



The Rights Removal Bill: Why staff in public bodies should be worried and how they can take action

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The British Institute of **Human Rights**

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BIHR has created this resource for public bodies and their staff to explain how the replacement of our Human Rights Act with the new Bill of Rights Bill (widely referred to as the Rights Removal Bill) will impact on practice.

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What's happening with the Human Rights Act?

The Human Rights Act is the UK law that exists to ensure that everyone's rights are respected and protected here at home. Our Human Rights Act takes 16 of the fundamental human rights in the European Convention on Human Rights (which the UK helped to write) and pulls them down into our domestic law.



[Click here to find out more about the Human Rights Act and how it works.](#)

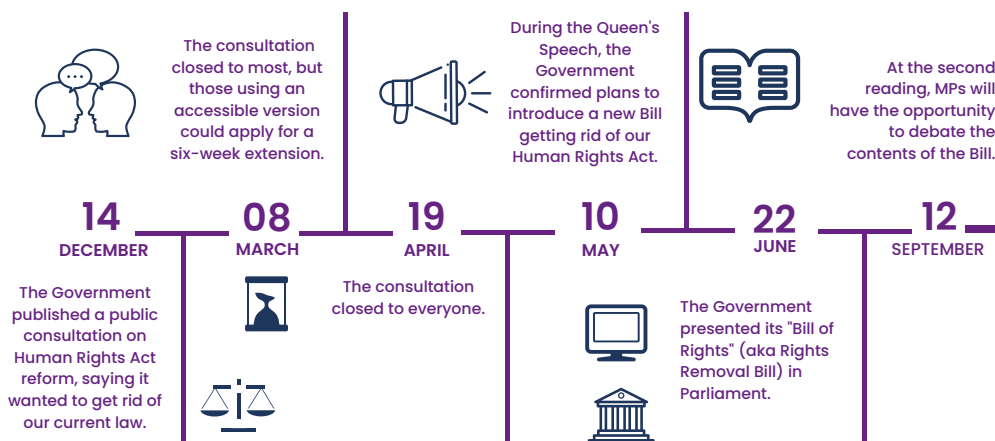
On 22 June 2022, the Justice Secretary, Dominic Raab, presented a Bill in Parliament that would replace our Human Rights Act. He is calling it a Bill of Rights, but it's actually a Rights Removal Bill. The Bill does not create new rights or strengthen existing protections; it only removes access to the ones we already have.



[Click here to find out more about how the Rights Removal has come about.](#)

The Bill is scheduled for second reading on 12 September 2022. You can find out how a law is made and keep up to date with the progress of the Bill here.

Human Rights Act Reform & the Rights Removal Bill



What are public bodies and why should their staff be worried?

The Human Rights Act puts a legal duty on public authorities to respect, protect and fulfil human rights in everything they do, every day. This duty is held by staff working in central government, local government, NHS Trusts, police and emergency services, public schools, independent regulators and more, as well as being held by private or charitable organisations delivering a “function of a public nature”, such as health or care. At BIHR, we support staff in public bodies to meet their legal duties under the Human Rights Act in their day-to-day decision-making, increasing their knowledge, confidence and overall ability to make fair and rights-respecting decisions in practice.

In BIHR’s guest blog series, staff in public bodies have shared why our Human Rights Act matters...



to a mental health nurse



to members of the armed forces and their loved ones



to social workers



[Click here to find out more about BIHR’s work with public bodies and services.](#)

The Rights Removal Bill will replace the Human Rights Act. The Bill is **unprincipled, unevidenced, and unworkable**. Staff working in public bodies should be worried about the impact these significant changes will have on their work, not only because it will cause uncertainty and chaos in their decision-making, but because the people they support in their roles every day will bear the brunt.



[Click here for more news & resources from BIHR on the Rights Removal Bill.](#)

What should staff in public bodies be worried about?

! The Rights Removal Bill will add uncertainty to your decision-making.

The Human Rights Act is used by staff in public bodies as a tool for making fair and rights-respecting decisions every day. There are several parts of the Act which support clear and confident decision-making by public bodies.

An important way our rights in the Human Rights Act work is through the use of positive obligations. This means that public bodies must take reasonable steps to protect people's rights when they are at risk of serious harm or loss of life. Positive obligations are the foundation of safeguarding people.

Taking proactive steps to protect rights under the positive obligations of the Human Rights Act can take many forms.

It could be a social worker following up on a safeguarding concern by contacting a child's school; a nurse in a mental health hospital completing a risk assessment when a person at risk of suicide asks for leave; a police officer investigating reports of sexual assault to prevent further incidents taking place. This part of the Human Rights Act helps staff to know when they should act to protect people's rights.

"The 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 Trust services."

Sarah, an NHS worker

The Rights Removal Bill will prevent judges from establishing new positive obligations to protect people, and it will undermine existing positive obligations on staff.



[Click here for more information about positive obligations.](#)

Section 3 of our Human Rights Act is another key legal duty which says that public bodies must apply other laws and policies in a way that upholds our rights so far as possible. Section 3 positions the Human Rights Act as the foundation of decision-making for public bodies.

Staff working in public bodies or delivering a public function have a complex maze of laws and policies to navigate, from laws on child protection, policing and discrimination, to internal policies on the use of restrictive practice, the protection of people's personal information, and eligibility criteria for who can access a public service.

However, staff can use the Human Rights Act to underpin their decision-making, ensuring that they respect human rights when applying other laws and policies in their work.

"Without a framework to underpin our decision-making, social work responses would have no benchmark, no consistent way of navigating thorny dilemmas and would likely have limited consistency."

Daisy, RITES Committee Expert and Independent Social Worker and Director of a practice consultancy organisation

The Rights Removal Bill will repeal section 3 of the Human Rights Act, meaning that the duty to interpret laws to support people's human rights will be removed.



[Click here for more information about the section 3 duty.](#)



From our work at BIHR, we know that clarity is crucial for public bodies, knowing when they should take steps to protect human rights, and how to apply and interpret the laws they use every day in a rights-respecting way. The Bill jeopardises this, putting staff in public bodies in an incredibly difficult and confusing position.



Using positive obligations to enable children in mental health hospital to keep in touch with their families

Mersey Care NHS Trust realised that it was difficult for children to visit their relatives in secure mental health settings in Liverpool. A group of children working with a local group explained that they were finding the ward unwelcoming, chaotic and frightening, which was making it difficult for families to maintain their relationships.

The Trust recognised the children's concerns as relating to their right to respect for family life (Article 8). The Trust looked at providing family visiting rooms and developed a specialised visiting area for families designed in consultation with children.

The Trust was able to protect and uphold the children's right to family life and improve their experiences of visiting their relatives.

By weakening the positive obligation on public bodies to protect rights, the Rights Removal Bill will make decisions like this harder to make as there will be less of a push to be proactive in ensuring people's rights are upheld.

! The Rights Removal Bill will make it harder to advocate for rights-respecting decisions.

One of the aims of the Human Rights Act is to create a culture of respect for human rights in the UK. It does this by putting a legal duty on public authorities to respect, protect and fulfil human rights, and by enabling people to seek justice in UK courts where this doesn't happen.

The positive obligations in the Human Rights Act framework, explained above, allow staff in public bodies to build a culture of respect for human rights by challenging decisions that fail to protect rights. Currently, if decisions are made on the basis of funding or policy, these can still be challenged by staff if they know, working on the ground, that decision would put people at risk of harm.

This is an important tool for advocating for rights-respecting decisions, as it allows public bodies to hold each other accountable for their decision-making (see John and Mary's story below). It also allows staff working for public bodies to hold their own employer accountable if their own rights are at risk. For example, NHS Trusts had a positive obligation to protect the right to life of their staff by providing them with adequate PPE when they were treating patients with Covid-19.

"I had a client with learning difficulties who needed an operation. I was able to assist the doctors in thinking through all the human rights implications. I was able to show that it was not just about the right to life, but the broader impact of the procedures and the need to treat the patient in a way that respected her dignity. A human rights approach allowed me to open up a dialogue about how to carry out this operation in a less intrusive and less distressing way for the client."

Ged, Community Learning Disability Nurse

By weakening the positive obligations on public bodies to protect rights, the Rights Removal Bill will make it harder for staff to challenge decisions which put the rights of themselves and others at risk.



[Click here for more information about positive obligations.](#)

When ordinary people believe their rights have been risked, they can ask a court in the UK to review what has happened and decide if human rights have or have not been breached. At BIHR, we know from our work that public bodies want to respect people's human rights because they care about the people they support. The fact that this is a legal duty which can result in legal action if it is not met, strengthens their position to uphold rights, especially in the face of lots of complex and conflicting priorities.

The Rights Removal Bill creates a new permission stage, putting an additional barrier in the way of people seeking justice when their human rights may have been risked by public bodies.



[Click here for more information about a new permission stage.](#)



By weakening positive obligations and introducing additional barriers for people seeking justice where their rights have been risked, the Rights Removal Bill will make it harder for staff to champion human rights in their work, ultimately damaging the culture of respect for human rights which many staff in public bodies have worked hard to build.



Using the duty to protect rights as an advocacy tool: John and Mary's Story

John is a man with a learning disability who was living in rented accommodation and receiving support from the local authority. One day, Mary, a district nurse, visited him at home, and she was very concerned by what she saw. John was living in a small single room that functioned as a bedroom, living room and bathroom all in one. His shower wasn't working, forcing him to use a hand towel and bowl for washing, and the toilet was close to his bed.

Mary raised concerns with the local authority however they refused to accept that there was anything wrong with John's living arrangements. She then talked to the Equalities Team in the NHS Trust who suggested that John's living arrangements could be having a negative impact on his human rights, including his right to respect for private life (Article 8) and his right to be free from inhuman and degrading treatment (Article 3).

Mary went back to the local authority and housing provider, setting out how John's rights were at risk and both services had a legal duty to protect John's dignity. The local authority reconsidered its initial response to Mary's concerns and found new accommodation for John that was far more suited to his needs.

Framing the situation using human rights language completely changed the conversation in John's case. Under the Rights Removal Bill, Mary may not have been able to effectively advocate for John in her conversations with other public bodies.

The Rights Removal Bill will lead to unfairness in how people's rights are upheld.

Human rights are universal, they belong to all of us. This is at the heart of our Human Rights Act, which gives staff in public bodies a reliable framework they can use respect, protect and fulfil the rights of everyone they interact with, every day.

Once again, the positive obligations under the Human Rights Act provide a clear framework which enables staff in public bodies to know when they should act to protect rights. This duty applies in the same way to everyone, ensuring that decisions are made in a fair and rights-respecting way to begin with, reducing the need for people to challenge decisions that risk their rights.

The weakening of the positive obligations on public bodies to protect people's rights under the Rights Removal Bill could lead to a system in which people who are less able to speak up against decisions that fail to protect their rights are ignored.

Daisy, a RITES Committee Expert and Independent Social Worker, says "If public bodies are no longer required to act in these circumstances, instead adopting a reactive duty, it is likely that a 'he who shouts loudest' management approach will be adopted across our pressurised public services, leaving those unable to speak up voiceless, including children and young people."



[Click here for more information about positive obligations.](#)

When staff in public bodies are making decisions that limit someone's non-absolute human rights, such as the right to liberty (Article 5) or the right to respect for private life (Article 8), proportionality is key to ensuring a 'fair balance' between the person's rights and the interests and rights of others.

"I think consideration of the proportionality of the intervention is particularly important as it encourages us to explore other less restrictive interventions. So, for example we can restrain someone in a compassionate, caring way by talking to them when they are well about how to do it, talking to them all the way through the restraint and debriefing them afterwards."

Sarah, an NHS worker

This important part of the Human Rights Act prevents public bodies from using of blanket approaches which fail to consider the impact of a decision or policy on each individual person's rights, and provides a way for those organisations to review their internal policies.



For example, an inpatient mental health service for young people used the principle of proportionality to review their policies about access to mobile phones and internet, using a human rights approach and individualised care planning to create positive change.

The Rights Removal Bill seeks to tell judges how to decide if a restriction of someone's human rights by the Government or a public body is proportionate. This will lead to unfair, 'one-size-fits-all' decision-making, limit people's ability to challenge this, and put public bodies and their staff in an incredibly difficult position.



[Click here for more information about proportionality.](#)

The Rights Removal Bill will bring about other changes which will create unfairness in how people's rights are upheld. Although these changes may not be relevant for all staff who work in public bodies, they nonetheless present a threat to the universality of human rights and are therefore a cause for concern which public officials should be aware of and may wish to find out more about.

Our right to respect for private and family life, home and correspondence (Article 8 in the Human Rights Act) goes to the heart of what it means to live in society in the UK.

The Rights Removal Bill seeks to cut off certain groups of people from accessing their Article 8 right. This will cause confusion, undermine the public interest, and crucially it will have serious impacts on people's human rights with corresponding serious negative consequences for their and their family's lives. Public officials working with people at risk of deportation or in services relating to immigration, probation, prisons, and courts may wish to find out more about this change.



[Click here for more information about changes to Article 8.](#)

If people believe their rights have been risked by the actions of a public body, they can use the Human Rights Act to 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.

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. It does this by making courts consider a person's past conduct, regardless

of whether it is related to the case being heard. This will do nothing to improve rights protections for people and everything to increase the power of the Government and reduce their accountability for how they treat people interacting with public services. Public officials working in services relating to addiction and recovery, forensics, mental health, learning disability and autism, probation and prisons may wish to find out more about this change.

"What does this mean for a person in recovery? The people I support already feel as though we don't have any rights. 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 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



[Click here for more information about changes to conduct and damages.](#)



By weakening positive obligations, reducing the importance of proportionality, diluting the right to private and family life, and picking and choosing who gets accountability for human rights breaches, the Rights Removal Bill threatens the fairness that is integral to staff's decision-making when they are working to uphold people's rights, and will lead to a system in which discrimination is much more likely to occur.



Using proportionality to review restrictive practices – Paul’s Story

“As a provider of mental healthcare and accommodation, St Martin of Tours Housing Association supports people with mental health issues and with offender backgrounds who need help to maintain their independence or to step down from secure hospital wards, prisons and similar situations. Prior to getting involved in BIHR’s project, we were very hands off about room searches, drugs and managing visitors. It was very liberating to find out that the right to respect for private life is a non-absolute right which can be balanced against the rights of others, prevention of crime etc. We’ve been able to use that framework to build room searches into residents’ care plans and help keep drugs out of the ‘projects’ (housing units). We also had a blanket ban on visitors going upstairs in our projects because some residents had a history of sexual offences. We’ve now used human rights to amend our policy and assess visiting on an individual basis, which allows us to balance safety against resident’s right to privacy.”

Under the Rights Removal Bill, the changes to how proportionality works could make blanket policies like these more common, where less restrictive options for people affected are not fully explored. This would create unfairness and possibly lead to discriminatory practices, as decisions which restrict people’s rights may no longer be made on a case-by-case basis.



The Rights Removal Bill will take away vital protections of people’s human rights in the UK.

At BIHR, we see the value of the Human Rights Act every day in our work with people accessing services, community and advocacy groups and staff working in public services. Together, we use our Human Rights Act to secure social justice in small places, close to home. We all want to live safe and well, knowing that the authorities will support our rights; our Human Rights Act helps make this happen. Without it, and with the Rights Removal Bill in its place, we would see the reduction of everyday human rights protections, taking the UK backwards and putting people at risk of harm.

The Bill will have a significant impact on everyone who relies on, or may rely on, their human rights – i.e. everyone in the UK. However, despite these significant constitutional changes, the Government has failed to engage in any effective, accessible, and legitimate process of consultation – instead preferring to exclude voices, ignore evidence and avoid scrutiny.

The Government's public consultation was inaccessible and excluded those most likely to be impacted by the changes, such as people with learning disabilities. What's more, the consultation ran from December to April at a time when public services faced winter pressures, a spike in Covid-19 infections and widespread staff shortages. If the Government wanted to hear from staff in frontline public services on how changes to UK human rights legislation would impact their day-to-day practice, their timing could not have been worse. When the consultation closed, the Government either completely disregarded or ignored most responses it did receive. Whilst within the parliamentary process, the Government has consistently sought to avoid any proper scrutiny of the Bill.

The Human Rights Act protects you too

The Human Rights Act places duties on public authorities to respect, protect and fulfil human rights. But it is also important to remember that the Human Rights Act also protects the rights of staff working in those public bodies. Those working for NHS organisations, local authorities, the police, the prison service and education authorities are protected by the 16 rights set out in the Act. This means that public officials can use the Human Rights Act to challenge their employer's policies, practices or decisions which impact on their rights, just as people accessing services can. For instance, when a public body's policy is incompatible with a staff member's right to freedom of assembly and association (Article 11), which covers joining a trade union, or their right to be free from discrimination (Article 14).



Mark's story

For Mark Woolcock's family, the positive obligation on public bodies to take reasonable steps to protect life meant that there was an inquest into whether or not the NHS had failed to appropriately protect Mark from Covid 19 when he died from the virus in April 2020.

Whilst the work of public officials is hugely important, they are more than just their jobs. Staff working in public bodies also use public services and the Human Rights Act is what ensures when we visit the GP or send our children to school or when relatives move into residential care that we know there is a law which sets out that we should be treated with dignity, respect and without discrimination. When this isn't the case, public officials, just like everyone else, can rely on the Human Rights Act to protect them, and they can use it to challenge decisions where their rights, or the rights of those they care about, have not been thought about.

What can public officials do about the Rights Removal Bill?

The UK Government likes to suggest that human rights are an inconvenience for public authorities. At BIHR, we know that this is far from the reality.

Public officials have told us that the Human Rights Act provides a useful framework for the complex decision-making they are faced with every day. Not only this, but staff in public bodies play a vital role in bringing about a culture of respect for human rights through their decision-making using the Human Rights Act. The Rights Removal Bill will undermine this, making it harder for these staff to respect, protect and fulfil human rights in their roles, and putting the rights of the people they interact with every day at risk.



We need public officials to speak up for their human rights and the rights of people they support.



We need public officials to tell the UK Government that they do not want their Bill of Rights.



We need public officials to speak up for protecting our Human Rights Act.

Here are some quick actions you can take...



Complete a short survey to tell the Joint Committee on Human Rights how important the Human Rights Act is in your work.



Write to your MP using BIHR's quick template letters.



Talk to your friends, family and colleagues about the Rights Removal Bill and share this guide!



Write BIHR a blog on why our HRA matters to you as a public official. Contact Helen on hwalden@bihr.org.uk.



Submit written evidence to the Joint Committee on Human Rights before Friday 26 August 2022.

BIHR's work on the Rights Removal Bill

Check out BIHR's [Rights Removal Bill hub](#), or click the links below to get BIHR's latest news, resources and events on the Rights Removal Bill. Please share widely!

Get informed:

- [Need-to-Know Guides to the Rights Removal Bill](#)
- [Easy Read: The Rights Removal Bill: What it means for you](#)
- [The Human Rights Act: Frequently Asked Questions](#)
- [Blog Series: Why Our Human Rights Act Matters](#)

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