



Bill of Rights – Commission’s Report

The Commission set up in 2011 to report on the possibility of a UK Bill of Rights published its report yesterday, 18 December. It has not attracted much attention from the media. The report itself runs to 282 pages, which I do not claim to have read in full. I was aware that its terms of reference rather oddly precluded the Commission from considering the possibility of the UK’s withdrawal from the European Convention on Human Rights (ECHR) but had not previously appreciated that this prohibition was an addition to the terms of reference on which Nick Clegg had insisted.

It is interesting that the report notes that only a quarter or so of those who put in submissions to the Commission were in favour of a UK Bill of Rights. Nevertheless the majority of the members of the Commission, seven out of nine, conclude that there is a strong argument in favour of such a Bill on the basis that it would incorporate and build on the UK’s obligations under the ECHR. Two members wrote their own dissenting conclusions on the main ground that the majority had failed to identify any shortcomings in the Human Rights Act or its application by the courts - a ground which anyone concerned in recent years with the application of the ECHR in numerous major court decisions on asylum and immigration cases must surely find astonishing. They appear also to hint at suspicions that consideration of a UK Bill of Rights may be a way of setting about the process of withdrawing from the ECHR.

An interesting point on which all members of the Commission were agreed is that any proposals for a Bill of Rights would have to take account of the interests of the devolved administrations, particularly that of Scotland with a referendum on independence now scheduled to be held in 2014.

Our view of the suggestion of a UK Bill of Rights was made clear in [Legal Paper MW 237](#) and reiterated in [MW 271](#). I can see no reason to change the view there expressed, that the judicial interpretation of the ECHR has in numerous decided cases made it apparent that the Convention has in practice been inimical to effective immigration control. A UK Bill of Rights, which supplemented the ECHR would almost certainly be written in similar broad language and be liable to similar judicial interpretation leading to comparable deleterious effects on the UK’s ability to control its own borders and in particular to deport convicted criminals and other undesirables. If there were to be concomitant withdrawal from the ECHR, that would mean an end to decisions imposed from Strasbourg. However, any Bill of Rights or document in similar style has the drawback of being open to interpretation in a way that reduces the powers of Parliament and increases the powers of unelected judges. Unfortunately, recent history shows that decisions by the UK’s own judges can also be harmful to the public interest in immigration control. We remain in favour of withdrawal from the ECHR which we originally suggested in July 2007 (see [Legal Paper MW 76](#)).

We await the government’s reaction to the Commission’s report.

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