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Why and How to Leave the ECHR: Roadmap to Freedom



Rt Hon Suella Braverman KC MP

Guy Dampier

Foreword by Baroness Arlene Foster DBE PC



Contents



Glossary.....	4
About the authors.....	5
Foreword.....	6
Executive summary.....	7
Introduction: a brief history of the ECHR and its problems.....	10
History.....	10
Problems caused by the ECHR.....	12
1: Why we need to leave.....	15
1.1 Derogation is not feasible.....	15
1.2 Reform has not worked: the Interlaken Process.....	16
1.3 HRA reform or repeal without leaving the ECHR will make no difference.....	17
1.4 Limitations of 'reasonable defiance'.....	19
1.5 Completing Brexit and restoring sovereignty to the UK.....	20
2: Why stay?.....	21
2.1 Will we damage the UK's international reputation?.....	21
2.2 Will we leave the Council of Europe "with Russia"?.....	21
2.3 Is there a threat to civil liberties?.....	22
2.4 Will the Northern Ireland, devolution, or Trade and Co-operation Agreements be harmed?.....	22
3: Northern Ireland.....	23
3.1 Constitutional background: Belfast, Brexit, and the Union at risk.....	23
3.2. Northern Ireland and withdrawal from the ECHR.....	32
4: How to leave the ECHR.....	36
4.1 Governing law: Article 58 of the ECHR.....	36
4.2 Transition period.....	37
5: What comes next?.....	41
Conclusion.....	48
Bibliography.....	49

Glossary



DUP: Democratic Unionist Party

ECHR: European Convention on Human Rights

ECRIS: European Criminal Records Information System

ECtHR: European Court of Human Rights

EU: European Union

FC: Foreign Criminal

GFA: Good Friday Agreement

HC: House of Commons

HL: House of Lords

HRA: Human Rights Act

NIHRC: Northern Ireland Human Rights Commission

SAS: Special Air Service

SIS II: Schengen Information System

SOLAS: International Convention for the Safety of Life at Sea

SSHD: Secretary of State for the Home Department

TCA: Trade and Co-operation Agreement

UNCLOS: United Nations Convention on the Law of the Sea

About the authors



The Rt Hon Suella Braverman KC MP has been Conservative MP for Fareham and Waterlooville since 2015. She previously served as Secretary of State for the Home Department. Before that, she was Attorney General. She also served as Parliamentary Under Secretary of State at the Department for Exiting the European Union from January to November 2018.

Suella was educated at Heathfield School in London and went on to study Law at Queens' College, Cambridge. She gained a Masters in Law from the University of Paris 1, Pantheon-Sorbonne and qualified as a New York Attorney.

Called to the Bar in 2005, Suella specialised in public law and judicial review. From 2010-2015 she was on the Attorney General's Panel of Treasury Counsel. She has defended the Home Office in immigration cases, the Parole Board in challenges by prisoners and the Ministry of Defence in matters relating to injuries sustained in battle.

Guy Dampier is a Senior Researcher on Nationhood at the Prosperity Institute. Previously he worked at GB News, where he was the co-creator of *Grooming Gangs: Britain's Shame*, the documentary which played a central role in the decision of then-Home Secretary the Rt Hon Suella Braverman to launch a new taskforce to deal with the issue.

Before that he worked as an investigative journalist, a freelance researcher, and in factual television. He was a regular attendee at the Cambridge Security Initiative and has published academically on the cultural links between the so-called Islamic State and the medieval ghazis.

He has written for publications such as *The Critic*, *The Telegraph*, *UnHerd*, and *Conservative Home*.

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Foreword



In the corridors of Stormont and on the streets of Enniskillen, I have seen first-hand the delicate balance between liberty and law, sovereignty and stability. As someone who grew up in a border community during the darkest days of the Troubles, and who has had the privilege of serving Northern Ireland both as First Minister and as a lifelong unionist, I know what it means to fight for peace—real peace, rooted in justice and democratic consent.

And I also know what it means to be undermined by distant institutions, unaccountable courts, and legal doctrines that bear little resemblance to the principles on which this United Kingdom was founded.

This paper sets out, in forensic and principled detail, why the time has come for the United Kingdom to leave the European Convention on Human Rights. It is not a decision to be taken lightly, but neither is it one that can be avoided any longer. The Convention, born out of honourable intent, has over decades become an instrument that too often impedes rather than upholds justice, particularly in regions like Northern Ireland, where legal asymmetry now threatens the very peace the ECHR was once invoked to protect.

As a former lawyer and public servant, I believe deeply in the rule of law. But the rule of law must flow from the people, through their Parliament, shaped by their values and administered in their name. Today, we are not solely governed by laws of our own making, but by the rulings of a foreign court that interprets its mandate ever more expansively, often in ways that contradict the will of the British people and the settled intent of their representatives.

For those of us who value the Union, the stakes are even higher. The Convention, when embedded in devolved settlements such as the Belfast Agreement, has created a hierarchy of justice in which British soldiers are subjected to endless pursuit, while those who waged terror are given letters of comfort. This is not parity. This is not real peace. It is the slow unpicking of a constitutional fabric that holds our United Kingdom together.

It is now time to act—not in anger, but in resolution; not to abandon the cause of human rights, but to reclaim it within our own constitutional tradition.

This paper provides a starting point for discussion and a pathway to restoring the primacy of our common law and the sovereignty of our Parliament whilst also securing the integrity of the United Kingdom.

Let us not be timid in its reading, nor hesitant in its execution. The moment demands courage, and history will look kindly on those who chose to lead.

Baroness Foster of Aghadrumsee DBE PC.

Former First Minister of Northern Ireland

Member of the House of Lords

Executive summary



The European Convention on Human Rights (ECHR) was signed by Britain in 1951. In the aftermath of the Second World War, it was intended to prevent the horrors of the war from occurring again, and to serve as a bulwark against Soviet Communism.

However, our relationship with the ECHR has changed substantially over time, with the acceptance of the individual right of petition, the invention of the “living instrument” doctrine, and judgements by the European Court of Human Rights (ECtHR) made binding. The effect of these and other changes has been a diminishment in sovereignty, with the ECtHR overruling democratic governance.

Combined with the introduction of the Human Rights Act 1998 (HRA), which incorporated the ECHR rights into British law, it has resulted in an expansion in human rights law. This is responsible for the small boat crisis, our failing asylum system, the persecution of British veterans, and more. Attempts at derogation, ‘reasonable defiance’, replacing the HRA 1998 with an alternative, and internal reform of the ECHR have all failed.

Britain must leave the ECHR in order to regain sovereignty.

This paper makes the case for such a departure, laying out the irremediable failures of the ECHR, and dealing with common arguments for staying in it, before laying out a clear legislative and procedural plan for withdrawal with a particular focus on Northern Ireland.

In order to leave, we must:

1. Invoke Article 58 of the ECHR, which begins the six-month countdown to leaving.
2. Prepare our domestic legal framework for the end of the ECHR, through a Bill to repeal the HRA 1998 and a temporary Case Law Review Commission under a sunset clause to examine what Strasbourg-influenced case law should be retained.
3. Amend the Devolution Settlements, to remove reference to the ECHR.
4. Amend reference to the ECHR in the UK-EU Trade and Co-operation Agreement, ideally negotiating technical amendments to replace these.
5. Amend the Belfast Agreement, also known as the Good Friday Agreement (GFA), the Northern Ireland Protocol, and the Windsor Framework.
6. Clarify that a combination of the common law and statute provides ample protection of civil liberties in the United Kingdom.

The ECHR is more entwined with law in Northern Ireland than elsewhere. As a result, prior papers on how to leave the ECHR have always conceded that, due to the Belfast Agreement, it would remain in force in Northern Ireland but not elsewhere in the UK. However, combined with

the Windsor Framework, which created a dual-legal order within the United Kingdom, such a concession would constitute an unacceptable further divergence between Northern Ireland and Great Britain.

This paper explains why the Belfast Agreement, which consists of the domestic Multi-Party Agreement and the international British-Irish Agreement, need not pose an obstacle to ECHR withdrawal. It has already been modified five times through supplementary deals between the British and Irish governments:

1. The St Andrews Agreement (2006)
2. The Hillsborough Castle Agreement (2010)
3. The Stormont House Agreement (2014)
4. The Fresh Start Agreement (2015)
5. New Decade, New Approach (2020)

There is no obligation within the Belfast Agreement to remain a party to the ECHR, only to protect rights in Northern Ireland. This can be achieved through domestic mechanisms, including the common law.

In charting a course for ECHR withdrawal when it comes to Northern Ireland, certain principles could be adopted:

1. **Legal uniformity** across the United Kingdom, with rights equally guaranteed.
2. **Democratic accountability**, in which Parliament and domestic courts are superior to international bodies that are unaccountable to British voters.
3. **Consultation and confidence**, with Northern Ireland's communities consulted but Parliament ultimately sovereign.
4. **Peace through fairness**, that preserves the spirit rather than the letter of the Belfast Agreement, with British rights guarantees rather than submission to a foreign jurisdiction.
5. **A strategic approach**, with reform processing through four distinct stages and stability preserved.

These four stages are:

1. **Policy consultation**, with a White Paper issued by HM Government and parallel consultation with Northern Ireland's parties, civil society, and the Irish Government.
2. **Diplomacy**, with Article 58 of the ECHR invoked to begin the formal exit process, which will last six months. During this transition period, the main political parties in Northern Ireland would be consulted, to secure agreement to amend the Multi-Party Agreement. There would also be a supplemental agreement negotiated with the Irish Government, akin to the 2006 or 2010 frameworks. In the event that some parties in Northern Ireland refuse to support the changes, HM Government could still proceed with the next phase, as it did with the Windsor Framework.

3. **Legislation**, to repeal the HRA 1998, introduce a Judicial Review Reform Act, and amend the Northern Ireland Act 1998. The latter would remove reference to ECHR rights and replace them with new provisions that ensure continuity of rights in the common law. Primary legislation will be required to fix the problems in the Northern Ireland Protocol and the Windsor Framework. If changes cannot be agreed with the EU, HM government reserves the right to denounce these international agreements entirely.
4. **Implementation**, during which time the Northern Ireland Human Rights Commission (NIHRC) could review complaints and oversee the protection of rights after ECHR withdrawal. At the same time, Parliament would guarantee the non-retrogression of rights such as to a fair trial and freedom of religion or speech.

This phased approach allows for legal and institutional continuity. Rather than a retreat from human rights, this would be a restoration of democratic accountability and national sovereignty. In time, it could be counted alongside *Magna Carta* and the Glorious Revolution, constitutional reforms that preceded eras of national greatness.

Previous papers and discussions about UK withdrawal from the ECHR have always faltered at the question of Northern Ireland. The legal issues are worthy of closer consideration, and the priority of maintaining the peace achieved by the Belfast Agreement cannot be understated. But the Agreement itself poses no ultimate obstacle to the UK's departure from the ECHR. It is a matter of mapping out a clear legal route and displaying the political will to follow it.

Finally, we have set out a vision for the United Kingdom after we leave the ECHR. With our sophisticated legal system, a combination of the common law and statute will signify a restoration of the presumption of liberty, (i.e. that what is not expressly prohibited is permitted); the primacy of precedence and judge-made law which responds to disputes as they arise, rather than a codified top-down approach; and a pragmatism that has traditionally distinguished English jurisprudence, before the era of imported Continental legal approaches from the EU and ECtHR. Crucially, the ECHR never "created" rights, but merely restated rights that had been protected in the UK for many centuries before. In addition, Parliament's supremacy will be reasserted: judges who issue decisions which are at odds with a majority in Parliament will be corrected on a regular basis by statutory intervention via a mechanism of annual "Correction Bills".

Introduction: a brief history of the ECHR and its problems



History

Origins

The European Convention on Human Rights (ECHR) was born in the aftermath of the Second World War, out of horror at what had befallen Europe, and in opposition to the Soviet Union. Drafted by the Council of Europe in 1950, with the United Kingdom one of the first signatories, the ECHR was not initially incorporated into domestic law.

Expansion

Early fears

In 1949, Winston Churchill, then Leader of the Opposition, had called for “the setting up of a European Court of Human Rights” (ECtHR).¹ However, although he is sometimes cited as an architect of the ECHR, Churchill showed little further interest in the idea of the court on returning to power in 1951.

Contrary to the accepted narrative, there was no universal agreement on Britain signing the ECHR. In 1950, Lord Chancellor Lord Jowett warned the Cabinet against ratifying the ECHR, describing it as a “half-baked scheme” that could “seriously compromise the sovereignty of Parliament”.² As early as 1956 a senior civil servant like Sir Hilton Poynton could say, “We have now got ourselves committed to this wretched covenant and can’t get out of it now”.³

Individual petition

Once it had entered into the ECHR, Britain’s initial position was that it should only apply to states, not individuals. In February 1955, Foreign Office Minister Henry Turton said in Parliament that they took, “the view that States are the proper subject of international law; and that if individuals are given rights under international treaties, effect should be given to these rights through the national law of the States parties”.⁴

The right of individual petition to the ECtHR in Strasbourg was therefore rejected by Britain early on. In 1958, Lord Chancellor Viscount Kilmuir, better known as David Maxwell Fyfe, one of the original architects of the ECHR, said “It cannot be denied that the right of individual petition is open to considerable abuse”, warning that it could be used as a “method of political warfare”.⁵ Nor

| 1 Churchill, W. (1951). *In the Balance: Speeches 1949-50*. London: Cassell, p. 28.

| 2 Quoted in Marston, G. (1993). The United Kingdom’s Part in the Preparation of the European Convention of Human Rights, 1950. *International & Comparative Law Quarterly* 42(4): 813.

| 3 Quoted in Simpson, A.W.B. (2004). *Human Rights and the End of Empire: Britain and the Genesis of the European Convention*. Oxford: Oxford University Press.

| 4 HC Deb, 7 February 1955, vol 536, col 1533. ([link](#))

| 5 HL Deb. 18 November 1958, vol 212, cc 621-626. ([link](#))

was individual petition necessary, he said, as “we are quite certain that our law does guarantee for our citizens the rights and freedoms that are contained in the Convention”.

As late as 1964, Foreign Office Minister Peter Thomas could say that Britain accepted the jurisdiction of the ECtHR but that it was not “compulsory”, nor the right to individual petition because “we feel that it is open to abuse for political purposes”.⁶

Nonetheless, in 1966 the Labour Government accepted the right of individual petition to the ECtHR in Strasbourg. This was a pivotal shift. The ECHR began to have an impact on British law, coming into conflict with the English common law tradition.

The “living instrument” doctrine

In 1978 the European Court of Human Rights (ECtHR) invented a dynamic interpretive approach to the ECHR, through the “living instrument” doctrine.⁷ This held that the ECHR could be reinterpreted “in the light of present-day conditions”, rather than being tethered to the original text or the meaning of the original drafters.⁸

In doing so, the ECtHR assumed a role that went beyond that traditionally performed by the British judiciary, allowing it to effectively redefine the law without democratic oversight or accountability. This change has led to significant tensions with High Contracting Parties (that is, the signatories of the ECHR) and has too often become a vehicle for judicially imposed social change.

Post-Cold War membership increase

In the 1990s, the ECtHR’s jurisdiction expanded significantly, as former Communist countries sought to become High Contracting Parties. With this increase in membership came an increased diversity of legal traditions and political systems.

This contributed to a rising caseload, which in 1998 was one of the reasons given for the introduction of Protocol No. 11. This abolished the European Commission of Human Rights, which intermediated petitions, leaving only the ECtHR. It also made the ECtHR’s jurisdiction mandatory for all High Contracting Parties, centralising enforcement of human rights and removing national discretion.

In turn, this allowed the ECtHR to more directly impact domestic politics, with cases like *Hirst v United Kingdom (No. 2)* (2005), which ruled against the UK’s ban on prisoners voting.⁹

The Human Rights Act 1998

The Human Rights Act 1998 (HRA 1998) incorporated the rights enshrined in the ECHR into British law, allowing individuals to seek redress for any breach of ECHR rights in domestic courts, rather than having to go to the ECtHR in Strasbourg.

Section 2 of the HRA 1998 required British courts to “take into account” judgements of the ECtHR,

| 6 HC Deb, 15 June 1964, vol 696, col 926. ([link](#))

| 7 The relevant case is *Tyrer v United Kingdom* App no. 5856/72 (ECtHR, 25 April 1978). ([link](#))

| 8 ECtHR. (2022). *The European Convention on Human Rights: A Living Instrument*, p.7. ([link](#))

| 9 *Hirst v the United Kingdom (No. 2)*. App no. 74025/01 (ECtHR, 6 October 2005). ([link](#))

which although not requiring direct compliance, has in practice resulted in deference to ECtHR jurisprudence.

Section 3 of the HRA 1998 requires British courts to interpret legislation “so far as it is possible to do so” in a manner compatible with ECHR rights. This has led to British judges effectively rewriting laws, as in *R v A (No.2)* (2001), in which the House of Lords reinterpreted the Criminal Procedure and Investigations Act 1996, despite Parliament having not legislated for this change.¹⁰

Section 4 of the HRA 1998 also allows British courts to issue a “declaration of incompatibility” if they think that domestic legislation is inconsistent with the ECHR. While that does not automatically invalidate a law, it places pressure on Parliament to amend legislation, shifting legislative power towards the judiciary.

Judicial review

The HRA 1998 also transformed the nature of judicial review. Previously, the common law used the “Wednesbury unreasonableness test”, which allowed a court to intervene when a decision by a public body was so unreasonable that “no reasonable authority could ever have come to it”.¹¹

In *R. Daly v Secretary of State for the Home Department* (2001), this changed, with Wednesbury considered insufficient for human rights cases.¹² Instead, a new proportionality test derived from the ECtHR was applied, giving courts a much broader remit for challenging the decisions of public bodies than mere cases of unreasonableness, illegality, or impropriety.

Problems caused by the ECHR

The expansion of the ECHR, especially by means of the HRA 1998, has led to a number of profound problem areas in British law. The most prominent are as follows:

Asylum

HM Government's ability to detain and deport illegal immigrants has been badly affected by the ECHR, especially Article 3, which forbids torture and inhumane conditions, and Article 8, which protects the right to a family and private life. Together with maritime law such as SOLAS (International Convention for the Safety of Life at Sea) and UNCLOS (United Nations Convention on the Law of the Sea), **the ECHR has played a major part in the small boats crisis in the English Channel.**

Cases like *Chahal v UK* (1996) have made it hard to deport migrants if they might face any mistreatment.¹³ In *D v UK* (1997) a convicted criminal avoided deportation because he had a medical problem that could not be treated as well at home.¹⁴ Judges have even used the ECHR to change the Immigration Rules through cases like *Unuane v UK* (2020), challenging Parliamentary

| 10 *R. v A (No. 2)* [2001] UKHL 25, [2002] 1 AC 45. [\(link\)](#)

| 11 *Associated Provincial Picture Houses v. Wednesbury Corporation* [1947] EWCA Civ 1, [1948] 1 K.B. 223. [\(link\)](#)

| 12 *R. (Daly) v Secretary of State for the Home Department* [2001] UKHL 26, [2001] 2 AC 532. [\(link\)](#)

| 13 *Chahal v United Kingdom* App no. 22414/93 (ECtHR, 15 November 1996). [\(link\)](#).

| 14 *D. v United Kingdom*. App no. 30240/96 (ECtHR, 2 May 1997). [\(link\)](#)

sovereignty.¹⁵

Policing

Although police powers must be carefully limited in a democratic society, in recent years the ECHR has impeded the police's ability to maintain order, placing the rights of a minority of protestors above those of the law-abiding majority. *Director of Public Prosecutions v Ziegler and Others* (2021) led to the police prioritising the rights of protestors.¹⁶ This has become a factor in the success of groups like Extinction Rebellion and Just Stop Oil. Although subsequent court decisions have narrowed its application, it shows how judgements can distort the law for years before being corrected.

Northern Ireland veterans

In 1995 the ECtHR expanded the use of Article 2 in *McCann v United Kingdom*, over the "Death on the Rock" case, when the SAS shot several IRA terrorists on Gibraltar.¹⁷ It required an independent investigation into all deaths at the hands of agents of the state. This has been expanded upon in *McKerr v United Kingdom* (2001)¹⁸ and *In the matter of an application by Geraldine Finucane for Judicial Review (Northern Ireland)* (2019)¹⁹, with the result that **British soldiers can now expect to be chased through the courts for decades-old events.**

Extra-territoriality

Although the ECHR's jurisdiction is primarily territorial, in *Al-Skeini and others v United Kingdom* (2011) it was ruled that it could apply overseas, or extra-territorially, whenever a High Contracting Party exercised "effective control" over an area.²⁰ This brings operations overseas under the jurisdiction of the ECtHR. There is a danger of vexatious or malicious legal action, as seen in the case of former solicitor Phil Shiner.²¹ There is also a fear among British service personnel that they can be chased through the courts for doing their duty in combat.

Rule 39 orders

Rule 39 allows the ECtHR to recommend interim measures before proceedings in a court. This was used to frustrate the Rwanda Plan in 2022, when a single anonymous judge at the ECtHR was able to disregard a Supreme Court judgement and prevent the deportation of one of those scheduled to go.²² This had the effect of grounding all potential flights, halting the policy.

Green action

In *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* (2024), the ECtHR found in favour of a group of elderly Swiss women who argued that the Swiss Government's failure to take some actions on climate change was a breach of the ECHR, despite this effectively overturning the

| 15 *Unuane v United Kingdom*. App no. 80343/17 (ECtHR, 24 November 2020). ([link](#))

| 16 *Director of Public Prosecutions (Respondents) v Ziegler and others (Appellants)* [2021] UKSC 23, [2022] AC 408. ([link](#))

| 17 *McCann and others v United Kingdom* App no 18984/91 (ECtHR, 27 September 1995). ([link](#))

| 18 *McKerr v United Kingdom* App no 2883/95 (ECtHR, 4 May 2001). ([link](#))

| 19 *In the matter of an application by Geraldine Finucane for Judicial Review (Northern Ireland)* [2019] UKSC 7, [2019] 3 All ER 191. ([link](#))

| 20 *Al-Skeini v United Kingdom* App no. 55721/07 (ECtHR, 7 July 2011). ([link](#))

| 21 Vock, I. (2024). 'Ex-lawyer spared jail over false Iraq war claims', *BBC*, 10 December. ([link](#))

| 22 ECtHR. (2022). *The European Court grants urgent interim measure in case concerning asylum seeker's imminent removal from the UK to Rwanda*, 14 June. Press release. ([link](#))

results of a Swiss referendum on the subject.²³ Not only does this open up a new avenue for activist groups to cause trouble, it is obviously anti-democratic.

This brief survey gives a clear picture of what the ECHR was in theory and what it has then become in practice. With this in mind, the rest of this report considers in more detail why the UK should leave and how it can go about doing so.

| 23 *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* App no 53600/20 (ECtHR, 9 April 2024). ([link](#))

1: Why we need to leave



It is sometimes suggested that leaving the ECHR is a “radical” point of view. We consider here all of the alternatives to leaving and explore why none of them are feasible

1.1 Derogation is not feasible

Following 9/11, the invasions of Afghanistan and Iraq, and the increased risk of domestic terrorism in the UK, the Blair Government brought in new counter-terrorism powers. The Anti-Terrorism Crime and Security Act 2001 allowed for indefinite detention of foreign terror suspects who could not be deported under Article 3 of the ECHR, which prohibits “torture” or “inhuman or degrading punishment.” This, however, would have constituted a breach of Article 5, which guarantees liberty and security and protects from unlawful detention. Such a breach was considered necessary given the unprecedented circumstances immediately after 9/11. Therefore, HM Government derogated from the ECHR, as set out in Article 15.

Derogation allows a High Contracting Party to lawfully disapply some obligations contained in the ECHR, and remain a member of the ECHR, if certain legal tests are satisfied. Article 15 makes clear that in order to derogate from the ECHR, the Government must be facing a situation of war or a “public emergency, threatening the life of the nation”, and that all measures taken must be “strictly required by the exigencies of the situation”. This is a high threshold to meet, but one that might reasonably be met in the aftermath of a terrorist attack, when exceptional measures might be necessary for the purposes of national security.

However, in *A (FC) and others (FC) v SSHD* (2004), the House of Lords found this derogation was incompatible with both Articles 5 and 14, the latter prohibiting discrimination.²⁴

In response to this, HM Government introduced watered-down control orders in the Prevention of Terrorism Act 2005. Unlike indefinite detention, these could be used on foreign and domestic terrorism suspects. There were two types of order. Derogated orders allowed the Home Secretary to impose house arrest but only when HM Government derogated from the ECHR, while non-derogating orders imposed strong personal controls but not house arrest. Control orders only lasted a short time, with a judge striking them down under Articles 6 and 5 of the ECHR (although through a series of challenges to specific orders, the former was reversed on appeal and the latter upheld).²⁵

The Blair Government also sought to work within the ECHR, for example seeking diplomatic assurances that no torture (in breach of Article 3) would be allowed, so as to permit the deportation of foreign terror suspects. Nevertheless, this effort at derogation failed and HM Government

| 24 *A (FC) and others (FC) v Secretary of State for the Home Department* [2004] UKHL 56. ([link](#)).

| 25 *SSHD v MB (FC)* [2007] UKHL 46, [2008] AC 440. ([link](#))

was forced to undo many of its national security measures. This example demonstrates that derogation is not a viable path for the UK to pursue as the high legal test is almost impossible to satisfy in problem cases. **If, even after the biggest ever terror attack on the West, it was impossible to make derogation work effectively, then derogation is of only limited utility.**

1.2 Reform has not worked: the Interlaken Process

It is often suggested that we should remain a member and reform the ECHR from within. However, reform has been attempted over the last two decades, unsuccessfully.

In 2004, Protocol No. 14 attempted to simplify the ECtHR's processes, to enable them to deal with the backlog of cases, although it was only ratified in 2010. Combined with a new version of Rule 47 in the Rules of the Court, which enabled the ECtHR to rule submissions which were overlong or insufficiently supported by evidence as inadmissible, this reduced the backlog. Nonetheless, the backlog persisted.

To reform the ECtHR, a series of high-level conferences were organised. They were:

- Interlaken Conference 2010
- Izmir Conference 2011
- Brighton Conference 2012
- Oslo Conference 2014
- Brussels Conference 2015
- Copenhagen Conference 2018

As a result of the first conference being in Interlaken, this series has been christened "the Interlaken Process". Discussion of the limits to the ECtHR's powers, judicial activism, and deference led to Protocols No. 15 and 16. The former introduced reference to the "subsidiary role" of the ECtHR in an effort to deal with concerns by High Contracting Parties about the ECtHR's increasingly expansive interpretation of the ECHR. The latter allowed the highest domestic courts in High Contracting Parties to request the ECtHR give advisory opinions on questions relating to the interpretation or application of ECHR rights, to enable High Contracting Parties to avoid future violations.

Subsidiarity means that the ECtHR and ECHR should be seen as safety nets rather than a first port of call. Another important concept for reformers was the "margin of appreciation", which is the deference the ECtHR should show towards High Contracting Parties' interpretation of their own legal systems. This is adjusted according to the public interest, so that in cases which involve issues like national security, the High Contracting Parties will have more latitude.

The ECHR also provides for proportionality, which allows judges to adopt an intrusive, merit-based assessment of decisions. This legal test has influenced judicial review in British courts, enabling judges to overturn more decisions by the state if they disagree with the decision, regardless of whether the correct process was used and whether the decision was within the range of reasonable decisions.

As a major critic of the ECtHR's ever-expanding powers, the direction of the Interlaken Process was welcomed by the United Kingdom. It used its leadership of the Council of Europe to push for greater reform at the Brighton Conference in 2012, with the aim of restricting the flow of cases from the UK to the ECtHR and increasing the status of its own national courts. However, although the Brighton Declaration, which set out a limited series of reforms to the ECtHR, did go some way towards dealing with these issues, they have nonetheless persisted.²⁶

The Interlaken Process is considered complete, as of 2021, with no further efforts at reform. Yet its success should surely be measured by whether it has sufficiently reduced the ECtHR backlog and whether it has increased the status of national courts.

On both counts it is a failure. According to the ECtHR's own 2024 annual report, the backlog of cases still stands at around 60,000. An impressive reduction from the 160,000 peak in 2011 certainly, but the numbers have been stubbornly stuck between around 56-80,000 since 2014.²⁷ These figures are still staggeringly high and suggest a clear "floor" to the ECtHR's ability to reduce its caseload. Furthermore, it is hard to suggest the status of Britain's national courts have improved relative to the ECtHR since Interlaken began in 2010.

Despite a decade of effort, it is hard to avoid the conclusion that the Interlaken Process, a flagship ECtHR reform project, has been a failure.

1.3 HRA reform or repeal without leaving the ECHR will make no difference

There have been several attempts to reform the domestic HRA 1998 in order to circumvent the jurisdiction of the ECHR. However, these attempts to reform or repeal the HRA 1998 whilst remaining within the ECHR have all failed.

1.3.1 HRA reform between 2015 and 2024 did not work

As part of their efforts at reform, in 2014 the Conservative Government of Prime Minister David Cameron released *Protecting Human Rights in the UK*.²⁸ This policy paper suggested that the HRA 1998 should be replaced with a new Bill of Rights and Responsibilities, that the ECtHR's judgements should be curtailed so that they were not binding on the UK Supreme Court, that the ECtHR should become an advisory body only, and that if the ECtHR failed to accept this then Britain should leave the ECHR.

The intention was to return sovereignty to Britain and reduce domestic pressure over the adverse political reaction to ECtHR decisions, while ideally keeping Britain within the ECHR so as not to damage Britain's international relationship. It was effectively internal criticism, praising the ECHR itself but suggesting that reform was needed to ensure that human rights laws remained "credible, just, and [able to] command public support".

| 26 UK Government, (2012). *Brighton Declaration on ECHR reform adopted*. ([link](#))

| 27 ECtHR (2025). *Annual Report 2024*. Strasbourg: Council of Europe ([link](#)). The lowest number of pending cases since 2014 was 56,350 in 2018. The highest was 79,750 in 2016. See the ECtHR's [2018](#) and [2016](#) annual reports for these figures.

| 28 Conservative Party, (2014). *Protecting Human Rights in the UK*. ([link](#))

This would be achieved by repealing the HRA 1998, putting the text of the original ECHR into primary legislation, having Parliament clarify the limits of ECHR rights, creating a threshold beneath which legal matters would not have to engage ECHR rights, limiting human rights claims to the United Kingdom so that they no longer applied to British Armed Forces overseas, and amending the Ministerial Code to reinforce that the duty of Ministers is to follow the will of Parliament.

Therefore, although the Cameron Government threatened to withdraw from the ECHR if the Council of Europe failed to agree to their terms, the ECHR rights would have been preserved in primary legislation. This was felt to ensure that any fallout would be limited but would also have meant that many of the same issues would persist, only in a more limited domestic form.

This plan was included in the 2015 Conservative manifesto, in which HM Government made clear that it intended to enact a Bill of Rights.²⁹ A consultation was scheduled for late 2015.³⁰ This was delayed into 2016³¹ and then permanently delayed following the Brexit referendum and the resignation of David Cameron as Prime Minister.³² A draft bill reportedly went through seven revisions under Martin Howe KC.³³ He argued that the Bill of Rights should “give special status and protection to existing common law legal principles and statutes”, including parts of the Bill of Rights of 1689 and the Act of Settlement.³⁴

Although David Cameron’s negotiating strategy was never fully tested, the initial threat was not enough to compel reform. **We have little reason to believe that similar threats from the UK in the future would be any more successful.** Notably, Martin Howe KC has said repeatedly since that the UK must withdraw from the ECHR.

1.3.2 HRA reform between 2015 and 2024 did not work

The Conservatives had been committed to reform of the HRA 1998 almost from its inception; but in office between 2010 and 2024 they struggled to find an acceptable solution. Justice Secretary Dominic Raab sought to replace the HRA 1998 with a proposed British Bill of Rights in 2022, setting up an independent review to guide this process.

The Bill was intended to repeal and replace the HRA 1998, aiming to “reinforce quintessential UK rights” and affirm the supremacy of the UK Supreme Court over the ECtHR.³⁵ In doing so, it restated ECHR rights in our law. It also sought to reaffirm Parliamentary sovereignty, giving Parliament the final say in balancing rights, and limiting the ability of courts to expand rights without a democratic mandate. It would also have included the introduction of a “permission stage”, during which claimants would have to demonstrate that their claims were serious. It was hoped this would weed out so-called “bogus” claims. Additionally, it would strengthen freedom of speech, boost press protections, and reduce positive obligations on public authorities (such as

| 29 Conservative Party. (2015). *The Conservative Party Manifesto 2015*, p. 73. ([link](#))

| 30 HC Deb 8 September 2015, vol 599, col 205. ([link](#))

| 31 Hyde, John. (2015). ‘Gove confirms British bill of rights consultation next year’, *Law Gazette*, 2 December. ([link](#))

| 32 Select Committee on the Constitution, *Inquiry into legislative process*, Oral evidence, 1 March 2017. ([link](#)).

| 33 Bowcott, O. (2015). ‘Lawyer urges release of Tories’ proposals for British bill of rights’, *The Guardian*, 11 May. ([link](#))

| 34 Howe, M. (2006). ‘A British Bill of Rights’, *martinhoweqc.com*. ([link](#))

| 35 HC Deb 22 June 2022, vol 716 col 845. ([link](#))

requiring police to warn gang members of threats³⁶). Finally, it would state that British courts were not bound by interim measures from the ECtHR.

However, the Bill was heavily criticised and eventually shelved. The truth is that, even if enacted, it would have had little effect. Reforming domestic law makes no difference as long as claimants can still take cases to the ECtHR and HM Government is still bound by the terms of the ECHR. Any domestic legislation that breaches the terms of the ECHR could be declared incompatible by the British courts and ultimately struck down following an adverse judgement in Strasbourg.

1.4 Limitations of ‘reasonable defiance’

The concept of ‘reasonable defiance’ or ‘principled disobedience’ holds that the ECHR can occasionally be breached in the knowledge that the ECtHR’s legal ability to compel a High Contracting Party is limited and that it is ultimately diplomatic pressure that forces compliance. An example of this is prisoner voting, where the United Kingdom was able to ignore ECtHR rulings on the issue for a number of years before being compelled to give in.³⁷

However, although this may work in some cases, it is unreasonable to imagine that reasonable defiance could be applied in all the cases necessary or as a proactive, deliberate policy strategy. There is also an intellectual dishonesty to accepting the ECHR in principle whilst flouting it when expedient, as well as making breaches of the rule of law habitual.

1.4.1 Prisoner voting rights

In *Hirst*, the ECtHR ruled that the UK’s blanket ban on prisoner voting breached Article 3 of Protocol No. 1 of the ECHR. The response from successive Governments was deflection. In December 2006, Lord Falconer, then Lord Chancellor, defended the status quo, stating that the ban was a “proper and proportionate punishment”.³⁸

Despite two public consultations under Labour (2006 and 2009), no legislative action was taken. The 2010–2015 Coalition Government, although supportive of remaining within the ECHR framework, similarly refused to implement the ruling. Even with a parliamentary majority and popular support for retaining the ban, Cameron’s Government failed to legislate against the European ruling. His personal opposition was unequivocal, stating in 2010 that it made him “physically ill” to consider giving prisoners the vote. Yet the policy was implemented in 2018 under Justice Secretary David Lidington. After thirteen years of political resistance, the UK eventually partially complied with the ECtHR’s ruling with an amendment to the legislation which allowed the vote to prisoners in some circumstances, such as when they are released on temporary license.

Many of those opposed to withdrawal point to this case as an example of how the UK was not compelled to comply with a Strasbourg ruling for many years. However, HM Government was found to be in breach of its obligations under the ECHR and eventually complied.

³⁶ Slack, J. (2016). ‘Euro judges order police to ‘protect’ gangsters: Officers forced to issue ‘threat to life’ notices to villains and drug lords’, *Daily Mail*, 30 September. ([link](#))

³⁷ BBC. (2017). ‘Prisoner voting compromise ends dispute with European court’, *BBC*, 7 December. ([link](#))

³⁸ HL Deb 14 December 2006, vol 687 col 201WS. ([link](#))

Aside from the fact that compliance is usually enforced one way or another, a sustained position of acknowledged breach sets the wrong precedent for international relations and the rule of law, even if the laws being flouted are bad ones.

1.5 Completing Brexit and restoring sovereignty to the UK

The ECHR was created for the post-war world and is now over seventy years old. Much like the 1951 Refugee Convention and other international agreements, it is incapable of dealing with the scale and characteristics of contemporary legal problems.

Nowhere is this clearer than when it comes to asylum. Post-war agreements designed to deal with displaced people within Europe, who benefited from cultural commonalities and a *relative* lack of difference in their levels of development, have now been applied to the entire world. In Britain alone, the population of illegal immigrants is estimated at between 1 and 2 million people. There is no way to deal with this problem under the current framework.

Brexit began the process of regaining Britain's sovereignty. As the struggles over the Rwanda Plan showed, Britain is no longer able to exercise control over its borders because of international law, especially the ECHR. As such, to complete the restoration of national sovereignty and to fully reap the benefits of Brexit, leaving the ECHR is now a necessity.

2: Why stay?



The debate about leaving the ECHR polarises opinion. Those who wish to remain part of it often cite the following arguments, which need to be dealt with head-on.

2.1 Will we damage the UK's international reputation?

Although the question of international reputation is often raised, this is something of a self-fulfilling prophecy, since complaints that leaving the ECHR would damage our international reputation may have the effect of damaging our international reputation.

Much the same was said of Brexit but, despite domestic political turmoil, it had less effect on our relationships with international partners than many predicted. The number of trade deals which have been signed since then demonstrates that in some ways our international reputation is higher.

Furthermore, other Anglosphere nations such as the United States, Australia, Canada, and New Zealand are not members of the ECHR (although the United States and Canada are Observer States at the Council of Europe), and yet they enjoy positive international reputations.

2.2 Will we leave the Council of Europe “with Russia”?

It is occasionally said that if the UK were to leave the ECHR, this would put us in the same company as Russia, which was expelled following its brutal invasion of Ukraine.

This argument is disingenuous. If the UK were to leave the ECHR, it would not be because of egregious war crimes or violations of civil liberties. It would be on the basis of a political mandate, endorsed by a majority in Parliament, and reflecting the will of the electorate.

Furthermore, membership of the ECHR is by itself no guarantee of human rights enforcement. Other nations within the ECHR have breached international law without it leading to their expulsion or serious international consequences. This includes war crimes allegedly committed by Azerbaijan³⁹ in its war with Armenia and Iceland's breach of the law over fishing rights.

Finally, withdrawing from the ECHR need not automatically require the United Kingdom to also leave the Council. The only two states to do so, Greece in 1969 and Russia in 2022, did so knowing they would likely be expelled otherwise. Although the Statute of the Council requires that human rights and fundamental freedoms be protected, it does not explicitly require adherence to the ECHR. Article 3 states:

| 39 Human Rights Watch. (2022). 'Video shows Azerbaijan forces executing Armenian POWs', *Human Rights Watch*, October 14. ([link](#))

Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I.

Later on, Article 8 states:

Any member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine.

Article 8 has never been used, although as mentioned above, some states chose to withdraw rather than risk its use. Article 3 only requires that human rights and fundamental freedoms be protected, not that states must be signatories to the ECHR or even that all the ECHR rights must be upheld.

2.3 Is there a threat to civil liberties?

Another argument is that leaving the ECHR would negatively affect civil liberties, such as freedom of speech. As the United Kingdom is currently a signatory of the ECHR and yet sees its citizens being arrested under the Communications Act 2003 for social media posts perceived as being offensive, the recording of Non-Crime Hate Incidents, and "buffer zones" around abortion clinics where people can be arrested for praying silently, it is unclear how strong these rights are. Frankly, the United Kingdom can do much better.

More significantly, this argument either ignores or displays a genuine ignorance of the fact that the United Kingdom has benefited from the rule of law and from liberty for centuries before the ECHR existed. **If anything, many civil liberties have suffered during the period in which the United Kingdom has been part of the ECHR; a culture of liberty has also suffered having been outsourced to foreign judges. Parliament and the common law are sufficient to protect civil liberties.**

2.4 Will the Northern Ireland, devolution, or Trade and Co-operation Agreements be harmed?

As set out in the next chapter, arguments regarding Northern Ireland, devolution and Trade Co-operation Agreements do not pose insurmountable obstacles to leaving the ECHR.

3: Northern Ireland



This paper sets out a structured, lawful, and constitutionally robust strategy for the United Kingdom to withdraw from the ECHR, repeal the HRA 1998, and reassert democratic sovereignty over domestic human rights law. Central to this proposition is the necessity of addressing the apparent legal and political complications posed by the Belfast Agreement, and particularly its references to the ECHR. This chapter outlines a principled method to amend the Agreement to reflect the UK's post-Brexit constitutional reality, while preserving democratic government across all nations of the Union.

3.1 Constitutional background: Belfast, Brexit, and the Union at risk

3.1.1 The promise of the Belfast Agreement

The Belfast Agreement was a political and diplomatic landmark reached in 1998. Emerging from decades of conflict in Northern Ireland, it established a devolved power-sharing framework, embedded the principle of consent in relation to Northern Ireland's constitutional status, and provided for North-South and East-West institutions. Critically, it affirmed Northern Ireland's status as part of the United Kingdom, unless a majority of its inhabitants were to vote otherwise.

The Agreement was also a statement of parity between traditions, identities, and jurisdictions. Its central tenet was that Northern Ireland would enjoy equal treatment within the United Kingdom, while also recognising Irish identity and aspirations. This delicate balance, rooted in consent, was never intended to make Northern Ireland a legal anomaly within the UK.

Contrary to popular misconception, the Belfast Agreement is not a single legal instrument, but rather a political agreement given legal force through domestic and international law. It consists of:

- a Multi-Party Agreement between most of Northern Ireland's political parties
- a British–Irish Agreement, which is an international treaty between the UK and Ireland

The Multi-Party Agreement was signed by numerous political parties from Northern Ireland: the Alliance Party, Labour Party NI, Northern Ireland's Women's Coalition, the Progressive Unionist Party, Sinn Féin, the Social Democratic and Labour Party, the Ulster Democratic Party, and the Ulster Unionist Party. The Agreement set out the framework for new political institutions and governance in Northern Ireland and is structured first into three Strands (Strand 1 dealing with democratic institutions to ensure cross-community power-sharing; Strand 2 establishing North-South institutions to promote co-operation between Northern Ireland and the Republic of Ireland; and Strand 3 setting up East-West institutions to foster co-operation between the UK and Ireland). These are followed by sections on Rights, Safeguards and Equality of Opportunity, Decommissioning, Security, Policing, and Justice and Prisoners. The Agreement forms part of the legal and political foundation for governance in Northern Ireland and was implemented in British law via the Northern Ireland Act 1998.

The British–Irish Agreement was signed by both the British and Irish Governments in 1998 and complements the Multi-Party Agreement. It establishes formal structures for co-operation between the UK and Irish governments on matters relating to Northern Ireland, such as the 'Strand 3 Institutions', and provides a framework for joint oversight and support of Northern Ireland's governance. It was given effect through ratification and the amendment of domestic legislation.

Even today, there remain clauses within the Agreement that have not been implemented, with no enforcement having been taken. In addition, there are many cases where the Belfast Agreement has been breached. For example, the late Lord Trimble argued in 2021 that the Northern Ireland Protocol "rips the very heart out of the [Belfast] Agreement"⁴⁰, with no consequent litigation in international courts or remedy granted.

3.1.2 The Belfast Agreement and the ECHR

The Belfast Agreement refers to the ECHR in the following ways (quotes italicised):

(1) Multi-Party Agreement: Strand One, para 5(b)

The ECHR is referred to here as a safeguard, together with *"any Bill of Rights for Northern Ireland supplementing it, which neither the Assembly nor public bodies can infringe, together with a Human Rights Commission"*, to ensure that all sections of the *"community can participate and work together successfully in the operation of these institutions"*.

(2) Multi-Party Agreement: Strand One, para 5(c)

There must be *"arrangements to provide that key decisions and legislation are proofed to ensure that they do not infringe the ECHR and Bill of Rights for Northern Ireland"*.

(3) Multi-Party Agreement: Strand One, para 26(a)

"The Assembly will have authority to pass primary legislation for Northern Ireland in devolved areas, subject to the ECHR and any Bill of Rights for Northern Ireland supplementing it which, if the courts found to be breached, would render the relevant legislation null and void."

These references cite the ECHR (and a supplementary Bill of Rights for Northern Ireland) as the benchmark for human rights protections. **However, there is nothing here obliging HM Government to be a member of the ECHR specifically or permanently.**

(4) Multi-Party Agreement: Rights, Safeguards and Equality of Opportunity. Human Rights, para 1

The parties affirm their commitment to the mutual respect, the civil rights and the religious liberties of everyone in the community. Against the background of the recent history of communal conflict, the parties affirm in particular:

⁴⁰ Trimble, D. (2021). 'I feel betrayed by the Northern Ireland Protocol, which rips out the heart of the 1998 Belfast Agreement', *News-Letter*, November 21. ([link](#))

- *the right of free political thought;*
- *the right to freedom and expression of religion;*
- *the right to pursue democratically national and political aspirations;*
- *the right to seek constitutional change by peaceful and legitimate means;*
- *the right to freely choose one's place of residence;*
- *the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity;*
- *the right to freedom from sectarian harassment;*
- *the right of women to full and equal political participation.*

This statement of substantive rights makes no reference to the ECHR. Whilst in some respects, this list effectively mirrors ECHR rights (e.g. freedom of religion, freedom from discrimination and the right to political participation), in other respects it goes beyond those rights envisaged in the ECHR or protected by Strasbourg jurisprudence, for example the explicit references to "political aspirations", "constitutional change", and protections from "sectarian harassment". These are more specific and not explicitly protected under current Strasbourg law, despite the commitments in the Belfast Agreement.

(5) Multi-Party Agreement: Rights, Safeguards and Equality of Opportunity. Human Rights, para 2

"The British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency."

This is the clearest and most direct commitment to incorporation of the ECHR into Northern Ireland's domestic law, and it forms the legal basis for the HRA 1998 in that region.

(6) Multi-Party Agreement: Rights, Safeguards and Equality of Opportunity. Human Rights, para 4:

The new Northern Ireland Human Rights Commission will be invited to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the ECHR, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and - taken together with the ECHR - to constitute a Bill of Rights for Northern Ireland. Among the issues for consideration by the Commission will be:

- *the formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland; and*
- *a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors.*

The reality is that this commitment has not been implemented, despite the Northern Ireland Human Rights Commission (NIHRC) reporting in 2008 with recommendations for a Bill of Rights for Northern Ireland.

The British–Irish Agreement binds the UK to implement the Multi-Party Agreement and refers to the commitments therein. However, the treaty text itself does not add new or independent references to the ECHR.

3.1.3 Assessing the references to the ECHR in the Belfast Agreement

In summary, references to the ECHR (and a supplemental but unimplemented Bill of Rights for Northern Ireland) are contained primarily in the Rights, Safeguards and Equality of Opportunity, Human Rights section of the Multi-Party Agreement.

The most explicit provision is found in Paragraph 2 of that section, where HM Government undertakes to “complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency.”

This clause reflects the political and legal context of the time: the ECHR was regarded as a modern international benchmark for liberal democracy, and its incorporation was seen as a means to entrench baseline protections for both communities in Northern Ireland after decades of conflict.

However, this language is descriptive, not prescriptive. It reflects a commitment to incorporate the ECHR at that time, not a requirement that the ECHR be permanently entrenched in Northern Ireland’s legal framework. There is no “in perpetuity”, “binding”, or “irrevocable” language regarding adherence to the ECHR. Nor is there any provision stating that only the ECHR can be the basis of human rights protection in Northern Ireland. As Paragraph 1 of the same section indicates, there are commitments to rights that go beyond the ECHR but which are not, as yet, legally protected. This was a policy mechanism, not a constitutional principle or binding law.

Other references to the ECHR, such as those in Strand One, treat the ECHR as a standard of comparison or a benchmark, rather than as the only acceptable or legally required framework. The NIHRC is tasked with reviewing the adequacy and effectiveness of human rights protections, including those found in the ECHR, but again this implies that other sources of rights protection could be acceptable or even preferable so long as they are effective and fair. Furthermore, the ECHR-compliant recommendations of the NIHRC for a Bill of Rights have so far been ignored and not implemented.

Crucially, while the Agreement commits to “incorporation”, it does not prevent the UK Parliament from repealing the HRA 1998, nor does it prohibit the UK from denouncing the ECHR under Article 58 of the ECHR itself. As such, the Agreement respects the constitutional doctrine of Parliamentary sovereignty, even while it promotes a normative human rights agenda.

The British–Irish Agreement, meanwhile, which gave treaty status to the Belfast Agreement, does not independently entrench the ECHR, nor are there any express references to the ECHR contained within it. It commits the UK and Irish Governments to the implementation of the Multi-Party Agreement, but it does not transform the ECHR into a supranational or immovable legal obligation under international law. **What is binding is the commitment to protect rights, not**

the method by which those rights are guaranteed.

Accordingly, there is no legal or treaty obligation requiring the UK to remain permanently a party to the ECHR in order to comply with the Belfast Agreement. What the Agreement requires is that rights and equality be meaningfully protected in Northern Ireland. That can be achieved through common-law protections through the courts.

The underlying spirit of the Agreement is of consent, equality, and democratic legitimacy, not legal subservience to international tribunals. A UK-wide withdrawal from the ECHR can and must be consistent with these principles. **The key is to ensure that rights protections remain credible, effective, and applicable equally across the United Kingdom.**

Thus, while the ECHR is mentioned several times in the Belfast Agreement, it is not constitutionally entrenched. Its inclusion was contextual, not eternal; political, not legally binding. It is entirely within HM Government's power to use instead a sovereign domestic rights framework, provided the promises of the Agreement—equality before the law, respect for human dignity, and political parity—are upheld.

3.1.4 Modifications to the Belfast Agreement

Contrary to the narrative often advanced by political opponents of reform, the Belfast Agreement is a living political accord, subject to reinterpretation, amendment, and augmentation, according to changing legal and political conditions. Over the past two decades, the Agreement has been modified no fewer than five times through re-negotiated supplementary deals between the UK and Irish Governments and Northern Ireland's political parties. These modifications have addressed everything from power-sharing breakdowns and devolution of justice, to cultural rights and financial reform. In many cases, they have directly amended or displaced specific provisions of the original Agreement, particularly in the Strand One (Governance), Strand Two (North–South), and Strand Three (East–West) structures, as well as the Rights, Safeguards and Equality of Opportunity section.

Each of these agreements serves as clear precedent that the 1998 framework can be amended, and that doing so is consistent with the broader peace process and democratic consent. The idea that the Agreement's references to the ECHR are somehow immune to revision is not only legally incorrect but politically ahistorical, and against the true spirit of the Agreement.

We will now consider some of the changes made to the Belfast Agreement since it was first enacted.

(1) The St Andrews Agreement (2006)⁴¹

Changes made: *Strand One, paragraph 3 of the Belfast Agreement was replaced by a new procedure; Strand One, paragraph 24 was amended and Strand One, paragraph 35 was supplemented and significantly altered the Belfast Agreement's application.*

The first major post-Agreement reform came in 2006, following the suspension of devolution

| 41 Northern Ireland (St Andrews Agreement) Act 2006. ([link](#))

in 2002. After several failed attempts to revive the institutions, the St Andrews Agreement restructured aspects of the power-sharing model to accommodate new political realities, especially the rise of the Democratic Unionist Party (DUP) and Sinn Féin as the dominant unionist and nationalist parties, respectively. It made adjustments to Northern Ireland's Assembly and introduced reforms to local governance, the nomination procedures for First and Deputy First Ministers, and strengthened ministerial accountability as well as committing to language protections.

Crucially, the St Andrews Agreement was formally incorporated into UK legislation through the Northern Ireland (St Andrews Agreement) Acts of 2006 and 2007. Although negotiations took months and were fraught with difficulty, both unionist and nationalist leaderships ultimately accepted the deal, proving that even fundamental aspects of the original Agreement, such as governance mechanisms, are negotiable when circumstances demand. Comparatively speaking, the St Andrews Agreement represents significant amendments to the substance of the original framework of the Belfast Agreement.

(2) The Hillsborough Castle Agreement (2010)⁴²

Changes made: *Strand One, paragraph 7 was amended to create a new Department of Justice and new powers; Strand One, paragraph 11(d)'s interpretation was expanded.*

By 2010, attention had turned to the devolution of policing and justice powers, which had remained under Westminster control since 1998. The Hillsborough Castle Agreement, negotiated between the DUP and Sinn Féin with UK and Irish governmental support, provided a roadmap to devolve these powers to the Northern Ireland Assembly. It addressed sensitive concerns around how justice would be administered in a post-conflict society and established the position of a local Minister of Justice.

This agreement marked a substantive shift in the constitutional framework created by the Belfast Agreement. It took several months of negotiation. Nevertheless, it demonstrated that even the most delicate areas (policing and judicial authority) can be devolved and restructured through political consensus. Following an affirmative cross-community vote, the changes were enacted in the UK Parliament through statutory instruments which further amended the Northern Ireland Act 1998 through the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010, Northern Ireland Act 1998 (Amendment of Schedule 3) Order 2010, and the Northern Ireland Court Service (Abolition and Transfer of Functions) Order 2010.

(3) The Stormont House Agreement (2014)⁴³

Changes made: *The Rights, Safeguards and Equality of Opportunity section was substantively developed through new commitments and Strand One, paragraph 13 was partially implemented.*

The Stormont House Agreement came in response to multiple problems: the handling of the legacy of the Troubles, welfare reform disputes, and public finance. It proposed the creation of new institutions to deal with historical investigations, a truth recovery process, and oral history

| 42 Agreement at Hillsborough Castle 2010. ([link](#))

| 43 The Stormont House Agreement 2014. ([link](#))

archives. It also included measures to streamline Northern Ireland's political institutions and reduce the number of Members of the Legislative Assembly (MLAs).

While some elements of the Agreement were delayed or only partially implemented, it showed that the Belfast framework could accommodate ongoing debate about identity, justice, and historical memory. Most of the major parties endorsed the proposals, although some nationalist figures criticised the lack of progress on certain legacy issues. Still, it showed a willingness to adapt the Agreement's ethos to modern concerns, especially those involving complex questions of law and justice.

(4) The Fresh Start Agreement (2015)⁴⁴

Changes made: *Strand One and the Executive's operation and the Rights section were amended.*

The Fresh Start Agreement was negotiated in response to political instability stemming from paramilitary activity and disputes over welfare policy. It built on the Stormont House framework, providing greater clarity around the implementation of financial reforms and addressing lingering issues around governance and transparency. It also reaffirmed commitments to tackling paramilitarism and supporting the rule of law.

This agreement, like those before it, was the product of multilateral negotiation between the UK and Irish governments and Northern Ireland's main political parties. Though some smaller parties voiced dissent, the agreement was accepted by both the DUP and Sinn Féin. It underscores the extent to which political agreements can be revised and reinterpreted over time, especially when required to uphold public confidence.

(5) New Decade, New Approach (2020)⁴⁵

Changes made: *Rights, Safeguards and Equality of Opportunity, paragraphs 1 and 5 were expanded; Strand One, paragraph 13 was reformed, and the Declaration of Support was bolstered.*

Perhaps the most telling example of the Agreement's modifiability is the New Decade, New Approach deal, signed in 2020 following a three-year collapse of Northern Ireland's institutions. This agreement provided for the restoration of devolution, introduced new mechanisms for ministerial accountability, and addressed long-standing cultural disputes, including commitments to legislate on the Irish language and Ulster Scots.

The process took well over a year and required intense negotiation between the main parties and the two governments. It ultimately succeeded in getting all five main Stormont parties to again operate the Stormont structures. Its success demonstrates that even issues of identity and culture, often considered the most politically volatile, can be incorporated into new frameworks without violating the foundational balance of the Belfast Agreement.

3.1.5 Assessing modifications to the Belfast Agreement

As shown in the examples above, the Belfast Agreement has not remained frozen in its 1998 form.

| 44 A Fresh Start: The Stormont Agreement and Implementation Plan 2015. ([link](#))

| 45 New Decade, New Approach 2020. ([link](#))

Specific paragraphs have been revised, replaced, or reinterpreted through cross-party political agreements and formal legislative amendments by the UK Parliament. These reforms span governance (Strand One), rights (Rights and Safeguards), legacy justice, culture, and language.

These precedents prove that amending references to ECHR rights, especially to ensure legal parity between Northern Ireland and Great Britain, is both lawful and consistent with past practice. It would not breach the spirit of the Agreement but instead honour its deeper principle: that Northern Ireland remains a full part of the United Kingdom unless its people democratically decide otherwise. No peace agreement should become the vehicle through which constitutional separation is imposed by legal stealth.

3.1.6 Brexit and the Northern Ireland Protocol

The 2016 referendum on leaving the European Union presented a test of constitutional integrity. Though Northern Ireland voted 56% to remain, the United Kingdom as a whole voted to leave. In the years that followed, the EU and the Irish Government leveraged HM Government's commitment to avoiding a hard border on the island of Ireland to pressure the UK into accepting the Northern Ireland Protocol.

The Protocol, agreed in 2019, effectively placed a customs and regulatory border in the Irish Sea, meaning that a subset of EU goods regulation continues to apply in Northern Ireland. This created an internal border within the United Kingdom, undermining economic union, constitutional unity, and democratic equality.

The trade implications have been significant and deeply problematic:

- **Trade diversion:** According to the UK's Office for National Statistics and HMRC, the value of trade between Great Britain and Northern Ireland fell in important sectors, especially food, chemicals, and agri-products, in the immediate aftermath of the Protocol's implementation in 2021. Simultaneously, imports from the Republic of Ireland surged by over 60%, indicating trade diversion.⁴⁶
- **Cost of compliance:** Businesses operating across the Irish Sea reported significant administrative burdens. A 2022 Northern Ireland Chamber of Commerce survey found that 66% of firms experienced increased costs.⁴⁷
- **Investment uncertainty:** The imposition of EU rules in part of the UK has discouraged UK-wide investment and fragmented the internal market. Critics have noted that the dual regulatory regimes created a "two-speed UK", with Northern Ireland subject to foreign laws with no democratic accountability.⁴⁸

Moreover, it is clear that the Northern Ireland Protocol breaches the Belfast Agreement. As the late Lord Trimble, one of the architects of the Belfast Agreement, argued in 2022, the Protocol "is destroying the Good Friday Agreement."⁴⁹ He argued that the Protocol breaches the letter and

| 46 Western, Harry. (2021). 'What's happening to UK-Irish trade – revisited', *Briefings for Britain*, 28 October. ([link](#))

| 47 Northern Ireland Chamber of Commerce and Industry. (2022). *Quarterly Economic Survey Summary Q2 2022*, p.12. ([link](#))

| 48 Crisp, J. (2021). 'UK must pound the table for the return of imperial measures in Northern Ireland', *The Telegraph*, 17 October. ([link](#))

| 49 Trimble, D. (2022). 'The Northern Ireland Protocol is destroying the Good Friday Agreement', *The Telegraph*, 16 May. ([link](#))

the spirit of the Agreement by removing the assurance that democratic consent is needed for changes to Northern Ireland's status, undermining democratic representation and fundamentally changing Northern Ireland's constitutional place within the UK.

3.1.7 The ongoing erosion of the Union: Article 2 of the Windsor Framework and the legal fallout from *Dillon* and *JR295*

The Windsor Framework, agreed in 2023, was billed as a solution to the political and trade turbulence caused by the Northern Ireland Protocol. Unfortunately, it has entrenched a deeper problem: the creation of a dual legal order within the United Kingdom. While it introduced some limited easements on goods trade across the Irish Sea, it enshrined continued adherence to parts of EU law in Northern Ireland in ways that still reach far beyond customs checks or product standards.

At the centre of this is Article 2 of the Windsor Framework, which requires the UK to “ensure that no diminution of rights, safeguards or equality of opportunity” as set out in the Belfast Agreement occurs following Brexit. These rights, once underpinned by EU membership, are now maintained as treaty obligations by the UK *vis-à-vis* Northern Ireland.

This provision came under judicial scrutiny in the case of *Re NIHRC and JR295 in the matter of the Illegal Migration Act (2023)*.⁵⁰ In that case, Mr Justice Humphreys ruled that the protections in Article 2 included rights derived from both the ECHR and retained EU asylum law, despite the UK's formal departure from the latter framework. The claimant, a 16-year-old Iranian national, had travelled from France by small boat and claimed asylum in the UK. He was residing in Northern Ireland and argued that he was exempt from the provisions in the British Government's Illegal Migration Act, passed in 2023. Humphreys J confirmed that aspects of the Illegal Migration Act 2023 caused a diminution in the rights enjoyed by asylum seekers, rights protected under the Belfast Agreement, thus consisting of a breach of Article 2 of the Windsor Framework. Relying on Colton J in an earlier case, *Re Dillon*⁵¹, Humphreys said:

Read together, the provisions of Article 4 of the WA and section 7A of the Withdrawal Act are juridically aligned to the approach to the supremacy of EU law under the 1972 Act and *Factortame*. In the circumstances where domestic law is inconsistent with the provisions of the WA and laws made applicable by Article 4, the latter take precedence and domestic law is disapplied.⁵²

The *JR295* judgement confirmed that EU-derived rights continue to be enforceable in Northern Ireland, even as they are disapplied in the rest of the UK. It was followed by several similar cases such as the at Court of Appeal in *In the matter of an application by Martina Dillon and others – NI Troubles (Legacy and Reconciliation) Act 2023 (2025)*⁵³, which, in practical terms, now mean that EU asylum directives, procedural safeguards, and human rights jurisprudence (including the EU Charter of Fundamental Rights) must still be observed by UK authorities operating in Northern Ireland, placing it at odds with the post-Brexit legal landscape

| 50 *Re NIHRC and JR295 in the matter of the Illegal Migration Act* [2024] NIKB 35. ([link](#))

| 51 *Dillon, McEvoy, McManus, Hughes, Jordan, Gilvary, and Fitzsimmons Application and in the matter of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 and the Secretary of State for Northern Ireland* [2024] NIKB 11. ([link](#))

| 52 *Re NIHRC and JR295*, para 179. ([link](#))

| 53 *In the matter of an application by Martina Dillon and others - NI Troubles (Legacy and Reconciliation) Act 2023* [2024] NICA 59. ([link](#))

of Great Britain.

These developments have had not only economic effects but constitutional implications. A region of the UK is now governed in part by rules made in Brussels, enforced through the European Court of Justice, without the consent of the governed. This runs contrary to the foundational principle of the Union: that British citizens are equal under the law and enjoy equal protection by Parliament. It is also against the spirit of the Belfast Agreement.

3.2. Northern Ireland and withdrawal from the ECHR

What is clear from Section 3.1.4 is that the Belfast Agreement has evolved through negotiation and revision on multiple occasions. To amend it once more to reflect the UK's sovereign withdrawal from the ECHR would be neither unlawful nor unprecedented. What is required is a measured constitutional strategy: legally sound, diplomatically astute, and politically coherent.

It is also clear that the current constitutional position is untenable. HM Government may legislate to repeal the HRA 1998 or withdraw from the ECHR, but courts in Northern Ireland may still be obliged to apply rights derived from them by virtue of the Windsor Framework and its incorporation into domestic law via the European Union (Withdrawal Agreement) Act 2018, s. 7A and s. 8C.

Any meaningful withdrawal from the ECHR must confront the legal asymmetry embedded in Article 2, which has effectively preserved a second-tier legal regime in Northern Ireland. Without amending the Framework and its constitutional base in the Belfast Agreement, the United Kingdom risks entrenching a permanent legal border within its own territory, jeopardising both legal coherence and political unity.

Thus, in charting a course for ECHR withdrawal, it is essential to adopt a framework rooted in constitutional principle, legal clarity, and national unity. The following general principles must guide any legislative and treaty reform process:

3.2.1 General principles

Legal uniformity

Northern Ireland is part of the United Kingdom, and it should not be subject to a parallel system of human rights enforcement via the ECtHR in Strasbourg whilst the rest of the UK is not. The constitutional status of Northern Ireland as an integral part of the UK is not contingent on adherence to the ECHR. The Parliament of the United Kingdom has sovereign authority over all parts of the Union, including Northern Ireland. Rights must be equally guaranteed across all four nations, reflecting a shared British legal culture, not divergent international obligations. The lessons of the Protocol must inform our approach to the ECHR: sovereignty, unity, and democratic equality are indivisible. Northern Ireland must not be left behind.

Democratic accountability

Rights adjudication should return to domestic democratic institutions—principally Parliament and the courts—not distant international bodies unaccountable to British voters. The British people must be the source of their rights, not foreign judges. The UK has a proud history of liberty, from *Magna Carta* to Blackstone, from *Habeas corpus* to the Bill of Rights

1689. Human rights should reflect our constitutional traditions and be accountable to Parliament.

Consultation and confidence

The reform process must be grounded in consultation with Northern Ireland's communities and its main political institutions. But it must also reflect the UK Parliament's ultimate sovereignty, particularly in constitutional matters.

Peace through fairness: preserving the spirit of the Belfast Agreement

Peace in Northern Ireland has been and will be best sustained through fairness, equality, and democratic participation, not by institutionalising foreign oversight. The Belfast Agreement was designed to meet new realities. **Its core objectives of peace, consent, and equality can be upheld without adherence to the ECHR.** A new legal framework must affirm these values through UK-based rights guarantees, not submission to a foreign jurisdiction.

3.2.2 Strategic approach: sequencing reform and preserving stability

Amending the Belfast Agreement to remove references to the ECHR cannot be a blunt or unilateral exercise. It must be sequenced, consultative, and anchored in political legitimacy. A four-phase strategy is advised:

Policy consultation phase

- A formal White Paper should be issued by HM Government setting out:
 - » the defects of the current system;
 - » the case for withdrawal from the ECHR;
 - » the intention to maintain rights protections via British law;
 - » a proposal to re-negotiate the Belfast Agreement, Northern Ireland Protocol, and Windsor Framework accordingly; and
 - » proposals to amend the Scotland Act 1998, the Government of Wales Act 1998, the European Union (Future Relationship) Act 2020, and any other legislation that refers to the ECHR (see next chapter).
- Parallel consultation with Northern Ireland's parties, civil society, and the Irish Government should be initiated, highlighting the continuity of rights protections under a new domestic framework.

Diplomatic phase

- HM Government must invoke Article 58 of the ECHR (by sending a formal letter to the Council of Europe), beginning the formal exit process, lasting six months.
- HM Government would consult with the main political parties in Northern Ireland with a view to securing agreement to amend the Multi-Party Agreement. The changes would affirm the parties' commitment to fundamental rights and recognise the UK's withdrawal from the ECHR. The key changes would include:
 - » the UK's withdrawal from the ECHR;
 - » the revised legal basis for rights protections in Northern Ireland, i.e. the common

law and statute; and

» a joint commitment to upholding peace and democratic processes.

- In the event that some of the political parties of Northern Ireland refuse to support the changes, HM Government would proceed with this phase in its sovereign legislative capacity, i.e. through amendments to the Northern Ireland Act 1998, just as the British Government proceeded with the Northern Ireland Protocol and the Windsor Framework.
- The UK should also commence the process of agreeing these changes with Ireland. Thus, diplomatic engagement is necessary, and the UK should propose a diplomatic update in the form of a bilateral protocol to the British-Irish Agreement, akin to the 2006 or 2010 changes. This "UK-Ireland Human Rights Protocol" would reflect the UK's intention to no longer be bound by the ECHR and would replace the ECHR references with "the common law", as set out above.
- Ireland would not be required to leave the ECHR itself, only to recognise the UK's sovereign choice and the adequacy of its rights regime. Crucially, the Irish state, though a party to the Belfast Agreement, cannot unilaterally dictate UK human rights law and so it would always be open to the UK Parliament to proceed with the changes in domestic statute under the doctrine of parliamentary supremacy.
- HM Government would open negotiations with the EU on the Northern Ireland Protocol and Windsor Framework to fix the problems set out above. If no agreement were forthcoming, the Government could proceed unilaterally and must be prepared to denounce/withdraw from the Protocol and the Windsor Framework entirely.

Legislative phase (Article 58 transition period)

- Once Article 58 has been triggered, and before the six-month expiry date, Parliament would legislate to repeal the HRA 1998, introduce a Judicial Review Reform Act, and allow the common law to operate. Any legislation would make clear that the ECtHR no longer binds the UK.
- The UK Parliament would legislate to amend the Northern Ireland Act 1998 (specifically sections 6, 24, and Schedule 2) to remove the requirement for compliance with ECHR rights.
- Protections for identity, equality, and due process would remain in place, satisfying the spirit if not the letter of the Agreement's Rights, Safeguards and Equality of Opportunity chapter.
- Primary legislation would be needed to correct the *JR295* judgement and enact changes to the Northern Ireland Protocol and Windsor Framework. Should no changes be secured through agreement with the EU, HM Government should proceed with its domestic legislation regardless.
- Corollary changes in primary legislation to Scotland, Wales, and EU legislation would need to be passed.
- This stage must be carefully managed to prevent a legal vacuum during the transition.

Implementation and public legitimacy phase (Article 58 transition period)

- HM Government could use the existing Northern Ireland Human Rights Commission to review complaints and oversee rights protections post-ECHR withdrawal.
- Parliament would guarantee the non-retrogression of rights, ensuring that key entitlements such as freedom of religion, speech, fair trial, and anti-discrimination remain protected.

3.2.3 Summary

This phased and structured approach allows for legal and institutional continuity.

The withdrawal from the ECHR and repeal of the HRA 1998 represent not a retreat from human rights, but a restoration of democratic accountability. The United Kingdom must reclaim the right to define its own legal order, reflective of its traditions, values, and parliamentary supremacy.

To do so effectively, we must address the anachronistic entanglement of the Belfast Agreement with a supranational legal regime by which the people of the United Kingdom no longer wish to be bound. Through measured amendment, legal clarity, and political diplomacy, we can secure both the unity of the Union and the liberty of its people.

4: How to leave the ECHR



Having considered the specific issue of Northern Ireland, we will here consider the process of leaving the ECHR.

Leaving the ECHR requires a structured and careful plan. Whilst such a departure represents a significant change to our legal, constitutional and political order, it is entirely within the UK's abilities and powers to carry it out.

4.1 Governing law: Article 58 of the ECHR

In order to withdraw formally from the ECHR, the United Kingdom must invoke Article 58, which governs denunciation:

Article 58 – Denunciation

1. *Any High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it, and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.*
2. *Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from the obligations contained in this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation becomes effective.*
3. *Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a party to this Convention under the same conditions.*
4. *The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to apply under Article 56.*

Article 58(1) permits any High Contracting Party to denounce the ECHR by giving six months' notice in writing to the Secretary General of the Council of Europe. The notification must explicitly state the UK's intention to withdraw, and the denunciation takes effect at the end of the six-month period. During this time, the UK remains bound by its obligations under the ECHR.

While Article 58 of the ECHR allows for unilateral denunciation by a High Contracting Party through notice to the Secretary General of the Council of Europe, constitutional convention and legal precedent in the UK strongly suggest that primary legislation would be required before such a withdrawal could lawfully occur. Following the Supreme Court's ruling in *R. (Miller) v Secretary of State for Exiting the European Union*, also known as *Miller I*, it is now established that the executive cannot unilaterally withdraw from international treaties that have been incorporated

into domestic law without parliamentary authorisation.⁵⁴ Therefore, triggering Article 58 would likely require a dedicated Act of Parliament to authorise the Government to issue the formal notice of denunciation to the Council of Europe. Such legislation would ensure democratic legitimacy, legal clarity, and proper constitutional procedure in this significant step of reclaiming sovereign control over human rights law.

Thus, the United Kingdom Parliament would pass a European Convention of Human Rights (Notification of Withdrawal) Bill to give the Prime Minister the legal authority to issue the Article 58 notification to the Council of Europe. This would also trigger the transitional period of at least six months to allow time for the UK legal system to be fully prepared for autonomy in rights protection from the moment the denunciation becomes effective.

4.2 Transition period

In order to allow sufficient time to prepare for the post-withdrawal context, a transition period is essential. As with our withdrawal from the EU, this allows ongoing cases to be resolved in good time and for a seamless change to take place with as much foresight as possible for all involved. It would commence as soon as the ECHR (Notification of Withdrawal) Act came into effect, thereby triggering Article 58. As provided for in the text of the ECHR, this period would last at least six months.

It is during this transition period that the following essential steps would be taken, under three main themes:

4.2.1 Preparing our domestic legal framework for the end of the ECHR and HRA repeal

The following measures would need to be taken during the transition period:

ECHR (Notification of Withdrawal) Bill

- As set out above, this would be passed to commence the six months (or longer) transition period to prepare for the UK's withdrawal from the ECHR.

ECHR (Withdrawal) Bill

- During the Transition Period, HM Government would introduce legislation to repeal the HRA 1998. This would come into effect at the end of the transition period.
- The legislation would also make clear that judgements from the ECtHR are no longer binding, that the jurisprudence from the ECtHR is no longer to be taken into account by UK judges unless otherwise stipulated, and that public authorities are no longer bound to comply with the ECHR.

Strasbourg jurisprudence

- HM Government should establish a temporary Human Rights Case Law Review Commission within Government to examine and recommend which, if any, previous Strasbourg-influenced case law should be retained or legislatively re-enacted under domestic law.
- The Commission would operate with a sunset clause of a certain duration and would work

| 54 *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5, [2018] AC 61. ([link](#))

with parliamentary committees to provide draft bills or amendments to existing law.

- Legislation would be prepared to undo the broader effects of the ECHR within UK law, for example to render ECtHR jurisprudence obsolete and non-binding and to provide for the review and repeal of all domestic laws, regulations, and precedents that incorporated ECHR law or principles.
- If any particular rights originating from Strasbourg were to be retained, legislation could be introduced to enact these provisions into statute. This could be done in a similar way to the Retained EU Law (Revocation and Reform) Act 2023, in which Parliament would be required to examine each one and decide whether it should be retained or overturned.

Pending cases

- The UK would remain subject to the ECHR and rulings from the ECtHR during the transition period, so that all cases that had been commenced prior to the transition period would still be treated under the old rules.
- Provision for any new cases commenced during the transition period would have to be made to avoid the 'closing down sale' effect, whereby new cases are hurriedly brought to take advantage of the transition period.

Professional education

- New legal education and judicial training would be needed to equip lawyers, judges, the legal profession, and public authorities with the correct understanding and awareness of the new human rights framework.

4.2.2 Amending the legal frameworks affecting the devolution settlements

The following plan would need to be delivered during the transition period to address the devolution settlements.

Northern Ireland

See previous chapter.

Scotland and Wales

The Scotland Act 1998 embeds the ECHR directly into the devolution settlement in sections 29(2)(d) and 57(2) which effectively place a duty on Ministers, the Scottish Parliament, and public authorities to comply with the ECHR.

Similarly, the Government of Wales Act 1998 (and its successor, the Government of Wales Act 2006) incorporates the ECHR into the Welsh devolution framework via section 94 of the 1998 Act. Section 80 of the 2006 Act, like in Scotland, places a duty on the Welsh executive and legislature to comply with the ECHR. Therefore, during the transition period, these sections would need to be repealed.

Under the Sewel Convention, HM Government would normally seek the consent of the Scottish Parliament and Welsh Assembly before legislating on devolved matters or amending devolved competencies. However, the UK Parliament is legally sovereign and could legislate without consent: during the UK's withdrawal from the EU, the Sewel Convention was not followed. While HM Government did seek legislative consent from the devolved legislatures for the major Brexit-

related bills, including the EU Withdrawal Act 2018 and the EU (Withdrawal Agreement) Act 2020, all three devolved parliaments refused consent for the Withdrawal Agreement Bill and the Scottish Parliament withheld consent for the EU Withdrawal Act 2018. Notwithstanding their refusal, the Westminster Parliament proceeded to pass these laws, and they came into force in the normal manner.

The Sewel Convention states that Westminster will “not normally” legislate on devolved matters without devolved consent, but parliamentary sovereignty allows Westminster to legislate regardless of this consent. As a similar pattern of refusal of consent may play out if the UK withdraws from the ECHR, HM Government should be prepared to act in a similar manner to the passing of past Brexit-related legislation.

4.2.3 Amending references to UK adherence to the ECHR in the UK-EU Trade and Co-operation Agreement

The ECHR is referred to in the UK-EU Trade and Co-operation Agreement (TCA) signed between the UK and the EU following the UK’s withdrawal from the European Union. It is largely referenced in Part 3 of the Agreement, which covers law enforcement and judicial co-operation in criminal matters.

The relevant references to the ECHR are as follows:

Article 524: Basis for cooperation

1. The cooperation provided for in this Part is based on the Parties’ and Member States’ longstanding respect for democracy, the rule of law and the protection of fundamental rights and freedoms of individuals, including as set out in the Universal Declaration of Human Rights and in the European Convention on Human Rights, and on the importance of giving effect to the rights and freedoms in that Convention domestically.

2. Nothing in this Part modifies the obligation to respect fundamental rights and legal principles as reflected, in particular, in the European Convention on Human Rights and, in the case of the Union and its Member States, in the Charter of Fundamental Rights of the European Union.

Article 692 – Termination of Law Enforcement and Judicial Cooperation

Either Party may terminate Part Three Law Enforcement and Judicial Cooperation with nine months’ notice. However, Part Three can be terminated sooner if either Party terminates Part Three because the other has denounced the ECHR or its Protocols 1, 6 or 13. If this happens, Part Three would be terminated either on the date the denunciation takes effect or within 15 days, depending on how the denunciation happens.

As such, measures would need to be taken to renegotiate technical amendments with the EU to change the references to the ECHR within the international agreement. If no such agreement were forthcoming, the UK would have to be prepared to withdraw from the ECHR and prepare for the possibility that the EU would subsequently suspend the operations of Part III of the TCA. Such an outcome is not automatic: it would be a purely political choice by the EU to suspend the TCA

and could be avoided through effective diplomacy.

Should the EU choose to suspend, there would be some implications on limited aspects of UK-EU collaboration, for example regarding data-sharing between the UK and EU on criminal records, wanted persons, and extradition arrangements.

However, none of these consequences, as a worst-case scenario, are insurmountable. Post-Brexit, the UK lost access to the ECRIS (European Criminal Records Information System) and replaced it under the TCA. The mutual benefit of sharing such data is plain and it would be disadvantageous for the EU to seriously threaten to sever such operational ties. However, should the EU take such a step, as provided for under Article 692 of the TCA, the contingency plan would involve the UK using Interpol's 1-24/7 system, which allows the secure sharing of information between law enforcement,⁵⁵ and bilateral requests that the UK makes of all other countries. This system is global, not limited to the EU, and delivers data within hours. In addition, the UK could make bilateral requests to individual EU countries and could also submit requests directly to national criminal record bureaux in EU countries.

Pre-Brexit, many arguments were invoked to suggest that the UK being cut out of ECRIS and the Schengen Information System (SIS II) would be harmful for law enforcement. They proved to be unfounded. The reality is that, post-Brexit, an alternative to ECRIS was established between the EU and UK, and the UK used the Interpol database instead of the SIS II while also continuing to participate in the Prum system, allowing for exchanging of DNA, fingerprint, and vehicle registration data with EU Member States.

| 55 Interpol (n.d.). *Databases*. ([link](#))

5: What comes next?



After withdrawing from the ECHR, the UK would be able to rely on the foundation of its legal system and indeed its democracy: the common law. As articulated by the jurist A.V. Dicey and developed in our courts, the common law offers robust protection for individual rights. Such rights are not 'granted' by a written constitution but are the result of judicial decisions arising out of disputes.

The British tradition of civil liberties was sophisticated and well-developed enough through the common law before 1950. Indeed, as politicians and judges remarked at the time, the ECHR did not 'create' rights, it merely declared rights that had already existed under UK law.

In 2021, the former Conservative Government held a consultation on the ECHR and published a list of common law or legislative provisions, along with relevant watchdogs, regulators, and agreements, which recognised and protected those rights enshrined in the ECHR and HRA 1998, either by preceding them historically or existing in legislation independent from them.⁵⁶ Some of the most significant of these are:

ECHR Article	Common law, legislative provisions, and watchdogs, regulators, and agreements
Article 2 - Right to life	Common law provisions Criminal offences such as murder, manslaughter, or culpable homicide; coroner investigation of death Legislative provisions • Suicide Act 1961, Criminal Justice Act (Northern Ireland) 1966 – forbids aiding or abetting suicide • Fatal Accidents Act 1976 (<i>not Scotland or Northern Ireland</i>) – relatives of those killed by wrongdoing of others may recover damages • Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 – ensures that, where in the public interest, a public inquiry should be conducted by the relevant procurator fiscal • Fatal Accidents (Northern Ireland) Order 1977 • Domestic Violence, Crime and Victims Act 2004 – forbids causing or allowing death of child or vulnerable adult • Corporate Manslaughter and Corporate Homicide Act 2007 – establishes corporate responsibility for death by gross breach of duty of care Watchdogs, regulators, and agreements Independent Office for Police Conduct; Police Investigations & Review Commissioner (Scotland); Scottish Public Services Ombudsman (<i>deals with complaints about Scottish Prison Service</i>); Police Ombudsman for Northern Ireland; Prisons and Probation Ombudsman

| 56 UK Government. (2021). *Human Rights Act Reform: A Modern Bill of Rights, A consultation to reform the Human Rights Act 1998*. [\(link\)](#)

ECHR Article	Common law, legislative provisions, and watchdogs, regulators, and agreements
Article 3 - Prohibition of torture and inhuman or degrading treatment or punishment	Common law provisions Common assault and tort of battery; common law assault in Scotland; common law breach of the peace in Scotland; evidence obtained under torture is excluded from trial Legislative provisions • Bill of Rights 1689 – prohibits cruel and unusual punishment • Offences Against the Person Act 1861 – creates the offences of grievous and actual bodily harm • Criminal Justice Act 1988 – prohibits torture by public officials in performance of their duties • Education Act 1996 - outlaws corporal punishment in schools • Children and Young Persons (Scotland) Act 1937 – prohibits cruelty to those below the age of sixteen • Protection from Harassment Act 1997 and Family Law Act 1996 – allows for preventative civil injunctions, interdicts and interim interdicts in Scotland • Protection from Harassment (Northern Ireland) Order 1997 • Family Homes and Domestic Violence (Northern Ireland) Order 1997 • Domestic Abuse (Scotland) Act 2011 – domestic abuse interdicts • Domestic Abuse Act 2021 and Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 • Children Act 2004 – removes defence of reasonable chastisement for offences of Actual Bodily Harm or cruelty • Adults with Incapacity (Scotland) Act 2000 – offence of ill-treatment and wilful neglect Watchdogs, regulators, and agreements Care Quality Commission; Care Inspectorate (<i>Scotland</i>); Scottish Public Services Ombudsman; Police Ombudsman for Northern Ireland; Office for Police Conduct, Police Investigations and Review Commissioner (<i>Scotland</i>); HM Inspectorate of Prisons; international treaties (e.g. UN Convention Against Torture and European Convention Against Torture)
Article 4 - Prohibition of slavery and forced labour	Common law provisions <i>Habeas corpus</i>; offence of kidnapping Legislative provisions • Slavery Abolition Act 1833 – formally abolishes slavery • Gangmasters (Licensing) Act 2004 – introduces compulsory licensing scheme for gangmasters and other labour agencies employing vulnerable workers in agriculture, food fathering, and packaging industries • Criminal Justice and Licensing Act 2010 (<i>Scotland</i>) – offence of people trafficking. • Modern Slavery Act 2015 – introduces offences of human trafficking, slavery, and forced labour • Human Trafficking and Exploitation (<i>Scotland</i>) Act 2015 – offence of human trafficking; also requires Scottish Ministers to prepare a trafficking and exploitation strategy Watchdogs, regulators, and agreements Modern Slavery Human Trafficking Unit, part of the National Crime Agency; National Referral Mechanism, set up in 2009 following ratification of Council of Europe Convention on Action against Trafficking in Human Beings to identify victims of trafficking

ECHR Article	Common law, legislative provisions, and watchdogs, regulators, and agreements
Article 5 - Right to liberty and security	Common law provisions <i>Habeas corpus</i>; false imprisonment; offence of kidnapping Legislative provisions • <i>Magna Carta</i> • <i>Magna Carta Hiberniae</i> • Police and Criminal Evidence Act 1984 and Codes of Practice – introduces restrictions on powers of police to arrest, detain, and hold prisoners • Police and Criminal Evidence (Northern Ireland) Order 1989 • Criminal Procedure (Scotland) Act 1995 and Police, Public Order and Criminal Justice (Scotland) Act 2006 – places restrictions on powers of the police to detain and arrest in Scotland • Mental Health Act 1983, Mental Capacity Act 2005, Mental Capacity Act (Northern Ireland) 2016 – safeguards the liberty of persons detained due to mental illness • Mental Health (Care and Treatment) (Scotland) Act 2003, Mental Health (Scotland) Act 2015, Criminal Procedure (Scotland) Act 1995 – safeguards the liberty of persons in Scotland detained due to mental illness
Article 6 - Right to a fair trial	Common law provisions Rules of natural justice such as rules against bias and right to a fair hearing; presumption of innocence and burden of proof on prosecution; trial by jury Legislative provisions • Contempt of Court Act 1981 – limits what can be published about a case while it is ongoing and ensures confidentiality of jury deliberations • Police and Criminal Evidence Act 1984 – strengthens the right to contact a solicitor • Police and Criminal Evidence (Northern Ireland) Order 1989 • Criminal Procedure (Scotland) Act 1995 – strengthens defendant's rights in criminal proceedings • Criminal Procedure and Investigations Act 1996 and Civil Procedure Rules – clarifies the duty to disclose relevant information during trials • Criminal Justice and Licensing (Scotland) Act 2010 – clarifies the duty to disclose relevant information during trials in Scotland

ECHR Article	Common law, legislative provisions, and watchdogs, regulators, and agreements
Article 7 - No punishment without law	Common law provisions General presumption that law will not be retrospective unless clear in legislation Legislative provisions - Coroners and Justices Act 2009 - clarifies that courts must follow the relevant sentencing guidelines - Criminal Justice and Licensing (Scotland) Act 2010 – establishes new Scottish Sentencing Council to oversee sentencing guidelines in Scotland - War Crimes Act 1991 - clarifies a rare example of retrospective criminal liability Watchdogs, regulators, and agreements Sentencing Council for England and Wales; Criminal Cases Review Commission; Attorney General's Unduly Lenient Sentence Scheme; Scottish Criminal Cases Review Commission; Crown Office and Procurator Fiscal Service (Scotland)
Article 8 - Right to respect for private and family life	Common law provisions Common law defamation; confidentiality laws and privacy; tort of trespass Legislative provisions - Police and Criminal Evidence Act 1984, Police and Criminal Evidence (Northern Ireland) Order 1989 – clarifies procedure to apply for search warrant - Criminal Procedure (Scotland) Act 1995 – clarifies procedure to apply for a search warrant in Scotland - Data Protection Act 2018 - UK General Data Protection Regulation - Investigatory Powers Act 2016 and Regulation of Investigatory Powers (Scotland) Act 2000 – strengthens protection from infringements of privacy in relation to personal data and surveillance - Health and Social Care Act 2008 – introduces Care Quality Commission and requires service providers to meet minimum standards of care. See also the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003
Article 9 - Freedom of thought, conscience and religion	Common law provisions No formal restrictions on the freedom of worship Legislative provisions - Public Order Act 1986 – introduces offence of incitement to religious hatred - Criminal Justice (Scotland) Act 2003 – forbids offences aggravated by religious prejudice - Criminal Justice and Immigration Act 2008 – abolishes common law offence of blasphemy in England and Wales - Northern Ireland Act 1998 – outlaws public authorities discriminating over religious belief or political opinion

ECHR Article	Common law, legislative provisions, and watchdogs, regulators, and agreements
Article 10 - Freedom of expression	Common law provisions Principle of freedom of speech subject only to provisions of common law or statute; defamation – protection of reputation weighed against the wider public interest; disclosure of certain documents to the press where referred to in court proceedings; common law right of access to information from public authorities Legislative provisions - Contempt of Court Act 1981 – balances freedom of expression with right to fair trial - Bill of Rights 1689 – protects freedom of speech in Parliament - Scotland Act 1998 – protects freedom of speech in the Scottish Parliament. See also the Northern Ireland Act 1998 - Education (No 2) Act 1986 – protects freedom of speech within law for staff, students, and speakers at university - Theatre Act 1968 – abolished censorship on theatre - Freedom of Information Act 2000 and The Freedom of Information (Scotland) Act 2002 Watchdogs, regulators, and agreements Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; Independent Press Standards Organisation
Article 11 - Freedom of assembly and association	Common law provisions Principle of right to peaceful assembly and association; ordinary and reasonable uses of highways Legislative provisions - Public Order Act 1986 – creates offences in relation to public order - Civic Government (Scotland) Act 1982 – sets out provisions in respect of public processions - Trade Union Act 1871 and Employment Act 1990, consolidated in the Trade Union and Labour Relations (Consolidation) Act 1992 - Trade Union Act 2016 – protects the right to join or not join a trade union Watchdogs, regulators, and agreements Universal Declaration of Human Rights; International Covenant on Civil and Political Rights
Article 12 - Right to marry and found a family	Common law provisions No prescribed right to marry Legislative provisions - Marriage Act 1949 and Marriage (Scotland) Act 1977 – clarify marriage formalities (e.g. marriage under 16 is void) - Matrimonial Causes Act 1973 – clarifies the right to divorce - Adoption and Children Act 2002 – makes provisions in respect of adoption - Adoption and Children (Scotland) Act 2007 – makes provisions in respect of adoption in Scotland - Civil Partnership Act 2004 - Forced Marriage (Civil Protection) Act 2007 - Marriage (Same Sex Couples) Act 2013, Marriage and Civil Partnership (Scotland) Act 2014 - Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 and Marriage and Civil Partnership (Northern Ireland) Regulations 2020 Watchdogs, regulators, and agreements Universal Declaration of Human Rights

Reverting to the original setting of the common law supplemented by narrowly drafted statute would have several significant advantages.

First, at the heart of the common law is a presumption of liberty. What is not expressly prohibited is permitted. This philosophy contrasts with the civil law doctrine, embodied and imported into the UK by the ECHR (and EU law), in which the boundaries of permissible conduct are derived from the state. Under such regimes, liberty is not assumed; it is rationed.

The British legal tradition rejects this statist approach. Our model begins not with the state's conception of our rights, but with the individual's inherent freedom. This is not only philosophically superior, it is also practically more liberal. The common law evolves through precedent, pragmatism, and reasonableness. It does not rest on frozen texts or abstract doctrines. Judges respond to real cases, in real time, with reference to real norms. And instead of citizens looking above for rights upon which they might depend, a culture of freedom of action, independence of mind, and personal responsibility is fostered. Fundamentally, the common law embeds centuries of cultural and moral evolution. It does not impose external standards, but articulates norms arising from the community itself.

Second, the reason why the common law system is lauded as one of the most successful and attractive legal systems in the world—and emulated in emerging jurisdictions—is because, unlike the indeterminate language of a codified system such as the ECHR, common law rules develop case-by-case. This leads to a body of law that is predictable, and intelligible to practitioners and citizens alike. This makes the common law responsive, able to adapt to new societal norms without requiring constitutional amendment. It evolves organically, reflecting the society it serves and refreshing itself as needs evolve in society.

Third, it avoids the serious risks that a new codified, albeit domestic, approach would bring. Codes, like a new Bill of Rights, seek to be all-encompassing. The law is developed top-down, based on the thinking at the time the code is made. The main problem is that codes ossify rights into politically defined categories and afford judges artificial limits upon which to their interpretations. Codes or a Bill of Rights risk creating similar problems of activist judges taking an expansive interpretation of the British Bill of Rights and undermining parliamentary sovereignty. As Lord Sumption has warned⁵⁷, the judicialisation of moral and political questions threatens democratic legitimacy. Allowing the common law to respond on a case-by-case basis as disputes arise avoids this risk.

Finally, the common law is sufficient. There is no material need to replicate and complicate it. As set out comprehensively above, the common law, alongside Parliament's statutory framework, already outlaws abuses such as torture, arbitrary detention, and discrimination. UK statute already criminalises murder, assault, and theft; and, for example, the Police and Criminal Evidence Act 1984, amongst other laws, already provides firm protections.

Returning to the common law will be part of a wider constitutional change. This will need to be done carefully, likely requiring a Judicial Review Reform Bill and an annual Parliamentary Correction Bill, the former reining in the judicial activism that has come to define some of our case law in recent years (the subject being too large for this paper), the latter of which will allow Parliament to swiftly

reverse or amend judicial decisions when needed.

In a ruling in 1999, Lord Hoffmann rightly observed "much of the Convention [merely] reflects the common law",⁵⁸ articulating how the Convention did not create such rights, but simply recognised their prior existence in our common law. This is true not only of freedom of speech, but a host of other liberties long preserved and treasured by the British people. This tradition served the British people well for centuries, and it can do so again.

| 58 *R. (Simms) v SSHD* [1999] UKHL 33, [2000] 2 AC 115. ([link](#))

Conclusion



The United Kingdom's accession to the ECHR was, in its time, intended as a noble act—a gesture of solidarity and a signal of leadership in post-war Europe. But that era has passed. In the generations since, **the ECHR has mutated from a shield against tyranny into a sword against sovereignty**, often wielded to frustrate democratic government, override Parliamentary intent, and paralyse effective policymaking on the most sensitive questions of law, borders, and national security.

The evidence is now overwhelming: our capacity to control immigration, manage public order, govern the conduct of war, protect national security, and uphold the supremacy of Parliament has been persistently eroded—not by foreign enemies, but by a supranational court operating under doctrines foreign to our legal culture. **Reforming this system has failed. Derogation has proved illusory. “Reasonable defiance” has bred only constitutional uncertainty and political drift.**

Nowhere is this democratic deficit felt more keenly than in Northern Ireland. There, the continued application of the ECHR has allowed lawfare to supplant reconciliation. Investigations into historic offences are pursued disproportionately against British servicemen, even as former terrorists walk free. The principle of parity between traditions, which lay at the heart of the Belfast Agreement, has been distorted into legal asymmetry. Yet as this paper sets out, there remains a lawful and constitutionally sound pathway to amend the Agreement, preserve peace, and reassert the equal dignity of Northern Ireland as a full and sovereign part of the United Kingdom.

To that end, this paper sets out the first clear constitutional roadmap. Parliament retains the right—indeed, the duty—to legislate for withdrawal. The repeal of the HRA 1998 and the formal denunciation of the ECHR under Article 58 are not acts of rupture, but of renewal. They represent the restoration of Parliament as the sole source of rights, responsibilities, and remedies within this realm. This is not a rejection of human rights, but a reassertion that such rights derive their legitimacy from the British people and their representatives, not from anonymous judges in Strasbourg.

And what of the future?

What comes next is not a vacuum, but a renaissance. The English common law, our ancient inheritance, has served as the foundation of liberty for centuries. It proved flexible, principled, and deeply protective of individual freedoms long before supranational courts existed. We do not require foreign codes to respect the rights of our citizens. We require only the wisdom of Parliament through statute, the balance of our unwritten constitution, and the vigilance of an independent judiciary. Combined, the common law and Parliamentary statute would restore clarity, uphold liberty, and reconcile the protection of rights with the democratic will.

This is not a retreat. It is the reclaiming of a birthright.

The time has come for the United Kingdom to once again govern itself fully and freely; to speak its own laws; secure its own borders; command its own Armed Forces; and affirm that no foreign court may overrule the will of its Parliament or the voice of its people.

We have honoured the past. Now, we must take responsibility for the future.

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PROSPERITY INSTITUTE

11 Charles Street
London W1J 5DW
United Kingdom
t: +44 (0) 20 7148 5400 | www.prosperity.com

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