



Consultation Response: Human Rights Act Reform: A Modern Bill of Rights - 8 March 2022

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This response is concerned with a single proposal on human rights, that seeks to advance the UK's commitments under the Aarhus Convention and to bring the UK's essential rights up to date with a 'right to wellbeing', to respond to increasing inequality and the climate and ecological emergency that is being felt across the world.

SUMMARY

Extensive research has demonstrated the importance of people having 'rights' with regard to environmental quality

(1). A right to a healthy environment is enshrined in over 100 constitutions across the world

(2). The Aarhus Convention

(3) of which the UK is a signatory recognises that: "...every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations" The UK Government's agenda on wellbeing, described as a "moral, social and economic programme for all of Government"

(4) would be singularly enhanced and embedded through a right to wellbeing.

This right would be limited in such a way that it provides the last line of defence when other systems have failed. It would focus on protecting those most in need. By its very nature, it would exemplify the 'public interest' and help to support the moral programme for Government.

What is "wellbeing"?

- In the UK Government's Levelling Up White paper, there is an emphasis on ensuring "that people do not have to leave their community to live a good life" and that people have access to the six 'capitals' that will drive levelling up and improve health and wellbeing.
- It is defined in HM Treasury's well being guidance (5), and at its most simple "Wellbeing is about how people feel" while the ONS tracks information on our health, and where we live.
- The general pattern across the UK identified in the paper is that London and the South East have benefitted from the global economy, while the rest of the country has suffered in terms of health and wellbeing.
- The impacts of climate change and the impact of pollution (air quality in particular) exacerbate the vulnerability of groups who are meant to be protected by the Equality Act (6).

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Cumulatively, climate change also impacts children more over their lifetimes as the problem will only grow greater.

- Articles 2 (right to life) and 8 (right to respect for private and family life, and home) of the European Convention on Human Rights (7) are applicable to climate change and pollution impacts.
- The case of Ella Kissi-Debra where her death was directly linked to air pollution as a contributory cause of the asthma she suffered (8). There had been a failure to set adequate limits on pollution to protect people's health.
- A recognised "right to wellbeing" would allow preventative action to be taken to improve the environmental quality of areas by driving action in areas of most concern and most impact.

How would the right be framed?

- Procedural rights are common in UK legislation and underpin good governance. A substantive right to wellbeing would ensure that in limited, specified circumstances, there would be a route to use the right to require a rethink of decisions, so both a preventative and procedural measure that would be based on the issue of wellbeing.

How would the right work in practice?

- Access to information, public participation and the ability to challenge decisions are cornerstones of democracy. The 'right to wellbeing' would add a substantive right to these procedural rights, putting the last building block in place for a system of good governance in the UK.
- It would work by allowing individuals to challenge a public authority if in a set of prescribed, limited circumstances, it can be shown that that public authority is not implementing for example, WHO standards for air quality or access to health services. These prescribed limited circumstances should be consulted upon and described in regulation.
- In contrast to the Environment Act, the right to wellbeing would allow those in our society most affected by pollution and suffering the poorest health, in the worst social and economic circumstances, to have a voice and provide a push where it is most needed to "level up".
- The UK has felt the lack of substantive rights in the inability to halt pollution or to tackle climate change in the way that the public wants. This is evidenced in public protest, disillusionment with democracy, the democratic deficit, and polarisation of politics. We need a stronger set of shared values, and one that everyone can agree on in the UK is our right to wellbeing.

Draft right to wellbeing amendment

- (1) Everyone has the right to an environment that is not harmful to their health or well being.

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References

- (1) [David Boyd, UN Special Rapporteur on Human Rights and the Environment](#)
- (2) [UNEP environmental rights review](#)
- (3) [The Aarhus Convention](#)
- (4) [Levelling Up White Paper](#)
- (5) [HM Treasury Guidance on Wellbeing](#)
- (6) [ONS Indicators](#)
- (7) [European Convention on Human Rights](#)
- (8) [Ella Kissi-Debrah | Courts and Tribunals Judiciary](#)