asked how Parliament's role in engaging with, and scrutinising, section 3 judgments could be enhanced. Of the 1,407 who responded directly to this question, 762 respondents mentioned other reasons (including, for example, that such a change could be made under Parliament's internal procedures and does not require legislation), 571 respondents mentioned that no change is required to the current framework and 103 respondents mentioned that a cross party working group (such as the JCHR) should scrutinise section 3 judgments.

74. In Question 14 of the consultation, we asked whether a new database should be created to record all judgments that rely on section 3 in interpreting legislation. Of the 1,532 who responded directly to this question, 832 (56%) stated no and 637 (44%) responded yes. 643 respondents gave a reason for or against the proposal, such as that the database should cover all judgments made by UK courts, whether or not they are relevant to the Human Rights Act. 416 respondents mentioned that such a database would be costly.

75. Having considered this proposal further, the Government will not be proceeding with proposals to enhance the role of Parliament in scrutinising section 3 judgments, or the creation of a database of such judgments, in the Bill of Rights.

When legislation is incompatible with the Convention rights: sections 4 and 10 of the Human Rights Act and quashing orders

Declarations of incompatibility

76. The Government believes that declarations of incompatibility have been an effective way of recognising the democratic role of Parliament, by facilitating dialogue between the courts and Parliament. Under the Human Rights Act, declarations of incompatibility can only be made in relation to secondary legislation (like Regulations and Orders) where the Act of Parliament under which the legislation is made requires the incompatibility. Section 4 does not otherwise apply in relation to secondary legislation. Under the law as it stands, the courts can, amongst other things, declare secondary legislation invalid or disapply the provision in question. The Government, therefore, asked in the consultation whether there is a case for providing that declarations of incompatibility should also be the only remedy available to courts in relation to certain secondary legislation.

77. In Question 15 of the consultation, we asked whether the courts should be able to make a declaration of incompatibility for all secondary legislation, as they can currently do for Acts of Parliament. Of the 2,307 who responded directly to this question, 1,717 (74%) responded no and 590 (26%) responded yes. 1,355 respondents mentioned that they believe no change is required to the current framework. In addition, 61 respondents mentioned that declarations of incompatibility should be extended to all secondary legislation.

78. The Government remains convinced that reform is needed to give courts a wider ability to declare secondary legislation incompatible. However, we will not make this the only options for courts. They will retain existing powers alongside this new option. By opening secondary legislation to more declarations of incompatibility, courts will have the option to use this power as an alternative remedy.

Quashing Orders

79. Section 1 of the Judicial Review and Courts Act 2022 allows courts making quashing orders in judicial review proceedings in England and Wales to include provision suspending the effects of the order for a limited period of time, or removing or limiting any retrospective effect of the quashing. The section sets out a presumption that these powers will be exercised if it appears to the court that including such provision would, as a matter of substance, offer adequate redress. It specifies a number of

factors to which the court is required to have due regard. The section affects the available remedies where secondary legislation is held to be incompatible with the Convention rights in judicial review proceedings in England and Wales. The IHRAR Panel recommended that these powers should be made available in all proceedings where secondary legislation is challenged under the Human Rights Act.

80. In Question 16, we asked whether the proposals for suspended and prospective quashing orders put forward in the Judicial Review and Courts Act should be extended to all proceedings under the Bill of Rights where secondary legislation is found to be incompatible with the Convention rights. Of the 1,290 who responded directly to this question, 1,038 (80%) responded no, 252 (20%) responded yes. 654 respondents mentioned that they believe no changes are required to the current approach.

81. The Government's view is that it is right that suspended and prospective quashing orders should apply to human rights cases, and is satisfied that this is appropriately provided for in the Judicial Review and Courts Act. Therefore, there is no need for further legislation on this matter in the Bill of Rights.

Remedial Orders

82. Section 10 of the Human Rights Act provides that remedial orders may only be used where ministers consider there are 'compelling reasons' to do so. It was included in the Act to provide a means of addressing incompatible legislation more rapidly than is generally possible through primary legislation. Remedial orders are generally subject to a type of 'super-affirmative' Parliamentary procedure, although there is a procedure for making and commencing an order before a draft is approved by Parliament where the matter is considered urgent (known as the urgent procedure). This is to facilitate a swift response to adverse judgments presenting significant issues, even when Parliament is not sitting.

83. In Question 17 of the consultation, we asked if the Bill of Rights should contain a remedial order power, outlining four options. Of the 1,320 who responded directly, 333 respondents mentioned Option A (similar to that contained in section 10 of the Human Rights Act), 152 respondents mentioned Option B (similar to that in the Human Rights Act, but not able to be used to amend the Bill of Rights itself). 148 respondents mentioned Option D (abolished altogether) and 43 respondents mentioned Option C (limited only to remedial orders made under the 'urgent' procedure). 766 respondents said that there is no case for change.

84. We have carefully considered the recommendations of the IHRAR Panel and the responses to the consultation and have decided that remedial secondary legislation remains an appropriate measure when there are compelling reasons to use it in certain specified circumstances. We are adding certainty about the scope of the

power by making clear that remedial secondary legislation cannot be used to amend the Bill of Rights itself, as the IHRAR Panel recommended.

Statement of compatibility: section 19 of the Human Rights Act

85. Section 19 of the Human Rights Act requires the minister in charge of a Bill in Parliament to express his or her view as to the compatibility of the legislation with the Convention rights by making and publishing one of two statements before Second Reading of the Bill in each House. The minister must state either in his or her view that the Bill is compatible with the Convention rights (section 19(1)(a)), or that, although he or she is unable to make that statement, the Government nevertheless wishes Parliament to proceed with the Bill (section 19(1)(b)).

86. There is a debate as to whether section 19 strikes the right constitutional balance between Government and Parliament, particularly in relation to ensuring human rights compatibility whilst also creating the space for innovative policies – in particular, whether the test set out in section 19 is the appropriate test, and if not, how might it be improved.

87. In Question 18 of the consultation, we invited views on how you consider section 19 is operating in practice and whether there is a case for change. 3,702 respondents mentioned that they did not believe there was a case for change. Of the 1,180 who responded directly to this question, 81 respondents thought that there is a case for change.

88. The Government is of the view that reform of section 19 is needed. We will therefore not replicate the section 19 obligation in the Bill of Rights, in order to facilitate innovative policy making. The Government is proposing removing this in order to move away from the simplistic binary offered by section 19. The stigma attached to the making of a section 19(1)(b) statement risks effectively operating as a veto on innovative policy-making, even in cases where legislation may be successfully defended in court. This change will allow and encourage innovative and creative policy making which better achieves Government aims, without preventing human rights impacts from being considered during the passing of a Bill.

89. This will not prevent Parliament, including the Joint Committee on Human Rights, from considering and debating human rights implications of proposed legislation, and new proposed legislation will still be accompanied by analysis of human rights implications. Indeed, removal of a binary statement on compatibility recognises the complexity of determining Convention compatibility.

Application to Wales, Scotland and Northern Ireland

90. In Question 19 of the consultation, we asked how the Bill of Rights can best reflect the different interests, histories and legal traditions of all parts of the UK, while retaining the key principles that underlie a UK-wide Bill of Rights. Of the 2,126 respondents who responded directly to this question, 1,126 respondents mentioned that the Bill cannot reflect these interests and traditions and 84 respondents mentioned that there should be a UK-wide approach.

91. The Government remains committed to a UK-wide Bill of Rights that maintains the competence of the devolved legislatures while reflecting that we are a strong Union of diverse interests, history and legal traditions. The Government believes that everyone in the UK should benefit from improvements to our human rights framework.

92. We will therefore strike the right balance between guaranteeing rights protection to everyone within the UK, whilst also allowing for difference in how the rights framework is applied and implemented across the UK. The Government's intention is to implement a single human rights framework for the UK that respects its diverse legal traditions, but which is also founded on principles common to all.

93. In the Belfast (Good Friday) Agreement, the UK committed to completing incorporation of the European Convention on Human Rights (ECHR) into the law of Northern Ireland. Through the Bill of Rights, we continue to meet our commitments under this Agreement.

94. Our reforms are, furthermore, fully in line with our obligations under the Withdrawal Agreement, the Northern Ireland Protocol and the UK–EU Trade and Cooperation Agreement.

Public authorities – section 6 of the Human Rights Act

95. The Government believes that the range of bodies and functions to which the obligations under the Human Rights Act currently apply is broadly right. The current formulation has the benefit of flexibility, which has allowed the application of the Act to evolve in line with changes in how public functions are delivered. It is also important, however, that the Bill of Rights affords clarity and certainty as far as possible about its scope. In particular, the Government wished to consider in the consultation whether there is alternative drafting which might achieve broadly the same application of obligations under the Bill of Rights, but in a way which offers more certainty or clarity.

96. In Question 20 of the consultation, therefore, we asked whether the existing definition of public authorities should be maintained, or whether more certainty could be

provided as to which bodies or functions are covered. Of the 2,043 who responded directly to this question, 1,789 respondents mentioned that the existing definition should be maintained, 90 respondents mentioned that the existing definition should be expanded, and 12 respondents mentioned that the existing definition should be diminished.

97. In Question 21 of the consultation, we invited views on the replacement options for section 6(2) to give public authorities greater confidence to perform their functions within the bounds of human rights law. Of the 1,735 who responded directly to this question, 870 (51%) responded ‘Neither – prefer no change’; 499 (30%) responded ‘Neither’; 158 (9%) chose ‘Option 2’; 145 (9%) chose ‘Option 1’.

98. The Government will not be amending the definition of public authorities in the Bill of Rights. The Government remains convinced however that the Bill of Rights can provide greater clarity as to public authorities’ obligations. The Bill of Rights will make clear that when public authorities are giving effect to the will of Parliament, they will not be acting unlawfully under the Bill of Rights. It will achieve this by removing the UK courts’ power to interpret legislation in ways that are not in line with the ordinary meaning of the words and the overall purpose of the statute. This ensures that laws will be interpreted in a manner that is consistent with the will of Parliament. This in turn will deliver greater certainty for public services to do the jobs entrusted to them, without the constant threat of having to defend against human rights claims.

Extraterritorial jurisdiction

99. The Human Rights Act remained silent on the question of its effect on activities abroad, leaving it to be determined by the courts. We have seen how domestic and Strasbourg case law has meant that complex legal arguments have developed around when the Human Rights Act and indeed the Convention apply abroad in such challenging situations as armed conflict, and around the interaction between the Convention and the law of armed conflict in such situations.

100. In Question 22 of the consultation, we asked for 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. Of the 1,085 who responded directly to this question, 745 respondents mentioned that the Bill should apply to British public authorities overseas in all circumstances where the ECHR applies, with no change from existing arrangements.

101. The Government recognises, as noted in the consultation, that there is not a unilateral domestic solution to this issue and the Government will continue to work

with partners in the Council of Europe to address the issue of the extraterritorial application of the Convention at the international level.

102. However, the Government is of the view that as we undertake wider domestic human rights reform, it is the right time to signal at domestic level our commitment to the principle that claims relating to overseas military operations should not be brought under human rights legislation, given that the Convention was not originally intended to apply extraterritorially and was never designed to regulate conflict situations.

103. As the consultation set out, if the extraterritorial scope of the Bill of Rights were to be restricted, other legislative changes would be required in order for the UK to continue to meet its obligations under the Convention. We will introduce the necessary ‘alternative remedies’ through later legislation, with a provision within the Bill of Rights setting out that the exclusion for overseas military operations will not be brought into force unless and until the alternative remedies are in place. This will also ensure that Service personnel and veterans will continue to have a route to make claims against the Ministry of Defence.

104. The Government remains committed to upholding and strengthening the rule of law in relation to the Armed Forces, which will continue to abide by their duty to act lawfully and uphold the highest standards. Our Armed Forces will continue to discharge their obligations under international law, including international humanitarian law, in any armed conflict situation.

Qualified and limited rights

105. The Convention recognises certain rights as ‘qualified’, including the right to respect for private and family life (Article 8); freedom of thought, conscience, and religion (Article 9); freedom of expression (Article 10); and freedom of assembly and association (Article 11). In the interpretation of these rights, courts are required to carry out a balancing exercise by considering the actions of public authorities and deciding, firstly, if a right had been infringed and, in the case of a qualified right, if that interference could be justified. The Human Rights Act gave effect to this balancing exercise by allowing the courts to consider the actions of public authorities which resulted in courts being required to use broad powers to assess whether a public authority was acting in a proportionate way when its actions had infringed a person’s human rights.

106. In the absence of any clarity in the Human Rights Act, judges’ opinions have differed as to the extent of the powers involved. Some have considered that this depends on the type of law under consideration and the relevant knowledge the court may have of the issue in question. The Government believes that the Human Rights Act did not provide sufficient clarity in this area.

107. There are other rights in the Convention, known as ‘limited’ rights, which can be subject to restrictions, such as the right to liberty and security (Article 5) and the right to a fair trial (Article 6).

108. In general, the Government believes that whilst the courts are required to determine the application of rights to the particular facts of any case, where Parliament has expressed its clear will on complex and diverse issues relating to the public interest, this should be respected.

109. In Question 23 of the consultation, we invited views on the extent to which the application of the principle of ‘proportionality’ has given rise to problems, in practice, under the Human Rights Act. Of the 971 responses which considered the extent to which the application of the principle of proportionality had been applied, 679 (70%) responded ‘Other’ (providing no view either way) and 229 (24%) responded ‘Not at all’.

110. Question 23 of the consultation also outlined two draft clauses (which can be found in appendix 2 of the consultation document) on how to provide courts with guidance on balancing qualified and limited rights. Of the 1,886 respondents who engaged with the options for reform 1,250 (66%) responded ‘Neither – prefer no change’; 436 (23%) responded ‘Neither’; 84 (4%) responded ‘Option 2’ and 78 (4%) responded ‘Option 1’.

111. The Government remains convinced that reform of the balancing of rights is needed to ensure due respect for the differing roles of the courts and Parliament. We will therefore provide guidance to courts, stating that where Parliament has expressed its view on the public interest through primary legislation, courts should give deference to that view. This would apply whenever public interest considerations arise (whether in respect of proportionality or, more broadly, the scope of a right). We want decisions regarding human rights to be taken in a fair and balanced way, which consider the needs of the individual who has claimed that their rights have been violated, but also ensures due consideration of the rights of others and the diverse interests of society as a whole.[3] The Bill of Rights will protect the role of Parliament, restoring the ability of elected lawmakers to exercise their judgment in balancing complex and diverse socio-economic policies, with the wider interests of society. This provision is not intended to displace Article 9 of the English Bill of Rights 1689.

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3 For example, see SC, CB and 8 children, R. (on the application of) v Secretary of State for Work and Pensions & Ors [2021] UKSC 26 (9 July 2021) (bailii.org)

Deportations in the public interest

112. The Government believes that public confidence in our human rights framework is eroded when foreign criminals can evade deportation, because their human rights are given greater weight than the safety and security of the public.

113. In Question 24, we asked how we can make sure deportations that are in the public interest are not frustrated by human rights claims, and invited views on which of three options would best achieve this. Of the 1,783 responses which engaged with the three options mentioned in the question 1,470 (82%) preferred none of the options; 129 (7%) preferred Option 3; 80 (4%) preferred Option 2; 72 (4%) preferred Option 1.

114. 1,373 respondents mentioned that they believe no change is required to the current framework. The Government remains convinced that reform is needed to secure the deportation of foreign national offenders (FNOs) who have shown little or no regard for the rights of others by committing crimes in the UK, and we will therefore legislate to set a high constitutional ceiling under which deportation provisions which relate to Article 8 (right to respect for private and family life) of the Convention are to be viewed by the Courts in terms of their compatibility with those rights. The Government will also establish limits on the court's power when they are considering appeals against deportation made on Article 6 grounds (right to a fair trial). Specifically, we will introduce in law a stringent test for appeals so that they must be dismissed unless a very high threshold is met.

Illegal and irregular migration

115. In Question 25, we asked how, while respecting our international obligations, we could 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. Of the 1,821 respondents who replied directly to the question, 1,236 respondents mentioned that no change is required to the current framework, 90 respondents mentioned that illegal or irregular migration should be stopped rather than focusing on deportation and 44 respondents mentioned that the immigration process or criteria to get a visa should be changed.

116. The Government has considered in detail the issues raised in this area, with the Nationality and Borders Act 2022 having received Royal Assent on 28 April. This is an important part of the Government's New Plan for Immigration, delivering a fair but firm asylum system, deterring illegal entry into the UK, breaking the business model of people-smuggling networks, and speeding up the removal of those with no right to be in the UK.

Remedies and the wider public interest

117. The Government believes that the compensation system can be used to make sure that the wider public interest is properly protected alongside individuals' rights. We think that where cases are brought against public authorities, the courts should have a responsibility to consider the impact of the award of a remedy on the public authority's ability to discharge its mandate.

118. In Question 26, we invited views on the four factors which the Bill of Rights could establish in considering when damages are awarded and how much. Of the 1,344 who responded directly to this question, 343 respondents mentioned that factor C (the extent of the breach) should be included, 175 respondents mentioned that factor B (the extent to which the statutory obligation had been discharged) should be included, 172 respondents mentioned that factor A (the impact on the provision of public services) should be included and 127 respondents mentioned that factor D (where the public authority was trying to give effect to the express provisions, or clear purpose, of legislation) should be included**.** 709 respondents mentioned that damages / cases should be judged on a case-by-case basis and 255 respondents mentioned that no change is required to the current framework.

119. The Government has carefully considered the views expressed in responses to the consultation and has concluded that reform is needed to take due account of the wider public interest in awarding remedies. As referred to above, while maintaining broad discretion for courts in the determination of remedies, the Bill of Rights will direct courts on a non-exhaustive basis to consider how serious the effects of the unlawful act are. These include the relevant conduct of the individual seeking damages, any other remedy they have been granted, and the impact on a public authority's ability to continue to provide services to society as a whole, including future awards of damages in similar cases.

Chapter 4 – Emphasising the role of responsibilities within the human rights framework

120. This chapter focuses on the Government's proposals to emphasise the role of responsibilities within the human rights framework. Everyone holds human rights alongside their responsibilities as community members, regardless of whether they undertake their responsibilities, and the Government believes that our new human rights framework should reflect the importance of responsibilities.

121. In Question 27 of the consultation, we asked whether the Bill of Rights should contain some mention of responsibilities and/or the conduct of claimants. We provided two options as to how we might best achieve this:

     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.

122. Of the 2,526 who responded, 1,244 (52%) preferred neither option. 790 (33%) of those respondents also specified that they believe no change was required. 191 (8%) respondents preferred Option 1, and 157 (7%) respondents preferred Option 2.

123. Having considered the responses received, the Government remains of the view that responsibilities and rights are equally necessary for a healthy democracy. The Bill of Rights will ensure that courts expressly consider a claimant's wider relevant conduct when considering whether to make an award of damages, affirming the connection which exists between rights and responsibilities.

124. The conduct of a claimant may already be taken into account by the Strasbourg and domestic courts when considering whether to make an award of damages. The Bill of Rights will strengthen the principles surrounding the awarding of damages by expressing them in statute. These will be built on but independent of the Strasbourg Court's own principles, and will ensure UK courts do not award higher damages than they consider the Strasbourg Court would award. The Bill will therefore enable UK courts to consider damages in a UK context. Courts will have wide discretion in how to take into account relevant past conduct of the claimant in the awarding of any damages, as part of all the circumstances of the case.

Chapter 5 – Facilitating consideration of and dialogue with Strasbourg, while guaranteeing Parliament its proper role

125. This chapter focuses on Government proposals to ensure Parliament is made aware of adverse Strasbourg judgments against the UK, respecting its important constitutional role. The Government is responsible for coordinating all steps for implementation of a final judgment, including proposing legislative amendments to Parliament if these are needed. In the UK, however, democratic responsibility for legislation ultimately lies with Parliament, and we believe this should be reflected in our arrangements for responding to Strasbourg judgments.

126. In Question 28 of the consultation, we asked for comments on the proposals for responding to adverse Strasbourg judgments, in light of the illustrative draft clause provided in the consultation, (which can be found in appendix 2 of the consultation document).

127. 1,412 respondents mentioned that nothing should be done, and 218 respondents expressed views that Government should abide by Strasbourg judgments.

128. The Government believes that the Bill of Rights should still reflect the important role Parliament holds in our constitutional arrangements. Therefore, we have amended our proposal, taking into account these responses. We will introduce provisions in the Bill of Rights to require that the Secretary of State lays any adverse Strasbourg judgments against the UK before Parliament. We will also affirm Parliament's supremacy in the exercise of the legislative function, by clarifying the status in UK law of Strasbourg judgments and decisions.

129. In the consultation, we proposed the inclusion of a provision for Ministers to table a motion for debate following an adverse judgment. We will not be legislating for this option as Ministers are able to do so without an explicit power.

Chapter 6 – Impacts

130. The Government is committed to considering the impact of the policy proposals set out in the consultation document, including on individuals with particular protected characteristics. As part of the consultation, we asked for views and evidence on potential impacts that could arise as a result of the proposed Bill of Rights. In particular, we asked what the likely costs and benefits might be.

131. Responses identified costs arising from the proposals, including 359 respondents mentioning costs to wider society. Costs were also mentioned for public authorities and the justice system. Only a small proportion of responses mentioned benefits arising from the proposals.

132. Responses also indicated a mixture of impacts for those with protected characteristics, including age, disability, religion or belief, and gender reassignment. When asked how any negative impacts might be mitigated, 1,092 respondents mentioned that Bill of Rights should be withdrawn.

133. The Government has carefully considered the responses and an analysis of the impacts has been provided below in the following section. The full Impact Assessment for the Bill of Rights may be found on gov.uk.

Impact Assessment, Equalities and Welsh Language

Impact Assessment

134. An Impact Assessment (IA) has been published alongside the consultation response document. The IA notes the potential impacts of the reforms, including equalities analysis.

Welsh Language Impact Test

- **Were there any responses from Welsh stakeholders that raised particular issues or considerations for Wales or Welsh-speakers that need responding to?** We don't believe this to be the case.
- **If yes, have you assessed the likely impacts on service delivery of the policy proposals on the use of the Welsh language in Wales?** N/A.
- **What action have you taken to ensure that the policy proposals are consistent with the requirements set out in the MoJ Welsh Language Scheme? (e.g. have you considered having a Welsh language translation of the consultation response?)** A Welsh language translation of the consultation response will shortly be available on gov.uk.

Further guidance can be found here: https://www.gov.uk/government/publications/moj-welsh-language-scheme-2018

Conclusion and next steps

135. The Government is introducing the Bill of Rights Bill to Parliament on 22 June. The responses received as part of this consultation have been factored into final policy development supporting the Bill.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

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