

# Bill of Rights Bill

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Ministry of Justice, are published separately as Bill 117 —EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary Dominic Raab has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Bill of Rights Bill are compatible with the Convention rights.



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[AS INTRODUCED]

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[AS INTRODUCED]

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# B I L L

TO

Reform the law relating to human rights.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## *Introductory*

### **1 Introduction**

- (1) This Act reforms the law relating to human rights by repealing and replacing the Human Rights Act 1998.
- (2) In particular, this Act clarifies and re-balances the relationship between courts in the United Kingdom, the European Court of Human Rights and Parliament by ensuring—
  - (a) that it is the Supreme Court (and not the European Court of Human Rights) that determines the meaning and effect of Convention rights for the purposes of domestic law (see section 3(1)); 10
  - (b) that courts are no longer required to read and give effect to legislation, so far as possible, in a way which is compatible with the Convention rights (see paragraph 2 of Schedule 5, which repeals section 3 of the Human Rights Act 1998);
  - (c) that courts must give the greatest possible weight to the principle that, in a Parliamentary democracy, decisions about the balance between different policy aims, different Convention rights and Convention rights of different persons are properly made by Parliament (see section 7). 15
- (3) It is affirmed that judgments, decisions and interim measures of the European Court of Human Rights— 20
  - (a) are not part of domestic law, and
  - (b) do not affect the right of Parliament to legislate.

*The Convention rights*

## 2 The Convention rights

- (1) In this Act “the Convention rights” means the rights and fundamental freedoms set out in—
  - (a) Articles 2 to 12 and 14 of the Convention, 5
  - (b) Articles 1 to 3 of the First Protocol, and
  - (c) Article 1 of the Thirteenth Protocol,
 as read with Articles 16 to 18 of the Convention.
- (2) Those Articles have effect for the purposes of this Act subject to any designated derogation or reservation (as to which see sections 27 and 28). 10
- (3) The Articles are set out in Schedule 1.

## 3 Interpretation of the Convention rights

- (1) The Supreme Court is the ultimate judicial authority on questions arising under domestic law in connection with the Convention rights.
- (2) A court determining a question which has arisen in connection with a Convention right— 15
  - (a) must have particular regard to the text of the Convention right, and in interpreting the text may have regard to the preparatory work of the Convention;
  - (b) may have regard to the development under the common law of any right that is similar to the Convention right; 20
  - (c) must comply with sections 4 to 8.
- (3) A court determining a question which has arisen in connection with a Convention right—
  - (a) may not adopt an interpretation of the right that expands the protection conferred by the right unless the court has no reasonable doubt that the European Court of Human Rights would adopt that interpretation if the case were before it; 25
  - (b) subject to paragraph (a), may adopt an interpretation of the right that diverges from Strasbourg jurisprudence. 30
- (4) Subsection (3)(a) does not prevent a court from adopting an interpretation of a Convention right where it does so as a result of complying with section 4 (freedom of speech).
- (5) Evidence is to be given for the purposes of this section in proceedings before any court in such manner as may be provided by rules. 35

## 4 Freedom of speech

- (1) When determining a question which has arisen in connection with the right to freedom of speech, a court must give great weight to the importance of protecting the right.

- (2) In this section “the right to freedom of speech” means the Convention right set out in Article 10 of the Convention (freedom of expression) so far as it consists of a right to impart ideas, opinions or information by means of speech, writing or images (including in electronic form).
- (3) This section does not apply – 5
- (a) in criminal proceedings or to the determination (in other proceedings) of any question whether a provision of primary or subordinate legislation that creates a criminal offence is incompatible with a Convention right;
  - (b) to the determination of any question whether the disclosure of information would be in breach of an obligation of confidence which – 10
    - (i) arises under an agreement with any person, or
    - (ii) arises (otherwise than under an agreement) as a result of a professional relationship with any person;
  - (c) to the determination of any question relating to – 15
    - (i) whether a person is entitled to enter, or remain in, the United Kingdom, or
    - (ii) a person’s citizenship;
  - (d) to the determination of any question the determination of which affects or may affect national security. 20

## 5 Positive obligations

- (1) A court may not adopt a post-commencement interpretation of a Convention right that would require a public authority to comply with a positive obligation.
- (2) In deciding whether to apply a pre-commencement interpretation of a Convention right that would require a public authority to comply with a positive obligation, the court must give great weight to the need to avoid applying an interpretation that would – 25
- (a) have an impact on the ability of the public authority or of any other public authority to perform its functions; 30
  - (b) conflict with or otherwise undermine the public interest in allowing public authorities to use their own expertise when deciding how to allocate the financial and other resources available to them, including in particular the professional judgment of those involved in operational matters; 35
  - (c) require the police to protect individuals who are involved in criminal activity or otherwise undermine the police’s ability to determine their operational priorities;
  - (d) require an inquiry or other investigation to be conducted to a standard that is higher than is reasonable in all the circumstances; 40
  - (e) affect the operation of primary legislation (including primary legislation relating to supply and appropriation).

- (3) For the purposes of this section an interpretation of a Convention right is a “pre-commencement interpretation” if either of the following conditions is met.
- (4) The first condition is that—
- (a) at any time before the coming into force of this section, a superior court of record adopted the interpretation, and 5
  - (b) that interpretation has not been overruled by a subsequent judgment of such a court (whether given before or after the coming into force of this section).
- (5) The second condition is that— 10
- (a) at any time before the coming into force of this section, the European Court of Human Rights adopted the interpretation, and
  - (b) that court has not resiled from that interpretation in a subsequent judgment (whether given before or after the coming into force of this section). 15
- (6) For the purposes of this section an interpretation of a Convention right is a “post-commencement interpretation” if it is not a pre-commencement interpretation.
- (7) In this section “positive obligation” means an obligation to do any act.
- 6 Public protection** 20
- (1) Subsection (2) applies where—
- (a) a court is determining a question which has arisen as to whether a relevant Convention right of a person has been breached, and
  - (b) the person was, at the time of the alleged breach, subject to a custodial sentence imposed in respect of an offence of which the person had been convicted. 25
- (2) The court must give the greatest possible weight to the importance of reducing the risk to the public from persons who have committed offences in respect of which custodial sentences have been imposed.
- (3) The alleged breaches of relevant Convention rights in relation to which subsection (2) applies include, in particular, breaches alleged to arise in connection with— 30
- (a) a decision of any person about whether a person subject to a custodial sentence should be released from custody;
  - (b) a decision of any person about whether a person subject to a custodial sentence should be placed in a particular part of a prison. 35
- (4) In this section “custodial sentence” means a sentence specified in regulations made by the Secretary of State.
- (5) Regulations under subsection (4) are subject to the negative procedure.
- (6) For the purposes of this section a person is “subject to” a custodial sentence at any time during the period of the custodial sentence, regardless of whether 40



the person is or is not in custody (but disregarding any period before the sentence comes into effect).

- (7) In this section “relevant Convention right” means any Convention right other than the Convention rights set out in the following Articles of the Convention—

- (a) Article 2 (right to life);
- (b) Article 3 (prohibition of torture);
- (c) Article 4(1) (prohibition of slavery);
- (d) Article 7 (no punishment without law).

## 7 Decisions that are properly made by Parliament

- (1) This section applies where —

- (a) a court is determining an incompatibility question in relation to a provision of an Act, and
- (b) in order to determine that question, it is necessary to decide whether the effect of the provision (whether considered alone or with any other relevant provision or matter) on the way in which the Convention rights are secured strikes an appropriate balance—
  - (i) as between different policy aims,
  - (ii) as between different Convention rights, or
  - (iii) as between the Convention rights of different persons;
 or as between any combination of matters mentioned in sub-paragraphs (i) to (iii).

- (2) The court must—

- (a) regard Parliament as having decided, in passing the Act, that the Act strikes an appropriate balance as between the matters mentioned in subsection (1)(b)(i) to (iii), and
- (b) give the greatest possible weight to the principle that, in a Parliamentary democracy, decisions about how such a balance should be struck are properly made by Parliament.

- (3) In this section “an incompatibility question”, in relation to a provision of an Act, means a question whether—

- (a) the provision is incompatible with a Convention right, or
- (b) a public authority which acts (or proposes to act) in accordance with the provision does so in a way which is incompatible with a Convention right.

- (4) A reference in subsection (3)(b) to acting “in accordance with” a provision is to acting so as to comply with, or give effect to or enforce, the provision.

## 8 Article 8 of the Convention: deportation

- (1) This section applies where a court is considering, in relation to a decision of the Secretary of State to make a deportation order in respect of a foreign criminal (“P”), the question whether any provision of primary or subordinate

legislation relating to deportation (a “deportation provision”) is incompatible with the right to respect for private and family life.

- (2) No deportation provision may be found to be incompatible with the right to respect for private and family life unless the court considers that the provision requires a public authority to act in respect of P in a way that would result in manifest harm to a qualifying member of P’s family that is so extreme that the harm would override the otherwise paramount public interest in removing P from or requiring P to leave the United Kingdom. 5
- (3) For the purposes of subsection (2), harm is “extreme” only if— 10
- (a) it is exceptional and overwhelming, and
  - (b) it is incapable of being mitigated to any significant extent or is otherwise irreversible.
- (4) For the purposes of subsection (2), it is in only the most compelling circumstances that— 15
- (a) the court could consider that removing P from or requiring P to leave the United Kingdom would cause extreme harm to a member of P’s family other than a qualifying child, and
  - (b) the court could not reasonably conclude that the strong public interest in removing P from or requiring P to leave the United Kingdom outweighs harm to a member of P’s family other than a qualifying child. 20
- (5) In this section—
- “deportation provision” has the meaning given in subsection (1);
  - “qualifying child”, in relation to P, means a person— 25
    - (a) who is under the age of 18,
    - (b) with whom P has always had and continues to have a genuine and subsisting parental relationship, and
    - (c) who is a British citizen or has lived in the United Kingdom for a continuous period of seven years or more;
  - “qualifying member of P’s family” means a member of P’s family— 30
    - (a) who is a qualifying child, or
    - (b) who is otherwise dependent on P and is a British citizen or is settled in the United Kingdom within the meaning of the Immigration Act 1971 (see section 33(2A) of that Act);
  - “right to respect for private and family life” means the right set out in Article 8 of the Convention. 35

## 9 Jury trial

- (1) The ways in which the right to a fair trial is secured in the United Kingdom include, in the case of a person charged with an offence, legislation under which (absent any of the circumstances mentioned in subsection (2)) the person is tried before a jury. 40
- (2) Those circumstances are—
- (a) where the person pleads guilty;

- (b) where the person chooses to be tried without a jury;
  - (c) where the offence is prescribed by law as insufficiently serious to be required to be tried before a jury;
  - (d) where it is otherwise prescribed by law that the person should be tried without a jury.
- (3) In this section “right to a fair trial” means the Convention right set out in Article 6 of the Convention.

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### *Legislation*

## **10 Declaration of incompatibility**

- (1) Subsection (2) applies in any proceedings in which—
- (a) a court is satisfied that a provision of primary legislation is incompatible with a Convention right, or
  - (b) a court—
    - (i) is satisfied that a provision of subordinate legislation is incompatible with a Convention right, and
    - (ii) does not quash the provision, or declare it invalid, by reason of the incompatibility.
- (2) The court may make a declaration that the provision is incompatible with the Convention right.
- (3) A declaration under this section (“a declaration of incompatibility”)—
- (a) does not affect the validity, continuing operation or enforcement of the provision in respect of which it is made, and
  - (b) is not binding on the parties to the proceedings in which it is made.
- (4) In this section “court” means—
- (a) the Supreme Court;
  - (b) the Judicial Committee of the Privy Council;
  - (c) the Court Martial Appeal Court;
  - (d) in Scotland—
    - (i) the High Court of Justiciary sitting otherwise than as a trial court, or
    - (ii) the Court of Session;
  - (e) in England and Wales or Northern Ireland, the High Court or the Court of Appeal;
  - (f) the Court of Protection, in any matter being dealt with by the President of the Family Division, the Chancellor of the High Court or a puisne judge of the High Court.

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## **11 Right of Crown to intervene**

- (1) Where a court is considering whether to make a declaration of incompatibility, the Crown is entitled to notice in accordance with rules.

- (2) In any case to which subsection (1) applies a relevant UK authority is entitled, on giving notice in accordance with rules, to be joined as a party to the proceedings.
- (3) In subsection (2) “a relevant UK authority” means—
- (a) a Minister of the Crown (or a person nominated by a Minister of the Crown), 5
  - (b) a member of the Scottish Government,
  - (c) the Welsh Ministers,
  - (d) a Northern Ireland Minister, or
  - (e) a Northern Ireland department. 10
- (4) Notice under subsection (2) may be given at any time during the proceedings.
- (5) A person who has been made a party to criminal proceedings (other than in Scotland) as the result of a notice under subsection (2) may, with permission, appeal to the Supreme Court against any declaration of incompatibility made in the proceedings. 15
- (6) In subsection (5) “permission” means permission granted by the court making the declaration of incompatibility or by the Supreme Court.

*Public authorities*

**12 Acts of public authorities**

- (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right. 20
- (2) Subsection (1) does not apply to an act if—
- (a) as the result of one or more provisions of primary legislation, the authority could not have acted differently, or
  - (b) the authority was acting so as to give effect to or enforce— 25
    - (i) one or more provisions of primary legislation that are incompatible with the Convention rights, or
    - (ii) one or more provisions of subordinate legislation that are incompatible with the Convention rights where (disregarding the possibility of revocation) primary legislation prevents removal of the incompatibility. 30
- (3) In this Act (except in section 5) a reference to an “act” of a public authority includes a failure to act (and references to the doing of an act are to be read accordingly). 35  
This is subject to subsection (4).
- (4) In this Act a reference to an “act” of a public authority does not include a failure—
- (a) to introduce in, or lay before, Parliament a proposal for legislation, or
  - (b) to make any primary legislation or remedial regulations.

- (5) In this Act a reference to an “act” of a public authority does not include a reference to the interpretation of legislation.

### 13 Proceedings

- (1) Subsection (2) applies to a person who—
- (a) claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 12(1), and 5
  - (b) is (or would be) a victim of the act (or proposed act).
- (2) The person may—
- (a) bring proceedings against the authority under this Act, or
  - (b) rely on the Convention right or rights concerned— 10
    - (i) in any legal proceedings brought against the person, or
    - (ii) in establishing a cause of action arising otherwise than under this Act.
- (3) Proceedings under subsection (2)(a) may be brought—
- (a) in the High Court on an application for judicial review or in the Court of Session on a petition for judicial review, or 15
  - (b) if brought otherwise than on such an application or petition, in such court as may be determined in accordance with rules.
- (4) Proceedings under subsection (2)(a) must be brought before the end of—
- (a) the period of one year beginning with the date on which the act complained of took place, or 20
  - (b) such longer period as the court considers equitable having regard to all the circumstances,
- but that is subject to any rule imposing a stricter time limit in relation to the procedure in question. 25
- (5) The proceedings under subsection (2)(a) that may be brought as mentioned in subsection (3)(b) include a counterclaim or similar proceeding.
- (6) For the purposes of this Act a person is a “victim” of an act (or proposed act) only if the person would be regarded as a victim for the purposes of Article 34 of the Convention (individual applications) if proceedings were brought in the European Court of Human Rights in respect of that act (or proposed act). 30
- (7) This section applies in relation to an act (or proposed act) which is done (or is proposed to be done) outside the British Islands if and only if the act (or proposed act) is within the jurisdiction of the United Kingdom for the purposes of Article 1 of the Convention (obligation to respect human rights). 35
- (8) Subsection (7) is subject to section 14(1).
- (9) Nothing in this Act creates a criminal offence.

## 14 Overseas military operations

- (1) Section 13 does not confer a right on a person to bring proceedings, or rely on a Convention right, in relation to an act (or proposed act) of a public authority which is done (or is proposed to be done) outside the British Islands in the course of overseas military operations. 5
- (2) Section 13 does not confer a right on a person to bring proceedings, or rely on a Convention right, in relation to an act (or proposed act) of a public authority which is done (or is proposed to be done) within the British Islands where—
- (a) the act is done (or proposed to be done) wholly for the purposes of overseas military operations, and 10
  - (b) at the time the act is (or would be) done the person is (or would be) outside the British Islands.
- (3) Where subsection (2) —
- (a) prevents a person (“P”) from bringing proceedings, or relying on a Convention right, in relation to an act (or proposed act) of a public authority, or 15
  - (b) would do so if P were not deceased,
- it also prevents any other person from bringing proceedings, or relying on a Convention right, under section 13 in relation to that act (or proposed act) if their right to do so arises only as a result of their relationship with P. 20
- (4) Section 13 does not confer a right on a person to bring proceedings, or rely on a Convention right, in relation to an act (or proposed act) of a public authority which is done (or is proposed to be done) for the purposes of any inquiry or other investigation into— 25
- (a) whether an act (or proposed act) within subsection (1) or (2) was done (or was proposed to be done), or
  - (b) the circumstances in which any such act was done (or was proposed to be done).
- (5) Nothing in this section prevents any person from relying on a Convention right in any criminal proceedings. 30
- (6) In this section—
- (a) “overseas military operations” means any operations outside the British Islands, including peacekeeping operations and operations for dealing with terrorism, civil unrest or serious public disorder, in the course of which members of Her Majesty’s forces come under attack or face the threat of attack or violent resistance; 35
  - (b) “Her Majesty’s forces” has the same meaning as in the Armed Forces Act 2006 (see section 374 of that Act).

## 15 Permission required to bring proceedings

- (1) No proceedings under section 13(2)(a) may be brought by a person in relation to an act (or proposed act) of a public authority unless the person has obtained permission from the court in which the proceedings are to be brought. 40

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- (2) In subsection (1) “proceedings” does not include—
- (a) proceedings brought in Scotland or Northern Ireland on a petition or application for judicial review (as to which see instead section 16);
  - (b) proceedings before the tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000 (the Investigatory Powers Tribunal);
  - (c) proceedings relating to a deportation order made by the Secretary of State in respect of a foreign criminal.
- (3) The court may grant permission only if it considers that—
- (a) the person is (or would be) a victim of the act (or proposed act), and
  - (b) the person has suffered (or would suffer) a significant disadvantage in relation to the act (or proposed act).
- (4) The court may disregard the requirement in subsection (3)(b) if it considers that it is appropriate to do so for reasons of wholly exceptional public interest.
- (5) If the court grants permission in reliance on subsection (4), the court must certify that the condition in that subsection is met.
- (6) A person who is refused permission under this section—
- (a) may appeal against that refusal to such court as may be specified in rules, but
  - (b) may not appeal to any other court against any decision made on an appeal under paragraph (a).
- (7) Rules may make further provision about permission and appeals under this section.
- (8) For the purposes of this section a person has suffered (or would suffer) a “significant disadvantage” in relation to an act (or proposed act) only if the person would be regarded as suffering significant disadvantage for the purposes of Article 35 of the Convention (admissibility criteria) if proceedings were brought in the European Court of Human Rights in respect of that act (or proposed act).
- 16 Judicial review: sufficient interest**
- (1) Subsection (2) applies in relation to—
- (a) an application for judicial review in Northern Ireland that is made by virtue of section 13(3)(a);
  - (b) an application for judicial review in England and Wales, or in Northern Ireland, that is not made by virtue of section 13(3)(a), so far as it relies on a Convention right or rights.
- (2) The applicant is to be taken to have a sufficient interest in relation to the act (or proposed act) in question only if the person is (or would be) a victim of the act (or proposed act).
- (3) Subsection (4) applies in relation to—
- (a) a petition for judicial review in Scotland that is made by virtue of section 13(3)(a);

- (b) any other petition for judicial review in Scotland so far as it relies on a Convention right or rights.
- (4) The applicant is to be taken to have title and interest to sue in relation to the act (or proposed act) in question only if the person is (or would be) a victim of the act (or proposed act).

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## 17 Judicial remedies: general

- (1) If a court finds that an act (or proposed act) of a public authority is (or would be) unlawful under section 12(1), the court may, subject to subsection (2) and section 18, grant such remedy as it considers just and appropriate.
- (2) The court—
  - (a) may grant a remedy other than damages only if it is within the powers of the court to grant that kind of remedy;
  - (b) may award damages only if the court has power to award damages, or order the payment of compensation, in civil proceedings.
- (3) The person who has power to make rules for the purposes of this Act in relation to a particular tribunal may, to the extent the person considers it necessary to ensure that the tribunal can provide an appropriate remedy in relation to an act (or proposed act) of a public authority which is (or would be) unlawful as a result of section 12(1), by regulations add to—
  - (a) the relief or remedies which the tribunal may grant, or
  - (b) the grounds on which it may grant any of them.
- (4) Regulations under subsection (3) are subject to the affirmative procedure.
- (5) A public authority against which damages are awarded under this section is to be treated—
  - (a) in Scotland, for the purposes of section 3 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 as if the award were made in an action of damages in which the authority has been found liable in respect of loss or damage to the person to whom the award is made;
  - (b) for the purposes of the Civil Liability (Contribution) Act 1978 as liable in respect of damage suffered by the person to whom the award is made.
- (6) A reference in this section or section 18 to a court granting a remedy is to the court—
  - (a) granting a remedy or relief, or
  - (b) making an order.

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## 18 Judicial remedies: damages

- (1) A court may award damages to a person under section 17 only if—
  - (a) the person has suffered loss or damage arising from the unlawful act, and

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- (b) the court is satisfied that it is unable to grant a remedy that is just and appropriate without making an award of damages.
- (2) Subsection (1) does not apply in relation to an unlawful act which is incompatible with the Convention right set out in Article 5 of the Convention (right to liberty and security). 5
- (3) The court must not award a person an amount of damages which is greater than the amount which, in the opinion of the court, the European Court of Human Rights would award that person if the case were before it.
- (4) The court must comply with subsections (5) to (7) – 10
- (a) when determining whether the condition in subsection (1)(b) is met, and
- (b) when determining the amount of any award of damages under section 17.
- (5) The court must take into account all the circumstances of the case including, in particular – 15
- (a) any conduct of the person that the court considers relevant (whether or not the conduct is related to the unlawful act);
- (b) anything done by the public authority to avoid acting incompatibly with the Convention right in question;
- (c) how serious the effects of the unlawful act are; 20
- (d) any other remedy granted in relation to the unlawful act (by that or any other court);
- (e) the consequences of any other decision (of that or any other court) in respect of the unlawful act.
- (6) The court must also take into account, and give great weight to, the importance of minimising the impact that any contemplated award of damages would have on the ability of the public authority, or of any other public authority, to perform its functions. 25
- (7) In complying with subsection (6) the court must have regard (in particular) to future awards of damages which may fall to be made in cases involving issues that are the same as, or similar to, those involved in the unlawful act. 30
- (8) In this section –
- (a) a reference to an unlawful act includes a proposed unlawful act;
- (b) a reference to damages includes compensation.
- 19 Judicial acts** 35
- (1) Proceedings under section 13(2)(a) in respect of a judicial act may be brought only –
- (a) by exercising a right of appeal,
- (b) on an application (in Scotland a petition) for judicial review, or
- (c) in such other forum as may be prescribed by rules. 40
- (2) That does not affect any rule of law which prevents a court from being the subject of judicial review.

- (3) In proceedings under this Act in respect of a judicial act done in good faith, damages may not be awarded otherwise than—
- (a) to compensate a person to the extent required by Article 5(5) of the Convention,
  - (b) to compensate a person for a judicial act that is incompatible with Article 6 of the Convention in circumstances where the person is detained and, but for the incompatibility, the person would not have been detained or would not have been detained for so long, or 5
  - (c) to compensate a person for a judicial act that—
    - (i) is incompatible with Article 8 of the Convention, and 10
    - (ii) is inconsistent with the requirements of procedural fairness.
- (4) An award of damages in respect of a judicial act is to be made against the Crown; but no award may be made unless the appropriate person, if not a party to the proceedings, is joined.
- (5) In this section— 15
- “appropriate person” means the Minister (or, in Northern Ireland, Northern Ireland department) responsible for the court concerned, or a person or government department nominated by that Minister (or, in Northern Ireland, that Northern Ireland department);
  - “judge” includes a member of a tribunal, a justice of the peace (or, in Northern Ireland, a lay magistrate) and a clerk or other officer entitled to exercise the jurisdiction of a court; 20
  - “judicial act” means a judicial act of a court and includes an act done on the instructions, or on behalf, of a judge.

*Limits on powers of court etc* 25

## 20 Limits on court’s power to allow appeals against deportation

- (1) This section applies where—
- (a) the Secretary of State decides to make a deportation order in respect of a foreign criminal (“P”), and
  - (b) P appeals to the relevant tribunal under section 82 of the 2002 Act on the grounds that removing P from or requiring P to leave the United Kingdom in accordance with the deportation order would be unlawful under section 12 of this Act. 30
- (2) So far as the appeal is by reference to the right to a fair trial, the relevant tribunal must dismiss the appeal unless it considers that removing P from or requiring P to leave the United Kingdom in accordance with the deportation order would result in a breach of the right to a fair trial so fundamental as to amount to a nullification of that right. 35
- (3) For the purposes of subsection (2), in a case where the Secretary of State’s decision to make a deportation order in respect of P was informed by deportation assurances, the relevant tribunal must— 40
- (a) presume that the Secretary of State’s assessment of those assurances is correct, and

- (b) accordingly –
- (i) treat the assurances as determinative of the appeal, and
  - (ii) dismiss the appeal,
- unless the relevant tribunal considers that it could not reasonably conclude that the assurances would be sufficient to prevent a breach of the right to a fair trial so fundamental as to amount to a nullification of that right. 5
- (4) In this section –
- “the 2002 Act” means the Nationality, Immigration and Asylum Act 2002;
  - “deportation assurances” means assurances from the country or territory to which it is proposed to deport P about how P would be treated in that country or territory; 10
  - “the relevant tribunal” means the First-tier Tribunal or, in a case that is certified under section 82A of the 2002 Act, the Upper Tribunal;
  - “right to a fair trial” means the right set out in Article 6 of the Convention. 15

## 21 Limit on court’s power to require disclosure of journalistic sources

- (1) No court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, a journalistic source unless the court is satisfied –
- (a) that the disclosure is necessary – 20
    - (i) in the interests of justice, or
    - (ii) in the interests of national security or for the prevention of crime or disorder, and
  - (b) that there are exceptional and compelling reasons why it is in the public interest for the disclosure to be made. 25
- (2) In determining whether there are exceptional and compelling reasons why it is in the public interest for the disclosure to be made, the court must give great weight to the public interest that exists in protecting journalistic sources, including the fact that their protection supports the Convention right set out in Article 10 of the Convention (freedom of expression). 30
- (3) In this section –
- “court” includes any body exercising the judicial power of the State (and “legal proceedings” is to be construed accordingly);
  - “journalistic source” means a person who supplies information to another person – 35
    - (a) intending that other person to use the information for the purposes of journalism, or
    - (b) knowing that the information is likely to be used for those purposes.

**22 Limit on court's power to grant relief that affects freedom of expression**

- (1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right set out in Article 10 of the Convention (freedom of expression).
- (2) If the person against whom the application for relief is made (“the respondent”) is neither present nor represented, no such relief is to be granted unless the court is satisfied –
  - (a) that the applicant has taken all practicable steps to notify the respondent; or
  - (b) that there are exceptional and compelling reasons why the respondent should not be notified.
- (3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.
- (4) In this section “relief” includes any remedy or order (other than in criminal proceedings).

**23 Freedom of thought, conscience and religion**

- (1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise by a religious organisation of the Convention right set out in Article 9 of the Convention (freedom of thought, conscience and religion).
- (2) The court must have particular regard to the importance of the right.
- (3) The reference in subsection (1) to a religious organisation includes a reference to its members collectively.

**24 Interim measures of the European Court of Human Rights**

- (1) For the purposes of determining the rights and obligations under domestic law of a public authority or any other person, no account is to be taken of any interim measure issued by the European Court of Human Rights.
- (2) Subsection (3) applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of a Convention right.
- (3) The court may not have regard to any interim measure issued by the European Court of Human Rights.

*Remedial action***25 Duty to notify Parliament of failure to comply with the Convention**

- (1) Subsection (2) applies if –
  - (a) the European Court of Human Rights finds, in its final judgment in a case to which the United Kingdom is a party, that the United

- Kingdom has failed to comply with an obligation arising under the Convention, or
- (b) the United Kingdom, pursuant to rules of that court, makes a declaration acknowledging that the United Kingdom has failed to comply with such an obligation. 5
- (2) The Secretary of State must lay before Parliament notice of the court's judgment or (as the case may be) the United Kingdom's declaration.

## 26 Power to take remedial action

- (1) This section applies if—
- (a) a provision of legislation has been declared under section 10 to be incompatible with a Convention right and, if an appeal lies— 10
- (i) all persons who may appeal have stated in writing that they do not intend to do so;
- (ii) the time for bringing an appeal has expired and no appeal has been brought within that time; or 15
- (iii) an appeal brought within that time has been determined or abandoned; or
- (b) it appears to a Minister of the Crown or Her Majesty in Council that, having regard to a finding of the European Court of Human Rights made after the coming into force of this section in proceedings against the United Kingdom, a provision of legislation is incompatible with an obligation of the United Kingdom arising from the Convention. 20
- (2) If a Minister of the Crown considers that there are compelling reasons for proceeding under this section, the Minister may by regulations make such amendments to the legislation as the Minister considers necessary to remove the incompatibility. 25
- (3) If, in the case of subordinate legislation, a Minister of the Crown considers—
- (a) that it is necessary to amend the primary legislation under which the subordinate legislation in question was made, in order to enable the incompatibility to be removed, and 30
- (b) that there are compelling reasons for proceeding under this section, the Minister may by regulations make such amendments to the primary legislation as the Minister considers necessary.
- (4) This section also applies where the provision in question is in subordinate legislation and has been quashed, or declared invalid, by reason of incompatibility with a Convention right and the Minister proposes to proceed under paragraph 2(b) of Schedule 2. 35
- (5) If the legislation is an Order in Council, the power conferred by subsection (2) or (3) is exercisable by Her Majesty in Council (and Schedule 2 applies accordingly). 40
- (6) This section does not confer power to amend—
- (a) a Measure of the Church Assembly or of the General Synod of the Church of England, or

- (b) this Act.
- (7) Schedule 2 makes further provision about remedial regulations.

*Derogations and reservations*

## 27 Derogations

- (1) The Secretary of State may by regulations designate a UK derogation. 5
- (2) Regulations under subsection (1)—
  - (a) may be made in anticipation of the making of a UK derogation;
  - (b) are subject to the made affirmative procedure.
- (3) A UK derogation ceases to be designated—
  - (a) if the UK derogation is amended, replaced or withdrawn (but this does not limit the power to make new regulations under subsection (1)); 10
  - (b) (unless the UK derogation has already ceased to be designated under paragraph (a)) at the end of the period of five years beginning with the date on which the regulations under subsection (1) in relation to it were made. 15
- (4) At any time before the end of the period—
  - (a) fixed by subsection (3)(b), or
  - (b) extended by regulations under this subsection,
 the Secretary of State may by regulations extend it by a further period of five years. 20
- (5) Regulations under subsection (4) are subject to the affirmative procedure.
- (6) In this Act—
  - (a) “UK derogation” means a derogation by the United Kingdom from an Article of the Convention or of any protocol to the Convention; 25
  - (b) “designated derogation” means a UK derogation that is for the time being designated by virtue of subsection (1) and has not ceased to be designated in accordance with this section.

## 28 Reservations

- (1) The UK reservation to Article 2 of the First Protocol to the Convention is a designated reservation. 30
- (2) A UK reservation ceases to be designated if it is wholly withdrawn.
- (3) If the UK reservation mentioned in subsection (1) ceases to be designated as a result of subsection (2), the Secretary of State must by regulations amend subsection (1) so as to reflect the change. 35
- (4) A statutory instrument containing regulations under subsection (3) must be laid before Parliament after it is made.
- (5) In this Act—

- (a) “UK reservation” means a reservation by the United Kingdom to an Article of the Convention or of any protocol to the Convention;
- (b) “designated reservation” means a UK reservation that is designated under subsection (1) and has not ceased to be designated as a result of subsection (2).

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## 29 Designated derogations and reservations to be set out in Schedule 3

- (1) Designated derogations and designated reservations are set out in Schedule 3.
- (2) If it appears to the Secretary of State that Schedule 3 has become out of date, the Secretary of State must by regulations amend it to bring it up to date.
- (3) A statutory instrument containing regulations under this section must be laid before Parliament after it is made.

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### *Judges of the European Court of Human Rights*

## 30 Appointment to European Court of Human Rights

- (1) In this section “judicial office” means the office of –
  - (a) judge of the Supreme Court;
  - (b) Lord Justice of Appeal, Justice of the High Court or Circuit judge, in England and Wales;
  - (c) judge of the Court of Session, Lord Commissioner of Justiciary or sheriff, in Scotland;
  - (d) Lord Justice of Appeal, judge of the High Court or county court judge, in Northern Ireland;
  - (e) judge of the Upper Tribunal;
 and “judicial office holder” means a person holding any of those offices.
- (2) A judicial office holder –
  - (a) may become a judge of the European Court of Human Rights (“the Court”) without being required to relinquish their judicial office; but
  - (b) is not required to perform the duties of their judicial office while the office holder is a judge of the Court.
- (3) In respect of any period during which the judicial office holder concerned is a judge of the Court –
  - (a) a judge of the Supreme Court is not to count as such for the purposes of section 23(2) (maximum number of judges) or section 34 (salaries and allowances) of the Constitutional Reform Act 2005;
  - (b) a Lord Justice of Appeal or Justice of the High Court is not to count as a judge of the relevant court for the purposes of section 2(1) or 4(1) of the Senior Courts Act 1981 (maximum number of judges) nor as a judge of the Senior Courts for the purposes of section 12(1) to (6) of that Act (salaries etc.);
  - (c) a judge of the Court of Session is not to count as a judge of that court for the purposes of section 1(1) of the Court of Session Act 1988

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- (maximum number of judges) or of section 9(1)(c) of the Administration of Justice Act 1973 (“the 1973 Act”) (salaries etc.);
- (d) a Lord Justice of Appeal or judge of the High Court in Northern Ireland is not to count as a judge of the relevant court for the purposes of section 2(1) or 3(1) of the Judicature (Northern Ireland) Act 1978 (maximum number of judges) nor as a judge of the Court of Judicature of Northern Ireland for the purposes of section 9(1)(d) of the 1973 Act (salaries etc.); 5
- (e) a judge of the Upper Tribunal is not to count as such for the purposes of paragraph 5 of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007 (remuneration, allowances and expenses); 10
- (f) a Circuit judge is not to count as such for the purposes of section 18 of the Courts Act 1971 (salaries etc.);
- (g) a sheriff is not to count as such for the purposes of section 16 of the Courts Reform (Scotland) Act 2014 (2014 asp 18) (remuneration and allowances); 15
- (h) a county court judge of Northern Ireland is not to count as such for the purposes of section 106 of the County Courts Act Northern Ireland) 1959 (salaries etc.).
- (4) If a person holding the office of sheriff principal is appointed a judge of the Court, section 6 of the Courts Reform (Scotland) Act 2014 (temporary appointment of sheriff principal) applies, while the person is a judge of the Court, as if the person’s office of sheriff principal is vacant. 20
- (5) Schedule 4 makes provision about judicial pensions in relation to a judicial office holder who serves as a judge of the Court. 25
- (6) Regulations may make transitional provision (including, in particular, provision for a temporary increase in the maximum number of judges) in relation to any judicial office holder who has completed service as a judge of the Court.
- (7) The power to make regulations under subsection (6) is exercisable by – 30
- (a) the Lord Chancellor, for provision which –
- (i) relates to a person holding an office mentioned in subsection (1)(a), (b) or (e),
- (ii) relates to a person holding an office mentioned in subsection (1)(c) and would be outside the legislative competence of the Scottish Parliament if it were contained in an Act of the Scottish Parliament; or 35
- (iii) relates to a person holding an office mentioned in subsection (1)(d) and would be outside the legislative competence of the Northern Ireland Assembly if contained in an Act of that Assembly; 40
- (b) the Scottish Ministers, for provision which relates to a person holding an office mentioned in subsection (1)(c) (other than provision falling within paragraph (a)(ii));
- (c) the Department of Justice in Northern Ireland, for provision which relates to a person holding an office mentioned in subsection (1)(d) (other than provision falling within paragraph (a)(iii)). 45



- (8) Regulations under subsection (6) are subject to the negative procedure.
- (9) The following paragraphs apply to the making of regulations under subsection (6) in relation to any holder of a judicial office listed in subsection (1)(b)–
- (a) before deciding what transitional provision it is appropriate to make, the person making the regulations must consult the Lord Chief Justice of England and Wales; 5
  - (b) before making the regulations, that person must consult the Lord Chief Justice of England and Wales.
- (10) The Lord Chief Justice of England and Wales may nominate the holder of an office falling within section 109(4) of the Constitutional Reform Act 2005 to exercise the Lord Chief Justice’s functions under subsection (9). 10
- (11) The following paragraphs apply to the making of regulations under subsection (6) in relation to any holder of a judicial office listed in subsection (1)(d)–
- (a) before deciding what transitional provision it is appropriate to make, the person making the regulations must consult the Lord Chief Justice of Northern Ireland; 15
  - (b) before making the regulations, that person must consult the Lord Chief Justice of Northern Ireland.
- (12) The Lord Chief Justice of Northern Ireland (“the Lord Chief Justice”) may nominate any of the following to exercise the Lord Chief Justice’s functions under subsection (11)– 20
- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).

*Rules and regulations* 25

### 31 Rules

- (1) In this Act “rules” means rules of court, or–
- (a) in relation to proceedings before a court or tribunal in England and Wales, rules made by the Lord Chancellor for the purposes of this Act; 30
  - (b) in relation to proceedings before a court or tribunal in Scotland, rules made by the Scottish Ministers for the purposes of this Act;
  - (c) in relation to proceedings before a court in Northern Ireland, rules made by the Department of Justice in Northern Ireland for the purposes of this Act; 35
  - (d) in relation to proceedings before a tribunal in Northern Ireland, rules made by a Northern Ireland department for the purposes of this Act;
- and includes provision made by order under section 1 of the Courts and Legal Services Act 1990.
- (2) In making rules, regard must be had to section 19 (judicial acts). 40
- (3) Any power of the Lord Chancellor to make rules (other than rules of court) is exercisable by statutory instrument.

- (4) Any power of a Northern Ireland department to make rules (other than rules of court) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (5) A statutory instrument containing rules (other than rules of court) made by the Lord Chancellor is subject to annulment in pursuance of a resolution of either House of Parliament. 5
- (6) Rules (other than rules of court) made by the Scottish Ministers are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).
- (7) Rules (other than rules of court) made by a Northern Ireland department are subject to negative resolution within the meaning given in section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)). 10

## 32 Regulations

- (1) Regulations under this Act may make—
- (a) consequential, supplementary, incidental, transitional, or saving provision; 15
- (b) different provision for different purposes.
- Paragraph (a) does not apply to regulations under section 37, 39 or 40.
- (2) Any power of a Minister of the Crown to make regulations under this Act is exercisable by statutory instrument. 20
- (3) Any power of a Northern Ireland department to make regulations under this Act is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (4) Where regulations under this Act are subject to “the negative procedure”—
- (a) the statutory instrument containing them, if made by a Minister of the Crown, is subject to annulment in pursuance of a resolution of either House of Parliament; 25
- (b) the regulations, if made by the Scottish Ministers, are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)); 30
- (c) the regulations, if made by a Northern Ireland department, are subject to negative resolution within the meaning given in section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).
- (5) Where regulations under this Act are subject to “the affirmative procedure”—
- (a) the regulations, if made by a Minister of the Crown, may not be made unless a draft of the instrument containing them has been laid before, and approved by a resolution of, each House of Parliament; 35
- (b) the regulations, if made by the Scottish Ministers, are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)); 40
- (c) the regulations, if made by a Northern Ireland department, may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.

- (6) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsection (5)(c) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.

### **33 Regulations subject to made affirmative procedure**

- (1) This section applies in relation to regulations under this Act that are subject to “the made affirmative procedure”. 5
- (2) The statutory instrument containing the regulations must be laid before Parliament after being made.
- (3) The regulations cease to have effect at the end of the period of 40 days beginning with the day on which the statutory instrument containing them is made unless, during that period, the instrument is approved by a resolution of each House of Parliament. 10
- (4) In calculating the period of 40 days, no account is to be taken of any whole days that fall within a period during which— 15
- (a) Parliament is dissolved or prorogued, or
- (b) both Houses of Parliament are adjourned for more than four days.
- (5) If the regulations cease to have effect as a result of subsection (3), that does not— 20
- (a) affect the validity of anything previously done in reliance on the regulations, or
- (b) prevent the making of new regulations.

### *Interpretation*

### **34 Meaning of “public authority”**

- (1) In this Act (apart from Schedule 1) “public authority” includes— 25
- (a) a court, and
- (b) any person certain of whose functions are functions of a public nature, but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.
- (2) In relation to a particular act, a person is not a public authority by virtue only of subsection (1)(b) if the nature of the act is private. 30

### **35 Meaning of “Strasbourg jurisprudence”**

- (1) In this Act “Strasbourg jurisprudence” means any— 35
- (a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights,
- (b) opinion of the Commission given in a report adopted under Article 31 of the Convention,
- (c) decision of the Commission in connection with Article 26 or 27(2) of the Convention, or

- (d) decision of the Committee of Ministers taken under Article 46 of the Convention.
- (2) In subsection (1)–
- (a) the references in paragraphs (b) and (c) to Articles are to Articles of the Convention as they had effect immediately before the coming into force of the Eleventh Protocol; 5
- (b) the reference in paragraph (d) to Article 46 includes Articles 32 and 54 of the Convention as they had effect immediately before the coming into force of the Eleventh Protocol;
- (c) a reference to a report or decision of the Commission or a decision of the Committee of Ministers includes a report or decision made as provided by paragraphs 3, 4 and 6 of Article 5 of the Eleventh Protocol (transitional provisions). 10
- (3) In this section “the Commission” means the European Commission of Human Rights. 15

### 36 Interpretation

- (1) In this Act (apart from Schedule 1)–
- “amend” includes repeal, revoke and apply (with or without modifications);
- “the British Islands” includes the territorial sea adjacent to the United Kingdom and the territorial sea adjacent to any of the Channel Islands or the Isle of Man; 20
- “the Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the United Kingdom; 25
- “court” (except in sections 10, 11 and 31) includes a tribunal;
- “criminal proceedings” includes relevant armed forces proceedings (as to which see subsection (2));
- “declaration of incompatibility” means a declaration under section 10; 30
- “domestic law” means the law of the United Kingdom or any part of the United Kingdom;
- “foreign criminal” has the same meaning as in section 32 of the UK Borders Act 2007;
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975; 35
- “Northern Ireland Minister” includes the First Minister and the deputy First Minister in Northern Ireland;
- “primary legislation” means any – 40
- (a) public general Act;
- (b) local and personal Act;
- (c) private Act;
- (d) Measure of the Church Assembly;
- (e) Measure of the General Synod of the Church of England;

- (f) Order in Council—
- (i) made in exercise of Her Majesty’s Royal Prerogative;
  - (ii) made under section 38(1)(a) of the Northern Ireland Constitution Act 1973 or section 84(1) of the Northern Ireland Act 1998; or 5
  - (iii) amending an Act of a kind mentioned in paragraph (a), (b) or (c);
- (g) order or other instrument made under primary legislation (otherwise than by the Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Assembly Government, a member of the Scottish Government, a Northern Ireland Minister or a Northern Ireland department) to the extent to which it operates to bring one or more provisions of that legislation into force or amends any primary legislation; 10
- “the First Protocol” means the protocol to the Convention agreed at Paris on 20th March 1952; 15
- “the Eleventh Protocol” means the protocol to the Convention (restructuring the control machinery established by the Convention) agreed at Strasbourg on 11th May 1994;
- “the Thirteenth Protocol” means the protocol to the Convention (concerning the abolition of the death penalty in all circumstances) agreed at Vilnius on 3rd May 2002; 20
- “public authority” has the meaning given by section 34;
- “remedial regulations” means regulations under section 26 (and includes, in a case in which section 26(5) applies, an Order in Council under that section); 25
- “Strasbourg jurisprudence” has the meaning given by section 35;
- “subordinate legislation” means any—
- (a) Order in Council other than one—
    - (i) made in exercise of Her Majesty’s Royal Prerogative; 30
    - (ii) made under section 38(1)(a) of the Northern Ireland Constitution Act 1973 or section 84(1) of the Northern Ireland Act 1998; or
    - (iii) amending an Act of a kind mentioned in the definition of primary legislation; 35
  - (b) Act of the Scottish Parliament;
  - (c) Measure of Senedd Cymru;
  - (d) Act of Senedd Cymru;
  - (e) Act of the Parliament of Northern Ireland;
  - (f) Measure of the Assembly established under section 1 of the Northern Ireland Assembly Act 1973; 40
  - (g) Act of the Northern Ireland Assembly;
  - (h) order, rules, regulations, scheme, warrant, byelaw or other instrument made under primary legislation (except to the extent to which it operates to bring one or more provisions of that legislation into force or amends any primary legislation); 45

- (i) order, rules, regulations, scheme, warrant, byelaw or other instrument made under legislation mentioned in any of paragraphs (b) to (g) made under an Order in Council applying only to Northern Ireland;
  - (j) order, rules, regulations, scheme, warrant, byelaw or other instrument made by a member of the Scottish Government, Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Assembly Government, a Northern Ireland Minister or a Northern Ireland department in exercise of prerogative or other executive functions of Her Majesty which are exercisable by such a person on behalf of Her Majesty; 5
- “tribunal” means any tribunal in which legal proceedings may be brought; 10  
“victim” has the meaning given by section 13(6).
- (2) In the definition of “criminal proceedings” in subsection (1), “relevant armed forces proceedings” means – 15
- (a) proceedings before the Court Martial;
  - (b) proceedings before the Service Civilian Court;
  - (c) proceedings before the Court Martial Appeal Court;
  - (d) a summary hearing before a commanding officer under the Armed Forces Act 2006; 20
  - (e) proceedings before the Summary Appeal Court;
  - (f) proceedings before the High Court on an appeal from the Summary Appeal Court;
  - (g) proceedings before the Supreme Court on an appeal from the Court Martial Appeal Court. 25

### *Final provisions*

## **37 Consequential and minor amendments**

- (1) Schedule 5 contains consequential and minor amendments.
- (2) The Secretary of State may by regulations make further provision that is consequential on this Act. 30
- (3) Regulations under this section may amend any primary legislation passed or made before this Act or in the same Session as this Act.
- (4) Regulations under this section that amend primary legislation are subject to the affirmative procedure.
- (5) Any other regulations under this section are subject to the negative procedure. 35

## **38 Application and extent**

- (1) This Act binds the Crown.
- (2) This Act extends to England and Wales, Scotland and Northern Ireland.

### 39 Commencement

- (1) Sections 31 to 41, except section 37(1), come into force on the day on which this Act is passed.
- (2) The other provisions of this Act come into force on such day as the Secretary of State may by regulations appoint. 5
- (3) The Secretary of State may exercise the power in subsection (2) in relation to section 13(8) and section 14 (overseas military operations) only if the Secretary of State is satisfied (whether on the basis of provision contained in an Act passed after this Act or otherwise) that doing so is consistent with the United Kingdom's obligations under the Convention. 10

### 40 Power to make transitional or saving provision

- (1) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act.
- (2) The power conferred by subsection (1) includes power to amend or modify any primary or subordinate legislation so as to preserve or restore (to any extent) the effect of a relevant judgment of a court. 15
- (3) In subsection (2) "relevant judgment" means a judgment that—
  - (a) decides that one or more provisions of primary or subordinate legislation are to be interpreted or applied in a particular way, and
  - (b) appears to the Secretary of State to have been made in reliance on section 3 of HRA 1998 (interpretation of legislation). 20
- (4) Regulations made by virtue of subsection (2) that amend or modify primary legislation are subject to the affirmative procedure.
- (5) Any other regulations made by virtue of subsection (2) are subject to the negative procedure. 25
- (6) No regulations may be made by virtue of subsection (2) after the end of the period of two years beginning with the commencement date.
- (7) In this section—
  - "the commencement date" means the date on which paragraph 2 of Schedule 5 (repeal of HRA 1998) comes into force in relation to section 3 of HRA 1998; 30
  - "HRA 1998" means the Human Rights Act 1998.

### 41 Short title

This Act may be cited as the Bill of Rights 2022.

## SCHEDULES

### SCHEDULE 1

Section 2(3)

#### THE ARTICLES

#### PART 1

#### THE CONVENTION

5

#### *Article 2*

#### **Right to life**

1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. 10
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
  - (a) in defence of any person from unlawful violence;
  - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; 15
  - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

#### *Article 3*

#### **Prohibition of torture**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment. 20

#### *Article 4*

#### **Prohibition of slavery and forced labour**

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour. 25
3. For the purpose of this Article the term “forced or compulsory labour” shall not include:
  - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention; 30
  - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;



- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
- (d) any work or service which forms part of normal civic obligations.

*Article 5*

**Right to liberty and security**

5

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
  - (a) the lawful detention of a person after conviction by a competent court;
  - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law; 10
  - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; 15
  - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority; 20
  - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
  - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition. 25
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial. 30
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful. 35
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

*Article 6*

**Right to a fair trial**

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. 5  
10
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
  - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; 15
  - (b) to have adequate time and facilities for the preparation of his defence;
  - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; 20
  - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court. 25

*Article 7*

**No punishment without law**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. 30
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations. 35

*Article 8*

**Right to respect for private and family life**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. 5

*Article 9*

**Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 10
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. 15

*Article 10*

**Freedom of expression**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 20
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. 25  
30

*Article 11*

**Freedom of assembly and association**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 35
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on 40

the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

*Article 12*

**Right to marry**

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right. 5

*Article 14*

**Prohibition of discrimination**

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. 10

*Article 16*

**Restrictions on political activity of aliens**

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens. 15

*Article 17*

**Prohibition of abuse of rights**

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention. 20

*Article 18*

**Limitation on use of restrictions on rights**

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed. 25

**PART 2**

THE FIRST PROTOCOL

*Article 1*

30

**Protection of property**

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject

to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

5

*Article 2*

**Right to education**

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

10

*Article 3*

**Right to free elections**

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

15

**PART 3**

ARTICLE 1 OF THE THIRTEENTH PROTOCOL

*Article 1*

20

**Abolition of the death penalty**

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

SCHEDULE 2

Section 26

REMEDIAL REGULATIONS

25

*Regulations*

- 1 (1) Remedial regulations may –
  - (a) be made so as to have effect from a date earlier than that on which they are made;
  - (b) make provision for the delegation of specific functions.
- (2) Remedial regulations may –
  - (a) amend any primary legislation (including primary legislation other than that which contains the incompatible provision) apart from this Act; and

30

- (b) amend subordinate legislation (including subordinate legislation other than that which contains the incompatible provision).
- (3) Remedial regulations may be made so as to have the same extent as the legislation which they affect.
- (4) No person commits an offence solely as a result of the retrospective effect of remedial regulations. 5

*Procedure*

- 2 No remedial regulations may be made unless –
  - (a) a draft of the regulations has been approved by a resolution of each House of Parliament made after the end of the period of 60 days beginning with the day on which the draft was laid; or 10
  - (b) it is declared in the regulations that it appears to the person making them that, because of the urgency of the matter, it is necessary to make the regulations without a draft being so approved.

*Regulations laid in draft* 15

- 3 (1) No draft may be laid under paragraph 2(a) unless –
  - (a) the person proposing to make the regulations has laid before Parliament a document which contains a draft of the proposed regulations and the required information; and
  - (b) the period of 60 days, beginning with the day on which the document required by this sub-paragraph was laid, has ended. 20
- (2) If representations have been made during that period, the draft laid under paragraph 2(a) must be accompanied by a statement containing –
  - (a) a summary of the representations; and
  - (b) if, as a result of the representations, the proposed regulations have been changed, details of the changes. 25

*Urgent cases*

- 4 (1) If remedial regulations (“the original regulations”) are made without being approved in draft, the person making them must lay them before Parliament, accompanied by the required information, after they are made. 30
- (2) If representations have been made during the period of 60 days beginning with the day on which the original regulations were made, the person making them must (after the end of that period) lay before Parliament a statement containing –
  - (a) a summary of the representations; and 35
  - (b) if, as a result of the representations, the person considers it appropriate to make changes to the original regulations, details of the changes.
- (3) If sub-paragraph (2)(b) applies, the person making the statement must –

- (a) make further remedial regulations replacing the original regulations;  
and
  - (b) lay the replacement regulations before Parliament.
- (4) If, at the end of the period of 120 days beginning with the day on which the original regulations were made, a resolution has not been passed by each House approving the original or replacement regulations, the regulations cease to have effect (but without that affecting anything previously done under either the original or replacement regulations or the power to make fresh remedial regulations).

5

*Definitions*

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5 In this Schedule –

“representations” means representations about remedial regulations (or proposed remedial regulations) made to the person making (or proposing to make) them and includes any relevant Parliamentary report or resolution;

15

“required information” means –

- (a) an explanation of the incompatibility which the regulations (or proposed regulations) seek to remove, including particulars of the relevant declaration, finding or order; and
- (b) a statement of the reasons for proceeding under section 26 and for making regulations in those terms.

20

*Calculating periods*

6 In calculating any period for the purposes of this Schedule, no account is to be taken of any whole days that fall within a period during which –

- (a) Parliament is dissolved or prorogued, or
- (b) either House of Parliament is adjourned for more than four days.

25

SCHEDULE 3

Section 29

DESIGNATED RESERVATION

At the time of signing the present (First) Protocol, I declare that, in view of certain provisions of the Education Acts in the United Kingdom, the principle affirmed in the second sentence of Article 2 is accepted by the United Kingdom only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure.

30

Dated 20 March 1952

Made by the United Kingdom Permanent Representative to the Council of Europe.

35

## SCHEDULE 4

Section 30(5)

## JUDICIAL PENSIONS

*Power to make regulations about pensions*

- 1 (1) The Lord Chancellor may by regulations make provision with respect to pensions payable to or in respect of any judicial office holder who serves as an ECHR judge. 5
- (2) Regulations under this paragraph may, in particular –
- (a) make such provision as the Lord Chancellor considers appropriate to secure that –
- (i) a judicial office holder serving as an ECHR judge who was, immediately before appointment as an ECHR judge, a member of a judicial pension scheme is entitled to remain as a member of that scheme, 10
- (ii) the terms on which that person remains a member of the scheme are those which would have been applicable had they not been appointed as an ECHR judge, and 15
- (iii) entitlement to benefits payable in accordance with the scheme continues to be determined as if, while serving as an ECHR judge, that person's salary was that which would (but for section 30(4)) have been payable to that person in respect of their continuing service as the holder of a judicial office. 20
- (b) make provision –
- (i) for any contributions which are payable by a judicial office holder who remains a member of a scheme as a result of the regulations, and which would otherwise be payable by deduction from that person's salary, to be made otherwise than by deduction from that person's salary as an ECHR judge, and 25
- (ii) for such contributions to be collected in such manner as may be determined by the administrators of the scheme. 30
- (c) amend any provision of, or made under, a pensions Act in such manner and to such extent, as the Lord Chancellor considers necessary or expedient to ensure the proper administration of any scheme to which it relates.

*Procedure for regulations*

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- 2 (1) This paragraph applies to regulations under paragraph 1.
- (2) If the regulations relate to the holder of an office mentioned in section 30(1)(c), the Lord Chancellor must consult the Secretary of State before making them.
- (3) If the regulations are combined with scheme regulations under section 1 of the Public Service Pensions Act 2013 that are subject to the affirmative procedure, the combined regulations are subject to the affirmative procedure. 40



- (4) Otherwise the regulations are subject to the negative procedure.

*Definitions*

- 3 In this Schedule –
- “ECHR judge” means a judge of the Court;
  - “judicial pension scheme” means a scheme established by or under a pensions Act; 5
  - “pensions Act” means any of the following –
    - (a) the County Courts Act Northern Ireland) 1959;
    - (b) the Sheriffs’ Pensions (Scotland) Act 1961;
    - (c) the Judicial Pensions Act 1981; 10
    - (d) the Judicial Pensions and Retirement Act 1993;
    - (e) the Public Service Pensions Act 2013;
    - (f) the Public Service Pension Act (Northern Ireland) 2014 (c. 2 (N.I.)).

SCHEDULE 5

Section 37 15

CONSEQUENTIAL AND MINOR AMENDMENTS

*Contempt of Court Act 1981*

- 1 (1) In the Contempt of Court Act 1981, section 10 (sources of information) is amended as follows.
- (2) The existing text becomes subsection (1). 20
  - (3) After that subsection insert –
    - “(2) Subsection (1) does not apply where the source of the information is a journalistic source.  
For provision limiting the court’s power to require the disclosure of journalistic sources, see section 21 of the Bill of Rights 2022. 25
    - (3) In this section “journalistic source” means a person who supplies information to another person –
      - (a) intending that other person to use the information for the purposes of journalism, or
      - (b) knowing that the information is likely to be used for those purposes.” 30

*Human Rights Act 1998*

- 2 The Human Rights Act 1998 is repealed.

*Scotland Act 1998*

- 3 The Scotland Act 1998 is amended in accordance with paragraphs 4 to 6.
- 4 In section 100 (human rights)–
- (a) in subsection (1), in the words after paragraph (b), for “Human Rights Act 1998” substitute “Bill of Rights 2022”; 5
  - (b) in subsection (3), for “section 8(3) and (4) of the Human Rights Act 1998” substitute “section 18 of the Bill of Rights 2022”;
  - (c) in subsection (3E), for “section 7(5) of the Human Rights Act 1998” substitute “section 31(1) of the Bill of Rights 2022”;
- 5 In section 126 (interpretation), in the definition of “the Convention rights”, 10  
for “Human Rights Act 1998” substitute “Bill of Rights 2022”.
- 6 (1) Schedule 4 (enactments etc. protected from modification) is amended as follows.
- (2) In paragraph 1(2) (the protected provisions: particular enactments)–
- (a) omit paragraph (f); 15
  - (b) omit the “and” at the end of paragraph (g);
  - (c) at the end of paragraph (h) insert “, and  
“*(i) the Bill of Rights 2022.*”
- (3) In paragraph 13(1) omit paragraph (b).

*Northern Ireland Act 1998*

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- 7 The Northern Ireland Act 1998 is amended in accordance with paragraphs 8 to 10.
- 8 In section 7 (entrenched enactments), in subsection (1)–
- (a) omit paragraph (b);
  - (b) omit the “and” at the end of paragraph (e); 25
  - (c) at the end of paragraph (f) insert “, and  
(g) the Bill of Rights 2022.”
- 9 (1) Section 71 (restriction on application of rights) is amended as follows.
- (2) In subsection (3), in paragraph (a), for the words from “section 6” to the end substitute “section 12 of the Bill of Rights 2022, not unlawful under subsection (1) of that section, and”. 30
- (3) In subsection (4), in paragraph (a), for the words from “section 6” to the end substitute “section 12 of the Bill of Rights 2022, is not unlawful under subsection (1) of that section, and”.
- (4) In subsection (5), for “Human Rights Act 1998” substitute “Bill of Rights 2022”. 35
- 10 In section 98 (interpretation), in the definition of “the Convention rights”, for “Human Rights Act 1998” substitute “Bill of Rights 2022”.

*Government of Wales Act 2006*

- 11 The Government of Wales Act is amended in accordance with paragraphs 12 to 15.
- 12 In section 81 (human rights) –
- (a) in subsection (4), in paragraph (a), for “section 6 of the Human Rights Act 1998 (c. 42)” substitute “section 12 of the Bill of Rights 2022”; 5
  - (b) in subsection (6), for “Human Rights Act 1998” substitute “Bill of Rights 2022”.
- 13 In section 158 (interpretation), in subsection (1), in the definition of “the Convention rights”, for “Human Rights Act 1998 (c. 42)” substitute “Bill of Rights 2022”. 10
- 14 In Schedule 3A (functions exercisable concurrently or jointly with Welsh Ministers), in the table in paragraph 1(2) omit the entry for the Human Rights Act 1998. 15
- 15 In Schedule 7B (general restrictions), in the table in paragraph 5(1) –
- (a) omit the entry for the Human Rights Act 1998;
  - (b) after the entry for the United Kingdom Internal Market Act 2020 insert –
- |                          |                 |    |
|--------------------------|-----------------|----|
| “The Bill of Rights 2022 | The whole Act.” | 20 |
|--------------------------|-----------------|----|

# Bill of Rights Bill

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[AS INTRODUCED]

A

## B I L L

TO

Reform the law relating to human rights.

*Presented by Secretary Dominic Raab  
supported by Secretary Brandon Lewis,  
Secretary Alister Jack, Secretary Simon Hart,  
the Attorney General and James Cartlidge.*

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Ordered, by The House of Commons, to be  
Printed, 22nd June 2022.

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