

# Rights Removal Bill\*: Key Concerns

## Picking and choosing who gets accountability for human rights breaches



\*We think this is a more suitable name for the Government's new "bill of rights" Bill.

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 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. This is a key form of accountability that makes us all stronger in a healthy democracy.

**The Rights Removal Bill 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.**

### THE GOVERNMENT SAID...

— “ —  
We are recognising that responsibilities exist alongside rights and ensuring that the appropriateness of paying damages to those who have infringed the rights of others is considered.  
— ” —

### THE JCHR SAID...

— “ —  
These proposals risk undermining access to justice and the enforcement of human rights – and in particular the right of a victim to an effective remedy where their human rights have been breached by the State.  
— ” —

### BIHR SAYS...

**Human rights law is about putting checks on the conduct of the Government and public bodies, not on the conduct of ordinary people. The Government is trying to mark its own homework.**

Currently, the Human Rights Act enables courts to look at each case on its facts and to only provide a remedy that is “just and appropriate” (section 8). Sometimes this will include financial remedies called damages, sometimes it will not.

Our Human Rights Act does consider relevant personal conduct; it needs to ensure our rights are balanced with the rights of others. There is a framework within our current Act where some rights can sometimes be limited to protect the person or the wider community. For example, our right to liberty (Article 5 of the HRA) can be restricted if there is a risk of harm to ourselves or others.

Any amendments to the Human Rights Act needs to widen its scope and limit the already very strong powers of government/parliament/public authorities so that the individual potentially suffering human rights abuse can have a chance for their voice to be heard equally.

A response from BIHR's Human Rights Act Reform Survey

**The British Institute of Human Rights**

bihr.org.uk



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The Rights Removal Bill will tell courts how they should award remedies when they, the Government, or public bodies exercising governmental power, breach people's human rights. 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" 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.

The Government is trying to set the rules on how they provide justice to people when they, or a public body, have breached a person's human rights. They are also trying to set the rules on what remedy should be given to the person whose rights were breached, stating that this should depend not only on what has happened to the person, but also on the person's past actions, which could be completely unrelated to the issue being considered.

It is ordinary people who bring legal cases in the courts when the Government or public bodies have risked their human rights.

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It is a fundamental part of human rights law that protections are not earned or based on an individual's conduct; they exist simply because someone is human. This is the very foundation upon which the European Convention on Human Rights was developed following the horrors of World War Two.

**Human rights do involve responsibilities: the responsibilities of Government and public bodies to uphold people's human rights. This Government's Bill seeks to limit the state's responsibilities, whilst suggesting individuals' responsibilities should carry more weight. This is not only a contradiction, but runs counter to the very core of human rights: their universality.**

It is very worrying that they want to change things to be about whether you have done something in your past. It is saying for addicts for example or people who have been or are in prison that they are less entitled to rights than the next person - but they are actually still human beings with rights.

Kerryanne Clarke, RITES Committee Expert and Team Leader at North Lanarkshire Recovery Community and Rights in Recovery Leadership participant with lived experience of the prison system

Our current approach has the flexibility to look at each case on its facts.

The Bill goes further and tells the court to look at anything the person may have ever done. Essentially, it makes the judge decide whether a person is good or bad, and how much resource the public body has, and use that to decide how much of a financial remedy a victim is awarded.

Human rights protections are universal, precisely to prevent the Government having the power to determine who is deserving of rights and damages when things go wrong and who is not. Under the law, everyone deserves minimum standards of how they are treated, regardless of whether those with power think they deserve them.