Breakfast Briefing: A Practitioner's Guide to the UK's Bill of Rights

5th July 2022

Chair:
Steve Broach

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Removal of the interpretative obligation (current s.3 HRA) and increased role of declarations of incompatibility

5 July 2022

Steph David

Structure

1. Power and purpose of section 3 HRA – interpretative obligation

2. Removal of the tool

3. Implications for case law reliant on section 3?

4. Increase in Declarations of Incompatibility and claims to Strasbourg?

5. Other principles of interpretation

Purpose of Human Rights Act 1998

"*It will give people in the United Kingdom opportunities to enforce their rights under the European Convention in British courts rather than having to incur the cost and delay of taking a case to the European Human Rights Commission and Court in Strasbourg."*

Tony Blair October 1997

"The broad sweep of section 3(1) is indeed crucial to the working of the 1998 Act" *Ghaidan v Godin-Mendoza* [2004] 2 AC 557

Power of section 3 HRA

3 Interpretation of legislation.

(1)So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

- Mandatory: courts and public authorities
- Two obligations: "must be read" AND "given effect"

Interpretative obligation

- Applies even if the statutory language admits of no doubt and may still require legislation to be given a different meaning
- The interpretative obligation is "*remarkably powerful*… [it] *goes beyond the normal canons of statutory interpretation*" In re UNCRC (Incorporation) (Scotland) Boll (SC(Sc)) [2021] 1 WLR 5106
- "*a broad approach concentrating, amongst other things, in a purposive way on the importance of the fundamental right involved*" *Ghaidan,* Steyn
- Limit: grain of legislation
- Recent example: *Jennings v Human Fertilisation and Embryology Authority* [2022] EWHC 1619 (Fam)

Removal of the tool

Clause 1(2): "…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);"

Clause 10 Declarations of Incompatibility

10(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. […]

Applies: Supreme Court, Privy Council, High Court, Court of Appeal, CoP

Interpretations reliant on s 3 HRA (1)

- Repeal of section 3 accompanied by a power to make secondary legislation to preserve the effects of interpretations made under that section (Explanatory Notes)

- Section 16 of the Interpretation Act 1978 – repeal does not affect previous previous operation of repealed legislation

- Clause 40: SoS has power to make transitional or saving provisions, which includes power to amend or modify primary or subordinate legislation to preserve the effect of a relevant judgment

Interpretations reliant on s 3 HRA (2)

- ECHR- compliant interpretation because of s 3?

- Impact statement:
  - *"MoJ has, to date, identified approximately 60 cases subject to section 3 interpretations that have not been superseded by new legislation. Through consultation with lead policy teams, MoJ estimates that responsible UK government departments may seek to preserve the effect of around 40 of these interpretations using secondary legislation made under the power* […]" (para 122)

Increase in Declarations of Incompatibility and claims to Strasbourg?

- Shift in power – to Parliament (or the Executive?)

- Impact assessment – no longer "*immediate remedy*" pursuant to s 3, but will have to *"wait for the issue to be resolved by Parliament"*

- Article 13: "*Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity*."

- "[…] *This Article, in giving direct expression to the States' obligation to protect human rights first and foremost within their own legal system, establishes an additional guarantee for an individual in order to ensure that he or she effectively enjoys those rights"* (*Kudła v. Poland* [GC], 2000, § 152)

"[W]*hat we find in the Bill of Rights Bill is an example of Boris Johnson's 'cakeist' philosophy — which extols the merits of both having one's cake and eating it — writ large. The UK, we are told, remains fully committed to the ECHR and the Supreme Court is lauded as the ultimate judicial authority when it comes to rights questions. The reality, however, is very different. Once the political hubris is stripped away and the Bill is examined through a legal lens, the metaphysical infeasibility of cakeism becomes all too apparent and the Bill of Rights can be seen for what it is:* ***a piece of legislation that the Government claims enhances human rights protection but which in fact significantly diminishes it. If, as is likely, this results in more applications to (and UK losses in) the Strasbourg Court, the Government will then face a stark choice between accepting the Court's judgments — thereby exploding the myth that the Bill magically enabled the UK to loosen its international obligations via domestic legislation — or defying them and finding itself in breach of international law****. That is the hard legal reality, and no amount of political bluster by the Justice Secretary about 'strengthen[ing] traditional UK rights' or preventing the Supreme Court's 'subordinat[ion] to Strasbourg' will change that."* (Mark Elliott, Professor of Public Law and Chair of the Faculty of Law at the University of Cambridg

Other principles of statutory interpretation?

- Principle of interpretation that requires domestic legislation to be interpreted compatibly with UK's treaty obligations?
  - Statutory presumption not to act contrary to international law
  - ECHR content BUT direct contradiction of Bill of Rights

- Rights at common law? Principle of legality
  - Content of common law rights?
  - Ambiguity and generality

Bill of Rights: Interpretation of Convention Rights

Katherine Barnes

Restrictions on the approach of domestic courts

Restrictions on the scope of rights

- Undermining the Convention as a “living instrument”
- Strasbourg interpretation a ceiling not a floor
- Removing positive obligations

Interference in the proportionality/fair balance exercise

- Attempt to codify deference to Parliament

NB Prisoners (clause 6), deportation of foreign criminals (clause 8), freedom of speech (clause 4)

Undermining Convention as “living instrument”

- Clause 3(2)(a): A court determining a question which has arisen in connection with a Convention right *“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”*
- Explanatory notes: *“Reference to the preparatory work of the Convention can serve to inform courts’ understanding of the original intention behind the Convention rights, and thus how the rights should be interpreted”*
- Encourage originalist interpretation of the Convention and departure from “living instrument” doctrine (obvious dangers clear from recent US Sup Ct decisions!)

Strasbourg interpretation a ceiling not a floor

- Clause 3(3): A court determining a question which has arisen in connection with a Convention right:

(a) may not adopt an interpretation of the rights 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;

(b) Subject to paragraph (a), may adopt an interpretation of the rights that diverges from Strasbourg jurisprudence

- So, cannot expand right beyond Strasbourg, but can reduce right

Strasbourg interpretation a ceiling not a floor

- At present domestic courts will not "go further than they can be fully confident that the European court would go" (AB v SSJ [2021] UKSC 28 at [57]) BUT based on fact Strasbourg is ultimate arbiters of Convention rights and aggrieved applicant can always petition Strasbourg
- That rationale falls apart if domestic courts can depart from Strasbourg by interpretating rights more restrictively.

Removing positive obligations

- Clause 5 – two approaches depending on whether positive obligation established prior to BoR coming into force:

(1) Post-commencement of BoR: prohibition on further positive obligations (clause 5(1))

Removing positive obligations

(2) Pre-commencement of BoR (clause 5(2)): in deciding whether to apply a pre-commencement interpretation "court must give great weight to the need to avoid applying an interpretation that would" –

- impact on PA's ability to perform functions
- conflict with judgment of PA in deciding how to allocate its resources
- require the police to protect individuals involved in criminal activity or otherwise undermine police determination of operational priorities
- require an investigation to be conducted to a standard that is higher than is reasonable in all the circumstances
- affect the operation of primary legislation (including primary legislation relating to supply and appropriation

Removing positive obligations

Post-commencement

- Prevents "living instrument" doctrine applying re positive obligations (stuck with rights at a snapshot in time)
- Clause 5(7): "In this section *"positive obligations means an obligation to do any act"* – Strasbourg case law often does not distinguish clearly between positive and negative obligations so much further development by Strasbourg risks being inapplicable to the UK

Removing positive obligations

Pre-commencement

- Major curtailment of important rights (eg obligation to take reasonable steps to protect a person's life if PA knows – or ought to know – there is a real and immediate risk)
- Very wide reaching scope given definition of positive obligation as *"an obligation to do any act"*.
- Legal uncertainty for PAs re their obligations ((a)what exactly were the obligations previously? (b) how do they apply now?)
- Major increase in litigation to clarify how the various factors apply in different settings

Interference with proportionality/fair balance

- Clause 7(2) – where court is determining an incompatibility question in relation to a provision of an Act and considering whether appropriate balance struck between various interests, the court must:

(a) regard Parliament as having decided, in passing the Act, that the Act strikes an appropriate balance […]

(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

Interference with proportionality/fair balance

- Parliament having decided it has struck an appropriate balance – arguably implicit anyway. Doubtful how much weight court will afford to this.
- Giving *“greatest possible weight”* to fact Parliament best placed to decide fair balance.
  - What does this mean and how will it work?
  - Courts already do this via sophisticated doctrine of deference. Attempt to oblige maximum deference to Parliament regardless of subject matter?

Concluding thoughts

- Serious undermining of existing rights protection
- Constitutional power grab
- Complex and incoherent – huge quantities of litigation on the horizon…

The End

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Bill of Rights: when and how a claim can be brought, overseas operation, the permission stage, damages

5 July 2022

Emily Wilsdon

Clause 12: the duty

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.

(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—

(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.

(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).
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.

Clause 13: how a human rights claim would be brought

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
  (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—
    (i) in any legal proceedings brought against the person, or
    (ii) in establishing a cause of action arising otherwise than under this Act.

Clause 13: victim status test & compatibility with Equality Act 2006, Belfast Agreement & Northern Ireland Act 1998?

Equality and Human Rights Commission

Promoting and upholding equality and human rights ideals and laws across England, Scotland and Wales.

The Commission is the regulatory body responsible for enforcing the Equality Act 2010. We are also accredited by the United Nations as an "A status" national human rights institution. Our duties include reducing inequality, eliminating discrimination and promoting and protecting human rights.

The Belfast Agreement:
An Agreement Reached at the
Multi-Party Talks on Northern Ireland

New Institutions in Northern Ireland

. A new Northern Ireland Human Rights Commission, with membership from Northern Ireland reflecting the community balance, will be established by Westminster legislation, independent of Government, with an extended and enhanced role beyond that currently exercised by the Standing Advisory Commission on Human Rights, to include keeping under review the adequacy and effectiveness of laws and practices, making recommendations to Government as necessary; providing information and promoting awareness of human rights; considering draft legislation referred to them by the new Assembly; and, in appropriate cases, bringing court proceedings or providing assistance to individuals doing so.

The Commission was established as a result of the Belfast (Good Friday) Agreement. Our governing legislation is the Northern Ireland Act 1998, as amended by the Justice and Security (Northern Ireland) Act 2007 and the European Union (Withdrawal Agreement) Act 2020.

The Commission is a National Human Rights Institution with A status accreditation from the United Nations. This recognition means that the organisation operates independently in full accordance with the United Nations General Assembly Resolution 48/134 (the Paris Principles).

Compatibility issue with the Belfast Agreement…

United Kingdom Legislation

2. The British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency.

Ireland

Government and human rights advocates 'concerned' over how UK Bill will impact Belfast Agreement

Lawyer for Ballymurphy 10 says proposed Bill of Rights will 'row back' legal progress in the North

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What about the Sewel Convention?

Clause 14: overseas military operations

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.

(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

(b) at the time the act is (or would be) done the person is (or would be) outside the British Islands.

What is an overseas military operation?

(6) In this section—

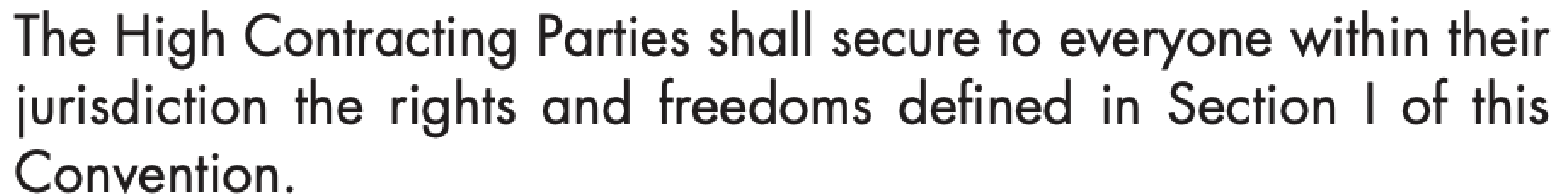
(a) "overseas military operations" means any operations outside the British Islands, including peacekeeping operations and operations for dealing with terrorism, civil unrest or serious public disorder, in the course of which members of Her Majesty's forces come under attack or face the threat of attack or violent resistance;

(b) "Her Majesty's forces" has the same meaning as in the Armed Forces Act 2006 (see section 374 of that Act).

Is it compatible with Article 1 ECHR?

ARTICLE 1

Obligation to respect Human Rights


The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

Joint Committee on Human Rights

"Clause 14 introduces a total ban on access to justice in respect of human rights breaches arising from overseas military/peacekeeping operations. This would impact on the ability of members of the Armed Forces, their family members, and innocent civilians to seek justice and accountability for human rights violations. This is clearly not compatible with the basic principles of the rule of law, access to justice or the enforcement of human rights, specifically the procedural obligations arising from the right to life (Article 2 ECHR) and the prohibition on torture (Article 3 ECHR and UNCAT), as well as other rights that may be engaged by overseas military operations."

Government statements appear confident:

"**Limit the Bill's territorial jurisdiction**. Domestic and Strasbourg case law has extended beyond the intent of the Convention's drafters. The Bill excludes extraterritorial jurisdiction for military operations abroad."

– Dominic Raab's letter to the Justice Select Committee, 21 June 2022

But will it?

The Bill's Impact Assessment tells a different story

149. Under Article 1 of the Convention, the States Parties are obliged to "secure to everyone within their jurisdiction the rights and freedoms" defined in the Convention. Jurisdiction in international law is classically defined on a territorial basis with certain exceptions such as diplomatic premises. While Strasbourg's approach has been praised for ensuring protection for human rights, particularly where one Convention state has occupied the territory of another, it has been criticised for going beyond the intent of the Convention's drafters, and for bringing international human rights law into conflict situations that are classically governed by the law of armed conflict.

150. The government is proposing that the Bill of Rights should apply extraterritorially to the extent of the UK's extraterritorial obligations under the Convention, but with a carve out for military operations overseas. A restriction of extraterritoriality would be in line with the Convention's original drafters' intentions, we believe.

151. The government recognises **that there is no unilateral domestic solution to extraterritorial jurisdiction**. The government believes this provision signals our commitment to the principle that claims relating to overseas military operations should not be brought under human rights legislation. We are considering how to resolve this issue at an international level with our partners in the Council of Europe.

152. To maintain compatibility with the Convention, alternative remedies will be introduced through later legislation. The carve out for military operations overseas **will not commence** unless and until the alternative remedies are in place.

Clause 14 - just an exercise in ‘signalling’?

- Would require *very* surprising diplomatic developments.
- Not a change the signatory states are likely to make (and not in a hurry – two signatories currently engaged in war).
- Predict that it is unlikely this or any future Government will legislate for any adequate alternative remedy that would satisfy ECtHR.

Clause 15: permission

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.

(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).

Significant disadvantage

(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).

- A violation of a right should attain a minimum level of severity to warrant consideration by an international court.
- Violations which are purely technical and insignificant do not merit European supervision (Shefer v. Russia).
- The severity of a violation should be assessed by taking into account both the applicant's subjective perception and what is objectively at stake in a particular case (Korolev v. Russia)
- A violation of the Convention may concern important questions of principle and thus cause a significant disadvantage regardless of pecuniary interest.
- E.g. Giuran v. Romania, concerned stolen goods EUR 350, the applicant had suffered a significant disadvantage because the proceedings concerned a question of principle for him, namely his right to respect for his possessions and for his home.

HM Courts &
Tribunals Service

OUT OF ORDER

THE FAULT HAS BEEN REPORTED

The Criminal Courts Calendar 2022
#thelawisbroken

Society
of Labour
Lawyers

Clause 18: damages

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

(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).

(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.

In making decisions about loss, damage and whether to make an award:

(5) The court must take into account all the circumstances of the case including, in particular—

- (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;
- (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.

(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.

Impact Assessment

- “The new factors in determining how damages are awarded may remove or reduce awarded damages, leading to savings for government departments and other public bodies.”
- “The potential reduction in damages could lead to some litigants deciding to no longer pursue their claims, leading to cost savings for the justice system.”
- “though this may be partially offset by a loss of associated court fees”
- “This is likely to be a particular cost for litigants bringing claims against certain public-facing public authorities, such as the police.”
- “The test for whether damages are likely to prevent a public authority from delivering its public service obligations may be developed, by the courts, into a stage in proceedings requiring complex argument involving experts and administration costs. This may result in increased overall costs and delays.”
- “claimants may still recover damages on other grounds in some cases, such as tort, resulting in few, if any, cost savings”

Bill of Rights: Relationship with ECtHR and International Law

Nyasha Weinberg

‘Taking back control’ from the ECtHR…

Clause 1 of the Bill sets out the Bill’s aims: to *“repeal and replace”* the HRA 1998.

It reflects the themes of the Independent Human Rights Act Review, who considered a series of questions including the relationship between the domestic courts and the ECtHR. (and the separation of powers)

It introduces the bill as “*clarifying and re-balancing*” the relationship between UK courts, the European Court of Human Rights ("**ECtHR**") and Parliament.

... And 'handing' it to the UKSC

"1(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"*

- (a) […] "*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 […]*
- *(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*** *[… (repeal of section 3 of the HRA 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.****"*

While emphasising the ECtHR's newly limited role (at least domestically)

*(3) It is **affirmed that judgments, decisions and interim measures of the European Court of Human Rights –***

(a) Are not part of domestic law, and

(b) Do not affect the right of Parliament to legislate"

This is all without any change to the UK's international law obligations

- There is nothing in the Bill of Rights which changes the UK's position in international law.
- The UK remains subject to binding treaty obligations as a signatory and state party to the European Convention on Human Rights ("**ECHR**").
- Plus, common law presumption that Parliament does not intend to act in breach of international law
- The Good Friday Agreement 1998 (**GFA 1998**") requires the Convention be given direct effect in Northern Ireland Courts

How does the Bill promote the Supreme Court in relation to the ECtHT?

- Through **Clause 3** following which:
  - Asserts the Supreme Court as the "*ultimate judicial authority*"
  - Reforms the HRA section 2 obligation: courts are no longer required to 'take account' of ECtHR jurisdiction.
  - UK Courts:
    - Must have *"particular"* regard to the Convention right text
    - May have regard to the preparatory work of the Convention
    - May have regard to common law rights and principles sanctioning divergence from ECtHR approach
- **Clause 3(3)(a)** prevents courts from "*expanding*" the protection conferred: but note: this may lead to judicial second guessing.

Some further examples

- A number of the Bill of Rights clauses demonstrate government willingness to open the gap between the
  - (i) Case law of the ECtHR on convention rights, and
  - (ii) The UK's treaty obligations and the domestic application of the convention.
- **Examples:**
  - **Clause 5** on positive obligations
  - **Clause 8** which result in UK courts (depending on its interpretation) concluding that there is not an ECHR breach, when in fact there is one.
  - **Clause 24** which requires ECtHR interim measures to be disregarded, including by UK courts.

Declarations of Incompatibility

- **Clause 10** maintains power to issue declarations of incompatibility –where "*court is satisfied that a provision of primary legislation is incompatible with a Convention right.*"
- Hard to know whether such declarations will be more likely or less likely under the Bill of Rights compared to the HRA:
  - Provisions in Clauses 7 and 8 reduce likelihood of a declaration of incompatibility
  - But the absence of an interpretative obligation may result in more incompatibilities.
- Note: A declaration of incompatibility is not an 'effective remedy' under Article 35(1) ECHR

Breaches of Convention rights – remain breaches of Convention rights

- Nothing contained in the bill can change position in international law: UK divergence could result in a breach of the UK's treaty obligations under ECHR.
- Questions as to the UK's compliance with the ECHR remain for the ECtHR to determine, regardless of what is contained in the Bill.
- Thus the 'rebalancing' is solely from the perspective of domestic constitutional legitimacy

The UK may find itself in Strasbourg more often

- The UK will still be required to comply with Strasbourg decisions- to which is bound by treaty law.
- Thus litigants (or at least those who can afford it) can still go to Strasbourg.
- The new legislation likely means that the UK will be likely to be found in breach of the ECHR more often.
- But, it will be more expensive and burdensome for those seeking to rely on Convention rights – in particular, those expressly restricted in the proposed Bill of Rights

Overall?

- Strategy to reduce the influence of the ECtHR
- But without removing the UK from the ECHR
- Straining the relationship between the UKSC and ECtHR, and the UK's relationship with CoE.
- Lawyers are likely to find wiggle room: finding routes to referring to Strasbourg jurisprudence in domestic courts when determining convention rights
- Consequently, the new situation is somewhat confused: with the government attacking the HRA and limiting ready enforcement of rights, while remaining bound by the ECHR.
- Likely to lead to a significant amount of confusion- and litigation.

END

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