

**The cost-of-living crisis and human rights:**

**Why Parliamentarians  
should reject the Rights  
Removal Bill & stand firm  
on our Human Rights Act**



Healthcare



Fair wages



Social Security



Standards of Living



Housing

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As we face one of the most severe cost-of-living crises the UK has ever seen, it's more important than ever that people are supported to know and claim their rights. Equally, it's important that those in positions of public power are held accountable when they breach or fail to respect our human rights.

[Our Human Rights Act 1998](#) ("HRA") brings fundamental protections from [the European Convention on Human Rights](#) ("ECHR") into UK domestic law and puts a legal duty on public bodies to respect, protect and fulfil human rights. The Act can, and is, being used as a powerful tool to mitigate and challenge the actions, policies, and decisions of state bodies across the UK as more and more people are forced into vulnerable situations. It's also being used as a decision-making framework for staff working in public bodies to support them to take a human rights-based approach.

And yet, on 22nd of June 2022, the UK Government published a new Bill that would get rid of our Human Rights Act. It has been called a Bill of Rights Bill – but it's exactly the opposite. It is a Rights Removal Bill, and the latest step in plans to reduce the responsibilities of Government to respect, protect and fulfil human rights. Although the dangerous Bill was "shelved" on 7th September 2022 following the appointment of Brandon Lewis as Justice Secretary, at the start of November, we saw the re-appointment of Dominic Raab. Shortly afterwards, the Justice Secretary [announced on Twitter](#) that we will see the return of the Rights Removal Bill in the "coming weeks."

At the British Institute of Human Rights, a UK wide charity, we work with people accessing services, community and advocacy groups and staff working in public bodies every day. Together we use our Human Rights Act to secure social justice in those small places, close to home.

**Without our HRA, and with the Rights Removal Bill in its place, during a cost-of-living crisis, we will see the reduction of everyday human rights protections, taking the UK backwards and putting people at risk of serious harm.**

As we enter a winter where people face the choice between heating or eating, the last thing we need is the UK Government stripping away people's most basic rights protections. We are therefore calling on all Parliamentarians to:



**Read the real-life stories below**



**Understand the implications of the replacement of our Human Rights Act during a cost-of-living crisis**



**Commit to voting against the Rights Removal Bill**



**Commit to voting against any subsequent Bills which seek to otherwise bring in elements of the Rights Removal Bill should the Bill itself fail**

Drawing on people's lived experience, this short guide explains through real life stories:

- The importance of the HRA during the cost-of-living crisis.
- The danger of replacing our HRA with the Rights Removal Bill.



## Our Human Rights Act protected Steve and his daughters after the loss of their mother, don't risk passing the Rights Removal Bill



Steve\* had been living with his partner for ten years and they had two young daughters together. Devastatingly his partner, and the girls' mum, died of breast cancer in 2018. But when Steve applied for bereavement support payment, it was refused because Steve and his partner were not married or in a civil partnership. This support is worth almost £10,000 and provides vital income and security to families during an immensely difficult period.

### How our Human Rights Act protected Steve and his daughters

In 2020, [Child Poverty Action Group's \(CPAG\)](#) legal team supported Steve and another bereaved family to challenge this. In court, it was our HRA that meant Steve could challenge the policy and argue that grieving children's needs were the same whether or not their parents were married. [The judge agreed](#) and ruled that grieving children who have lost their mum or dad and their remaining parent deserve to be treated no differently because of marital status.

Our Human Rights Act is a powerful tool to ensure laws, policy and practice are applied through the lens of human rights including fairness. As the Independent Human Rights Act Review itself concluded, "The UK Courts have, over the first twenty years of the HRA, developed and applied an approach that is principled and demonstrates proper consideration of their role and those of Parliament and the Government." ([Independent Human Rights Act Review \(IHRAR\), page 95](#)).

### What the Rights Removal Bill risks for Steve and his daughters (and all of us)

Had the Rights Removal Bill been in place in 2020, this outcome, which Steve and his grieving children needed, would likely not have happened. This is because Clause 7 of the Bill requires courts to unrealistically assume Parliament has considered all possible outcomes arising out of every law passed, restricting discretion to look at whether there is unfairness in an individual case. All parliamentarians know this is unworkable. Legislators have limited time, and a key role of courts in our democratic system is to look at the application of laws in individuals' situations.



For Steve's daughters, Clause 7 of the Rights Removal Bill would have likely meant courts not being able to look at the fairness in their situation because unmarried parents were not explicitly covered in the law at the time. Even though it is clearly discriminatory, and such a difference of treatment lacks justification because the purpose of the provision was to provide support following parental bereavement.

### **The change is unevicenced:**

#### **Findings of the Government's own Public Consultation**

The findings of the Government's own public consultation go against this change. The overwhelming majority of respondents, 66% preferred no change. Only 4% preferred the option the Government is pursuing; that courts should give great weight to the expressed view of parliament when deciding the compatibility of legislation with human rights or the actions of public bodies when acting under other law or duties. ([Govt Consultation Response, Paragraph 109](#)).

#### **Findings of Government's own Independent Human Rights Act Review**

When the Government established the IHRAR, they did not include investigation into the use of the proportionality principle at all, including in practice. It is therefore unclear what evidence the Government is using to justify this dilution of our human rights, aside from asserting its opinion.



[You can read Steve's case brought by CPAG here.](#)



[You can read more about Clause 7 of the Rights Removal Bill and it's dangerous and discriminatory impact here.](#)

## Our Human Rights Act protects carers facing homelessness and destitution – don't risk passing the Rights Removal Bill



Two carers, and someone receiving care, had to rely on our HRA to successfully challenge the discriminatory impact of the benefit cap. One carer had been evicted from her home as she was unable to keep up with rent payments due to the cap and was on the brink of being unable to provide her granddaughter with vital support. Another carer was very close to becoming destitute as a result of deductions to his housing benefit.

The Court found the cap was in violation of all the claimants' right to enjoyment of possessions (Article 1, Protocol 1) and non-discrimination (Article 14). This was because the benefit cap did have some exemptions, but this was based on an unreasonably narrowly defined definition of household. The discriminatory treatment was found to be unlawful because, when the Government was introducing the cap, it had failed to consider the impact on disabled people who depend on this care. Following the judgement, the Government made changes so that people receiving the relevant carers benefits were exempt from the benefit cap. This decision has had a profound, positive, impact on many carers' lives. Statistics show that "about 1,400 households containing carers were affected by the benefit cap" (House of Lords debate on Welfare Reform).

### How our Human Rights Act protected carers

Under Sections 3 and 6 of our HRA it sets out that public bodies and courts when applying other laws or regulations, for example, the benefits cap, should do this in a way that is compatible with our human rights as far as possible. This is integral to ensuring that human rights protections are real for people, as well as improving decision making and lessening the need for legal challenge. We call it, "the interpretive obligation". This is a key form of accountability that makes us all stronger in a healthy democracy. What's written on paper, i.e., in law or regulations, when applied, does not always have equal effects. Like the benefits cap in this situation for carers. The Human Rights Act provides the mechanism to challenge situations like this and to change them, in this case to ensure that no future carers would be subject to discrimination.

## What the Rights Removal Bill risks for carers (and all of us)

The Rights Removal Bill will repeal section 3 of our Human Rights Act meaning that the duty to interpret laws to support people's human rights will be removed (see paragraph 2 of Schedule 5 Bill of Rights Bill). It also means that laws that have previously been applied in a way that respects our human rights by courts and public bodies using section 3, will no longer be applied in that way. So, what happened in this case, where a court found the benefit cap violated human rights and should instead be applied compatibly resulting in far reaching changes to carer's entitlements would be unlikely to happen. Not only would the two carers involved not have had their rights upheld but it would have had a knock-on effect for thousands of carers.

### The change is unevidenced:

#### Findings of the Government's own Public Consultation

The Government asked in its Public Consultation if it should remove the legal duty on courts and public bodies to interpret laws in a way that respects human rights, so far as possible. The overwhelming majority of respondents (79%) said no while 11% said they had no preference to any option presented ([Govt Consultation Response, Paragraph 69](#)).

#### Findings of Government's own Independent Human Rights Act Review

The Independent Review of the Human Rights Act (IHRAR) concluded the issue around section 3 is not the law but the damaging perceptions about it, "...there is no substantive case that UK Courts have misused section 3 or 4 ... There is a telling gulf between the extent of the mischief suggested by some and the reality of the application of sections 3 and 4." ([IHRAR, Chapter 5, paragraph 182](#)).

Yet in the Rights Removal Bill, the Government have decided to scrap the whole section, an option supported by just 4% of people.



[You can read the case brought by the EHRC here: Hurley & Ors v Secretary of State for Work and Pensions.](#)



[You can read more about the repeal of Section 3 and its dangerous impact here.](#)

## Our Human Rights Act protects Yolande and her children from homelessness when escaping domestic violence – don't risk passing the Rights Removal Bill



Yolande and her children were fleeing domestic violence, and her husband's attempts to track them down as they moved from town to town across the UK. They were referred to Social Services in their borough, but social workers told Yolande that the constant moving of her children meant she was an unfit parent and that she had made the family intentionally homeless. They said that they had no choice but to place her children in foster care.

### How our Human Rights Act protected Yolande and her children

A support worker helped Yolande to challenge Social Services' decision as it failed to respect her and her children's right to family life (Article 8). Social Services reconsidered the issue, taking the family's human rights into account, and agreed the family would remain together, and that Social Services would help cover some of the essential costs of securing safe private rented accommodation. Our Human Rights Act right to respect for private and family life, home and correspondence (Article 8) goes to the heart of what it means to live in society in the UK. It is about respect for us as individuals, our relationships with others, and the decisions that public bodies make about us every day.

### What the Rights Removal Bill risks for Yolande and her children (and all of us)

Under the Rights Removal Bill Clause 8 seeks to curtail the protections provided by the right to private and family life (Article 8), under the guise of restricting immigration. Aside from the legally highly questionable nature of these restrictions (especially in relation to international refugee law), this fails to recognise that our human rights are there to protect everyone – no matter who you are.



Rights Removal Bill been in place, it's likely that the culture around protecting this right would be heavily diminished. Those with unsettled immigration status will be at the sharp end of that which is a serious concern itself. Beyond the discriminatory impact it will also create a chilling effect discouraging individuals from raising their right to private and family life and public officials from considering and respecting it. Yolande and her family would likely have had a very different outcome under the Rights Removal Bill in.

### The change is unevicenced

The Government's evidence for this change does not reflect the law as it is now. It includes data and selected cases from before the Immigration Act 2014 which made it much harder for people to appeal against deportation using their Article 8 right. This means that the Government's data "obscures actual trends" ([Bail for Immigration Detainees](#)) and, in reality, there has been a reduction in human rights preventing deportations. ([Report by Joint Committee on Human Rights, Page 64](#)).



[You can read Yolande's story by BIHR here.](#)



[You can read more about Clause 8 of the Rights Removal Bill and it's dangerous and discriminatory impact here.](#)



## Our Human Rights Act protects disabled people's rights to an adequate standard of living – don't risk passing the Rights Removal Bill



RR, who cared for his disabled partner, was told housing benefit that pays their 2-bedroom home would be cut because as a couple they only needed 1 bedroom – often referred to as the "bedroom tax".

In fact, a second bedroom was needed due to RR's partner's disabilities and to store her medical equipment and supplies. This situation was not considered by the "bedroom tax" regulations, which meant RR and many other disabled people and their partners were subject to cuts which meant they could not cover the rent.

### How our Human Rights Act protected disabled people

RR relied on the Human Rights Act to challenge the situation. It was found that decision-makers should have disapplied the "bedroom tax" in the case of a disabled person that needed extra room for medical supplies because it breached the Human Rights Act [right to private life \(Article 8\)](#) and the [right to be free from discrimination \(Article 14\)](#). This ruling was hugely significant not just for RR but for the 130 couples with similar cases which were postponed until this case was decided.

Our Human Rights Act was always designed to respect parliamentary sovereignty, which is why Courts do not have a strike down power for Acts of UK Parliament. Section 6 (2) of our Human Rights Act specifically sets out that if a public body breaches convention rights, but does this because they are applying provisions of an Act of Parliament (and could not have acted differently), this would not be unlawful. The Act was designed to recognise the practical challenges faced by lawmakers, with a lot of detail having to be delegated through vast amounts of secondary legislation, which Parliament cannot reasonably scrutinise. In these situations, the HRA allows courts to examine and disapply secondary legislation which does not respect human rights. Courts can also hold public bodies to account when they are applying subordinate legislation in a way that breaches rights. [As the President of the Supreme Court made clear at the time:](#)



**"There is nothing unconstitutional about a public body disapplying a provision of subordinate legislation where this breaches convention rights."**

- RR v Secretary of State for Work and Pensions

## **What the Rights Removal Bill risks for disabled people (and all of us)**

Clause 12 of the Rights Removal Bill would stop decision-makers from having to disapply secondary legislation if it breaches human rights. Clause 12 sets out that it will no longer be unlawful for a public body to act in a way that is incompatible with human rights if the act is as a result of:

**(i) one or more provisions of primary legislation that are incompatible with the Convention rights, or (ii) one or more provisions of subordinate legislation that are incompatible with the Convention rights.**

This means that had the Rights Removal Bill been in place, it would no longer be unlawful for a public body to apply the bedroom tax even if it resulted in discrimination for a disabled person and their family. This is because the public body could say they were operating under subordinate legislation. The court would not therefore be able to hold the public body to account for the breach of rights. As in the benefits caps case, this would not only impact the family in this case but the 130 other families who were awaiting a judgment.

## **The change is unevidenced**

### **Findings of Government's own Public Consultation**

In the Government's Consultation, in response to question 15 on secondary legislation, 51% of respondents said they want no change to S6(2) which only grants courts powers and public bodies exceptions when dealing with Acts of Parliaments, not subordinate legislation.

## Findings of Government's own Independent Human Rights Act Review

The IHRAR report is clear that it recommends there should be “no change to the substantive contents of sections 3 and/or 4 of the HRA.” ([Chapter 5, page 249](#)). In fact, the IHRAR additionally recommended “introducing an ex-gratia payment mechanism where a declaration of incompatibility is made”. This would mean giving courts the choice of whether to provide a payment to people whose rights are breached by other laws, recognising that the law will remain the same unless and until Parliament decides to change it. ([Chapter 5, pages 256-7](#)).

**Our Human Rights Act protects victims of trafficking like Patience and her right to redress when failed by the police – don't risk passing the Rights Removal Bill**



Patience was brought to the UK as a domestic worker and nanny and forced to work for little or no money and was subject to physical and mental abuse. Her “employer” took away her passport. When Patience managed to escape with the help of a neighbour and reported her experiences to the police, they refused to take her allegations seriously and closed her case.

Human rights organisation Liberty supported Patience to argue that the police had failed to protect Patience's Article 4 right to be free from slavery or forced labour. While the Modern Slavery Act 2015 wasn't in place at the time, the police could have pursued Patience's “employer” for criminal abuse. The police reopened Patience's case and issued her with an apology, damages and a promise to improve training given to officers on cases like hers.

### How our Human Rights Act protected Patience

The Human Rights Act puts legal duties on Government and public bodies making decisions about our lives to uphold our human rights. These legal duties create responsibilities to respect, protect and fulfil the rights of those accessing, or trying to access, public services.

When this doesn't happen, ordinary people like Patience who believe their rights have been risked can ask a court to review the situation. If the court finds that rights have been breached, they can award remedies to help address the harm people have experienced. There is a framework within that decision making which balances rights and makes sure that remedies are just and appropriate where someone else came to harm for example. There is a framework within that decision making which balances rights and makes sure that remedies are just and appropriate. For example, this might include looking at whether anyone else also came to harm. What it does not do it make remedying the harm a person has experienced dependent on some form of subjective morality test – the courts simply look at the facts of each case and award what it just and appropriate.

### **What the Rights Removal Bill risks for Patience (and all of us)**

The Rights Removal Bill on the contrary seeks to create different categories of people: those who are entitled to have full remedies for human rights breaches by the Government and public bodies, and those who are not. Clause 18 of the Bill would make courts consider a person's past conduct, regardless of whether it is related to the case being heard. The court will also be required to consider and give "great weight" (a term which has no legal meaning) to the importance of minimising the impact that any potential award of damages would have on the ability of the public authority to perform its own functions.

For Patience, this would mean two things:

- 1** That the court could decide that Patience's own conduct at any point in her life should be considered in deciding the damages awarded to her for the police failure.
- 2** That the court could decide that giving Patience damages would impact the police's ability to perform its functions and therefore award none.

When someone has their rights breached by the state, damages do not fix the harm. They instead offer recognition and some small amount of justice, and an important incentive for public bodies to avoid such risks to people's rights in the future.

The Rights Removal Bill does not focus on what is just in each situation, but rather seeks to send a strong message to courts that some people do not deserve full remedies for breaches of their human rights. This goes against the fundamental principle of human rights – that they are universal, for everyone, equally.

### The change is unevidenced:

#### Findings of the Government's own Public Consultation



The Government asked in its Public Consultation what damages someone can be awarded for a breach of their human rights. The majority (52.8%) confirmed they like the current system, where it's looked at on a case-by-case basis. The Government's Bill instead includes statutory obligations (which 13% wanted), the impact on the public authority (which 12.8% wanted) and whether the public authority was trying to respect the "intention" of another law (which 9% wanted).

([Govt Consultation Response, Paragraph 118.](#))

#### Findings of Government's own Independent Human Rights Act Review

When the Government established the IHRAR, they did not include investigation into remedies within the panel's terms of reference. It is therefore unclear what evidence the Government is using to justify this dilution of our human rights, aside from asserting its opinion.



[You can read Patience's case brought by Liberty here.](#)



[You can read more about Clause 18 here.](#)

## Our Human Rights Act protects people like Nina when mental and physical health is at risk – don't risk passing the Rights Removal Bill

Nina, a young woman with mental health issues, was moved to a facility 200 miles away from home when she turned 18. This meant that some of her younger brothers were unable to visit her, and it was expensive and time consuming for her mum (who also has mental health issues) to visit. Nina was distressed by the lack of contact with her brothers and began to self-harm. As the hospital has a rule stating there will be no family visits within 48 hours of self-harm, this led to even less family access.

Donald, who was trained by the British Institute of Human Rights, along with Nina's social worker, wrote to the relevant Clinical Commissioning Group to challenge Nina's placement on the basis of her [Article 8 right to respect for family life](#). Within a few days the CCG had sent a different doctor to assess Nina and within two weeks of the assessment Nina was transferred to a unit closer to home.



As the cost-of-living crisis is having such a serious impact on people's mental health and our ability to access services close to home, it is important to remember that we have the right to private and family life.

### How our Human Rights Act protected Nina

A key way the rights in our Human Rights Act work is through the use of positive obligations. This means that the Government and the public bodies involved in our lives, such as social workers, doctors, teachers, and police officers, must take reasonable steps to protect us when we're at risk of serious harm or loss of life. This includes protecting victims of crime, people detained in hospitals, and children at risk of abuse. When the authorities don't act, individuals can hold them to account for failure to protect their rights. This is a key form of accountability that makes us all stronger in a healthy democracy. Positive obligations are the foundation of safeguarding. They are about stepping in and saving lives and preventing serious harm to people, often when we are at our most vulnerable or marginalised as Nina was.

## **What the Rights Removal Bill risks for Nina (and all of us)**

The Government's Rights Removal Bill destroys positive obligations in several ways, primarily in Clause 5 which seeks to limit this duty to proactively protect people from harm.

This would be disastrous for people like Nina. Clause 5 (2a) states that when considering what pro-active steps are needed to protect people from harm, "great weight" must be given to whether actions would "impact on the public authority to perform its functions". Clause 5(2b) further states that when deciding what action should be taken this "should not undermine the expertise of public bodies when deciding how to allocate financial and other resources." Essentially these clauses will justify inaction to protect people from harm

For Nina, had the Rights Removal Bill been in place, her advocate and social worker would have not been able to rely on the strong positive obligation to protect Nina from harm and uphold her rights. Instead they'd had been at the mercy of what the decision-makers considered important, with no way to make sure people's needs are front and centre. The very decision-making that resulted in a girl being moved 200 miles from her family just because she turned 18.

### **The change is unevidenced:**

#### **Findings of the Government's own Public Consultation**

In the public consultation, all the evidence published supported keeping positive obligations. 1596 responses noted no change is required to the current framework. 1265 responses noted positive obligations provide protection for vulnerable people. 874 responses noted this is not a genuine issue. (Govt Consultation Response, Paragraph 63).

#### **Findings of Government's own Independent Human Rights Act Review**

When the Government established the IHRAR, they did not include investigation into the use of positive obligations within the panel's terms of reference. It is therefore unclear what evidence the Government is using to justify this dilution of our human rights, aside from asserting its opinion.





[You can read Nina's story by BIHR here.](#)



[You can read more about Clause 5 of the Rights Removal Bill and it's dangerous and discriminatory impact here.](#)

## Replacing our HRA is dangerous, especially during a cost-of-living crisis

Without the HRA carers in receipt of Carer's Allowance would not be exempt from the benefit cap, Yolande would not have received housing support, RR and many disabled people would lose their homes Patience would never have been able to hold the police to account, and Nina would not have been able to get healthcare she needed closer to her family.

If we lose our HRA, we will no longer be able to rely on its rights or benefit from the duties it places on public bodies to uphold our rights.

### Call to Action

As we enter a winter where people face the choice between heating or eating, the last thing we need is the Government stripping away our most basic rights protections. Yet the Government is intent on weakening these protections and limiting state accountability; we need your help to combat this assault on everyone's rights.



## We are calling on Parliamentarians to:



Call for the Rights Removal Bill to be withdrawn from the parliamentary timetable



Commit to voting against the Rights Removal Bill



Commit to voting against any subsequent Bills which seek to otherwise bring in elements of the Rights Removal Bill should the Bill itself fail



Amplify the voices of the people in this guide and beyond ensuring that people, and the rights and duties which protect us all from the worst impacts of the cost-of-living crisis are front and centre.

### More information:

- [All of BIHR's briefings and guides on the Rights Removal Bill](#)
- [More stories of the dangerous impact of the Rights Removal Bill](#)

The British Institute of Human Rights (BIHR) is a charity working in communities across the UK to enable positive change through the practical use of human rights law beyond the courts, sharing this evidence of change and people's lived experiences to inform legal and policy debates. We work to support people with the information they need to benefit from their rights; with community groups to advocate for social justice using human rights standards; and with staff across local and national public bodies and services to support them to make rights-respecting decisions. This enables us to call for the development of national law and policy which truly understands people's experiences of their human rights. Established in 1970, with a focus on supporting a culture of respect for human rights since the passing of the Human Rights Act in 1998, we work with over 2,000 people each year.

