

# Example by StudyDriver

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## Bill of Rights Example

**“If a home grown Bill of Rights was adopted, fundamental rights and freedoms would be afforded better protection.”** Even prior to re-entering office in 1997 and overseeing the enactment of the Human Rights Act 1998, the Labour Party was constitutionally committed to the enactment of a Bill of Rights[1]: “The incorporation of the European Convention on Human Rights is a necessary first step, but it is not a substitute for our own Bill of Rights...”. In the period that has elapsed since the 1998 Act, the political imperative to achieve a “home grown” Bill of Rights appears to have dwindled[2]. Lord Scarman in the Preface to Zander’s A Bill of Rights[3] points out: “Laws for the protection of the rights of individuals are of little value to the citizen if he cannot enforce them directly in the courts of his own country.” Of course, since that was written, the argument that the enforcement of human rights in the UK required a trip to Strasbourg has largely disappeared but there remain fundamental concerns that the incorporation of the ECHR will prove a palliative rather than a panacea and will distract attention from the need for domestic measures to enshrine fundamental rights. It is submitted that a Bill of Rights is required for two reasons: first, it is necessary clearly to define the types of rights and freedoms which should be accorded special protection; second, having done so, it is necessary to embody them in a document which has particular legal status and priority. Oliver and Drewry[4] take the view that the 1998 Act achieves neither of these objectives; while “an important step in that direction”, it fulfils neither of these objectives fully. What is required

is a Bill of Rights with full constitutional authority. A major obstacle facing the implementation of a UK Bill of Rights is complacency. For centuries, our citizens have taken a pride in a system of democratic government which has been exported all over the world without the need for a written constitution. This type of "if it ain't broke, don't fix it" mentality ignores the considerable further advantages which such an instrument might confer. While it is argued that the adoption of such a bill would interfere with the doctrine of separation of powers in that the interpretation of it would confer upon the judiciary a function akin to legislation, it can hardly be suggested that the present situation in which legislative and executive power are controlled by the process of judicial review (which has evolved at common law and has no legislative foundation) is more satisfactory. As has already been seen with the introduction of direct enforceability of the ECHR, the existence of a Bill of Rights would raise public awareness of rights issues. In common with the American Constitution, it could be taught in schools and engender a sense of civic rights and responsibilities which is presently lacking. Citizens would thus become empowered by readily accessible and understandable methods of enforcing their rights against those who might improperly use power over them. Most importantly, the Bill would act as a benchmark against which the actions of government could be challenged. The idea that current legislation reflects the will of the people is a fallacy. It is frequently the case that the political party holding a majority in Parliament has been elected by a minority of the population (and, as a result of the "first past the post" system) even a minority of the overall votes cast. By convention, that party will nonetheless form the government of the day. Thereafter, the system of Cabinet government (dominated in any event by Prime Ministers who are less "first among equals" and increasingly presidential) and party whipping results in the passage of legislation such as that in respect of terrorism for which the popular mandate is questionable to say the least. A further significant advantage would lie in the unifying and codifying effect which such a Bill would have upon the present hotch-potch of equality and discrimination legislation. At present, prohibition of discrimination is to be found in a variety of measures which have been introduced over time such as the Sex Discrimination Act 1975 and the Race Relations Act 1976. More recently the Employment Equality (Religion or Belief) Regulations 2003[5] and the Employment Equality (Sexual Orientation) Regulations 2003[6] have been introduced to combat discrimination on the grounds of religious belief and sexual orientation. A consideration of these two Statutory Instruments reveals the absurdity that each is couched in virtually identical terms to the other but nonetheless has had to be separately enacted. A Bill of Rights could

provide for the essential elements of equality from which the rights of all minorities that are discriminated against could then derive. This would ensure that - unlike at present - legislation and case law to combat discrimination on such grounds as disability and age would keep pace with the more traditionally accepted evils of racial and sexual discrimination. Foremost among the voices that continues to call for a UK Bill of Rights is Liberty which has published a draft bill[7] which, while acknowledging the ECHR also draws upon the 1966 United Nations International Covenant on Civil and Political Rights. Liberty argues that a Bill of Rights should be enforceable by individuals against all agents of the state and this would therefore include the judiciary as well as national and local government. The present problem with the Human Rights Act 1998 is that it is possible for the government to circumvent its intended effect by passing legislation which is in conflict with the ECHR. A Bill of Rights, by contrast, would enjoy overriding status. As in the case of the USA Constitution, measures which violated the provisions of the Bill would be struck down as inferior legislation. This would obviate the present tension between enforcement of rights under the 1998 Act and the remedies previously available by way of judicial review. Finally, the frequently expressed concerns that parliamentary sovereignty would be undermined by the existence of such a Bill can be demonstrated to be misplaced. Unlike the 1998 Act which derives from an external European Convention, the Bill of Rights would be the creation of Parliament itself. Its imposition and subsequent adherence to it would serve to enhance rather than diminish the authority of Parliament. In conclusion, therefore, the passage of the Human Rights Act 1998 may be described (however anomalous this may appear at first sight) as a retrograde step for the cause of the enactment of a Bill of Rights in this jurisdiction. While the implementation of the European Convention should be lauded for the focus that it has attracted to the subject of individual rights in relation to the potential misuse of power by the state, the temptation is now for those significant players in the political game who previously espoused such constitutional reform to regard the issue as largely redundant. It has been demonstrated that this is not so and that the need for a comprehensive code remains as acute as ever not only further to enhance the protection of human rights introduced by the impact of European measures but also to provide a unifying and consolidating force in a jurisdiction which has relied for far too long upon the development of common law principles and remedies to safeguard the liberty and other freedoms of the individual. A Royal Commission should be tasked with taking forward to work commenced by groups such as Liberty in order to implement the unification of a wide range of rights under a single, comprehensible and

accessible code of rights. Bibliography Alder, J., General Principles of Constitutional and Administrative Law, (4th Ed., 2002) Allen, M. & Thompson, B., Cases and Materials on Constitutional and Administrative Law, (7th Ed., 2003) Barnett, H., Constitutional and Administrative Law, (5th Ed., 2004) Bradley, A. & Ewing, K., Constitutional and Administrative Law, (13th Ed., 2003) Fenwick, H. & Phillipson, G., Text, Cases and Materials on Public Law and Human Rights, (2nd Ed., 2003) Labour Party, A New Agenda for Democracy: Labour's Proposals for Constitutional Reform, (1993) Liberty, A People's Charter, Liberty's Bill of Rights, (1991) Liberty, Liberty Bill of Rights, (1995) Oliver, D. & Drewry, G., The Law and Parliament, (1998) Wadham, J., A British Bill of Rights in Blackburn, R. & Plant, R., (Eds.), Constitutional Reform: The Labour Government's Constitutional Reform Agenda, (1999) Zander, M., A Bill of Rights?, (4th Ed., 1997)

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## Footnotes

[1] Labour Party, A New Agenda for Democracy: Labour's Proposals for Constitutional Reform, (1993), pp.29-32 [2] See, Wadham, J., A British Bill of Rights in Blackburn, R. & Plant, R., (Eds.), Constitutional Reform: The Labour Government's Constitutional Reform Agenda, (1999) [3] (4th Ed., 1997) [4] Oliver, D. & Drewry, G., The Law and Parliament, (1998), p.177 [5] 2003 SI No.1660 [6] 2003 SI No.1661 [7] Liberty, Liberty Bill of Rights, (1995)