

The Bill of Rights Bill

**Response to the Joint Committee for
Human Rights consultation**

August 2022

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Introduction

The Trades Union Congress (TUC) exists to make the working world a better place for everyone. We bring together the 5.5 million working people who make up our 48 member unions. We support unions to grow and thrive and we stand up for everyone who works for a living.

Trade unions play a vital role in ensuring that fundamental individual and collective labour law rights are respected and upheld.

Many of these rights are underpinned by the Human Rights Act (HRA) and the European Convention on Human Rights (ECHR). We advocate the importance of strong collective bargaining rights, appropriate regulation and enforcement to ensure the protection of employment rights, as well as equal treatment for all regardless of race, religion, age, gender, disability, sexuality and access to financial resources.

We agree with the Joint Committee on Human Rights (JCHR) that “the HRA is functioning as intended as it enables human rights to be enforced effectively in the UK with little recourse needed to the European Court of Human Rights (ECtHR)’ and that ‘the government has failed to make the case for repealing and replacing the HRA with a Bill of Rights in the form proposed”.

We have concerns about how this Bill of Rights Bill (BoR) would impact the human and employment rights of workers.

Below, we outline concerns in four areas: the erosion of workers’ access to their article 11 rights under the HRA of freedom of association and assembly, including their rights to strike and to collective bargaining; the equalities impact on workers of the restriction of positive obligations; the impact on workers of limits to the concept of universality and new definitions of state accountability, and the BoR contravening UK obligations under international law.

Problem 1: The erosion of workers' access to their article 11 rights under the HRA of freedom of association and assembly, including their rights to strike and to collective bargaining

In recent years, unions have successfully deployed human rights law to defend union rights from employer and government attack, in some cases to extend collective rights. S. 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) is an employer's requirement to inform and consult on proposed redundancies with representatives of the affected employees including unions, which implements the European Collective Redundancies Directive.

In 2014, *Wandsworth LBC v Vining, Francis and UNISON*, UNISON successfully argued that this requirement to consult was collective in nature and so by virtue of article 11 of the ECHR must apply to TULRCA, s.188.¹

This argument was supported by the 2008 Grand Chamber of the ECHR judgment in *Demir and Baykara v Turkey*, that, in principle, the right to collective bargaining is a fundamental human right.²

UNISON argued that by excluding their members from collective consultation under TULRCA, s. 280 the employer had interfered with the union and its members' rights to collective bargaining, and breached article 11 of the ECHR. The Court of Appeal agreed, and the principle that the right to collective bargaining is a fundamental human right was secured into domestic law.³

In 2011 the Court of Appeal in *RMT v Serco and ASLEF v London and Birmingham Railway* recognised that the right to strike is also an element of the right to freedom of association under article 11, which is given effect by the HRA. The ECtHR found that overly broad bans on taking industrial action are not permissible.⁴

The Act has helped to advance the rights of workers in Europe in other ways, including limiting workplace surveillance⁵ and restricting dismissal of workers where it interferes with their freedom of expression outside work⁶ or has a severe impact on their private and family life.⁷

By removing Section 3 of the HRA, this Bill removes the obligation on governments to bring UK law in line with Convention rights, also known as the 'interpretive duty'. It would limit

¹ [David, S \(2022\). "The end of collective rights as human rights?" *Building Worker Power*, TUC, p21.](#)

² [ibid](#)

³ [ibid](#)

⁴ [McKay, S \(2010\). "ECHR Upholds Right to Collective Bargaining and to Strike", *European Foundation for the Improvement of Living and Working Conditions*.](#)

⁵ [Barbulescu v. Romania \(2017\) \(Application no. 61496/08\)](#)

⁶ [Herbai v. Hungary \(Application no. 11608/15\)](#)

⁷ [Denisov v. Ukraine \(Application no. 76639/11\)](#)

workers and their union's ability to seek justice in the UK courts, as UNISON, RMT and ASLEF did, as unions and workers will only have the lengthy and expensive route of the Strasbourg ECtHR.

This, and the introduction of a permissions stage, has vast implications for smaller unions, workers and individuals who do not have the resources for Strasbourg, meaning under the BoR workers' access to their rights will be eroded. Further, the Bill would undermine historical Section 3 decisions, making them subject to ministerial review. This threatens the employment and human rights previously won by trade unions for workers in landmark cases such as those above and currently held by all workers.

But unions do not just fight for the human rights of their workers, the HRA helps union members to fight for individuals.

The HRA works as the last line of defence for workers and individuals by using the Act itself to discourage human rights abuses by employers. UNISON has used the Act to protect elderly couples forced with separation by hundreds of miles when just one of them needed care, and to safeguard 'women under threat of domestic violence, ensuring they can keep their police-recommended panic room without having their benefits penalised due to the bedroom tax.'

The union also states the HRA has led to cases that have secured rights for equalities groups including LGBT+ workers and those with mental or physical disabilities.⁸

⁸ [McAnea, C \(2022\). "We Can't Let the Government Take Away Crucial Legal Safety Nets", UNISON](#)

Problem 2: The equalities impact on workers of the restriction of positive obligations

Positive obligations in Section 6 of the HRA make it unlawful for public bodies to violate Convention rights. The Bill would restrict this in two ways: stopping new and continuing development of rights in response to changing conditions, and limiting existing protections by stopping courts from applying established positive obligations and subordinating them to other public body priorities.

This could have a devastating impact on Black, migrant, LGBT+, disabled and women workers, who already experience increased barriers to justice due to structural racism and inequality.

Research cited by the Runnymede Trust shows Black and ethnic minority people make up 71-73% of criminal and civil legal aid cases in England and Wales.⁹ Under the proposed permissions stage of the BoR, a Black worker discriminated against by their employer would first have to show that they have faced a 'significant disadvantage' to bring a case to court. This extra barrier could stop some workers from realising their rights.

Under the BoR, victims of racism, xenophobia, LGBT+ hate, ableism, misogyny and gender-based violence may not be able to hold their public services employer to account for failing to put protections in place for vulnerable workers or individuals.

Also, existing positive obligations will be negatively affected. Current existing positive obligations under threat include those for the legal recognition of gender identity for trans people¹⁰, that protect Gypsies' and Travellers' way of life¹¹, and those that protect migrant workers.

In 2021, the UK high court found that two members of the Windrush generation, both of whom had been part of the UK labour economy for decades, had their human rights breached when the Home Office refused to grant them citizenship.¹² Two conditions were essential to this ruling: that the Home Office was required to enact positive obligations and that unimpeded access to justice in the UK courts was possible—two conditions impossible with the BoR.

Further, migrants being denied any type of right increases their vulnerability to labour exploitation. This causes direct harm to migrant workers and damages the entire workforce by creating a race to the bottom on terms and conditions.

⁹ [Kapoor, A and N Youssef \(2022\) "The Bill of Rights: undermining rights for ethnic minority groups when they most need protection", Runnymede Trust.](#)

¹⁰ [Goodwin v. UK \(Application no.28957/95\) \[90\].](#) See also: [X v. The former Yugoslav Republic of Macedonia, \(Application no.29683/16\).](#)

¹¹ [Connors v UK \(Application no. 66746/01\).](#)

¹² [Vernon Vanriel v Secretary of State for the Home Department \(Case No: CO/1784/2021 CO/2941/2020\)](#)

The positive obligations to protect the right to life and to investigate deaths is currently being used to hold to the government and other public bodies to account for the state failures¹³ that led to the Grenfell fire, taking the lives of 72, dozens of whom were union members.¹⁴

We agree with EAW 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”.¹⁵

The removal of positive obligations also contravenes the underlying principle of the ECHR, that it should be “a living instrument which must be interpreted in the light of present-day conditions”¹⁶ to ensure that it could provide a long-term source of protection for rights as they develop in a changing world. One example is UK court’s future ability to respond to new technology such as increased surveillance and the associated risk of racial and other profiling by states and employers.

Further, in the absence of an employment bill and alongside worrying new proposed legislation such as the Data Protection and Digital Information Bill¹⁷ and the Brexit Freedoms Bill¹⁸, the restriction of positive obligations means future workers in the UK risk having their rights abused both by employers with new levels of access to workers’ personal lives and by the very bodies created to protect them, without recourse.

¹³ [Robertson, H. \(2017\) “Grenfell Exposes the True Face of Deregulation”, TUC](#)

¹⁴ [Anon \(2017\) “Unite Applies for Core Participant Status in the Grenfell Tower Public Inquiry”, Unite](#)

¹⁵ [Anon, \(2022\) “British Bill of Rights is a Major Step Back for Women and Survivors”, End Violence Against Women Coalition.](#)

¹⁶ [Tyrer v UK \(1978\) 2 EHRR 1, para 31; Johnson v Ireland \(1986\) 9 EHRR 203, \[53\].](#)

¹⁷ Towers, M (2022) *New Data Bill. Watering down of data rights. Gov will be free to make more changes to data rights without involving parliament* [Twitter] 25th July 2022 Available at:

https://twitter.com/MaryMay_ling/status/1551524652861751298 [Accessed 23 August 2022].

¹⁸ [Monbiot, G. \(2022\). “Johnson’s ‘Brexit freedoms bill’ won’t set us free. But it will reward his supporters”, The Guardian.](#)

Problem 3: The impact on workers of limits to the concept of universality and new definitions of state accountability.

The BoR has been progressed despite a manifesto commitment that promised simply to 'update' the current HRA. The government has also tried to avoid parliamentary scrutiny on this process¹⁹, suggesting a concerted effort to concentrate more power in the hands of the executive.

The BoR and explanatory notes seem to suggest that "upon commencement of the BoR and repeal of the HRA, all section 3 HRA judgments will fall. No precedent based upon those decisions will remain other than where selected by the Secretary of State."²⁰ This deletes decades of human rights development created by a balance of Parliament, the courts, and legal action by individuals and trade unions, and replaces it with the discretion of one minister. This is an extreme redefinition of what constitutes state accountability.

According to the JCHR letter dated 30th June, this "has the potential to affect millions of people in the UK: those in hospitals, in care settings, those dealing with local authorities, in education, in detention settings or in social matters. Indeed, it will impact upon anyone who deals with public bodies and will likely disproportionately impact those who are the most vulnerable in society". We share this concern and reiterate that it is the workers in these settings, navigating doing their jobs in an opaque, deregulated environment who will bear the brunt.

Regarding universality, the Bill would undermine the fundamental principle that human rights are for everyone, bestowed upon us all on the basis of our humanity. It creates groups of people deserving and undeserving of human rights by restricting the ability of migrants and people in prisons or detention centres to bring human rights claims.

The Bill targets article 8, the right to a family life, so that deportations that will result in anything up to 'exceptional', 'overwhelming' and 'irreversible' harm to a child cannot be challenged. It also creates barriers to ensuring migrants' right to a fair trial under article 6, blocking appeals and likely leading to people, often migrant workers, being deported based on decisions that constitute flagrant denials of justice.

PCS, the public and commercial services workers union, recently brought a High Court challenge against the Home Office regarding the Secretary of State's Rwanda removal scheme.²¹ This policy has been decried by the UN High Commissioner for Refugees as

¹⁹ [Spurrier, M. \(2022\) Letter to Rt Hon Dominic Raab MP. "Pre-legislative scrutiny of a Bill of Rights" Liberty, TUC and over 150 other civil society organisations.](#)

²⁰ [Grant, S, Whelton C and J Pang, \(2022\) "Liberty's Briefing on the Bill of Rights Bill for Second Reading in the House of Commons" Liberty.](#)

²¹ [Anon \(2022\) "Outcome Announced of PCS Challenge to Home Office Rwanda Removal Policy" PCS.](#)

“contrary to the letter and spirit of the Refugee Convention”²² and has been criticized by groups that support migrants for being ‘unspeakably cruel’.²³ We are equally as concerned as PCS about the BoR leading to their members being asked to carry out acts described in this way and we extend this concern to workers supporting migrants in all public bodies.

While inhumane agendas such as the Rwanda scheme (but also the Nationality and Borders Bill, the Police, Crime and Sentencing Bill, the Investigatory Powers Act, cuts to disability benefits and the recently proposed government attacks on trade unions) may be legal under a Bill of Rights - they are not in the spirit of Convention rights. They may also contravene historical ECtHR rulings, and the UK’s international obligations under International Labour Organisation (ILO) Conventions and the Trade and Cooperation Agreement (TCA).

²² [Anon \(2022\) “UNHCR ‘Firmly’ Opposing UK-Rwanda Offshore Migration Processing Deal” United Nations.](#)

²³ [Anon \(n.d.\) “Unspeakably Cruel New Plans to Send Asylum Seekers to Rwanda”, Joint Council for the Welfare of Immigrants](#)

Problem 4: The relationship between the BoR and UK obligations under international law

In our view, the BoR transgresses ILO Protocol 29, which amends ILO Convention 29 on Forced Labour.²⁴ Under this Convention, the government has committed to "addressing the root causes and factors that heighten the risks of forced or compulsory labour". Discouraging workers from reporting labour abuses by restricting their article 8 and 6 rights to family life and fair trial creates an environment where fears of deportation are heightened, and labour abuses are less likely to be reported. Rather than addressing these "root causes and factors" the BoR exacerbates them.

The same would apply for ILO Convention 111²⁵ under which the government has undertaken to "declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof". This prohibits the denigration of protections against unequal treatment at work for public services workers who are members of equalities groups, and the restriction of access to article 11 rights to freedom of expression, freedom of association and collective bargaining, both of which, as previously outlined, the BoR will encourage.

In December 2020 the UK and EU signed the TCA. A key principle of this agreement was that neither the UK nor EU countries should lower standards on workers' rights, also known as level playing field commitments. Under the enforcement mechanism in the TCA, if the UK worsens workers' rights the government can face strict penalties.²⁶

The level playing field commitments include not regressing on the standard of rights in place when the UK-EU agreement was signed and maintaining 'fundamental rights at work' which are grounded in the ILO core conventions.²⁷ Yet the BoR is exactly that—a regression of rights that will impact workers extremely negatively.

The BoR puts the UK in contravention with its moral obligations under international law by rolling back human rights protections that workers and individuals have enjoyed for twenty-five years. It threatens the TCA, UK obligations under ILO Conventions and the Good Friday Agreement.²⁸ The TCA includes the potential to bring a case for even a single breach of non-regression if this can be proven to have an impact on trade or investment. Current trade deals are already being affected, with international UK partners suggesting the government has been criticised for being "reckless and demagogic".²⁹

²⁴ [International Labour Organisation \(ILO\), 2014 "P029 - Protocol of 2014 to the Forced Labour Convention 1930"](#)

²⁵ [International Labour Convention \(ILO\) 1958, "C111 - Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\)"](#)

²⁶ [Ortino, F \(2022\). "Protecting workers' rights using the EU-UK Trade and Cooperation Agreement", TUC](#)

²⁷ [ibid](#)

²⁸ [O'Donoghue, A. and C. Murray \(2022\) "The Bill of Rights Bill: Playing Fast and Loose with the Belfast/Good Friday Agreement \(Again\)" Oxford Human Rights Hub](#)

²⁹ [O'Carroll, L \(2022\). "US 'will not entertain' UK trade deal that risks Good Friday agreement", *The Guardian*.](#)

Conclusion

There are yet further problems with the BoR that human rights organisations have outlined in detail elsewhere.³⁰

The TUC is currently and will continue to fight challenges to workers' collective rights on an international scale, including those threatened by the BoR.

We urge the JCHR to ensure that human rights are protected in the UK by publicly denouncing this Bill and lobbying for its rejection.

³⁰ [Grant, S, Whelton C and J Pang, \(2022\) "Liberty's Briefing on the Bill of Rights Bill for Second Reading in the House of Commons" Liberty.](#)