

8 March 2022

1. This is a joint submission to the consultation: *Human Rights Act Reform: A Modern Bill Of Rights*, from the civil society organisations Demos and Fair Vote UK.

### About us

2. Demos is Britain's leading cross-party think tank, with a 25-year history of high quality research, policy innovation and thought leadership. Our priority is to bring ordinary citizens' voices into policy making. CASM, Demos' dedicated digital research hub has unique insights and expertise across tech policy and its impact on our society, economy and democracy.
3. Fair Vote UK was set up to tackle the issue of data misuse, voter manipulation and lack of transparency in elections head-on. We are committed to ensuring the institutions that protect our democratic processes are fit for purpose in a digital age.
4. We write as digital policy experts who have been engaged in the ongoing debate around the future of digital regulation in the UK, specifically the Online Safety Bill. The future of UK human rights legislation has profound importance for the protection of digital rights, and we urge the MOJ and DCMS to work together to ensure that the rights protections in both the Online Safety Bill and in UK human rights legislation are consistent and effective.
5. This submission was prepared by Ellen Judson, Senior Researcher, CASM, Demos and Kyle Taylor, Founder and Director, Fair Vote UK.
6. Below are our general comments on the proposed reforms as they relate to digital regulation. They are most pertinent in relation to the following questions:

*Question 7: Are there any other steps that the Bill of Rights could take to strengthen the protection for freedom of expression?*

*Question 29: We would like your views and any evidence or data you might hold on any potential impacts that could arise as a result of the proposed Bill of Rights.*

## Overview

7. The protection of human rights online is fundamental to the protection of human rights more broadly, and vice versa. Too often, 'digital regulation' globally is used as an excuse to curb digital rights and freedoms: in recent days we have seen the alarming consequences of governments being able to weaponise internet and information regulation to suppress political dissent. For the UK to credibly position itself as a world-leader in how to achieve liberal democratic digital regulation, it needs an online safety regime that is firmly rooted in strong human rights legislation. We do not agree that the Government's proposals for a new Bill of Rights will provide this strong framework.

## How human rights legislation affects digital regulation

8. The consultation document for these proposed reforms states that:

*'The challenges for freedom of expression are increasingly also reflected in social media and higher education. The internet has revolutionised our ability to connect with each other and express our views widely. However, the majority of online speech is now facilitated by a small number of private companies, with significant influence over what content appears online.'*

*Freedom of expression and the media are essential qualities of a flourishing democracy, and the government is committed to maintaining a free and open internet, in line with our democratic values.*

*The government is committed to ensuring that the biggest social media companies protect users from abuse and harm, and in doing so ensuring that everyone can enjoy their right to freedom of expression free from the fear of abuse.'*

9. We welcome this commitment, particularly to a free and open internet, which is crucial to the realisation of freedom of opinion, expression and privacy. The recognition that abuse can curtail freedom of expression and should be addressed in the interests of promoting digital rights is also welcome.

10. However, we are concerned that the government's proposed reforms will not in fact deliver on this commitment, but rather risk deeply undermining it.
11. How rights are protected through the Online Safety regime is clearly rooted in human rights legislation.
12. There have been concerns raised that the Online Safety Bill will not adequately protect human rights online: either through *mandating* that platforms take actions (such as removing many kinds of content, or identifying users) which disproportionately impact on freedom of expression and/or privacy, or simply through failing to hold platforms accountable should their own decisions infringe unacceptably on human rights.
13. Currently, [the Online Safety Bill](#), as drafted, seeks to alleviate these risks by placing a duty on platforms to:

*'have regard to the importance of— (a) protecting users' right to freedom of expression within the law, and (b) protecting users from unwarranted infringements of privacy, when deciding on, and implementing, safety policies and procedures.'*
14. What this means in practice, and what platforms will be expected to do or not do in order to safeguard user rights, is left open. The Joint Committee tasked with pre-legislative scrutiny of the Bill [found that](#):

*'As a public body, Ofcom's Code of Practice will need to comply with human rights legislation (currently being reviewed by the Government) and this will provide an additional safeguard for freedom of expression in how providers fulfil this requirement.'*
15. The backstop to ensure the risks to rights are mitigated rests not in the Bill itself but in broader human rights legislation - crucially, the Human Rights Act.
16. Any weakening of human rights protections, therefore, risks undermining digital rights and the efficacy and legitimacy of a digital regulation regime. We believe that the proposed reforms would weaken these protections unacceptably.

### Freedom of expression and privacy

17. The consultation document states that these proposals should provide:

*'ways of strengthening the protection for freedom of expression in the Human Rights Act, mindful as always of the government's primary duty to protect national security and keep its citizens safe'*

*'greater clarity regarding the interpretation of certain rights, such as the right to respect for private and family life,'*

*and 'more general guidance on how to balance the right to freedom of expression with competing rights (such as the right to privacy) or wider public interest considerations.'*

18. Of particular concern is the apparent elevation in these proposals of freedom of expression alongside a demotion of privacy, effectively mandating a hierarchy of rights.

19. This attempt to 'strengthen' freedom of expression is reflected in provisions in the draft Online Safety Bill to protect 'journalistic' and 'democratically important' content. We and others [have criticised](#) these provisions for failing to add meaningful protection for freedom of expression while threatening to protect abusive and harmful content online under the guise of not allowing 'woke campaigners' to 'silence' others.

20. We see this as an ongoing risk in the Government's purported strategy to protect freedom of expression - that it fails to engage with the realities of how harms need to be balanced against freedoms, and risks extending more protection to harmful forms of speech while failing to uplift the speech of historically marginalised groups.

21. The threats to freedom of expression online are genuine and significant, but are misportrayed as originating often from the speech of members of marginalised groups (e.g. '[woke campaigners](#)' or '[woke prejudice](#)'). The actual threats to freedom of expression are the results of tech-facilitated violence, abuse and harassment scaled through automated algorithmic amplification, technology developed to standards which have not had human rights considerations built in, lack of access to private and secure communication channels, and restricted access to crucial information online.

22. For instance, we are troubled by not seeing more consideration of the ways, [as described by the then-UN Special Rapporteur on the promotion and protection of freedom of opinion and expression](#), in which anonymity and

encryption are essential protections for people to actually be able to exercise their freedom of opinion and expression. On the contrary, we have seen the Government publish safety advice for platforms warning of the [risks of anonymity](#) and [end-to-end encryption](#), as well as funding a campaign [against the use of end-to-end encryption](#) by major platforms. If these protections are reduced, it would erode not only the right to privacy but also the right to freedom of expression.

23. We are similarly concerned by the consultation document's indication that the US model of protection of freedom of expression may be instructive for how the UK should protect free speech. Far from offering greater protection, the weaponisation of the notion of freedom of expression online is clear in the US, where false claims of '[censorship of conservative voices](#)' are made by lawmakers who object to their own speech or that of their supporters being subject to moderation rules designed to prevent harmful content. This hierarchy of human rights is not theoretical in the United States. It is, in practice, already in place.
24. If the human rights framework is altered in the ways proposed so that careful and meaningful balancing of rights assessments is no longer possible, the ability for platforms to act to effectively protect users from violent and hateful speech risks being curtailed.
25. Safety, freedom of expression and privacy should not be seen as three antithetical goals and principles, whereby safety comes first, freedom of expression second and privacy third - as this consultation document implies. Each should be treated as an essential and complementary pillar of a human-rights respecting internet.
26. Where they may come into conflict, one should not automatically take priority over the others. The courts already undertake balance of rights and proportionality assessments in individual cases according to the facts. The [IHRAR concluded](#) "[t]he UK Courts have, over the first twenty years of the HRA, developed and applied an approach that is principled and demonstrates proper consideration of their role and those of Parliament and the Government." The proposed Bill of Rights risks undermining this process, one which has proven itself to work.
27. In terms of how these rights, and others, should be balanced, in short, we agree with [the BIHR's summary assessment](#) that:

*'The Human Rights Act (HRA) already protects the right to freedom of expression. This is a non-absolute right and can be restricted BUT there is a process that must be followed to make sure that any restriction is lawful. This means there are already rules to follow to make sure that unnecessary restrictions of this right should not happen...Decisions about this right are often complex and involve careful balancing of other rights, such as people's rights to privacy or wellbeing. Protecting the right to freedom of expression should not come at the expense of our other human rights; the HRA provides an effective process to make balanced decisions.'*

### Impacts on those with protected characteristics

28. We have strong concerns about the way in which this consultation has been conducted: any changes to the Human Rights Act would disproportionately affect those who already face structural barriers to the full exercise of their rights. Any proposed reforms to such fundamental rights-protecting legislation should include a comprehensive equalities impact assessment.
29. Moreover, the [lack of provision of comprehensive accessibility formats](#), has meant many people, particularly disabled people, have not been able to fully engage with the consultation process.
30. Any changes to human rights protections which limit the freedom of expression and privacy online holds [particular risks for members of marginalised groups](#). The UK should not be risking (as these proposals do) a divergence arising between rights protected under UK law and rights protected under the ECHR.
31. We believe that the Human Rights Act in its current form already represents the strongest, most effective and legitimate framework upon which other legislation, such as the Online Safety Bill, can depend. The proposed changes will undermine the UK's protection and promotion of human rights and safety online.

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