



Bill of Rights 2022: Implications for children

Second Reading Briefing, House of Commons

12th September 2022

The Bill of Rights, if enacted, will significantly weaken respect for children's human rights and the ability of children to hold the UK Government and public bodies to account where their rights have been infringed. Given the impact the proposals will have on children, we have urged the Government to carry out a Child Rights Impact Assessment (CRIA) but this has not happened.¹ The Government's broader impact assessment states that children are one of the groups identified "*that may potentially be disproportionately impacted by specific aspects of the proposed changes.*" It also states that 45% of Human Rights Act claimants are children.²

Since the Human Rights Act (HRA) came into force in 2000, it has provided important protections for some of our most vulnerable children we work with, such as children in care, child witnesses, children in custody, children with special educational needs and disabilities, and refugee children (see examples on page 3-4). Such protections must remain in place.

Below we highlight some of our key concerns with the Bill although we disagree with the Bill in its entirety and urge MPs to vote against it at 2nd reading.

Further barriers to justice for children

The introduction of a permission stage will create further barriers to justice for children (clauses 15-18). We're extremely concerned about the effect introducing conditionality will have on a child's right to bring a claim under the ECHR. There are already the necessary checks in place to ensure that spurious claims cannot proceed. Section 7 of the HRA already requires a child, or anyone else, who wants to bring a claim under the HRA to show that they are a victim of a human rights breach and there are admissibility stages for legal cases in the UK which prevent frivolous, academic or unmeritorious cases from proceeding.

Clause 15 will make it much harder for children to access justice if they have to prove they have experienced 'significant disadvantage', an extra test likely to complicate, delay and add cost to proceedings. We know from our work that children already struggle to access justice, are already disadvantaged by the lengthy time taken in court proceedings, and can be far less willing to litigate breaches of their human rights as they are more reliant on their parents or carers to assist them in making such decisions. Clause 15 will have a chilling effect which will be particularly detrimental to children.

Removal of courts and public bodies' duty to interpret legislation in line with the ECHR

Clause 12 would replace the current duty, in Section 6 HRA, on public authorities to act compatibly with human rights unless they are required to do so as a result of legislation. Although Clause 12³ makes it unlawful for a public body to act incompatibly with convention rights, this is undermined by the removal of section 3 of the HRA for UK legislation to be interpreted compatibly with European Convention rights "so far as possible". The Independent Human Rights Act Review concluded that "*there is no substantive case for its repeal or amendment [of section 3]*"⁴. Section 3 is a necessary tool to allow courts and public bodies to interpret and apply legislation in a manner that is compatible with the Convention. This is an

¹ The Department for Education published a template for civil servants to facilitate policy makers to carry out a CRIA in November 2018. For more information on CRIAs see Children's Rights Alliance for England (2021) [Using Children's Rights Impact Assessments to improve policy making for children](#)

² Paragraphs 275 and 283: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1084545/bill-of-rights-impact-assessment.pdf

³ Clause 12 replaces the current duty, in Section 6 HRA, on public authorities to act compatibly with human rights unless they are required to do otherwise as a result of legislation.

⁴ The Independent Human Rights Act Review (2020) *The Independent Human Rights Act Review Final Report* p181

important measure that ensures that legislation complies with children’s human rights and removing this will significantly reduce safeguards for public services to act in a way that respects children’s rights.

Courts have a long-established role in interpreting legislation, so this is not a new nor a controversial power. In interpreting legislation, a court seeks to give effect to the will and intention of parliament; the courts rightly assumed that parliament intends its legislation to be compliant with the HRA, and therefore section 3 does not radically alter the usual principles of statutory interpretation. It does, however, enhance the importance of compliance with the Convention.

The removal of section 3 alongside the explicit carve out of legislative interpretation from public body acts in Clause 12(5)⁵ will also weaken public bodies’ obligations to comply with human rights when navigating and applying other laws. This will inevitably mean that public services will be less likely to act in a way which respects children’s human rights.

In addition to the removal of these obligations, Clause 5 of the Bill of Rights Bill prevents the application of new positive obligations on public bodies. Positive human rights obligations on public bodies provide the foundation for safeguarding children and protecting them from abuse and neglect. This safety net is particularly important for children in institutional settings.

Section 6 HRA obligations and positive obligations have helped to ensure that public authorities comply with the ECHR and that children have their rights respected without the need to go to court, but where public bodies fail to respect and protect rights, children and their families can use the HRA to take action in the courts. Sections 3 and 6 have also contributed to the development of a progressive human rights culture in Scotland which the current proposals would significantly disrupt.

Dilution of parliamentary and ministerial scrutiny

The removal of section 19 of the HRA will reduce the ability of Parliament to scrutinise the human rights implications of different legislation. Given that a wealth of legislation has an impact on children’s rights it has an important role to play in ensuring that consideration is given to these rights by both Government and Parliament in the development and scrutiny of new legislation. This view was supported by the Independent Human Rights Act Review: *“There can be no doubt that it [section 19] has had a major, transformational and beneficial effect on the practice of Government and Parliament in taking account of human rights.”*⁶ Section 19 is particularly important given there is no statutory requirement to carry out a CRIA of new policy and legislation by the Westminster Government and these are not carried out by the majority of Parliamentary Committees.

Weakening of rights protections for certain groups of children

We are extremely concerned that the Bill of Rights limits access to rights for certain groups such as children in prison and in the immigration system undermining the key human rights principle of universality.

Children in prison

We’re particularly concerned by Clause 6 of the Bill, which will apply to children in prison as well as adults. Clause 6 requires the court, when deciding whether certain human rights of prisoners have been breached, to give the “greatest possible weight” to the importance of reducing the risk to the public from persons given custodial sentences. Although the Clause exempts certain Convention rights, it could significantly undermine the ability of these children to enforce many others. As well as going against the

⁵ As set out by the Government’s Explanatory Notes of the reforms: “making it clear that public authorities (including courts) are not bound by the obligation...to interpret legislation in a way that is compatible with Convention [human] rights.” See Bill of Rights Explanatory Notes, ¶113, p. 17.

⁶ The Independent Human Rights Act Review (2020) *The Independent Human Rights Act Review Final Report* p244

universality principle of human rights, it sends out a dangerous message that this group of children are not entitled to the same treatment as other children.

Children in contact with the criminal justice system are some of the most vulnerable in society and this is particularly the case for children in prison.⁷ In 2017, the Youth Custody Improvement Board and the Youth Justice Board concluded that Young Offenders Institutions and Secure Training Centres weren't capable of caring for or rehabilitating children and the pandemic compounded the harm caused to children in prison.⁸ Clause 6 could further exacerbate ill treatment. Given that more than half of children in prison are Black or from other ethnic minority groups⁹ this clause will also disproportionately impact children from racialised groups.

Children in the immigration system

Clauses 8 and 20 of the Bill restrict the application of Article 8 (right to private and family life) and 6 (right to a fair trial) HRA in deportation cases. We are very concerned that Clause 8 could substantially limit the right to private and family life for the children of individuals being deported and young adults who have lived in the UK for most of their lives. Again, it is not compatible with the human rights principle of universality. We're very troubled by cases we have seen where the Secretary of State has attempted to deport young adults who have lived in this country most of their lives, based on crimes they committed as children.¹⁰

Where deportations are based on crimes that were committed as children, the courts have a vital role in ensuring all relevant information is taken into account in deciding whether or not deportation is necessary, including the impacts of child criminal exploitation. The time spent in this country as a child and growing up here will always be relevant in deciding whether to deport someone, and therefore allowing such people to bring Article 8 claims is necessary. We are concerned that Clause 8 will pave the way for the Government to further limit children's right to challenge their deportations and very detrimentally impact child victims of criminal exploitation.

Impact on children in devolved administrations

The UK Government has failed to properly consider the impact on devolution settlements into which the HRA is embedded. There has been scant regard for operation of the different judicial systems within the UK and engagement with the devolved administrations has been poor, with many of their concerns being ignored. Additionally, the safeguards of the ECHR and HRA, provided for by the Belfast/Good Friday Agreement remain a cornerstone of the finely balanced set of relationships in Northern Ireland and will be violated by the UK Government's current proposals. We are very concerned that that the repeal of HRA will lead to serious legal uncertainty within the devolved administrations, with significant impact on the rule of law and children's access to justice. It will also destabilise the foundation for enhanced legal protections in areas of devolved competence.

Questions to the Minister

- Given the impact of the Bill on children, will the Government commit to carrying out and publishing a Child Rights Impact Assessment?

⁷ Research carried out by HM Inspector of Prisons found that 52% had been in the care of a local authority, 25% reported having a disability and 36% reported having a health problem, including mental health issues. HM Inspectorate of Prisons (2021) *Children in Custody 2019–20 An analysis of 12–18-year-olds' perceptions of their experiences in secure training centres and young offender institutions*

⁸ Goodfellow, P., and Harris, M., (2021) *The Youth Justice System's Response to the COVID-19 Pandemic Literature Review*, Manchester Centre for Youth Studies at the Manchester Metropolitan University and the Alliance for Youth Justice.

⁹ Youth Custody Report: June 2022 <https://www.gov.uk/government/publications/youth-custody-data>

¹⁰ Just for Kids Law are currently assisting one young person subject to deportation who has lived here since he was 12 and another young person who has lived here since he was two.

- How will the Government ensure that vulnerable children are able to access justice for breaches of their human rights given the proposals set out in the Bill?
- Given the removal of the public sector duty, how will the Government ensure they safeguard vulnerable children?
- How will the Government ensure current rights protections, including enforcement and remedies, enjoyed under the ECHR and the Human Rights Act 1998 and provided for in the Belfast/Good Friday Agreement are maintained? How will the Government have full regard to the impact on devolution settlements?

Examples of how the HRA has provided important protections for vulnerable children

- Ensuring that 17-year-olds were given the right to an appropriate adult at the police station, and to have their parents notified of their whereabouts where previously they were treated the same as adults.¹¹ This previous lack of protection for 17 year-olds in police custody led to the tragic case of a child taking her own life.
- Confirming equal financial support for family and non-family members who foster children, when the High Court ruled that payments by a local authority should not discriminate against foster families on the grounds of family status.¹²
- Ensured that children in prison were entitled to the same protection and care as all other children. This landmark case found that the Children Act 1989 applies to children in custody and led to a raft of child protection policies and procedures being introduced to prisons.¹³
- Curtailed police powers to remove children under 16 years old from designated areas, when a court ruled that the power in the Anti-Social Behaviour Act 2003 to disperse children under 16 from certain areas after 9pm should only be used in cases where children are involved in, or at risk of, anti-social behaviour.¹⁴
- By families at Deep Cut Barracks using the HRA to get justice for their children who had died at the Barracks because steps had not been taken to properly safeguard and protect them.¹⁵ Using Article 2 (right to life) and Article 6 (right to a fair and public hearing) of the ECHR they successfully argued that the court should quash the findings of the previous coroners and ordered fresh inquests. This shows how positive obligations ensure that public bodies take proactive steps to safeguard children's rights and enable redress when a public body has not fulfilled its human rights obligations towards children, particularly for children in institutions.
- Preventing a woman living in poverty, who had to leave her partner after discovering he had been abusing their children, from being separated from her children. The woman and her children were placed in temporary bed and breakfast accommodation and were housed in three different places in a 6-month period. Social workers claimed she was not a 'fit' parent as she was unable to provide stability for her children and was having problems getting them to school. With assistance from a local group, the woman invoked her children's right to respect for private and family life and their right to education under the HRA, and challenged their decision. The local authority then decided not

¹¹ R(HC) v The Secretary of State for the Home Department, and the Commissioner of the Police of the Metropolis [2013] EWHC 982 (Admin)

¹² R (L and others) v Manchester City Council, High Court, 26 September 2001

¹³ R (on the application of Howard League) v Secretary of State for the Home Department and the Department of Health 2002

¹⁴ R (W) v Commissioner of Police for the Metropolis and others, 2006, EWCA Civ 458

¹⁵ <https://centreforjustice.org.uk/human-rights-stories-no-4-deepcut-how-the-families-used-the-human-rights-act-to-get-access-to-the-states-evidence-about-their-children-and-to-get-fresh-inquests-exposing-abuse-ill-treat/>

to remove the children, but to keep them on the 'children at risk' register, and within three weeks the family was able to be placed in stable accommodation.¹⁶

- Preventing a mother and her new-born baby from being made homeless. A single mother who had been refused asylum was threatened with eviction by the National Asylum Support Service (NASS), while having her second child. NASS issued a 'termination of support' notice to her while she was giving birth in hospital. The voluntary organisation supporting the woman suggested to NASS that evicting the family in these circumstances could amount to inhuman and degrading treatment under Art. 3 of the HRA and suggested the NASS reconsider the decision. The notice was amended and the woman and her children were able to receive support and alternative accommodation under the Immigration and Asylum Act 1999.¹⁷
- Secured a return to a specialist school placement for a teenager with complex special educational needs and disabilities who had been denied access to education and suffered physical and chemical restraints due to the devastating impact of loss of education and social service provision during COVID lockdowns. ¹⁸
- Secured access to education for a disabled child who had been left without access to a school placement for a prolonged period with no alternative educational arrangements in place in breach of Article 2 of Protocol 1, ECHR. ¹⁹
- Ensured that the rights to liberty and security (Article 5), a fair trial (Article 6) and respect for private and family life (Article 8) are central to the Mental Health Review Tribunal Process when considering the future of children and young people detained under the Mental Health (Northern Ireland) Order 1986 or subject to deprivation of liberty under the Mental Capacity (Northern Ireland) Act 2016.

For more information, please contact Natalie Williams, Head of Policy and Public Affairs E: NWilliams@crae.org.uk T: 07890583511.

¹⁶ *The Human Rights Act Changing Lives*, 2nd edition, British Institute of Human Rights, <https://www.bihr.org.uk/Handlers/Download.ashx?IDMF=3c184cd7-847f-41b0-b1d1-aac57d1eacc4>

¹⁷ British Institute of Human Rights (2008) *The Human Rights Act Changing Lives*, 2nd edition

¹⁸ <https://childrenslawcentre.org.uk/sedated-and-abandoned-the-struggle-to-care-for-my-disabled-daughter-during-lockdown/>

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<https://www.judiciaryni.uk/sites/judiciary/files/decisions/JR143%20%28A%20minor%29%20acting%20by%20his%20mother%20and%20next%20friend%20for%20JR%20and%20in%20the%20matter%20of%20decisions%20of%20the%20Education%20Authority.pdf>