What is the Human Rights Act and the Bill of Rights?

In 1998 the [Human Rights Act](https://www.legislation.gov.uk/ukpga/1998/42/contents) was introduced in Britain, and it was accompanied by a White Paper that proclaimed the Act would ‘bring rights home’ by enabling the enforcement in UK courts of a suite of rights. It lets you defend your rights in UK courts and compels public organisations – including the Government, police and local councils – to treat everyone equally, with fairness, dignity and respect.[[1]](#footnote-2)

The rights set out in the Human Rights Act is based on the [European Convention on Human Rights](https://www.echr.coe.int/documents/convention_eng.pdf) (ECHR)[[2]](#footnote-3) . The [Bill of Rights](https://bills.parliament.uk/bills/3227) – recently introduced by the current Government - means the UK will still remain party to the ECHR and will therefore remain bound to the Convention rights under international law. But, even with these set of rights remaining the same, the Bill “makes [major changes](https://www.newstatesman.com/quickfire/2022/06/dominic-raab-british-bill-of-rights-woke-lawyers) to the way in which those rights are to be applied, interpreted and enforced”.

The Ministry of Justice’s Bill of Rights consultation paper[[3]](#footnote-4) references a “long, proud and diverse history of freedom”, and says that common law has “been stifled by the current human rights law framework”. The recent judgment by the European Court of Human Rights that blocked the plane of asylum-seekers headed to Rwanda from taking off has played into these themes.

[Merris Amos](https://theconversation.com/profiles/merris-amos-177558), Professor of Human Rights Law, Queen Mary University of London has provided a useful explanation of what the Bill of Rights will not only mean in practice, but what it tells us about the Government’s approach to changing fundamental rights: “What the government is proposing is not merely an “update” to the Human Rights Act, as claimed in the 2019 Conservative Party manifesto. It is, instead, a wholesale revision of a fundamental feature of the UK constitution.

Among other things, it will reduce the power of UK judges where legislation is incompatible with the European Convention on Human Rights and limit important duties such as the positive duty to protect life. It will also place the UK’s membership of the European Convention on Human Rights in jeopardy by empowering UK courts and parliament to not comply with judgments of the European Court of Human Rights.

For other democracies, the process to change such an important feature of the constitution would likely take years, and would involve constitutional conventions, public consultation, a referendum or special parliamentary majorities. With the government’s current majority, the Human Rights Act could be repealed in less than a year.”[[4]](#footnote-5)

What has civil society said?

There are concerns from all parts of civil society that the Bill of Rights will erode people’s basic human rights. Organisations across civil society are particularly concerned that those already marginalised will be most under threat, corporations and institutions will be able to evade justice and our already underfunded legal system will struggle to support these people.

150 organisations and parliamentarians across the House have [written](https://www.theguardian.com/law/2022/jun/21/dominic-raab-bill-of-rights-human-rights-act-replacement-letter) to Justice Secretary Dominic Raab, calling for the Bill to be subjected to proper scrutiny, given that the proposals are of “supreme constitutional significance and have the potential to impact on the rights of individuals for many years to come”. Human rights groups have expressed their concerns about the Bill’s weakening of our existing rights – Liberty’s Director, Martha Spurrier highlighted that the Bill “prevents courts from putting legal obligations on the state to actively protect someone’s human rights”. [Equally Ours](https://www.equallyours.org.uk/) have similarly condemned the Bill, saying “it bears little relationship to the weight of the evidence submitted to the Government that overwhelmingly shows changes to the Human Rights Act are both unnecessary and harmful”.

The [Runnymede Trust](https://www.runnymedetrust.org/) believes the Human Rights Act has proved “an effective tool for challenging the abuses facing Black communities in our criminal justice system” and that fundamental change it has had in progressing race equality. Research shows that 76% of Black people do not believe that their human rights are equally protected to white people[[5]](#footnote-6). Runnymede believes that the introduction of the Bill of Rights will introduce a so-called ‘responsibilities framework’ which would in essence create “different classes” of claimants based on their past behaviour. This proposal would shift the court’s focus from the human rights violations committed by a public authority to examining the life of the person who has experienced those violations. They go on to say that this is “particularly threatening for Black and ethnic minority communities who already experience deeply disproportionate outcomes in the criminal justice system.”

[End Violence Against Women](https://www.endviolenceagainstwomen.org.uk/) Coalition (EVAW) believes that “it is clear that government plans to overhaul this legislation represents a major step backwards for victims and survivors’ ability to seek justice and a direct attack on women’s rights.” They go on to say that human rights provide victims and survivors with essential legal protections, as well as vital tools to challenge the state and its institutions for failing to protect us from gender-based violence.

[Mind](https://www.mind.org.uk/) has stated that those with mental health problems could be impacted and the changes “present a very real threat” to people’s rights and that the current Human Rights Act “offers essential protection to so many including those of us with mental health problems. This morning's proposals threaten to strip away our strongest protections.”[[6]](#footnote-7)

Bethany Bale, policy officer for [Disability Rights UK](https://www.disabilityrightsuk.org) said: “The lack of justification as to why the Human Rights Act needs abolishing and replacing with a new bill of rights is deeply concerning. The strengthening of ‘rights of wider society’ mentioned in the… consultation, without recognising that society is in essence made up of swathes of smaller groups with distinct needs which also need protection, could leave disabled people with less rights… We are concerned that the bill of rights will make it even harder for poorer and marginalised groups to access justice, and easier for institutions to escape justice.”

What does this mean for Londoners and what are funders doing?

[The Baring Foundation](https://baringfoundation.org.uk/news/) submitted evidence to the Joint Committee on Human Rights Inquiry into the Government’s Independent Human Rights Act Review[[7]](#footnote-8): “Arguably the most significant impact of the Human Rights Act has been beyond the courtroom. It has directly influenced the way public authorities make decisions as Section 6 requires public authorities to act in a way that is compatible with the rights set out in the HRA (Convention rights). When this happens, people do not have to enforce their rights as such, as they are already taken account of in the way decisions are reached and made. Rather it allows for their rights to be better understood, protected and asserted without the need to resort to litigation.”

They also sated that in the justice system there is currently a “lack of information available to individuals, advocacy and support groups and public authorities about the rights contained in the Human Rights Act – what they mean and how they apply in practice.” Which we’ve seen in the underfunding of the advice sector for years, and there is growing concern that changes to the Human Rights Act will only deepen this.

[Access to Justice](https://atjf.org.uk/) state that “two thirds of the UK population don’t know how to get legal advice and there are 14 million people living in poverty who can’t afford it. A lack of access to justice leads to issues of poverty, homelessness, ill health, unemployment, broken households, and many other social and personal difficulties.”

The new Bill of Rights, according to legal experts like [David Allen Green](https://7kzf3.r.a.d.sendibm1.com/mk/cl/f/3K21nBpeypl3ZcaYd43Gvlwi2obk_1d9sRZouo59j3Jo3Fyz5CuvCSsRRpmzXOZMDhFVsLPVKMPdU12FuWsF9yvi1suiiwiXnArp-WKJFNbc6pO2yGj9uC5NUVdyw0B62ybxKrxL9fEf1A3KiQNA_Or-0yI4QJzvs8oNKuwHWd49ED9pAkapAT6DkC592NwkWaPaQ22Kbh10NouAbedLheYXdP-3vLuV032tm15hQ8E1Ria8ZolePdV9cqfGCUidrbYv-jH5eQO3xxI7AMQiswgUrZ4jJYrCPcx0a2JLZdSyJKEJzeljelddKZx0XOlkcxm2) and [Professor Mark Elliot](https://publiclawforeveryone.com/2022/06/22/the-uks-new-bill-of-rights/) (Cambridge University) will make it “far more difficult for litigants to rely on those rights in domestic courts”. For example, the Bill will mean that UK courts will take a more restrictive interpretation of particular rights and makes them less likely to find that legislation violates the Convention on Human Rights. As a result, more claimants might be forced to take their case to the European Court of Rights in Strasbourg – a much more costly and time-consuming route.

As mentioned above those in society who are already marginalised are likely to be most affected by this, and those whose British citizenship is in question. The defeat of the Governments plans to send migrants to Rwanda by the ECHR is one of their key drivers to push through the Bill of Rights.

We already know that the advice sector is underfunded and stretched, with these changes set to make the system more in demand that it already is. As we stated in our [Strategy for Funding Immigration Advice](https://londonfunders.org.uk/resources-publications/publications/strategy-funding-immigration-advice-london), just over one third of the UK’s migrants live in London[[8]](#footnote-9), which includes migrants who have lived here for many years and their children who may be born here. Over one third (37%) of Londoners were born outside of the UK[[9]](#footnote-10), and over half (54%) of Londoners born abroad don’t hold a British passport[[10]](#footnote-11), including many EU citizens who had not, pre-Brexit, felt the need to apply for one, the Bill of Rights is therefore extremely concerning for our migrant population of London.

Further reading:

End violence against women - <https://www.endviolenceagainstwomen.org.uk/british-bill-of-rights-major-step-back-for-women-and-survivors/>

<https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/2017/11/Human-Rights-Act-report-Oct-2017.pdf>

The Conversation - <https://theconversation.com/why-uk-approach-to-replacing-the-human-rights-act-is-just-as-worrying-as-the-replacement-itself-185633>

Liberty – <https://www.libertyhumanrights.org.uk/>

Equally Ours – <https://www.equallyours.org.uk/>

1. <https://www.libertyhumanrights.org.uk/your-rights/the-human-rights-act/#:~:text=The%20Human%20Rights%20Act%20is,with%20fairness%2C%20dignity%20and%20respect>. [↑](#footnote-ref-2)
2. <https://publiclawforeveryone.com/2022/06/22/the-uks-new-bill-of-rights/> [↑](#footnote-ref-3)
3. <https://www.gov.uk/government/consultations/human-rights-act-reform-a-modern-bill-of-rights> [↑](#footnote-ref-4)
4. <https://theconversation.com/why-uk-approach-to-replacing-the-human-rights-act-is-just-as-worrying-as-the-replacement-itself-185633> [↑](#footnote-ref-5)
5. <https://committees.parliament.uk/publications/3376/documents/32359/default/> [↑](#footnote-ref-6)
6. <https://www.mind.org.uk/news-campaigns/news/mind-responds-to-proposals-to-weaken-the-human-rights-act/> [↑](#footnote-ref-7)
7. <https://committees.parliament.uk/committee/93/human-rights-joint-committee/> [↑](#footnote-ref-8)
8. <https://migrationobservatory.ox.ac.uk/resources/briefings/migrants-in-the-uk-an-overview/> [↑](#footnote-ref-9)
9. <https://commonslibrary.parliament.uk/research-briefings/sn06077/> [↑](#footnote-ref-10)
10. <https://www.trustforlondon.org.uk/issues/society/citizenship-integration-initiative/17/> [↑](#footnote-ref-11)