

## ***A British Bill of Rights: Informing the debate***



This is an important moment in the development of the British constitution. Resolving the issues relating to a bill of rights may prove a decisive step towards a full blown written constitution. It will involve addressing the relationships and tensions between the different branches of the constitution as well as that between the individual and the state. JUSTICE welcomes the apparent willingness of all three major political parties in the UK Parliament to agree that the time is right for national debate.

*A British Bill of Rights: Informing the debate* is a clear and accessible review of the key issues in order to promote a better informed debate on the subject. It does not take a view on whether Britain does or does not need such a bill. It focuses on the four main areas in the bill of rights debate: content, amendability, adjudication and enforcement, and process.

## **Conclusions**

### **Content**

- The provisions in a new bill of rights must not fall short of the rights guaranteed under the Human Rights Act 1998 (HRA). Any new model must build on the European Convention on Human Rights so that it is 'ECHR-plus'.
- There are a number of options that would allow a new bill of rights to build on the ECHR:
  - Modernising and strengthening ECHR rights by:
    - reducing current limitations
    - simplifying limitation clauses
    - updating rights
  - Guaranteeing traditional and common law rights
  - Protecting certain economic, social and cultural rights
  - Including rights contained in international and overseas domestic bills of rights.
- The draft content of a bill of rights should not be over-inclusive.
- A bill of rights should have a preamble outlining its purpose and underpinning values and articulating the constitutional principles it seeks to enforce. References to 'responsibilities' which correspond to the core rights should be confined to this preamble. Their force is moral rather than legal.
- Language is crucial. A bill of rights must be understood by the general population, while giving sufficient detail to guide the elected branches and the judiciary.

### **Amendment**

- Any bill of rights will go through a careful drafting process. However, even the most carefully drafted rights instrument may have to be amended at some point. There are four options which can be identified in the British context:
  - Amending the Parliaments Acts
  - Special majority vote in the UK Parliament
  - Referendum
  - Declaration against amendment.

### **Adjudication and enforcement**

- Rights protected by the ECHR will continue to be subject to the jurisdiction of the European Court of Human Rights. Broadly, there are four enforcement models:
  - Judicial enforcement with Supreme Court strike down power
  - Judicial enforcement subject to Parliamentary override
  - Judicial declaration of incompatibility with legislative response
  - Interpretative statute.
- Any enforcement model must be suited to British constitutionalism.
- There is scope for requiring Parliament (in its scrutiny of bills) and the judiciary (in its decision making) to have regard to international treaties and overseas jurisprudence in their determinations of fundamental rights.

## Process

- The process adopted in establishing a bill of rights will impact directly on its acceptance by the public. Human rights are too fundamental to be sacrificed in a mismanaged consultation exercise. Careful planning and maximum publicity are required to ensure widespread participation.
- The common elements to the process of constitutional reform are:
  - Initiation of reform proposals
  - Public consultation and consensus
  - Government and legislative process
  - Referendum.
- Particular lessons can be drawn from overseas:
  - Start with a community-based process
  - Ensure commitment from all major political parties
  - Keep the process within a time limit
  - Give a central role to the Equality and Human Rights Commission
  - Have a sound and achievable model in mind
  - Develop a progressive and robust model of rights protection
  - Seek to achieve the purposes of a bill of rights without necessitating a major shift in constitutional arrangements, especially with regard to judicial powers
  - Locate the debate in values and good governance. Human rights works well as a concept for the converted and the well-educated, but a broader set of tools needs to be deployed in talking to the community at large.

## What are the advantages of adopting a British bill of rights?

- **Values** – the process of drafting a British bill of rights opens the way for participative debate on the legal and moral standards which govern our society.
- **Democratic engagement** – a British bill of rights can perform a valuable task in re-engaging people with our constitutional and political arrangements.
- **Education** – a British bill of rights can educate the general public about the legal, political and moral framework on which our democracy functions.
- **Britishness** – a concrete legal and symbolic document shaping the fundamental values according to which British people live will achieve more than flag days or national bank holidays.
- **Increase and update rights** – the ECHR is 60 years old and some of its language and provisions outmoded.
- **International** – there is the opportunity to recognise our international obligations.
- **Constitutional evolution** – a bill of rights can form a central plank of a new constitutional settlement.

## What are the disadvantages of adopting a British bill of rights?

- **Timing** – this may not be a time to be exploring ideas for building upon the rights protected by the Human Rights Act when the Act is relatively new, and has yet to become widely understood or indeed used in its fullest sense.
- **Reflection of short-term concerns** – a bill of rights should embody society's long-held principles, and point towards its aspirations. Given that we are living under laws not normally tolerated in times of peace, there is a danger that a bill of rights would normalise the current situation.
- **Dissension** – the debate on a bill of rights will polarise positions and increase the public's lack of understanding of human rights.

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