

Rights Removal Bill*: Key Concerns



Limiting positive obligations on public bodies to protect rights

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

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 have to take reasonable steps to protect us when we're at risk of serious harm or loss of life. When the authorities don't act, individuals can hold them to account for failure to protect. This is a key form of accountability that makes us all stronger in a healthy democracy.



Clause 5 of the Rights Removal Bill seeks to remove future positive obligations to protect people, and unravel previous protections.

THE PUBLIC SAID...

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.

THE GOVERNMENT SAID...

— “
The Bill of Rights will...prevent courts from placing new costly obligations on public authorities to actively protect someone's human rights.
” —

BIHR SAYS...

Under the Human Rights Act, positive obligations are quite literally about stepping in and saving lives and preventing serious harm to people. They are the foundation of safeguarding people.

By preventing UK courts from interpreting Convention rights as imposing new positive obligations on public bodies, it means that UK courts will no longer be able to interpret our human rights in a way that requires public bodies to take proactive steps to protect individuals if they have not done so in the past. The Bill stops our human rights law from adapting and protecting us when we need it.

Furthermore, when courts have already interpreted human rights as imposing positive obligations, the new Bill strongly discourages courts from continuing to see human rights in that way. Instead, it says that when courts are interpreting how proactive a public body should have been in protecting a person's rights, for example, they should "give great weight" to how the public body decides to allocate the resources available them and to whether having to proactively protect that person's rights would have an impact on the public body's ability to perform its functions.

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Often the harm they are talking about is serious harm, a risk to a person's life or their mental and physical health and wellbeing. The positive obligation to proactively protect rights protects all of us. We all interact with public bodies and removing this duty puts us all at risk of harm.

Importantly, what counts as a positive obligation under the Bill is a far lower bar. The Government goes far wider than the reasonable steps test; it means "an obligation to do any act". That could mean the positive obligation of a social worker to make a call to the teacher of a child to follow up on safeguarding concerns or the positive obligation of a mental health nurse to conduct an assessment before someone who poses a risk to their own life is allowed on leave.



[Read about how positive obligations were used by survivors of rape to get justice](#)

Without this clear duty given to staff through our Human Rights Act, staff will have to navigate a complex maze of other laws, policies and guidance in decision-making to keep people safe. It cannot be up to each public authority to decide if taking action to protect human rights fits into their overall strategy and policies. The point of any human rights law is to ensure a minimum level of treatment for all people, not a pick and mix system depending on what those with responsibilities choose to do.

Importantly, the positive obligation also means that public bodies must take proactive steps to protect the rights of their staff. During Covid-19, staff used our Human Rights Act to challenge public bodies where their right to life was at risk and proactive steps to keep them safe, such as providing PPE, were not taken, often due to policy, resource and/or funding. These factors are, of course, always considered by courts, as they are the reality in the UK where public services are chronically under-funded. However, the new Bill will give public bodies carte blanche to argue that rights were not protected because of a lack of resource and the courts will weight their decision in that favour, not in favour of the individual and their loved ones who have lost someone because of the decisions of a public body.

In making its points about positive obligations, the Government fails time and again to highlight the importance of these protections for people in everyday life.

The Government's proposed removal of positive obligations on themselves and public bodies to protect people, will lead to more human rights breaches, risking people's lives and safety. This takes us backwards.