Police Action Lawyers Group (PALG)
Summary of Response to HM Government's 'Consultation to reform the Human Rights Act 1998' ('the Consultation')

1. PALG is a national organisation of lawyers who represent complainants against the police in England & Wales. More information can be found at http://www.palg.org.uk. The complete PALG response can also be found at that website.

2. The Human Rights Act 1998 ('HRA') has been crucial to provide victims of police failures with a system of redress; and the criminal justice system has been a key staging ground for the development of human rights. For example, in *DSD* [2018] UKSC 11 the police were held liable to victims of the serial rapist, John Worboys.

3. The HRA already respects our common law traditions. HRA, s.2(1) requires courts to 'take into account' the decisions of the European Court of Human Rights ('ECtHR'). It does not bind our courts. National law remains the ultimate authority. The ECtHR engages in dialogue with our courts, which shapes human rights law across Europe.

4. We agree with the Independent Human Rights Act Review ('IHRAR') that there is a good deal of force in leaving s.2 HRA without amendment. We disagree with the Consultation's proposals, to amend it (Question 1). They are unsatisfactory and would not work. They would breach obligations under the European Convention, the Belfast (Good Friday) Agreement, and the EU Withdrawal Agreement. Some of the proposals would upend the system of precedent which is the cornerstone of the common law, while others would reject decades of legal developments which reflect the reality of modern British life. The position of the UK Supreme Court is already secure under the HRA and we reject the suggestion, that it requires clarification (Q2).

5. Some of the proposals are peculiar. The right to trial by jury (Q3) is not, we think, under threat. Proposals for additional protections for freedom of expression ignores that it is Government proposals and actions which pose one of the biggest threats to that right (Qs 4, 5, 6, 7). The Government should rethink its own infringements on free speech, not tinker with the HRA.

6. Other proposals would prevent vulnerable victims from getting redress for rights abuses. We disagree with proposals to introduce a permission stage for human rights claims (Q8). It would be redundant and ineffective. Moreover, it would hinder access to justice, would reduce legal certainty, and would hit the most vulnerable worst. First and foremost, however, it would be unnecessary. There simply isn't the volume of cases to require such a stage and there is no evidence to support the fear of a "claims culture". A permission stage would increase the burden on the courts and prevent victims of abuses getting redress without doing anything to improve the administration of justice. Of course, if there were to be a permission stage, there should be discretion for exceptional cases (Q9) but the better approach would be not to introduce such a stage at all. Talk of "genuine human rights abuses" (Q10) is unhelpful and divisive.

7. The positive obligations under the HRA are a key facet of its protection of vulnerable people (Q11). They aim to protect victims of rapists (*DSD*) and those whose lives face a real and immediate risk (*Osman*). The obligations they impose are to take "reasonable steps" – so they do not impose an impossible burden. In our full response to the consultation we draw on case studies from our own work to show just how vital positive obligations are (§§139-150).

8. Positive obligations are of particular importance to families who have lost loved ones. It is obligations under the HRA that requires the state to investigate the "circumstances" of

certain deaths – for example of those who are in mental health hospitals. Moreover, the HRA also requires family involvement in the investigations, and has helped to transform inquests into forums where families can get answers and perhaps spark systemic change to save lives in the future.

9. We agree with the IHRAR that there is little to no evidence to suggest that courts are misusing s.3 HRA. It requires them to interpret legislation in a rights-compliant manner – if it is possible to do so. When they do, courts are giving effect to Parliament's will. When it's not possible, then under s.4, courts can say so – but it's for Parliament to make any changes. We therefore reject the Consultation's "options" for s.3 as unnecessary and unwelcome (Q12). Parliament already has mechanisms to scrutinise the HRA (Q13) and IHRAR's suggestion of a database of judgments would be a welcome addition (Q14).

10. We also agree with IHRAR that there is no basis for the proposal that courts should use declarations of incompatibility in relation to secondary legislation. The current framework is used appropriately by courts (Q15). We consider that suspended and prospective only quashing orders would be detrimental as they would allow the Government act in breach of the law without repercussions (Q16). There is no evidence to suggest that the system of remedial orders is flawed (Q17); or that the operation of s.19 requires alteration (Q18).

11. PALG members predominantly operate in England and Wales but we note that, if the Bill of Rights were to be a foundation text for the UK then it would have to address questions of constitutional structure, cultures, and traditions (Q19). It has not done so.

12. There is no need for amendment to the existing definition of public authorities which allows for the protection of rights where private bodies undertake public functions (Q20). In a similar vein, there is no case to replace section 6(2) HRA, and either of the two proposed options would be regressive. To improve public authorities' confidence in their HRA compliance it would be appropriate to increase education and training of existing law – not introduce a new one (Q21).

13. The principle of proportionality also operates well, as shown by recent undercover policing cases such as that of Kate Wilson (2021). In contrast, the Government's proposal for interpretive guidance would undermine the separation of powers, and put a thumb on the scales (Q23).

14. Proposals that relate to deportation (Q24) and migration (Q25) are made without a sound evidential basis, and/or are wrong-headed. These proposals, and those in relation to responsibilities (Q27) are unnecessary and contrary to international obligations. Changes to the extra-territorial application of the ECHR via the HRA are not necessary or desirable and would give rise to significant issues – and undermine accountability (Q22).

15. There is no justification for legislative guidance on damages for breaches of human rights (Q26) and nor is there need for any alteration to the procedure for responding to ECtHR judgments (Q28). The Government's proposals do nothing to safeguard Parliamentary Sovereignty which, in any case, is not at risk from the current system.

16. In summation, the majority of the proposed changes are unnecessary, while others are offensive to the UK's tradition of upholding human rights. Several of them are in direct contravention of the international law obligations to protect Convention rights in the UK. The HRA is an effective instrument to balance those obligations with Parliamentary Sovereignty. The Government should think again on its plans to replace it (Q29).