

Summary of Government Proposals



Lord Carnwath

- (i) The UK would remain party to the Convention, with the rights in the Convention sitting at the heart of a Bill of Rights. The rights as set out in Schedule 1 to the Human Rights Act will remain. “We regard the Convention as offering a common-sense list of rights. The key problems have arisen from the way in which those rights have been applied in practice, at both the Strasbourg and domestic levels.” These proposals will not, therefore, create any fundamental conflict with the Convention, nor necessitate our withdrawal. (paras 183-5)

- (ii) Section 2 would be amended to allow for the courts to have recourse to a wider range of jurisprudence – “a formulation that emphasises the primacy of domestic precedent, while setting out a broader range of case law – including, but not confined to, the Strasbourg case law – that UK courts may consider, if they so choose” (para 196).
- (iii) The Bill of Rights will make clear that the UK Supreme Court is “the ultimate judicial arbiter of our laws in the implementation of human rights”. This is because “the domestic courts are better placed than international courts to determine our laws, including relating to the training, calibre, experience, outlook and legitimacy of our senior judiciary.” (para 200)

- (iv) The qualified right to trial by jury will be recognised (para 202).
- (v) Greater emphasis will be placed on the right to freedom of expression. The new Bill will make clear that “the right to freedom of expression is of the utmost importance, and that courts should only grant relief impinging on it where there are exceptional reasons”. (paras 206, 213)
- (vi) There would be a permission stage for human rights claims, requiring proof of “significant disadvantage” subject to an exception in cases of “overriding importance”. (para 222-3) Litigants would be required to pursue other claims first (para 226).

- (vii) Ideas would be sought to “address the imposition and expansion of positive obligations to prevent public service priorities from being impacted by costly human rights litigation” (para 231 question 11). No specific proposals are made.
- (viii) Section 3 would be repealed or replaced to avoid “judicial amendment of legislation which can contradict, or be otherwise incompatible with, the express will of Parliament” (para 233).
- (ix) Guidance would be given on interpreting qualified rights to ensure that “great weight is given to Parliament’s view of what is necessary in a democratic society” (para 233ff)
- (x) Steps will be taken to clarify the extraterritorial application of the Convention (para 281)

Thank you for listening

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London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

Cornwall Buildings
45 Newhall Street
Birmingham, B3 3QR
+44 (0)121 752 0800

Contact

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

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