

## **A BILL OF RIGHTS THAT IS HUMAN RIGHTS ACT PLUS: WHAT ARE THE MINIMAL INDICATORS<sup>1</sup>?**

### **1) THE CONTENT OF THE RIGHTS**

- Any additional rights should cover new ground, or transparently supplement ECHR rights, not rephrase current rights in the HRA. They should demonstrably enhance rights protection.
- There should be no additional qualifications or limitations attached to specific rights or a new general limitations clause applying to all rights to tie them to 'responsibilities.'
- There should be no new limitations on the scope of the rights in the HRA which should continue to apply to everyone within the jurisdiction of the UK government.
- Any changes to s12<sup>2</sup> on the balance between freedom of expression and privacy should be compatible with the provisions of ECHR Articles 8/10.

### **2) THE MECHANISMS FOR ENFORCEMENT**

- All legislation, *regardless of when it is passed*, should be required to be interpreted by the Courts as compatible with the rights in the Bill of Rights, at least "so far as it is possible to do so" (s3).<sup>3</sup>
- No substitute for the Courts' power to issue a "Declaration of Incompatibility" unless this is to strengthen courts' powers to hold the executive to account (s 4).<sup>4</sup>
- The common law should not be exempted from the requirement on the courts to interpret all law compatibly with the rights in the Bill of Rights.
- No weakening of the powers of the courts and parliaments under the Devolution settlement.<sup>5</sup>

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<sup>1</sup> The indicators suggested here are not exhaustive but are related to proposals or suggestions that have been made by front bench Conservative spokespeople in support of a bill of rights based on repeal of the HRA.

<sup>2</sup> Drafted to "safeguard the freedom of the press."

<sup>3</sup> Any new interpretation clause should not be weakened to require the courts merely to 'take into account' the rights in the bill of rights or exempt new legislation from its terms.

<sup>4</sup> The courts have no strike down powers under the HRA. Any amendment to the mechanism in s4 should not be used to 'not weaken courts' powers to 'rebalance power to parliament.'

<sup>5</sup> Scotland Act 1998, Government of Wales Act 1998, Northern Ireland Act 1998.

- The courts should still be empowered to 'strike down' subordinate legislation.<sup>6</sup>
- Public authorities should still be specifically prohibited from acting incompatibly with the Bill of Rights (s6).<sup>7</sup>
- Any changes to the definition of public authority should be expansive, to address the exemption of some private bodies carrying out public functions, not restrictive (s6).

### **3) REMEDIES**

- Any changes to the definition of a 'victim' who can bring proceedings under the Bill of Rights should be expansive, not restrictive (s7).
- No interference with the discretion of the courts to grant such relief or remedies as they consider "just and appropriate" e.g. to limit remedies to those charged with, or convicted of, criminal offences.
- Amendment or repeal of the power to use subordinate legislation to remedy incompatible legislation is possible without materially damaging the protections of the HRA(s10),<sup>8</sup> although this could hinder swift remedial action following adverse decisions by the European Court of Human Rights (ECtHR)

### **4) DE- INCORPORATION OF THE ECHR (Law and Discourse)**

- Any expansion of the sources of authority that the courts can or should "take into account" when interpreting the Bill of Rights should not exclude the judgments, declarations, decisions or advisory opinions of the ECtHR.
- A British bill of rights should not be predicated on the denigration of international human rights and the consultation process for introducing it should enhance understanding of the ECHR and other ratified treaties.
- No bill of rights should be aimed at detracting from the universal application of human rights.

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<sup>6</sup> At least under the same terms as provided by HRA s3 (2).

<sup>7</sup> This is the root to the development of a 'culture of rights' which the Conservative leader has indicated is problematic.

<sup>8</sup> This provision has been used only 3 times.