

Liberty's briefing on the Bill of Rights Bill for second reading in the House of Commons: Executive Summary (July 2022)

The Bill of Rights Bill (BOR), widely known as the Rights Removal Bill, is unnecessary, unwanted, poorly thought through and pernicious. There is absolutely no need to repeal and replace the Human Rights Act, which has so improved the lives of people in this country over the past two decades. There is even less justification for replacing it with this Bill, which will do harm broad and specific to institutions and individuals in the name of increasing executive power, settling scores, and punishing groups of people deemed unworthy of rights.

The ramifications of this Bill will be huge. Some of the implications are doubtless intended, but much of what the Bill will do cannot be the goal of the Government. The amount of litigation that will be spawned, the legal uncertainty, the cost to the taxpayer, and the loss of control over British cases ceded to Strasbourg – and crucially, the untold and devastating impact on individuals' rights to be treated with dignity and respect – do not seem like desirable ends, but all will result from this Bill.

Over the course of this Bill's passage, hundreds of amendments will doubtless be offered in an attempt to mitigate some of the harm it will do. Even heavily amended, it is extremely difficult for us to conceive of a version of this Bill that improves upon the current human rights framework. It is therefore our strong and urgent recommendation to Government to withdraw this Bill entirely. If they will not do this, we call upon parliamentarians to act in the interests of their constituents and vote it down.

Democratic illegitimacy

The Government's evidence base for its proposals is practically non-existent, despite the access that it has to thousands of pages of high-quality legal analysis on the impact of the HRA and its proposed replacement. It has elected to ignore this entirely, discarding the report of its independent panel and the views of respondents to the Government's own consultation, and to deny Parliament an enhanced role in scrutinising a Bill of such major importance. The plans go so far beyond the manifesto commitment to 'update' the Human Rights Act that they may no longer even point to it as a mandate for their plans.

Avoiding accountability

The Bill seeks to drastically reduce the ability of courts to protect the public from human rights abuses. Declining to carry over section 3 HRA to the BOR leaves courts without the ability to interpret legislation in a rights-compatible way. More disturbing still is the Bill's suggestion that previous interpretations made under section 3 will fall unless specifically

preserved by the Secretary of State. This will undo two decades of advancements in human rights at a single stroke, and leave the rights that people depend on at the whim of a Minister.

Provisions on proportionality seek to limit courts' ability to act as a check on the Government, supposedly in the name of enhancing parliamentary supremacy. At the same time, however, the Government proposes to reduce the scope for Parliament to scrutinise legislation for ECHR compatibility. It is only the executive that wins in this equation. It is the public who will lose.

Diverging protections, closer ties

Much of the selling of the Bill has centred around a supposed 'taking back control' from European judges to our own domestic courts. This is explicitly not what the Bill does. UK courts are already under no obligation to do more than 'take into account' judgments of the European Court of Human Rights (ECtHR). This bill counterintuitively links us closer to their jurisprudence by enshrining ECtHR interpretations of rights as a 'ceiling' above which our courts may not go. This Bill imposes a limit on the human rights protections people in this country may enjoy, and hands responsibility for setting it to judges in Strasbourg.

At the same time, the weakening of rights protections and access to justice here means that more and more people will be forced into making the long and costly trip to Strasbourg when their rights have been abused by the State. In many of these cases, British courts will not have an opportunity to rule at all. The proposal to ignore interim measures of the ECtHR risks both breaching international law and emboldening other states subject to these measures to ignore them also. The measures just served on Russia to halt the execution of two British prisoners of war demonstrate just how important this is.

Subverting the devolution settlement

These changes are explicitly not wanted across the nations of the United Kingdom. The HRA and ECHR are embedded throughout the devolved settlements, engagement with the administrations has been poor and their concerns have been ignored, and each of Scotland, Wales and Northern Ireland are pursuing programmes of expanding human rights that conflict with this Bill's restrictions. It appears clear that this Bill in its current form would breach the Good Friday Agreement, raising serious concerns for stability in Northern Ireland.

Positive obligations

Among the most extreme provisions in the Bill is the attempt to dramatically restrict positive obligations, the duty upon the state to secure the protection of our human rights, by stopping

the clock on the further development of rights in response to changing conditions and turning back time on existing protections and subordinating them to public bodies' priorities. Limiting positive obligations will result in vast injustice for individuals, families, and communities across the UK. It is also fundamentally unworkable, and will result in more litigation, including at Strasbourg.

Positive obligations improve people's lives every day, in hospitals, care homes, and all our interactions with the State. They also bring us justice when things go drastically wrong. It is because of positive obligations that the families of the 97 people who died at Hillsborough, as well as the loved ones of people who have died in State custody or in other State institutions such as Zahid Mubarek¹ and Christopher Alder,² have been able to demand proper investigations and learning in order to prevent such abuses from occurring again. This is what the Government intends to shred.

The Justice Secretary has repeatedly claimed that replacing the HRA with the BOR will better protect women and girls. This is a galling claim, given that it was the HRA that enabled the victims of serial 'black cab rapist' John Worboys to hold the police to account for their failures to investigate him. The End Violence Against Women coalition has said, and we concur: "There is no reasonable justification for seeking to curb obligations on public authorities to protect people's human rights; this move simply seeks to absolve the state of responsibility in this area and will drastically impact victims and survivors of abuse."³

Attacking universality

The Bill would undermine the fundamental principle that human rights are for everyone, bestowed upon us all on the basis of our humanity. It creates groups of people deserving and undeserving of human rights, restricting the ability of people in prisons to bring human rights claims.

Eroding migrants' rights

The attack on universality also manifests in the provisions that seek to deny human rights protections to migrants. The Bill takes aim at the Article 8 right to a family life, facilitating deportations that will result in anything up to 'exceptional', 'overwhelming' and 'irreversible'

¹ The family of Zahid Mubarek, who was forced to share a cell with a racist cell mate in Feltham Young Offenders Institution and subsequently killed, relied on Article 2 to hold the prison authority to account for the failings that led to his death. See: *Zahid Mubarek R v Secretary of State for the Home Department (Respondent) ex parte Amin (FC)* [2003] UKHL 51.

² See: Wolfe-Robinson, M. and Bowcott, O., *Government to apologise to Alder family over police custody death*, The Guardian, 22 November 2011, <https://www.theguardian.com/uk/2011/nov/22/government-apologise-alder-family-police-death>.

³ End Violence Against Women coalition, *British Bill of Rights is a major step back for women and survivors*, 21 June 2022: <https://www.endviolenceagainstwomen.org.uk/british-bill-of-rights-major-step-back-for-women-and-survivors>.

harm to a child. It also erects significant barriers to ensuring migrants' Article 6 right to a fair trial, blocking appeals and surely leading to people being deported on the basis of decisions that constitute flagrant denials of justice.

Limiting access to justice

While certain groups will be more affected than others, the Bill will make it harder for everyone in the United Kingdom to access justice and seek redress for violations of their rights. It does so by introducing new barriers to bringing proceedings and tying the remedies to which an individual is entitled to their past conduct; and removing the ability of individuals to challenge rights violations relating to overseas military operations.

Perceiving there to be too many human rights claims coming forward, the Government has elected not to ensure it does not violate people's rights, but instead intends to make it harder for people to attain justice when they have been wronged. The military proposals meanwhile are so extreme that the Bill admits significant separate legislation will be necessary to even stand a chance of their being lawful.

Government hypocrisy: free speech and jury trial

Alongside all of the restrictions and diminishments that have earned the BOR the name of the Rights Removal Bill, the Government claims two areas where rights will supposedly be strengthened. These are the new right to a jury trial – a provision drafted in such a manner that it is unclear whether it would do anything at all – and a series of clauses relating to free speech.

Free speech organisations English PEN, Article 19, and Index on Censorship have “unequivocally rejected” the Government's claim that replacing the HRA will strengthen freedom of expression as a “false narrative”. We echo their statement that “freedom of expression is too important to be used as cover for weakening the protection of human rights.”⁴

The much-vaunted provision in the BOR directing courts to give ‘great weight’ the importance of free speech is entirely undermined by a series of carve-outs that would have the effect of disapplying the clause in any situation where a person may want to assert their speech against the Government. This Bill does not strengthen freedom of speech. The best that could

⁴ English PEN, Article 19 and Index on Censorship, *Bill of Rights will seriously undermine freedom of expression in the UK*, 24 June 2022: <https://www.englishpen.org/posts/campaigns/bill-of-rights-will-seriously-undermine-freedom-of-expression-in-the-uk/>; Siddique, H., *False narrative: campaigners say British bill of rights could undermine free speech*, The Guardian, 22 June 2022: <https://www.theguardian.com/world/2022/jun/22/false-narrative-campaigners-say-british-bill-of-rights-could-undermine-free-speech>.

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be said about it is that it does not diminish it as much as it does all our other rights – although the Government appears intent on clamping down on free expression elsewhere, whether through draconian anti-protest legislation or facilitating online censorship and eroding end-to-end encryption.

If the Government has any desire whatsoever to protect the rights of the people it serves, it must withdraw this dangerous and regressive Bill and retain our Human Rights Act in its present form.

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