

Our Human Rights Act

Interpretation of laws and human rights (Sections 3 and 6): What could change and what does this mean?



HUMAN RIGHTS



Interpretation of laws and human rights (Sections 3 and 6): What could change and what does this mean?

How does the HRA work with other laws?

Section 3 (s.3) of our Human Rights Act (HRA) means that any UK laws must be applied in a way which respects our human rights, as far as it is possible to do so. We call it, “the interpretive obligation”. This applies to the courts but also to public authorities, who have a legal duty to respect, protect and fulfil human rights in everything they do (Section 6). This also means that when the law gives public officials a choice, they must choose the option that respects human rights. We call this “looking at laws through a human rights lens”.

When this doesn't happen individuals can seek justice in the courts. Whilst courts can never overrule an Act of the UK Parliament, where possible they can apply other laws compatibly with human rights. This is a key form of accountability that ensures human rights are effective in the UK.

How will the Rights Removal Bill change this?

The UK Government (which we've referred to as “Government”) in their Rights Removal Bill (which is what the new ‘Bill of Rights’ is since it just reduces our human rights) (see paragraph 2 of Schedule 5 of the Bill) is getting rid of the s.3 interpretative obligation, and also reducing the obligation on public authorities to apply laws from the UK Parliament (which we've referred to as “Parliament”) in a way that respects human rights.

Why this change is not needed: human rights and our laws

Section 3 is a crucial part of our HRA that ensures that UK laws respect and protect human rights. This helps other laws work well in practice for people too and makes sure that our laws continue to respect human rights as society changes.



"Section 3 is a key section in the Human Rights Act 1998. It is one of the primary means by which Convention rights are brought into the law of this country."

- Lord Nicholls, Ghaidan v. Godin-Mendoza [2004] UKHL 30



Providing employment law protections to judges – Gilham v Ministry of Justice

A district judge was dismissed after she raised concerns about cost-cutting court reforms. S.3 of our HRA meant that the Supreme Court could say that the judge should be considered a "worker" and have the benefit of employment protections for whistle-blowers under the Employment Rights Act. There was no evidence that when drafting the law using the word "workers" Parliament had decided to exclude judges from the protections and excluding them now would risk discrimination (protected by Article 14 of our HRA).



"Our decision in Gilham gave effect to Parliament's enacted intentions: first, as expressed in the [Employment Rights Act 1996] that workers should have the benefit of whistle-blower protection; and secondly, as expressed in the HRA, that categories of worker should not be discriminated against in the exercise of their Convention rights for no reason."

Lord Carnwath, Is it time for a new British Bill of Rights?



Why this change is not needed: human rights and public authorities

Sections 3 and 6 HRA are central to making sure human rights protections are real for people every day central to how our HRA works every day. In practice, the interpretative obligation is used by public officials (NHS staff, social workers, teachers, the police etc.) to make human rights respecting decisions, when they navigate and apply other laws, such as mental health law or child protection laws. It is also used by people and families to challenge public bodies when laws are applied blanketly without regard to a person's human rights. This makes sure that human rights are actually real for people whenever they interact with public bodies, as well as lessening the need for legal challenge.

“

“the (Human Rights) Act is the constant that leads us through some thorny ethical dilemmas we (and the people we support) are faced with”

Daisy Jackson-Page, Independent Social Worker

”

“

“Sections 3 and 6 together tell public authorities to be guided by convention rights in making decisions in those cases.”

Dr Helene Tyrrell, Lecturer in Law, [evidence to Joint Committee on Human Rights, q.8](#)

”

“

“Section 3 is there to make sure other laws uphold human rights and vice versa, any changes to this can't be good. It ensures safeguarding and protection, so there is no need to amend it in any way.”

- Quote from [BIHR's HRA Reform Survey, page 36](#)

”



Improving practice and protecting rights in mental health settings

Kirsten is a single parent of an autistic son who, from the ages of 14-18, was held in mental health hospitals under the Mental Health Act. He was subjected to restrictive practices, including mechanical restraint, such as handcuffs, leg belts, and being transported in a cage, and long periods in seclusion.

“The Mental Health Act gave legal powers to put my child in a seclusion cell for weeks at a time. It gave powers to put my child in metal handcuffs, leg belts and other forms of mechanical restraints. It gave powers to transport him in a cage from one hospital to another...”

As a parent, the Human Rights Act gave me the legal framework to challenge decisions. This was so important for me as a parent facing the weight of professionals who seemed to have so much power over mine and my son's lives. I used the Human Rights Act to make timely and meaningful change to my own son's care and treatment.”

- Kirsten

Why changes to s.3 are not needed: human rights and the UK Parliament

Our HRA protects Parliament's role in making and changing laws (often referred to as "Parliamentary sovereignty"), including when Parliament thinks the law has been wrongly applied (see our [Guide about these issues](#)). Crucially, under s.3 an interpretation by the courts cannot change the meaning of the law being looked at and must respect Parliament's 'intention' when making the law. Interpretation is especially important when the wording of a law isn't clear or when the chosen wording excludes certain people or groups, where that was not the intention. Like in the case above about the judge.

The courts cannot fundamentally change a legal provision. But the courts have a crucial role in ensuring other laws (often laws which were written a long time ago) are applied in a way which respects everyone's human rights. The courts are already very careful to respect the limits set by Parliament. When a court thinks that a law should be relooked at, to bring it in line with human rights, it is up to Parliament to do that. This ensures the separation of powers and the sovereignty of Parliament.

(This is different in devolved nations, see below).

As, at least, 79% of respondents to the Government's public consultation said, **there is no need for change to s.3.** In fact, as the Independent Review of the Human Rights Act concluded the issue around s.3 is not the law but the **damaging perceptions** about it.

“
...there is no substantive case that UK Courts have misused section 3 or 4 ...
There is a telling gulf between the extent of the mischief suggested by some and the reality of the application of sections 3 and 4.”

[IHRAR, chapter 5, para. 182](#)

What could the Government's Rights Removal Bill mean in practice?

The removal of the s.3 interpretative duty will diminish the obligation on public bodies to apply other laws in a way that is rights respecting. This will reduce their ability to respect, protect and fulfil human rights in their decisions every day. This risks us losing the practice-based culture of ensuring rights are being upheld and will weaken accountability of public bodies and officials.

“
...Changes to section 3 thus threaten to undermine the mainstreaming of human rights and the tentative building of a ‘human rights culture’ that has taken place over the past 22 years.”

[Joint Committee on Human Rights, Human Rights Act Reform, page 30](#)

Everyone in the UK is impacted in some way by decisions of public bodies, and this will impact all of us. In particular, it will leave people, often in already very vulnerable situations, who rely on services like health, education, housing in a hugely uncertain position, with less control over their lives, removing the ability to practically challenge decisions that put their rights at risk.

The Bill will lead to an increase in laws being applied in a way that breaches people's rights. Instead, individuals would have to wait for Parliament to decide to change the legislation – which may never happen – or go to the European Court of Human Rights in Strasbourg – something which is financially and practically impossible for most people.

The Bill, and what it means in practice, would also cause a lot of uncertainty – for courts, public officials, and individuals. For example, what would any changes mean in practice? How would public officials be supported to understand and apply any changes?

Crucially, it also seems that under the Rights Removal Bill, laws that have previously been applied in a way that respects our human rights by courts and public bodies using s.3 HRA, will no longer be applied in that way. The only exception will be if a Minister decides to 'save' a human rights compatible court interpretation of a law (we have no idea which ones yet).

This means lots of laws which could be human rights respecting and have been applied in a human rights respecting way by public bodies, suddenly will be applied in a way that breaches our human rights. This is especially difficult because there is no clear list of laws which have been interpreted in a human rights respecting way because of s.3 HRA, and which, under the Bill, would no longer be interpreted in that way (and often it isn't even clear from what the court may have said). This all means that laws will suddenly have to be interpreted in different and unknown ways, creating chaos, restricting our human rights even more, and putting public bodies and their staff in an incredibly difficult and confusing position.



“This amendment has the potential to affect millions of people in the UK: those in hospitals, in care settings, those dealing with local authorities, in education, in detention settings or in social matters. Indeed, it will impact upon anyone who deals with public bodies and will likely disproportionately impact those who are the most vulnerable in society.”

- Quote from Joanna Cherry QC MP, Acting Chair of the JCHR



Protections for SEND children – C v Governing Body of a School 2018

Luke (we've made up his name) is autistic and has anxiety. His school did not meet his needs and he was excluded for behaving aggressively. However, the Equality Act 2010 (Disability) Regulations 2010 excluded disabled people with a “tendency to physical abuse” from the law's (the Equality Act's) protection against discrimination.

The court used s.3 of our HRA to interpret the regulation in question so that it did not apply to children in education who have a recognised condition that makes them more likely to be physically abusive. This filled a gap in legal protection, and ensured non-discrimination: schools now cannot exclude a disabled pupil without first providing reasonable support to try and manage their behaviour – benefiting Luke and other children.

“Any move to weaken the Human Rights Act will make it harder for children and young people with SEND to hold public authorities accountable, which undermines their rights and the protective environment the Act aims to foster.”

- Catriona Moore, Policy Manager at Independent Provider of Special Education Advice

Additional issues with the proposed changes for devolved nations

Explainer – Devolution and our HRA

Under the “devolution acts” a devolved Parliament / Assembly only has the power to make laws that comply with the rights in our HRA. If a law made by a devolved Parliament / Assembly does not comply with our HRA, it can be “struck down” (set aside) by the courts. Judges in the devolved nations must also, if possible, interpret laws as within the Parliament’s / Assembly’s power to make. This means that judges in devolved nation courts will interpret laws as complying with human rights (using the s.3 approach), if possible. See this [video](#) by the Scottish Human Rights Commission for more information on our HRA in Scotland.

The Centre for Administrative Justice in Northern Ireland has explained that, if “section 3 is repealed or significantly weakened ... incompatibility decisions would inevitably increase”. This is because courts’ ability to interpret laws as complying with human rights would be reduced, which may mean more devolved laws are incompatible and are “struck down” instead.

Also, under the devolution acts judges will still have to interpret Northern Irish, Scottish and Welsh laws in a way that is compatible with human rights, if they can. If the Bill removes s.3, which applies to Westminster laws, judges might have to take a different approach when dealing with laws made in Westminster than in the other Assemblies / Parliaments.

This will result in uncertainty and a weakening of human rights protections.



“the proposed changes [to Section 3] reflect a regressive approach that conflicts with views in Wales where the progressive interpretation of rights by the judiciary and internal human rights law is seen as a positive.”

- Welsh Civil Society Forum



What actions can you take?

We now have the Rights Removal Bill which will implement these changes (and many others we are very concerned about). It is really important that everyone continues 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 the scrapping of our Human Rights Act and the new Rights Removal Bill, as well as public officials themselves who use our Human Rights Act to create positive change every day. Sadly, this lived experience is rarely part of the debate in the UK, conveniently ignored by this government, and yet these are real life stories of how our Human Rights Act is working for people.



Get involved!

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

Come along to our [HRA Reform events](#) to [upskill](#) and let us know what the HRA means to you.

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.