

Convener, Clare Adamson MSP
Scottish Parliament Constitution, Europe, External Affairs and Culture Committee
The Scottish Parliament
Edinburgh EH99 1SP

21 June 2022

Dear Convener, Clare Adamson MSP

Call for a Parliamentary Inquiry into the Constitutional Issues in the Proposals to Reform the Human Rights Act

We expect legislation to be introduced to the Westminster Parliament imminently that will significantly and fundamentally change the Human Rights Act (HRA). The HRA is now over twenty years old and has had a significant impact on the growing culture and understanding of human rights in Scotland. The European Convention on Human Rights that it incorporates, is embedded as a key pillar of devolution. Convention rights are part of the fabric of Scotland's legislation, rich body of case law and crucially, of the legislative competence and the law-making process of the Scottish Parliament.

In a joint letter to the Lord Chancellor and Secretary for Justice, Dominic Raab, Committee Chairs at Westminster expressed their disappointment that these planned reforms were not being put forward for pre-legislative scrutiny, as was recommended by the Joint Committee on Human Rights. Their letter stated:

As was made clear in the Queen's Speech, the Government's intent in bringing forward this Bill is to "ensure the constitution is defended" and "restore the balance of power between the legislature and the courts". Such proposals are therefore of supreme constitutional significance and have the potential to impact on the rights of individuals for many years to come. Thus, it is vital that any proposals and legislative measures are subject to the fullest amount of public and parliamentary scrutiny to ensure their appropriateness, practicality, and longevity.¹

We have concerns that the responses to the consultation on planned reforms are not being published and we have yet to see any analysis of the over 12,000 responses. It is premature for the Bill to be introduced until those responses have been properly analysed. We have already seen the report from the Independent Review Panel on the

¹ Letter to Lord Chancellor and Secretary for Justice from Committee Chairs, 27 May 2022: <https://committees.parliament.uk/publications/22473/documents/165604/default/>

Human Rights Act largely ignored by the Secretary of State. We are concerned that the same will happen to all of the organisations and individuals who took the time to submit detailed responses to the consultation, including those in Scotland who raised significant issues with the planned reforms for devolution and the operation of the Scottish courts.

We are hugely concerned about the proposals to “overhaul” the HRA for a number of reasons detailed in our submissions to both the Independent Panel and consultation, among which is the concern that the new legislation will interfere with devolution in ways that have not been properly considered or understood. The recent consultation by the Ministry of Justice gave scant regard to the separate legal system in Scotland, asking only one vague question about reforms reflecting the different legal traditions across the UK. We have no confidence that these issues will be properly considered during the process of this Bill. Indeed, the Law Society for Scotland said in their consultation response to the UK Government proposals;

The concept of a Bill of Rights which reflects the range of different interests, histories, and legal traditions of all parts of the UK will be challenging to formulate in statutory language.... The distinct court systems in each jurisdiction with varying structures, powers, and laws to interpret are not easy to reconcile with the ambition to apply the Bill of Rights across the UK. Different legal traditions which rest on distinct jurisprudential origins create laws and practice which are not harmonized. These legal traditions are closely linked to the community identity of those who live in the jurisdictions where they apply.²

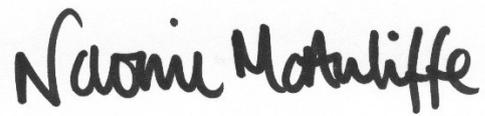
For all of these reasons, we are writing to ask the Constitution, Europe, External Affairs and Culture Committee to conduct an Inquiry into the devolution impacts of the changes to the Human Rights Act so that both the Scottish and Westminster Parliaments can provide proper scrutiny of such an important and fundamental part of the UK’s constitutional legal framework. This would be additional and complementary to the legislative consent process for this Bill, and we would request that the Committee makes the Westminster Parliament aware of this process and shares its outcomes.

We would be happy to meet with you, and to provide any more information or comment as might be helpful for you in your considerations.

² Law Society of Scotland, Human Rights Act Reform: A Modern Bill of Rights – The Government’s Proposals. March 2022: <https://www.lawscot.org.uk/media/372546/100322-response-human-rights-act-a-modern-bill-of-righths-chapter-4-the-government-proposals.pdf>

We look forward to hearing from you

Yours sincerely

A handwritten signature in black ink that reads "Naomi McAuliffe". The letters are cursive and fluid.

Naomi McAuliffe
Scotland Programme Director, Amnesty International UK

A handwritten signature in black ink that reads "Bruce Adamson". The signature is very stylized, with a large, looping initial 'B'.

Bruce Adamson
Children and Young People's Commissioner Scotland

A handwritten signature in black ink that reads "Mhairi Snowden". The signature is cursive and elegant.

Mhairi Snowden
Director, Human Rights Consortium Scotland

A handwritten signature in blue ink that reads "Jennifer Ang". The signature is cursive and clear.

Jennifer Ang
Co-Founder & Director of Development and Policy, JustRight Scotland