

Human Rights Act background

The Human Rights Act (HRA) was passed by Parliament in 1998 and entered into effect in 2000, the HRA was created to “give further effect” to the 1951 European Convention on Human Rights (ECHR).¹ The UK, as a founding member of the Council of Europe, ratified the ECHR in March 1951 thereby consenting to be bound by the provisions of the treaty. The HRA provides domestic recourse for violations of the ECHR by requiring all public agencies to consider the rights of all individuals within the United Kingdom and allowing individuals to bring human rights cases in domestic courts. It is also deeply integrated in the devolution settlements in Northern Ireland, Wales and Scotland.²

The HRA was designed to bring the rights in the ECHR into domestic law, letting people raise legal claims in the UK. The effect of the HRA has been to make protection and enforcement of these basic rights more accessible to people in the UK. Before passage of the HRA, claims related to the rights in the ECHR had to be raised at the European Court of Human Rights in Strasbourg, often making a case prohibitively expensive and time consuming, creating a class of people for whom it was unfeasible to ever bring a claim.

Additionally, the requirement in section 6 that public authorities consider human rights in all decisions brings human rights to the forefront of all governmental actions.

The HRA also includes several methods for protecting the rights of individuals:

For all new laws, the Minister responsible must confirm that it is compatible with the HRA – or explain why it is not – requiring a consideration of basic human rights before any law is passed.

Existing laws must be interpreted and applied so as to comply with the human rights in the HRA. If any laws cannot be so interpreted or applied, the courts can issue a declaration of incompatibility stating the impossibility of interpreting a given law in a way that complies with the HRA and encouraging the legislature to update the law so it can be compatible with human rights.

These protections are not limited to UK citizens, an obvious situation recognized by former Director of Public Prosecutions Keir Starmer, who is now Labour MP, who stated that “the idea that these human rights should somehow stop in the English Channel is odd and, frankly, impossible to defend.”³

Current Situation

Angered by ECtHR decisions, recent Conservative party election manifestos have promised to scrap the Human Rights Act, replacing it with an as yet unspecified UK Bill of Rights. The Coalition government replaced this pledge with the decision to instead establish a commission to investigate the

¹ Great Britain. Human Rights Act 1998: Elizabeth II. (1998). London: The Stationery Office.

² “HRA is woven into the fabric of the devolution settlements and any attempts to change or weaken the HRA will have significant implications for devolution arrangements.” “Briefing on the Commission on a UK Bill of Rights and the current consultation on its Discussion Paper.” British Institute of Human Rights ABC (2011).

³ Hope, Christopher. “Keir Starmer, head of CPS, launches impassioned defence of Human Rights Act.” The Telegraph. 21 Oct. 2009.

creation of a 'British Bill of Rights.' The commission failed to reach a conclusive decision. However, the Conservative party's election victory in 2015 meant that they finally had the means to do away with the HRA, with the promise remaining to replace it with a British Bill of Rights.

However, the promised consultation on the HRA has been delayed. The consultation has been marred by constitutional and political challenges which have seen it seemingly slip down the priority list. These challenges include:

- (1) Addressing the implications of repeal, given Scottish sensitivities and the reality of Scottish Devolution;
- (2) Addressing the issue of repeal, given how it might impact on the Good Friday Agreement;
- (3) Dealing with Conservative supporters of the Act and, particularly, Conservative supporters of the European Convention of Human Rights (ECHR);
- (4) Getting repeal of the Act and a replacement "British Bill of Rights", unless it is virtually identical, through the House of Lords;
- (5) Explaining why any this exercise is worth working out complicated answers to the above issues

Despite negative reports from the media and political sectors, the public tends to be very receptive to the concept of legal protections of basic rights.⁴ Indeed, as a recent report indicates, much of what has garnered negative reactions in the media has been false or at least misleading.⁵ Much of the tabloid media paints the HRA as a villain's charter – protecting terrorists and undesirables, but much of the important work the HRA does is rarely reported on.

Latest indication says that a consultation may take place around March 2016.

⁴ Liberty released polling data that showed "mass support (96%) for a law that protects rights and freedoms in Britain." Unfortunately, most Britons in that survey (91%) could not remember "ever having received or seen information from the Government explaining the Act." 2 October 2010. <<http://liberty-human-rights.org.uk/media/press/2010/britain-agrees-what-s-not-to-love-about-the-human-rights.php>>.

⁵ Human Rights Act Reporting in the Media: corrections and clarifications:
<<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmpolcon/writev/1049/m2.htm>>.