

CONSULTATION RESPONSE

Human rights Act 1998 Reform: A Modern Bill of Rights

March 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 18,000 individual members, as well as over 3,000 churches and 500 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 Christians.¹

We welcome the government's commitment to remain in the European Convention of Human Rights and for a future Bill of Rights to retain substantive rights.

As future legislation is considered, we would urge the government to strengthening for minority religious views in an ever progressive and secularised society. As religion is

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 2022]

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 faith led organisations to understand how the manifestation of belief can be best protected. In particular it is necessary to understand how this can be done in a way that upholds religious freedom at the same time as protecting other rights.

While Christian affiliation is still held by many in society, the particular beliefs and values of evangelical Christians constitute an increasingly minority worldview. It is therefore appropriate, and necessary, that the government give attention to how these beliefs are protected. It is our consideration that the current proposals fall short in this regard. In particular we consider that the approach suggested in relation Article 10 rights of freedom of expression 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 consultation

In our response, we are responding to questions 5, 7, 23 and 29b. The purpose of our engagement is to share the increasing challenge Christians face in living out their faith across society and to urge the government to strengthen religious minorities rights in our society.

Once the government have considered all responses and decides to move forward with legislation, the Evangelical Alliance would welcome the opportunity to attend roundtables and provide further assistance and advice. Please contact our head of public policy, Alicia Edmund: a.edmund@eauk.org.

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]

Question 5

The government is considering how it might confirm the scope for interference with Article 10 to limited and exceptional circumstances, taking into account the considerations above. To this end, how could clearer guidance be given to the courts about the utmost importance attached to Article 10? What guidance could we derive from other international models for protecting freedom of speech?

Freedom of expression is a foundational right for any democratic society to thrive. The exchanging of opinions, challenging and critiquing of ideas has refined policy and reformed institutions.

However, we are disappointed by the government's priority in this consultation to give greater protection to the media and higher education. Freedom of expression within journalism, broadcasting and universities are important, but we would urge the government to consider its role in protecting religious minorities to express in a secularised society.

We therefore suggest that the government broadens this proposal so that the same increased protection is given to the manifestation of religion and belief, so that they are only interfered with in limited and exceptional circumstances. We also think it is necessary that this is further defined so there is clarity about the situations in which the government would consider this appropriate to occur. For the avoidance of doubt we consider it important that the government explicitly set out that disagreement with beliefs, including to the extent that people find beliefs offensive, should not be reason to prevent their manifestation.

As public opinion moves away from orthodox Christian values there is a growing view that religious beliefs are harmful to society and should therefore be isolated from public discourse. The right to express and share differing opinions and deeply held beliefs are crucial to society. Evangelical Christians are highly active in society and do not view their faith as an add on or optional component, it is integral to who they are. Therefore where they are asked to circumscribe their beliefs and values to conform to other values, this is an undue restriction on their freedom to manifest their faith.

We do not know of another international model as an example for strengthening freedom of expression.

Question 7

Are there any other steps that the Bill of Rights could take to strengthen the protection for freedom of expression?

Words and the beliefs held do not exist in a vacuum. Through words and publications an individual can communicate ideas, strong convictions and beliefs. This is particularly true for evangelical Christians, where the teaching in the Bible motivates people to serve the poor in local communities and to speak out on injustice.

In recent years there has been several cases where street preachers sharing from the Bible have been arrested on the grounds for causing public harm and distress.

In December 2019, a call was made to West Yorkshire Police complaining that street preacher David McConnell, who was preaching in Huddersfield Town Centre, was “preaching on gay rights and abortion”. Police arrested him and held him in a cell for 6 hours until a desk sergeant listened to a recording of his preaching and realised no offence had been committed. Mr McConnell took legal action³ for wrongful arrest, false imprisonment, and breach of human rights. In May 2021, West Yorkshire Police admitted liability in court papers, and Liverpool County Court issued a judgement in favour of Mr. McConnell. West Yorkshire Police agreed to pay £3,250 in damages plus his legal costs.

Here the courts corrected the wrongful arrest, however going forward we would encourage the government to develop guidance that educates public authorities such as the police and crown prosecution services about religious identity and freedom. A clearer protection in a Bill of Rights for freedom of speech, coupled with better guidance and policies for police forces, will ensure that ours is a society that values and cherishes our freedoms and takes concrete steps to ensure freedom of speech is a reality and not just rhetoric.

Question 23

To what extent has the application of the principle of ‘proportionality’ given rise to problems, in practice, under the Human Rights Act? We wish to provide more guidance to the courts on how to balance qualified and limited rights. Which of the below options do you believe is the best way to achieve this? Please provide reasons.

Option 1: Clarify that when the courts are deciding whether an interference with a qualified right is ‘necessary’ in a ‘democratic society’, legislation enacted by Parliament should be given great weight, in determining what is deemed to be ‘necessary’.

Option 2: Require the courts to give great weight to the expressed view of Parliament, when assessing the public interest, for the purposes of determining the compatibility of legislation, or actions by public authorities in discharging their statutory or other duties, with any right.

We would welcome your views on the above options, and the draft clauses after paragraph 10 of Appendix 2.

Section 13 of the Human Rights Act invites the courts to consider freedom of thought, conscience and religion when making a judgement. Yet it is underused. In fact, we would go as far as to argue court decisions relegate religious belief below other rights and has effectively created a hierarchy of rights. This effect is cumulative, so that each decision used to restrict the manifestation of religious freedom provides the grounds for further restriction. It has become normalised to view the manifestation of religious freedom as an option, rather than an essential right to protect.

The ongoing case between *Cornerstone vs Ofsted* illustrates this point.

Cornerstone is an evangelical Christian adoption and fostering charity in the North-East of England. Under the Equality Act 2010 it allows religious organisations to limit their services to people of a particular religion or belief if it is for “the purposes of the organisation”; and furthermore, it allows them to discriminate on grounds of sexual orientation if this is “necessary to comply with the doctrine of the organisation”. In 2019, *Ofsted* in a draft report downgraded the agencies status from ‘good’ to ‘requires improvement’ on the grounds that *Cornerstone’s* recruitment policy to only recruit evangelical heterosexual Christians was discriminatory on the grounds of sexual-orientation. The court of appeal agreed, and *Cornerstone* are due to present their case to the supreme court. You can read more about how this case demonstrates the importance of manifesting religious belief here:

<https://www.eauk.org/news-and-views/cornerstone-loses-its-appeal-to-only-accept-bible-believing-christians-as-potential-carers>

We acknowledge that it is the role of courts to balance competing rights with the specifics of the case. However, it remains unclear why the option of implementing s13, both in this particular case, and in other cases where religious belief is impacted, is deemed of little or no relevance and is in need of strengthening.

We agree that interference with qualified rights needs to meet a high threshold, but are not convinced that the proposals achieve greater protection and not an encroaching judicial benchmarking of when it is justified.

Comments on Appendix 2 draft clauses

In both options the phrase ‘great weight to Parliament’ is used but is unclear what this means in practice.

Aside from this, we believe the proposal wrongly assumes that legislation passed by Parliament always acts in the public interest and/or carefully balances competing rights against another. We would suggest the government implement the Independent Human Rights Reviews recommendation on interpreting convention rights⁴, as it meets the needs of giving UK case law precedence but also provides the courts the option to refer to consider ECtHR case law where need.

Question 29b

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:

b. What do you consider to be the equalities impacts on individuals with particular protected characteristics of each of the proposed options for reform? Please give reasons and supply evidence as appropriate.

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 publication of this consultation Holyrood and Senedd have expressed a preference for the Human Rights Act and are concerned by proposals of a Bill of Rights. The politics between nations cannot create a situation where individual freedom of thought, conscience and religion is better protected in one nation over another, and so we urge the government 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 the Article 9 rights to freedom of belief, and the lack of proposals to strengthen this protection, means that this proposed policy will fail to redress the marginalisation of minority beliefs and worldviews.

⁴ Amend section 2 to clarify the priority of rights protection by giving statutory effect to the position developed in *Osborn v Parole Board* [2013] UKSC 61; [2014] AC 1115 and *Kennedy v Charity Commission* [2014] UKSC 20; [2015] AC 455, therefore applying UK domestic statute and common/ case law first before, if proceeding to interpret a Convention right, taking into account ECtHR case law.