

CALL FOR EVIDENCE

Legislative scrutiny: Bill of Rights Bill

August 2022

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Introduction

The Evangelical Alliance UK is the largest and oldest body representing the UK's two million evangelical Christians. Established in 1846, today we work across a diverse constituency of over tens of thousands of individuals, thousands of churches, and hundreds of organisations. The Evangelical Alliance is the founding member of the World Evangelical Alliance, which unites evangelical alliances based in different countries around the world, representing hundreds of millions of evangelical Christians.

As representatives of the evangelical church, we pursue policies that seek the welfare of all, protect religious freedom and allow Christians to live in accordance with biblical values. We also produce resources to help member churches and others understand the law. For example, in 2016 the Evangelical Alliance and the Lawyers' Christian Fellowship published *Speak Up*, a guide to the law on freedom of expression as it relates to the religious practice of evangelical Christians¹.

We welcome the joint committee on human rights call for evidence, seeking to scrutinise the content of the Bill of Rights Bill by inviting civil society to contribute and share their reflections on how repealing the Human Rights Act 1998 could disproportionately affect individual's from exercising their rights and more importantly access to justice when those rights are undermined. We would however wish to encourage the committee to advise and make proposals that strengthening Article 9, the right to freedom of thought, conscience, and religion alongside Article 10, freedom of expression.

As religion is increasingly viewed as optional, and the manifestation of belief is increasingly limited in the public sphere², there is an increasing need for the policymakers to meet with faith leaders and

¹ Evangelical Alliance and the Lawyers' Christian Fellowship (2016) *Speak up: the law and your gospel freedoms* Available online at: <https://www.eauk.org/what-we-do/initiatives/speak-up> [Accessed 4 March]

² Dennis P. Petri and Janet Epp Buckingham (2022) *Origins of and responses to secular intolerance* [online] Available at: <https://ijrf.iirf.eu/index.php/ijrf/article/view/100/127> [Accessed 4 March 2022]

faith-led organisations to better understand how the manifestation of belief can be better protected. The beliefs and values of evangelical Christians constitute an increasingly minority worldview. It is therefore appropriate, and necessary, that the government give attention to how religious freedom are protected whilst at the same time upholding other rights.

It is our position that the current Bill falls short in this regard. We consider that the approach suggested in relation to freedom of speech should also be accorded to Article 9 rights, so that they are only interfered with in limited and exceptional circumstances.

How we have approached this call for evidence

We are responding to questions 4, 5, 9, 10, 18, 19, 20 and 21.

The purpose of our engagement is to share the increasing challenges Christians, as well as those of other faiths or other beliefs, face in expressing alternative opinions and ideas in an ever polarised and progressive society. There have been recent court cases where individuals have experienced discrimination in the workplace or endured verbal abuse and threats of violence on social media. We urge the committee to encourage the government to reconsider their policy position on Article 9 and seek to make this a foundational right which all others derive from.

Once the committee have considered all responses, the Evangelical Alliance would welcome the opportunity to contribute further as the Bill is scrutinised further. Please contact our head of public policy, Alicia Edmund: a.edmund@eauk.org.

PARLIAMENTARY SCRUTINY OF HUMAN RIGHTS

Question 4

The Government's consultation suggested that the role of Parliament in scrutinising human rights should be strengthened. Would the Bill of Rights achieve this? How could this be achieved?

On Wednesday 22 June, in the opening statement to the Parliament the secretary of state for justice stated that it must be 'Parliament that has the last word'³, however, when examining the details of the Bill in practice it would mean greater powers are given to the Executive. (We expand this point further in questions 5 and 9).

Our greatest concern is that the Bill of Rights will rapidly proceed through the parliamentary stages with minimal time given to debate and scrutiny.

The first reading of the Bill was days before the summer recess and the second reading is planned for 12 September. That would give two days for parliamentarians to debate the bill with minimal time for debate and scrutiny. We believe Parliament must assert itself and insist more time is given to scrutinise a piece of legislation of such significance and we urge the joint committee to encourage parliamentarians to consider this Bill's compatibility with international law and examine the ministry of justice's impact assessment report. Failure to do so could negatively affect parliament's ability to consider human rights compatibility for future legislation.

Question 5

The Bill removes the requirement in section 19 HRA for Ministers to make a statement as to whether a Government bill is compatible with human rights. What impact would this have on Parliamentary scrutiny of human rights?

Clause 25, the duty on the secretary of state to lay before Parliament notice of a court's judgement on an Act of Parliament's failure to comply with the convention is a positive introduction.

However, in recent years the government's statement as to whether proposed legislation is compatible with human rights has come to mean very little and we would argue unhelpful to parliamentarians in scrutinising the Bill effectively.

Consider the Nationality and Borders Bill (now Act). Government ministers have given statements before committee and during debates that the Bill was compatible with international human rights law. This was challenged by civil society organisations working with refugees and supporting those seeking asylum and outright dismissed by Rosella Pagliuchi-Lor (United Nations High Commissioner

³ <https://hansard.parliament.uk/Commons/2022-06-22/debates/5736CBBA-A5F0-45B9-AA54-246FF57FB5EE/BillOfRights>

for Refugees, UK representative). In her evidence to the bill committee, she stated that the government's differential treatment policy 'has no basis in international law'⁴. Where expert opinion differed or even criticises government policy, in this instance backbench MPs supported the government's position rather than efficacy of legislation.

With regards to the Bill of Rights Bill, the minister states it is compatible with convention rights yet in the ministry of justice department's own impact assessment state 'there are no statistics on how human rights legislation affects people with characteristics protected under the Equality Act 2010'⁵. It is unclear how government policy can state the Bill is compatible whilst acknowledging there is little to no data on the impact this legislation will have on individual freedoms and society more generally. A Bill of this significance should provide parliamentarians with the data and government rationale for taking a particular direction rather than leaving parliament and cross-party MPs to source external briefings from civil society organisations or legal experts.

We would encourage this committee to insist that the timebound nature section 19 in the Human Rights Act 1998 is introduced into clause 25 of this Bill and in addition proposals made that for all future legislation at the time of introduction to Parliament it is accompanied with an impact assessment paper where government provide data and detailed analysis behind the policy direction taken. Without the latter the Bill should be paused progress through Parliament until the government produce a comprehensive written or verbal statement.

INTERPRETATING AND APPLYING THE LAW COMPATIBLY WITH HUMAN RIGHTS

Question 9

Clause 7 of the Bill requires the courts to accept that Parliament, in legislating, considered that the appropriate balance had been struck between different policy aims and rights and to give the "greatest possible weight" to the principle that it is Parliament's role to strike such balances. In your view, does this achieve an appropriate balance between the roles of Parliament and the courts?

In its current form the 'greatest possible weight' provides little guidance to the courts in how to judge a case against an Act of Parliament or government's policy intention. We would strongly advise the government to define 'greatest possible weight' into primary legislation, so that it can be scrutinised by Parliament.

⁴ <https://www.unhcr.org/uk/news/press/2021/9/614c163f4/unhcr-uk-asylum-bill-would-break-international-law-damaging-refugees-and.html>

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1084545/bill-of-rights-impact-assessment.pdf

Secondly, it is the government of the day and not parliament that dictate policy aims. Whilst both Houses of Parliament must agree on the specific wording of a bill, in reality this is dictated by a parliamentary majority, where opposition amendments are either voted down or in need of backbench MPs or peers to vote against the government. Parliament must have the power to hold the government to account.

With regards to Article 9, freedom of thought, conscience, and religion, it is our understanding that Parliament and the courts do not understand evangelical Christian belief or how speech and expression manifest in public life.

It is rare for freedom of religion or belief in the UK to be discussed and debated at length in Parliament. Nor is it common for either Commons or the Lords' committees to publish an inquiry into the state of religious freedom in the UK.

In our consultation response to government's 2021 Faith Review⁶ we recommended that they commission an audit of different religious groups to better understand how religious is active in public life. We strongly believed that this audit would lead onto to government and more importantly Parliament creating an action plan that would recognise the positive contribution of religion and faith-based organisations to public life. Without such an audit, we would argue policymakers – parliamentarians, civil servants, and criminal justice agencies – are insufficiently informed in how to promote and protect religious freedom.

Question 10

Clause 12 would replace the current duty, in section 6 HRA, on public authorities to act compatibly with human rights unless they are required to do otherwise as a result of legislation. In the absence of the obligation to read legislation compatibly with Convention rights, what impact would clause 12 have on (a) individuals accessing public services and (b) public authorities?

Clauses 4, 5, 6 and 12 are of huge concern and is the reason we are advocating for Article 9 to be strengthened.

Three cases would have been judged differently had the Bill of Rights, in its current form, become law. They are the Miller vs College of Policing⁷, Maya Forstater v CGD Europe⁸ and the Lancashire Festival⁹

⁶ <https://www.gov.uk/government/consultations/independent-faith-engagement-review-call-for-evidence/independent-faith-engagement-review-call-for-evidence>

⁷ <https://www.judiciary.uk/wp-content/uploads/2021/12/Miller-v-College-of-Policing-judgment-201221.pdf>

⁸ <https://www.judiciary.uk/wp-content/uploads/2022/07/Forstater-JR-AG.pdf>

⁹ <https://localgovernmentlawyer.co.uk/litigation-and-enforcement/400-litigation-news/46720-religious-organisation-wins-county-court-ruling-over-removal-by-council-of-adverts-on-buses>

cases. Each case is different in nature, the first is about freedom of expression in public space, the second centred on Article 9 in the workplace and the last is a combination of Article 9 and 10 and the right for religious organisations to advertise in public spaces. And yet the courts judged in each case that the appellant's human rights had been negatively impacted **and** that the respective public authorities either had to change policy (i.e., improve guidance on non-hate crime incidents and promote free speech) and/or pay a fine.

The public must have confidence in our public institutions and trust that they have their best interests and welfare in mind. And when that is not the case, there should be right of appeal.

Clause 12 is also at odds with the Equality Act 2010, section 149 public sector equality duty. It is also inconsistent with the government's *Inclusive Britain report* where several recommendations are made to across government department and associate statutory bodies to reduce ethnic disparities and inequalities across policing, health, and education.

It is our view removing positive obligations on public authorities is the wrong policy with harmful implications. Clause 12 must be amended.

SPECIFIC RIGHTS ISSUES

Question 18

The Bill strengthens protection for freedom of speech, with specific exemptions for criminal proceedings, breach of confidence, questions relating to immigration and citizenship, and national security. Do you think these changes are necessary? What would be the implications of giving certain forms of speech greater protection than other rights?

No.

We are deeply concerned by Clause 4. Instead of protecting free speech, clause 4 significantly limits freedoms set out in Article 10¹⁰.

In recent years there has been several cases where the police have judged street preachers speaking and sharing passages from the Bible wrongly arrest¹¹ or instances where posting bible passages online has led to heightened reaction from the public to report it as hate speech. Articles 10 and 11 of the European Convention of Human Rights protects individual freedoms to peaceful protest. However, by the government narrowing Article 10 rights and providing exceptions to free speech, we are concerned there will be an increase of wrongful arrests towards those with religious convictions. Worse is that the exception of speech to criminal proceedings would lead to judgments where Christian teaching and speech will be judged as hate speech.

¹⁰ '...the freedom to hold opinions and to receive and impart information and ideas **without interference by public authority regardless of frontiers (our emphasis)**

¹¹ <https://www.christian.org.uk/news/ci-backed-christian-street-preacher-wins-wrongful-arrest-case/>

Amongst our membership, we have had to respond to a growing demand to produce resources and host webinars to support individuals working in education or the workplace or organisations providing a public service to better understand the law and their freedoms to practice faith publicly. This year we are publishing *'Living for Jesus at Work'* report summarising the different experiences and challenges evangelicals face in the workplace. We would be happy to share a copy with committee members. Publication available from mid-September 2022¹².

Question 19

Why do you think the Government has chosen to protect freedom of speech rather than freedom of expression, as guaranteed in Article 10, and what are the implications of treating the elements of Article 10 differently?

In part, we believe it is in response to the culture wars that take place on social media and within public discourse. Free speech in the Bill of Rights sets out the right as freedom to 'impart ideas, opinions, or information by speech, writing or images' which appear positive on first reading. But there is greater protection for journalists and journalistic content and publication rather than strengthening the freedoms for individuals to share different opinions in the workplace, in public spaces or online.

Another significant justification for the government to make this distinction is to 'improve the police's ability to proactively manage the most disruptive protests'¹³.

Part 3 of the Police, Crime and Sentencing Courts (PCSC) Act 2022 has made significant changes to public order legislation and expanded police powers in how protests are policed in England and Wales. Under PCSC Act 2022, the police now have powers to impose restrictions and conditions to protests, limiting freedom of expression and freedom of assembly and association.

THE HUMAN RIGHTS ACT AND DEVOLVED NATIONS

Question 20

How would repealing the Human Rights Act and replacing it with the Bill of Rights as proposed impact human rights protections in Northern Ireland, Scotland and Wales?

The Evangelical Alliance has worked with parliament and government for many decades and has offices in Scotland, Wales and Northern Ireland that work directly with the devolved administrations. Since the government's consultation both Holyrood and Senedd have expressed a preference for the Human Rights Act and are concerned by proposals in this bill. The politics between nations cannot create a situation where individual freedom of thought, conscience and religion is better protected in

¹² Please email advocacy@eauk.org to receive an electronic or print copy of the resource.

¹³ <https://publications.parliament.uk/pa/bills/cbill/58-01/0268/JCHRfinalMEMO.pdf>

one nation over another, and so we urge policymakers to engage with church leaders and Christian-led organisations in Scotland, Wales, and Northern Ireland as it completes a full assessment.

Inevitably a policy which seeks to amend the UK's human right's framework will have an impact on those who are protected under that framework. This is also the point at which equalities and human rights legislation meet, it is therefore essential to give regard to **all** the protected characteristics. In particular, the Evangelical Alliance considers that the failure to adequately protect Article 9 and the lack of proposals to strengthen this right, means that this proposed policy will fail to redress the marginalisation of minority beliefs and opinions in an ever-progressive society.

Question 21

Should the Government seek consent from the devolved legislatures before enacting the Bill and, if so, why?

We would argue there must be consent both in the letter and the spirit of the Bill.

The UK government must actively engage with the devolved administrations and find ways to incorporate their concerns into the wording of the Bill. We would be deeply concerned if the government took a unilateral decision. Not only could that lead to individuals unable to exercise their freedoms and access justice but could risk the stability of the Union and worse the Belfast/Good Friday Agreement.

The Government have stated their position to remain party to the European Convention on Human Rights this is foundational to the Belfast/Good Friday Agreement. However, the Bill instructs and limits the powers of the courts in whether to consider interim judgements from Strasbourg (Clause 24) and grants greater derogative powers to the secretary of state (Clause 26) two instances we believe could undermine the Belfast agreement in Northern Ireland. The case of Allister 2022 NICA 15, [244] and its judgement¹⁴ that 'citizens of Northern Ireland are not on an equal footing in relation to trade with those in Great Britain' should serve as a reminder that its possible for government policy to have unintended consequences.

There is a role for the JCHR committee in inviting First Ministers from Scotland and Wales and political leaders from Northern Ireland to give evidence and to share on record their concerns with the current proposals and desired amendments.

¹⁴<https://www.judiciaryni.uk/sites/judiciary/files/decisions/James%20Hugh%20Allister%2C%20Benyamin%20Naem%20Habib%2C%20Steve%20Aiken%2C%20The%20Rt%20Hon.%20Arlene%20Isobel%20Foster%2C%20Barroness%20Catharine%20Hoey%20of%20Lylehill.pdf>