

22 February 2022

Race Council Cymru response to the UK Government's Consultation on proposals to reform the Human Rights Act 1998.

Q1: The proposed changes set out in the Consultation represent a constitutional matter with implications for the exercise of legislative and executive competence in Wales because they raise serious concerns for human rights and devolution. Although the consultation doesn't explicitly state how the specific legislative and socio-economic interests of the devolved governments will be impacted, the fact is that the UK Parliament retains the power to legislate on any topic and has exclusive competence (subject to EU law) to legislate for Wales in relation to all the reserved matters including areas such as policing, justice, social security, and most areas of commercial/business law. The proposed changes raise significant issues regarding accessibility to the courts, the rule of law and the role of the Courts in the application of the law relating to human rights. This is because they seek to reduce the expectation that UK courts follow the case law of the European Court of Human Rights in Strasbourg. According to the Public Law Project, "The Government's view is that section 3 has led to a move "too far towards judicial amendment of legislation which can contradict, or be otherwise incompatible with, the express will of Parliament." ([para 233](#)). The proposed changes could therefore considerably weaken human rights protections in Wales and put the UK at risk of breaching its international obligations if it is not upholding Convention rights to the standard that Strasbourg has deemed necessary.

The consultation claims to be founded upon values considered fundamental within British society and indigenous traditions, but no reference has been made to the consideration and inclusion of customary Welsh values, such as linguistic rights, consistent with our progressive legislation in Wales. This raises questions around how some of the key principles and protections in the Human Rights Act such as our *fundamental* rights will be impacted if the Bill was to be passed. It is important to recognise that what makes fundamental rights fundamental is the fact that they reflect deeply and widely shared understandings that transcend parochial domestic considerations.

Q2: The proposals set out in the Programme for Government have potentially far-reaching consequences for existing Welsh legislation, policies and future human rights commitments and therefore must be more sensitive to issues of devolution. According to Public Law: Text, Cases, and Materials - [Page 235](#), "The Government's programme would have to respect the different political and legal traditions within all of the countries of the UK to command public confidence. It would also, as a technical matter, involve reconsideration of the scheme of the devolution Acts, which limit the powers of the devolved legislatures and governments expressly by reference to respect for 'Convention rights'³." While we saw the Welsh parliament reject the Nationality and Borders Bill earlier this week, it's important to note that Wales is not independent of Westminster and while the Senedd can pass primary and secondary laws in Wales, "reserved" matters remain the responsibility of Westminster. The UK Parliament can still legislate in devolved areas, but, under the Sewel Convention, does "not normally" do so without the explicit consent of the relevant devolved body.

In effect, if the Bill is deemed as a "reserved matter" and subsequently passed, irrespective of the Senedd Cymru's current stance, there is a possibility that Wales *may* be subjected to the potential implications of the Nationalities and Borders Bill. The Bill seeks to give arbitrary rights to take away citizenship from individuals and would remove the obligation on the Secretary of State to give notice of deprivation of citizenship orders in certain circumstances, including in the interests of national security, foreign relations, and the public interest. As a result, if passed, there may be potential changes in deportation numbers, especially the potential increase in foreign national offender removals, which will create additional transport costs for government departments.

The Police, Crime and Sentencing legislation is also equally concerning because it seeks to provide substantial restrictions on the freedom to protest which would curb non-violent protest in a way that is inconsistent with our human rights. The creation in Clause 59 of a new statutory offence of “intentionally or recklessly causing public nuisance” is broadly drafted and risks criminalising some forms of peaceful protest, leading to fines or custodial sentences. It is important to note that Wales has adopted legislation which increases human rights protections by incorporating a duty to have due regard, within devolved functions, to the UN Convention on the Rights of the Child (2011 Measure referred to previously). If there are renewed calls for the UK to withdraw from the European Convention on Human Rights, *we* recommend that Wales should pledge to sign up to the Convention within the areas of policy responsibility devolved to Welsh Government.

Q3: The equalities impact on individuals with particular protected characteristics, including asylum seekers and refugees, ethnic minority communities and the Gypsy, Roma and Traveller community will be far-reaching and could pose adverse impacts on their wellbeing and mental health (which is protected by Article 8 ECHR). According to the Legislative Scrutiny: Nationality and Borders Bill (Parts 1, 2 and 4) – Asylum & Home Office Decision-Making, “As of September 2021, there were 67,547 individuals waiting an initial decision on their asylum application, of which approximately 65%, had been waiting for an initial decision longer than 6 months.” It is important to note that whilst awaiting decisions Asylum Seekers are prohibited from working or commencing the family reunification process and cannot access the entitlements guaranteed in the Refugee Convention. Adversely, there may also be additional costs for those who would be subject to a stricter deportation approach than the present one; with potential costs for the families of those who may face stricter deportation rules.

Furthermore, the Bill is set to dramatically reduce the rights of GRT people to exercise their nomadic culture, by making trespass a criminal offence and increasing the powers of the police to seize property where individuals reside. This criminalises individuals by making them liable to three months in prison or a fine of £2,500. Moreover, the Bill amends the Criminal Justice and Public Order Act 1994 by broadening the ‘list of harms’ that can lead to an order to leave the site, as well as increases the period for which persons cannot return to the site, from three to twelve months. The impact on the Gypsy, Roma and Traveller community can be further highlighted through the Bill’s aim to reduce the number of vehicles permitted on the land from six to one, effectively criminalising the ability for the GRT community to congregate. Egregiously, the bill risks leaving these minority groups even more excluded and will affect Welsh equality policies, support for refugees and asylum seekers, community cohesion and many other matters.

Yours sincerely,

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