



Consultation on Human Rights Act Reform: A Modern Bill of Rights Just Citizens response

JustCitizens is a migrant advisory panel hosted by JustRight Scotland and funded by the Paul Hamlyn Foundation, the Joseph Rowntree Charitable Trust, and the Esmee Fairbairn Foundation.

We are a collective of migrants living in Scotland from diverse backgrounds, including with experience of the UK asylum system and surviving in the UK with no recourse to public funds (NRPF). Our aim is to build a fairer and more equal vision of citizenship and belonging, for people living in Scotland.

JustRight Scotland is a registered charity (SO305962) established by an experienced group of human rights lawyers. We use the law to defend and extend people's rights, working collaboratively with non-lawyers across Scotland towards the shared aims of increasing access to justice and reducing inequality.

JustCitizens are submitting a response to this consultation in order to highlight gaps they have identified in the UK Government's proposals, drawing on our experiences living as, and supporting, migrants in Scotland.

We give consent for this response to be published along with other consultation responses. Contact details for further information:

sabrina@justrightscotland.org.uk

Question 8. Do you consider that a condition that individuals must have suffered a 'significant disadvantage' to bring a claim under the Bill of Rights, as part of a permission stage for such claims, would be an effective way of making sure that courts focus on genuine human rights matters?

No

Please provide reasons:

We believe that human rights are a fundamental aspect of life that we expect to be protected by the law, and any violation of them puts an individual at a "significant disadvantage". Adding the condition that an individual must have suffered a significant disadvantage" to bring a claim under the Bill of Rights is an attempt by the current UK Government to further restrict access to justice. The political context in which these changes are being proposed must be taken into consideration. Indeed, for us, these proposals alongside the Nationality & Borders Bill, and the Police, Crime, Sentencing and Courts Bill, represent yet another terrifying attempt by the UK Government to advance unnecessary, divisive, and discriminatory policies.

Just Citizens

JustCitizens is a project of JustRight Scotland, a Scottish Charitable Incorporated Organisation (SC047818) which provides legal services through its limited liability partnership, JustRight Scotland LLP which trades as JustRight Scotland (SO305962)

Room 1, 1st Floor, Libertas
House, 39 St Vincent Place,
Glasgow, G1 2ER

W ▶ <https://justcitizens.scot/>
T ▶ @justcitizens



The language used in this question is not clear and the UK Government offers no explanation or clarification on how they intend to measure “significant disadvantage”, paving the way for very broad interpretation. Additionally, who will decide what a significant disadvantage is? Who will this benefit and who will this discriminate against? The definition of a “significant disadvantage” is subjective; it changes drastically from case to case. For example, a £50 loss for a person with NRPF will be a significant disadvantage, however, a £2m loss will not be a significant disadvantage for a multinational corporation involved in an environmental or data protection dispute. Currently, the Human Rights Act is based on the idea of individuals possessing certain indisputable rights; because the individual is used as the unit of analysis, differences in context can be considered on a case-by-case basis; this approach guarantees a flexible system designed on purpose to avoid the application of a blanket approach. These proposals would weaken or remove that flexibility, resulting in ever more limited access to justice and redress.

The question implies that courts are currently inundated by non-genuine human rights claims. This assumption is not based on evidence and is simply false. If the government was serious about protecting courts from wasting time and resources on human rights claims, they would invest in preventative measures that would reduce breaches of human rights, such as civic education on human rights and the Human Rights Act.

We believe these proposals represent an attempt to discourage people from seeking justice and reducing accountability for the government. The process of taking a human rights claim to court is already time-consuming and emotionally draining, additional barriers will only further narrow the number of individuals able to access the courts to protect their human rights. Additionally, we want to highlight that framing this question around “effective ways” implies that bringing a claim, even when genuine, is not effective. Our human rights should matter more than money. This question creates a two-tier system for citizens, those deserving of human rights and those not deserving of them. The question also wrongly implies that some claims are genuine, and some are not and that some disadvantages are less significant than others. All human rights must be justiciable, and the courts must decide independently what cases to adjudicate. Courts must provide reasons when dismissing human rights claims on a case-by-case basis, without being forced to apply one blanket rule as the Government seems to suggest. There should be an assumption that all human rights claims are genuine, and as long as those rights are a part of the domestic legal framework they should be justiciable, and courts must have an obligation to look into those claims.

Question 24. How can we make sure deportations that are in the public interest are not frustrated by human rights claims? Which of the options, below, do you believe would be the best way to achieve this objective? Please provide reasons.



This is another terrifying question. Firstly, only three options are given, implying that one of them will form part of the new Bill of Rights. JustCitizens refuse to choose an option as none of them is viable. The question is about “deportations being frustrated by human rights claims”, alluding to the fact that not everyone deserves to have their human rights protected, thus creating a two-tier system of individuals. The question implies people’s basic human rights should be outweighed by deportation policies: the right to family life, the right to liberty, the right to a fair trial, the right to life. Should we be giving these up? Human rights are “like branches of a tree that protect us, and this, along with other proposed bills, is removing these trees one by one until there is nothing left for us”.

The question implies that many people are waiting for deportation in the UK. This assumption is not based on evidence, as we know that deportation cases are few. The question also mentions public interest, but it does not explain what that would mean in practice, for example for a family where “a mother cannot be deported while a father can be. This would take away human rights from people, putting some human rights above others”. We feel this proposal is clearly discriminatory against migrants and we oppose it on the basis that if implemented, it will result in harm for refugees, asylum seekers and other migrants. Again, we believe these changes cannot be viewed in isolation and must be viewed alongside the Police, Crime, Sentencing and Courts Bill which seeks to criminalise activities like peaceful gatherings. As migrants, we often wonder how long our safety will be protected and how quickly will activities previously allowed suddenly be criminalised. We already know that many policies and tactics are used disproportionately against specific marginalised and minority groups. The Government has a responsibility to protect all of us and ensure a basic standard of living, especially for those more at risk in our society. These proposals from the UK Government go directly against that responsibility. Finally, the question suggests that courts should substitute their view for that of the Secretary of State. This suggestion is absurd. It blurs the lines of the separation of power and suggests removing checks and balances from the actions of the executive. We believe the track record of this Government bodes disaster for human rights if their actions will go unchecked by our courts.

Question 25. While respecting our international obligations, how could we more effectively address, at both the domestic and international levels, the impediments arising from the Convention and the Human Rights Act to tackling the challenges posed by illegal and irregular migration?

Firstly, the framing of this question is incredibly concerning. It implies that the basic levels of protection that we should meet internationally are causing too much of an issue and a barrier to our government. Human rights ensure we all equally enjoy a basic and dignified standard of living; however, in this question, they are framed as a barrier.

If this Government truly wants to respect its international obligations, it cannot portray the European Convention on Human Rights and the Human Rights Act as



impediments to the realisation of human rights. This is an attempt to break away from our international obligations, creating a system with no scrutiny and accountability. These proposals refer to the removal of “failed asylum seekers;” this language is grotesque. It makes it sound as though the asylum seeker has failed when the system and the government have failed. The burden of offending will be put on the most vulnerable who are here to seek refuge. If the Government wants people to use safe and legal routes to migrate it needs to make those routes available. The track record of this Government is horrific in this respect as most recently proven by the Afghanistan crisis, and currently the invasion of Ukraine.

We, at Just Citizens, believe that migration is a natural social process that is not limited to one or a few countries and that cannot be stopped by governments or by adopting one or another piece of legislation. It is a complex social, economic, and political process, and its management also requires complex methods. We also believe that illegal and irregular migration in modern and democratic states must be managed not by revoking or curtailing fundamental human rights, but by adopting policies and programmes addressing illegal migration, including its roots, and by actively participating together with the international community's efforts to address irregular migration through the creation of safe and legal routes.

Question 27. We believe that the Bill of Rights should include some mention of responsibilities and/or the conduct of claimants, and that the remedies system could be used in this respect. Which of the following options could best achieve this?

None of these options

Please provide reasons:

This proposal is particularly frightening considering the various reports published in the last few years on ingrained unconscious biases within societal structures. Humans react differently to trauma and stress. We believe there is no “right” way to cope with a traumatic event – like a sudden illness or injury, becoming destitute or homeless, or being illegally arrested and detained – and to propose that individuals be judged by their conduct during a highly stressful process is insensitive and not in line with any trauma-informed practice. This question also brings about the idea of roles and responsibilities; placing this weight on the victim and attributing the worth of their human rights to their “conduct”, a term we do not know what encompasses. It assumes that “if you do not behave, then you do not deserve human rights.” It is universally recognised that human rights are entitlements that are due to all human beings by virtue of their humanity, and not because they have done something to deserve their human rights. All human beings have their human rights regardless of their gender, sex, race, religion, national origin, etc. The language of this question, along with the proposed changes, removes the universality of human rights. It assumes that some people are worthy recipients of damages. If we start with this now, how do we know that in a few years some people will be less worthy of the right to life than others? As discussed, these clauses are likely to affect the most vulnerable in society.



It undermines "the universality of human rights and creates fewer worthy recipients of damages in legal claims. The removal of these rights creeps on you. Who decided and measured the significance of the damage? Who values my conduct and how good it is? Are we ruled by a government we can trust?" Furthermore, we would like to note that the language and phrasing of this question are inaccessible. It should be easy enough for anyone to understand and respond, especially on human rights. But the language is intentionally divisive. This is incredibly concerning, and we will continue to challenge this.

Question 29. We would like your views and any evidence or data you might hold on any potential impacts that could arise as a result of the proposed Bill of Rights. In particular:

What do you consider to be the likely costs and benefits of the proposed Bill of Rights? (Please give reasons and supply evidence as appropriate):

We believe the changes to the Human Rights Act presented in these proposals are unnecessary, divisive, and discriminatory. As discussed, we do not think this new Bill will be protecting our human rights, instead, it will create more barriers and hurt the most vulnerable in society. These changes make it harder for people to seek justice and degrade human rights protections - this will have a negative impact on everyone, particularly those who are more vulnerable and those with protected characteristics. There is a cost to human lives, dignity, basic rights that will place undue strain on mental and emotional health, leading to physical health problems. This new Bill would have no benefits. The best way to mitigate any negative impact is to prevent it from happening. The best way to mitigate the impact of this bill is to Kill the Bill. As stated by one of our members, "these proposals are a dangerous and an evil change to the Human Rights Act and will have huge repercussions on a significant part of the population by dividing us into bad and good migrants. However, we ask ourselves, who decides? How do they decide who is bad and who is a good migrant?" These proposed changes, alongside the Nationality & Borders Bill, and the Police, Crime, Sentencing and Courts Bill, represents a "creeping removal of human rights". It moves us to a position where legislation is eating away at our basic rights and protections. This is dangerous for us all. The Covid-19 pandemic has already highlighted the degree to which inequality and institutional racism is ingrained within our system; these inequalities will be perpetuated by this new proposed Bill and will create further divisions in our communities. It will cause us all to lose trust in the system and shows that whoever wrote this has lost touch with communities across the country. We also want to take a moment to again stress, the language in this consultation is completely inaccessible. We believe this to be a deliberate attempt at restricting responses. We think that "questions are framed in a way that manages their response by making assumptions. It is a way to maintain control over the responses."



This is an issue that affects us all, and we should all have the ability to challenge it through accessible means. Our human rights should not be a negotiation. The Human Rights Act protects us all and provides safety to the most vulnerable groups in our society. It should not be challenged, altered, or replaced.