

November 15th, 2022

Executive Summary of CEMVO Scotland's Briefing Paper on the Bill of Rights Bill for Second Reading at the House of Parliament

As a civil society organisation and a strategic partner of the Scottish Government's Equalities, Human Rights and Inclusion Directorate, CEMVO Scotland are alarmed at the removal and repeal of our rights proposed by the UK Government's Bill of Rights Bill, commonly known as the #RightsRemovalBill.

universality accountability
access to justice rightsremovalbill
removal of scrutiny regression
human rights protection
interim measures
devolution



CEMVO Scotland is a national intermediary organisation and strategic partner of the Scottish Government Equality Unit. Our aim is to build the capacity and sustainability of the ethnic minority (EM) voluntary sector and its communities. Since being established in 2003, we have developed a database network of over 600 ethnic minority voluntary sector organisations throughout Scotland to which we deliver a wide range of programmes that provide capacity building support to the sector.

As a national organisation, we continually engage with the EM voluntary sector and its communities, which enable us to gather intelligence about the needs and issues affecting the sector. This helps our organisation to deliver tailored support to the sector, and to work strategically with public, statutory, and government agencies to tackle a range of prevalent issues such as race equality, social inclusion, capacity building and civic participation.

One of our core programmes at CEMVO Scotland is Race for Human Rights. The aim of this programme is to help public service providers increasingly embed race equality and human rights in their strategic planning and day-to-day functions. This will be achieved by adopting an anti-racist and human rights-based approach.

Summary of Bill of Rights Bill Briefing Paper

Earlier this year, the UK government opened a public consultation into the ‘reform’ of the Human Rights Act 1998 (‘HRA’). Above many things, it was clear from this consultation that this was not reform but instead was a complete repeal of our HRA¹. CEMVO Scotland are deeply concerned about the implications of this new Bill, particularly the disproportionate impact it will have on ethnic minority (‘EM’) communities and on our devolution agreement. This is a summary of our briefing paper on the Bill of Rights Bill, accepted as evidence by the Joint Committee on Human Rights. To read our full response please follow this link [R4HR-Publication-Reform-Part-2.pdf \(cemvoscotland.org.uk\)](https://cemvoscotland.org.uk/R4HR-Publication-Reform-Part-2.pdf).

This summary will outline four gravely concerning and cross-cutting themes of this new Bill: contradictory; accountability; universality and devolution.

Contradictory

Throughout this Bill, there are numerous contradictory statements and intentions but the most apparent is that of ‘rebalancing the relationship’ between the European Court of Human Rights (‘ECtHR’) and the UK Supreme Court (‘UKSC’). The Bill seeks to make the UKSC the ultimate judicial authority on human rights, supposedly transferring this power from the ECtHR to the UKSC. One would assume this would be to ‘Bring Rights Home’, however the very next paragraph then removes said power from the UKSC and gives it to the UK Parliament. The implications of this are damaging for human rights protection as it removes the interpretative duty on the UKSC contained in section 3 HRA to interpret legislation in a way that is compatible with our basic human rights enshrined in the European Convention on Human Rights (‘ECHR’) and protected by our Human Rights Act. Removal of Section 3 of the HRA also means that when making decisions about people’s lives, public bodies will no longer be required to, or able to, apply other laws such as child protection or mental health laws in a way that respects human rights.

Clause 3(1) of the Bill adds to the contradictory nature of this Bill by stating that with this supposed ‘additional powers’ of the UKSC, it can diverge from ECtHR case-law but not in a way that expands on the scope. In short, the Bill states that it is *adding powers* but stipulates that UKSC can only give less protection of human rights, never more, which ultimately weakens our human rights protections.

¹ For more information on the consultation and a summary of our response, please read our other blog [Misleading, Regressive and Divisive – Our Human Rights at Risk – CEMVO Scotland](#)

Accountability

The Bill also limits accountability procedures by giving more weight and power to public authorities without regulation. For example, in a scenario where this Bill is enacted into law, public bodies won't be required to apply human rights to child protection laws, however in the instance where somebody alleges a violation of their human rights, this Bill advises UK courts to give 'great weight' to public authorities '*own expertise*'. Not only are these subjective terms but what is most concerning is this Bill gives more powers to public authorities and removes any means of scrutiny and reliance on their '*own expertise*'. This is incredibly alarming given the numerous bodies who have been scorned for their lack of expertise in their functions and findings of institutional racism within such structures, most notably the MET Police only recently being placed on 'special measures' due to their numerous, systematic failures. Another worrying feature of this Bill is the removal of public enquiries and investigations. These tools have been integral to our democratic society for decades but their power in achieving social justice is ever more pertinent in our society today, such as the inquiry into the death of Sheku Bayoh while in custody¹⁶ or the COVID-19 Care Home Inquiry. Together these measure will have a detrimental impact on us all but will have an alarmingly disproportionate impact on marginalised groups in society such as ethnic minority communities.

Universality

Next is this Bill's rejection and consideration of a core principle of human rights law, universality. Universality means that every individual has human rights by virtue of being human and that no hierarchy exists between these rights. They are all interdependent, interrelated and indivisible. However this Bill proposes specifically giving more weight to freedom of expression. One would be forgiven to think that this means that we will be able to then exercise this right more freely in the UK however, the Bill has a long list of carve-outs that limits the right for some and expands the rights for others. For example, in the instance of an individual wanting to protest and assert their rights against the government due to the new Police, Crime and Sentencing Act. What is particularly concerning about this is the disproportionate impact this added weight to freedom of expression will have on ethnic minorities. The UK has ratified and is a signatory of the International Convention on the Elimination of All Forms of Racial Discrimination ('ICERD') for many years but has always added an 'interpretive clause' to Article 4 which obliges the state to 'to investigate and punish reported racist hate crime offences; and take effective measures to combat racist media coverage'. For numerous years, the UN monitoring body and other states have called on the UK to remove such clause, which effectively nullifies the obligation, as it has a detrimental and disproportionate impact on EM communities. For example, there was a sharp increase in the number of racist hate crimes around the EU membership referendum in June 2016

which was peddled by “divisive, anti-immigrant and xenophobic rhetoric” by politicians in the UK¹⁰, and were also “the negative portrayal of ethnic or ethno-religious minority communities, immigrants, asylum seekers and refugees by the media’. Supposedly strengthening freedom of expression in this Bill and calling upon UK courts to give that right “great weight” will provide a free pass for racist politicians and media outlets to argue that their freedom of expression outweighs the right to non-discrimination held by ethnic minorities. This argument, however flawed, would theoretically be consistent with the approach taken in the Bill by the UK Government which seeks to create a hierarchy of rights placing freedom of expression above other Convention rights.

Another problematic area within this Bill is the introduction of new barriers to access justice. The impact of this is that more people will have to seek redress ECtHR rather than at home, in direct contrast of the aim of the Bill. Furthermore this Bill proposes to legislate that human rights are not for the undeserving such as those who are in prison. It is of the utmost importance to remember that human rights are for all individuals and that human rights are not a luxury, they are basic needs that must be met by the state.

Devolution

The Bill of Rights not only has an effect on human rights protection of individuals but it also has broader legal and political implications for Scotland and the devolution settlement. Legally, although the HRA is a reserved matter for the UK Parliament, the Scotland Act 1998 does not list human rights protection more broadly as reserved. In the spirit of the devolution statutes, if a competence is not reserved, it is devolved. Thus, human rights protection overall is devolved to Scotland.

Given that the Bill alters competence of the Scottish Government and Parliament, and relates to a devolved matter, politically, consent must be obtained by the Scottish Parliament. This consent is requested through a ‘legislative consent motion’, otherwise known as the Sewel Convention, which is also codified into law through Section 2 of the Scotland Act 2016. However, it is highly unlikely that consent would be given. The Scottish Parliament backed the HRA by 100 votes to 10 in 2014 when the UK Government’s plans to repeal the HRA were debated². More recently, Ministers of the Scottish Government and Welsh Government issued a joint statement on HRA reform noting that, ‘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’.³

² Evidence provided to the House of Lords Select Committee, available at: [House of Lords - The UK, the EU and a British Bill of Rights - European Union Committee \(parliament.uk\)](https://www.parliament.uk/business/committees/committees-a-z/commons-select/house-of-lords-select-committee-on-the-constitution/evidence/2017-18/evidence-to-the-house-of-lords-select-committee-on-the-constitution-2017-18/)

³ Available at: [Joint statement on Human Rights Act reform - gov.scot \(www.gov.scot\)](https://www.gov.scot/news/joint-statement-on-human-rights-act-reform-2018-09-11/)

If the UK Parliament was to pass the Bill without consent of the Scottish Parliament, this would fly in the face of the devolution settlement and place the UK in uncharted constitutional territory. As such, the Bill of Rights has been deemed an “act of vandalism” on the devolution settlement.⁴

Concluding Remarks

To conclude, CEMVO Scotland firmly oppose this Rights Removal Bill.

It is of CEMVO Scotland’s opinion that the proposed changes to human rights protection within this Bill is based on unfounded ‘need for reform’ exemplified by the suggested changes to the relationship between the ECtHR and UKSC. Provisions in the Bill also directly contradict the universality of human rights and international human rights law. The principle of universality applies both to rights itself and to rights-holders. All rights are interdependent, interconnected, indivisible and all rights-holders should have access to these rights as they are basic fundamental freedoms and rights that are required to live a life of dignity. Any interference with this principle will have a disproportionate negative impact on those most at risk in, including EM communities.

⁴ Quote by Christina McKelvie MSP, available at <https://www.gov.scot/news/uk-bill-of-rights-condemned/>