

# RULE OF LAW (ENFORCEMENT BY PUBLIC AUTHORITIES) BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Rule of Law (Enforcement by Public Authorities) Bill introduced in the House of Commons on 20 June 2022 (Bill 103).

- These Explanatory Notes have been prepared by Sir Christopher Chope OBE MP, the member in charge of the Bill, in order to assist the reader of the Bill.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

1. The Rule of Law (Enforcement by Public Authorities) Bill seeks to place a duty on all public authorities (excluding courts and the Houses of Parliament) to exercise their statutory powers to: i) investigate and take enforcement action for breaches of the law; and ii) exercise other statutory functions, in priority to any other activity which the authority may carry out. Police forces must comply with the above duties before conducting any activity relating to lawful conduct (including ‘non-crime hate incidents’).
2. The Bill would confirm that the main responsibility of public authorities under the rule of law should be to investigate and bring sanctions against those in breach of the existing law and exercise their other statutory functions above other matters which may take up an authority’s time and resources.
3. The Bill gives a right to individuals to seek relief (including damages) if a public authority contravenes the above duties.

## Policy background

4. By judgment of 20 December 2021, the Court of Appeal held that Operational Guidance (and subsequent revisions) relating to ‘non-crime hate incidents’ issued by the College of Policing was in breach of Art. 10 (Freedom of expression) of the European Convention on Human Rights (see *R. (on the application of Miller) v College of Policing* [2021] EWCA Civ 1926).
5. The judgment held that the recording of ‘non-crime hate incidents’ was an unlawful interference with freedom of expression, that the interference was real and significant, and that the volume of ‘non-crime hate incidents’ was enormous and the police do not have the resources nor the capacity to investigate every complaint that was made.
6. Other examples of public authorities not exercising their statutory powers to investigate and take enforcement action for breaches of the law include those cited by Sir Christopher Chope OBE MP in the Adjournment Debate entitled “*Rule of Law (Enforcement by Public Authorities)*” on 3 March 2020, including:
  - a. criminal fraud: in the year ending March 2019, 741,123 crimes of fraud were reported, giving rise to £2.2 billion in losses to victims, but only 42,127 crimes were disseminated for investigation and enforcement by local authorities;
  - b. illegal immigration: Section 24 of the Immigration Act 1971 sets out a series of criminal offences, including knowingly entering the United Kingdom without leave and remaining beyond the time limited by leave, yet despite the vast number of continuing offences against Section 24, few prosecutions, if any, are commenced; and
  - c. other instances, for example criminal damage (politically or otherwise motivated), rogue landlords, unlicensed homes of multiples occupation and trespass or unlawful camping.
7. Further, adherence to the rule of law is one of the fundamental elements of the British constitution. Annual reports from the World Justice Project suggest that the UK scores only 80% and is 12<sup>th</sup> in the international league table concerning the performance of countries in complying with the rule of law, which includes that legislation is fairly and effectively implemented and enforced.

## Commentary on provisions of Bill

### Clause 1: Duty to exercise statutory powers

8. Subsection (1) imposes a duty on all public authorities (as defined under section 6(3)(b) of the Human Rights Act 1998) to exercise their statutory powers to investigate and take enforcement action for breaches of the law.
9. Subsection (2) imposes a duty on those public authorities to ensure that compliance under subsection (1) and the exercise of those authorities' other statutory functions are conducted in priority to any other activity they may carry out.
10. Subsection (3) defines the public authorities to which the Act would apply.

### Clause 2: Police forces

11. This section requires police forces in England and Wales to comply with the above duties before conducting any activity relating to lawful conduct, whether or not that conduct is perceived by the victim (or another) to be motivated by hostility or prejudice against a person because of race, religion, disability, sexual orientation or transgender identity (i.e. is a 'non-crime hate incident').

### Clause 3: Redress

12. This section gives an individual a right to apply to court against a public authority in contravention of this Act for relief, including damages, for any material or non-material (including distress) damage as a result of the failure of the public authority to comply.

### Clause 4: Extent, commencement and short title

13. Subsection (1) sets out the territorial extent of the Bill. It will extend to England and Wales, Scotland and Northern Ireland.
14. Subsection (2) provides that the Act will come into force on the day on which it is passed.
15. Subsection (3) provides that the short title of the Bill will be the Rule of Law (Enforcement by Public Authorities) Act 2023 once it becomes an Act.

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