

Human Rights Act 1998 (Repeal and Substitution) Bill

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Schedule 1 – United Kingdom Bill of Rights and Responsibilities
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B I L L

TO

Repeal the Human Rights Act 1998 and related legislation; to make provision for a bill of rights and responsibilities to apply to the United Kingdom; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Introduction

1 United Kingdom Bill of Rights and Responsibilities

Schedule 1 to this Act (United Kingdom Bill of Rights and Responsibilities) sets out the UK rights, freedoms and responsibilities.

2 Interpretation of UK rights

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(1) A court or tribunal determining a question which has arisen in connection with a UK right may take account of a judgment of—

- (a) a court in Australia, Canada, New Zealand, the United States of America or any country having a common law-based judicial system;
- (b) the European Court of Human Rights; or
- (c) a court in any other jurisdiction which may be relevant to the UK right under consideration,

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but shall be bound to follow the judgments of higher courts in the United Kingdom, in accordance with the usual rules of precedent (though, for the avoidance of doubt, precedent relating to rights under the Convention shall not be binding when determining a question in connection with a UK right).

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(2) A court or tribunal determining a question which has arisen in connection with a UK right shall take into account all the facts and circumstances of the case, including the conduct of the person seeking to assert the UK right (including his adherence to the responsibilities set out in Article 23 of Schedule 1) and whether it is fair, equitable and in the interests of justice for such UK right to be applied in relation to the question at hand.

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- (3) Evidence of any judgment of which account may be taken under this section is to be given in proceedings before any court or tribunal in such manner as may be provided by rules.
- (4) In this section “rules” means rules of court or, in the case of proceedings before a tribunal, rules made for the purposes of this section – 5
- (a) by the Lord Chancellor or the Secretary of State, in relation to any proceedings outside Scotland;
 - (b) by the Secretary of State, in relation to proceedings in Scotland; or
 - (c) by a Northern Ireland department, in relation to proceedings before a tribunal in Northern – 10
 - (i) which deals with transferred matters; and
 - (ii) for which no rules made under paragraph (a) are in force.

Legislation

3 Interpretation of legislation

- (1) When reading and giving effect to legislation in light of the UK rights, the words and sentences of legislation must be construed in accordance with their ordinary and natural meaning. 15
- (2) Where the meaning of legislation arrived at in accordance with subsection (1) is ambiguous, it may be presumed that a possible meaning that is compatible with the UK rights was intended, unless the contrary intention appears. 20

4 Declaration of incompatibility

- (1) Subsection (2) applies in any proceedings in which a court determines whether a provision of primary legislation is compatible with a UK right.
- (2) If the court is satisfied that the provision is incompatible with a UK right, it may make a declaration of that incompatibility. 25
- (3) Subsection (4) applies in any proceedings in which a court determines whether a provision of subordinate legislation –
- (a) approved by resolution in Parliament, or
 - (b) not approved by resolution in Parliament but required by primary legislation (disregarding any possibility of revocation), 30
- is compatible with a UK right.
- (4) If the court is satisfied that the provision is incompatible with a UK right, it may make a declaration of that incompatibility.
- (5) In this section “court” means – 35
- (a) the Supreme Court;
 - (b) the Judicial Committee of the Privy Council;
 - (c) the Court Martial Appeal Court;
 - (d) in Scotland, the High Court of Justiciary sitting otherwise than as a trial court or the Court of Session;
 - (e) in England and Wales or Northern Ireland, the High Court or the Court of Appeal; 40

- (f) the Court of Protection, in any matter being dealt with by the President of the Family Division, the Vice-Chancellor or a puisne judge of the High Court.
- (6) A declaration under this section (“a declaration of incompatibility”)—
- (a) does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given; and
 - (b) is not binding on the parties to the proceedings in which it is made.
- 5 Right of Crown to intervene**
- (1) Where a court is considering whether to make a declaration of incompatibility, the Crown is entitled to notice in accordance with rules of court. 10
- (2) In any case to which subsection (1) applies—
- (a) a Minister of the Crown (or a person nominated by him),
 - (b) a member of the Scottish Executive,
 - (c) a Northern Ireland Minister,
 - (d) a Northern Ireland department,
- is entitled, on giving notice in accordance with rules of court, to be joined as a party to the proceedings. 15
- (3) Notice under subsection (2) may be given at any time during the proceedings.
- (4) A person who has been made a party to criminal proceedings (other than in Scotland) as the result of a notice under subsection (2) may, with leave, appeal to the Supreme Court against any declaration of incompatibility made in the proceedings. 20
- (5) In subsection (4)—
- “criminal proceedings” includes all proceedings before the Court Martial Appeal Court; and
- “leave” means leave granted by the court making the declaration of incompatibility or by the Supreme Court. 25
- 6 Certain subordinate legislation**
- (1) Subsection (2) applies in any proceedings in which a court determines whether a provision of subordinate legislation—
- (a) not approved by resolution in Parliament, and
 - (b) not required by primary legislation (disregarding any possibility of revocation),
- is compatible with a UK right. 30
- (2) If the court is satisfied that the provision is incompatible with a UK right, it may quash or declare invalid that provision, as well as other provisions of that subordinate legislation that cannot legally or practically be separated from that provision. 35
- (3) Where an act of a public authority is based on a provision of subordinate legislation covered by subsection (1) and could not reasonably be regarded, in all the facts and circumstances of the case, as compatible with the UK rights, a court may in relation to that act, in proceedings under section 8(2), grant such relief or remedy, or make such order, within its powers as it considers just and 40

appropriate, subject to the same conditions as apply under section 9 and save that damages may not be awarded where –

- (a) the public authority was required to undertake that act by the legislation, and
- (b) the legislation was not made by that public authority.

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(4) In this section –

- (a) “court” includes a tribunal;
- (b) “public authority” has the same meaning as in section 7; and
- (c) an “act” of a public authority has the same meaning as in section 7.

Public authorities

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7 Acts of public authorities

(1) It is unlawful for a public authority to act in a way which could not reasonably be regarded, in all the facts and circumstances of the case, as compatible with the UK rights.

(2) Where an act of a public authority is not unlawful under subsection (1) a court or tribunal shall give effect to, enforce or uphold that act, subject to any other relevant provision of law that is not a provision of this Act.

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(3) Subsection (1) does not apply to an act if –

- (a) as the result of one or more provisions of primary or subordinate legislation, the authority could not have acted differently; or
- (b) in the case of one or more provisions of primary or subordinate legislation, the authority was acting so as to give effect to or enforce those provisions.

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(4) In this section “public authority” includes –

- (a) a court or tribunal, and
- (b) any person certain of whose functions are functions of a public nature, but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.

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(5) In relation to a particular act, a person is not a public authority by virtue only of subsection (4)(b) if the nature of the act is private.

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(6) “An act” includes a failure to act but does not include a failure to –

- (a) introduce in, or lay before, Parliament a proposal for legislation; or
- (b) make any primary legislation or remedial order.

8 Proceedings

(1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 7(1) may –

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- (a) bring proceedings against the authority under this Act in the appropriate court or tribunal, or
- (b) rely on the UK right or rights concerned in any legal proceedings, but only if he is (or would be) a victim of the unlawful act.

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(2) Where section 7(1) does not apply to an act (or a proposed act) of a public authority by virtue of section 7(3), a person may rely on the UK right or rights

- concerned in any legal proceedings to claim that the relevant legislation is incompatible with the UK right or rights, on the ground that it authorises or requires the public authority to undertake the act in question and that act could not reasonably be regarded, in all the facts and circumstances of the case, as compatible with the relevant UK right or rights. 5
- (3) A person may only make a claim under subsection (2) if he is (or would be) a victim of the act in question.
- (4) In subsection (1)(a) “appropriate court or tribunal” means such court or tribunal as may be determined in accordance with rules; and proceedings against an authority include a counterclaim or similar proceeding. 10
- (5) If the proceedings are brought on an application for judicial review, the applicant is to be taken to have a sufficient interest in relation to the unlawful act only if he is, or would be, a victim of that act.
- (6) If the proceedings are made by way of a petition for judicial review in Scotland, the applicant shall be taken to have title and interest to sue in relation to the unlawful act only if he is, or would be, a victim of that act. 15
- (7) Proceedings under subsection (1)(a) must be brought before the end of—
- (a) the period of three months beginning with the date on which the act complained of took place; or
 - (b) such longer or shorter period as the court or tribunal considers equitable having regard to all the circumstances, 20
- but that is subject to any rule imposing a stricter time limit in relation to the procedure in question.
- (8) In subsection (1)(b) and (2) “legal proceedings” includes—
- (a) proceedings brought by or at the instigation of a public authority; and 25
 - (b) an appeal against the decision of a court or tribunal.
- (9) For the purposes of this section, a person is a victim of an act only if he—
- (a) is not a public authority, and
 - (b) is (or would be) directly affected by that act, or
 - (c) is (or would be) subject to a real risk that he may be directly affected by that act, or 30
 - (d) has a familial and strong link with a person who satisfies the criteria in (a) to (c) but who cannot engage in proceedings, and this link means he is seriously affected by that act.
- (10) In subsection (9)(a), “public authority” has the same meaning as in section 7; though a person who is only a public authority by virtue of section 7(4)(b) is not a public authority for the purposes of subsection (9)(a) where the act in question affects a function of his that is not of a public nature. 35
- (11) Nothing in this Act creates a criminal offence.
- (12) In this section “rules” means— 40
- (a) in relation to proceedings before a court or tribunal outside Scotland, rules made by the Lord Chancellor or the Secretary of State for the purposes of this section or rules of court,
 - (b) in relation to proceedings before a court or tribunal in Scotland, rules made by the Secretary of State for those purposes, 45
 - (c) in relation to proceedings before a tribunal in Northern Ireland—

- (i) which deals with transferred matters; and
 - (ii) for which no rules made under paragraph (a) are in force, rules made by a Northern Ireland department for those purposes, and includes provision made by order under section 1 of the Courts and Legal Services Act 1990. 5
- (13) In making rules, regard must be had to section 10.
- (14) The Minister who has power to make rules in relation to a particular tribunal may, to the extent he considers it necessary to ensure that the tribunal can provide an appropriate remedy in relation to an act of a public authority which is unlawful as a result of section 7(1) or in respect of which a remedy may be granted under section 6(3), by order add to – 10
- (a) the relief or remedies which the tribunal may grant; or
 - (b) the grounds on which it may grant any of them.
- (15) An order made under subsection (14) may contain such incidental, supplemental, consequential or transitional provision as the Minister making it considers appropriate. 15
- (16) “The Minister” includes the Northern Ireland department concerned.

9 Judicial remedies

- (1) In relation to any act of a public authority which the court finds is unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate, unless the act was reasonable with regard to all the circumstances, including a reasonable understanding of primary or subordinate legislation applying to the public authority concerned. 20
- (2) But damages may be awarded only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings. 25
- (3) No award of damages is to be made unless, taking account of all the circumstances of the case, including –
- (a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and
 - (b) the consequences of any decision (of that or any other court) in respect of that act, 30
- the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.
- (4) In determining –
- (a) whether to award damages, or
 - (b) the amount of an award, 35
- the court must not make any greater award than would have been made by the European Court of Human Rights in such a case.
- (5) A public authority against which damages are awarded is to be treated –
- (a) in Scotland, for the purposes of section 3 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 as if the award were made in an action of damages in which the authority has been found liable in respect of loss or damage to the person to whom the award is made; 40

- (b) for the purposes of the Civil Liability (Contribution) Act 1978 as liable in respect of damage suffered by the person to whom the award is made.
- (6) In this section –
 “court” includes a tribunal; 5
 “damages” means damages for an unlawful act of a public authority;
 and “unlawful” means unlawful under section 7(1).
- 10 Judicial acts**
- (1) Proceedings under section 8(1)(a) in respect of a judicial act may be brought only – 10
 (a) by exercising a right of appeal;
 (b) on an application (in Scotland a petition) for judicial review; or
 (c) in such other forum as may be prescribed by rules.
- (2) That is subject to any rule of law which prevents a court from being the subject of judicial review. 15
- (3) In proceedings under this Act in respect of a judicial act done in good faith, damages may not be awarded.
- (4) In this section –
 “court” includes a tribunal;
 “judge” includes a member of a tribunal, a justice of the peace (or, in Northern Ireland, a lay magistrate) and a clerk or other officer entitled to exercise the jurisdiction of a court; 20
 “judicial act” means a judicial act of a court and includes an act done on the instructions, or on behalf, of a judge; and
 “rules” has the same meaning as in section 8(12). 25

Remedial action

11 Power to take remedial action

- (1) This section applies if a provision of legislation has been declared under section 4 to be incompatible with a UK right and, if an appeal lies – 30
 (a) all persons who may appeal have stated in writing that they do not intend to do so;
 (b) the time for bringing an appeal has expired and no appeal has been brought within that time; or
 (c) an appeal brought within that time has been determined or abandoned.
- (2) If a Minister of the Crown considers that there are compelling reasons for proceeding under this section, he may by order make such amendments to the legislation as he considers necessary to remove the incompatibility. 35
- (3) If, in the case of subordinate legislation, a Minister of the Crown considers –
 (a) that it is necessary to amend the primary legislation under which the subordinate legislation in question was made, in order to enable the incompatibility to be removed, and 40
 (b) that there are compelling reasons for proceeding under this section,

he may by order make such amendments to the primary legislation as he considers necessary.

- (4) This section also applies where the provision in question is in subordinate legislation and has been quashed, or declared invalid, by reason of incompatibility with a UK right. 5
- (5) If the legislation is an Order in Council, the power conferred by subsection (2) or (3) is exercisable by Her Majesty in Council.
- (6) In this section “legislation” does not include a Measure of the Church Assembly or of the General Synod of the Church of England.
- (7) Schedule 2 makes further provision about remedial orders. 10

Other rights and proceedings

12 Safeguard for existing human rights

A person’s reliance on a UK right does not restrict—

- (a) any other right or freedom conferred on him by or under any law having effect in any part of the United Kingdom; or 15
- (b) his right to make any claim or bring any proceedings which he could make or bring apart from sections 8 to 10.

13 Freedom of expression

- (1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the UK right to freedom of expression. 20
- (2) If the person against whom the application for relief is made (“the respondent”) is neither present nor represented, no such relief is to be granted unless the court is satisfied—
 - (a) that the applicant has taken all practicable steps to notify the respondent; or 25
 - (b) that there are compelling reasons why the respondent should not be notified.
- (3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed. 30
- (4) The court must have particular regard to the importance of the UK right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to—
 - (a) the extent to which— 35
 - (i) the material has, or is about to, become available to the public; or
 - (ii) it is, or would be, in the public interest for the material to be published;
 - (iii) any relevant privacy code. 40
- (5) In this section—
 - “court” includes a tribunal; and

“relief” includes any remedy or order (other than in criminal proceedings).

14 Freedom of thought, conscience and religion

- (1) If a court’s determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the UK right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right. 5
- (2) In this section “court” includes a tribunal.

Parliamentary procedure

15 Statements of compatibility 10

- (1) A Minister of the Crown in charge of a Bill in either House of Parliament must, before Second Reading of the Bill –
- (a) make a statement to the effect that in his view the provisions of the Bill are compatible with the UK rights (“a statement of compatibility”); or
 - (b) make a statement to the effect that although he is unable to make a statement of compatibility the government nevertheless wishes the House to proceed with the Bill. 15
- (2) The statement must be in writing and be published in such manner as the Minister making it considers appropriate.

Human Rights Act 1998 and European Convention on Human Rights 20

16 Repeal of Human Rights Act 1998

The Human Rights Act 1998 is repealed.

17 Effect of European Convention on Human Rights

No –

- (a) provision of the Convention, 25
 - (b) judgment, decision, declaration or opinion of the European Court of Human Rights,
 - (c) opinion or decision of the European Commission of Human Rights, or
 - (d) decision of the Committee of Ministers taken under the Convention,
- whenever made or given, shall be regarded as binding on any person (including any public authority). 30

Supplemental

18 Orders etc under this Act

- (1) Any power of a Minister of the Crown to make an order under this Act is exercisable by statutory instrument. 35

- (2) The power of the Lord Chancellor or the Secretary of State to make rules (other than rules of court) under section 2(4) or 8(12) is exercisable by statutory instrument.
- (3) No order may be made by the Lord Chancellor or the Secretary of State under section 8(14) unless a draft of the order has been laid before, and approved by, each House of Parliament. 5
- (4) The power of a Northern Ireland department to make –
 (a) rules under section 2(4)(c) or 8(12)(c), or
 (b) an order under section 8(14),
 is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979. 10
- (5) Any rules made under section 2(4)(c) or 8(12)(c) shall be subject to negative resolution; and section 41(6) of the Interpretation Act (Northern Ireland) 1954 (meaning of “subject to negative resolution”) shall apply as if the power to make the rules were conferred by an Act of the Northern Ireland Assembly. 15
- (6) No order may be made by a Northern Ireland department under section 8(14) unless a draft of the order has been laid before, and approved by, the Northern Ireland Assembly.

19 Interpretation etc

- In this Act – 20
- “amend” includes repeal and apply (with or without modifications);
- “approved by resolution in Parliament” means –
- (a) approved by a resolution of each House of Parliament, or
- (b) if the subordinate legislation only needed the approval of one House of Parliament under its parent legislation, approved by a resolution of that House; 25
- “UK rights” means the UK rights and freedoms set out in Schedule 1, and “UK right” means the relevant one of those or any one of those, according to the context;
- “the Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the United Kingdom; 30
- “declaration of incompatibility” means a declaration under section 4;
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975; 35
- “Northern Ireland Minister” includes the First Minister and the deputy First Minister in Northern Ireland;
- “primary legislation” means any –
- (a) public general Act; 40
- (b) local and personal Act;
- (c) private Act;
- (d) Measure of the Church Assembly;
- (e) Measure of the General Synod of the Church of England;
- (f) Order in Council – 45
- (i) made in exercise of Her Majesty’s Royal Prerogative;

- (ii) made under section 38(1)(a) of the Northern Ireland Constitution Act 1973 or the corresponding provision of the Northern Ireland Act 1998; or
 - (iii) amending an Act of a kind mentioned in paragraph (a), (b) or (c); 5
- and includes an order or other instrument made under primary legislation (otherwise than by the Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Assembly Government, a member of the Scottish Executive, a Northern Ireland Minister or a Northern Ireland department) to the extent to which it operates to bring one or more provisions of that legislation into force or amends any primary legislation; 10
- “remedial order” means an order under section 11;
- “subordinate legislation” means any –
- (a) Order in Council other than one – 15
 - (i) made in exercise of Her Majesty’s Royal Prerogative;
 - (ii) made under section 38(1)(a) of the Northern Ireland Constitution Act 1973 or the corresponding provision of the Northern Ireland Act 1998; or
 - (iii) amending an Act of a kind mentioned in the definition of primary legislation; 20
 - (b) Act of the Scottish Parliament;
 - (c) Measure of the National Assembly for Wales;
 - (d) Act of the National Assembly for Wales;
 - (e) Act of the Parliament of Northern Ireland; 25
 - (f) Measure of the Assembly established under section 1 of the Northern Ireland Assembly Act 1973;
 - (g) Act of the Northern Ireland Assembly;
 - (h) order, rules, regulations, scheme, warrant, byelaw or other instrument made under primary legislation (except to the extent to which it operates to bring one or more provisions of that legislation into force or amends any primary legislation); 30
 - (i) order, rules, regulations, scheme, warrant, byelaw or other instrument made under legislation mentioned in paragraph (b), (e), (f) or (g) or made under an Order in Council applying only to Northern Ireland; 35
 - (j) order, rules, regulations, scheme, warrant, byelaw or other instrument made by a member of the Scottish Executive, Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Assembly Government, a Northern Ireland Minister or a Northern Ireland department in exercise of prerogative or other executive functions of Her Majesty which are exercisable by such a person on behalf of Her Majesty; 40
- “transferred matters” has the same meaning as in the Northern Ireland Act 1998; and 45
- “tribunal” means any tribunal in which legal proceedings may be brought.

20 Consequential amendments

- (1) A Minister of the Crown may by order made by statutory instrument make amendments to Acts or instruments made under Acts to reflect the replacement of the Human Rights Act 1998 with this Act.
- (2) Provision that may be made by order under subsection (1) includes the repeal of references to the Human Rights Act 1998 or terms used in that Act without any replacement provision. 5
- (3) No order may be made by a Minister of the Crown under subsection (1) unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament. 10

21 Short title, commencement, application and extent

- (1) This Act may be cited as the Human Rights Act 1998 (Repeal and Substitution) Act 2013.
- (2) The provisions of this Act come into force on the passing of this Act.
- (3) Sections 8(1)(b) and 8(2) apply to proceedings brought by or at the instigation of a public authority whenever the act in question took place; but otherwise section 8(1) does not apply to an act taking place before the coming into force of this Act. 15
- (4) This Act binds the Crown.
- (5) This Act extends to Northern Ireland. 20

SCHEDULES

SCHEDULE 1

Section 1

UNITED KINGDOM BILL OF RIGHTS AND RESPONSIBILITIES

Right to life

- | | | |
|---|---|----|
| | Article 1 | 5 |
| 1 | Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. | |
| 2 | Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than reasonably necessary –
(a) in defence of any person from unlawful violence;
(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
(c) in action lawfully taken for the purpose of quelling a riot or insurrection;
(d) otherwise to stop or prevent a crime. | 10 |
| 3 | Deaths resulting from lawful acts of war shall not be regarded as contravening this Article. | 15 |

Abolition of the death penalty

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Article 2

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Prohibition of torture

Article 3

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No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Prohibition of slavery and forced labour

Article 4

- | | | |
|---|--|----|
| 1 | No one shall be held in slavery or servitude. | 30 |
| 2 | No one shall be required to perform forced or compulsory labour. | |

- 3 For the purpose of this Article the term “forced or compulsory labour” shall not include—
- (a) any work required to be done in the ordinary course of lawful detention or during conditional release from such detention, or under the sentence of a court as punishment for a criminal offence; 5
 - (b) any service of a military character or, in case of conscientious objectors, service exacted instead of compulsory military service;
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - (d) any work or service which forms part of normal civic obligations; 10
 - (e) any work or training required to be performed as a condition of receiving a welfare benefit.

Right to liberty and security

Article 5

- 1 Everyone has the right to liberty and security of person. No one shall be deprived of his liberty by a public authority save in the following cases and in accordance with a procedure prescribed by law — 15
- (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law; 20
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; 25
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority; 30
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition. 35
- 2 Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
- 3 Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial. 40
- 4 Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful. 45

Right to a fair trial

Article 6

- 1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. 5
- 2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. 10
- 3 Everyone charged with a criminal offence has the following minimum rights – 15
- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; 20
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; 25
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language
 - (f) used in court.

No punishment without law

Article 7

- 1 No one shall be held guilty of any criminal offence on account of any act or omission which did not, at the time when it was committed, constitute a criminal offence under the law of the United Kingdom or the relevant part of the United Kingdom. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. 30
- 2 This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal under international law accepted by the United Kingdom or according to the general principles of law recognised by civilised nations. 35

Right to respect for private and family life

Article 8

- 1 Everyone has the right to respect for his private and family life, his home and his correspondence. 40

2	There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, immigration control, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.	5
3	This Article shall not apply to prejudice, hinder or avoid the trial and punishment of any person for any act or omission which is criminal under the laws of the United Kingdom or the laws of any other country or territory.	
	<i>Freedom of thought, conscience and religion</i>	10
	Article 9	
1	Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.	15
2	Freedom to manifest one's religion or beliefs does not entitle a person to cause or incite physical harm or injury to another person and is subject to such limitations as are prescribed by law and are necessary in a democratic society for the protection of public order.	
	<i>Freedom of expression</i>	20
	Article 10	
1	Everyone has the right to freedom of expression. This right shall include freedom to hold and state opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent public authorities from requiring the licensing of broadcasting, television or cinema enterprises.	25
2	The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.	30
	<i>Freedom of assembly and association</i>	35
	Article 11	
1	Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join (or not to join) trade unions for the protection of his interests.	
2	No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition	40

of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Right to marry

Article 12

Men and women both of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right. 5

Protection of property

Article 13

1 Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the laws of the United Kingdom. 10

2 The preceding provisions shall not, however, in any way restrict the enforcement of such laws deemed necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. 15

Right to education

Article 14

No person shall be denied the right to education. In the exercise of any functions which they assume in relation to education and to teaching, public authorities shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions, but only so far as this is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure. 20
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Right to free elections

Article 15

1 The relevant public authorities shall pursue the holding of free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature. 30

2 This Article shall not entitle a person to vote in an election if that person is in detention under the sentence of a court handed down for a criminal offence.

3 This Article shall not entitle a person to vote in an election if they are not a British citizen. 35

*Right to use force against intruders***Article 16**

- 1 In a dwelling, a person (who is not himself trespassing) has the right to use force against someone for the purpose of defending himself or others from violence or a sexual crime or for protecting property from crime, where he believes the person he uses force against is in or entering the dwelling as a trespasser; but the force used must not be grossly disproportionate in the circumstances that he believes exist. 5
- 2 This Article applies in England and Wales only.

Right to challenge removal of children

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Article 17

When a minor child is removed from the custody of a parent or other person in loco parentis and placed in the custody of a public authority, that parent or other person in loco parentis shall have the right to challenge the lawfulness of the removal before a court without undue delay. 15

*Right to challenge extradition***Article 18**

- 1 No British citizen may be compulsorily removed from the United Kingdom except in accordance with a process of extradition prescribed by law.
- 2 No British citizen may be extradited from the United Kingdom to another state or territory if he was in the United Kingdom at the time the alleged offence in question is said to have been committed; in such a case, he may only be tried for the alleged offence before a court in the United Kingdom and serve sentence after conviction by that court. 20

Prohibition of discrimination

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Article 19

The enjoyment of the rights and freedoms set forth in this Schedule shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. 30

*Restrictions on political activity of aliens***Article 20**

Nothing in Articles 8, 10, 11 and 19 of this Schedule shall be regarded as preventing restrictions on the political activity of aliens.

Limitation on use of restrictions on rights

Article 21

The restrictions permitted under this Schedule to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

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Certain limitations on application of rights

Article 22

1 The foregoing Articles in this Schedule are subject to this Article in their application.

2 No person who is not a British citizen may rely on any Article in this Schedule to delay, hinder or avoid deportation or other removal from the United Kingdom.

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3 A public authority may take such action in relation to a person as it believes to be appropriate in the interests of national security or public safety if it reasonably believes that there is a clear and present danger to national security or public safety presented by that person; but such action shall not include deprivation of life other than that permitted by Article 1 (read with Article 2) or torture or inhuman or degrading treatment or punishment (though, for the avoidance of doubt, such action may include extradition or other removal from the United Kingdom).

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Responsibilities

Article 23

A person's basic responsibilities include –

- (a) obeying the law;
- (b) rendering civil or military service when his country requires his support for its defence;
- (c) supporting, nurturing and protecting his minor children to the best of his ability;
- (d) respecting and upholding basic public order, without placing himself in significant danger;
- (e) seeking to support himself without recourse to a public authority to the best of his ability, including but not limited to seeking work or gainful employment where he is able; and
- (f) rendering help to other persons who are in need of assistance, where reasonable and to the best of his ability, including but not limited to help for elderly or disabled persons.

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SCHEDULE 2

Section 11(7)

REMEDIAL ORDERS

Orders

1 (1) A remedial order may –

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- (a) contain such incidental, supplemental, consequential or transitional provision as the person making it considers appropriate;
 - (b) be made so as to have effect from a date earlier than that on which it is made;
 - (c) make provision for the delegation of specific functions; 5
 - (d) make different provision for different cases.
- (2) The power conferred by sub-paragraph (1)(a) includes –
- (a) power to amend primary legislation (including primary legislation other than that which contains the incompatible provision); and
 - (b) power to amend or revoke subordinate legislation (including subordinate legislation 10
 - (c) other than that which contains the incompatible provision).
- (3) A remedial order may be made so as to have the same extent as the legislation which it affects.
- (4) No person is to be guilty of an offence solely as a result of the retrospective effect of a remedial order. 15

Procedure

- 2 No remedial order may be made unless a draft of the order has been approved by a resolution of each House of Parliament made after the end of the period of 60 days beginning with the day on which the draft was laid. 20
- 3 (1) No draft may be laid under paragraph 2 unless –
- (a) the person proposing to make the order has laid before Parliament a document which contains a draft of the proposed order and the required information; and
 - (b) the period of 60 days, beginning with the day on which the document required by this sub-paragraph was laid, has ended. 25
- (2) If representations have been made during that period, the draft laid under paragraph 2 must be accompanied by a statement containing –
- (a) a summary of the representations; and
 - (b) if, as a result of the representations, the proposed order has been changed, details of the changes. 30

Definitions

- 4 In this Schedule –
- “representations” means representations about a proposed remedial order made to the person proposing to make it and includes any relevant Parliamentary report or resolution; and 35
 - “required information” means –
- (a) an explanation of the incompatibility which the proposed order seeks to remove, including particulars of the relevant declaration, finding or order; and 40
 - (b) a statement of the reasons for proceeding under section 11 and for making an order in those terms.

Calculating periods

- 5 In calculating any period for the purposes of this Schedule, no account is to be taken of any time during which—
- (a) Parliament is dissolved or prorogued; or
 - (b) both Houses are adjourned for more than four days. 5
- 6 (1) This paragraph applies in relation to
- (a) any draft of a remedial order proposed to be made—
 - (i) by the Scottish Ministers; or
 - (ii) within devolved competence (within the meaning of the Scotland Act 1998) by Her Majesty in Council; and 10
 - (b) any document or statement to be laid in connection with such a proposed order.
- (2) This Schedule has effect in relation to any such proposed order, document or statement subject to the following modifications.
- (3) Any reference to Parliament, each House of Parliament or both Houses of Parliament shall be construed as a reference to the Scottish Parliament. 15
- (4) Paragraph 5 does not apply and instead, in calculating any period for the purposes of this Schedule, no account is to be taken of any time during which the Scottish Parliament is dissolved or is in recess for more than four days. 20

Human Rights Act 1998 (Repeal and Substitution) Bill

A

B I L L

To repeal the Human Rights Act 1998 and related legislation; to make provision for a bill of rights and responsibilities to apply to the United Kingdom; and for connected purposes.

*Presented by Charlie Elphicke,
supported by
Nadhim Zahawi, Matthew Hancock,
Priti Patel, Mr Dominic Raab,
Karen Bradley, Guy Opperman,
Nicola Blackwood, Chris Heaton-Harris,
Charlotte Leslie, Stephen Barclay
and Harriett Baldwin.*

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