Bill of Rights Bill
House of Commons Second Reading
Briefing
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For further information contact

Stephanie Needleman, Legal Director, sneedleman@justice.org.uk

JUSTICE: 59 Carter Lane, London, EC4V 5AQ, tel: 020 7762 6439

Email: admin@justice.org.uk Website: www.justice.org.uk

Introduction

1. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.

2. JUSTICE has a long history of work relating to the Human Rights Act 1998 ('**HRA**'). We were involved in the process of drafting the HRA and training judges in its operation. We have contributed to various public debates and consultations on the British Bill of Rights[1] and intervened in numerous cases involving the HRA.[2] In March 2021, we responded to the Independent Human Rights Act Review ('**IHRAR**') with input from an expert advisory group, chaired by Sir Michael Tugendhat.[3] JUSTICE also provided a detailed response to the Government consultation on this legislation, again with assistance from our expert Advisory Group.[4]

3. JUSTICE is fundamentally opposed to the Bill of Rights Bill ('**the Bill**'); it is damaging to human rights protections in this country, unworkable and unnecessary. The Human Rights Act 1998 ('**HRA**') has generally been working well and there is no case for such a fundamental overhaul. Our central concerns with the Bill are:

   (a) There is **no evidential** basis for the Bill and there has been a regrettable **lack of scrutiny** for such an important constitutional change.

   (b) The legislation will **reduce domestic human rights protection**.

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[1] JUSTICE, 'A British Bill of Rights: Informing the Debate' (2007); JUSTICE, 'Commission on a Bill of Rights: Do we need a bill of rights?: JUSTICE's Response' (2011); JUSTICE, 'Commission on a Bill of Rights: Response to Second Consultation' (2012).

[2] Including *R (Ullah) v Special Adjudicator* [2004] UKHL 26; *Jones v R (Al Jedda) v Secretary of State for Defence [*2007] UKHL 58; *Cadder v HM Advocate* [2010] UKSC 43; *Home Office v Tariq* [2011] UKSC 35; *Smith & Others v Ministry of Defence* [2013] UKSC 41; and *R (Hallam) v Secretary of State for Justice* [2019] UKSC 2.

[3] Our group of experts comprised of Sir Michael Tugendhat (chair), Professor Brice Dickinson (Queen's University Belfast), Tessa Gregory (Partner, Leigh Day LLP), Dominic Grieve QC (Temple Garden Chambers), Raza Husain QC (Matrix Chambers), Jonathan Moffett QC (11KBW), Christine O'Neil (Partner and Chairman, Brodies LLP); and Professor Alison Young (University of Cambridge). JUSTICE, 'The Independent Human Rights Act Review: Call for Evidence Response' (March 2021) and Annex

[4] JUSTICE, 'Human Rights Act Reform: A Modern Bill of Rights – Consultation Response' (March 2022)

(c) The Bill **concentrates power in the executive and reduces the accountability of Government**.

(d) It will cause years of completely unnecessary **legal uncertainty and chaos**.

(e) That it risks **de-stabilising the UK's devolved settlement** and **undermining the Good Friday Agreement**.

(f) That it places the UK in **breach of our international law obligations** under the European Convention on Human Rights ('**ECHR**') and therefore **threatens our international reputation as a country that upholds the rule of law.**

4. This is, in our view, a piece of legislation that is so fundamentally flawed that it cannot be properly rectified through the usual Parliamentary amendment process. **We call on MPs to vote against the Bill at Second Reading.**

Lack of evidence and scrutiny

5. The 2019 Conservative manifesto promised that the Government would '***update*** *the Human Rights Act and administrative law to ensure that there is a proper balance between the rights of individuals, our vital national security and effective government*' (emphasis added).[5] There was no commitment to repeal the HRA or replace it with a Bill of Rights, as has been confirmed by the previous Lord Chancellor Sir Robert Buckland QC MP who helped to draft the manifesto commitment.[6]

6. To fulfil its manifesto commitment, in December 2020 the Government commissioned IHRAR chaired by the distinguished former Court of Appeal judge Sir Peter Gross. The Review's panel included senior lawyers and academics with considerable experience. It received 167 submissions from a broad range of individuals and organisations with direct experience of working with the HRA.

[5] The Conservative and Unionist Party, 'Manifesto 2019' (2019)

[6] *'I wanted to use my time before you to further develop what was in my mind as I worked to implement the Government's 2019 manifesto commitment, when I helped to draft, of updating the Human Rights Act. Updating, not replacing, you will note'*. Sir Robert Buckland QC MP, 'Human Rights Act reform: getting the focus right', *UK in a Changing Europe* (30 March 2022)

7. This serious, evidence-based analysis concluded that '*the Human Rights Act is generally working well*'[7] and proposed some limited recommendations for reform of the HRA.[8] However, the Bill side-lines the work of IHRAR. As Sir Peter Gross has commented, the Ministry of Justice's ('**MOJ**') consultation (which formed the basis of this Bill) *'does not respond to [IHRAR], is not grounded in anything even approximating the exercise [IHRAR] conducted, but nevertheless asserts that the Human Rights Act is not working well.'*[9]

8. Furthermore, a fully accessible version of the consultation (including an 'easy read' version and an audio version for the visually impaired) was not published until near the end of the consultation period.[10] The MOJ had to subsequently extend the consultation period for those who required the accessible versions until 19 April 2022.[11] This was especially concerning given the potential impact on disabled people of these changes; for example, Mind has called the legislation a *'divisive and ultimately harmful change'*[12]. It seems extraordinary that legislation of such importance was then published only two months later.

9. It is a sad irony of the Bill that one of its stated aims is to increase the democratic oversight of human rights in Parliament and yet the Government has so far severely restricted the ability of Parliament to scrutinise this legislation and decision-makers. It was extraordinary that the Government refused to agree to pre-legislative scrutiny of the Bill, as is normal for legislation of such constitutional importance. In recent years, the Building Safety Bill, the Online Safety Bill and even the Downstream Oil Resilience Bill have been given pre-legislative scrutiny. The Chairs of the Public Administration and Constitutional Committee, the Joint Committee of Human Rights ('**JCHR**'), the Justice Committee and the Lords Constitution Committee have all called for this scrutiny given the issues at stake.[13] In addition, the previous Secretary of State for Justice ('**SSJ**') pulled out of appearing before

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[7] Joshua Rozenberg, 'Raab's reforms under attack', *A Lawyer Writes* (31 March 2022)
[8] Ministry of Justice, 'The Independent Human Rights Act Review' CP 586, (December 2021), p vi – vii
[9] Joshua Rozenberg, 'Raab's reforms under attack', *A Lawyer Writes* (31 March 2022)
[10] Ministry of Justice, `Human Rights Act Reform: A Modern Bill of Rights – Consultation Response', (June 2022), para 2
[11] Ministry of Justice, `Human Rights Act Reform: A Modern Bill of Rights – Consultation Response', (June 2022), para 2
[12] Mind, 'Mind comments on UK government proposals to weaken Human Rights Act protections' (22 June 2022)
[13] Their joint letter to the SSJ dated 27 May 2022 urged the Government to reconsider on pre-legislative scrutiny given the proposals are *'of significant constitutional significance and have the potential to impact the rights of individuals for many years to come'.*

the JCHR on 20 July 2022 and their questioning of the SSJ has not been rearranged before Second Reading[14]

10. The Government justified the lack of pre-legislative scrutiny on the basis that they received 12,000 responses to their consultation and published a response.[15] However, the consultation did not contain a draft of the Bill. Furthermore, the Government has completely ignored the majority of consultation responses. The vast majority of respondents opposed the Government's proposals, including 90% who opposed introducing a permission test, 90% who opposed the proposed changes to section 3 HRA and over 80% preferring no change to the deportation test.[16]

11. The Government has not made any significant concessions in the legislation following their consultation and, in some areas, they have doubled down or even introduced issues that were not consulted on, for example, interim remedies. This is no way to approach such a fundamental constitutional change to basic rights protection in this country. The Bill should be rejected at second reading on this basis.

Reducing Domestic Rights Protections

12. This is likely the first Bill of Rights in history that seeks to reduce human rights protections. Contrary to the former SSJ Dominic Raab MP's contention that the Bill will *'[strengthen] our tradition of freedom'* and is a *'human rights enhancing innovation'*, the consequence of this legislation will be to restrict how UK judges, in UK courts and tribunals, can interpret ECHR rights domestically.[17]

13. Whilst all the ECHR rights remain set out in s2 of the Bill, the remaining sections of the Bill reduces their content and applicability in a wide variety of situations. The legislation is ultimately about the executive dictating to the judiciary when rights can be upheld and in what circumstances.

14. David Davis MP set two Conservative tests for this legislation in the First Reading debate:

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[14] Peter Walker and Rob Davies, 'Anger at absent ministers grows as Raab pulls out of bill of rights session', *The Guardian* (14 July 2022)
[15] UK Parliament, *`Bill of Rights: Question for Ministry of Justice',* (6 June 2022)
[16] Ministry of Justice, 'Human Rights Act Reform: A Modern Bill of Rights – Consultation Response' (June 2022), paras 51, 69 and 113.
[17] UK Parliament, 'Hansard: Bill of Rights' (22 June 2022)

'First, the Conservatives do not believe in an overmighty state, therefore the state has to be curbed by an independent body. Secondly, our fundamental freedoms…are not the gift of the state but the birth right of our citizens. As such, they all have to be protected by powers vested in an independent judiciary.[18]

This Bill fails both of these and must be rejected.

15. It is important to note that, as the UK will rightly remain a signatory to the ECHR, individual citizens will retain the right to petition the European Court of Human Rights ('**ECtHR**'), though many will be prevented from doing so by the time-consuming and costly process. This legislation merely weakens domestic rights and, ironically, will lead to more human rights cases being heard against the UK at the ECtHR; resulting in the scope of rights protection being shaped to a much greater extent by the ECtHR rather than domestic courts.

Interpretation of ECHR rights (Clause 3)

16. Clause 3(3)(a) will severely limit the ability of domestic courts to uphold rights where either: (i) the ECtHR has not considered the issue in question; or (ii) the issue falls within the UK's margin of appreciation. This is clearly unsatisfactory. In respect of (i), it is not clear what 'expand protection' means.[19] If it includes applying a principle of ECtHR jurisprudence to a situation that has not been considered by the ECtHR, it may not be possible to know 'without reasonable doubt' what the ECtHR's approach would be and yet the domestic court is still required to resolve the issue. It is unclear why a criminal standard of proof is required here. The clause would also reduce the ability of UK courts to speak first on an issue, being able to influence a subsequent decision of the ECtHR.[20]

17. In respect of (ii), when a matter falls within a state's margin of appreciation, the ECtHR has specifically left it up to individual states to decide how to deal with an issue.[21] This is

[18] UK Parliament, 'Hansard: Bill of Rights' (22 June 2022)
[19] Clause 3(3)(a), Bill of Rights Bill
[20] In *Animal Defenders International v UK* 48876/08, the ECtHR followed the reasoning of the House of Lords (prior to formation of Supreme Court) that upheld a ban on political advertising, despite previous ECtHR case on issue finding a breach of Article 10 ECHR.
[21] This does not necessarily mean it is up to the legislature; it will depend on the constitutional settlement of each state. As Lord Hoffmann stated in *Re: P and Others* [2008] UKHL 38 at [37], *'the margin of appreciation is there for division between the three branches of government according to our principles of the separation of powers. There is no principle by which it is automatically appropriated by the legislative branch'*. It is for the

not the same as placing a ceiling on rights protection as this Bill seeks to do. The Bill's stated intention is to *'strengthen…the primacy of UK law'* and to give more freedom to domestic courts not to follow ECtHR jurisprudence.[22] However, if this is the intention it must cut both ways, the UK courts should where appropriate be able to find breaches of rights where the ECtHR would not. Once again, the Bill instead seeks to put UK domestic courts and judges in a straitjacket.

The repeal of Section 3 HRA

18. Section 3 HRA requires that *'so far as possible'* legislation must be read and given effect in a way which is compatible with the Convention rights. It is a stronger interpretative tool than the ordinary principles of statutory interpretation and has been vital to securing the protection of rights protection for many individuals. However, as found by IHRAR, and our own analysis,[23] it has been used cautiously and in limited circumstances by the courts, in a way that allows the effectiveness of the legislation in question to be upheld and remain consistent with, and in fact support, the intention of Parliament.[24] It is worth stressing that it **cannot** be used to undermine a '*fundamental feature'* of legislation.[25]

19. The following are examples of cases where section 3 was used to ensure individuals' rights were protected:

    a. **Ensuring that a woman could have a child with her late husband's sperm (Article 8 ECHR):**[26] the Family Court found that it was lawful for a woman's late husband's sperm to be stored at a fertility clinic beyond the statutory storage period, despite the clinic not providing the proper documentation. The Court were satisfied that the proper documentation would have been completed if provided

court to apply the division in the way which is appropriate for the United Kingdom. Lord Neuberger held in *Nicklinson v Ministry of Justice* [2014] UKSC 38 at [70] that, since the ECtHR had concluded that member states enjoy a wide margin of appreciation on the issue of assisted dying, it was for the national courts to decide how to accommodate the article 8 rights of those who wish and need assistance to kill themselves and the competing interests of the prevention of crime and the protection of others.

[22] Ministry of Justice, Bill of Rights Bill Explanatory Notes, p 5.

[23] We analysed 593 cases between 1 January 2013 and 31 December 2020, where section 3 HRA was referred to. In 24 cases, section 3 HRA was used to interpret legislation that would otherwise have been incompatible with Convention rights. In another 30 cases, section 3 was used to support (or as an alternative to) an interpretation reached using normal statutory interpretation

[24] Ministry of Justice, 'The Independent Human Rights Act Review', see n.8 above, paras. 34 – 80.

[25] *Ghaidan v Godin-Mendoza* [2004] UKHL 30 at [33].

[26] *Elizabeth Warren v Care Facility (Northampton) Limited* [2014] EWHC 602

and used section 3 HRA to ensure that the error in documentation was not fatal for the widow.

b. **Ensuring that same-sex couples have the same survivorship rights (Article 8 and Article 14 ECHR):**[27] the Rent Act 1977 stated that survivorship rights only applied to the wife and husband of a heterosexual couple (prior to same-sex marriage being legalised). Section 3 HRA enabled the courts to interpret the Rent Act 1977 to also apply to same-sex couples, so they were not discriminated against.

c. **Granting Windrush victims the chance to have their citizenship confirmed (Article 8 and Article 14 ECHR):**[28] two victims of the Windrush scandal successfully challenged the Home Secretary for breaching their human rights when refusing their citizenship applications. The individuals were refused by the Home Office as they had not been physically present in the UK for five years as a result of the Windrush scandal. Section 3 HRA allowed the Court to interpret the British Nationality Act 1981 as permitting a discretion in these circumstances.

20. Without a section 3 equivalent power, the courts would only have been able to issue a declaration of incompatibility in these cases. This would have meant waiting a significant period of time for the law to be made compatible, given the already stretched parliamentary timetable.[29] Further, it is likely that subsequent legislative changes would not have achieved justice for these individuals as such changes (if implemented) would likely only be prospective. Requiring a declaration of incompatibility and use of the remedial process, rather than reading the legislation compatibility would therefore result in unnecessary delays for individuals impacted as well as avoidable work for parliamentarians. In fact, the Government often actively asks the courts to use their section 3 interpretive power instead of issuing a declaration of incompatibility.[30]

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[27] *Ghaidan v Godin-Mendoza* [2004] UKHL 30

[28] *R (on the application of Vanriel & Tumi) v SSHD* [2021] EWHC 3415

[29] The average time lag taken to deal with declarations of incompatibility in the UK was 25 months (Jeff King, 'Parliament's Role following Declarations of Incompatibility under the Human Rights Act' in Murray Hunt, Hayley Hooper, and Paul Yowell, Parliaments and Human Rights: Redressing the Democratic Deficit (Hart 2015))

[30] For instance, Lord Mance told the JCHR that: '*In my experience, it is in no way uncommon that, in this situation, where a question of incompatibility arises, the government lawyers on instruction invite the court to use Section 3 rather than make a declaration of incompatibility. It avoids Ministers getting a degree of egg on their face through having stood up in Parliament and certified compatibility. It means that the legislation is compatible, and courts, not surprisingly, give some attention to that sort of request.*'; JCHR, 'Oral Evidence: Human Rights Act reform' HC 1033 (2 February 2022).

Positive obligations (Clause 5)

21. The Bill severely restricts domestic courts' ability to enforce positive obligations, defined in the Bill as a public authority having *'an obligation to do any act'*.[31] Any practical understanding of human rights recognises that the State is at times required to act to protect rights. Restricting a public authority from having to *'do any act'* to protect rights will render human rights protection illusory.

22. It is incredibly difficult for a court or public authority to distinguish between a positive and negative obligation arising from the ECHR.[32] There are even positive obligations contained in the text of the ECHR itself, for example the requirement to inform an individual of the criminal charges against them[33] or the requirement to provide an effective domestic remedy.[34]

23. The Government's overly broad definition of a positive obligation means that domestic rights protections will be drastically reduce in two deeply concerning ways.

24. First, clause 5(1) **puts a permanent freeze on domestic courts finding any new situations where a public authority is required to act to protect an individual's human rights.** This is an incredibly regressive approach which means that, as society adapts and the role of Government changes, the Government will not be required to change the way it acts accordingly to ensure that rights continue to be protected. When the ECHR was drafted, the Internet did not exist, sex between men was illegal and those with mental health problems were thought of as 'defective' and sent to asylums.[35] The COVID-19 pandemic was not anticipated but raised unique and unforeseen issues in the relationship between individuals and the State.[36] No-one would now suggest that these

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[31] Section 5(7) Bill of Rights Bill

[32] The Supreme Court has acknowledged the difficultly in classifying positive and negative obligations, noting that *'the boundaries between them are not susceptible of precise definition';* Lord Wilson in *R (on the application of T and another) v SSHD* [2014] UKSC 35 at [26]

[33] Article 5(2) ECHR;

[34] Article 13 ECHR

[35] Mental Health Foundation, 'Our History' (mentalhealth.org.uk)

[36] For example, following a judicial review pre-action letter which included human rights grounds, the National Institute for Health and Care Excellence ('NICE') agreed to amend their COVID-19 guidance to better protect those with autism, learning difficulties and/or mental disorders. Hodge Jones & Allen, 'NICE amends COVID-19 critical care guideline after Judicial Review challenge' (31 March 2020)

areas did not raise issues of fundamental human rights that required actions by the State to address.

25. Second, clause 5(2) **requires the courts to reassess whether previous positive obligations should continue to apply and gives a clear steer that many should be overturned**.[37] The clause requires the courts to give *'great weight'* to factors such as the impact on a public authority and its resources. However, the court will have already considered these factors and decided that there should still be an obligation on the State to act. Furthermore, the obligation to act is not an overly stringent one. For example, in *DSD* (see paragraph 26 below), it was made clear that the duty only applied where there were 'serious defects' in a police investigation that led to an infringement of Article 2 and 3 ECHR.[38] By asking the courts to give "great weight" to these factors, the courts are being told to revisit these cases, ensuring that the impact on public authorities trumps the protection of individuals' rights.

26. Clause 5 puts the following (and other) positive obligations found by the courts in serious legal doubt and, had Clause 5 been in place when these cases were decided, it is unlikely a positive obligation would have been found. These are examples where positive obligations have protected some of the most vulnerable individuals in this country:

    a. **The obligation to protect victims of serious sexual offences (Article 3 ECHR):** [39] several victims of the so-called 'Black Cab rapist' John Worboys were awarded compensation as serious investigative police failures violated Article 3 ECHR (the right not to be subject to torture or inhuman or degrading treatment). The police were under a duty to carry out a competent criminal investigation after credible evidence was received.

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[37] The Government consultation places heavy emphasis in its justification for this section on the case of *Osman v UK* 23452/94, where the police are required in limited circumstances to provide threat to life notifications. The ECtHR in *Osman* made clear that such an obligation *'must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities'.* Domestic courts have reiterated that the *Osman* test *'stringent'* (see *Chief Constable of the Hertfordshire Police v Van Colle* [2008] UKHL 50). It is unclear why this decision requires a fundamental overhaul of our entire human rights regime, rather than addressing any particular concerns in more targeted legislation. As we set out in our Consultation response at para 155, states are given a 'margin of appreciation' in relation to positive obligations and there are many examples of courts already refusing to expand their scope.

[38] Commissioner of Police of the Metropolis v DSD [2018] UKSC 11 [98]

[39] Commissioner of Police of the Metropolis v DSD [2018] UKSC 11

b. **The obligation to protect vulnerable hospital patients (Article 2 ECHR):**[40] an NHS Trust had a duty to take reasonable steps to protect a seriously mentally unwell patient who was at real and immediate risk of suicide. The patient, Melanie, aged 24, had been released from hospital despite serious concerns about her suicide risk. She subsequently committed suicide.

c. **The obligation to ensure that female prisoners were protected from unnecessary strip searches (Article 3 and Article 8 ECHR):**[41] the Secretary of State had a duty to ensure that a company running the prison had adequate and effective arrangements in place to protect against widespread and systemic unlawful strip searches of female prisoners, many of whom has been subject to sexual, physical or psychological abuse.

d. **The obligation to protect children from neglect and abuse (Article 3 and Article 8 ECHR):**[42] Social services had failed to intervene for four and a half years to protect four children, despite being aware of serious neglect and abuse. They were under a duty to use the powers available to them to protect the children from serious, long-term neglect and abuse.

27. We wholly agree with the End Violence Against Women Coalition who have said that *'there is no reasonable justification for seeking to curb obligations on public authorities to protect people's human rights; this move simply seeks to absolve the state of responsibility in this area and will drastically impact victims and survivors of abuse'.*[43] (emphasis added)

28. The drastic reduction in positive obligations, and the freeze on any new obligations going forward, will lead to a radical reduction in domestic human rights protections. The Government has failed to consider the many circumstances in which positive obligations have strengthened the rights of individuals and good governance; creating positive changes to policies, practices and the decision-making of the public authorities we all rely upon. The Victims' Commissioner and Domestic Abuse Commissioner have both said that *'the restriction of positive obligations in the proposals would disproportionately hinder*

[40] *Rabone and Anor v Pennine Care NHS Foundation Trust* [2012] UKSC 2
[41] *R (LW & Others) v Sodexo Limited and the Secretary of State for Justice* [2019] EWHC 367
[42] *Z & Others v United Kingdom* [2001] ECHR 333
[43] The End Violence Against Women Coalition, 'British Bill of Rights is a major step back for women and survivors' (21 June 2022)

victims and survivors of domestic abuse and sexual violence from being able to enforce their rights to support'.[44] Clause 5 would send a dangerous message to those public authorities that they can reduce standards and focus less on the dignity of each individual in our society.

Public protection (Clause 6)

29. Clause 6 would require courts, when considering human rights violations committed against individuals serving a custodial sentence, to '*give the greatest possible weight to the importance of reducing the risk to the public*' from such individuals. While the Bill does not provide a definition for '*custodial sentence*', clause 6(4) would allow the SSJ to specify its scope through regulations at a later date. The provision only applies to '*relevant Convention right[s]*', defined at clause 6(7) to include the whole ECHR except only Articles 2 (right to life), 3 (prohibition of torture), 4(1) (prohibition of slavery), and 7 (no punishment without law).

30. The protection of the public from harm, especially through criminal activity, is an essential function of the State. The law already requires courts, including the Parole Board, to consider public protection when deciding to incarcerate, release, or recall an individual to prison.[45] However, despite its importance, the UK is obliged to ensure that all measures oriented towards this policy aim are proportionate and in compliance with its domestic and international obligations. However, it is difficult to see how any risk that an individual serving a custodial sentence poses – even if deemed to be minimal or manageable by the Parole Board – could be outweighed by 'public protection' where the 'greatest possible weight' must be ascribed as required by this clause. In effect, the clause would oust human rights claims – regardless of the severity of the breach – for an entire category of people. This is plainly unacceptable.

31. In addition, clause 6(3) makes clear the primary focus for this section is parole and segregation decisions. First, human rights laws do not prohibit segregating prisoners provided the segregation pursues a legitimate aim, is necessary and proportionate and is

[44] Victims Commissioner and Domestic Abuse Commissioner, Letter to Dominic Raab MP (10 June 2022)
[45] See section 57 of the Sentencing Act 2020, which requires that courts '*must have regard*' to '*the protection of the public*' when the court deals with an adult '*offender for an offence*'. The Criminal Justice Act 2003 (as amended by section 125 of the Legal Aid, Sentencing, and Punishment of Offenders Act 2012) also provides that that the Parole Board cannot release an individual unless it '*is satisfied that it is no longer necessary for the protection of the public that [the individual] should be confined*'.

in accordance with the law. This was confirmed in the case of *Syed.*[46] The State is already capable, therefore, of addressing the issue of public protection without dismantling the important safeguards which the HRA provides. Second, it is of note that the recent report on *'Terrorism in Prisons'* by the Independent Reviewer of Terrorism Jonathan Hall QC did not make any recommendations in relation to human rights laws.[47] Indeed, we note that the report makes no mention of the HRA at all.

32. The proposal would severely impact some of the most vulnerable individuals, and undermine the Government's stated aim of encouraging the rehabilitation of people in prison.[48] In the case of *LW* cited above at paragraph 26 above, the issue was not whether strip searches were lawful under any circumstance but that the SSJ's policies needed to be followed when a strip search was undertaken and that the SSJ had not put in place proper monitoring procedures of the prison operator. If the Bill had been in place, with the *'greatest possible weight'* applied to public protection factors, a court may have found that the disproportionate search and incorrect procedure was lawfully carried out because of the prison officer's desire to ensure the prison was safe. This would severely undermine vital procedural safeguards.

33. Similarly, the clause would impede the ability of vulnerable women in the criminal justice system seeking redress. Only last year, the Prisons and Probation Ombudsman highlighted numerous severe failings on the part of HMP Bronzefield when a vulnerable young woman gave birth alone in her cell. The prison failed to provide the necessary care and supervision, despite numerous clear risk factors. As a result, the baby died.[49] Clause 6 would capture scenarios like this and remove rights from those who most need them – decimating important avenues for holding the State accountable for how it treats those in prison.

34. Finally, clause 6 would undermine the ability to hold the State accountable. Challenges to the State in these areas are important ways of ensuring that public services, including prisons, act within the law. The rule of law requires that every individual, no matter how

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[46] In *R (on the application of Syed) v The Secretary of State for Justice* [2019] EWCA Civ 367, it was confirmed that it was proportionate to segregate the individual given his risk to others. However, the Secretary of State for Justice had accepted that there were procedural errors in the decision to segregate the individual, policy was not followed, and the individual was not able to make representations about his segregation. A technical finding of a breach of Article 8 ECHR was made but no damages were awarded.

[47] Jonathan Hall QC, 'Terrorism in Prisons' (April 2022)

[48] Ministry of Justice, 'New prison strategy to rehabilitate offenders and cut crime' (7 December 2021)

[49] Prisons and Probation Ombudsman, 'Independent investigation into the death of Baby A at HMP Bronzefield on 27 September 2019' (September 2021)

heinous their criminal offence, is entitled to due process of law. This clause potentially fatally undermines that principle and sets a dangerous legal precedent.

Decisions made by Parliament (Clause 7)

35. Clause 7 seeks to severely restrict the courts' role in determining whether an appropriate balance has been struck between different policy aims and different Convention rights. It requires the court to regard Parliament as having decided the appropriate balance the different policy aims/ rights in passing the legislation in question. This is essentially asking the courts to assume that Parliament (almost) always strikes a balance that is rights complaint. However, this may not always be the case; as Lord Mance stated in *Nicklinson,* '*whilst the legislature is there to reflect the democratic will of the majority, the judiciary is there to protect minority interests, and to ensure the fair and equal treatment of all'*.[50] This clause does not reflect this basic principle of a society based in the rule of law. By reducing the role for the courts, it would leave individuals (especially those who are marginalised) without protection.

36. The possibility of Parliament passing legislation that does not uphold individual rights is further increased by the removal of the s.19 HRA obligation for the minister in charge of the bill to make a statement regarding their view of the compatibility of the Bill with the ECHR.

37. In addition, the clause fails to recognise the complexity of the legislative process. Parliament legislates at a high level as to what should happen. As demonstrated by the examples at paragraph 19 above, in relation to section 3 HRA, just because Parliament has passed legislation cannot automatically mean that Parliament has puts its mind to the particular facts of the case before the court, or even the risk of the issue in question arising.

Immigration (Clause 8)

38. Clause 8 seeks to insulate the Secretary of State for the Home Department ("**SSHD**") against a future challenge to hypothetical immigration legislation that would drastically reduce Article 8 ECHR rights. It does so by providing that the courts may not find deportation legislation incompatible with Article 8 unless it would result in '*manifest harm*'

[50] *R (on the application of Nicklinson and Another) v MoJ* [2014] UKSC 38 [164]

to a 'qualifying member' of the foreign national offender ("**FNOs**") family that is '*so extreme*' that it would override the '*paramount public interest*' in removing the FNO from the UK. 'Extreme' is defined as '*exceptional and overwhelming*' and '*incapable of being mitigated to any significant extent or is otherwise irreversible*'.[51]

39. It is important to put this provision into context: there has never been a case where a judge has declared legislation or immigration rules to be as a whole incompatible with Article 8 rights.[52] This is despite the current law already being stringent and successive governments tightening the legal test. This raises serious concerns about the extreme nature of the legislation in mind.

40. FNOs already have to demonstrate that their deportation would be *'unduly harsh'* on a partner/ child or that there would be *'very significant obstacles'* to their integration if they were deported. *'Very compelling circumstances'* are required when their sentence is in excess of four years imprisonment.[53]

41. The potential future Article 8 test, as anticipated by this clause, would decimate Article 8 rights to the point of them being unusable. The proposed test limits the consideration of the impact of an individual's deportation to 'qualifying family members' only – either 'qualifying children' or other British dependents. It therefore excludes consideration of the impact of deportation on non-dependent family members. Further the definition of 'qualifying child' means that the courts will not be allowed to consider the impact of deportation on children who are not British citizens or have not lived in the UK for seven years. This would not only breach our obligations under the ECHR but also the UN Convention on the Rights of the Child (incorporated into UK immigration law through s.55 Borders, Citizenship, Immigration Act 2009).[54]

42. The UK presently has a considerable 'margin of appreciation' in Article 8 decisions by the ECtHR. However, as was confirmed in *Ndidi v UK,* this is only when domestic decision-makers and an independent tribunal have considered all relevant factors, including complete family ties, length of time in the UK, the personal circumstances of the applicant

[51] Clause 8 Bill of Rights Bill
[52] Colin Yeo, 'What will be the impact of the Bill of Rights Bill on immigration cases?', *Free Movement* (1 August 2022)
[53] Section 19 Immigration Act 2014
[54] Section 55 Borders, Citizenship and Immigration Act 2009

and the impact on any children.[55] By reducing the factors the courts can consider, this will only lead to an increase in cases going to the ECtHR; inevitably delaying the final outcome and incurring a significant amount of unnecessary costs.

Overseas Military Operations (Clause 14)

43. Clause 14 would prohibit domestic legal proceedings being brought against a public authority for breach of ECHR rights in relation to an act (or proposed act) done outside the British Islands in overseas military operations.[56]

44. We concur with the analysis of specialist experts in this area, such as the Centre for Military Justice (who advise current and former members of the armed forces / their families).,[57] Clause 14 defines 'overseas military operations' very widely (to include acts done in the UK in relation to overseas operations) and the Centre for Military Justice have said the clause would make rights protections *'illusory'* in overseas military operations.[58]

45. The Government recognises that Clause 14 would breach the UK's obligations under Article 1 and Article 13 of the ECHR. This is why they have provided a commencement clause that states that the provision will come into force *'only if the Secretary of State is satisfied…that doing so is consistent with the United Kingdom's obligations under the Convention'.*[59] The Government's impact assessment states that *'alternative remedies will be introduced through later legislation'.*[60] It is unclear how the Government proposes to meet the requirements of the ECHR domestically without permitting human rights litigation, especially when they have stated there is no *'unilateral domestic legislative solution'* to their identified problem.[61] Parliament should not give the Secretary of State the power to commence clause 14 without any detail of what the Government intends to replace it.

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[55] *'…in Article 8 cases, the Court has generally understood the margin of appreciation to mean that, where the independent and impartial domestic courts have carefully considered the relevant facts, applying the relevant human rights standards consistently with the Convention and its case-law, and adequately balanced the applicant's personal interests against the more general public interest in the case, it is not for it to substitute its own assessment of the merits…for that of the competent national authorities'* *Ndidi v UK* 41215/14

[56] Clause 14(1), Bill of Rights Bill

[57] Centre for Military Justice, 'The Bill of Rights: Tipping the scales against service personnel' (30 August 2022)

[58] Centre for Military Justice, 'The Bill of Rights: Tipping the scales against service personnel' (30 August 2022)

[59] Clause 39(3) Bill of Rights Bill

[60] Ministry of Justice, 'Bill of Rights Impact Assessment' (19 June 2022), para. 152

[61] Ministry of Justice, 'Human Rights Act Reform: A Modern Bill of Rights: A consultation to reform the Human Rights Act 1998' (December 2021), para. 280

46. On the substance, JUSTICE is of the view there is no issue in principle with the extra-territorial effect of the ECHR to UK armed forces abroad, especially when these cases often involve serious allegations of unlawful killing or torture. The armed forces are already under other legal obligations, such as the Geneva Convention and UK criminal law. The Ministry of Defence ('**MoD**') have stated they cannot identify any treatment of a detainee that would be possible under the Geneva Convention and UK criminal law but prohibited by the ECHR.[62]

47. The application of human rights law to members of the armed forces allows them (and their families) to benefit from its protections when on overseas operations. The Supreme Court, in *Smith v MoD,* found that the MoD owed a duty to soldiers under Article 2 ECHR to provide them suitable equipment to safeguard their life.[63] The Centre for Military Justice have highlighted a number of examples in their briefing as to how human rights have helped service personnel and their families achieve justice, including rape victims and victims of botched investigations.[64] Clause 14 would end that protection.

Conclusion

48. In short, the Bill would drastically reduce domestic human rights protections and lead to countless individuals failing to secure justice in UK courts for breaches of their rights, as they have been able to do since the HRA was incorporated.

Concentrating power in the hands of the executive and reducing Government accountability

49. The Government's consultation response stated that the Bill would "provide a much clearer demarcation of the separation of powers between the courts and Parliament."[65] However, rather than upholding the separation of powers, this Bill would concentrate power in the hands of the executive and shield them from challenge and accountability. It gives the Secretary of State unprecedented powers to change legislation; requires the

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[62] M. Hemming, 'Written Evidence to the Defence Committee, UK Armed Forces Personnel and the Legal Framework for Future Operations' (January 2014), para. 8

[63] *Smith and Others v Ministry of Defence* [2013] UKSC 41; though made clear that the court should avoid putting *'unrealistic or disproportionate'* positive obligations on the state in a military context [76] and that a *'very wide measure of discretion'* should be given to those planning operations [81].

[64] Centre for Military Justice, 'The Bill of Rights: Tipping the scales against service personnel' (30 August 2022)

[65] Ministry of Justice, 'Human Rights Act Reform: A Modern Bill of Rights – Consultation Response', (June 2022), p. 4

courts give preference to the impact on public authorities over the impact on individuals; and shields the Government from accountability for breaches of Convention rights.

Giving the Secretary of State the power to unilaterally change legislation (Clause 40)

50. As set out above, the Government intends to repeal the interpretative power contained in section 3 HRA. This raises the question of what happens to previous interpretations of legislation made by the courts under section 3 HRA. The usual approach would be to confirm that all previous section 3 interpretations remain in place, until Parliament (or the executive for secondary legislation) makes the proactive decision to change the law.[66] However, instead, Clause 40 of the Bill gives the Secretary of State the power to amend or modify any primary or secondary legislation to *'preserve or restore'* a relevant court judgment that "*appears to the Secretary of State to have been made in reliance on section 3*".[67] Clause 40 has a two-year sunset clause.

51. This is an unprecedented Henry VIII clause which gives the Government significant power to amend vast areas of law **without parliamentary oversight**. The clause also allows the Secretary of State to save only certain elements of section 3 interpretations, leaving the Secretary of State *'free to 'save' only those elements of s.3 interpretations they deem desirable and purge what remains by omission'* potentially leaving *'legislation changed beyond recognition and operating in a manner that bears little resemblance to the statute passed by Parliament or the 'relevant judgment' the SoS is supposedly preserving'.*[68]

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[66] See, for example, the approach of the Government in relation to EU law during the Brexit process which they said *'maximises certainty for individuals and businesses, avoids a cliff edge and provides a stable basis for Parliament and, where appropriate, devolved institutions to change the law where they decide it is right to do so';* Department for Exiting the European Union, 'EU (Withdrawal Bill Factsheet 2: Converting and preserving law' (13 July 2017).

[67] Ministry of Justice, 'Bill of Rights Explanatory Notes' (22 June 2022), at para. 264; *'this includes the power for the Secretary of State to amend primary or subordinate legislation to preserve or restore the effect of legislation that has been interpreted or applied using section 3 of the HRA so that this is not lost on repealing the HRA'.*

[68] Stefan Thiel, 'Henry VIII on steroids – executive overreach in the Bill of Rights Bill' *UK Constitutional Law Association* (6 July 2022)

Elevating the views of the executive and public authorities

52. In a number of places, the Bill requires the courts to give "great weight" to the matters that are within control of the public authority and to therefore preference the public authority's views and position over that of individuals' seeking to enforce their rights.[69] Whilst public policy of an elected government is undeniably an important factor to consider (as is confirmed by the ECHR), this is not the overriding consideration that should be taken into account when someone's fundamental rights are breached.

53. For example:

    a. Clause 5 requires that courts must give 'great weight' to the impact of a positive obligation on the ability of a public authority to perform its functions and on the public authority's financial resources.

    b. Clauses 18(6) and 18(7) require the courts give 'great weight' to the impact of any damages award on the ability of <u>any</u> public authority to 'perform its functions', including future awards in similar cases. This is factor is overly broad; it will be arguable for the public authority that an award of any level of compensation is likely to have some kind of impact on a public authority now or in the future.

    It is the public authority who will claim to have the authoritative perspective and information on these factors, and they will be very difficult for the individual to dispute. Further, it should be for the courts to what weight to give these factors in the circumstances, rather than weighting the scales heavily in favour of the defendant public authority.

54. Clause 20(3) limits a court or tribunal's power to question assurances received by Secretary of State in deportation proceedings. It requires a court or tribunal to "*presume that the Secretary of State's assessment of those assurances is correct*" and determinative of the appeal (unless it "*could not reasonably conclude that the assurances would be sufficient to prevent a breach of the right to a fair trial so fundamental as to amount to a nullification of that right.*' It is a serious breach of the separation of powers to require courts to consider assurances of the SSHD as determinative in an appeal. It is a

[69] Daniella Lock, '<u>Three Ways the Bill of Rights Bill undermines UK sovereignty</u>' *UK Constitutional Law Association* (27 June 2022)

fundamental feature of the rule of law that courts must be able to properly scrutinise the position of the executive.

55. In addition, the suggestion in clause 7, that if Parliament has enacted legislation that must automatically be determinative of that legislation striking the right balance between Convention rights and policy aims, is contrary to the separation of powers. In particular, this provision needs to be viewed in the context of concerns about the relationship between Parliament and the executive, and the erosion of parliamentary power. As pointed out by the House of Lords Secondary Legislation Scrutiny Committee[70] and the House of Lords Delegated Powers and Regulatory Reform Committee,[71] the balance of power has shifted away from Parliament towards the executive, with bills becoming skeletal, leaving all the detail that will have a direct impact on the public to secondary, executive made, legislation. So, whilst clause 7 may on its face look like a shift of the balance of power to Parliament, it is in reality a shift of power towards the executive. Primary legislation will be unchallengeable in the courts, leaving the executive the wide power to make delegated legislation.

Barriers to holding the Government to account

56. The Bill further tips the balance of power in favour of the executive by putting in place a number of barriers that would prevent the executive from being held to account for breaches of individuals' rights.

Permission Test (Clause 15)

57. The Bill introduces a permission test for individuals seeking to enforce their rights. The court may only grant permission if the claimant (a) is (or would be) a victim for the purpose of individual applications to the ECtHR under Article 34;[72] and (b) has "*suffered (or would suffer) a significant disadvantage in relation to the act*".[73]

[70] House of Lords Secondary Legislation Committee, 'Government by Diktat: A call to return power to Parliament', (24 November 2021)
[71] House of Lords Delegated Powers and Regulatory Reform Committee, 'Democracy Denied? The urgent need to rebalance power between Parliament and the Executive', (24 November 2021)
[72] Clause 13(6), Bill of Rights Bill
[73] Clause 15(3), Bill of Rights Bill

58. There are already a number of barriers to bringing a human rights claim in domestic courts[74] and tools which the courts can use to dispose of unmeritorious claims.[75] The permission stage will add a further barrier to rights claims, likely dissuading individuals from enforcing their rights through the courts and reducing the accountability of public bodies. Public bodies would be free to breach individuals' rights so long as those breaches did not cause a "*significant disadvantage*".

59. The Explanatory Notes state that "*The introduction of a permission stage will ensure that courts focus on serious human rights based claims*".[76] However, the proposed permission test, unlike the judicial review permission test, is not related to the merits of the claim.[77] Instead it focusses on the level of disadvantage caused to an individual by any human rights breach. This suggests that some unlawful human rights breaches are less deserving of redress then others and drives a coach and horses through the fundamental concept of the universality of human rights. As the academic Alison Young has said, *"sometimes a human right can be harmed in a way that is serious, but where this may not be seen as one that gives rise to a significant disadvantage or creates large costs'.*[78] For example, the Information Commissioner's Office has warned *'there is a risk that genuine claims (where the extent of harm does not come to light at the permission stage) might not be able to proceed'.*[79]

60. The Government justifies the introduction of a permission test on the basis that it is identical to the test for making a claim to the ECtHR under Article 35 ECHR.[80] However, it is inappropriate to compare an international apex court to a domestic court. First, to bring a claim in Strasbourg, all domestic remedies will need to have been exhausted. The domestic permission stage would apply at the very initial stage of a claim. You would not

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[74] For example, means and merits tests for Legal Aid; costs risks if not publicly funded; difficulties obtaining legal representation; if legal representation cannot be obtained, difficulties understanding the law and legal processes as a litigant in person.

[75] Including: normal standing rules for judicial review; the existing permission stage for judicial review; a general minimum "threshold of seriousness" requirement in many aspects of UK law, for example defamation; strike out; summary judgment.

[76] Ministry of Justice, 'Bill of Rights Explanatory Notes' (22 June 2022), para. 17

[77] Judiciary for England and Wales, 'The Administrative Court Judicial Review Guide 2021' (July 2021), p. 46; *'The judge will refuse permission to apply for judicial review unless satisfied that there is an arguable ground for judicial review which has a realistic prospect of success'*

[78] Alison Young, 'Human Rights Act Review: Rights and responsibilities'**,** *Constitutional Law Matters,* (14 February 2022)

[79] Information Commissioner's Office, 'The Information Commissioner's response to the Ministry of Justice consultation on Human Rights Act Reform', (2022), para. 4.12

[80] Ministry of Justice, 'Bill of Rights Impact Assessment' (19 June 2022), para. 37

expect that a County Court hearing a damages claim should apply the same permission test as the Supreme Court.[81]

61. Second, the introduction of the admissibility criterion at the ECtHR was to tackle a serious backlog of cases. However, we are not aware that the same issues apply to civil cases in the UK, and the Government has not provided any substantive evidence of this. Further it is not at all clear that the introduction of the admissibility criterion has reduced the Strasbourg's backlog and workload.[82]

62. The proposed permission test is a solution in search of a problem. There is no evidence the present system is not working, the Government acknowledges it will add bureaucracy and costs to an already stretched justice system,[83] it will disadvantage those who already struggle to seek justice and undermine the rule of law by allowing public authorities to act with impunity.

Damages (Clause 18)

63. Damages for human rights breaches both ensure that victims are compensated for damage caused by violations of their rights by public authorities,[84] and incentivise the State to uphold the individual rights set out in the ECHR.[85] The approach to damages set out at Clause 18 of the Bill threatens to undermine both of these purposes.

64. It is a fundamental principle of domestic and international human rights obligations that rights are for everyone, regardless of prior conduct.[86] Making damages contingent on the victim's conduct, in particular conduct which is unrelated to the claim, raises worrying questions about who is considered 'deserving' of compensation. Clause 18(5) is

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[81] Supreme Court of the United Kingdom, Practice Direction 3, at PD 3.3.3: *"an arguable point of law of general public importance which ought to be considered by the Supreme Court at that time, bearing in mind that the matter will already have been the subject of judicial decision and may have already been reviewed on appeal."*

[82] D. Shelton, 'Significantly Disadvantaged? Shrinking Access to the European Court of Human Rights' *Human Rights Law Review,* Volume 16. Issue 2, 2016, p. 303 – 322.

[83] Ministry of Justice, 'Bill of Rights Impact Assessment', (19 June 2022) para 165

[84] See examples of non-pecuniary harm which can be severe: proven psychiatric harm in *DSD & Anor v The Commissioner of Police for the Metropolis* [2015] WLR 1833; *Re H (Parental Responsibility: Maintenance)* [1996] 1 FLR 867; *Kate Wilson v (1) The Commissioner of Police of the Metropolis and (2) National Police Chiefs' Council* IPT/11/167/H (24 January 2022).

[85] *Brennan v City of Bradford MBC* [2021] 1 WLUK 429 at [210]: awards should be kept modest '*but not minimal because this would undermine respect for Convention rights'.*

[86] *RB (Algeria) v SSHD* [2009] UKHL 10, [210].

sufficiently wide to potentially cover a sizeable percentage of the UK population having a reduced entitlement to redress when their rights are violated (and their conduct was not relevant to the rights breach). For example, there are around 11 million people in the UK who have a criminal record,[87] and many of these come from backgrounds of socio-economic disadvantage.[88]

65. Clause 18(6) requires the court to give '*great weight'* to the importance of minimising the impact of any damages award on the *'ability of the public authority, or of any other public authority, to perform its functions'.* By virtue of clause 18(7), this includes considering the impact of future awards of damages that may be made in similar cases. This overly broad clause fails to recognise the incentivisation that damages can provide to ensure that public authorities protect fundamental human rights; leading to improved practices and benefits for all who use public services. The Government has recognised the need to provide compensation in other circumstances, such as the Windrush compensation scheme[89] or the victims of the contaminated blood scandal.[90] There is no reason why the same logic should not be applied to human rights damages.

66. If the Government is concerned about the costs of compensation, the clear solution is for the State to act in a way that is compliant with the Convention. The Government should not be considering watering down one of the key avenues for compliance where the fault for compensation amounts rests solely with their own decision-making processes. This clearly contrasts with the Ministry of Justice's stated commitment to improving the service and support victims receive and "*guarantee that victims are at the heart of the criminal justice system*".[91]

Acts of public authorities (Clause 12) and repeal of section 3 HRA

67. Clause 12 of the Bill, like section 6 HRA, makes it unlawful for public authorities to act in a way that is incompatible with Convention rights. Similar to section 6 HRA, there are two exceptions to this requirement – (a) they are required by primary legislation to act incompatibly; and (b) a public authority was acting to give effect to or enforce: (i) primary

[87] Home Office, 'Freedom of Information Request response to Mr Christopher Stacey', (27 October 2017).
[88] *Ibid:* Between 2000 and 2010 approximately 26 per cent of those on out-of-work benefits had received at least one caution or conviction.
[89] Home Office, 'Windrush Compensation Scheme Guidance', (2022)
[90] Clare Dyer, 'News Victims of infected blood scandal will each receive £100 000 compensation', *BMJ*, (18 August 2022)
[91] Ministry of Justice, 'Delivering Justice for Victims: A consultation on improving victims' experiences of the justice system' (December 2021)

legislation that is incompatible with Convention rights; or (ii) subordinate legislation that is incompatible with Convention rights where primary legislation prevents the removal of the incompatibility.

68. However, due to the removal of the section 3 interpretative power, the courts' ability to interpret legislation compatibly with convention rights will be diminished. There will therefore be more situations in which legislation is incompatible and the exceptions to the requirement on public authorities bite, so that public authorities are not required to act compatibility with Convention rights due to incompatible legislative provisions. This will increase the circumstances where public authorities can act contrary to human rights with impunity.

Preferencing certain forms of freedom of expression (Clause 4)

69. Clause 4 requires that courts to give '*great weight'* to '*the right to freedom of speech*' when it is determining question relating to that right. The Government's rhetoric around the Bill is that freedom of expression was a *'unique and precious liberty on which the UK has historically placed great emphasis',* and which is being strengthened by this Bill.[92]

70. However, in determining when freedom of speech should be given 'great weight', the Bill excludes situations where the State has the most power, including the ability to make criminal offences and any issue that affects national security. It is also notable that Clause 4(2) defines freedom of speech as the imparting of ideas, opinions or information by means of speech, writing or images (including in electronic form), but does not include expressive conduct i.e., protest. We are particularly concerned about this in light of the new restrictions on protest in the Police, Crime, Sentencing and Courts Act 2022 ('PCSC Act'), with further restrictions proposed in the Public Order Bill.[93]

71. It is notable that free speech organisations such as Article 19, English PEN and Index on Censorship have opposed this Bill stating that it will *'expand state power and hamper*

[92] Ministry of Justice, `Human Rights Act Reform: A Modern Bill of Rights – Consultation Response', (June 2022), para. 38

[93] See, for example, Joint Coalition's Update on Part 3 of the Police, Crime, Sentencing and Courts Bill, (March 2022)

efforts to hold the Government to account, joining other legislative measures…that have reduced the ability to challenge government overreach.'[94]

Legal Uncertainty and Chaos

72. The Bill is ill-thought through, lacks evidence and is drafted in such an opaque way that it will take years (and potentially decades) of costly litigation to determine the legal meaning and effect of its provisions. In general, the HRA has now settled in UK law, with public authorities having clear expectations of their obligations.

73. IHRAR demonstrated there was no compelling evidence for overhauling the present system. The Bill will overturn over 20 years of domestic jurisprudence, lead to years of re-litigating settled law, interpreting vague legal tests and creating unnecessary uncertainty for our public authorities. We highlight the following examples of areas where the Bill is likely to give rise to significant legal uncertainty.

74. The Government's own impact assessment acknowledges that some of the changes in the Bill are *'expected to create legal uncertainty'* and *'an increase in litigation against public authorities'.*[95] Whilst they submit that this will eventually settle down, it is unclear when this might be. For example, the Supreme Court have now had to twice rule on the *'unduly harsh'* test set out in the Immigration Act 2014, the most recent some eight years after the legislation was given royal assent.[96]

75. There are also a number of other similarly complicated legal tests which are likely to be subject to interpretative litigation by the courts.[97] The result of this Bill will be years of satellite litigation and complicated legal arguments, providing no certainty for the public authority or the individual.

Repeal of section 3 HRA

76. As set out at paragraph 19 above, section 3 HRA is repealed with no equivalent interpretative power in the Bill. The Government's consultation said that it was *'minded to*

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[94] ARTICLE 19, Index on Censorship and English PEN, 'Bill of Rights will seriously undermine freedom of expression in the UK', (22 June 2022)
[95] Ministry of Justice, 'Bill of Rights Impact Assessment' (19 June 2022)
[96] *HA (Iraq) & Others v SSHD* [2022] UKSC 22
[97] See, for example, how to have 'particular regard' to the text of the ECHR (Clause 3), how to define 'great weight' (Clause 5), the new tests in Clause 8 on Article 8 ECHR deportation cases, etc.

agree' with IHRAR that section 3 should not be repealed given the *'uncertainty in this area'.*[98] The Government has not made clear why its position has now changed.

77. It is unclear whether on commencement of the Bill all section 3 interpretations of legislation will fall away unless explicitly preserved by the Secretary of State under clause 40 (which contains the power for the Secretary of the State to amend or modify any legalisation to preserve or restore any judgement that "*appears to the Secretary of State to have been made in reliance on section 3*") This in itself creates a significant uncertainty. If this is the Government's intention, there is no guarantee that even a well-intentioned executive could clearly and immediately identify all cases where section 3 has been used.[99] Professor Richard Ekins, head of Policy Exchange's Judicial Power Project, has acknowledged that *'repealing s.3 would be no simple legislative act: the rule of law would call for careful, extended thought and then precise, comprehensive action'*. At the very least, Professor Ekins concluded that '*Parliament ought to enact a detailed transitional scheme to avoid (or at least minimise) confusion*'[100]. Clause 40 cannot be said to be that.

Positive obligations (Clause 5)

78. Clause 5(2) covers how positive obligations previously found by the courts should be reconsidered. The Government's explanatory notes states that the intention of Clause 5(2) is '*to guide courts to consider the wider implications of their decision (rather than just the need to do justice in the particular case'.*[101] However, this is asking the courts to involve themselves more politically not less, especially when you are asking judges to weigh up factors such as the allocation of resources. It is also constitutionally illiterate as the judiciary's constitutional role is solely to rule on particular cases, applying the facts to legal provisions or principles. They should not be mandated to consider political issues.

79. Clause 5(2) could lead to all previous positive obligations being re-litigated by the courts. The intention is that, rather than a full proportionality assessment that weighs the interests of the individual against the interests of the State, the courts should instead give '*great weight'* to the perceived interests of the State. It immediately places all previous legal

[98] Ministry of Justice, `Human Rights Act Reform: A Modern Bill of Rights – Consultation', (12 July 2022)
[99] This is especially the case when section 3 HRA is used to support (or as an alternative) to a normal statutory interpretation.
[100] Richard Ekins, 'Rights-consistent interpretation and (reckless) amendment', *UK Constitutional Law Association Blog*, (24 January 2013)
[101] Ministry of Justice, 'Bill of Rights Explanatory Notes' (22 June 2022), para. 61

obligations, found by courts including the UK Supreme Court, in legal uncertainty likely to take years to resolve.

80. It would mean that every public authority would be now within its rights to apply to the courts to overturn precedent, including that of the UK Supreme Court, in the hope of reducing its human rights obligations. Even those public authorities who do not take such a step will be unclear what their legal obligations will be going forward. Every individual seeking to enforce their rights, based on previous decisions, would be uncertain as to their legal rights against a public authority. This can only result in years of avoidable domestic litigation, many of which will have to work its way up to the Supreme Court, causing immeasurable distress to those individuals seeking to enforce their rights and significant legal costs.

81. There is a further, perhaps unintended, legal problem with Clause 5(2). As Professor Edmund Robinson has raised, it is unclear what the Courts should do once they review a previous positive obligation and determine that it went too far applying the criteria in the Bill.[102] The courts may prefer to set out a narrower positive obligation. However, this would surely qualify as a 'post-commencement interpretation' of a positive obligation to which the courts are prohibited from making under Clause 5(1). The Courts would then be in the absurd position of having to either uphold the previous interpretation or scrapping the positive obligation entirely. It is unclear how this 'all or nothing' approach is in anyone's interests.

Permission stage

82. The proposed permission test will add bureaucracy and confusion throughout the court and tribunal system, causing unnecessary expense where resources are already stretched. It will add avoidable paper applications and oral hearings, which are likely to particularly impact litigants in person. Other than the Administrative Courts where judicial review claims are brought, civil courts and tribunals are not set up to deal with an initial permission stage. The existing permission stage in judicial review works because the parties are subject to the duty of candour,[103] which means that significant information

[102] Edmund Robinson, 'Fumbling with interpretation – Clause 5 of the Bill of Rights and the positive obligations challenge', *UK Constitutional Law Association*, (27 July 2022)

[103] Treasury Solicitor's Department, 'Guidance on Discharging the Duty of Candour and Disclosure in Judicial Review Proceedings' (January 2010); The *'effect of this duty is to require the public authority, when presenting its evidence in response to the application for judicial review to set out fully and fairly all matters that are relevant to the decision that is under challenge'*. It is a *'weighty responsibility'* and extends to disclosure of documents (p. 3).

should be available early on in the process. In the context of civil claims, a decision on permission would have to made prior to disclosure when no evidence will be available. Alternatively, it will require a fundamental change to the way in which civil litigation is currently conducted.

83. Claims often include both human rights grounds as well as other public and civil law grounds. For example, a claim could raise Article 5 and damages under the Bill, the tort of false imprisonment, wrongful arrest, a breach of statutory duty claim and a claim for misfeasance in the public office. It is going to cause significant confusion and practical difficulties if the court has to address an initial permission stage for the human rights elements of the claim. This is especially so when different grounds overlap and may rely on shared facts; it would not make any sense to split the claims up at such an early stage, expending additional court time and resources considering only one element of the claim.

84. In judicial review claims where human rights arguments are made, Clause 15 would seem to require two different permission tests in the same claim. In claims other than judicial review, a decision on permission could end a claim before the defendant had to provide key disclosure.[104]

An increase in cases against the UK at the ECtHR

85. Whilst the Government's stated aim with this Bill is to recognise *'the autonomy of our domestic courts',* this legislation removes discretion from UK courts and tribunals to determine human rights cases domestically. This will only lead to more cases being heard at the ECtHR, because a domestic remedy is no longer possible. This is in nobody's interests.

86. Since the UK is rightly committed to remaining a signatory to the ECHR, individuals will retain the right to petition the ECtHR (though this is of course subject to the time-consuming and costly process to bring a claim to Strasbourg). The Government acknowledges, for example in relation to positive obligations, that *'there could be additional applications to the Strasbourg Court as a result'.*[105] This is also likely in relation to a number of other areas, including deportation, overseas military operations and damages.

[104] As there is no duty of candour in pre-action correspondence, unlike in judicial review claims
[105] Ministry of Justice, 'Bill of Rights Impact Assessment' (19 June 2022), para. 70

87. Clause 3(2)(a) prevents domestic courts following the ECtHR's *'living instrument'* doctrine, which enables the ECHR to be read in a way that reflects societal change.[106] This has resulted in rights protections today that are considered non-negotiable, such as children being born outside of marriage having the same rights as those born within[107] or the decriminalisation of homosexuality,[108] or societal changes such as the rise of the Internet. This clause will result in domestic courts being left behind the ECtHR's jurisprudence, rather than being able to influence it as they do at present, leading to weaker domestic rights protections and more cases going to the ECtHR.

88. We have set out below at paragraph 105 how these changes will weaken the UK's international reputation for upholding human rights. However, leaving this aside, it is unclear how it is in any public authorities' interests to face the prospect of years of litigation before the ECtHR (given the uncertainty and cost) when matters could be dealt promptly by giving more discretion to domestic judges.

89. The UK at present has a significant 'margin of appreciation' when its domestic courts have fully considered human rights claims. The Brighton Declaration in 2012, which was led by the UK government, was a written agreement that set out the principles of subsidiarity[109] and the margin of appreciation.[110] As the then Justice Secretary Ken Clarke said, the declaration means that *'the court will not normally interfere where national courts have clearly applied the Convention properly'.*[111] However, this was predicated on encouraging national courts to *'take into account the relevant principles of the Convention',* allowing litigants to make human rights arguments *'without unnecessary impediments'* and *'effective implementation'* of the ECHR at a national level.[112] This Bill undermines the Brighton Declaration and will lead to a number of human rights claims being determined at the ECtHR, when they could have been more efficiently resolved by domestic courts under the HRA.

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[106] *Demir and Baykara v. Turkey* [2008] App. No. 34503/97 (12 November 2008); *Tyrer v. United Kingdom* (1978) App. No. 5856/72 (25 April 1978).
[107] *Marckx v. Belgium* (1979) App No. 6833/74 (13 June 1979).
[108] *Dudgeon v the United Kingdom* (1981) App. No. 7525/76 (22 October 1981).
[109] Robert Spano (President of ECtHR), The significance of the European Convention at the national level (28 October 2021); The principle of subsidiarity is that '*member states are first and foremost responsible for the effective implementation of the international human rights norms they have voluntarily signed up to'.*
[110] European Court of Human Rights, Brighton Declaration 2012, (20 April 2012)
[111] Ministry of Justice and Kenneth Clarke QC, 'UK delivers European court reform', (20 April 2012)
[112] European Court of Human Rights, Brighton Declaration 2012, (20 April 2012)

90. It is also worth noting that MI5, MI6 and GCHQ have warned that a possible consequence of overhauling human rights laws to limit domestic claims is that more cases will then be heard by the ECtHR. They are reported to have raised concerns about terrorism cases and those in relation to armed services abroad, where domestically the security services are able to provide evidence to the judiciary in secret in closed material proceedings - an option that is not available at the ECtHR.[113]

Impact on devolution and Good Friday Agreement

A rights ceiling and democratic deficit in the devolved nations

91. The ECHR is embedded in the devolved settlements. Under the devolution statutes the devolved institutions cannot act or legislate in any manner that is contrary to the 'Convention rights'.[114] This means that, unlike Westminster legislation, legislation passed by the devolved legislatures can be struck down if it is not compatible with ECHR rights. The definition of 'Convention rights' in the Bill is borrowed from the HRA, namely those rights of the Convention that are set out in s1 HRA. Whilst the Bill would replace references to the HRA in the devolved statutes with reference to the Bill of Rights, and the list of rights is the same under both, its impact reaches far beyond a simple change in wording.

92. The Convention rights will have to be given 'the same meaning' as in the Bill. The Bill drastically alters how Convention rights are defined and interpreted domestically by setting out a much more limited interpretation than under the HRA. This will mean that devolved legislation or acts by the devolved Governments will be found to be compatible with Convention rights, whereas under the HRA they would have found to be incompatible.

93. Even if the devolved legislatures wanted to provide a greater protection for rights than that provided for in the Bill, they are unlikely to be able to do so. This is because the Bill, like the HRA, will be a protected enactment.[115] This prevents the devolved legislatures from modifying the Bill. Therefore, the devolved legislatures are prevented from making their own provision for giving effect to the Convention. Given the broad reading of

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[113] Oliver Wright, 'Meddling with human rights law makes UK less secure, spies warn', *The Times*,(13 December 2021)

[114] Section 29(2)(d) and Section 57(2) Scotland Act 1998; Section 6(2)(c) and Section 24(1)(a) Northern Ireland Act 1998; Section 81(1) and Section 94(6)(c) Government of Wales Act 2006.

[115] *Reference by the Attorney General and the Advocate General for Scotland – United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill* [2021] UKSC 42

'modification' given by the Supreme Court recently,[116] it is likely that the devolved legislatures will be prevented from legislating to provide for greater rights protection than that contain within the Bill. For example, they are unlikely to be able to legislate to allow for positive obligations to be enforced, contrary to Clause 5 of the Bill. This would essentially place a rights "ceiling" on the devolved nations and lead to the absurd position where legislation is struck down as incompatible because it protects individual human rights too much (or even in a way which is compatible with the legal obligations of the ECHR).

94. This is particularly concerning given the high level of support for human rights in the devolved nations. In Wales, the Government have embedded international human rights standards, such as the UN Convention on the Rights of the Child, into Welsh law through 'indirect incorporation'.[117] In Scotland, the Government are looking to pass a Human Rights Bill to give effect to international human rights standards such as the UN Convention on the Rights of Persons with Disabilities.[118] There is widespread support for human rights in Northern Ireland (see paragraph 102 below). Restricting the ability of devolved nations to legislate to give greater protection to rights risks creating a democratic deficit in the devolved settlements.

Engagement with devolved nations

95. Given the centrality of the HRA to the devolved settlements it is disappointing that there has been a lack of engagement with the devolved administrations; the Welsh Government stating they were not given *'advanced sight'* of the Bill apart from five clauses a week before publication.[119]

96. Whilst the Government has said they will seek legislative consent in accordance with the Sewell Convention,[120] we note that both the Scottish and the Welsh devolved administrations have made clear they are fundamentally opposed to this Bill.[121] Consent

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[117] Welsh Parliament, 'Where next for human rights in Wales', (10 December 2021)
[118] Scottish Government, 'New Human Rights Bill', (12 March 2021)
[119] Welsh Parliament, https://gov.wales/written-statement-uk-government-bill-rights 'Written Statement: UK Government Bill of Rights',(22 June 2022)
[120] UK Parliament, 'Glossary: Sewell Convention'; '*The Sewell Convention applies when the UK Parliament wants to legislate on a matter within the devolved competence of the Scottish Parliament, National Assembly for Wales or Northern Ireland Assembly. Under the terms of the Convention, the UK Parliament will "not normally" do so without the relevant devolved institution having passed a legislative consent motion.*'
[121] See, Welsh Parliament, 'Written Statement: UK Government Bill of Rights',(22 June 2022); Scottish Government, 'UK Bill of Rights Condemned', (22 June 2022)

cannot be sought from the Northern Ireland Assembly as it is not presently sitting. The Government should confirm they will not proceed with this Bill without consent from the devolved governments, given the potential impact on our devolved settlements

97. Both the Scottish and Welsh Governments made detailed submissions to IHRAR and the Government's consultation setting out their opposition to fundamental reform of the HRA. This Bill effectively mandates the devolved administrations to reduce their human rights protections in key devolved public services (including health and police), below the basic level required for full compliance with the ECHR and the ECtHR. The impact on our devolved settlement should not be underestimated by parliamentarians and is another reason why this legislation should not proceed.

The Good Friday Agreement ('GFA')

98. The GFA obliges the UK to provide *'complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention, including powers for the courts to overrule Assembly legislation on grounds of inconsistency'.*[122] Since this Bill compels domestic courts to diverge significantly from ECtHR jurisprudence, it risks individuals in Northern Ireland not being able to fully enforce their ECHR rights domestically. This would be a breach of the GFA.

99. In particular, we would highlight that positive obligations have played a fundamental role in the peace process in Northern Ireland, especially in policing. This is best demonstrated by the positive obligation under Article 2 ECHR on the police to investigate and conduct inquests into legacy killings. There is strong legal opinion that interference with positive obligations would be detrimental to confidence in policing in Northern Ireland.[123] The Northern Ireland Police Board has a statutory duty to monitor the performance of police in accordance with the HRA and it is unclear if this will continue after this Bill.[124] The Chair of the Northern Ireland Police Board said recently that *'a rights based approach to policing protects the public and officers responsible for delivering the service'.*[125] Reducing

[122] Secretary of State for Northern Ireland, 'The Belfast Agreement: an agreement reached at the multi-party talks on Northern Ireland' CM 3883, (1998), Rights, Safeguards and Equality of Opportunity, p.2.
[123] KRW Law and Doughty Street Chambers, 'Report on the potential effects of repeal of the Human Rights Act 1998 by the British Government' (GUE/NGL, Group of the European Parliament, 2016)
[124] Section 3(3)(b)(ii) Police (Northern Ireland) Act 2000
[125] Northern Ireland Policing Board, 'Human Rights Annual Report', p. 14

positive obligations will lead to significant uncertainty in Northern Irish policing, which has been based on strict compliance with the HRA and the ECHR.

100. The proposed permission test also risks undermining the requirement in the GFA to provide 'direct access' to the courts and remedies for breach of Convention rights. It will prevent individuals who suffer breaches of the ECHR but who are not granted permission because the breach may not result in a 'significant disadvantage', accessing the courts in non-judicial review claims and obtaining a remedy.

101. The Government's stated position in the relation to the Northern Ireland Protocol Bill was that protecting the GFA is an essential interest of the United Kingdom. The Government's legal opinion referred to *'the maintenance of stable social and political conditions in Northern Ireland, the protection of the 1998 Belfast (Good Friday) Agreement, the effective functioning of the unique constitutional structures created under that Agreement'* as being some of those essential interests.[126] The Government have stated that they *'continue to consider carefully'* the impact of this Bill on Northern Ireland,[127] but it is irresponsible to proceed with this Bill until a full impact assessment on the GFA has been completed and published. This legislation is so ill-thought through that the Northern Ireland Human Rights Commission are unclear whether they would continue to be able to institute human rights claims, as they can at present through s71 Northern Ireland Act 1998.[128]

102. The HRA is generally viewed positively in Northern Ireland. Research in 2017 found that 84% of people felt that the HRA was good for Northern Ireland.[129] The Northern Ireland Human Rights Commission recommended in their consultation response that *'the current proposals for reform of the HRA are withdrawn, in light of the likely damaging impact on the Northern Ireland peace process'.*[130]

103. UK Government cannot seek legislative consent from the Northern Ireland Assembly since it is not sitting however, the Government has said that consensus is required in

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[126] Foreign, Commonwealth & Development Office, 'Northern Ireland Protocol Bill: UK government legal position', (13 June 2022)
[127] Ministry of Justice, 'Bill of Rights Impact Assessment' (19 June 2022), para. 152
[128] Northern Ireland Human Rights Commission, 'NI Human Rights Commission responds to the Bill of Rights Bill', (22 June 2022)
[129] Human Rights Consortium, 'Attitudes to Human Rights in Northern Ireland', HRC, (July 2017), p. 7.
[130] Northern Ireland Human Rights Commission, 'Response to the consultation on Human Rights Act Reform: a Modern Bill of Rights' (March 2022), para. 3.36

Northern Ireland before a Bill of Rights for Northern Ireland can be introduced (a provision of the GFA, not yet implemented).[131] The same approach should be taken for reducing human rights protections in Northern Ireland, below the standard of the ECHR and that envisaged by the GFA.

Breach of the UK's international legal obligations and undermining the UK's international reputation

104. The Bill risks placing the UK in breach of its international legal obligations under the ECHR leading to more negative determinations against the UK by the ECtHR and completely avoidable damage to the UK's international reputation for upholding human rights.

Undermining the UK's proud history of leadership within the Council of Europe

105. This is a perilous moment for human rights protections in continental Europe, as the war in Ukraine continues and Russia is expelled from the Council of Europe (the leading human rights organisation on the continent). Now is the moment for the UK to lead on the world stage reinforcing basic human rights norms and international law, including the ECHR.

106. The UK's reputation is strengthened not only by being a party to the ECHR but an active, leading member of the Council of Europe. The UK Government's own position is that *'we increase the effectiveness of the Council of Europe (CoE) and the UK's influence within it to make the CoE better protect the UK's goals in Europe on improving human rights, democracy and respect for the rule of law'.*[132] We are concerned that this Bill which is premised on a view that the ECHR undermines Parliamentary sovereignty and stifles the Government implementing policy seriously risks undermining support in the ECHR at this critical time. It also encourages other countries to ignore their legal obligations under the ECHR.

107. The UK has a proud history of compliance with the ECHR and presently very few human rights violations are found against the UK. Since 2011, the UK has on average had 5 judgments per year in which a human rights violation has been found against the UK by

[131] John Manley, 'No Bill of Rights until Stormont consensus says British government, *The Irish News,* 17 February 2020

[132] UK Government Website, 'UK and the Council of Europe', (2022)

the EctHR.[133] In 2021, the UK received a mere 0.005% of the total judgments finding an ECHR violation.[134] This is because the HRA has enabled UK judges to fully determine human rights issues domestically. By substantially reducing domestic human rights protections and the ability of UK judges to determine human rights issues in accordance with Strasbourg jurisprudence, the inevitable result would be more cases heard against the UK at the ECtHR and more defeats for the UK.

Interim Measures (Clause 24)

108. Clause 24 prevents domestic courts from taking into account any interim measure by the ECtHR when determining a human rights issue.[135] The Government's stated explanation for this clause is to '*ensure that the fact that an interim measure has been issued by the ECtHR does not influence domestic courts when deciding whether to grant relief that may affect the exercise of Convention rights'.*[136]

109. Interim measures were not mentioned in the Government's consultation on this legislation and the lack of pre-legislative scrutiny means the Government has not been able to have detailed feedback on this issue.

110. Clause 24 appears to have been introduced solely in response to the ECtHR's decision in the recent Rwanda litigation.[137] We strongly disagree that three individual cases on one sole issue provide adequate justification for legislating so broadly with respect to our international law obligations. This is especially the case when these are just interim decisions; there has been no legal determination yet by any domestic or international court on the compatibility of the Rwanda policy with the ECHR.

111. Interim measures can be issued by the ECtHR under Rule 39, only when there is an *'imminent risk of irreparable damage'.*[138] They understandably most typically occur when Article 2 or Article 3 rights are at issue, though can *'in highly exceptional cases'* be used

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[133] Ministry of Justice, 'Responding to human rights judgments' (December 2021) and Council of Europe, 'Violations by Article and by State' (2021)
[134] Council of Europe, 'Violations by Article and by State' (2021)
[135] Clause 24 Bill of Rights Bill
[136] Ministry of Justice, 'Bill of Rights Explanatory Notes', para 203 (22 June 2022)
[137] *K.N. v. the United Kingdom* (application no. 28774/22), Press Release, (14 June 2022)
[138] See European Court of Human Rights, 'Practice direction: Requests of interim measures (Rule 39 of the Rules of Court)'; and Mamatkulov and Askarov v. Turkey, Application Nos. 46827/99 and 46951/99, 4 February 2005.

in Article 8 cases.[139] For example, recently the ECtHR issued an interim measure to Russia to *'refrain from military attacks against civilians and civilian objects'* after a request by the Ukrainian Government due to a real risk of Article 2, 3 and 8 ECHR violations.[140]

112. A Rule 39 interim measure is already not strictly binding on a domestic court, though it is binding on the UK Government under international law as a signatory to the ECHR. The only requirement under s2 HRA is that domestic courts should 'take into account' decisions of the ECtHR. This is logical because individuals have the right to petition the ECtHR once domestic remedies are exhausted, which this Bill would rightly not change.

113. Clause 24 puts the UK at serious risk of non-compliance with its international legal obligations. Interim measures serve to ensure the effectiveness of the right of individual petition guaranteed by Article 34 of the ECHR.[141] They are normally used in extradition or deportation cases where if claimant is extradited or deported prior to the full claim being determined there is a real risk that they would be subject to serious and irreversible harm. This would hinder the effective exercise of the right of applicants under Article 34 to being their claims before the ECtHR. Clause 24 therefore prevents the courts and other public authorities from complying with the UK's international obligations.

CONCLUSION

114. To conclude, this Bill should be rejected as (i) there has been a **lack of evidence and scrutiny**; (ii) it **substantially reduces domestic human rights protection**, below the level required by the ECHR; (iii) it concentrates power in the executive and reduces accountability; (iv) it will cause **years of unnecessary legal uncertainty and chaos**; (v) it risks **destabilising the UK's devolved settlement and undermining the Good Friday Agreement**; and (vi) **places the UK in breach of our international legal obligations** and will **diminish our international reputation**.

115. JUSTICE would urge all Members of Parliament to vote against the Bill at Second Reading in the House of Commons. The Bill should be vigorously opposed by all those, across party lines, who believe that the UK Government should respect basic rights protections and be accountable to those who it purports to represent.

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[139] European Court of Human Rights, 'Practice direction: Requests of interim measures (Rule 39 of the Rules of Court)'

[140] *Ukraine v. Russia* (application no. 11055/22), Press Release, (1 March 2022)

[141] See *Paladi v the Republic of Moldova* (application no. 39806/05) (10 March 2009)