



THE CRIMINAL BAR ASSOCIATION

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DO WE NEED A UK BILL OF RIGHTS?

Consultation Paper

Introduction

1. The Commission on a Bill of Rights (CBR) has issued a discussion paper entitled ‘Do we need a UK Bill of Rights?’ dated September 2011. The CBR invites views on 4 questions:
 - i. do you think we need a UK Bill of Rights?; If so,
 - ii. what do you think a UK Bill of Rights should contain?;
 - iii. how do you think it should apply to the UK as a whole, including its four component countries of England, Northern Ireland, Scotland and Wales?; and
 - iv. having regard to our terms of reference, are there any other views which you would like to put forward at this stage?
2. This CBR was established by the Coalition Government, and its Terms of Reference include investigating ‘the creation of a UK Bill of Rights that incorporates and builds on all our obligations under the European Convention on Human Rights’. The CBR has also issued interim advice to the government on reform of the European Court of Human Rights (ECtHR) in readiness for the UK assuming the Chairmanship of the Council of Europe. The interim advice recommends fundamental reform by introducing filter mechanisms limiting the volume of cases requiring decisions of the court, and an enhancement of standards and qualifications of candidates for judicial appointments to the ECHR.

1. Do you think we need a UK Bill of Rights?

3. The Criminal Bar Association (‘the CBA’) is of the firm view that the Human Rights Act 1998 (‘the HRA’) provides appropriate protection to the human rights of the population of the United Kingdom and a UK Bill of Rights is unnecessary.

4. The HRA provides protection for the following human rights and freedoms:
 - (i) right to life (Article 2);
 - (ii) prohibition of torture or inhuman or degrading treatment or punishment (Article 3);
 - (iii) prohibition of slavery or servitude, or forced or compulsory labour (Article 4);
 - (iv) right to liberty and security (Article 5);
 - (v) right to a fair trial (Article 6);
 - (vi) no punishment without law (Article 7);
 - (vii) right to respect for private and family life, home and correspondence (Article 8);
 - (viii) freedom of thought, conscience and religion (Article 9);
 - (ix) freedom of expression (Article 10);
 - (x) Freedom of peaceful assembly and association (Article 11);
 - (xi) right to marry (Article 12);
 - (xii) right to an effective remedy (Article 13); and
 - (xiii) prohibition of discrimination (Article 14).
5. The CBA is of the view that the rights set out above are fundamental. Any proposed Bill of Rights would in any event have to encompass those rights.
6. The HRA has been criticised repeatedly, especially by the UK tabloid press, not because of the text of the freedoms it establishes, but because of the perceived way in which English Courts interpret and apply the Act. It is the view of the CBA that misreporting and misunderstanding of the decisions of our courts has led to unfair criticism of the HRA itself.
7. It is also a common misconception that the fundamental rights provided for within the Human Rights Act 1998 as articulated by the European Convention on Human Rights, were already provided for under domestic law pre 1998. This is wrong. The HRA enshrined such principles into law which provided legal remedy for breach and in doing so enfranchised people before the courts to protect and compensate themselves should their legal rights be violated.
8. The CBA takes the view that the English courts do not interpret the HRA in a way which is irrational and out of touch with reality. In fact the introduction of the HRA reduced the number of violations found by the ECHR by a half after it was introduced. It is

not a foreign instrument of control, nor an alien concept. We agree that the HRA could be made more robust, but we do not accept the argument for a British Bill of Rights.

9. Given the view of the CBA that a UK Bill of Rights is not needed, the remaining consultation questions do not strictly require an answer. However, should the CBR conclude in favour of a UK Bill of Rights, we would have the following view:

2. What do you think a Bill of Rights should contain?

10. As foreshadowed in paragraph 4 above, the CBA is of the view that any Bill of Rights should contain those rights that the HRA already upholds.

3. How do you think it should apply to the UK as a whole, including its four component countries of England, Northern Ireland, Scotland and Wales?

11. Were there to be a UK Bill of Rights, the firm view of the CBA is that the Bill should have equal effect in all of the ‘component countries’ of the UK.

4. Having regard to our terms of reference, are there any other views that you would like to put forward at this stage?

12. The CBA agrees with the interim advice on the reform of the ECHR to the effect that the ECHR could be made more efficient and cases filtered so that only the most important cases requiring the court’s decision reach the court quickly.

13. In respect of the interim advice on enhancing the quality and experience of judicial candidates to the ECHR, we agree with the sentiment that the court should be composed of judges of the highest intellectual, and moral standing.

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