JOINT CIVIL SOCIETY BRIEFING ON THE BILL OF RIGHTS BILL FOR SECOND READING IN THE HOUSE OF COMMONS

SEPTEMBER 2022

INTRODUCTION

This is a short joint briefing written in the names of the organisations whose logos appear on the cover page and are listed at the end of this briefing. For the reasons set out below, we are united in our view that the Bill of Rights Bill (BORB) must be withdrawn entirely, and the Human Rights Act 1998 (HRA) must be retained.

The BORB, widely known as the Rights Removal Bill, is unnecessary, unevidenced, unworkable, and unwanted – and it is individuals who will bear the brunt of its harmful effects. There is absolutely no need to repeal and replace the HRA, which has been vital to securing dignity, justice, and respect for individuals, families, and communities across the country over the past two decades.

As a coalition spanning the human rights and civil liberties, pan-equality, legal, disability rights, criminal justice, military justice, trade union, care and social work, public health, LGBTQ+ rights, violence against women and girls, racial justice, migrant and refugee rights, children's rights, privacy and technology, faith, environment, international development, and other sectors, we call on MPs to vote against the Rights Removal Bill.

WIDER CONTEXT

1. **Repealing the HRA goes far beyond the 2019 Conservative manifesto commitment to 'update' the Act.** The Rights Removal Bill would repeal and replace the HRA. The Government does not have a mandate to significantly reduce rights protections in the UK and drastically change our constitutional settlement.

2. **The Government has ignored expert legal and policy analysis on their plans.** The report of the Independent Human Rights Act Review (IHRAR) was discarded, the views of the over 12,800 respondents to the Government's consultation have been dismissed, and the recommendations of the Joint Committee on Human Rights (JCHR) have been rejected. Some of the proposals in the Bill, such as those concerning interim measures, have never been consulted on by the Government, and there is a severe lack of evidence of need for the Bill as a whole.

3. **The Government has denied calls for greater parliamentary scrutiny of the plans.** The Government has rejected calls for pre-legislative scrutiny from the chairs of the Public Administration and Constitutional Affairs Committee, Justice Committee, Lords Constitution Committee, and Joint Committee on Human Rights, supported by a broad coalition of more than 150 civil society groups, the Domestic Abuse Commissioner for England and Wales, the Victims' Commissioner for England and Wales and the Children's Commissioners of Scotland, Wales and Northern Ireland. The Chair of the Justice Committee and Conservative MP Sir Bob Neill said, "It is disappointing that the Government has chosen not to go down this path and I would urge it in the strongest possible terms to reconsider."

4. **The consultation process for the Bill was inaccessible, exclusionary, and highly flawed.** Throughout the consultation period, and in spite of the significant constitutional changes the Bill will bring about, the Government failed to provide accessible versions of its consultation document to enable people to respond. This excluded those people most likely to be impacted by the changes, such as people with learning disabilities. It was only after more than 140 organisations wrote to the Justice Secretary, more than 200 disabled people led organisations and individuals wrote to the Joint Committee on Human Rights, and a user-led disability campaign group threatened legal action, that the Government finally published an Easy Read and audio version the day before the deadline.[1] Those requiring an Easy Read or audio received only half the time given to everyone else to respond. There was no reason for the Government to publish its consultation before ensuring that everyone could take part. The Government also failed to publish a robust equality impact assessment of its proposals.

IMPACT ON INDIVIDUALS, FAMILIES, AND COMMUNITIES

5. **The Rights Removal Bill undermines the State's duty to protect our rights.** These duties, called positive obligations, are what enabled the victims of serial 'black cab' rapist John Worboys, the families of the victims of the Hillsborough disaster, and the loved ones of people who have died in State custody and in state institutions, to seek truth, justice, and accountability. They ensure disabled people are able to live dignified lives, and enabled families to visit their loved ones in care homes during the Covid-19 pandemic; they are also the foundation of safeguarding. The Bill will stop the clock on the further development of rights protections in response to changing conditions and strip back existing rights by subordinating them to public bodies' resources and priorities.[2]

6. **The Rights Removal Bill undermines the fundamental principle that we all have human rights by virtue of the fact that we are human.** It seeks to separate people based on whether they are deserving and undeserving of human rights, targeting already marginalised groups and depriving them of vital access to justice. For example, the Bill seeks to limit the ability of people in prisons to bring human rights claims. It is in precisely such institutions that protections are most vital. It also seeks to limit the State's obligations to protect people's human rights based on whether they have committed a criminal offence. Further, the Bill's attempt to tie an individual's past conduct to the damages to which they are entitled after a finding of a rights violation, contravenes the right to equality before the law and will stop people from obtaining a just remedy.

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[1] Letter to the Joint Committee on Human Rights in the UK Parliament, 3 March 2022: https://www.bihr.org.uk/Handlers/Download.ashx?IDMF=8e2d763d-1439-4799-9a0c-19a3c77d53cc

[2] End Violence Against Women coalition, 'British Bill of Rights is a major step back for women and survivors' (21 June 2022) https://www.endviolenceagainstwomen.org.uk/british-bill-of-rights-major-step-back-for-women-and-survivors.

7. **The Bill will reduce the ability of courts to protect the public from human rights abuses and for public bodies to respect people's human rights.** The Bill removes section 3 HRA, which will limit courts' ability to interpret legislation in a rights-compatible way. Likewise, when making decisions about our lives, public bodies will no longer be required, or be able to, apply other laws, such as mental health or child protection laws, in a way that respects our human rights. Kirsten, for example, relied on s.3 HRA to challenge the inhuman treatment of her son in a mental health unit.[3] The Bill jeopardises this. It will leave people who rely on services like health, education and housing, with less control over their lives, removing their ability to practically challenge decisions that put their rights at risk. The Bill also suggests that previous interpretations made under section 3 HRA will no longer apply unless specifically preserved by the Secretary of State. This will undo two decades of advancements in human rights and leave the rights that people depend on at the whim of a Minister.

8. **The Rights Removal Bill's introduction of a permission stage will create further barriers to justice.** The Government is seeking to limit the number of claims brought rather than further embedding human rights practices into public bodies and institutions. The Government is also seeking to prevent individuals from challenging human rights violations relating to overseas military operations, which would result in significant miscarriages of justice.[4]

9. **The Rights Removal Bill could make it harder for individuals to challenge their deportations on the basis of violations of their right to private and family life, save for in the most extreme circumstances.** This will pave the way for parents and children, families, and wider communities to be ripped apart. The existing deportation regime has already narrowed the scope of people who can challenge their deportation on Article 8 grounds and sets a very high threshold, as was legislated for in the Immigration Act 2014. The Rights Removal Bill sets out to make this system even more brutal and unjust, including by limiting challenges to only those where a child or dependent would come to harm considered 'exceptional and overwhelming', and which could not be mitigated or reversed. The Bill also seeks to limit individuals' ability to challenge deportations based on diplomatic assurances that they will not be harmed, in ways that could have life-threatening consequences. This, coupled with the fact Black and Brown communities likely will be most sharply impacted, also raises significant concerns that the Bill's deportation provisions will only further entrench systemic racism.

10. **The Rights Removal Bill denies enhanced protection to people using their speech against the State.** The clause giving 'great weight' to the importance of free speech is undermined by a long list of carve-outs that effectively disapply this protection where a

[3] British Institute of Human Rights, Kirsten's Story: https://www.bihr.org.uk/kirstens-story.
[4] Centre for Military Justice, *Military Human Rights Stories:* https://centreformilitaryjustice.org.uk/guide/military-human-rights-stories.

person may want to assert their rights against the Government, such as in the context of new protest offences.[5]

IMPACT ON OUR DEMOCRATIC INSTITUTIONS AND CONSTITUTIONAL SETTLEMENT

11. **In restricting the powers of the courts, the Bill will further centralise power in the executive.** The Rights Removal Bill seeks to alter how courts assess the proportionality of different measures, which will limit the courts' ability to act as a check on the Government. It also reduces the scope for Parliament to scrutinise whether legislation is compatible with human rights.

12. **The Rights Removal Bill sets us on a collision course with the European Court of Human Rights (ECtHR).** The proposals throughout the Bill threaten to create divergence between the rights enjoyed domestically and those protected at the Strasbourg level. As a result, more and more people will be forced into making the long and costly trip to Strasbourg when their rights have been abused by the State. This will have a discriminatory impact, because it is only those who can afford to do so – and who do not face pre-existing structural oppression and/or other barriers to justice – who will be able to pursue this route. The British courts will also have a diminished influence over the jurisprudence of the ECtHR, which will give rise to more adverse judgments against the UK.

13. **The Government is rewriting the rules so it does not have to comply with its own obligations under international law.** The Bill seeks to enable the Government to ignore interim measures of the ECtHR, which are only available when there is a risk of "irreparable harm", such as in the case of measures served on Russia in June 2022 to halt the execution of two British prisoners of war. This will set a negative precedent for other countries in the Council of Europe.

14. **The Rights Removal Bill has been rejected by the devolved nations of the United Kingdom.** The HRA and ECHR are embedded throughout the devolved settlements, and each of the devolved administrations of Scotland, Wales and Northern Ireland are pursuing programmes of expanding human rights that conflict with this Bill's restrictions. There has been scant regard for operation of the different judicial systems within the UK and engagement with the administrations has been poor, with many of their concerns being ignored. This means that legislative consent from the devolved legislatures is highly unlikely.

15. **The Rights Removal Bill will violate the Belfast/Good Friday Peace Agreement.** The B/GFA committed the UK government to "complete incorporation into Northern Ireland

[5] English PEN, Article 19 and Index on Censorship, 'Bill of Rights will seriously undermine freedom of expression in the UK' (24 June 2022) https://www.englishpen.org/posts/campaigns/bill-of-rights-will-seriously-undermine-freedom-of-expression-in-the-uk/

law of the ECHR, with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency."[6] These safeguards, which remain a cornerstone of the finely balanced set of relationships in Northern Ireland, will be violated by proposals in the Bill which directly undermine access to the courts and the commitment to provide remedies for breaches of the Convention.

CONCLUSION

16. This short statement does not even begin to cover all the problems with the Rights Removal Bill, which may also undermine the ability of the Government to champion rights globally. The organisations in our coalition will highlight to parliamentarians and the wider public in the months to come.

17. In the name of the people our organisations work with and for, and the communities we represent, we urge parliamentarians to protect their constituents, vote down this Bill and retain our Human Rights Act.

LIST OF ORGANISATIONS (IN ALPHABETICAL ORDER)

Access Social Care, ACEVO, Advocacy Western Isles, Agenda, Alcohol Focus Scotland, Allies for Justice, Amnesty International UK, APPEAL, Article 12 in Scotland, Article 19, Art27scotland, Asylum Aid, Asylum Matters, Asylum Support Appeals Project, Bail for Immigration Detainees, Baptists Together, Become, Best for Britain, Big Brother Watch, Black Equity Organisation, Bond, CEMVO Scotland, Centre for Military Justice, Child Poverty Action Group, Child Rights International Network, Children England, Children in Scotland, Children in Wales (Plant yng Nghymru), Children's Law Centre, Children's Rights Alliance for England, Civil Society Alliance, Client Earth, Committee on the Administration of Justice, Community Policy Forum, Compassion in Politics, Defend Digital Me, Detention Action, Disability Rights UK, Empower Women for Change, End Violence Against Women, Equality Network, Equally Ours, Every Child Protected Against Trafficking UK, Face Equality International, Fair Trials, Faith in Older People, Families for Justice, Focus on Labour Exploitation, Foxglove, Freedom From Torture, Friends of the Earth, Helen Bamber Foundation, Here, Human Rights Consortium, Human Rights Consortium Scotland, Human Rights Watch, Humanist Society Scotland, Humanists UK, Inclusion London, Inclusion Scotland, Index on Censorship, INQUEST, Just Fair, Just for Kids Law, JUSTICE, JustRight Scotland, Latin American Women's Rights Service, Law Centres Network, Learning Disability England, Learning Disability Wales (Anabledd Dysgu Cymru), Legal Aid Practitioners Group, LGBT Foundation, Liberty, Making Rights Real, medConfidential, Mermaids, Migrants' Rights Network, Mind, National AIDS Trust, National Council of Voluntary Organisations, North Wales Regional Equality Network, Open Britain, Oxfam, Peace Brigades International UK, Play Scotland, POhWER, Prison Reform Trust, Prisoners' Advice Service, Project 17, Public Interest Litigation Support, Public Law Project, Race Council Cymru, Race Equality First, Refugee Action, Relatives & Residents Association, René Cassin, Reprieve, Rethink Mental Illness, Rights & Security International, Rights of Women, Scottish CND, Scottish Women's Convention, Sheila McKechnie Foundation, Shelter, Shelter Cymru, Start360, Statewatch, Tai Pawb, The British Association of Social Workers, The British Institute of Human Rights, The Health and Social Care Alliance Scotland (the ALLIANCE), The Joint Council for the Welfare of Immigrants, The Methodist Church, The Pyramid at Anderston, The United Reformed Church, Together (Scottish Alliance for Children's Rights), Traveller Movement, Unison, UNJUST, Unlock Democracy, VoiceAbility, Wales Council for Voluntary Action (Cyngor Gweithredu Gwirfoddol Cymru), Welsh Centre for International Affairs, Women's Equality Network Wales.

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[6] Paragraph 2 of the 'Safeguards, Rights, and Equality of Opportunity' chapter of the Belfast (Good Friday) Agreement.