

Rt Hon Joanna Cherry KC MP

By email: jchr@parliament.uk & joanna.cherry.mp@parliament.uk

19th April 2023

Dear Joanna Cherry KC MP, Chair of the Joint Committee on Human Rights,

We write with urgent concerns about the UK Government's attempts to undermine human rights protections by weakening Section 3 of the Human Rights Act.

As the Committee knows, Section 3 means that government and the public bodies making decisions about our lives must apply other laws and policies in a way that upholds our rights so far as possible. When this doesn't happen, individuals can seek justice in the courts. Whilst courts can never overrule an Act of Parliament, where possible they can apply other laws compatibly with human rights. This is a key form of accountability that makes us all stronger in a healthy democracy.

Much of the political rhetoric surrounding Section 3 focuses on UK courts, and either suggests an overmighty approach by the judiciary (when in fact it is an appropriate exercise of the balance of powers between courts, government, and parliament) or disregards the impact of Section 3 in ensuring human rights protections are real for people in their everyday lives. Section 3 is used by public officials to make rights-respecting decisions when they navigate and apply other laws. This improves our interactions with public bodies and reduces the need for legal challenge.

"[T]he Human Rights Act has given us a legal, objective, decision-making framework, provided by no other law or policy, to ensure rights are protected and people and staff are safe... In its current form, the law is powerful and a framework for positive change for people and families accessing...services."

- Sarah Dallal, NHS worker

Through its paused "Bill of Rights Bill" (better known as the Rights Removal Bill), the UK Government is attempting to remove Section 3 (Clause 1(2)(b)). This would jeopardise the ability of public body staff to make rights-respecting decisions every day. Laws would suddenly have to be interpreted in different and unknown ways, creating chaos. Courts would be unable to interpret legislation from years ago compatibly with how we live now and with our human rights as the lens through which to do that. In devolved nations, there would be "unhelpful and confusing divergence between devolved and reserved law" – because the Devolution Acts mean judges will still have to interpret Northern Irish, Scottish and Welsh laws in a way that is compatible with human rights, if they can. People who rely on services like health, education, housing would be left in a hugely uncertain position with less control over their lives, without the ability to practically challenge decisions that put their rights at risk. It would take us backwards.

"No public body should be above the law. All make mistakes, or take poor decisions. It remains essential that every individual child, young person and family has a way of challenging public authorities when they get things wrong."

– Catriona Moore, parent of a disabled teenager, Policy Manager at IPSEA & RITES Committee Member

The UK Government's approach to dismantling the Section 3 duty via the Rights Removal Bill had no support. The Government-commissioned Independent Human Rights Act Review said: "There is no substantive case for [Section 3's] repeal or amendment...any damaging perceptions as to the operation of section 3 are best dispelled by increased data as to its usage." The UK Government's own analysis of its public consultation on the Bill states 79% of respondents said there should be no change to Section 3.

"Section 3 is there to make sure other laws uphold human rights and vice versa, any changes to this can't be good. It ensures safeguarding and protection, so there is no need to amend it in any way."

– Response from BIHR's Human Rights Act Reform Survey

Despite this, and with the Rights Removal Bill seemingly paused, the UK Government has attempted to replicate the provision twice in March 2023 alone: in its Illegal Migration Bill (better known as the Refugee Ban Bill) (**Clause 1(5)**) and its Victims & Prisoners Bill (**Clause 42 – 44**). These new laws are more targeted, removing human rights protections from people in situations where the UK Government seems to believe it will be perceived as more acceptable. This is not how human rights work; no government gets to pick and choose who is deserving of rights and who is not. In fact, "the whole point about human rights is that they apply to all human beings: and that even and perhaps particularly those whose causes are unpopular, like prisoners and immigrants, need protection against the abuse of state power" (Dinah Rose, KC).

Universality, the fact that rights belong to all of us, is what makes human rights so important; removing rights from any of us removes rights from all of us. This emerging pattern of laws chipping away at human rights protections is deeply concerning – both because of its immediate impact on the people targeted and because of the precedent it sets that all our human rights are at the whim of the government of the day.

Attempting to destroy Section 3 is an attempt by the UK Government to avoid accountability that must be met with the exact opposite. **We urge you to take a watching brief on this matter; to raise this issue in Parliament as appropriate, including in correspondence and evidence sessions with relevant Ministers; and to be alert to similar provisions when conducting all inquiries and legislative scrutiny.**

Yours sincerely,

The British Institute of Human Rights HUMAN RIGHTS



Human Rights Consortium Scotland



justfair

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