

The Human Rights Act

What it means for you



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The Human Rights Act 1998 is an important and wide-ranging law that affects many parts of our lives. This leaflet explains what the Act says and how it works.

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The leaflets in this series give you an outline of your legal rights. They are not a complete guide to the law and are not intended to be a guide to how the law will apply to you or to any specific situation. The leaflets are regularly updated but the law may have changed since this was printed, so information in it may be incorrect or out of date.

If you have a problem, you will need to get more information or personal advice to work out the best way to solve it. See 'Further help' on page 15 for sources of information and advice.

You may have read about the Human Rights Act in newspapers, or heard about it on television or on the radio. That's because it's an important piece of legislation that affects large areas of our lives. The Human Rights Act doesn't spell out things you must or mustn't do. It's more like a series of principles (called articles or protocols). If you want to take somebody to court under the Human Rights Act, you must show that one of these principles has been broken.

Where did the Human Rights Act start?

The roots of the Human Rights Act go back to the Second World War. After the war, the European Convention on Human Rights (often called 'the Convention') was written, setting out important basic human rights. In 2000 the Human Rights Act made the Convention part of British law.

The rights in the Convention are set out as separate 'articles'. Since the Convention was written, new 'protocols' have been added. Most of these protocols deal with procedure, but some of them add new rights to the Convention.

The European Court of Human Rights in Strasbourg was set up to consider cases brought by people who claim that their rights under the

Convention have been broken ('breached' in legal terms). In many cases, this court has decided that the British government has breached the Convention. These cases have led to important changes in the law in this country.

Taking a case to the court in Strasbourg takes a long time. In almost all cases you must first take legal action in this country using the Human Rights Act before you take a case to the court in Strasbourg. You can take a case to Strasbourg only if you fail to win your case here under the Human Rights Act.

How does the Human Rights Act work?

Not all the rights in the Convention and its protocols are part of British law. In particular, Articles 1 and 13 and some of the protocols are not included in the Human Rights Act. The rights that have been made part of British law are called the Convention rights. Some of the rights that have been left out may be added later. The Convention rights are very broad, and the Act affects many areas of the law. The Human Rights Act says that, as far as possible, the courts should interpret and apply the law in a way which respects or fits in with people's Convention rights.

The Human Rights Act also says that public authorities must respect people's Convention rights. Public authorities include government departments, the police, local councils and the Benefits Agency. Some organisations are public authorities at some times but not at others. For example, a security company is a public authority when it is working for the Prison Service but not when it is doing private security work.

Sometimes the rights of different people clash, and the courts have to find a balance between these rights. For example, animal rights protesters may use the rights to freedom of expression (Article 10) and freedom of assembly (Article 11) to argue that the police (a public authority) should allow them to protest outside the homes of scientists who do animal experiments. The scientists may use the right to respect for their privacy and home (Article 8) to try to persuade the police to stop the protest.

What can I do if I think my rights have been breached?

If you think a public authority has breached your Convention rights (or that it is going to do so), you can take court proceedings against them. You have to show that you have

been affected by what the public authority has done or is going to do.

You can apply for a procedure called a 'judicial review' if:

- you want to challenge a decision made by a public authority; or
- you want the court to order a public authority to do something or stop doing something.

Under judicial review, a judge will look at your case and decide if the public authority has acted illegally. You have to start proceedings quickly, and at the latest within three months of the authority's decision or action you are challenging. It is important to consult a lawyer quickly and discuss the possibility of judicial review if you think that there has been a breach of your rights, because judicial review can be an effective way of challenging a decision or action, and you are more likely to get public funding (legal aid) for it than for a damages claim on its own.

If you just want compensation because your Convention rights have been breached, you can bring a claim for damages. You have to bring the case within a year of your rights being breached.

A court can award you compensation if it finds that your Convention rights have been breached. But the court

may choose not to award you compensation if it decides that simply finding that your rights were breached is enough. The compensation that people have received for breaches of their Convention rights has been quite low.

You may also be able to rely on your Convention rights if you are defending yourself in court. This will happen most often in criminal cases, but it may also happen, for example, if you are:

- a council tenant and the council is trying to evict you; or
- an immigrant or asylum seeker facing deportation.

What sort of cases doesn't the Act cover?

Sometimes a court won't be able to do anything about your rights being breached. The Human Rights Act doesn't allow the courts to overrule an Act of Parliament. If the courts can't interpret or apply a particular Act of Parliament in a way that respects or fits in with people's Convention rights, all they can do is to make what's called a 'declaration of incompatibility'. The Government and Parliament then have to decide if the law should be changed. But until or unless that happens, the courts have to apply the law as it is, even though

it does not fit in with Convention rights. The courts will not be able to award you any compensation.

If you find yourself in this situation, you could think about applying to the European Court of Human Rights, because the Court in Strasbourg can award compensation.

The Human Rights Act allows people to bring a case only against an organisation that is a public authority. So a person who is employed by, for example, a local council can take proceedings against their employer, but a person who is employed by a private company cannot.

Even so, the Act affects court cases between individuals and private organisations. This is because it changes the way the courts interpret and develop the existing law. The courts are already using Article 8 of the Convention (the right to respect for private and family life) to develop a law of privacy that will affect private individuals and organisations as well as public authorities.

The articles of the Act in detail

Here we explain what each article says. We also give examples of how they have been used in the past or how they might be used under the Human Rights Act. Bear in mind,

though, that these are just examples, and the Convention rights can be used in many other ways.

Article 2: Right to life

This says that the Government and public authorities must protect the right to life. It may mean that the police have to protect someone whose life is under immediate threat. It might also be used to argue that a patient should be able to get treatment that would save their life. Article 2 says there are three situations when the Government or a public authority can justify taking someone's life. These are where:

- they are protecting someone else from illegal violence;
- they are trying to arrest someone or prevent someone from escaping from custody; or
- they are trying to stop a riot.

If someone dies in such a situation, the Government or public authority (usually the police) will have to show that no more force was used than absolutely necessary. Unless they can show this, they will have breached Article 2.

Article 2 also says there should be a proper investigation when the police or army kill someone or when someone dies in custody or when someone has

died because of a public authority's negligence. This will usually be an inquest, but sometimes the Government, police or army may have to hold a public inquiry. Under Article 2, the family of the dead person may also have to be given legal aid so that they can fully participate in the investigation.

There are two particular situations that Article 2 does not cover:

- It cannot be used to stop a woman having an abortion.
- It does not give people who are terminally ill the right to be helped to die.

Article 3: Prohibition of torture

This says that no one should be tortured, and also forbids punishing or treating people in a way that is degrading or inhuman. The European Court of Human Rights says inhuman or degrading treatment or punishment has to be very serious to be a breach of Article 3. At the least, it must be extremely humiliating.

This article prevents people being deported to a country where they are likely to be tortured, or extradited (sent) to face criminal charges in a country where they will face the death penalty.

It has also been used:

- in cases where social services have failed to protect children from severe abuse; and
- to argue that the Government should not withhold state support from asylum seekers because doing this would leave them destitute (with nothing to live on).

Prisoners or people held in hospital might use Article 3 if they are treated very badly or if the conditions in the prison or hospital are particularly bad.

Article 4: Prohibition of slavery and forced labour

This forbids slavery; that is, when one person is owned by another person, or when someone is forced to work. However, the article makes it clear that this does not include work that someone has to do while they are in prison, or any work contracts that you agree to voluntarily.

Article 5: Right to liberty and security

This limits the circumstances in which someone can be detained and have their freedom taken away. It covers detention for:

- long periods – for example, if you are in prison or are forced to stay as a patient in a mental hospital; and

- short periods – for example, if you are arrested.

Article 5 says the law must be clear about how and when people can be detained. It also says that people can be detained only:

- if they have been convicted of an offence and sentenced to imprisonment;
- if they have disobeyed a court order to make them do something that the law says they must do (such as paying a fine or paying maintenance);
- if there is good reason to suspect they have committed a crime, or to stop them from committing a crime, or to stop them running away after committing a crime;
- if they are mentally ill, alcoholic, a drug addict or a vagrant, or if it is necessary to detain them to stop an infectious disease spreading;
- to stop them coming into the country illegally; or
- so that they can be deported or extradited (sent to a country where they have been accused of a crime).

People under 18 may also be detained to make sure they get educational supervision or can be taken to court.

However, English and Welsh law does not allow some types of people to be detained. For example, drug addicts can't be detained just because they are addicts.

Article 5 also gives people who have been arrested or detained the right to:

- be told why they have been arrested in a language they understand;
- be taken before a court quickly;
- bail (being released temporarily while court proceedings continue, which you may be given if you agree to meet conditions, such as living at a certain place), unless there are good reasons for not granting it;
- be tried within a reasonable time;
- take court proceedings to challenge their detention if they think it is illegal; and
- compensation if they have been illegally detained.

Article 5 also gives some people who are detained the right to have a court or tribunal look again at the reasons for their detention from time to time. This includes compulsory patients in a mental hospital and prisoners serving a life sentence once they have completed the tariff part of their sentence (the minimum period that they must spend in prison

before the Parole Board can decide to release them on licence – that is, with conditions).

Article 6: Right to a fair trial

This article says everyone has the right to a fair trial and sets standards for the way hearings should be run. You may believe you have not had a fair trial if you lose your case, but there will be a breach of Article 6 only if the standards have not been met.

Article 6 applies to both civil proceedings (cases involving disputes between individuals or organisations) and criminal proceedings (when someone is prosecuted for an offence).

Certain standards apply in both criminal and civil cases. These are the right to:

- a trial within a reasonable time;
- an independent judge;
- a public hearing (although in some circumstances the public is not allowed to watch);
- have the judge's decision made public; and
- know the judge's reasons for the decision.

In civil cases, Article 6 also protects the right to take court proceedings to settle a dispute (though, depending on the type of case, this right may be limited). In a very few cases Article 6

may also give you the right to legal aid for your case if you cannot present your case yourself and you cannot afford a lawyer.

In some situations where a person who is not completely independent makes a decision, they are not necessarily breaching Article 6 (for example, a housing officer reviewing a homelessness decision). This is because you would have the right to appeal against the decision to a court.

There are extra rights in criminal cases. These are the rights to:

- be presumed innocent until you have been proved guilty;
- be told at an early stage what you are being accused of;
- remain silent – you cannot be forced to answer questions, but the court may be able to take your silence into account when deciding whether you are guilty;
- have enough time to prepare your defence;
- have legal aid for a lawyer if you cannot afford one and it is 'in the interests of justice' for you to have one;
- be present at your trial;
- put your side of the case at your trial;
- question the main witnesses against you and call witnesses of your own; and
- have an interpreter if you need one.

Article 7: No punishment without law

This says you cannot be tried and found guilty if what you did was not a criminal offence when you did it. It also says that you can't be punished in a way that was not the law when you committed the offence.

Parliament can't backdate a law that:

- increases the length of time you could be sent to prison; or
- introduces a new punishment for an offence.

Article 7 also says that the law must be clear so that people know whether what they are doing is against the law or not.

Article 8: Right to respect for private and family life

This says there should be respect for everyone's private and family life, home and correspondence.

There is no full definition of what 'private life' includes, though it is similar to privacy and covers the right to:

- get on with your life without interference;

- develop your personality and form friendships and relationships with other people;
- enjoy your sexuality; and
- control your body.

It also covers how people or organisations hold and use information about you.

'Family life' means your relationship with your close family. This includes a man and woman who aren't married but who live in a stable relationship, though the Court in Strasbourg has not yet recognised a same-sex couple as a family.

'Your home' means where you now live. The right to respect for your home does not mean that you have the right to be given a home if you do not have one, or to be given a better one than you already have.

'Your correspondence' means your phone calls and letters, as well as e-mails. People have used Article 8 to challenge the police or secret services about bugging their phones.

Article 8 is a 'qualified right'. This means that the Government or a public authority may be allowed to restrict or interfere with the right in certain circumstances. The Government or the public authority

must show that there was a clear legal basis for the restriction or interference. Its actions must pursue one of the six aims sets out in Article 8. These aims include to prevent crime and to protect the rights of others. It also has to show that breaching the right was 'necessary and proportionate' (that it was done for a very good reason and went no further than it needed to).

Article 8 has been used in many cases, including:

- cases brought by gay men, which led to the abolition of laws that restricted gay men having sex. The age of consent for gay men is now the same as for everyone else;
- a man who had been in care as a child, who used Article 8 to get his care records;
- a police officer who brought a successful claim against her bosses for tapping her work phone.

Article 9: Freedom of thought, conscience and religion

This guarantees that you can think what you want and can hold any religious belief. You cannot be forced to follow a particular religion and cannot be stopped from changing your religion. The freedom of

conscience principle also applies to people who are vegan or pacifist.

Article 9 also protects the right to practise or express your religion or beliefs.

Article 9 is a 'qualified right'. This means that the Government or a public authority may be allowed to restrict or interfere with the right in certain circumstances. The Government or the public authority must show that there was a clear legal basis for the restriction or interference. Its actions must pursue one of the four aims set out in Article 9 – for example, to protect the rights of others. It also has to show that the restriction or interference was 'necessary and proportionate' (that it was done for a very good reason and went no further than it needed to).

Article 10: Freedom of expression

This guarantees the right to pass information to other people and to receive information that other people want to give you. It also guarantees the right to hold and express opinions and ideas. It is similar to the right under Article 9, although the range of opinions and beliefs that are protected by Article 10 is much wider. Journalists and people who publish

newspapers and magazines can use Article 10 to argue there should be no restrictions on what they write about. Artists and writers can use it to defend themselves against people who try to censor their work.

Article 10 is a 'qualified' right. This means that the Government or a public authority may be allowed to restrict or interfere with the right in certain circumstances. The Government or the public authority must show that there was a clear legal basis for the restriction or interference. Its actions must pursue one of the eight aims set out in Article 10, which include:

- the prevention of crime;
- the protection of morals;
- the protection of other people's rights or reputations; and
- the protection of confidential information.

It also has to show that the restriction or interference was 'necessary and proportionate' (that it was done for a very good reason and went no further than it needed to).

Article 11: Freedom of association and assembly

This protects the right to protest peacefully by holding meetings and demonstrations. It also means that the police may have to act to protect people holding a meeting or demonstration from anyone trying to stop it.

Article 11 protects the right to form or join a political party or other group, and the right to belong to a trade union. But the right to join a trade union doesn't include police officers, soldiers and some other groups who work for the Government. Article 11 also guarantees the right not to have to join a union.

Article 11 is a 'qualified' right. This means that the Government or a public authority may be allowed to restrict or interfere with the right in certain circumstances. The Government or the public authority must show that there was a clear legal basis for the restriction or interference. Its actions must pursue one of the five aims set out in Article 11, which include preventing disorder or crime, and protecting other people's rights. It also has to show that the interference was 'necessary and proportionate' (that it was done

for a good reason and went no further than it needed to).

At the moment, the police can restrict demonstrations or ban them. People may use Article 11 to challenge some of these restrictions if they believe they go too far and are not necessary.

Article 12: Right to marry and found a family

This gives men and women the right to marry, as long as they are old enough. Traditionally this did not include same-sex couples or transgender people (people who've undergone a sex change). However, both the Strasbourg and English courts have recently found that transgender people do have the right to marry in their new gender (the sex they've changed to) and the law has now changed so that it is in line with these rulings.

The right to 'found a family' may apply only to people who are married. If it does, people who are not married will have to rely on the right to respect for family life under Article 8 to argue for their right to have children.

Article 14: Prohibition of discrimination

This includes many types of discrimination, including discrimination on grounds of:

- sex;
- race;
- religion; and
- political opinion.

However, the article does not say these are the only ones, and the European Court of Human Rights has accepted that it covers discrimination against people who are:

- non-marital (born to unmarried parents);
- unmarried;
- prisoners; or
- gay or lesbian.

The courts are also likely to accept that the article covers discrimination against someone because they are disabled.

You can argue that you have been discriminated against on other grounds as well, but you will probably need to show that the discrimination is linked to a 'personal characteristic'.

Article 14 does not give general rights against discrimination. You can use it only where the discrimination

is linked to another article of the Convention. For example, a gay man found that he could take over the tenancy on a flat after his partner had died, but on worse terms than if his partner had been a woman. He used Article 8 because his home was at stake. He then used Article 14 as he was discriminated against because of his sexual orientation.

Article 14 is often used with Article 1 of the First Protocol by people who are discriminated against in the payment of benefits.

Even if you can show that you have been discriminated against and that the discrimination is linked to another article, the Government or public authority might still be able to argue that the discrimination is justified. But they must show that there is a good reason for treating you differently and that their actions are proportionate (go no further than they need to).

The protocols in detail

The protocols are new parts of the Convention, added since the Convention was first written.

Protocol 1 Article 1: Protection of property

'Property' has a very wide meaning. It can include shares, a pension, welfare benefits that you have contributed to by paying national insurance, or even the right to sue someone.

The article says the Government or a public authority cannot take your property away from you unless the law states that it can and it is in the public interest to do so. If your property is taken away, you should be able to claim compensation.

The article also says the Government or a public authority cannot restrict what you do with your property, unless there is a law that allows them to do this and there is a good reason for it. However, the article does not affect the right of the Government or a public authority to take or control your property to force you to pay taxes or fines.

Protocol 1 Article 2: Right to education

This gives everyone the right to go to school and the right to apply to university or college, but it does not stop schools and colleges choosing the people they will accept. It says

the Government should make sure that the education is of a reasonable standard. This applies to private as well as state schools.

The Article says the Government and schools must respect the religious views and other serious beliefs of a child's parents, but it does not give people the right to a particular type of education for their children.

Protocol 1 Article 3: Right to free elections

This says the Government must hold elections at reasonable intervals and that the elections must be by secret ballot. The article gives people the right to vote or to stand in elections, although there are some restrictions on this right. It does not say what type of election system the Government should use. A prisoner has used this article to successfully challenge the complete ban on prisoners voting.

Protocol 6 Articles 1 and 2, Protocol 13: Abolition of the death penalty

The sixth protocol abolished the death penalty in Britain, but originally it still allowed for the death penalty during wartime or when war is about to break out. However, more recently, Britain signed Article 1 of the 13th protocol, which bans the death penalty completely, so it now cannot be used at any time.

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Liberty

For general information on the Human Rights Act see the Liberty guide 'Your Rights', available from public libraries, or log onto their website at: www.yourrights.org.uk

If you want help on a particular human rights issue contact the Liberty legal helpline. It is available Monday and Thursday 6.30pm to 8.30pm and Wednesday 12.30pm to 2.30pm.
phone: 0845 1232307
email: info@liberty-human-rights.org.uk

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Many of the organisations offer some or all of their services for free. If you cannot afford to pay for advice you may be eligible for financial support through the Community Legal Service Fund (Legal Aid). You can order leaflets about funding from the LSC Leaflet line on 0845 3000 343. You can also use a Legal Aid eligibility calculator on the website: www.clsdirect.org.uk

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The Legal Services Commission (LSC)

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LIBERTY

PROTECTING CIVIL LIBERTIES
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