

Human Rights Act reform: nothing about us, without us



HUMAN RIGHTS



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This briefing outlines our serious concerns with how the UK Government's (which we refer to as the 'Government') is going about scrapping Human Rights Act (HRA) and replacing it with a new "Bill of Rights" (or, as we see it, a Rights Removal Bill, since all it does is remove our access to rights and reduce the protection they provide). We look at how the HRA is for everyone; how this has generally not been reflected in the reform process, which has been inaccessible and opaque; and how the Government keeps ignoring the evidence.

Our HRA safeguards the rights of every single person in the UK. At BIHR, we see how our HRA is protecting people every day across the UK in quiet, often ordinary, ways which help each one of us live with dignity and respect. Many of the changes in the Rights Removal Bill have been put forward as legal technicalities and procedural nuances, but when combined the proposals set out substantial changes to how our laws protect our human rights. The Bill is, in effect, a wholesale destruction of how our human rights are protected in the UK. This will have a significant impact on everyone who relies on, or may rely on, their human rights – everyone in the UK.

Despite the significant constitutional changes the Bill will bring about, the Government has failed to engage in any effective and legitimate process:

The Government's public consultation on reforming our HRA was inaccessible and excluded many people in the UK from being able to respond, including those most likely to be impacted by the changes, such as learning disabled people.

The Government has failed to even consider, let alone take on board, the evidence which clearly shows there is no need for change. This includes seemingly ignoring the findings of the Independent Human Rights Act Review, which the Government itself set up, and a report from the Joint Committee on Human Rights.

The Government has consistently refused to engage in any proper scrutiny of the Rights Removal Bill, including refusing to submit a draft of the Bill to pre-legislative scrutiny.

The Government has disregarded most responses to its consultation. These responses have been classified as ‘sentiment analysis’ and therefore don’t seem to have been counted, and the other responses, the vast majority of which called for no change to our HRA, have simply been ignored.

Everyday people were not included in discussions

Before we consider whether evidence was listened to – first we need to consider how key evidence was not even gathered in the first place by the Government. Given the potential wide-ranging changes to our human rights protections, it should have followed that people across the UK would be provided with a real opportunity to engage in the process. However, rather than seeking out this critical evidence, the Government excluded it.

Independent Human Rights Act Review – public engagement and conclusions

In December 2020, the Government set up the Independent Human Rights Act Review (IHRAR) Panel, to investigate how our HRA is working and whether it needs to change. In January 2021, IHRAR published a [Call for Evidence](#) which closed in March 2021.

The wording of IHRAR’s document was technical. However, the IHRAR was clear that it wanted “to consult widely and encourages the widest possible range of views from the public and interested parties in its consultations, across all four nations of the UK” ([Sir Peter Gross, Chair of IHRAR](#)). IHRAR encouraged public engagement through several open ‘[roadshow](#)’ events across the UK. BIHR attended several roadshows and were concerned that the voices of people with lived experience of using our HRA were still being missed.



“The vast majority of submissions received by IHRAR spoke strongly in support of the HRA. They pointed to its impact in improving public administration for individuals, through developing a human rights culture. Thus, the HRA was not, or not just, to be viewed through the prism of a few high-profile cases or indeed with a focus on litigation at all.”

- [IHRAR Report, p.16, para. 46](#)



We therefore worked with [Liberty](#) to organise a **lived experience roundtable** with the IHRAR Panel. At this event, the Panel listened to the voices of people across the UK who have used our HRA to create positive change in their lives, the lives of their loved ones or the lives of the people they support. You can read more about the stories that were shared [here](#).

In addition to the roadshows, the IHRAR Panel received over 150 responses to their Call for Evidence, including [BIHR's response](#) which amplified the voices of over 400 people.

IHRAR's full 580-page long report is highly detailed and considered. The Panel was overall very positive about our HRA and highlighted that its **effectiveness cannot just be measured in the courtroom**. One recommendation they did make was to **increase education and awareness of our HRA** to improve public ownership of our human rights.

“*A further online Roundtable was held with members of the public who provided the Panel with an invaluable, moving insight into how their lives had been affected by reliance upon the Convention rights contained with the HRA.*”
[IHRAR Report, p.3, para. 7](#)

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- [IHRAR Report, p.16, para. 46](#)

The Government's Human Rights Act Reform Consultation

On 14 December 2021, on the same day that IHRAR's report (which was submitted to the Government two months earlier) was published, the Government released a 123-page consultation paper (which we refer to as the 'Consultation'). This contained the Government's proposals to scrap our HRA. Not only were there serious concerns about the substance of the changes proposed (outlined in other [BIHR briefing notes](#) and our [response](#)), and the fact that the public were not able to see IHRAR's report before the Consultation was published, the Consultation was also exclusionary; it:

- was inaccessible and full of legal-jargon;
- was very difficult for non-lawyers to engage with;
- focused on technicalities without considering the bigger picture impacts;
- assumed the need for change and provided only partial information and 'cherry-picked' evidence, unlike the usual approach to consultations; and
- did not engage with lived experience.

All this meant that it excluded the people who rely on our HRA the most from having a say.

A 123-page document of English text is also not usable for many people in the UK:

- Easy Read and audio versions of the Consultation were not published until the day before the deadline (which was slightly extended for those needing these versions, see below);
- the full Welsh version was only available on 1 February 2022 – 35 days before the deadline; and
- no other accessible versions (British Sign Language, Braille) were available.

In responding to the Consultation, BIHR, a small charity, expended significant resources to support as many people as possible to have their say. This was driven by BIHR's approach to policy, but also the need to offer alternative ways of contributing to the Consultation for those who were otherwise excluded by the official process. To achieve this, we ran workshops and surveys in Plain Language and Easy Read, including inviting people to share their views on accessibility of the Consultation.

The figures and quotes (more of which are in [our response](#)) speak for themselves:

"My mum is a deaf woman with learning disability – she would not be able to answer the consultation, yet it's exactly the type of policy change that she should be asked about as it is people like my mum who will be most affected. There is clearly a lack of accessibility, which is a major concern."

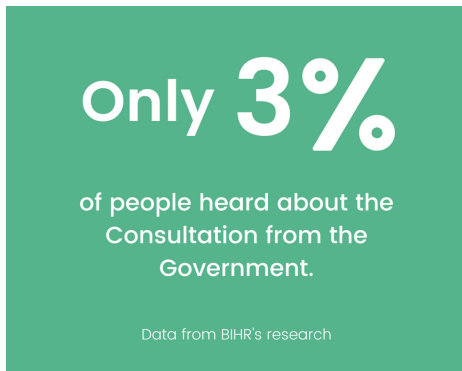
Easy Read Workshop

"I feel like the view of wider public is being ignored as the consultation looks like being set up only for professionals with a very specific questions formed in a complicated juridical language, whilst in fact it applies to each person who lives in the UK and the changes would affect everybody equally."

Easy Read Survey

"Under this format, I feel as though I am being patronised and 'gas-lit' by the government."

Easy Read Survey



In fact, the Consultation failed to follow [the Government's own Consultation Principles 2018](#), including that consultations should:

- Principle A**
- Use plain English and avoid acronyms.
 - Be clear what questions you are asking and limit the number of questions to those that are necessary.
 - Make them easy to understand and easy to answer.
 - Avoid lengthy documents when possible and consider merging those on related topics.

- Principle G**
- Take account of the groups being consulted.
 - Consult stakeholders in a way that suits them.

The process so far can also be contrasted with that in other countries. For instance, the South African public consultation process took two years; Northern Ireland trained up facilitators and worked with Civil Society groups to improve public awareness and engagement; and Canada heard presentations from 300 interest groups.

Alongside many other civil society groups, BIHR called for accessible versions of the Consultation, right from the start of the process. On 24 February 2022 – 12 days before the Consultation deadline – the Government published a word only Easy Read version, citing “supply chain” as a reason for the delay. This document did not include pictures and many groups of people with learning disabilities stated that they did not recognise this document as Easy Read and could not use it. In fact, the Government’s definition of Easy Read states that “easy read uses pictures to support the meaning of text”, so the Government, again, failed to adhere to its own standards.

Calls for improved accessibility continued, including from user-led learning disability campaign group Pembrokeshire People First (supported by BIHR) and a joint letter to the JCHR (signed by more than 200 people with learning disabilities and other communication needs, and organisations that support them). The Government on 7 March 2022 – 1 day before the Consultation was due to close – released a new Easy Read version of the Consultation with images and an audio version.

They announced a six-week extension for people who required these versions to respond. The Ministry of Justice also ran two events on the Consultation for disability groups, advocates, and disabled people.

“
I feel like the voices of people with learning disabilities aren’t heard”
Lucy, member of Pembrokeshire People First Campaigns Group
”

It is important to remember there is no external deadline that the Government had to work to here; it has determined the timeframes. The Government could, and should, have waited to proceed until they had all the accessible materials in place. It is unprincipled that full Easy Read and audio versions were not available from the start and demonstrates the need for our HRA to hold the state to account – including when it is running consultations on reforming our HRA. We also still have concerns on accessibility:

- Only six weeks to respond was given to people who needed accessible versions of the Consultation, compared to 12 weeks (albeit over the Christmas period) for those that could engage with the full version. This is discriminatory and demonstrates an unwillingness to truly engage with people with disabilities.
- The extension had to be requested by individuals/organisations on a case-by-case basis, which created additional accessibility (e.g. digital exclusion) barriers.
- BIHR attended the Ministry of Justice events and was concerned about their accessibility (people on the session raised that they could not understand the content) and the lack of evidence provided to support claims made.

Further, we have since heard from many people who had no idea that there was a consultation on our HRA – for any consultation to be effective people need to know about it.

The Government Consultation was (ironically) not human rights compliant

In 2021, BIHR worked with over 200 stakeholders including public authority staff, people, community groups, and charities and policy organisations as part of a project looking at Government Consultations and Human Rights. BIHR and partners co-produced an analytical tool to help identify to what extent a consultation process complies with the PANEL human rights principles. This project aims to support a human rights based approach across policy making in the UK. The tool asks a series of questions related to each aspect of PANEL.

It uses this data to provide a traffic light analysis, green = rights-based approach, amber = room from improvement, and red = human rights considerations not embedded. Applying this tool, the Consultation was completely incompatible with human rights standards and failed to engage the people most likely to be impacted.

Consultation:		Human Rights Act Reform
Date analysis undertaken:		14.03.22
Participation:	Amber	People should be involved in decisions that affect their lives.
Accountability:	Red	There should be monitoring of how people's rights are being affected, as well as remedies when things go wrong.
Non-discrimination:	Amber	Nobody should be treated unfairly because of their age, sex, gender reassignment/identity, ethnicity, disability, religion etc.
Empowerment:	Red	Everyone should understand their rights, and be fully supported to take part in developing policy and practices which affect their lives.
Legality:	Red	Approaches should be grounded in the legal rights that are set out in domestic and/or international law

Views and evidence not listened to – Independent Human Rights Act Review and Joint Committee on Human Rights

The Government may have set up IHRAR and called for people’s views, but all this evidence collected has just been ignored.

IHRAR received over 150 responses, as well as running roundtable meetings. Following this extensive evidence collection and review, IHRAR’s 580-page detailed report was mostly positive about our HRA and found there was no case for any large changes, only suggesting a few small technical changes and calling for increased public ownership of our HRA. .



“Overall IHRAR’s conclusion was that the HRA worked well, benefitted many and fulfilled three of its original objectives: bringing rights home, reducing the number of cases in which the United Kingdom loses in the Strasbourg court and facilitating a United Kingdom or British contribution to the development of Strasbourg jurisprudence”

- Sir Peter Gross, (Chair of IHRAR), The Human Rights Act – Reviewed



At the same time as the IHRAR, Parliament’s Joint Committee on Human Rights (JCHR) had a parallel inquiry, to understand how our HRA has been working and whether it needs change. Like IHRAR, the JCHR report (published June 2021) stated that: *“the evidence we heard has led us to conclude that there is no case for changing the Human Rights Act.”*

The Government has ignored both IHRAR and the JCHR – implementing changes in the Rights Removal Bill which were not recommended (often explicitly) by IHRAR nor the JCHR. Where IHRAR did consider a change, which the Rights Removal Bill is now implementing, the IHRAR panel concluded again and again that our HRA was working well, and that the change was not needed.

For example, IHRAR expressly rejected the idea, of removing the obligation (at section 3 HRA) for courts to interpret and apply other laws in a way that respects people’s human rights, as far as possible. IHRAR found that “there is no substantive case for its repeal or amendment [of section 3]” (IHRAR Report (Chapter 5 p181). But this has been completely ignored by the Government who has still gone ahead and scrapped section 3.

It has unfortunately been clear that the Government intends to ignore IHRAR for a while. The Consultation asked similar questions that IHRAR had asked. It frequently stated that the Government considered sweeping change was needed in areas where IHRAR had found there was no, or very little, cause for change. This breaches the Government's Code of Practice on Consultation, that "if the Government has previously obtained relevant information from the same audience, consideration should be given as to whether this information could be reused to inform the policymaking process" (Criterion 5.1). But, it also belittles IHRAR's detailed work, and disregards the efforts of so many people and civil society groups who responded to IHRAR's Call for Evidence.

IHRAR's recommendation for increasing public ownership of our HRA also seems to have been ignored by the Government, who has instead preferred to criticise the development of a 'rights culture'.

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"The government's own independent review recommendations have been ignored. Any democratic government would listen carefully to the advice. Our government is authoritarian and shows a real lack of democratic decision making."

BIHR Easy Read Survey

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"It is important to underline that IHRAR's recommendations were informed by the breadth, depth and broad spectrum of this engagement involving so many people across the United Kingdom and beyond. A factor worthy of consideration before departing from it".

Sir Peter Gross (Chair of IHRAR): The Human Rights Act Reviewed

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The changes in the Rights Removal Bill also do not follow on from IHRAR's work. IHRAR was asked to look at how our HRA "is operating" and "not...the substantive rights". However the Rights Removal Bill, and preceding Consultation, go way beyond this: removing our HRA and reducing the protection and substance of human rights protected by the law.

Further, in contrast to IHRAR’s Call for Evidence, the Consultation’s questions were frequently expressed in heavily loaded terms which clearly suggested that the Government had already decided the outcome without considering the evidence.

The Government repeatedly asserts its opinion that change is needed, but it is very unclear what evidence (if any) the Government is using to justify diluting our human rights.

For example, the Rights Removal Bill is going to greatly reduce the positive obligations on Government and public bodies to take proactive steps to protect a person’s right when there is a known and immediate risk of that person’s rights being breached (e.g. safeguarding duties). However, the Government did not ask IHRAR to investigate the use of positive obligations. Instead, without publishing evidence, the Government in its Consultation simply asserted that positive obligations were causing an issue for all public services and is now trying to remove them using the Rights Removal Bill.

These issues were all clearly summed up by Sir Peter Gross, chair of IHRAR:



“The Government commissioned IHRAR an independent panel to review the workings of the HRA and make recommendations for any improvement. The Panel spent the best part of a year reviewing objectively the relevant case law and canvassing a vast array of opinions from academics, judges, practitioners, and the public around the UK and beyond. Our report concluded that the HRA is generally working well but could work even better with a package of improvements proposed. The reaction of Government has been to produce the [Consultation] which does not with respect respond to ours, is not grounded in anything approximating the exercise we conducted but nevertheless asserts that the HRA is not working well.”

- Sir Peter Gross, (Chair of IHRAR), The Human Rights Act - Reviewed



Views and evidence not listened to – responses to the Consultation

12,873 people and organisations responded to the Consultation. Such a high figure, especially given all the difficulties, shows how much people want to be involved in the conversation about our human rights law. But the Government deliberately decided to completely ignore and not even consider most people's views. In a document summarising the responses to the Consultation (the 'Consultation Response'), the Government explains that they divided the responses into 'sentiment analysis', which 'expressed a general opinion on the consultation' or our human rights, and 'thematic analysis', 'those which answered some or all of the questions specifically' (approx. 1,000 to 1,500 responses). As far as we can see, the 'sentiment analysis' has just been ignored without any effort to think about what these thousands of responses say about people's ownership and care for our human rights laws. Considering how difficult and inaccessible the technical legal questions in the Consultation were, this approach shows a staggering disregard for people's opinions and arrogance by the Government. Everyone's opinion should be listened to – even if they are not able to use technical legal language or engage in the technical details.

The Government has ploughed ahead with changes to our human rights law, despite the majority of the evidence which it did 'count' disagreeing with the changes. Time and time again in the Consultation Response the Government recognises that nobody (or nearly nobody) who responded wanted them to make a change – but the Government is making the change anyway. Sadly, especially for the thousands of people and organisations who put in time and effort to respond, it is very difficult to see the Consultation as anything other than a sham.

For example, of respondents counted by the Government:

- 90% said no to introducing a permission stage for court cases, which would put a barrier in place to a legal case and reduce access to justice for human rights breaches. The Rights Removal Bill is doing it anyway.
- 1,596 people said that no change is needed to the current framework for positive obligation, with many noting these obligations "provide protection for vulnerable people" and others considering that there is "not a genuine issue" to resolve. In fact, not one piece of data presented by the Government's Consultation Response supports gutting positive obligations. The Government "examined the sentiment" in favour of positive obligations and decided that it would ignore it.

- 79% said that section 3 HRA, the legal duty on courts and public bodies to interpret laws in a way that respects human rights, so far as possible, should be left alone, 11% said they did not like either of the Government's suggested changes and 4% preferred only an amendment to the current position. But the Government, decided to scrap the whole of this important section – the option only supported by 4% of respondents.
- 82% of respondents said none of the Government's proposals to increase deportations should be followed, but the Rights Removal Bill goes ahead and drastically reduces the Article 8 right to private and family life of deportees and their family members.

Real questions need to be asked about whether the responses from 12.8 thousand people and groups were considered before the Government decided how to proceed. The Consultation first closed on 8 March 2022 – that left only 42 days before the Queen's Speech on 10 May 2022 where it was confirmed the Government's plans (and even fewer days from the second deadline on 19 April 2022). It is almost unthinkable that in that time the Government read and considered anything near the number of responses submitted.

The Government has also refused to publish in full the responses it received, and the Consultation Response hardly provides much information on what people said (other than that they did not like the Government's plans!). For such an important constitutional change to our human rights protections, people need to know what the arguments were – for and against. Publishing the responses to the Consultation would have been a simple way of getting that information to the public – but, yet again, it seems that the facts and evidence are being hidden by the Government.

Pre-legislative scrutiny

With new laws, before Parliament goes through the process of considering and passing the law, there is an option for something called 'pre-legislative scrutiny'. This allows Parliamentary committees made up of members of the House of Commons and House of Lords to look at a draft of the bill, think about how it will work and what its impact will be, and allow for changes to be made before it is formally 'introduced' to Parliament. There can also be the opportunity for open public discussion and consultation on what the bill says.

The chairs of four specialist Parliamentary committees (Justice, Human Rights, Constitution and Public Administration and Constitutional Affairs) sent a joint letter to the Justice Secretary asking for there to be pre-legislative scrutiny of any new 'Bill of Rights'. In their letter, the chairs said that:

"Such proposals are ... of supreme constitutional significance and have the potential to impact on the rights of individuals for many years to come. Thus, it is vital that any proposals and legislative measures are subject to the fullest amount of public and parliamentary scrutiny to ensure their appropriateness, practicality, and longevity. We were therefore disappointed to note that the proposed 'Bill of Rights' has not been put forward for pre-legislative scrutiny ... We would urge the Government to reconsider."

A coalition of 150 different organisation from across UK civil society also called on the Government to provide pre-legislative scrutiny. But the Government just keeps refusing. Pre-legislative scrutiny ensures that bills are properly examined and discussed before they become law. The Government's continual refusal to allow the Rights Removal Bill to be fully scrutinised, just makes us wonder, what are the Government so afraid of?

In summary...

It is hard to see any level of transparency or good faith in the Government's approach to reforming (and weakening) our human rights framework. Rather than doing what it can to listen to people, the Government's approach appears to have been to plough ahead making the changes it wants to our human rights, which will essentially reduce their responsibilities to uphold people's rights. The pretence of any robust evidence base for change, of public engagement, and of accountability, is thin at best.

What next?

We now have the Rights Removal Bill and it is really important that everyone works to raise awareness of the risks to our human rights from the Bill and stands up for our human rights! We especially need to hear the voices of people accessing services who would be impacted by any changes as well as public officials who use our HRA to create positive change every day.

It is really important that the Rights Removal Bill is probably scrutinised, its potential impact on people across the UK is considered and that it is called out for what it is. (See our explainer on how a law is made). Some specific things we want to see happen include:

- The Government's failure so far to listen to people and the evidence, be repeatedly highlighted – inside and outside of Parliament.
- The Government to undertake a wider study and equality impact assessment to understand the realities on the wider UK population of the proposed changes. See the joint letter to the Government that we signed up.
- Scrutiny of the Rights Removal Bill, by the specialist Parliamentary select committees made up of MPs and/or Lords.



Get involved!

Write to your [MP](#) to raise your concerns and show much you care about human rights (you can use our customisable template letters!)

Come along to our [HRA Reform events](#).

Follow us on [Twitter](#) to keep up with what BIHR are doing to raise awareness and protect our HRA.

Write us a blog about [Why Our Human Rights Act Matters](#) to you, email hwalden@bihr.org.uk.

Find out more about what the reform could mean on our HRA Reform [hub](#). On this hub we will post all of our up to date resources and campaigns.

Sign up to our [enews](#).