

Rights Removal Bill*: Key Concerns

Removing the Section 2 duty of interpretation



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

A key part of our Human Rights Act is the section 2 duty on UK courts to "take into account" how similar cases have been decided in the ECtHR. This is not an absolute duty, but it helps make sure our human rights protections are consistent and certain. It reduces the need for cases to be heard in the ECtHR because they can be decided by UK courts. This is a key form of accountability that makes us all stronger in a healthy democracy.



The Government's Rights Removal Bill does not strengthen the role of UK courts, it limits them and reduces our human rights protections.

THE GOVERNMENT SAID...

— “

Courts cannot interpret a Convention right to expand the scope of the right to cover more circumstances, impose additional obligations on public authorities, or restrict the extent to which interferences with and limitations on the right can be justified

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These changes are designed to limit and reduce our human rights protections in the UK, and make it harder for ordinary people to access their human rights.

The HRA section 2 duty draws a careful line between making sure our legal protections in the UK are consistent with the ECtHR, whilst also respecting the UK Parliament's sovereignty and the expertise of UK courts to make decisions about UK issues. Currently the Human Rights Act says the UK Supreme Court can decide not to follow ECtHR cases, such as where the ECtHR's case law on the issue was not "coherent or settled" (Hallam v Secretary of State for Justice). The Human Rights Act also means there is a 'judicial dialogue' between the UK courts and the ECtHR, where the UK courts will sometimes disagree with the ECtHR. This can influence how the ECtHR interprets human rights when it looks at similar cases. In the UK, our courts will always follow what the UK Supreme Court decides on an issue because our system is based on following cases in the highest court.

THE PUBLIC & INDEPENDENT REVIEW SAID...

In the public consultation, 56% of people said there should be no change to section 2.

— “

[removing Section 2] would result in there being no formal link between the HRA and the Convention. While the UK remains a party to the Convention, this option has nothing to commend it.

The Report of the IHRAR

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BIHR SAYS...

We all want to be able to live in a democracy where each person can access their human rights and seek justice in the UK courts, knowing that we will not have worse protections than if we had to go the European Court of Human Rights (ECtHR). Our Human Rights Act helps make this happen.

The British Institute of Human Rights

bihr.org.uk



[Click here to visit our Rights Removal Bill Hub for more information.](#)



Rights Removal Bill: Key Concerns

Removing the Section 2 duty of interpretation

The rights in the Human Rights Act (and in the Government's Bill) come from the European Convention on Human Rights (ECHR), which the UK is signed up to. It is clear that, under international law, the ECtHR has the ultimate say on how the rights in the ECHR are interpreted. The Bill seeks to remove the link between what the ECtHR says about human rights and how human rights work in the UK, whilst also introducing a 'ceiling' of our rights protections. This will result in UK public bodies and the Government having to provide less respect and protection of our human rights. It will take human rights protections in the UK backwards: disconnecting human rights from society today and in the future.

Since the Human Rights Act was passed, the ECtHR has considered fewer cases from the UK and has generally not found the UK to be in breach, with the UK normally fixing the situation when it is. This is due to the UK's international standing as a rights-respecting country, but also because the Human Rights Act helps ensure that UK laws, Government and public bodies respect our human rights. With this change, there will be an increase in the number of people having to take a case to the ECtHR.

Instead of the ECHR providing a minimum level of basic human rights protection for people in the UK, the Rights Removal Bill flips this. It limits the ability of UK courts to provide better protection. Trying to disconnect human rights in the UK from the ECHR will do nothing to change the UK's obligations under the Convention, instead signalling the green light to other states seeking to undermine international respect for human rights law.



It is difficult, expensive, and time consuming to do this, so we will be moving backwards to a two-tier system with human rights, justice and accountability only for those who can afford it. This is exactly what our HRA was designed to avoid. This is likely to breach the Convention right to an effective remedy within the UK (Article 13) for any breach of our rights. This, in turn, will almost certainly result in more decisions against the UK by the ECtHR. This will reduce the UK's accountability to respect our human rights: both in our UK courts and on an international level.

The ECtHR's decisions have been pivotal in improving human rights protections in the UK and ensuring that they have evolved with a changing society over the last 70 years. The Bill seeks to 'freeze' our human rights protection in time, and, if anything, take them back to the 1950s when the ECHR came about.

The Rights Removal Bill will do everything to limit people's access to their human rights every day, and thus accountability of the Government and public bodies when our human rights are breached.