



Human Rights Inquiry

UNISON Scotland's response to the Scottish Parliament European and External Relations Committee's call for evidence for its Human Rights Inquiry

November 2015

INTRODUCTION

UNISON is Scotland's largest trade union representing around 155,000 members working across public services. We welcome the opportunity to respond to the Scottish Parliament European and External Relations Committee's call for evidence for its Human Rights Inquiry.

Our vision is for public services that are accountable, collaborative and based on equality and human rights, accessible to and meeting the needs of all. We want to see human rights mainstreamed in the design, delivery and funding of all public services. UNISON has been a long time member of both Liberty and Amnesty International and is also a member of the Human Rights Alliance. UNISON Scotland is a member of Human Rights Consortium Scotland.

BACKGROUND

For trade unionists, human rights are at the core of what we stand for. UNISON's approach to the Committee's Inquiry starts with our strong condemnation of the UK Government for its many direct and indirect attacks on human rights, including the proposed repeal of the Human Rights Act, the Trade Union Bill, and its failure to implement its equality and human rights obligations under EU and UN equality and human rights instruments.

Such erosion of human rights in the UK is not only a threat to our liberties, but sends a shocking message to illiberal regimes across the world. It contributes to diminished respect for so many essential rights, in particular impacting currently on the plight of refugees, who are extremely vulnerable and in need of the international legal protections to which they are entitled.

Austerity policies, with their persistent attack on public services, have further eroded equality and human rights for many across society including women; children and young people; black people and ethnic minority groups, including migrant workers; people with disabilities; workers and trade unions. The attack on pay, driving down wages for millions of people, is being exacerbated with the disgraceful assault on workers rights in the Trade Union Bill, with huge implications for civil liberties.¹ The Bill breaches a number of articles in the European Convention on Human Rights, and in particular, ILO conventions that the UK is a signatory to. As the STUC says, effectively the UK Government is trying to remove the right to strike. While strikes are rare, "the ability of unions to take industrial action when needed is a fundamental ingredient in achieving fair pay for our members. The Government understands this, but much as it might wish to, it cannot ban strikes. This is a right upheld by international and human rights law. Instead they plan to make it as difficult as possible to undertake effective industrial action."²

We welcome broad political support in Scotland for the campaign against the Bill, and a statement from Liberty, Amnesty International and the British Institute of Human Rights that the Trade Union Bill is a major attack on civil liberties, warning that it "would hamper people's basic right to protest and shift even more power from the employee to the employer." They added: "It is hard to see the aim of this Bill as anything but seeking to undermine the rights of all working people. We owe so many

¹ <https://www.unison.org.uk/content/uploads/2015/11/trade-union-bill-civil-liberties.docx>

² <http://www.stuc.org.uk/files/Trade%20Union%20Bill%202015/TU%20bill%20Briefing%20latest.pdf>

of our employment protections to Trade Unions and we join them in opposing this Bill.”

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Human rights laws and public bodies’ practices need to be strengthened. So far they have not realised their potential to protect individual rights, such as respect for family life, and collective rights e.g. to belong to a trade union, as noted in the Jimmy Reid Foundation report *Economic and Social Rights are Human Rights*. It calls for, among other things, human rights compliance to be central to the economic strategy which businesses operate in, with the UN framework on business and human rights allowing our government’s economic strategy to fit a globally recognised model.⁴ The report makes proposals for Scotland’s National Action Plan on Human Rights, including the action plan on implementing the UN Guiding Principles on Business and Human Rights.

UNISON traveled with Human Rights Consortium Scotland to Geneva last month, to present a range of evidence to the United Nations on many of the concerns in Scotland about the UK Government’s failings on human rights obligations.⁵ We raised specific points about the Trade Union Bill, and the HRCS said afterwards about the evidence presented on UK compliance with the UN International Covenant on Economic, Social and Cultural Rights:

“The UK has agreed with the UN that we would enjoy a minimum set of economic, social and cultural rights. As so many people know from everyday life, there is a huge gap between the rhetoric and the reality so we highlighted the increase in poverty resulting from the government’s austerity measures and welfare reform, the demonisation of human rights by politicians and the UK undermining international human rights standards by abolishing The Human Rights Act 1998. Our government has promised the UN that it will progressively realise economic and social rights to the maximum extent of available resources but has failed to do so and the poorest are suffering.”

GENERAL COMMENTS

UNISON Scotland’s evidence here builds on the UNISON response in September 2012 to the UK Government Ministry of Justice’s Commission on a Bill of Rights’ Second Consultation.⁶ We pointed out then that UNISON is committed to equality, the elimination of discrimination and the protection of human rights. UNISON works with its European and international counterparts to promote human rights and to ensure they are enjoyed by citizens in the UK, the EU and internationally. The issues of particular importance to us include the right not to be subjected to torture; the right to protest and participate in democratic processes; the right to equality; the right to work and to just conditions at work; the right to fair remuneration; and the right to freedom of association, including the right for all individuals to join and be represented by a trade union without the fear of victimisation or blacklisting, and the rights for trade unions to organise, to bargain collectively and to strike.

UNISON members work with children, the elderly and vulnerable to ensure they receive public services with dignity and their human rights respected.

³ <https://www.tuc.org.uk/union-issues/trade-union-bill/trade-union-bill-%E2%80%9Cmajor-attack-civil-liberties%E2%80%9D-human-rights-groups>

⁴ <http://reidfoundation.org/wp-content/uploads/2015/08/Workers-Rights-are-Human-Rights-10th-Aug-20151.pdf>

⁵ <http://www.unison-scotland.org.uk/news/2015/sep/oct/1023a.htm>

⁶ <http://cbr.cjs.gov.uk/group-2/UNISON.pdf> <https://www.justice.gov.uk/about/cbr/second-consultation/consultation-responses>

UNISON believes that a primary responsibility of the Government is to promote and respect human rights. This includes civil and political rights and social and economic rights. These rights underpin the democratic and social contract between the State and citizens. It is therefore incumbent on the Executive, Parliament, the judiciary and wider public bodies not to act in a manner which violates these rights. It is also essential that effective mechanisms are in place to ensure that such rights are enforceable.

UNISON members set out their major concerns and proposals in a comprehensive motion on Creating an Agenda on Equality and Human Rights, that was passed at this year's National Delegate Conference.⁷

These are our answers to the call for evidence questions:

What is your general view on the UK Government's proposal to introduce a British Bill of Rights to replace the Human Rights Act 1998? Do you think changes need to be made to the current human rights regime in the UK?

UNISON is totally opposed to the proposal to abolish the Human Rights Act (HRA). We believe it is a damaging, dangerous and retrograde step that is an assault on human rights here and that diminishes the UK's reputation internationally, giving succour to illiberal regimes around the world. It is also based on and in reaction to false premises.

Yes, there is much that can be done to build on the Human Rights Act. However, the HRA must remain in place. We could only support a UK Bill of Rights if it did not seek to repeal or undermine the HRA in any way.

UNISON believes that full human rights compliance is fundamental to delivering a fairer Scotland with equality and social justice for all. The UK Government should be implementing all EU and UN equality and human rights obligations, including developing action plans in response to concluding observations from UN Committees/Treaty bodies on compliance with relevant Treaties. The aim should be to fully implement a sustainable human rights based approach and culture, ensuring that human rights are mainstreamed in the design, delivery and funding of all public services.

What rights, if any, would a British Bill of Rights have to contain? How would a British Bill of Rights interact with Scotland's separate legal system?

We repeat the proviso that a Bill of Rights must build on the HRA, which should not be repealed. There should be no loss of rights.

UNISON considers that any UK Bill of Rights, in addition to the the HRA, ought to contain a right to equality, rights to administrative, civil and criminal justice including a right to trial by jury in defined circumstances and socio-economic rights like the right to education, the right to adequate housing, the right to adequate standard of living and the right to the highest obtainable standard of health. In the areas of equality and criminal justice in particular there is a need for more clarity on basic rights, particularly the state's obligations to ensure equal treatment for a range of disadvantaged citizens. In the area of criminal procedure many rights, well-established and indeed constitutional rights in similar jurisdictions, are missing or ill-defined in the UK (for example, rights in detention, right to counsel, right to be free from unlawful search and seizure).

⁷ Motion 85. <https://www.unison.org.uk/content/uploads/2015/07/2015-National-Delegate-Conference-Decisions-Booklet-20150702.pdf>

UNISON considers that none of these rights can be said to be absolute and favours appropriate mechanisms whereby infringements of such rights can be permitted so long as they can be demonstrably justified in a free and democratic society (see for example, section 1, Canadian Charter of Rights and Freedoms; section 5, New Zealand Bill of Rights Act 1990).

UNISON believes that a UK Bill of Rights should expressly state that rights to Freedom of Association (for example those contained in Article 11 of the European Convention on Human Rights) shall cover core labour rights, including the right for trade unions to organise, to bargain collectively and the right to strike. This approach would bring the UK into the line with the practice of most other industrialised countries. For example, the vast majority of EU Member States have specific constitutional rights safeguarding the right to strike. France, Italy, Spain, Greece, Portugal, Finland and Sweden have an express constitutional right to strike; while in Germany and the Netherlands the right to strike is has been read into the constitutional arrangements by the courts. A specific reference to the right to bargain collective and to strike would also be consistent with the decisions of the European Court of Human Rights in the *Demir and Baykara v. Turkey* and *Enerji Yapi-Yol Sen v. Turkey* cases.

Where required, relevant legislative changes should be made to ensure Scottish people have the same new rights. The HRA requires all public authorities in Scotland to act compatibly with the rights in the European Convention on Human Rights, covering both reserved and devolved areas. This must not be weakened.

Arguments have been made that the current system does not sufficiently respect the sovereignty of the UK Parliament. What are your views on this?

We disagree. UK Courts have to take account of case law and interpret legislation in a way compatible with the European Convention on Human Rights “so far as it is possible to do so.” In practice prisoners’ voting rights is the only area in which the UK has defied the European Court of Human Rights. There are many other comments we would make about the role of Parliament, devolution within the UK, international treaties and institutions, but do not have space to do so. This is complex, but the perceived issue is not one that should be addressed by repeal of the HRA, with all the dangers that entails, not just for UK citizens, but for human rights internationally. Also, states should be accountable under international law for breaches of citizens’ human rights.

In addition, it has been suggested that the European Court of Human Rights has developed “mission creep” expanding the European Convention on Human Rights into areas which it should not cover. What views do you have on this argument?

We disagree. We object to any attempt to limit human rights protections to only the “most serious cases.” We object to the toxic nature of the debate, promoted by the right wing media and encouraged by the UK Government suggesting that some people do not deserve human rights. We believe the UK Government’s proposals are based on a false premise. So-called ‘unpopular’ rights are the very rights that must be defended. Interpretation of the Convention, drafted in 1950, rightly evolves over time and has therefore addressed areas such as discrimination over sexuality and corporal punishment in schools, in the context of changing societal attitudes.

What do you think the practical impact of the proposals will be in individual cases, for example as regards immigration policy, criminal law, or decisions made by public authorities?

This could be seriously regressive for individual cases. We need basic rights that are universal and the effect of the whole thrust of the UK Conservative party proposals has been to challenge this. At UK and Scottish level we should be building a human

rights culture, with public authorities integral to that process. We need human rights to be embedded and strengthened, not removed in a 'pick and choose' way by politicians pandering to the worst of the right wing press. It is hard to predict specific impacts until we see the final proposals.

What impact do you think any changes will have on Scotland more generally? Would the Scottish Parliament have to consent to any changes under the Sewel Convention? Could the UK Government act without the consent of the Scottish Parliament?

It would have a very damaging impact and would go against the wide support in Scotland for further embedding human rights, mainstreaming them across public services. Yes, the Scottish Parliament would have to consent. We welcome the Scottish Government's strong commitment to the HRA and the promise not to agree to a Legislative Consent Motion. For the UK Government to act without that, and without the consent of the devolved legislatures in Wales and Northern Ireland, would not only lead to a 'patchwork' of human rights law, but a constitutional crisis and a breach of the Good Friday Agreement.

Do you think it would be possible to have different human rights regimes within the United Kingdom

It may be possible, but would be immensely damaging overall. A 'patchwork' of human rights regimes that is not based on the fundamental principles in the HRA makes implementation of each difficult, causes confusion and is absolutely not the way to improve standards and best practice.

What impact do you think the UK Government's proposals will have on the UK and Scotland at an EU and international level, for example within the Council of Europe?

It will definitely mean a diminishment of the UK's standing and Scotland's standing in advocating for human rights around the world. Human rights defenders working in other countries have been warning that illiberal regimes will take heart if the UK is seen to be 'retreating' from upholding universal human rights. There are already countries using the UK government's position to justify not implementing human rights decisions, including Egypt and Russia. Separately, there is the possibility, depending on the final proposals, that the UK's membership of the Council of Europe could be in question, with all the attendant implications, if the ECHR is not fully implemented in the new law.

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