

# The King's Speech and the Rule of Law

Lucy Moxham

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## What is the King's Speech?

The [State Opening of Parliament](#) will take place on Tuesday 7th November. In his first King's Speech since becoming monarch, King Charles III will open Parliament and set out the government's legislative programme for the new parliamentary session. While there is no fixed length for a [parliamentary session](#), they usually run from spring to spring. However, the 2022-2023 session was [extended](#) to give the government more time to get through its legislative agenda.

A date for the next general election has not yet been announced, but this being an election year will undoubtedly influence the legislative programme for the upcoming parliamentary session. As some have [cautioned](#), "parliamentary handling tends to get harder over time, as a government loses political capital and its MPs begin to nervously eye the election". Others have [warned](#) that there will be "little actual time for legislation in the final session of Parliament". Under the [Dissolution and Calling of Parliament Act 2022](#), which repealed the Fixed-Term Parliaments Act 2011, the current Parliament will automatically end after five years, on 17 December 2024, if it has not been dissolved earlier. The election would then take place 25 working days later on 28 January 2025. (For analysis of when the next election might be, see [here](#).)

## Which bills are continuing?

Public bills which have not been passed by the end of a parliamentary session will usually be lost, but they can be "[carried over](#)" into the next session if a motion is agreed by the House of Commons.

Four public bills are being carried over into the 2023-2024 session, and two hybrid bills will also continue:

- Data Protection and Digital Information (No 2) Bill;
- Digital Markets, Competition and Consumers Bill;
- Economic Activity of Public Bodies (Overseas Matters) Bill;
- Victims and Prisoners Bill;
- High Speed Rail (Crewe - Manchester) Bill (hybrid); and
- Holocaust Memorial Bill (hybrid) (1).

A carry-over motion has also recently been agreed for the Renters (Reform) Bill.

In addition, four draft bills were published in the 2022-23 parliamentary session (the Draft Media Bill, the Draft Victims Bill (introduced and now carried over - see above), the Draft Mental Health Bill, and the Draft Terrorism (Protection of Premises) Bill), and a further draft bill was announced but has not yet been published: the Draft Audit Reform Bill (2).

## **What else might we see in the King's Speech?**

In addition, several bills were announced in the [May 2022 Queen's Speech](#), but have not yet been introduced. These include the Conversion Therapy Bill, the Modern Slavery Bill, and the Transport Bill (3).

Finally, parliamentary researchers have identified other areas which may be the subject of legislation in future, based on government documents and media reports, including: criminal justice measures; raising the age of sale for tobacco products; implementing legislation for UK accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership; transport; leasehold and commonhold reform; and changing the Habitats Regulations to 'scrap nutrient neutrality' (4). It has also been [suggested](#) that recent government White Papers may indicate areas for future legislation and highlight football governance, health and disability, gambling reform, and AI regulation in this regard.

## **Which plans may raise Rule of Law issues?**

The Bingham Centre for the Rule of Law, through a new phase of our [Rule of Law Monitoring of Legislation](#) project, will be closely examining the government's legislative programme as set out in the King's Speech on 7th November. It is already anticipated that some proposals will raise significant Rule of Law issues. We highlight three examples below.

### ***The Victims and Prisoners Bill***

The government published the [Draft Victims Bill](#) for pre-legislative scrutiny in May 2022. Following this, the [Victims and Prisoners Bill](#) was introduced in the House of Commons in March 2023 and a carry-over motion was agreed for the Bill in May 2023. While a range of concerns have been raised about the Bill, a central issue relates to what has been [described](#) as "the partial resurrection of the Bill of Rights Bill through the disapplication of section 3 of the Human Rights Act". It is a fundamental principle of international human rights law that human rights are universal. It is also a [core principle of the Rule of Law](#) that "[t]he laws of the land should apply equally to all, save to the extent that objective differences justify differentiation". Removing a means of human rights protection from a particular group of people would undermine the universality of human rights and raise Rule of Law questions.

Under section 3 of the [Human Rights Act 1998 \(HRA\)](#), "[s]o far as it is possible to do so", primary legislation and subordinate legislation, "must be read and given effect in a way which is compatible with the Convention rights". Under section 4 HRA, where it is not possible to do so, the court "may make a declaration of that incompatibility". The section 3 interpretative obligation has allowed courts to protect human rights in the UK and, in conjunction with section 4, is designed to respect parliamentary sovereignty and the separation of powers. However, the government's so-called [Bill of Rights Bill](#) (which we understand has now been [withdrawn](#)) sought to repeal section 3 HRA. The [Independent Human Rights Act Review \(IHRAR\)](#), chaired by Sir Peter Gross and established by the government to consider how the HRA is operating in practice and whether any change is required, published its [Final Report](#) in December 2021. The IHRAR undertook a detailed examination of sections 3 and 4 HRA, including how they "strike the constitutional balance" between the courts and Parliament. In submissions to the IHRAR, "[t]here was a strongly held view that the evidence supported the conclusion that UK Courts had not abused the use of section 3 and that section 4 had been used sparingly as Parliament had intended". Repeal of section 3 HRA was ultimately rejected by the Panel. In

correspondence to the then Justice Secretary Dominic Raab, the [Joint Committee on Human Rights \(JCHR\)](#) similarly stressed that "[r]ecent case law indicates that the courts are using section 3 appropriately" and that "repeal of section 3 would lead to a substantial weakening in the protection of human rights in the UK - as well as significant legal uncertainty and confusion".

However, as explained in the government's [ECHR memorandum](#) accompanying the Victims and Prisoners Bill when it was introduced in March 2023, clauses 42-44 of the Bill (see clauses 43-45 in the latest version of the Bill) would disapply section 3 HRA in relation to certain provisions which are described in the memorandum as spanning "the full legislative framework in England and Wales relating to release, licences, supervision, and recall of indeterminate and determinate sentenced offenders". The memorandum explains that these clauses aim to "bring forward in this context the repeal of section 3 HRA, as set out in the Bill of Rights Bill... specifically in relation to the statutory release regime". This also follows the disapplication of section 3 HRA in the [Illegal Migration Act 2023](#). As others have [emphasised](#), "[t]he trend that is emerging appears to be a sort of repeal by stealth - not taking on the Human Rights Act directly but disapplying its provisions in relation to individual bills and individual groups, piece-by-piece" which will "create a two-tiered system of human rights protection, whereby some people are protected by the requirement to have laws read compatibly with human rights and some are not". The [Law Society of England and Wales](#) and the [Prison Reform Trust](#), among others, have expressed great concern that the universality of human rights is being undermined in this way. In a letter to the Justice Secretary Alex Chalk last month, the [JCHR](#) reiterated its view that section 3 is "crucial to the legal protection of human rights in the UK" as well as its opposition to the government's disapplication of section 3 HRA in relation to the Illegal Migration Act and the proposal to repeal section 3 HRA in the Bill of Rights Bill. The JCHR called for the disapplication of section 3 HRA to be removed from the Victims and Prisoners Bill.

### ***Rental of prison space abroad***

The government recently announced plans to rent prison space abroad in order to address overcrowding in prisons here. A [press release](#) from the Ministry of Justice and Justice Secretary Alex Chalk stated that this is similar to steps taken by Belgium and Norway in the past and that "[t]he government will legislate as soon as parliamentary time allows to enable any future arrangements and will require that conditions are to the same standard as prisons in England and Wales". However, some of those working in the sector have [raised concerns](#) about the proposals and have expressed disappointment that other measures to address the "prison-capacity crisis" are not being given the same priority. There are a wide range of practical and legal questions which remain to be answered. For example, Louise Finer, who previously ran the UK's National Preventative Mechanism set up to independently monitor places of detention, has [stressed](#) that "the long-standing resistance by successive UK governments to the extra-territorial application of its international human rights treaty obligations" will be highly relevant to these discussions. She warned that if the government does go ahead with these plans "we must ensure that they are backed up by strong and accountable legal safeguards otherwise the UK risks breaching its obligations to prevent ill treatment, creating different and unaccountable standards for those held outside the UK and opening up a 'legal vacuum' for the protection of human rights". The Howard League for Penal Reform has [cautioned](#) that the prisons will need to be regularly inspected and that this will have "knock-on implications for the prison watchdogs". It noted that HM Inspectorate of Prisons already conducts overseas inspections in an immigration context, but that independent monitoring boards also play an important role. Others have [highlighted](#) the impact on prisoners' rehabilitation and on the families and children of prisoners.

### ***Migration and asylum***

Finally, we may see a renewed focus on migration and asylum next session, one of Prime Minister Rishi Sunak's [five key priorities](#). The [government's plans](#), to send some persons seeking asylum to Rwanda for their claims to be processed there, are central to implementing the Illegal Migration Act 2023 (see discussion [here](#), [here](#) and [here](#)). The Supreme Court heard the [Rwanda appeals](#)

in October and judgment is expected in a [couple of months](#). The former Director of Legislative Affairs in No 10, Nikki da Costa, recently [suggested](#) that a "further bill focussed on illegal migration may also be needed if the Supreme Court rules the Government's Rwanda policy is unlawful". In addition, if the Supreme Court finds in favour of the government, it is possible the applicants may seek to bring a case to the European Court of Human Rights in Strasbourg. One commentator has [cautioned](#) the UK government that "[a]nti-ECHR invective may find an audience domestically. But the government's stated policy is to minimize crossings through better European cooperation - and attacks on domestic and European courts will only harm that cause". With some in government [suggesting](#) that the UK should withdraw from the Convention system, which is central to devolution in Scotland, Wales and Northern Ireland and also to the [Belfast/Good Friday Agreement](#) in respect of Northern Ireland, the Rule of Law could be under further threat.

*Lucy Moxham is a Senior Fellow at the Bingham Centre, and is leading a new phase of the Centre's Rule of Law Monitoring of Legislation project. For more information about the project and its previous phase of work, including analysis of Bills during the period 2020-2022, see [here](#).*

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## Footnotes

1. See R Kelly, House of Commons Library, 'King's Speech 2023' (13 October 2023) available at <https://researchbriefings.files.parliament.uk/documents/CBP-9869/CBP-9869.pdf>.
2. See above.
3. See above.
4. See above.

URL: <https://binghamcentre.biicl.org/comments/126/the-kings-speech-and-the-rule-of-law>