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Human Rights Act Reform: A Modern Bill of Rights-consultation: NSS response

Submitted by email to: HRAReform@justice.gov.uk

1. This submission is made by the National Secular Society (NSS). The NSS is a not-for-profit non-governmental organisation founded in 1866, funded by its members and by donations. We advocate for separation of religion and state and promote secularism as the best means of creating a society in which people of all religions and none can live together fairly and cohesively. We seek a diverse society where all are free to practise their faith, change it, or to have no faith at all. We uphold the universality of individual human rights, which should never be overridden on the grounds of religion, tradition or culture.

Freedom of religion, thought and conscience

2. The NSS is keen to ensure that reform of the Human Rights Act does not dilute freedom of religion or belief in the UK, or negatively affect the implementation of the Article 9 right to freedom of religion, thought and conscience. This is a right that must be carefully balanced as there is often a tension between the right to follow one's religion and beliefs and the rights of others not to have those beliefs imposed upon them.
3. The NSS believes that the European Court of Human Rights (ECtHR) has generally achieved the appropriate balance between the competing rights and interests under Article 9. If the government were to implement a bill of rights, we would recommend that the UK courts follow the existing jurisprudence.
4. In *Kokkinakis v Greece* the ECtHR ruled that: "freedom of thought, conscience and religion is one of the foundations of a 'democratic society' within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it."
5. The NSS is concerned that in the UK there is a particular risk of religion being given undue influence, to the detriment of others. The presence of an established church, with ex officio seats in parliament for senior bishops and archbishops, affords religion privileged political power and influence. Furthermore, the state school system includes many faith schools, which are permitted to discriminate on grounds of religion. State schools with no faith designation are nevertheless expected to perform daily acts of collective worship. It is therefore difficult in the UK to avoid the imposition of religion.
6. The NSS therefore urges the government to ensure that existing protections for freedom of religion, thought and conscience are maintained. In their drafting and implementation, a new bill of rights must not privilege the rights of religious believers over those of the non-religious, or

diminish human rights protections for women, religious minorities, LGBT+ people and other vulnerable groups, such as children.

Freedom of expression

7. The NSS strongly supports the right to freedom of expression. We agree that democratic society depends upon the right to debate difficult issues and to challenge orthodoxies. In the past, blasphemy laws were used to insulate religious beliefs from criticism and ridicule. The NSS is concerned that the expansion of the concept of “hate crime” has the potential to operate as a de facto blasphemy law where criticism of religious doctrine or practice outlawed on the grounds that it is offensive to religious believers or that it could stir up hatred against a religious group.
8. The NSS urges the government to ensure that any proposed bill of rights includes robust protections for freedom of expression, with explicit protection for speech that “offends, shocks or disturbs”.
9. Limitations of the right to freedom of expression need to be justified by more than the emotions the expression may provoke. This is especially true when formulating criminal laws, where the liberty of the person may be at stake.

Judicial review

10. The right to judicial review is a vital mechanism for holding public authorities to account. The sovereignty of parliament is undermined when the executive can violate its laws. If the UK is to have a bill of rights, it is essential that its citizens have the means to enforce those rights.
11. The consultation suggests that the courts should focus on “genuine human rights matters”. We see no evidence that they are not doing so already. The NSS accepts that there must be a mechanism for striking out baseless claims. However, we are concerned that raising the threshold for bringing claims serves primarily to prevent courts from considering cases where human rights have been breached. It is far from clear what constitutes a “significant disadvantage”. In many cases, the matter under consideration does not only affect the individual bringing the claim. When there is a likelihood of a widespread breach of human rights, a case should be heard even if the effect on the individual bringing it is not substantial.
12. It is the responsibility of public authorities to ensure that their policies are in accordance with the law. If parliament enacts a bill of rights, there must be a mechanism for enforcement. An unaccountable government is a far greater threat to parliamentary sovereignty than the concerns outlined in the consultation.

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