Written submission to Just Fair's call for evidence to inform their 2025 report to: the United Nations Committee on Economic, Social and Cultural Rights

As part of the seventh periodic review of the UK

The British Institute of Human Rights

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September 2024

About the British Institute of Human Rights

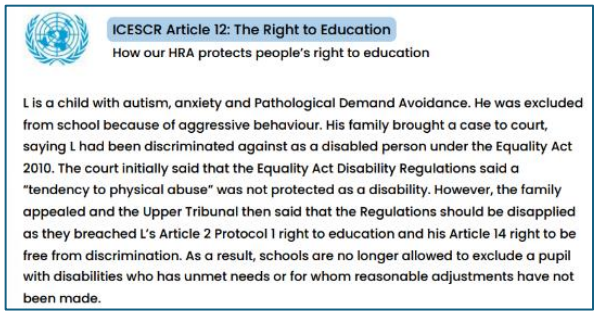
The British Institute of Human Rights (BIHR) is a charity working across the UK to enable positive change through the practical use of human rights law. We use the power of our domestic legislation, our Human Rights Act (HRA), to bring these rights to life in people's everyday lives. We work with people to provide the information they need to benefit from their rights; with community groups to advocate for social justice using human rights standards; and with staff across local and national public bodies and services to support them to make rights-respecting decisions. This enables us to call for the development of national law and policy which truly understands people's experiences of their human rights.

The Human Rights Act & Everyday Rights

In September 2022, BIHR submitted a response to Just Fair's initial call for written evidence for the UK Civil Society Shadow Report to the United Nations Committee on Economic, Social and Cultural Rights. This submission highlighted the way our domestic human rights law can be used to secure people's everyday rights:

> "Traditionally our 16 HRA rights have been called civil and political. However, it is really important to remember that our HRA is a "living instrument". This means the way it is interpreted and the protections it offers needs to adapt and develop in line with our society's progress e.g. the right to private life has helped people challenge the use of CCTV cameras, even though these weren't around in 1950 when the rights were first written. We've also seen, for example, how the right not to be treated in an inhuman or degrading way has been found to mean that some people who would otherwise be destitute are entitled to housing and financial support. Cases like this demonstrate that even economic, social and cultural rights that are not explicitly named in the HRA can benefit from its protection and, as the European Court of Human Rights has itself noted, "there is no watertight division separating" economic, social and cultural rights away from the rights in the HRA (and Convention)."

Our 2022 submission gave real-life examples from case law and from BIHR's work that demonstrate the way the HRA gives domestic protection to many of the rights in the International Covenant on Economic, Social and Cultural Rights.



An update since our 2022 submission

Our 2022 submission highlighted our concerns that the then-Government's Rights Removal Bill would weaken human rights for everyone in the UK by getting rid of the HRA. Although this Bill has now been scrapped, some elements of it have been mirrored in other pieces of legislation that remain on the books.

In particular, the Right Removal Bill would have removed Section 3 of the HRA - despite a government consultation finding that 79% of people did not support this. This Section says that when governments and public bodies are making decisions about our lives and applying other laws and policies, they must do so in a way that upholds our human rights so far as possible. The Safety of Rwanda (Asylum and Immigration) Act; the Illegal Migration Act; and the Victims & Prisoners Act all contain sections that disapply Section 3 in particular circumstances.

The weakening of Section 3 remains of particular concern. Section 3 is a key part of making human rights real every day. Much of the political rhetoric surrounding it focuses on UK courts, and either suggests an overmighty approach by the judiciary (when in fact it is an appropriate exercise of the balance of powers between courts, government, and parliament). Similarly, commentary often disregards the impact of Section 3 in ensuring human rights protections are real for people in their everyday lives. Section 3 is used by public officials to make rights-respecting decisions when they navigate and apply other laws. This improves our interactions with public bodies and reduces the need for legal challenge.

Vernon's story

Vernon was a member of the "Windrush Generation". **This refers to people who came from Commonwealth countries to live in work in the UK between 1948 and 1973. They were given indefinite leave to remain but the UK Home Office failed to keep records or provide any documentation. This resulted in many people being refused public services or even entry to the UK. Vernon experienced this when he went to Jamaica for his father's funeral and was prevented from returning to the UK for over 13 years.**

In 2018, the Windrush Scheme was introduced to make it easier for members of the Windrush Generation to get proof of their right to remain. Vernon applied and was granted indefinite leave to remain. He then tried to apply for British citizenship but was told that according to the British Nationality Act, he had to have been present in the UK for five years before he could do so. The court said that a section in the British Nationality Act gave the Home Secretary discretion to waive some requirements for citizenship. By refusing to use the section to waive the five-year requirement for Vernon, the Home Secretary breached his right to

private and family life and right to be free from discrimination. The Home Secretary should have used Section 3 of the HRA to interpret the law in a way that respected Vernon's human rights – in particular, his right to family life and his right to be free from discrimination.

Vernon's story illustrates just one of many complex and nuanced issues that often arise in immigration law. Section 3 provides a roadmap for interpreting such laws and ensures this is done with due respect for individual circumstances and human rights wherever possible (and provides avenues for challenge for people like Vernon if it is not). Despite guidance suggesting that the recent immigration laws disapplying Section 3 target those "with no right to be in the UK", it is important to remember that people like Vernon were also "[thrown] into turmoil because [the UK Government] did not recognise their legal right to be in the UK".

In fact, it is when we are in these particularly vulnerable positions that our human rights protections are most important. Through our work, we have seen Section 3 used in everyday life to put human rights at the heart of laws which might otherwise be arbitrarily applied – such as when it comes to interpreting powers of detention under the Mental Health Act or exercising Social Services' discretion to support families facing destitution.

Recommendation:
The UK Government must commit to protecting human rights for everyone in the UK in a real and practical way. At a minimum, the Government must ensure existing protections through our HRA are not interfered with and, crucially, that the scope of Section 3 is not limited through the passing of other legislation. Such provisions are against both the letter and the spirit of our Human Rights Act, and the very notion of universal human rights. We also recommend that the UK Government seek to repeal the relevant sections of the Illegal Migration Act; Safety in Rwanda Act; and Victims & Prisoners Act which disapply Section 3 of the HRA. This would restore the position to as was intended when the HRA was passed by Parliament, and support one of its key aims to help embed a culture of respect for human rights in the UK - so that the upholding of people's everyday human rights is not only focused on court remedies, but also how other laws and policies are applied in their lives by public officials.

Putting everyday human rights into practice

Ensuring universal human rights are properly protected in UK law is the first step, but much work also needs done to put that law into practice. Our extensive work with public bodies across the UK has shown that when the Section 3 obligation is not met, it is often because neither the public bodies nor the people accessing

services know about it.

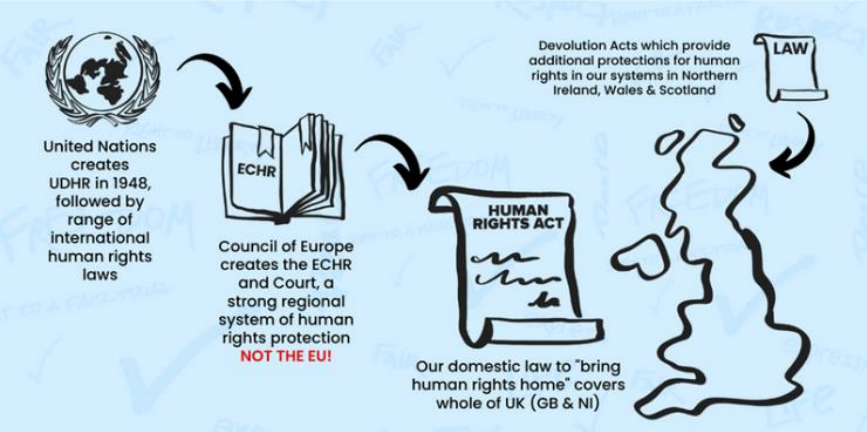
We find that dedicated training increases both support for and confidence using human rights among public body workers. For example, **80%** of staff in a local council said that after our Human Rights Act training session, they would challenge or change a decision about someone's access to support or services. **100%** of participants at our session for professionals working in Special Educational Needs and Disabilities said they needed further training and resources to support them to take action to protect human rights.

Similarly, our work with individuals and community groups has demonstrated that understanding of and confidence using the language of human rights law supports people to advocate for their everyday rights to be respected. For example, we recently completed a Rights in Recovery Leadership Programme with Scottish Recovery Consortium – a charity supporting and advocating for people recovering from problematic substance use. After the programme, 100% of participants rated their knowledge of the rights and duties under UK human rights law as **"good" or "excellent"** whereas before, 80% said "average" and 20% said "poor" or "non-existent". Notably, participants talked about the misconceptions they held about human rights before the programme began, saying "**I just believed that drug addicts didn't have rights…**" and "**I realised how terribly I was let down by duty bearers when I needed help the most**".

For people accessing services and service providers to have collaborative and constructive conversations about human rights, both must have access to information about rights and duties.

Recommendation:
The UK Government should focus not just on implementing rights-respecting laws but on putting into place the funding and training necessary for public body workers to put human rights into practice and uphold their duties under the law. Specifically, whilst work on incorporating ICESR into UK law is ongoing, there is significant potential and progress to make in ensuring a range of economic, social and cultural rights issues are addressed through the implementation of the UK's Human Rights Act. BIHR's work demonstrates both the need and value of practical, accurate and accessible training and practice programmes focused on securing people's everyday rights in health, social care, education, welfare and other areas of public service provision.

Annex I: The Human Rights Act & ICESCR



The Human Rights Act (HRA) brings the Articles from the European Convention of Human Rights (ECHR) into UK domestic law, which itself draws on the Universal Declaration of Human Rights. The UK's HRA therefore gives domestic effect and protection of many of the rights contained within the International Covenant on Economic, Social and Cultural Rights (ICESCR). These include: the right to family life (Article 8, HRA); the right to freedom from discrimination (Article 14, HRA); and the right to education (Article 2, Protocol 1, HRA). Importantly, many economic, social and cultural rights fall within the ambit of the HRA even if not explicitly named within it. For example, certain welfare benefits have found to be protected by the HRA right to peaceful enjoyment of possessions, supporting people's right to social security. Similarly, the HRA right to be free from inhuman or degrading treatment has been used to successfully challenge a refusal to fund vital healthcare, supporting people's right to health.

The HRA enables people to access their rights in the UK, both through interactions with public services and domestic courts. Section 3 and Section 6 together require all public bodies to act and apply other laws in a way that is compatible with human rights, if it is possible to do so. Section 7 means an individual can bring a legal case against a public body that does not uphold their rights.

It is important to note that having not directly incorporated ICESCR into UK law, the HRA is the only legal mechanism through which ICESCR protections can be given direct effect. UK courts are only able to draw on ICESCR (and other international protections) where these can provide interpretative support to the rights contained in the HRA. The situation of the HRA is therefore not merely one of domestic law but is also of the utmost importance for the Committee's review of the extent to which the UK Government is upholding ICESCR rights.

Parliamentary Sovereignty & Human Rights

Parliamentary sovereignty is often said to be 'the defining principle of the British Constitution'. Parliamentary sovereignty means that Parliament is the supreme legal authority in the UK. Parliament can create or get rid of any law and the courts cannot overrule Parliament. No Parliament can pass laws that future Parliaments cannot change. This means that, unlike in some other countries, the ECHR does not take priority over national law in the UK.

The HRA does not limit parliamentary sovereignty. Section 19 of the HRA requires the Government to make a statement on whether any laws they are proposing to Parliament are compatible with HRA rights, but this is advisory only and Parliament could still choose to pass an incompatible law.

These laws could still be eligible for judicial review. When examining human rights claims, courts will look at whether a law **could** have been interpreted in a way that upholds human rights and then if it **was**. If a court decides that there could have been a human rights-compliant decision or application of law, then it will declare that a Section 3 interpretation was possible, and the range of remedies available could include an order to remake the decision or application of the law. However, if the court agrees there was no way to apply the other law in a rights-compliant way then, provided it is a Higher Court, it can issue a declaration of incompatibility under Section 4 of the HRA. This is not a strike down power; the law which is not rights-compliant remains in force unless or until Parliament decides to change it.