



Ministry of
JUSTICE

Rights and Responsibilities: developing our constitutional framework

Summary of responses

March 2010



**Rights and Responsibilities:
developing our constitutional framework**
Summary of responses

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

March 2010

© Crown Copyright 2010

The text in this document (excluding the Royal Arms and other departmental or agency logos) may be reproduced free of charge in any format or medium providing it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the document specified.

Where we have identified any third party copyright material you will need to obtain permission from the copyright holders concerned.

For any other use of this material please contact the Office of Public Sector Information, Information Policy Team, Kew, Richmond, Surrey TW9 4DU or e-mail: licensing@opsi.gsi.gov.uk

ISBN: 9780101786027

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office
ID P002358075 03/10

Printed on paper containing 75% recycled fibre content minimum.

About this consultation

- To:** The consultation was aimed at the general public as well as special interest groups, such as those engaged in the promotion and protection of human rights. The consultation was complemented by a programme of public deliberation on a broader range of constitutional questions, which is the subject of a separate, independent report. Both this summary and the report on public deliberation can be found on the Ministry of Justice website at www.justice.gov.uk
- Duration:** From 23 March 2009 to 26 February 2010
- Enquiries (including requests for the paper in an alternative format) to:** Rights, Responsibilities and Values Team
Ministry of Justice
102 Petty France
London
SW1H 9AJ
- Tel: 020 3334 3734
Fax: 020 3334 3744
Email: rightsandresponsibilities@justice.gsi.gov.uk

Rights and Responsibilities: developing our constitutional framework
Summary of responses

Contents

Introduction and contact details	5
Background	6
Summary of responses	9
Responsibilities	12
Rights	16
Legal effect	20
Conclusion and next steps	23
Consultation Co-ordinator contact details	25
The consultation criteria	26
Annex A – List of respondents	27

Rights and Responsibilities: developing our constitutional framework
Summary of responses

Introduction and contact details

This document is the post-consultation report for the Green Paper, *Rights and Responsibilities: developing our constitutional framework*.

It will cover:

- the background to the report
- a summary of the responses to the report
- a detailed response to the specific questions raised in the report
- the next steps following this consultation.

Further copies of this report and the Green Paper can be obtained by contacting the **Rights, Responsibilities and Values Team** at the address below:

**Human Rights Division
Ministry of Justice
102 Petty France
London
SW1H 9AJ**

Telephone: 020 3334 3734

Email: rightsandresponsibilities@justice.gsi.gov.uk

This report is also available on the Ministry's website: www.justice.gov.uk.

Alternative format versions of this publication can be requested from 020 3334 3734.

Background

The Green Paper *Rights and Responsibilities: developing our constitutional framework*¹ was published on 23 March 2009. It invited comments on the Government's proposals to bring forward as soon as possible in the next Parliament a Bill of Rights and Responsibilities that would build on the Human Rights Act 1998.

The genesis of the *Rights and Responsibilities* Green Paper can be found in an earlier Green Paper, *The Governance of Britain*,² which was published in July 2007. The purpose of *The Governance of Britain* was to start a national conversation about a new constitutional settlement that would further develop the radical and beneficial changes brought about by devolution to Wales, Northern Ireland, Scotland and London, the Data Protection Act 1998, the Freedom of Information Act 2000, reforms to the House of Lords, independence for the Bank of England and National Statistics and the creation of the UK Supreme Court.

The Governance of Britain looked at further possible changes that would alter the balance of power in the United Kingdom, entrusting Parliament and people with a greater role in influencing the decisions that affect everybody's lives and upholding and enhancing the rights and responsibilities of the citizen. The publication was not a blueprint but rather the first step in creating a conversation about improving accountability for the exercise of power. Some of those proposals, such as changes to the powers of Parliament in relation to international treaties, are being taken forward in the Constitutional Reform and Governance Bill, which is presently before Parliament. Others, such as giving Parliamentary Select Committees the opportunity for pre-appointment hearings for a number of senior public appointments, have been put into effect without the need for legislation.

A broad range of consultation has taken place since 2007. The publication of the *Rights and Responsibilities* Green Paper took the discussion to the next level and was complemented by a programme of deliberative events across Britain over the autumn of 2009 and early 2010. At these events, the views of the public were taken on national identity, national values (including a Statement of Values), a Bill of Rights and Responsibilities and a written constitution. A separate, independent report³ is published alongside this *Summary of responses*, which provides the findings from these events. The *Summary* shows a strong public appetite for further debate of these profoundly important issues, and broad support for adoption of a Statement of Values and a Bill of Rights and Responsibilities as part of a suite of constitutional changes.

¹ www.justice.gov.uk/publications/docs/rights-responsibilities.pdf

² www.official-documents.gov.uk/document/cm71/7170/7170.pdf

³ www.justice.gov.uk/publications/rights-responsibilities.htm

Rights and Responsibilities: developing our constitutional framework covered three broad areas: first, the merits of giving constitutional recognition to responsibilities; second, the possible recognition at a constitutional level of rights relating to criminal justice, equality, good administration, social justice and the welfare state, healthcare, children, and living within environmental limits (this list was not exhaustive and respondents were invited to suggest other areas they felt might merit inclusion in a Bill of Rights and Responsibilities). Finally, respondents were asked for views on the question of the legal effect of any Bill, and to look again at assumptions about how best to ensure that rights and responsibilities are respected and understood. The possible approaches set out in the Green Paper ranged from a declaratory and symbolic statement, to a set of rights and responsibilities directly enforceable by the individual in the courts.

The Government made clear in the Green Paper its own position in relation to the question of legal effect. The Green Paper clearly states that the Government did not consider a generally applicable model of directly enforceable rights or responsibilities would be the most appropriate for a future Bill of Rights and Responsibilities. The Government argued that such a model may not be the best mechanism for ensuring fair provision of economic and social rights. Similarly, the imposition of new penalties was unlikely to be the best way to foster a sense of civic responsibility and encourage respect and tolerance for others and participation in the democratic process.

A variety of means were created by which people could contribute responses to the issues raised in the Green Paper. A micro-site – *People, Power and Politics*⁴ – was opened on the 23 March 2009 and has hosted four online discussion forums on values, rights, responsibilities and approaches to a Bill of Rights and Responsibilities. The site has also been used as a portal for news feeds, which are sent automatically to a wide range of stakeholders on developments in this policy area. The Ministry of Justice has also embraced social media through its use of Twitter to engage a new online community who do not necessarily follow or contribute to debates about potential constitutional change.

The Ministry of Justice also proactively encouraged the input of young people. *A Young people's guide to rights and responsibilities*⁵ was published to make what can be a complex subject area more accessible, particularly as a key element of the Green Paper's discussion of rights related to children's wellbeing. The *Young people's guide* was complemented by an *easy read guide*⁶ to the Green Paper. This was underpinned by informal roundtable discussions with organisations such as the Disability Law Service and Scope, as well as a formal written response from Mencap. Roundtable discussions were also held with a wide variety of different representatives from the UK's main faith communities. A full list of respondents and events is attached at

⁴ <http://governance.justice.gov.uk>

⁵ www.justice.gov.uk/publications/docs/right-responsibilities-young-people.pdf

⁶ www.justice.gov.uk/publications/docs/rights-responsibilities-easy-read.pdf

Annex A. It is important to be clear that responses came from a wide variety of sources and varied in terms of level of detail. This summary makes clear in its analysis the extent to which the Government received general or specific responses.

The consultation period on the Green Paper ran for eleven months and closed on 26 February 2010. This report summarises the responses and concludes by explaining how the process (including the programme of deliberative research) will influence the further development of the proposal consulted upon.

Summary of responses

- i. The consultation process on a Bill of Rights and Responsibilities reached in the region of 2,500 individuals through the different methods outlined in the previous section. This included 123 written submissions. These encompassed three broad categories: written responses, online responses and responses coming out of the roundtable events that took place during the course of the consultation. Many of the individual responses received, therefore, represented the views of a much larger constituency.
- ii. The written responses were the largest of these three groups and accounted for 72 of the 123. Of these, just over half were from organisations including charities, NGOs, faith groups, political groups and legal and academic organisations, with the remainder coming from individuals. There were 35 online responses, largely through the *People Power and Politics* microsite which hosted four online debates on 'Values in the UK', 'Rights', 'Responsibilities' and 'Approaches to a Bill of Rights and Responsibilities' throughout the consultation period. Where an individual participated in more than one discussion, all their posts were counted as one response. People also contributed through Twitter, with the Rights and Responsibilities feed attracting over 600 followers. Due to the brief and wide ranging nature of these contributions, all the Twitter comments were counted as a single response. In the case of the responses coming out of the events and meetings, of which there were 15, each event was recorded as an individual response.
- iii. Drawing on such different sources for responses inevitably meant that they varied widely in terms of the depth of analysis, in the level of focus on the issues raised in the Green Paper and in the number of people whose views were represented. When analysing the responses, the Government has tried to reflect this when weighting the views expressed, and presenting the findings.
- iv. Overall, most of the responses welcomed the Green Paper, and a large number supported its central proposal that the time was right to explore a Bill of Rights and Responsibilities.
- v. The reasons for supporting a Bill differed, but the most widely shared view was that it would be beneficial in raising people's awareness of rights and responsibilities. Connected to this was a strong view that a new constitutional document should be presented in a clear and accessible way and be suitable for use in education from an early stage.

- vi. Some people explicitly supported a BoRR as the next step in an ongoing constitutional process, viewing it as a means of 'updating' the current constitutional situation and potentially paving the way for a written constitution. Others saw it as an opportunity to build on and strengthen the protections enshrined in the Human Rights Act 1998, further extending the rights of individuals to new areas such as economic and social rights.
- vii. Of those respondents who did not support the development of a new constitutional instrument, most felt that the protections already in place, particularly in the form of the Human Rights Act, were sufficient, and that the case for change was not strong enough to justify such a fundamental step. These respondents also tended to stress the need to properly enforce and publicise the rights contained in the current legal framework and argued that the Government needed to do more in this area.
- viii. Others felt that the wrong constitutional issue was being addressed and that questions surrounding Parliamentary sovereignty, House of Lords reform or the current voting system were more important and should be resolved before this debate continued.
- ix. The responses to each of the central chapters of the Green Paper on Responsibilities, Rights and Legal Effect are discussed in detail in the following sections. Overall however, respondents were split roughly half and half on whether responsibilities should be included in any new Bill. Some respondents felt articulating responsibilities would help rebalance the debate and encourage a positive cultural change, but others felt that it is not the place of the State to talk about responsibilities, which more traditionally fall within the remit of communities, faith groups or the family. There was also a group of responses which were cautious about the prospect of including responsibilities within the substance of a new Bill, but were comfortable with responsibilities being articulated in a preamble.
- x. On rights, the overwhelming majority of responses were keen to stress that they welcomed the Government's commitment that there would be no retreat from the protections in the Human Rights Act, which were seen as representing an extremely important step in rights protection in the United Kingdom. A significant number of responses favoured codifying rights in some of the new areas discussed in the Green Paper, with most support for articulating rights for children and children's wellbeing, support for a statement of equality and good administration, and more conditional support for the inclusion of some social and economic rights.

- xi. In terms of legal effect, there was an overarching preference for full legal enforceability of rights wherever possible, but this was accompanied by a realisation that this may not always be appropriate where questions of resource allocation are at stake. There was little appetite for legal enforcement of responsibilities with the preference here for a declaratory or symbolic statement with the aim of fostering a positive cultural change.
- xii. People were generally comfortable with the role of the courts in overseeing the framework of rights, even where this might involve making decisions on resource allocation, but there was also a view that this must be balanced with Parliament's right to make key decisions in this area. Some responses specifically called on Parliament to take a more active role in monitoring human rights compliance.
- xiii. Where issues surrounding devolution were discussed, concerns were expressed that any new constitutional document should not interfere with the separate Bill of Rights process in Northern Ireland, and a more general desire to see a new constitutional document relevant at all levels of governance, from the Devolved Administrations and Legislatures to local councils. Among those responses that discussed devolution implications, there was also strong support for a core constitutional document which applied across the whole of the UK, but which could be supplemented by the individual Devolved Legislatures, for example in the area of social and economic rights.

Responsibilities

1. Almost all the responses to the consultation included a view on responsibilities, and predominantly focused on whether or not responsibilities should be included in a new Bill rather than going into specific detail about different kinds of responsibility touched on in the Green Paper. Quite a few responses felt that the Green Paper was not sufficiently clear in explaining the nature of responsibilities and how they related to rights, which prompted wide ranging debate on this point.
2. Overall the responses in favour of including responsibilities in any new Bill were fairly evenly balanced by those against, although the case against inclusion was argued in stronger terms. In addition, there was a third group of respondents who were cautious about the inclusion of responsibilities in the substance of a new constitutional document, sharing many of the concerns of those who argued against inclusion, but who were comfortable with the inclusion of responsibilities in a preamble, or as a purely declaratory statement.
3. With few exceptions, respondents across the board were resistant to the idea that fundamental human rights should be contingent on responsibilities and supported the Green Paper's statement that this was not on the table.

Arguments against including responsibilities

4. One of the key arguments against the inclusion of responsibilities was that the kinds of responsibility discussed in the Green Paper were of a very different nature to the rights discussed alongside them. Whilst there was widespread agreement with the argument, at 2.13 of the Green Paper, that responsibilities are already inherent in rights, most respondents who touched on this issue felt that the discussion in the Green Paper went far beyond this idea, covering social and moral issues as well as the responsibility to respect the rights of others.
5. Some respondents were opposed to articulating these kinds of responsibilities at a constitutional level because they felt it was an unnecessary addition to the debate and that what was important was to promote a better understanding of how the responsibilities inherent in rights worked.
6. Respondents also felt uncomfortable with the idea because the kinds of responsibilities discussed in the Green Paper were seen as more transient and lacking 'equivalence' to core human rights, which in turn risked being 'devalued' by being discussed in parallel.

7. Another argument against including responsibilities, which was articulated particularly clearly by those representing vulnerable groups such as those with mental illness or learning difficulties, who were concerned that elevating responsibilities based on social norms or accepted modes of behaviour, would exclude those who were unable rather than unwilling to conform. In the response submitted by Scope, this point is expressed as follows:

‘Balancing rights with responsibilities can create a set of assumptions which disproportionately impact on disabled people across a number of areas. For example, in the debate on incapacity benefit and employment support where rights to benefits are accompanied by responsibilities, there is a strong assumption that it is the lack of motivation on the part of disabled people that accounts for failing to move from receiving benefits into work.’
8. Finally, some responses felt that it was simply not the role of the State to articulate these kinds of responsibilities, which more properly belong to the civic and social spheres and to individual communities and families. As one individual noted, the inclusion of responsibilities ‘risks the document becoming not a Bill of Rights, but more a treatise on how people should behave in relation to the State’. This view was articulated particularly clearly by the faith groups who responded to the consultation and stressed that sources of moral authority are found outside the State. The response from the Archbishop’s Council for the Church of England makes this point clearly:

‘The exercise of responsibilities to others should be worked out, and people held to account for their responsibilities, first in the family, next in the local community and, only where these levels have proved inadequate, in the actions of the State.’
9. It is important to note that concerns of the kind discussed above did not always lead to respondents rejecting outright the possibility of including responsibilities in a Bill. Particularly among those responses where the primary concern was a fear that the inclusion of responsibilities might introduce a degree of contingency into rights protection despite the assurances in the Green Paper, there was a willingness to support a statement of responsibilities in the preamble to a new Bill, or as a purely declaratory statement. JUSTICE and the Equality and Human Rights Commission were among those who advocated this approach.

Arguments in favour of including responsibilities

10. Responses against the inclusion of responsibilities were balanced by those in favour, although these were in general not as strongly developed as those against. The key argument in favour of inclusion was that it might encourage or regenerate active citizenship. Quite a few respondents also supported the Green Paper’s argument that we should seek to articulate what we owe as much as what we expect, and to address the perceived imbalance between rights and responsibilities in our constitutional architecture. As one individual stated:

‘A legal Bill of Rights and Responsibilities is urgently required so that the current situation, where people often say “I know my rights” as an excuse for denying others theirs, ends.’

11. Of the suggestions in the Green Paper of areas where responsibilities might be articulated there was most support for including responsibilities relating to child well-being. There was also strong support for stressing the responsibility to obey the law and to pay taxes, both of which were thought to be relatively uncontroversial.
12. The idea of a responsibility to live within environmental limits also attracted some support, although there was a feeling that this must be matched by Government action in order to have an impact. A duty to treat public sector staff with respect also attracted mixed views; a couple of respondents found it too vague to grasp whereas more queried why such a duty should not extend more widely. It was felt that a responsibility simply to respect others was a more appropriate goal.
13. The prospect of including responsibilities in relation to criminal justice, specifically to report crimes and co-operate with prosecuting agencies provoked more polarised responses. Some were strongly in favour and felt it was a straightforward responsibility of all citizens, whilst others felt that a general responsibility in this area could not be sufficiently flexible to take into account the sometimes complex personal circumstances of individual situations.
14. Several responses were strongly opposed to the inclusion of a duty to vote. They argued that the decision not to vote was not always a consequence of apathy but could also be made on the basis of strongly held moral and ethical convictions. In these circumstances, it was felt that to associate a decision not to vote with a failure to fulfil a constitutional responsibility was to make a moral judgement where it was not always appropriate.

Additional suggestions

15. In addition to the responsibilities proposed in the Green Paper, quite a few responses made further suggestions of responsibilities that might be included. For example, a survey of children’s views conducted by the Children’s Rights Director for England suggested the following responsibilities: responsibility for your own behaviour and actions, to make use of your education, to show respect to others, to be responsible for your own safety, to look after others and yourself, to look after your health and hygiene, to give your opinion.
16. The responsibility to take care of your own health was also mentioned by a number of other respondents, including in the roundtable meeting with disability organisations. A duty to participate in civic affairs also met with support.

Government responsibilities

17. Finally, a theme running through a large number of responses was a desire to see the responsibilities of Government set out in addition to those of the individual. Of particular concern was a desire that Government commit to involve people in decision making and decisions about resource allocation, to ensure that individuals are able to influence the debate and to promote administrative fairness. Given the focus of these comments, it is possible to interpret this as support for a right to good administration, although it is expressed in the language of responsibilities.

Rights

18. The Green Paper discussed the different types of rights that are interwoven throughout our common law, statute and convention, and suggested this was a good moment to explore drawing together and codifying these rights in a new constitutional instrument. The Green Paper was clear that the civil and political rights currently embodied in the European Convention would not be subject to change, and sought views on a number of areas in which new rights might be articulated.
19. A large number of the responses on rights began with a statement support for the civil and political rights set out in the Human Rights Act and welcomed the Green Paper's assertion that that rights protection in this area would not be reduced. The Equality and Human Rights Commission's response for example, was entitled 'Human Rights Act Plus' and set out:

'The time may be right to consider the next steps in the development of human rights in Britain, but only if the development of any Bill of Rights reinforces and builds on our current human rights protection.'
20. Some responses argued that there was no need to extend the discussion of rights beyond those contained in the Human Rights Act. The Archbishop's Council for the Church of England suggested that to do so risked rights inflation and an unjustified intrusion of the State into human affairs. Coming from a different perspective, Liberty argued that maintaining the rights the Human Rights Act was the only realistically achievable option, as any further expansion of rights was unlikely to meet with political consensus.
21. However, the majority of responses were open to the arguments made in the Green Paper about codifying rights in new areas, although there was debate as to whether the approach in the Green Paper was the best way forward. A number of responses from across the spectrum argued that the first place to look when considering new rights should be the international treaties to which the UK is a party, such as the UNCRC, CRPD and ICESCR.
22. Generally though, respondents in favour of potentially extending the language of rights to new areas engaged fairly closely with the specific proposals in the Green Paper, and were broadly supportive of them. The key reason given for support was the hope that this process would give citizens a better understanding of their rights and clarify entitlements.
23. Of the specific areas addressed in the Green Paper, there was most support for including rights relating to children and children's wellbeing, which corresponds to the high level of support also expressed for the inclusion of responsibilities towards children in the previous section. In a large number of cases, this support was linked to a specific call for the

incorporation of the UN Convention of the Rights of the Child into domestic law.

24. The UNCRC was not the only source of rights in this area though. A survey of the views of 1,888 children conducted by the Children's Rights Director for England also stressed the right to have a say, for individual wishes to be taken into account, to be treated fairly and equally and to choose carers as being important to children.
25. There was also clear support for a freestanding right to equality, although participants frequently expressed this as a right to non-discrimination, which was felt by some to be a more straightforward term. In exploring this option, some respondents also suggested that a constitutional document also contain specific rights for particular groups; children, disabled people and those suffering from domestic and sexual violence, trafficking and exploitation. Something that also came out of this discussion was a desire on the part of a few participants for a right to human dignity to be recognised alongside a right to equality. The response from Rene Cassin and ResponseAbility said:

‘As we strive to create an equal society that treats its members as being of equal worth we must ensure that we treat everyone with dignity, regardless of whether or not they can fully participate in society...for example treating those with dementia or special needs with respect so that their wishes are taken into account.’
26. The proposal for a right to good administration also engendered support among respondents, with a perception that it would provide clarity and coherence, and would draw on work on principles of good administration done by the Ombudsmen. As discussed in the previous section, a theme running through the responses on responsibilities was a desire for a clearer articulation of Government responsibilities to involve people in decision making, to treat information responsibly and be transparent. This can also potentially be interpreted as support for a right to good administration.
27. Connected to this discussion was also a call from the Chairman of the Law Commission for a right to good law to be included. He argued:

‘Citizens have the right to expect that the laws which govern them should be accessible, intelligible and up-to-date...The Commission believes that such a right should be enshrined in any Bill of Rights.’
28. The discussion surrounding social and economic rights was also met with broad support, although the discussions here were more cautious than in the areas discussed above. A few respondents felt that to elevate these rights to constitutional status would compromise the freedom of Government to make policy or prove difficult to reach a consensus on, but overall there was a consensus in favour of including rights to healthcare, housing, education and an adequate standard of living. This, it was argued in the response from RADAR, would break down what has become a false distinction:

‘It is difficult to separate the right to housing (a social right) from the right to family (a civil right). Every family needs a place to live in; bad housing affects health and relationships, and therefore family life, and this in turn affects the wellbeing and educational achievements of children.’

29. One interesting point that came out of a roundtable discussion with disability groups was a feeling that a right to healthcare potentially needed to be broadened to include rights to social care and social interaction in order to reflect the needs of disabled people. As one participant noted:
- ‘I think it’s really important to think about access in terms of rights. Rights to a social life, to social interaction...if you’re socially isolated as a lot of evidence shows, a lot of outcomes across the board are much worse for you and you’re at a much higher risk of poor health, so its really important to emphasise access to social interaction, social opportunities and being included rather than excluded.’
30. Outside this consensus, there were more mixed feelings about other rights falling within the broad social and economic category. There were concerns for example, about giving constitutional status to the right to work because of the difficulty of predicting or controlling the conditions that made work available. A right to sustainable development also produced mixed responses: whilst some respondents were in favour there was a feeling that the Green Paper could have been clearer on what such a right would mean in practice.
31. The discussion of rights in the criminal justice sphere was not explored by as many respondents as the areas discussed above but there was support among those who did for the idea of articulating the rights of victims of crime. The principle reason given for this, in line with the argument in the Green Paper, was a feeling that it would go some way towards ‘rebalancing’ the current system. There were some dissenting voices on this point however, with a few responses opposing the inclusion of these kinds of rights on the grounds that they would compromise the ‘objectivity’ of the criminal justice system.
32. The issue of habeas corpus and trial by jury did not attract such wide discussion, with support tending to be motivated by a sense that civil liberties needed to be bolstered. One or two respondents did feel strongly on this point however, with one response arguing:
- ‘It is not possible to imagine two more central elements of the British system of human rights protection that these two concepts. They are two of the most long-standing and familiar elements of our constitutional settlement...two of the most recognisably British concepts in relation to individual rights and responsibilities and the inclusion of them is essential to give the Bill final weight.’
33. It should also be noted however that a couple of responses picked up on the fact that trial by jury is not a familiar concept in the Scottish legal system. These issues are explored in more detail in the following section.

Additional rights

34. As with the discussion on responsibilities, respondents made suggestions for the inclusion of rights not included in the Green Paper. Some of these have been touched on above, including the right to dignity, to good law and the right to social care and social interaction. Other suggestions encompassed the rights of future generations, the right to asylum, the right to assisted suicide, the right to vote from the age of 16, and the right to approve resource decisions at a local level, although in each case, support came from an individual or handful of individuals rather than a majority of respondents.

Legal effect

35. The Green Paper set out a range of options for giving legal effect to a new Bill of Rights and Responsibilities on a continuum ranging from a declaratory statement, a statement of principles informing legislation and guiding the courts, to full legal justiciability. It also suggested means of giving a Bill effect beyond the legal sphere, through a duty on Ministers to report to Parliament on the compatibility of legislation, or monitoring compliance through Parliamentary committees or the Ombudsmen. The consultation also asked about how far the courts should be involved in decisions about resource allocation, how a Bill would relate to other legislation including the Human Rights Act and how it would fit with the UK's governance arrangements in respect of devolution.

Enforcing rights

36. Overall, respondents were broadly in favour of making rights legally enforceable wherever possible, arguing that effective enforceability was what gave rights meaning. There was concern that unless rights were legally enforced, the effect of a new Bill would be minimal, and that this could engender public cynicism. One respondent commented:
37. 'Rights legislation, whether in the form of a constitution, convention or Act, is good news for people such as those with a learning disability, whose rights are routinely abused, but there is no point providing these rights unless they are adequately enforced.'
38. There was strong support among some respondents, including Liberty, Unlock Democracy and the Equality and Human Rights Commission, for retaining and strengthening the enforcement mechanisms of the Human Rights Act in any new constitutional instrument, including the requirement that legislation be interpreted compatibly wherever possible, that the courts take into account the jurisprudence of the European Court of Human Rights, have the power to strike down incompatible subordinate legislation and make declarations of incompatibility in respect of primary legislation, and that public authorities cannot act incompatibly with the provisions of a new Bill. There was also support among a couple of these responses for broadening the definitions of victim and public authority under any new Bill, for incorporating Article 13 of the ECHR which establishes the right to an effective remedy, and for increasing the role of Parliament in monitoring compliance with the provisions of any new Bill.
39. Amongst these responses and a handful of others, there was disappointment that the Green Paper did not place more emphasis on full legal enforceability, including in respect of social and economic rights. As the response from CRAE noted:

‘We can see the attraction of general interpretative principles, especially if they are human rights based...but this is a very poor substitute for incorporating the full range of international obligations in to UK law.’

40. However, this sentiment was not necessarily reflected among the responses more broadly. Respondents were generally comfortable with the idea of the courts playing a significant role in safeguarding rights and making decisions, including where issues of resource allocation were at stake, with a couple of responses noting that the judiciary was already called upon to weigh complex areas of Government policy in their day to day business. However, there was also an awareness that in cases where rights entail resources, as is the case with many social and economic rights, full legal enforceability is not always appropriate.
41. Here, the preference tended to be for enforcement through interpretative principles or through the progressive realisation model adopted by South Africa. A couple of responses also explored in some detail the benefits of enforcing these kinds of rights through the Ombudsmen or tribunals system. The response from the Parliamentary and Health Service Ombudsman made the following points:
- ‘The objection to court involvement with socio-economic rights is in part the limited capability of the court to exercise a credible role in this area. It should be noted however, that the Ombudsman process is typically inquisitorial and deliberative, and that its decisions, rarely binding, are to that extent revisable.’
42. Participants at the roundtable event with disability organisations also stressed this point, noting:
- ‘...a softer tribunal system is a better mechanism for people to enforce their rights. It’s less formal and allows more accessibility for people in the tribunals system and it works well in employment cases and welfare benefits.’

Enforcing responsibilities

43. When discussing enforceability in relation to responsibilities, the tone of the discussion was different, reflecting the more varied responses regarding whether or not they should be included within a new constitutional document. The concerns about making responsibilities legally enforceable have already been touched on, with a particular focus on the potential impact on vulnerable groups who are unable to fulfil responsibilities or who may be disproportionately affected by the failure of others, such as parents and carers, to do so.
44. The preferred means of giving effect to responsibilities, should they be included, was therefore overwhelmingly for a declaratory statement, possibly included in the preamble to any new Bill. It was felt among those who supported this approach that such a statement would have the

potential to bring about a positive cultural change and encourage more active citizenship. As one response noted:

‘Codifying responsibilities for declaratory purposes may have a role in expressing a standard to which individuals, communities and government should aspire. The sanctions which help enforce declaratory principles need not always be legal sanctions. The court of public opinion is an effective one.’

Devolution

45. Only a small number of responses explored the devolution implications of any new constitutional instrument in any depth. Of those that did there was support for the idea that a UK wide framework of civil and political rights could be built on and supplemented by the Devolved Legislatures, to reflect the wishes and traditions of different jurisdictions. This reflects a proposal made by the Joint Committee on Human Rights in their Twenty Ninth Report of Session 2007-8, *A Bill of Rights for the UK?* We are grateful for their substantial contribution to the debate.
46. In a few cases, support for this proposal was born of a practical concern that consensus could be difficult to achieve. The response from JUSTICE particularly stressed this point, arguing that the Green Paper had underestimated the difficulty of reconciling a new Bill with the UK’s devolution arrangements. In other cases support for this approach reflected an underlying commitment to the principle of subsidiarity. This desire was also reflected more broadly in the view that any new constitutional document should be ‘owned’ by all tiers of governance and not just by Parliament.
47. Several responses, particularly that from the Committee for the Administration of Justice, expressed a specific concern that a new Bill should not undermine the separate Bill of Rights process in Northern Ireland, mandated by the Belfast Agreement. In relation to this the Green Paper clearly stated that, ‘the Government does not wish the public debate around a UK instrument to detract from the process relating to a potential Bill relating to the particular circumstances of Northern Ireland’. This remains the case.

Conclusion and next steps

48. The Government is grateful for the wide range of thoughtful responses that have been submitted on the issues raised in the *Rights and Responsibilities* Green Paper and would like to extend its thanks to those individuals, groups and organisations who have proactively taken the debate to their local communities and those they represent to ensure that voices not often heard in a discussion about constitutional reform have been able to contribute.
49. The responses to the Green Paper, combined with the programme of deliberative research, have reached in the region of 2500 people and shown an appetite for both further debate on a Bill of Rights and Responsibilities (as well as a broader range of constitutional issues) and support in principle for the Government taking forward a Bill.
50. In his statement to the House of Commons on the 23 March 2009, the Lord Chancellor and Secretary of State for Justice (the Rt Hon Jack Straw MP) said:
- ‘Constitutional change should take place only on the basis of full and proper deliberation. The Green Paper has been through such a process within Government and now it is time to take the debate out to the people whom we all serve. The deliberation must not be rushed and so the Green Paper will not precede any legislation this side of a general election... A Bill of Rights and Responsibilities could form the next natural and necessary step in a process that began 60 years ago with the Universal Declaration [of Human Rights]. It is an opportunity to bring together existing rights and responsibilities in one statute and better to define the relationship between citizen and state in a new and unifying constitutional document for this century.’ (Official Report, Vol. 490, Part No. 51, 23 Mar 2009: Column 39)⁷
51. The consultation activity around the Green Paper has gone a considerable way to fulfilling the commitment to full and proper deliberation but there is more to be done. The programme of deliberation has seen members of the public passionately debating the complex trade offs that need to be considered when exploring in particular the possible recognition and protection of economic and social rights; and they have told the Government that further public debate of the issues is required with greater numbers of people from as wide a variety of backgrounds as possible. The Government is committed to taking this forward in the next Parliament and the consultation will be founded on the responses summarised in this report and the findings from the programme of deliberation.

⁷ www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090323/debtext/90323-0006.htm#0903235000003

52. It is important to be clear about the Government's continuing support for the Human Rights Act and the protections and remedies provided by it. It is encouraging to see the responses to the Green Paper support the Government's view on this point. Prior to the Act, accessing Convention rights via the Strasbourg court was a time-consuming, expensive and difficult process. Now, those rights can be accessed in UK courts, with cases heard by UK judges. The Act better protects the family and has benefited all sections of society. In providing a more practical mechanism to access rights, as well as a positive obligation on the State to protect them, countless thousands of people have benefited from the law, without necessarily having to resort to the law. The Government are proud of the Human Rights Act and will not resale from it.
53. It is worth recording also that the Green Paper consultation and complementary programme of deliberative research has contributed to the Government's decisions to take forward other important constitutional changes. In a speech on transforming politics on 2 February 2010⁸ the Prime Minister announced that the Cabinet Secretary would "lead work to consolidate the existing unwritten, piecemeal conventions that govern much of the way central government operates under our existing constitution into a written document"; and second, that "a group will be set up to identify ... what aspects of law and relationships between each part of the state and between the state and the citizen should be deemed 'constitutional'".
54. This work is progressing. The Cabinet Office is leading work on consolidating existing conventions about the way central government operates. This material will follow the pattern set out in the New Zealand Cabinet Manual, although its contents will of course reflect UK practice. A draft of the chapter on elections and government formation was presented to the House of Commons Justice Select Committee on 24 February. The final document should be ready for an incoming government after the general election.
55. The Government is also working on setting up the group to look at the aspects of law and relationships between each part of the state and between the state and the citizen that should be deemed 'constitutional'. The Government envisages that after the group looking at principles has reported, there will then be detailed consideration of how our existing laws and conventions fit in with those principles and which should be given the status of constitutional. The Government believes we have reached a cross-road on our constitutional journey. Now is the time to create a new constitutional settlement that meets the aspirations of the UK public with a more equitable distribution of power that places Parliament and the people at its heart.

⁸ www.number10.gov.uk/Page22337

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact Julie Bradford, Ministry of Justice Consultation Co-ordinator, on 020 3334 4492, or email her at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

Julia Bradford
Consultation Co-ordinator
Ministry of Justice
102 Petty France
London
SW1H 9AJ

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under the **Introduction and contact details** section of this paper at page 5.

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria must be reproduced within all consultation documents.

Annex A – List of respondents

Organisations

Action for Children's Arts

Al-Khoei Foundation

The Archbishops' Council of the Church of England

Baptist Union of Great Britain, the Methodist Church, the United Reformed Church

British Humanist Association

British Institute for Human Rights

CASE – Campaign for State Education

The Children's Commissioner for England

The Children's Legal Centre

Children's Rights Alliance for England

The Children's Rights Director for England

Citizens Advice Bureau

Committee on the Administration of Justice

Community Sector Coalition

Early Childhood Forum

Equality and Diversity Forum

Equality and Human Rights Commission

ERIC

Federal Trust for Education and Research

Free Churches Group

Girlguiding UK

The Green Party

Hindu Forum Britain

Hodge, Jones & Allen LLP

JUSTICE

Law Centres Federation

Law Commission (Chairman)

Liberty

Magistrates' Association

Mencap

Mind

National Children's Bureau

Network of Buddhist Organisations

Parliamentary and Health Service Ombudsman

RADAR – the Disability Network

ResponseAbility and Rene Cassin

Rights of the Child UK (ROCK)

SCOPE

Stonewall

Unlock Democracy Catholic Parliamentary Office – Scotland

Roundtable events

Britishness and Belonging event

British Humanist Association and National Secular Society

Children's Rights Alliance for England

Christian discussion group

Diana Award holders

Disability Organisations meeting

Equality South West (Taunton)

FCCC sub-group meeting

Governance of Britain engagement event – Bristol

Governance of Britain engagement event – Nottingham

Governance of Britain engagement event – Newcastle

Governance of Britain engagement event – Brighton

Governance of Britain engagement event – London

Hindu Forum of Britain

Seminar with Professor Etzioni of The George Washington University

Young People's Guide to Rights and Responsibilities, launch event

Individual responses

Seventy three individuals responded to the consultation in the form of written responses or contributions to the online debates. A number of the online responses were submitted as joint responses. There were also fourteen twitter responses which were categorised as one response. In addition, a webchat with the Minister for Human Rights, Michael Wills, was also categorised as one response.



information & publishing solutions

Published by TSO (The Stationery Office) and available from:

Online

www.tsoshop.co.uk

Mail, Telephone Fax & E-Mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries 0870 600 5522

Order through the Parliamentary Hotline Lo-Call 0845 7 023474

Fax orders: 0870 600 5533

E-mail: customer.services@tso.co.uk

Textphone: 0870 240 3701

The Parliamentary Bookshop

12 Bridge Street, Parliament Square,

London SW1A 2JX

Telephone orders/General enquiries: 020 7219 3890

Fax orders: 020 7219 3866

Email: bookshop@parliament.uk

Internet: <http://www.bookshop.parliament.uk>

TSO@Blackwell and other Accredited Agents

Customers can also order publications from:

TSO Ireland

16 Arthur Street, Belfast BT1 4GD

Telephone orders/general enquiries: 028 9023 8451

Fax orders: 028 9023 5401

ISBN 978-0-10-178602-7



9 780101 786027