

COMMISSION ON A BILL OF RIGHTS

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Mr David Melding AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff
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5 August 2011

Our ref: DP 46

Dear Mr Melding

COMMISSION ON A BILL OF RIGHTS: DISCUSSION PAPER

As you know, in March of this year the UK Government established a Commission on a Bill of Rights to investigate the creation of a UK Bill of Rights. I was appointed as the Commission's Chair.

The Commission is today launching a discussion paper, *Do we need a UK Bill of Rights?*, to begin to gather the views of the public in the UK and of organisations which would like to contribute to the Commission's work. This paper is the first part of a wide-ranging work programme that will include public engagement and consultation. We have also posted the paper on the Commission's website (see <http://www.justice.gov.uk/about/cbr/index.htm>), and have requested responses to it by Friday 11 November. I should note that while the discussion paper is endorsed by all members of the Commission, one member, Dr Michael Pinto-Duschinsky, is intending to publish a note setting out his comments on the paper. A link to Dr Pinto-Duschinsky's note, once it is available, will be provided on the Commission's website at the address noted above.

I am writing both to provide you with a copy of the paper and to invite any input which your committee members might wish to provide. I have also written to the First Minister of Wales, Counsel General for the Welsh Government, and to the Chair of the Communities, Equality and Local Government Committee.

As I and other members of the Commission stated in our evidence to the House of Commons Political and Constitutional Reform Committee on 9 and 16 June, and as the minutes of the Commission's first meeting reflect (copy attached), the Commission is very conscious of the particular position of Wales with regard to a possible UK Bill of Rights.

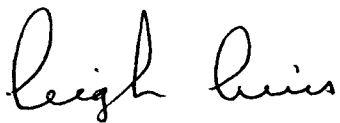
As you will see from my evidence to the Political and Constitutional Reform Committee, and as is reflected in the minutes of our first meeting, the Commission also intends to visit Cardiff later this year. We would very much welcome meetings with you representatives of the Welsh Government and Welsh Assembly at that point, including with your Committee. If you agree that this would be useful, perhaps I could ask the Commission's Secretariat to contact your office directly to discuss the possibility of arranging such meetings.

I should note that I recently wrote to the Welsh Government's nominees to the advisory panel to the Commission, Clive Lewis QC and Reverend Aled Edwards, to congratulate them on their appointment and to propose an initial meeting. I and other members of the Commission are very much looking forward to working with Mr Lewis and Reverend Edwards and the other members of the advisory panel.

I should also note that I have written to the leaders or constitutional spokespeople of every party represented in the parliaments and assemblies of the United Kingdom in order to seek responses to our paper from across the political spectrum and the countries of the UK. I have also asked the Commission's Secretariat to send a copy of the paper to all members of the devolved legislatures and the Westminster Parliament.

I look forward to receiving your views.

Yours sincerely,

A handwritten signature in black ink that reads "Leigh Lewis". The signature is written in a cursive, flowing style.

Sir Leigh Lewis KCB
Chair

**COMMISSION ON A
BILL OF RIGHTS**

Discussion Paper

**Do we need a
UK Bill of Rights?**

August 2011

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Introduction

1. The Commission on a Bill of Rights is an independent Commission set up by the Government¹ and required by our Terms of Reference²

"To investigate the creation of a UK Bill of Rights that incorporates and builds on all our obligations under the European Convention on Human Rights, ensures that these rights continue to be enshrined in UK law, and protects and extends our liberties.

"To examine the operation and implementation of these obligations, and consider ways to promote a better understanding of the true scope of these obligations and liberties.

"To provide advice to the Government on the ongoing Interlaken process to reform the Strasbourg court ahead of and following the UK's Chairmanship of the Council of Europe.

"To consult, including with the public, judiciary and devolved administrations and legislatures, and aim to report no later than by the end of 2012."

2. The Commission has decided to begin to consult by seeking views from the public on the four questions set out in paragraph 5.
3. As regards the need to reform the European Court of Human Rights, on which we are also asked to give advice to the Government, we are not asking detailed questions at this stage. The Government has asked for our preliminary views on this within a limited timeframe, and our further views will be given at a later stage, when we may consult further. Any views on this aspect of our work which you would like to give us at this stage would, however, be welcome. As background we include the text of the Interlaken Declaration and a subsequent Declaration agreed by the forty seven Member States of the Council of Europe at Izmir.
4. The purpose of this Discussion Paper is to begin the process of public consultation.

Questions for Public Consultation

5. The four questions on which we seek your views are:

(1) do you think we need a UK Bill of Rights?

If so,

(2) what do you think a UK Bill of Rights should contain?

(3) how do you think it should apply to the UK as a whole, including its four component countries of England, Northern Ireland, Scotland and Wales?

(4) having regard to our terms of reference, are there any other views which you would like to put forward at this stage?

6. The remainder of this paper sets out background to these questions, and is put forward as an aid to understanding. It aims to describe the current position in purely factual terms.

Background

The UK Constitution

7. The United Kingdom is unlike most other democratic countries in Europe and the Commonwealth (apart from New Zealand) in having neither a comprehensive written constitution nor a constitutional charter of fundamental rights which is supreme over ordinary law and able to be amended only by a special prescribed procedure. We have no comprehensive constitutional charter which establishes and gives limited powers to the institutions of government, or which confers and protects the civil and political rights of citizens, or which restricts Parliamentary sovereignty.
8. There are thus no British rights that are 'fundamental' in the sense that they enjoy special constitutional protection against Parliament. The liberties of the subject are implications derived from two principles. The first principle is that we may say or do as we please, provided that we do not transgress the substantive law or the legal rights of others. The second principle is that the Crown and public authorities may only act if they have the power to do so. These powers can derive from legislation, common law and – as far as the Crown is concerned – the royal prerogative. Our laws are a combination of statute law and the principles of the common law and equity developed by our courts. Our system is based upon the constitutional principles of Parliamentary sovereignty and the Rule of Law.

Parliamentary sovereignty

9. The principle of Parliamentary sovereignty means that the power to legislate may be exercised only by Parliament. The principle of Parliamentary sovereignty also means that Parliament cannot limit the power of a future Parliament to amend or repeal legislation.

The Rule of Law

10. The Rule of Law means, among other things, that it is the responsibility of the independent judiciary to interpret and apply the law impartially and fairly, free from government influence or interference.
11. Our constitutional system is also different from that of some other countries in that international treaties do not automatically become part of our law. Parliamentary legislation, such as the European Communities Act 1972, is passed to bring international obligations into domestic law.

International Human Rights Conventions

12. In December 1948, the UN General Assembly adopted the Universal Declaration of Human Rights, recognising the universality of human rights. In 1976, two UN International Covenants – a Covenant on Civil and Political Rights, and a Covenant on Economic, Social and Cultural Rights – came into force. They are reinforced by several UN human rights conventions, for example, against torture, race and sex discrimination, and protecting the rights of the child and of the disabled.

13. These international treaties are binding in international law on the UK, but they have not been directly incorporated by legislation into UK law. However, their reporting mechanisms and comments influence UK policy and practice and are taken into account by our courts and lawmakers where relevant. Our courts operate a presumption that where a treaty has been accepted by the Government on behalf of the UK and its citizens, Parliament is presumed to legislate to give effect to the terms of the treaty when introducing legislation in that area.

The Origins of the European Convention on Human Rights

14. The Convention was created in the aftermath of the Second World War which convinced many European politicians and jurists of the need to guard against the rise of dictatorships and to reduce the risk of relapse into another European war. This led to the creation, in 1949, of the Council of Europe. Members of the Council are obliged to accept the principles of the rule of law and the enjoyment by all peoples within their jurisdiction of human rights and fundamental freedoms.
15. One of the Council of Europe's first acts was to draft a human rights Convention for Europe, conferring enforceable rights upon individuals against sovereign states, intended to provide a European mechanism for the enforcement of certain rights.
16. On 23 January 1951,³ in accordance with standard UK practice for the ratification of treaties, the text of the Convention was laid before both Houses of Parliament for 21 sitting days in accordance with the 'Ponsonby Rule'.⁴ No member of either House of Parliament prayed against it, thus there was no Parliamentary debate. However, the Convention was discussed during a House of Commons debate on the Council of Europe on 13 November 1950, one week after the UK's signature of the Convention.⁵ The UK was the first state to ratify the Convention, on 8 March 1951.
17. The Convention came into force on 23 September 1953. The Convention has now been ratified by the forty-seven Member States of the Council of Europe, with a population of over 800 million people, including Russia and the majority of former countries of the Soviet bloc.
18. Subsequent to its introduction, the Convention has been amended or supplemented by several Protocols. Additional rights to protection of property, education and free elections were added by Protocol No.1 to the Convention, ratified by the UK on 3 November 1952. The UK has since ratified Protocol No. 6 on abolishing the death penalty⁶ and Protocols Nos. 11 and 14 which have amended the Convention enforcement machinery.⁷ It has not ratified Protocols Nos. 4, 7 nor 12 which contain further rights.⁸
19. At its inception, only countries, and not individuals, could bring complaints under the Convention. However, the right of individual complaint or petition to the European Commission of Human Rights (as it then was) was accepted by the UK in January 1966 without Parliamentary debate.

Convention rights and freedoms

20. The Convention identifies the following human rights and freedoms:

- Right to life (Article 2);
- Prohibition of torture or inhuman or degrading treatment or punishment (Article 3);
- Prohibition of slavery or servitude, or forced or compulsory labour (Article 4);
- Right to liberty and security (Article 5);
- Right to a fair trial (Article 6);
- No punishment without law (Article 7);
- Right to respect for private and family life, home and correspondence (Article 8);
- Freedom of thought, conscience and religion (Article 9);
- Freedom of expression (Article 10);
- Freedom of peaceful assembly and association (Article 11);
- Right to marry (Article 12);
- Right to an effective remedy (Article 13);
- Prohibition of discrimination (Article 14).

21. Protocol No. 1 includes the following:

- Protection of property (Article 1);
- Right to education (Article 2);
- Right to free elections (Article 3).

Giving effect to the Convention

22. Article 1 of the Convention provides that contracting states must "secure to everyone within their jurisdiction" the Convention rights. States and their public authorities – legislative, executive, and judicial – are required to respect these Convention rights and freedoms and have positive obligations to secure them within their national legal systems. Article 13 of the Convention obliges States and their public authorities to provide effective remedies for violations of the Convention rights.

23. At the same time, Article 35(1) of the Convention provides that (unless they are ineffective) domestic remedies must have been exhausted before an application may be made to the Strasbourg Court. This is to provide the State with the opportunity to remedy the matter itself. The Strasbourg Court is thus intended mainly to be a supervisory Court of last resort, and the main responsibility for enforcing human rights is meant to be that of the domestic authorities, who are in the best position to do so.

24. Article 46 of the Convention also imposes a duty on contracting states to abide by final judgments of the European Court of Human Rights where the Court decides that there has been a violation of the Convention. The supervision of the execution of final judgments of the Strasbourg Court is carried out by the Committee of Ministers of the Council of Europe, which decides whether the State has adopted sufficient individual and general measures to enable the case to be closed.⁹ If a state were unwilling or unable to abide by a final judgment, it would have the option of withdrawing from the Convention system. Article 58 of the Convention provides that a state has to give six months' notice in order to denounce the Convention.

How the Convention rights are given effect in UK law¹⁰

25. The obligation to provide effective remedies under Article 13 of the Convention is met in the UK by a combination of common law and statute law.
26. Statutes and other documents such as Magna Carta in 1215 and the Declaration of Arbroath in 1320, the later Bill of Rights and Scottish Claim of Right in 1689, and the Reform Acts of the 19th and early 20th centuries, hand in hand with developments of the common law reflect the traditions of liberty on which our current framework of rights and responsibilities is built. The Convention sought to reflect that tradition. Our courts have recognised constitutional rights inherent in the common law as matching some Convention rights, including a right of access to justice, a right to freedom of expression, a right to respect for private life, and a right to equal treatment without discrimination.
27. Apart from specific legislation giving direct or indirect effect to particular Convention rights, the main legislative ways in which the Convention rights have been given effect is by means of the Human Rights Act 1998 and the devolution legislation for Northern Ireland, Scotland and Wales.

The Human Rights Act 1998

28. The Human Rights Act provides legal remedies for violations of Convention rights while adhering to the doctrine of Parliamentary sovereignty by withholding from our courts the power to strike down Acts of Parliament that are held to be incompatible with Convention rights.
29. The Act requires our courts and tribunals to take into account judgments of the European Court of Human Rights where they are relevant. So far as possible, it also requires legislation to be read and given effect in a way which is compatible with the Convention rights. Where a specified higher court considers that a provision in an Act of Parliament is not compatible with a Convention right, the Human Rights Act empowers the court to make a declaration of incompatibility.
30. A declaration of incompatibility does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given. So the relevant legislative provision continues to have force and effect, despite its incompatibility with Convention rights, until such time as it is amended. It is for the Government to decide whether to seek to amend the law. If it decides not to do so, the alleged victim of a violation may have recourse to the European Court of Human Rights, but has no further remedy under UK law.

31. The Human Rights Act also makes it unlawful for any public authority (which includes courts and tribunals but excludes Parliament) to act in a way which is incompatible with a Convention right (apart from where they are required by primary legislation to act in that way).
32. A person who claims that a public authority has acted or proposes to act in a manner made unlawful by the Act may bring proceedings provided that the claimant is a victim within the meaning of the Convention. The Act empowers a court or tribunal to grant appropriate remedies when it finds that a public authority has acted or proposes to act in a way which is incompatible with Convention rights and has therefore acted unlawfully. However, no award of damages may be made unless it is necessary, having regard to any other remedy, to afford 'just satisfaction' to the claimant. When deciding whether to award damages, or the amount of an award, the court or tribunal must take into account the principles applied by the Strasbourg Court in awarding compensation under Article 41 of the Convention.
33. The Act provides that a person's reliance on a Convention right does not restrict any other right or freedom conferred on him by or under any law having effect in any part of the UK. The purpose of this is to safeguard more generous rights which may be enjoyed apart from the Human Rights Act, whether at common law or under other legislation.
34. Section 19 of the Act requires a Minister in charge of a Bill to make a statement before the second reading of the Bill that in his or her view its provisions are compatible with Convention rights, or, if unable to make such a statement of compatibility, that the Government nevertheless wishes the House to proceed with the Bill. The purpose is to ensure that in the preparation of a Bill and its passage through Parliament, consideration is given to any implications the Bill may have in relation to Convention rights, and to ensure that any relevant issues are identified at an early stage so that they can be the subject of informed debate in Parliament.

The Joint Parliamentary Human Rights Committee

35. So far as the work of Parliament is concerned, an independent cross-party Joint Parliamentary Committee of both Houses of Parliament (the JCHR) enables systematic Parliamentary scrutiny of government measures for their compatibility with the Convention rights and the other human rights conventions to which the UK is party.¹¹ The JCHR scrutinises proposed legislation for compatibility with the UK's obligations under the Convention and other human rights treaties by which the UK is bound. Where necessary it questions Ministers. The JCHR also monitors the Government's response to judgments on human rights from the European and UK courts, and conducts thematic inquiries into particular human rights issues (for example, deaths in custody, care for the elderly, business and human rights, human trafficking, extradition and deportation procedures, the operation of anti-terrorist legislation, and the right of disabled people to independent living).

The Equality and Human Rights Commission

36. The Equality and Human Rights Commission (EHRC) was set up by the Equality Act 2006 with duties not only as regards equality and diversity, but also as regards Convention and other human rights.¹² It has monitoring and advisory powers. The EHRC may institute or intervene in legal proceedings, and may rely in judicial review on alleged breaches of the Convention rights, even though it is not a victim or potential victim.¹³

Scotland

37. Scotland is a separate jurisdiction from England and Wales and from Northern Ireland, with its own distinctive legal history and traditions, its own body of common law and statute law, its own system of courts and its own legal profession. However, the Human Rights Act applies to Scottish public authorities in the same way as it applies to public authorities elsewhere in the UK.
38. The Convention has been given further effect in Scotland by virtue of the devolution settlement. Under the Scotland Act 1998, actions by members of the Scottish Government¹⁴ and legislation enacted by the Scottish Parliament¹⁵ must be compatible with the Convention. Legislation or actions which are found to be incompatible by the courts are liable to be declared to be beyond the powers conferred and to be held invalid.
39. A Scottish Commission for Human Rights was set up by Act of the Scottish Parliament in 2006¹⁶ with a general duty to promote human rights and to encourage best practice in relation to human rights, including not only the Convention rights but those in other human rights treaties ratified by the UK.¹⁷

Northern Ireland

40. Under the terms of the Northern Ireland Act 1998, Ministers and Northern Ireland departments are not permitted to act in a way which is incompatible with the Convention.¹⁸ Similarly the Northern Ireland Assembly does not have competence to legislate in a manner incompatible with the Convention.¹⁹
41. The Northern Ireland Human Rights Commission (NIHRC) is an independent statutory body set up in 1999 with wide functions, including giving assistance to individuals in court proceedings, and bringing proceedings itself. It is required by statute to advise the Secretary of State for Northern Ireland on the scope for defining, in a Bill of Rights for Northern Ireland to be enacted by the Westminster Parliament, rights supplementary to those in the Convention. The Belfast (Good Friday) Agreement of 1998 states that the Bill should reflect the particular circumstances of Northern Ireland, drawing as appropriate on international law and experience.
42. On 10 December 2008, the NIHRC presented its Advice on a Bill of Rights for Northern Ireland to the Government. It made a number of recommendations for inclusion in a Bill of Rights.²⁰
43. The Government published its paper "A Bill of Rights for Northern Ireland: Next Steps" for consultation, and the NIHRC made a written response to that paper on 17 February 2010.²¹

Wales

44. The Laws in Wales Act 1535 provided that England and Wales were united and the Welsh and the English were to be subject to the same laws and have the same privileges. Since that time, there has been one legal system for England and Wales. However, the Government of Wales Act 1998, which has since been modified by the Government of Wales Act 2006, provides an additional route for the application of the Convention to Wales.
45. The devolution arrangements set out in the Government of Wales Act 2006 place a requirement upon the Welsh Assembly²² and the Welsh Ministers²³ to act compatibly with the Convention.

European Union rights

46. In 2007 the institutions of the European Union proclaimed the EU Charter of Fundamental Rights.²⁴ This includes a number of social, economic and political rights and principles that do not appear in the Convention. The Charter applies to the institutions of the European Union, and to the Member States "only when they are implementing Union law".²⁵ The Charter, where it applies, has the same legal force as the Treaties.²⁶ Under Protocol 30 to the Lisbon Treaty, the Charter does not contain any new justiciable rights applicable to the United Kingdom or Poland. The Treaties also provide that fundamental rights guaranteed by the Convention and the common constitutional traditions of the Member States are general principles of EU law.²⁷

We hope to hear from you soon.

47. We hope to begin hearing your views on a Bill of Rights for the UK and the related issues raised by our Terms of Reference. We would like to receive your views by 11 November 2011. Unless you specifically request otherwise, all responses will be made public.
48. All responses should be sent to the inbox or address below:
responses@commissiononabillofrights.gsi.gov.uk

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Postpoint 9.55
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Alternative formats

If you require this information in an alternative language, format or have general enquiries about the Commission on a Bill of Rights, please contact us by email at enquiries@commissiononabillofrights.gsi.gov.uk, telephone us at 020 3334 2486 or write to us at:

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Confidentiality

All written representations and evidence provided to the Commission will, unless publication is unlawful, be made public unless specifically requested otherwise. If you would like any of the information provided in your response to be treated confidentially, please indicate this clearly in a covering note or e-mail (confidentiality language included in the body of any submitted documents, or in standard form language on e-mails, is not sufficient), identifying the relevant information and explaining why you regard the information you have provided as confidential. Note that even where such requests are made, the Commission cannot guarantee that confidentiality will be maintained in all circumstances, in particular if disclosure should be required by law. If you have any particular concerns about confidentiality that you would like to discuss, please contact the Commission at: enquiries@commissiononabillofrights.gsi.gov.uk

The Commission is not subject to the requirements of the Freedom of Information Act 2000. However once the Commission has completed its work its papers are likely to be passed to the Government. In these circumstances information formerly held by the Commission may then be subject to the requirements of that legislation.

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Endnotes

¹ The Commission's creation was announced by Mr Mark Harper MP (Parliamentary Secretary, Cabinet Office) on 18 March 2011 in a written Ministerial Statement (HC Deb 18 March 2011 c 32WS) as follows:

"The Government have established an independent Commission to investigate the creation of a UK Bill of Rights, fulfilling a commitment we made in our Programme for Government. The Commission will explore a range of issues surrounding human rights law in the UK and will also play an advisory role in our continuing work to press for reform of the European Court of Human Rights in Strasbourg.

"The UK will be pressing for significant reform of the European Court of Human Rights, building on the reform process underway in the lead up to our Chairmanship of the Council of Europe later this year. We will be pressing in particular to reinforce the principle that states rather than the European Court of Human Rights have the primary responsibility for protecting Convention rights.

"The Commission will be chaired by Sir Leigh Lewis KCB, a former permanent secretary at the Department for Work and Pensions with a long career in public service. He will be joined on the Commission by Jonathan Fisher QC, Martin Howe QC, Baroness Kennedy of The Shaws QC, Lord Lester of Herne Hill QC, Philippe Sands QC, Anthony Speaight QC, Professor Sir David Edward QC and Dr Michael Pinto-Duschinsky.

"The Commission members have, between them, extensive legal expertise and experience, and we expect the Commission to take into account a broad range of views as it fulfils its remit. In addition, an advisory panel will be established to provide advice and expertise to the Commission on issues arising in relation to Scotland, Wales and Northern Ireland. The Commission will report jointly to the Deputy Prime Minister and the Secretary of State for Justice. The Commission will be supported by a small secretariat of civil servants."

² The Coalition's Programme for Government said: "We will establish a Commission to investigate the creation of a British Bill of Rights that incorporates and builds on all our obligations under the European Convention on Human Rights, ensures that these rights continue to be enshrined in British law, and protects and extends British liberties. We will seek to promote a better understanding of the true scope of these rights and obligations." See Cabinet Office: http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition-programme_for_government.pdf

³ See HC Deb 5 February 1951 vol 483 cc 159-60W.

⁴ The power to make treaties is a Prerogative power vested in the Crown, but under the Ponsonby Rule, the Government lays all treaties subject to ratification (with limited exceptions) before both Houses of Parliament for 21 sitting days before ratification (or its equivalent) is effected: Foreign Office, "Ponsonby Rule", http://www.fco.gov.uk/resources/en/pdf/pdf4/fco_pdf_ponsonbyrule. See also Gardiner, Richard K., *International Law* (Edinburgh: Pearson Education Limited, 2003), pp. 148-9.

⁵ See HC Deb 13 November 1950 vol 480 cc 1392-504.

⁶ The UK signed Protocol No. 4 on 16 June 1963 but has yet to ratify. Protocol No. 4 entered into force for the other signatories from 2 May 1968. The UK signed Protocol No. 6 on 27 January 1999 and ratified it on 20 May 1999. Protocol No. 6 entered into force for the UK on 1 June 1999.

⁷ The UK signed Protocol No. 11 on 11 May 1994 and ratified it on 9 December 1994. Protocol No. 11 entered into force on 1 November 1998. The UK signed Protocol No. 14 on 13 July 2004 and ratified it on 28 January 2005. Protocol No. 14 entered into force on 1 June 2010.

⁸ The full text of the Convention and its Protocols can be found at: <http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf>

⁹ See generally, Supervision of the execution of judgments of the European Court of Human Rights, 4th Annual Report (2010), Council of Europe, Committee of Ministers, April 2011.

¹⁰ We refer to "UK law" for convenience, while recognising that there are different laws and courts of England, Northern Ireland, Scotland and Wales.

¹¹ See <http://www.parliament.uk/commons/selcom/hrhome.htm>

¹² Sections 8 and 9.

¹³ Section 30.

¹⁴ Section 57(2).

¹⁵ Section 29.

¹⁶ The Scottish Commission for Human Rights Act 2006 (2006 asp 16).

¹⁷ See <http://www.scottishhumanrights.com>

¹⁸ Section 24(1)(a).

¹⁹ Section 6.

²⁰ These included:

- right to equality and prohibition of discrimination;
- right to health;
- education rights;
- freedom from violence, exploitation and harassment;
- right to identity and culture;
- right to civil and administrative justice;
- rights to liberty and fair trial;
- language rights;
- rights of victims;

- democratic rights;
- right to an adequate standard of living;
- right to accommodation;
- right to work;
- environmental rights;
- children's rights.

²¹ See <http://www.nihrc.org/bor>

²² Section 94.

²³ Section 81(1).

²⁴ The text of the Charter can be found at
<http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:303:SOM:en:HTML>

²⁵ Article 51.1.

²⁶ Treaty on European Union, article 6(1), 2010/C 83/01.

²⁷ Treaty on European Union, article 6(3), 2010/C 83/01.

**MINUTES OF THE MEETING OF THE COMMISSION ON A BILL OF RIGHTS
6 May 2011 – Committee Room 4, House of Lords**

Members:

Sir Leigh Lewis KCB (Chair)
Professor Sir David Edward QC
Jonathan Fisher QC
Martin Howe QC
Baroness Kennedy of The Shaws QC
Lord Lester of Herne Hill QC
Dr Michael Pinto-Duschinsky
Professor Philippe Sands QC
Anthony Speaight QC

Additional attendees: See Annex A

1 Introduction by the Chair

1.1 Sir Leigh Lewis welcomed members of the Commission to the first meeting of the Commission on a Bill of Rights. He thanked members for their early individual discussions with him as Chair and welcomed the sentiment shared by all members to participate in collegiate and productive discussion and debate.

1.2 Sir Leigh Lewis noted that he saw his primary role as Chair as being to facilitate the work of the Commission. The role of the Secretariat to the Commission would be to support members in carrying out the work of the Commission.

2 Round-table discussion

2.1 Sir Leigh Lewis invited members to outline their ambitions for the Commission. Points raised in the discussion included:

(a) there was a desire, as far as possible, to produce a report that forged consensus among members and which would contribute to a well-informed public discussion;

(b) there was a need to be, and to be seen to be, independent from Government;

(c) there was a need to ensure public engagement with the work of the Commission, and therefore a need to conduct a wide-ranging consultation with the public that took account of the diversity of the UK;

(d) there was a need to secure greater public ownership of human rights in the United Kingdom;

(e) the Commission would need to consider fully the implications of the devolution settlements in its work, and consult with the devolved administrations and others in Northern Ireland, Scotland and Wales;

(f) the Commission should consider whether and how a Bill of Rights could address concerns about the Human Rights Act 1998, including the concerns of some that its incorporation of ECHR rights had resulted in it being viewed as a foreign import;

(g) the Commission should consider both the historical provenance of human rights protection and its common law heritage; in particular the Commission should consider the role of the common law in domestic human rights judgments in addition to the requirement to take account of the jurisprudence of the European Court of Human Rights;

(h) the Commission should consider the relationship between Parliament, the executive and the judiciary in terms of the respective roles of each in any system of human rights protection;

(i) the Commission should consider the margin of appreciation and what impact a UK Bill of Rights might or should have on the approach of the European Court of Human Rights in this respect;

(j) the Commission should consider:

- whether existing rights could or should be rebalanced, for example as regards the relationship between Articles 8 and 10;
- whether existing rights could or should be modernised to take account of technological advances;
- whether any additional rights could or should be included in any UK Bill of Rights such as the right to jury trial, habeas corpus (although mindful of the need to reflect the position under Scots law), a right to equal protection of the law, and a right to administrative justice;
- whether rights should be accompanied by responsibilities;
- the remedies provided for in the Human Rights Act 1998 and the balance struck by that Act between Parliament (including the JCHR), the executive branch and the legislature;

(k) the Commission should prioritise the work on its interim advice on the reform of the European Court of Human Rights, given that its Terms of Reference requested such advice ahead of the UK's forthcoming Chairmanship of the Council of Europe;

(l) the Commission's advice on reform of the European Court of Human Rights should try to look at the big picture and the future possibility of fundamental reforms, rather than at changes that simply tinkered with the existing system.

2.2 Summing up the discussion, Sir Leigh Lewis thanked members for their initial contributions. He said that he was encouraged by the degree to which

members appeared willing to look for agreement on the issues facing the Commission.

3 Ways of working

3.1 Introducing the item, Sir Leigh Lewis noted that certain members had already touched in their contributions on ways in which the Commission should approach its work. The main points raised in discussion were:

(a) members agreed that all discussion in meetings of the Commission should remain confidential;

(b) members agreed that for reasons of practicality, the Commission would need at times to operate without all its members being present, with those members who were present conducting certain meetings or consultations or other work on behalf of the Commission as a whole;

(c) members agreed that teleconference facilities should be used in its work where this was necessary;

(d) members agreed that the Commission should have its own public website. Members also agreed that they would benefit from access to a private intranet forum where confidential discussion threads could be conducted and where documents could be made available confidentially to members. Sir Leigh noted the distinction between a public website hosted by the existing Ministry of Justice domain and a website created outside the existing Ministry of Justice infrastructure, in particular the fact that the latter would cost more and take longer to launch. Members agreed that a public website within the existing Ministry of Justice domain would be acceptable on that basis, provided the independence of the Commission was made clear and explicit;

Action: the Secretariat to continue work on the development of a public website for the Commission and to investigate the options for creating a secure intranet forum

(e) a number of members noted that they had been invited to appear before the House of Commons Political and Constitutional Reform Committee on 9 and 16 June 2011. Members agreed that Sir Leigh Lewis would contact the Chair of the Committee to discuss the appearances and would report back to members;

Action: the Secretariat to arrange a discussion between Sir Leigh Lewis and the Chair of the Political and Constitutional Reform Committee

(f) members agreed to issue a short press statement following the first meeting of the Commission. This statement should report the fact that the Commission had met for the first time and highlight its intention to engage in substantial public consultation and outreach;

Action: the Secretariat to circulate a draft press statement to members on Monday 9 May 2011

(g) members agreed that future meetings of the Commission should, where possible, be held in the House of Lords.

Action: the Secretariat to proceed accordingly and to liaise with Baroness Kennedy and Lord Lester to facilitate access to the House of Lords for future meetings

4 Draft work programme and public consultation

4.1 Introducing the item, Sir Leigh Lewis invited members to note papers 1 and 2.

Proposed dates of future meetings

4.2 Members agreed that the next meeting would take place on Tuesday 28 (commencing 3.30pm) and Wednesday 29 June 2011 (ending 4pm) at a location within commuting distance of central London.

4.3 Members agreed to reschedule the July meeting in the light of the revised meeting dates for June. The July meeting will now take place from 10am until 2pm on Monday 11 July 2011. The meeting will be followed by an optional lunch in the House of Lords.

Action: the Secretariat to confirm members' availability for the optional lunch on 11 July 2011, and for further meeting dates for 2011

Issues paper

4.4 It was suggested that one method of setting out the many issues facing the Commission and engaging early with the public would be to produce an issues paper. This approach had been useful and effective in previous similar work undertaken by some members.

4.5 Members agreed that the paper should be a neutral and brief exposition of the issues before the Commission, and should pose open questions. The paper should not purport to be an exhaustive survey of all of the issues but would invite input and views.

Action: the Secretariat to prepare a draft issues paper for consideration at the next meeting of the Commission. Lord Lester and Professor Sir David Edward to provide the Secretariat with examples of previous papers by way of background

Consultation and 'outreach strategy'

4.6 Members agreed that comprehensive public consultation would be important in order to ensure that the Commission's work was fully informed by a diverse range of views from across the United Kingdom. The main points raised in discussion were:

- (a) the current devolution settlements had particular implications for the creation of any UK Bill of Rights. It was essential that the Commission visit Belfast, Cardiff and Edinburgh, and that it consulted fully with the devolved administrations and with other stakeholders in those jurisdictions;
- (b) more generally it would be important to seek the views of a diverse range of individuals and organisations representative of a wide range of interests and backgrounds;
- (c) previous similar Commissions had used various strategies for public consultation that would be useful to consider;
- (d) the Commission should consider whether and how to engage with the academic community;
- (e) the Commission would need to consult with the judiciary.

4.7 Summing up the discussion, Sir Leigh Lewis noted that members were agreed that the Commission needed to develop a robust strategy for consultation and outreach.

Action: the Secretariat to prepare a draft 'outreach strategy' for consideration at the next meeting of the Commission. The Secretariat to liaise with Professor Sir David Edward and Baroness Kennedy who have experience in conducting similar exercises.

5 Factual update on Interlaken

Commission's mandate to provide advice on reform of the European Court of Human Rights

5.1 Introducing the item, Sir Leigh Lewis invited members to note paper 3. Members had already referred to the issue of court reform as part of the discussions on the terms of reference under item 2. The main points raised in that discussion had been that:

- (a) the Commission should examine fundamental questions such as the role of the Strasbourg court, as opposed to the minutiae of proposed reform;
- (b) it would be important for the Commission to consider the implications of any recommendations for reform in terms of available resources and practical impact;

(c) the timing of the United Kingdom's Chairmanship of the Council of Europe meant that the Commission would need to provide advice quickly on this issue.

5.2 Summing up the discussion, Sir Leigh Lewis invited members to work with the Secretariat to prepare a draft paper on court reform.

Action: the Secretariat to prepare a draft paper on court reform for consideration at the next meeting

Visit to the European Court of Human Rights

5.3 Members agreed that an early visit to Strasbourg would be important in informing the Commission's work in this area. Members discussed possible individuals with whom to meet in Strasbourg. It was noted that the Joint Committee on Human Rights was due to visit Strasbourg on 22-23 June 2011.

5.4 Summing up the discussion, Sir Leigh Lewis asked the Secretariat to propose a schedule for the visit and to liaise with the British Ambassador to the Council of Europe with a view to arranging a visit by the Commission to the European Court of Human Rights.

Action: the Secretariat to proceed accordingly

6. AOB and date of next meeting

6.1 Dr Michael Pinto-Duschinsky invited any members who would like to do so to attend a seminar which he has been involved in organising to be held on 20 May 2011 in Oxford. The seminar would deal with issues of relevance to the Commission's work.

Action: the Secretariat to circulate further information on the seminar to members

6.2 The next meeting would be held on 28-29 June 2011 at a venue to be agreed by the Chair with the Secretariat.

Commission on a Bill of Rights Secretariat
13 May 2011

Annex A

Additional attendees:

Andrea Wright	Secretary
Alison Presly	Legal Advisor
Robin Seaton	Policy Officer
Marie Colton	Policy Officer