



Scottish Government
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Llywodraeth Cymru Welsh Government

Cabinet Secretary for Social Justice, Housing & Local
Government

Shona Robison MSP

Minister for Equalities and Older People

Christina McKelvie MSP

Minister for Social Justice

Jane Hutt MS

Counsel General and Minister for the
Constitution

Mick Antoniw MS

Rt Hon Dominic Raab MP

Lord Chancellor, Secretary of State
for Justice, and Deputy Prime Minister

01 March 2022

Dear Dominic

Yesterday the Minister for Equalities and Older People in the Scottish Government, the Minister for Social Justice in the Welsh Government, and the Counsel General for Wales met to discuss our shared concerns regarding the UK Government's intention to replace the Human Rights Act with a "modern Bill of Rights".

Whilst we will each submit individual responses to your consultation before your deadline of the 8th March, and we have each had the opportunity to set out our respective positions in separate meetings with you on the 10th and 23rd of February, we feel it is important to re-iterate to you in writing our grave and deep-seated concerns in relation to both the current proposals and the UK Government's longer-term direction of travel.

As you know, the Human Rights Act plays a critically important role in protecting fundamental rights and freedoms across the whole of the United Kingdom. It has performed that function extremely successfully for more than two decades and it has done so in a way that has not only directly benefitted a great many individual members of society but has been instrumental in ensuring that our public institutions carry out their work in ways that embrace and embed positive action to respect, protect and fulfil human rights.

As the substantial body of human rights case law resulting from the Act has demonstrated, the practical effects have been far-reaching.

The Act has enabled vitally important issues to be addressed across the whole of our society. The achievements made possible by the Act encompass everything from action on gender equality to the protection of free speech and the right to protest. It has repeatedly demonstrated its worth by enabling individuals and communities to directly challenge failings on the part of powerful public authorities, including (for example) by assisting the families of service personnel to obtain justice when their rights were breached by the UK Government. The Act has been instrumental in helping to secure equality for LGBTQ+ people and it has ensured that scandals involving medical malpractice and the abuse of vulnerable patients could be publicly exposed. Amongst the headline cases in which the Human Rights Act has been of central importance have been the fight for justice following the Hillsborough disaster and the successful challenge brought by the victims of the sex offender John Worboys in the face of serious failings by the Metropolitan Police.

There can therefore be no question that the Human Rights Act has served our society well, and that it provides safeguards and protection which are essential to individuals and communities throughout the UK. The Act has also delivered, again and again, on the original promise to “bring human rights home” by enabling individuals whose rights have been breached to obtain a legally-enforceable remedy from the UK’s own courts, without the lengthy delays and expense involved when application has to be made to the European Court of Human Rights in Strasbourg.

We note that your own Independent Human Rights Act Review, whose report you published simultaneously with the current proposals for a “Bill of Rights”, itself concluded that there is no good case for making significant changes to the Act as it currently exists. Both the Scottish and Welsh governments provided the Review Panel with detailed submissions, and it also received extensive and highly-persuasive evidence from some of the United Kingdom’s most eminent legal experts, including both practitioners and academics. It is disappointing, if not perhaps surprising, that you should have decided to simply disregard that weight of evidence and expertise and to press ahead regardless with what amounts in practice to an ideologically-motivated attack on the freedoms and liberties protected by the Human Rights Act.

Our disappointment is further compounded by the fact that the current consultation exercise is tainted by claims and assertions which are not only unsubstantiated but potentially misleading. For example, in our view it is entirely wrong to suggest that the existence of legally-enforceable human rights protections has led to a decline in personal responsibility or that the vindication of human rights is somehow in conflict with the public interest. Nor is there any credible evidence which supports the claim that requiring public authorities to treat individual members of the public with dignity and respect, and in accordance with their fundamental and inalienable human rights, has led to “legal uncertainty, confusion and risk aversion for those delivering public services on the frontline”. On the contrary, all of the evidence points instead to a positive impact which has supported improved standards of service and enabled the exposure of harmful and deficient practice. It is similarly incorrect to claim that “public protection [has been] put at risk by the exponential expansion of rights” or that the ability of members of the public to challenge bad decision-making in the courts has somehow led to a “democratic deficit”. The existing mechanisms of the Human Rights Act are designed precisely to protect democratic dialogue and they do so in a way that respects parliamentary sovereignty.

We would, additionally, take particular issue with the claim in the consultation paper that “judicial activism” has led the UK’s courts to exceed the limits of their proper powers. Again, there is no credible evidence to support this assertion.

The truth, instead, is that the courts are invariably very careful to conduct themselves in a manner which accords proper respect to the legitimate constitutional roles of both Westminster and the devolved legislatures, and of the respective UK and devolved governments. Of course, it is correct to say that the Human Rights Act has empowered the courts to closely and critically examine the proportionality of government decisions and policies. Indeed, this is one of the core strengths of the Act and it is a feature that has repeatedly proven its value over the last two decades. But this is a very different matter from the unwarranted claims which have been made about excessive “judicial activism”. It is unfortunate, to say the least, that the consultation paper should seek to call into question the independence and impartiality of the courts in this way.

Such concerns have a wider currency and go beyond the immediate context of public policy in the United Kingdom. It is therefore particularly regrettable that both the intention and the effect of the UK Government’s current agenda appears to be directed at distancing the United Kingdom from its long-standing and historic commitment to promoting human rights and the rule of law at the international level.

There is no doubt in our minds that the trajectory now being followed by the UK Government is one which will ultimately result in the United Kingdom’s detachment, incrementally and by stealth, from its obligations as a member state of the Council of Europe. It is certainly difficult to read proposals, such as those for the replacement of section 2 of the Human Rights Act, as anything other than an exercise in narrow parochialism, informed by an opportunistic and entirely unnecessary antipathy to European institutions. Our own respective positions, by contrast, are informed by a resolute belief in the importance of international co-operation and by a clear recognition of the importance of remaining a full member of the Council of Europe. We would therefore urge you to reflect carefully on the damage which the UK Government’s proposals risk causing not just to the United Kingdom’s own international standing and reputation but to the integrity and coherence of international human rights mechanisms more generally.

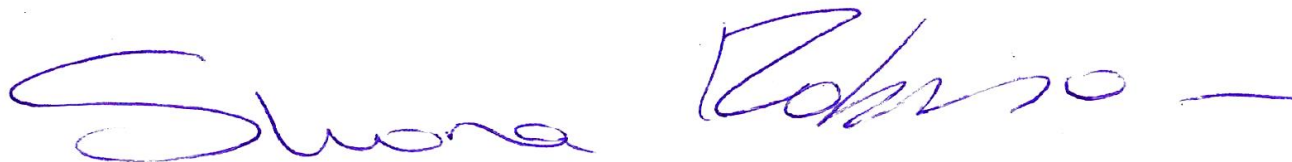
For all of these reasons, the Scottish and Welsh Governments are very clear that under the current constitutional settlement the interests of the peoples of Scotland and Wales are best protected by retaining the Human Rights Act in its current form. The proposals for a “modern Bill of Rights” which have been put forward by the UK Government are therefore both unwelcome and unnecessary. Furthermore, as the Human Rights Act is fundamental to each of the devolution settlements of the UK, it would be a matter of the gravest concern if the UK Government was to contemplate acting in this area without the agreement of all of the UK’s national legislatures.

We would, in consequence, once again urge you to listen very carefully to the views the democratically-elected governments of Scotland and Wales and also to the very strong, and consistent, support for the Human Rights Act which has been conveyed by voices from across the whole of UK civil society. It will clearly now be important for the UK Government to pay close attention to the responses generated by the current consultation, and for it also to revisit the wide-ranging and well-informed evidence already submitted to the Independent Human Rights Act Review.

Our specific request to you would then be that you undertake to change direction while it is still possible to do so, by abandoning the current proposals and by re-committing not just to the retention of the existing Human Rights Act but to guaranteeing full compliance by the United Kingdom with the obligations which it has undertaken to fulfil as a State Party to the European Convention on Human Rights and as a member of the Council of Europe.

We are copying this letter to the First Minister of Scotland, the First Minister of Wales, the First Minister and Deputy First Minister of Northern Ireland, the Secretary of State for Scotland, the Secretary of State for Wales, the Deputy First Minister of Scotland, the Cabinet Secretary for Justice and Veterans in the Scottish Government, the Clerk of the Equalities, Human Rights and Civil Justice Committee in the Scottish Parliament, and the Clerk of the Equality and Social Justice Committee in the Senedd.

Yours sincerely,



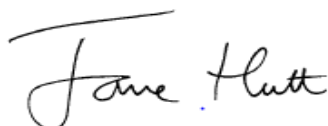
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